

SCHEDULE 7

Regulation 46.

“[SCHEDULE 2G
TO 1982 ACT]

RECOGNITION IN OTHER EEA STATES OF UK INSURERS

PART I

UK INSURERS CARRYING ON BUSINESS ETC. IN OTHER MEMBER STATES

Requirements for carrying on direct insurance business

- (1) A UK insurer shall not carry on direct insurance business of a class or part of a class through a branch in a member State other than the United Kingdom unless—
 - (a) the insurer is authorised under section 3 or 4 of this Act to carry on insurance business of that class or part of a class or is a member of Lloyd's; and
 - (b) the requirements of this paragraph have been complied with in respect of that branch.
- (2) The requirements of this paragraph are—
 - (a) that the insurer has given to the Secretary of State a notice containing the requisite EC details and, in the case of a company, the requisite UK details;
 - (b) that the Secretary of State has given to the supervisory authority of the member State in which the branch is to be established (“the member State of the branch”)—
 - (i) a notice which contains the requisite EC details; and
 - (ii) a certificate in accordance with sub-paragraph (3) below; and
 - (c) that either—
 - (i) that authority has informed the Secretary of State of the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
 - (ii) the period of two months beginning with the day on which the Secretary of State gave that authority the certificate mentioned in paragraph (b) above has elapsed.
- (3) A certificate is in accordance with this sub-paragraph if it—
 - (a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
 - (i) Articles 16 and 17 of the first general insurance Directive, and
 - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
 - (b) indicates the classes of insurance business which the insurer is authorised to carry on in the United Kingdom.
- (4) The Secretary of State shall, within the period of three months beginning with the date on which the insurer’s notice was received—
 - (a) give the notice and certificate referred to in sub-paragraph (2)(b) above; or
 - (b) refuse to give either or both of those documents.
- (5) The Secretary of State shall, within the period of three months referred to in sub-paragraph(4) above, notify the insurer—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) that he has given the notice and certificate referred to in sub-paragraph (2)(b) above, stating the date on which he did so; or
- (b) that he has refused to give either or both of those documents, stating the reasons for the refusal.

(6) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (2)(b) above unless, having regard to the business to be carried on through the branch, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(7) Where the supervisory authority of the member State of the branch has informed the Secretary of State as mentioned in sub-paragraph (2)(c)(i) above, he shall forward the information to the insurer.

- (1) A UK insurer shall not change the requisite EC details of a branch—
 - (a) which has been established by it in a member State other than the United Kingdom (“the member State of the branch”); and
 - (b) through which it carries on direct insurance business,

unless the requirements of this paragraph have been complied with in relation to its making of the change.

- (2) Subject to sub-paragraph (3) below, the requirements of this paragraph are—
 - (a) that the insurer has given a notice to the Secretary of State, and to the supervisory authority in the member State of the branch, stating the details of the proposed change not less than one month before the change is to take place;
 - (b) that the Secretary of State has sent to that authority a notice in accordance with sub-paragraph (4)(a) below; and
 - (c) that either—
 - (i) that authority has informed the insurer of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
 - (ii) the period of two months beginning with the day on which the insurer gave that authority the notice of the proposed change in accordance with paragraph (a) above has elapsed.

(3) In the case of a change occasioned by circumstances beyond the insurer’s control, the requirements of this paragraph are that the insurer shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State, and to the supervisory authority in the member State of the branch, stating the details of the change.

(4) The Secretary of State shall, as soon as practicable after receiving a notice under sub-paragraph(2)(a) above—

- (a) give notice to the supervisory authority in the member State of the branch informing it of the proposed change; or
- (b) refuse to give such notice.

(5) The Secretary of State shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the insurer—

- (a) that he has given the notice referred to in that sub-paragraph, stating the date on which he did so; or
- (b) that he refused to give the notice, stating the reasons for that refusal.

(6) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (4)(a) above unless, having regard to the proposed change, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(1) A UK company shall not change the requisite UK details of a branch—

- (a) which has been established by it in a member State other than the United Kingdom; and
- (b) through which it carries on direct insurance business,

unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) Subject to sub-paragraph (3) below, the requirements of this paragraph are that the company has given a notice to the Secretary of State stating the details of the proposed change at least one month before the change is effected.

(3) In the case of a change occasioned by circumstances beyond the company's control, the requirements of this paragraph are that the company shall as soon as practicable (whether before or after the change) give a notice to the Secretary of State stating the details of the change.

