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STATUTORY INSTRUMENTS

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**2003 No. 1102**

**The Insurers (Reorganisation and  
Winding Up) Regulations 2003**

**PART III**

*Modifications of the law of insolvency: notification and publication*

**Modifications of the law of insolvency**

**8.** The general law of insolvency has effect in relation to UK insurers subject to the provisions of this Part.

**Notification of relevant decision to the Authority**

**9.—(1)** Where on or after 20th April 2003 the court makes a decision, order or appointment of any of the following kinds—

- (a) an administration order under section 8(1) of the 1986 Act<sup>(1)</sup>;
- (b) a winding up order under section 125 of the 1986 Act or Article 105 of the 1989 Order;
- (c) the appointment of a provisional liquidator under section 135(1) of the 1986 Act or Article 115(1) of the 1989 Order, or in an interim order under section 9(4) of that Act or Article 22(4) of that Order;
- (d) a decision to reduce the value of one or more of the insurer's contracts, in accordance with section 377 of the Financial Services and Markets Act 2000<sup>(2)</sup>,

it must immediately inform the Authority, or cause the Authority to be informed of the order or appointment which has been made.

(2) Where a decision with respect to the approval of a voluntary arrangement has effect, and the arrangement which is the subject of that decision is a qualifying arrangement, the supervisor must forthwith inform the Authority of the arrangement which has been approved.

(3) Where a liquidator is appointed as mentioned in section 100 of the 1986 Act or Article 86 of the 1989 Order (appointment of liquidator in a creditors' voluntary winding up), the liquidator must inform the Authority forthwith of his appointment.

(4) Where in the case of a members' voluntary winding up, section 95 of the 1986 Act (effect of company's insolvency) or Article 81 of the 1989 Order applies, the liquidator must inform the Authority forthwith that he is of that opinion.

(5) Paragraphs (1), (2) and (3) do not apply in any case where the Authority was represented at all hearings in connection with the application in relation to which the order or appointment is made.

(6) For the purposes of paragraph (2), a "qualifying arrangement" means a voluntary arrangement which—

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(1) Part II of the Insolvency Act 1986 was applied to insurers by S.I. 2001/1242, article 3.  
(2) 2000, c. 8.

- (a) varies the rights of creditors as against the insurer and is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern; or
- (b) includes a realisation of some or all of the assets of the insurer and distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.

(7) A supervisor or liquidator who fails without reasonable excuse to comply with paragraph (2) or (3) (as the case may be) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Notification of relevant decision to EEA regulators**

**10.**—(1) Where the Authority is informed of a decision, order or appointment in accordance with paragraph (1), (2) or (3) of regulation 9, the Authority must as soon as is practicable inform the EEA regulators in every EEA State—

- (a) that the decision, order or appointment has been made; and
- (b) in general terms, of the possible effect of a decision, order or appointment of that kind on—
  - (i) the business of an insurer, and
  - (ii) the rights of policyholders under contracts of insurance effected and carried out by an insurer.

(2) Where the Authority has been represented at all hearings in connection with the application in relation to which the decision, order or appointment has been made, the Authority must inform the EEA regulators in every EEA State of the matters mentioned in paragraph (1) as soon as is practicable after that decision, order or appointment has been made.

#### **Publication of voluntary arrangement, administration order, winding up order or scheme of arrangement**

**11.**—(1) This regulation applies where a qualifying decision has effect, or a qualifying order or qualifying appointment is made, in relation to a UK insurer on or after 20 April 2003.

(2) For the purposes of this regulation—

- (a) a qualifying decision means a decision with respect to a proposed voluntary arrangement, in accordance with section 4A of the 1986 Act;
- (b) a qualifying order means—
  - (i) an administration order under section 8(1) of the 1986 Act,
  - (ii) an order appointing a provisional liquidator in accordance with section 135 of that Act, and
  - (iii) a winding up order made by the court under Part IV of that Act or Part V of the 1989 Order.
- (c) a qualifying appointment means the appointment of a liquidator as mentioned in section 100 of the 1986 Act or Article 86 of the 1989 Order (appointment of liquidator in a creditors' voluntary winding up).

(3) Subject to paragraph (8), as soon as is reasonably practicable after a qualifying decision has effect, a qualifying order or a qualifying appointment has been made, the relevant officer must publish, or cause to be published, in the Official Journal of the European Communities the information mentioned in paragraph (4) and (if applicable) paragraphs (5), (6) or (7).

