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STATUTORY INSTRUMENTS

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**1994 No. 1696**

**The Insurance Companies (Third  
Insurance Directives) Regulations 1994**

**PART II**

**AMENDMENTS OF 1982 ACT**

**CHAPTER VI**

*SUPPLEMENTARY PROVISIONS*

**Applicable law**

**49.** In paragraph 1 of Schedule 3A to the 1982 Act<sup>(1)</sup> (law applicable to certain contracts of insurance), for sub-paragraph (6) substitute—

“(6) Where the risk—

- (a) is situated in an EFTA state and falls within class 4, 5, 6, 7, 11 or 12 of Part I of Schedule 2 to this Act; or
- (b) is situated in a member State and is a large risk,

the parties to the contract may choose any law.

(7) Where the risk is situated in a member State which has implemented the transitional provisions in Article 27 of the second general insurance Directive, the meaning of ‘large risk’ for the purposes of sub-paragraph (6) above shall be determined in accordance with the law applicable in that State.”

**General interpretation**

**50.—**(1) In subsection (1) of section 96 of the 1982 Act<sup>(2)</sup> (general interpretation)—

- (a) after the definition of “annuities on human life” insert—

“‘associate’ shall be construed in accordance with section 96C below;”;
- (b) in the definition of “chief executive”, for the words “section 7 above” substitute the words “section 96D below”;
- (c) for the definition of “claims representative” substitute—

“‘claims representative’ has the meaning given in section 96F below;”;
- (d) in the definition of “controller”, for the words “section 7 above” substitute the words “section 96C below”;
- (e) after that definition insert the following definitions—

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<sup>(1)</sup> Schedule 3A was inserted by [S.I. 1990/1333](#), reg 6(2) and amended by [S.I. 1993/174](#), reg 5(4) and (5).

<sup>(2)</sup> Section 96 has been amended by [S.I. 1990/1333](#), reg 8(3) and [S.I. 1993/174](#), reg 2(1)(c); and there are other amendments not relevant to these Regulations.

“‘Community co-insurance operation’ and, in relation to such an operation, ‘leading insurer’ have the same meanings as in Council Directive 78/473/EEC of 30th May 1978(3) on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance;”;

(f) after the definition of “court” insert—

“‘criteria of sound and prudent management’ means the criteria set out in Schedule 2A to this Act;”;

(g) after the definition of “director” insert—

“‘EC company’ has the meaning given in section 2 above;

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(4) as adjusted by the Protocol signed at Brussels on 17th March 1993(5);

‘EEA State’ means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include the State of Liechtenstein;

‘EFTA company’ has the meaning given by section 72B above;

‘EFTA State’ means an EEA State which is not a member State;”;

(h) after the definition of “holding company” insert—

“‘home State’, in relation to an EC company, means the member State in which the company’s head office is situated;”;

(i) in the definition of “main agent”, for the words “section 7 above” substitute the words “section 96E below”;

(j) in the definition of “manager”, for the words “section 7 above” substitute the words “section 96D below”;

(k) for the definition of “member State of the commitment” substitute—

“‘non-EC company’ has the meaning given in section 5 above;

‘notifiable holding’ means voting rights or shares which, if acquired by any person, will result in his becoming a 10 per cent.shareholder controller, a 20 per cent.shareholder controller, a 33 per cent.shareholder controller, a 50 per cent.shareholder controller or a majority shareholder controller;”;

(l) after the definition of “registrar of companies” insert—

“‘relevant motor vehicle risks’ means risks falling within class 10 of Schedule 2 to this Act (motor vehicle liability), but excluding carrier’s liability;

‘shareholder controller’, ‘10 per cent.shareholder controller’, ‘20 per cent.shareholder controller’, ‘33 per cent.shareholder controller’, ‘50 per cent.shareholder controller’ and ‘majority shareholder controller’ have the meanings given by section 96C below;

‘State of the commitment’, in relation to a commitment entered into at any date, means—

(a) where the policy holder is an individual, the State in which he had his habitual residence at that date;

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(3) O.J. L151, 7.6.78, page 25.

(4) O.J. L1, 3.1.94, page 3.

(5) O.J. L1, 3.1.94, page 572.

- (b) where the policy holder is not an individual, the State in which the establishment of the policy holder to which the commitment relates was situated at that date,
- and ‘member State of the commitment’ shall be construed accordingly;”;
- (m) after the definition of “subsidiary” insert—
- “‘subsidiary undertaking’ shall be construed in accordance with section 258 of the Companies Act(6) and Article 266 of the Companies (Northern Ireland) Order 1986(7);”;
- and
- (n) after the definition of “Swiss general insurance company” insert—
- “‘UK company’ has the meaning given in section 5 above;”.
- (2) After subsection (4) of that section insert—
- “(5) Except as otherwise provided by paragraph 27 of Schedule 2F to this Act, this Act shall apply as if Gibraltar were a member State.”