Requisite details for purposes of paragraphs 1 to 3

(1) The requisite EC details for the purposes of paragraphs 1 and 2 above are—

- (a) the member State in which the branch is to be or has been established (“the member State of the branch”);
- (b) the address of the branch and confirmation that it is an address for service on the insurer's authorised agent;
- (c) the name of the insurer's authorised agent and, in the case of a member of Lloyd's, confirmation that the authorised agent has power to accept service of proceedings on behalf of Lloyd's;
- (d) the classes or parts of classes of business to be carried on, and nature of the risks or commitments to be covered, in the member State of the branch;
- (e) details of the structural organisation of the branch;
- (f) the guiding principles as to reinsurance of business to be carried on in the member State of the branch, including the insurer's maximum retention per risk or event after all reinsurance ceded;
- (g) estimates of the following, namely—
 - (i) the costs of installing administrative services and the organisation for securing business in the member State of the branch;
 - (ii) the resources available to cover those costs; and
 - (iii) if risks within class 18 of Schedule 2 to this Act are to be covered, the resources available for providing assistance;
- (h) for each of the first three financial years following the establishment of the branch—
 - (i) estimates of the insurer's margin of solvency and the margin of solvency required, and a statement showing how both have been calculated;
 - (ii) in the case of an insurer which intends to carry on long term business, the details mentioned in sub-paragraph (2) below as respects the business to be carried on in the member State of the branch; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (iii) in the case of an insurer which intends to carry on general business, the details mentioned in sub-paragraph (3) below as respects the business to be so carried on;
 - (i) in the case of an insurer which intends to cover relevant motor vehicle risks, confirmation that it has become a member of the national bureau and the national guarantee fund in the member State of the branch; and
 - (j) in the case of an insurer which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.
- (2) The details referred to in sub-paragraph (1)(h)(ii) above are—
- (a) a statement showing, on both optimistic and pessimistic bases, for each type of contract or treaty—
 - (i) the number of contracts or treaties expected to be issued;
 - (ii) the total premium income, both gross and net of reinsurance ceded;
 - (iii) the total sums assured or the total amounts payable each year by way of annuity;
 - (b) a statement setting out, on both optimistic and pessimistic bases, detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions; and
 - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (3) The details referred to in sub-paragraph (1)(h)(iii) above are—
- (a) estimates relating to expenses of management (other than costs of installation), and in particular those relating to current general expenses and commissions;
 - (b) estimates relating to premiums or contributions (both gross and net of all reinsurance ceded) and to claims (after all reinsurance recoveries); and
 - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (4) The requisite UK details for the purposes of paragraphs 1 and 3 above are—
- (a) the names of the company's managers and main agents in the member State of the branch;
 - (b) particulars of any association which exists or is proposed to exist between—
 - (i) the directors and the controllers of the company; and
 - (ii) any person who will act as an insurance broker, agent, loss adjuster or reinsurer for the company in the member State of the branch;
 - (c) the names of the principal reinsurers of business to be carried on in the member State of the branch;
 - (d) the sources of business in the member State of the branch (for example, insurance brokers, agents, own employees or direct selling) with the approximate percentage expected from each of those sources;
 - (e) copies or drafts of the following, namely—
 - (i) any separate reinsurance treaties covering business to be written in the member State of the branch;
 - (ii) any standard agreements which the company will enter into with brokers or agents in the member State of the branch;
 - (iii) any agreements which the company will enter into with persons (other than employees of the company) who will manage the business to be carried on in the member State of the branch;
 - (f) in the case of a company which intends to carry on long term business—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (i) the technical bases which the actuary appointed in accordance with section 19 above proposes to use for each class of business to be carried on in the member State of the branch, including the bases needed for calculating premium rates and mathematical reserves;
 - (ii) a statement by the actuary so appointed as to whether he considers that the premium rates which will be used in the member State of the branch are suitable;
 - (iii) a statement by that actuary as to whether he agrees with the information provided under sub-paragraphs (1)(f) and (2)(b) and (c) above; and
 - (iv) the technical bases used to calculate the statements and estimates referred to in sub-paragraph (2) above; and
- (g) in the case of a company which intends to carry on general business, copies or drafts of any agreements which the company will have with main agents in the member State of the branch.
- (5) In this paragraph “authorised agent” means an agent or employee of the insurer who has authority—
- (a) to bind the insurer in its relations with third parties; and
 - (b) to represent the insurer in its relations with supervisory authorities and courts in the member State of the branch.