(4) That information is—

- (a) a summary of the terms of the qualifying decision, qualifying appointment or the provisions of the qualifying order (as the case may be);
- (b) the identity of the relevant officer;
- (c) the statutory provisions in accordance with which the qualifying decision has effect or the qualifying order or appointment has been made.

(5) In the case of a qualifying appointment, that information includes the court to which an application under section 112 of the 1986 Act (reference of questions to the court) or Article 98 of the 1989 Order (reference of questions to the High Court) may be made.

(6) In the case of a qualifying decision, that information includes the court to which an application under section 6 of the 1986 Act or Article 19 of the 1989 Order (challenge of decisions) may be made.

(7) In the case of a qualifying order falling within paragraph (2)(b)(i), that information includes the court to which an application under section 27 of the 1986 Act or Article 39 of the 1989 Order (protection of interests of creditors and members) may be made.

(8) Paragraph (3) does not apply where a qualifying decision or qualifying order falling within paragraph (2)(b)(i) affects the interests only of the members, or any class of members, or employees of the insurer (in their capacity as members or employees).

(9) This regulation is without prejudice to any requirement to publish information imposed upon a relevant officer under any provision of the general law of insolvency.

(10) A relevant officer who fails to comply with paragraph (3) of this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) A qualifying decision or qualifying order is not invalid or ineffective if the relevant official fails to comply with paragraph (3) of this regulation.

(12) In this regulation, “relevant officer” means—

- (a) in the case of a voluntary arrangement, the supervisor;
- (b) in the case of an administration order, the administrator;
- (c) in the case of a creditors' voluntary winding up, the liquidator;
- (d) in the case of winding up order, the liquidator; or
- (e) in the case of an order appointing a provisional liquidator, the provisional liquidator.

### **Notification to creditors: winding up proceedings**

**12.—**(1) When a relevant order or appointment is made, or a relevant decision is taken, in relation to a UK insurer on or after 20th April 2003, the appointed officer must notify in writing all known creditors of that insurer—

- (a) of the matters mentioned in paragraph (4) and, if applicable, paragraph (5); and
- (b) of the matters mentioned in paragraph (6),

as soon as is reasonably practicable in any case.

(2) The appointed officer may comply with the requirement in paragraphs (1)(a) and the requirement in paragraph (1)(b) by separate notifications.

(3) For the purposes of this regulation—

(a) a “relevant order” means—

- (i) an administration order under section 8(1) of the 1986 Act or Article 21(1) of the 1989 Order where the order is made for the achievement of a purpose mentioned in section 8(3)(b), (c) or (d) of that Act or Article 21 (3)(b), (c) or (d) of that Order,

- (ii) a winding-up order under section 125 of the 1986 Act (powers of the court on hearing a petition) or Article 105 of the 1989 Order (powers of High Court on hearing of petition),
  - (iii) the appointment of a liquidator in accordance with section 138 of the 1986 Act (appointment of a liquidator in Scotland), and
  - (iv) an order appointing a provisional liquidator in accordance with section 135 of that Act or Article 115 of the 1989 Order;
- (b) a “relevant appointment” means the appointment of a liquidator as mentioned in section 100 of the 1986 Act or Article 86 of the 1989 Order (appointment of liquidator in a creditors' voluntary winding up); and
- (c) a “relevant decision” means a decision as a result of which a qualifying voluntary arrangement has effect.
- (4) The matters which must be notified to all known creditors in accordance with paragraph (1) (a) are as follows—
- (a) that a relevant order or appointment has been made, or a relevant decision taken, in relation to the UK insurer; and
  - (b) the date from which that order, appointment or decision has effect.
- (5) In addition to the matters mentioned in paragraph (4), insurance creditors must be notified, in accordance with paragraph (1)(a), of the following matters—
- (a) the effect which the relevant order, appointment or decision will, or is likely to have on the kind of contract of insurance under, or in connection with, which that creditor’s insurance claim against the insurer is founded; and
  - (b) the date from which any variation (resulting from the relevant order or relevant decision) to the risks covered by, or the sums recoverable under, that contract has effect.
- (6) The matters which must be notified to all known creditors in accordance with paragraph (1) (b) are as follows—
- (a) if applicable, the date by which a creditor must submit his claim in writing;
  - (b) the matters which must be stated in a creditor’s claim;
  - (c) details of any category of debt in relation to which a claim is not required;
  - (d) the person to whom any such claim or any observations on a claim must be submitted; and
  - (e) the consequences of any failure to submit a claim by any specified deadline.
- (7) Subject to paragraph (8), where a creditor is notified in accordance with paragraph (1)(b), the notification must be headed with the words “Invitation to lodge a claim: time limits to be observed”, and that heading must be given in either—
- (a) the official language, or one of the official languages, of the EEA State in which that creditor is ordinarily resident; or
  - (b) every official language.
- (8) Where a creditor notified in accordance with paragraph (1)(a) or (b) is—
- (a) an insurance creditor; and
  - (b) ordinarily resident in an EEA State,
- the notification must be given in the official language, or one of the official languages, of that EEA State.
- (9) The obligation under paragraph (1)(b) may be discharged by sending a form of proof in accordance with rule 4.74 of the Insolvency Rules, Rule 4.080 of the Insolvency Rules (Northern