### **Interpretation of expressions derived from insurance Directives**

**51.**—(1) In subsection (1) of section 96A of the 1982 Act(8) (interpretation of expressions derived from insurance Directives), after paragraph (b) insert—

- “(c) ‘the third general insurance Directive’ means Council Directive [92/49/EEC](#) of 18 June 1992(9) on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives [73/239/EEC](#)(10) and [88/357/EEC](#)(11);”.
- (2) In subsection (1B) of that section, after paragraph (b) insert—
- “(c) ‘the third long term insurance Directive’ means Council Directive [92/96/EEC](#) of 10 November 1992(12) on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives [79/267 EEC](#)(13) and [90/619/EEC](#)(14);”.
- (3) For subsection (2) of that section substitute—
- “(2) In this Act, in relation to an insurance company, ‘establishment’ means the head office or a branch of the company; and references to a company being established in a State mean that the company has its head office or a branch there.
- Any permanent presence of an insurance company in a State other than that in which it has its head office shall be regarded as a single branch, whether that presence consists of a single office which, or two or more offices each of which—
- (a) is managed by the company’s own staff;
- (b) is an agency of the company; or
- (c) is managed by a person who is independent but has permanent authority to act for the company in the same way as an agency.”

(6) [1985 c. 6](#): section 258 was inserted by the Companies Act [1989 \(c. 40\)](#), section 21.

(7) [S.I. 1986/1032 \(N.I.6\)](#); Article 266 was inserted by the Companies (Northern Ireland) Order 1990 ([S.I. 1990/593 \(N.I.5\)](#)), Article 23.

(8) Section 96A was inserted by [S.I. 1990/1333](#), reg 2(1) and amended by [S.I. 1992/2890](#), reg 9(4) and [S.I. 1993/174](#), reg 6(3) to (5).

(9) O.J. L228, 11.8.92, page 1.

(10) O.J. L228, 16.8.73, page 3.

(11) O.J. L172, 4.7.88, page 1.

(12) O.J. L360, 9.12.92, page 1.

(13) O.J. L63, 13.3.79, page 1.

(14) O.J. L330, 29.11.90, page 50.

(4) After subsection (3) of that section insert—

“(3A) In this Act references to the provision of insurance in the United Kingdom or any other EEA State are references to either or both of the following—

- (a) the covering (otherwise than by way of reinsurance) of a risk situated there through an establishment in another EEA State (‘the provision of general insurance’); and
- (b) the covering (otherwise than by way of reinsurance) of a commitment situated there through an establishment in another EEA State (‘the provision of long term insurance’).”

### **Meaning of “controller” etc.**

**52.** After section 96B of the 1982 Act(15) insert—

#### **“Meaning of ‘controller’ etc.**

**96C.**—(1) In this Act ‘controller’, in relation to an insurance company, means—

- (a) a managing director of the company or of a body corporate of which the company is a subsidiary;
- (b) a chief executive of the company or of a body corporate, being an insurance company, of which the company is a subsidiary;
- (c) a person in accordance with whose directions or instructions the directors of the company or of a body corporate of which it is a subsidiary are accustomed to act;
- (d) in the case of UK company, a person who satisfies the requirements of subsection (2) below; or
- (e) except in the case of a UK company, a person who either alone or with any associate or associates is entitled to exercise, or control the exercise of, 15 per cent. or more of the voting power at any general meeting of the company or of a body corporate of which it is a subsidiary.

(2) A person satisfies the requirements of this subsection in relation to a UK company if, either alone or with any associate or associates—

- (a) he holds 10 per cent. or more of the shares in the company or another company of which it is a subsidiary undertaking;
- (b) he is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the company or another company of which it is a subsidiary undertaking; or
- (c) he is able to exercise a significant influence over the management of the company or another company of which it is such an undertaking by virtue of—
  - (i) a holding of shares in; or
  - (ii) an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of,
 the company or, as the case may be, that other company.

(3) In this Act—

‘shareholder controller’ means a person who is a controller of a UK company by virtue of subsection (2) above;

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(15) Section 96B was inserted by [S.I. 1990/1333](#), reg 4 and amended by [S.I. 1992/2890](#), reg 9(5).

‘10 per cent. shareholder controller’ means a shareholder controller in whose case the percentage referred to in subsection (2) above is 10 or more but less than 20;

‘20 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 20 or more but less than 33;

‘33 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 33 or more but less than 50;

‘50 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 50;

‘majority shareholder controller’ means a shareholder controller whose shareholding is such that the UK company is his subsidiary undertaking.

(4) For the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company or is a shareholder controller, or a shareholder controller of any particular description, of a UK company, ‘associate’ means, subject to subsection (5) below—

- (a) the wife or husband or minor son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession, or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary undertaking of that company;
  - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has made an agreement or arrangement with any other person—
  - (i) with respect to the acquisition, holding or disposal of shares or other interests in the company concerned or another company of which it is a subsidiary undertaking; or
  - (ii) under which they undertake to act together in exercising their voting power in relation to the company concerned or another company of which it is such an undertaking, that other person.

(5) For the purpose of determining for the purposes of this Act whether any person is a controller of an insurance company other than a UK company, subsection (4) above shall have effect as if—

- (a) paragraphs (b) and (f) were omitted; and
- (b) in paragraph (e), for the words ‘subsidiary undertaking’, in both places where they occur, there were substituted the word ‘subsidiary’.