Requirements for providing insurance

- (1) A UK insurer shall not provide insurance of any class or part of a class in a member State other than the United Kingdom unless the insurer is authorised under section 3 or 4 above to carry on insurance of that class or part of a class or is a member of Lloyd’s and either—
- (a) the requirements of this paragraph have been complied with in relation to the provision of the insurance in that member State; or
 - (b) the insurance is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer.
- (2) The requirements of this paragraph are—
- (a) that the insurer has given to the Secretary of State a notice containing the requisite details; and
 - (b) that the Secretary of State has given to the supervisory authority in the member State in which the insurance is to be provided—
 - (i) a notice which contains the requisite details; and
 - (ii) a certificate in accordance with sub-paragraph (3) below.
- (3) A certificate is in accordance with this sub-paragraph if it—
- (a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
 - (i) Articles 16 and 17 of the first general insurance Directive, and
 - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
 - (b) indicates the classes of insurance business which the insurer is authorised to carry on in the United Kingdom.
- (4) Where the insurer intends to provide insurance in more than one member State, the requisite details may be contained in a single notification but must be set out separately in relation to each member State.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) The Secretary of State shall, within the period of one month beginning with the date on which the insurer's notice was received—

- (a) give the notice and certificate referred to in sub-paragraph (2)(b) above to the supervisory authority in the member State in which the insurer intends to provide insurance; or
- (b) refuse to give either or both of those documents.

(6) The Secretary of State shall, within the period of one month referred to in sub-paragraph (5) above, notify the insurer—

- (a) that he has given the notice and certificate referred to in sub-paragraph (2)(b) above to the supervisory authority in the member State in which the insurer intends to provide insurance, stating the date on which he did so; or
- (b) that he has refused to give either or both those documents, stating the reasons for the refusal.

(7) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (2)(b) above unless, having regard to the insurance to be provided in the member State, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

(1) A UK insurer shall not change the requisite details of the provision of insurance in a member State other than the United Kingdom unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) The requirements of this paragraph are—

- (a) that the insurer has given a notice to the Secretary of State stating the details of the proposed change;
- (b) that the Secretary of State has sent to the supervisory authority in the member State in which the insurance is provided a notice in accordance with sub-paragraph (4)(a) below.

(3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable give a notice to the Secretary of State stating the details of the change.

(4) The Secretary of State shall, as soon as practicable after receiving a notice under sub-paragraph (2)(a) above either—

- (a) give notice to the supervisory authority in the member State in which the insurance is provided informing it of the proposed change; or
- (b) refuse to give such notice.

(5) The Secretary of State shall, as soon as practicable after making a decision under sub-paragraph (4) above, notify the insurer—

- (a) that he has given the notice referred to in that sub-paragraph, stating the date on which he did so; or
- (b) that he has refused to give the notice, stating the reasons for the refusal.

(6) In the case of a UK company, the Secretary of State shall not refuse to give the notice referred to in sub-paragraph (4)(a) above unless, having regard to the proposed change, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the company.

Requisite details for purposes of paragraphs 5 and 6

7. The requisite details for the purposes of paragraphs 5 and 6 above are—

- (a) the member State in which the insurance is to be provided;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (b) the nature of the risks or commitments which the insurer proposes to cover in that State;
- (c) in the case of an insurer which intends to provide insurance to cover relevant motor vehicle risks—
 - (i) a notice stating the name and address of the claims representative; and
 - (ii) a declaration that the insurer has become a member of the national bureau and the national guarantee fund in that State; and
- (d) in the case of an insurer which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.

Requirement to notify cessation of insurance business etc.

- (1) A UK insurer which has ceased—
 - (a) to carry on direct insurance business through a branch in a member State other than the United Kingdom; or
 - (b) to provide insurance in such a member State,shall as soon as practicable notify the Secretary of State in writing that it has done so.
- (2) Any insurance which is provided by the insurer participating in a Community co-insuranceoperation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

PART II

UK INSURERS PROVIDING INSURANCE IN EFTA STATES

Notification to Secretary of State

- (1) Where a UK insurer intends to provide insurance in an EFTA State, it shall before doing so notify the Secretary of State in writing of its intention.
- (2) The notification shall indicate—
 - (a) the EFTA State in which the insurance is to be provided,
 - (b) the EEA State in which is situated the establishment through which the insurance will be provided (“the EEA State of establishment”), and
 - (c) the nature of the risks or commitments which the insurer proposes to cover.
- (3) Where the insurer intends to provide insurance in more than one EFTA State, the information specified above may be contained in a single notification but must be set out separately in relation to each such State.
- (4) Where a UK insurer has duly notified the Secretary of State of its intention to provide insurance in an EFTA State where administrative authorisation is required for the provision of insurance, then, if the original notification related—
 - (a) only to risks or commitments in respect of which such authorisation is required, or
 - (b) only to risks or commitments in respect of which such authorisation is not required,and the insurer subsequently intends to extend its activities to risks falling within the other category, it shall before doing so comply with sub-paragraphs (1) to (3) above in relation to those risks or commitments.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

Issue of certificates by Secretary of State

(1) A UK insurer which intends to provide insurance in an EFTA State may apply to the Secretary of State for a certificate—

- (a) attesting that the insurer possesses for its activities as a whole the minimum solvency margin calculated in accordance with the relevant provisions;
- (b) indicating the classes of business which the insurer is authorised to carry on in the United Kingdom;
- (c) stating that the Secretary of State does not object to the insurer providing the insurance; and
- (d) in the case of a company, attesting that the company's authorisation to carry on business in the United Kingdom, issued in accordance with Article 7(1) of the relevant Directive, enables the company to carry on business outside the EEA State of establishment.