Ireland) or Rule 4.15(2) of the (Insolvency) Scotland Rules as applicable in cases where either of those rules applies, provided that the form of proof complies with paragraphs (7) or (8) (whichever is applicable).

(10) An appointed officer commits an offence if he fails without reasonable excuse to comply with an applicable requirement under this regulation, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) For the purposes of this regulation—

(a) “appointed officer” means—

- (i) in the case of a relevant order falling within paragraph (3)(a)(i), the administrator,
- (ii) in the case of a relevant order falling within paragraph (3)(a)(ii) or (iii) or a relevant appointment, the liquidator,
- (iii) in the case of a relevant order falling within paragraph (3)(a)(iv), the provisional liquidator, or
- (iv) in the case of a relevant decision, the supervisor; and

(b) a creditor is a “known” creditor if the appointed officer is aware of, or should reasonably be aware of—

- (i) his identity,
- (ii) his claim or potential claim, and
- (iii) a recent address where he is likely to receive a communication.

(12) For the purposes of paragraph (3), and of regulations 13 and 14 a voluntary arrangement is a qualifying voluntary arrangement if its purposes include a realisation of some or all of the assets of the UK insurer to which the order relates and a distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.

### **Submission of claims by EEA creditors**

**13.**—(1) An EEA creditor who on or after 20th April 2003 submits a claim or observations relating to his claim in any relevant proceedings (irrespective of when those proceedings were commenced or had effect) may do so in his domestic language, provided that the requirements in paragraphs (3) and (4) are complied with.

(2) For the purposes of this regulation, “relevant proceedings” means—

- (a) a winding up;
- (b) a qualifying voluntary arrangement.

(3) Where an EEA creditor submits a claim in his domestic language, the document must be headed with the words “Lodgement of claim” (in English).

(4) Where an EEA creditor submits observations on his claim (otherwise than in the document by which he submits his claim), the observations must be headed with the words “Submission of observations relating to claims” (in English).

(5) Paragraph (3) does not apply where an EEA creditor submits his claim using—

- (a) in the case of a winding up, a form of proof supplied by the liquidator in accordance with rule 4.74 of the Insolvency Rules, Rule 4.080 of the Insolvency Rules (Northern Ireland) or rule 4.15(2) of the Insolvency (Scotland) Rules as the case may be;
- (b) in the case of a qualifying voluntary arrangement, a form approved by the court for that purpose.

(6) In this regulation—

- (a) “domestic language”, in relation to an EEA creditor, means the official language, or one of the official languages, of the EEA State in which he is ordinarily resident or, if the creditor is not an individual, in which the creditor’s head office is located; and
- (b) “qualifying voluntary arrangement” has the meaning given by regulation 12(12).

### **Reports to creditors**

**14.**—(1) This regulation applies where, on or after 20th April 2003—

- (a) a liquidator is appointed in accordance with section 100 of the 1986 Act or Article 86 of the 1986 Order (creditors' voluntary winding up: appointment of liquidator);
- (b) a winding up order is made by the court; or
- (c) a provisional liquidator is appointed.

(2) The liquidator or provisional liquidator (as the case may be) must send a report once in every 12 months beginning with the date when his appointment has effect to every known creditor.

(3) The requirement in paragraph (2) does not apply where a liquidator or provisional liquidator is required by order of the court to send a report to creditors at intervals which are more frequent than those required by this regulation.

(4) This regulation is without prejudice to any requirement to send a report to creditors, imposed by the court on the liquidator or provisional liquidator, which is supplementary to the requirements of this regulation.