(6) In this section—

‘settlement’ includes any disposition or arrangement under which property is held in trust;

‘share’ has the same meaning as in Part VII of the Companies Act or Part VIII of the Companies (Northern Ireland) Order 1986(16);

‘son’ includes stepson and ‘daughter’ includes stepdaughter.

(7) Any reference in this section to a UK or non-EC company includes a reference to a company which, if any authorisation sought by it were issued, would be such a company.”

### **Meanings of “manager” and “chief executive”**

53. After section 96C of the 1982 Act insert—

#### **“Meanings of ‘manager’ and ‘chief executive’.**

**96D.**—(1) In this Act ‘manager’—

- (a) in relation to a UK company, means any person (other than an employee of the company) appointed by the company to manage any part of its business, or any employee of the company (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
  - (i) exercises managerial functions, or is responsible for maintaining accounts or other records of the company; and
  - (ii) is not a person whose functions relate exclusively to business conducted from a place of business which is not in a member State;
- (b) in relation to an insurance company which is not a UK company, means an employee of the company (other than a chief executive) who, under the immediate authority of a director or chief executive of the company—
  - (i) exercises managerial functions, or is responsible for maintaining accounts or other records of the company; and
  - (ii) is not a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.

(2) In this Act ‘chief executive’, in relation to an insurance company or body corporate, means an employee of that company or body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of that company or body corporate.”

### **Meaning of “main agent”**

54. After section 96D of the 1982 Act insert—

#### **“Meaning of ‘main agent’.**

**96E.** —(1) In this Act ‘main agent’—

- (a) in relation to a UK company, means a person appointed by the company to be its agent in respect of general business in one or more member States, with authority to enter into contracts on behalf of the company in any financial year—
  - (i) without limit on the aggregate amount of premiums; or
  - (ii) with a limit in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below;
- (b) in relation to an insurance company which is not a UK company, means, subject to such exceptions as may be prescribed, a person appointed by the company to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the company in any financial year—
  - (i) without limit on the aggregate amount of premiums; or
  - (ii) with a limit in excess of 10 per cent. of that premium limit.

(2) A person shall not be regarded as falling within subsection (1)(a)(i) above in relation to a financial year unless—

- (a) the company is of the opinion that the aggregate amount of premiums, on contracts entered into by him on behalf of the company in that year in respect of general business in the member State or States concerned, will be in excess of 10 per cent. of the premium limit as determined in accordance with subsections (3) to (6) below; or
- (b) the aggregate amount of premiums, on contracts so entered into, actually is in excess of 10 per cent. of that premium limit.

(3) Subject to subsections (4) and (5) below, the premium limit for the purposes of this section is the aggregate of the amounts of gross premiums shown in the annual accounts relating to the company's business last deposited under section 22 above as receivable in respect of general business in the financial year to which the accounts relate.

(4) If the accounts so deposited relate to a financial year which is not a period of 12 months, the aggregate of the amounts of gross premiums shown in the accounts as receivable in that financial year shall be divided by the number of months in that financial year and multiplied by twelve.

(5) If no accounts have been deposited under section 22 above the aggregate amount of gross premiums shall be the amount or, if more than one amount, the lower or lowest amount, shown in respect of gross premiums relating to the company's business in the financial forecast last submitted by the company in accordance with regulations made for the purposes of section 5(1)(a) above.

(6) Any reference in subsection (3) or (5) above to the company's business is, in the case of an insurance company which is not a UK company, a reference to its business in the United Kingdom.”

### **Meaning of “claims representative”**

55. After section 96E of the 1982 Act insert—

#### **“Meaning of ‘claims representative’.**

**96F.**—(1) In this Act ‘claims representative’, in relation to an insurance company and an EEA State, means a person who—

- (a) has been designated as the company's representative in that EEA State (‘the EEA State concerned’); and
  - (b) satisfies the requirements mentioned in subsections (2) to (5) below.
- (2) The claims representative must be authorised—
- (a) to act on behalf of the company and to represent, or to instruct others to represent, the company in relation to any matters giving rise to relevant claims;
  - (b) to pay sums in settlement of relevant claims;
  - (c) to accept service on behalf of the company of proceedings in respect of relevant claims;

but the authority must not extend to the settlement of relevant claims.

(3) The claims representative must be authorised to represent the company in any proceedings or enquiry to establish the existence or validity of a policy issued by the company which covers or purports to cover relevant motor vehicle risks in the EEA State concerned.

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(4) Without prejudice to subsection (2) above, the claims representative must not act on behalf of the company in the carrying on in the EEA State concerned of its general business (other than its reinsurance business, if any).

(5) The claims representative must—

(a) in the case of an individual, be resident in the EEA State concerned;

(b) in the case of a corporation, have a place of business in that EEA State.

(6) In this section ‘relevant claim’ means any claim which may be made against a policy issued by the company to the extent that it covers relevant motor vehicle risks situated in the EEA State concerned, whether or not submitted to the company and whether by a policy holder or by a third party having rights of action against the company or a policy holder or by both.”