(5) A liquidator or provisional liquidator commits an offence if he fails without reasonable excuse to comply with an applicable requirement under this regulation, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) For the purposes of this regulation—

- (a) “known creditor” means—
  - (i) a creditor who is known to the liquidator or provisional liquidator, and
  - (ii) in a case falling within paragraph (1)(b) or (c), a creditor who is specified in the insurer’s statement of affairs (within the meaning of section 131 of the 1986 Act or Article 111 of the 1989 Order).
- (b) “report” means a written report setting out the position generally as regards the progress of the winding up or provisional liquidation (as the case may be).

### **Service of notices and documents**

**15.**—(1) This regulation applies to any notification, report or other document which is required to be sent to a creditor of a UK insurer by a provision of this Part (“a relevant notification”).

(2) A relevant notification may be sent to a creditor by one of the following methods—

- (a) by posting it to the proper address of the creditor;
- (b) by transmitting it electronically, in accordance with paragraph (4).

(3) For the purposes of paragraph (2)(a), the proper address of a creditor is any current address provided by that person as an address for service of a relevant notification and, if no such address is provided—

- (a) the last known address of that creditor (whether his residence or a place where he carries on business);
- (b) in the case of a body corporate, the address of its registered or principal office; or
- (c) in the case of an unincorporated association, the address of its principal office.

- (4) A relevant notification may be transmitted electronically only if it is sent to—
- (a) an electronic address notified to the relevant officer by the creditor for this purpose; or
  - (b) if no such address has been notified, to an electronic address at which the relevant officer reasonably believes the creditor will receive the notification.
- (5) The requirement to send a relevant notification to a creditor shall also be treated as satisfied if the conditions set out in paragraph (6) are satisfied.
- (6) The conditions of this paragraph are satisfied in the case of a relevant notification if—
- (a) the creditor has agreed with—
    - (i) the UK insurer which is liable under the creditor’s claim, or
    - (ii) the relevant officer,that information which is required to be sent to him (whether pursuant to a statutory or contractual obligation, or otherwise) may instead be accessed by him on a web site;
  - (b) the agreement applies to the relevant notification in question;
  - (c) the creditor is notified of—
    - (i) the publication of the relevant notification on a web site,
    - (ii) the address of that web site,
    - (iii) the place on that web site where the relevant notification may be accessed, and how it may be accessed; and
  - (d) the relevant notification is published on that web site throughout a period of at least one month beginning with the date on which the creditor is notified in accordance with sub-paragraph (c).
- (7) Where, in a case in which paragraph (5) is relied on for compliance with a requirement of regulation 12 or 14—
- (a) a relevant notification is published for a part, but not all, of the period mentioned in paragraph (6)(d), but
  - (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the relevant officer to prevent or avoid,
- no offence is committed under regulation 12(10) or regulation 14(5) (as the case may be) by reason of that failure.
- (8) In this regulation—
- (a) “electronic address” includes any number or address used for the purposes of receiving electronic communications which are sent electronically;
  - (b) “electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000(3) the processing of which on receipt is intended to produce writing; and
  - (c) “relevant officer” means (as the case may be) an administrator, liquidator, provisional liquidator or supervisor who is required to send a relevant notification to a creditor by a provision of this Part.

**Disclosure of confidential information received from an EEA regulator**

- 16.—**(1) This regulation applies to information (“insolvency information”) which—
- (a) relates to the business or affairs of any other person; and

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(3) 2000 c. 7.

(b) is supplied to the Authority by an EEA regulator acting in accordance with Articles 5, 8 or 30 of the reorganisation and winding up directive.

(2) Subject to paragraphs (3) and (4), sections 348, 349 and 352 of the 2000 Act apply in relation to insolvency information in the same way as they apply in relation to confidential information within the meaning of section 348(2) of the 2000 Act.

(3) Insolvency information is not subject to the restrictions on disclosure imposed by section 348(1) of the 2000 Act (as it applies by virtue of paragraph (2)) if it satisfies any of the criteria set out in section 348(4) of the 2000 Act.

(4) The Disclosure Regulations apply in relation to insolvency information as they apply in relation to single market directive information (within the meaning of those Regulations).

(5) In this regulation, “the Disclosure Regulations” means the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(4).

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(4) S.I. 2001/2188, as amended by S.I. 2001/3624 and S.I. 2002/1775.