(2) If it appears to the Secretary of State that a certificate applied for under sub-paragraph (1) above ought to be issued, he shall issue the certificate accordingly.

(3) If the Secretary of State refuses to issue a certificate, he shall inform the company in writing of his decision and of the reasons for it.

(4) In sub-paragraph (1) above “the relevant Directive” and “the relevant provisions” mean respectively—

- (a) if the company intends to cover risks, the first general insurance Directive and Articles 16 and 17 of that Directive;
- (b) if the company intends to cover commitments, the first long term insurance Directive and Articles 18, 19 and 20 of that Directive.

PART III

UK INSURERS PROVIDING INSURANCE IN THE UNITED KINGDOM THROUGH BRANCHES IN OTHER EEA STATES

(1) Where a UK insurer intends to provide insurance in the United Kingdom, it shall before doing so notify the Secretary of State in writing of its intention.

(2) The notification shall indicate—

- (a) the EEA State in which is situated the branch through which the company intends to provide insurance in the United Kingdom; and
- (b) the nature of the risks or commitments which the insurer proposes to cover in the United Kingdom.

(3) Where the EEA State in which is situated the branch through which the company intends to provide insurance in the United Kingdom is an EFTA State, the notification shall be accompanied by a certificate, issued by the supervisory authority in that State, which—

- (a) indicates the classes of insurance business which the company has been authorised to undertake through that branch;
- (b) states that the authority does not object to the company providing insurance in the United Kingdom; and

- (c) where the company intends to provide long term insurance in the United Kingdom, confirms that all the commitments which the company intends to cover fall within the classes of insurance business which the company has been authorised to undertake through that branch.
- (4) The insurer shall notify the Secretary of State in writing if—
 - (a) it changes either of the details notified to the Secretary of State under sub-paragraph (2) above; or
 - (b) it ceases to provide insurance in the United Kingdom.
- (5) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

PART IV

SUPPLEMENTAL Offences

- (1) A UK insurer commits an offence if—
 - (a) it carries on insurance business in a member State other than the United Kingdom in contravention of paragraph 1 above;
 - (b) in contravention of paragraph 2 or 3 above, it changes the requisite EC details or, as the case may be, the requisite UK details of a branch established by it in such a member State;
 - (c) it provides insurance in such a member State in contravention of paragraph 5 above;
 - (d) in contravention of paragraph 6 above, it changes the requisite details relating to the provision of insurance in such a member State; or
 - (e) it makes default in complying with, or with a requirement imposed under, any other provision of this Schedule.
- (2) A person commits an offence if he causes or permits to be included in a notification sent to the Secretary of State under paragraph 1, 2, 3, 5 or 6 above a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.
- (3) A person committing an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Interpretation

- (1) In this Schedule—
 - “direct insurance business” means insurance business other than reinsurance business;
 - “health insurance risks”, in relation to a member State, means risks falling within class 2 of Schedule 2 to this Act (sickness) where—
 - (a) insurance contracts covering those risks serve as a partial or complete alternative to the health cover provided by the statutory social security system in that State; and
 - (b) the law of that State requires such contracts to be operated on a technical basis similar to life assurance in accordance with all the conditions listed in the first sub-paragraph of Article 54(2) of the third general insurance Directive;
 - “national bureau”, in relation to a member State, means a professional organisation—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) which has been constituted in that State in accordance with Recommendation No 5 adopted on 25th January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe; and
- (b) which groups together insurance undertakings which in that State are authorised to conduct the business of motor vehicle liability insurance;

“national guarantee fund”, in relation to a member State, means a body—

- (a) which has been set up or authorised in that State in accordance with Article 1(4) of Council Directive 84/5/EEC⁽¹⁾; and
- (b) which provides compensation for damage to property or personal injuries caused by unidentified vehicles or vehicles for which the insurance obligation provided for in Article 1(1) of that Directive has not been satisfied;

“UK insurer” means a UK company or a member of Lloyd’s.

(2) In this Schedule—

- (a) references in Part I to the provision of insurance in a member State other than the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that member State through an establishment in another member State;
- (b) references in Part II to the provision of insurance in an EFTA State are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that EFTA State through an establishment in another EEA State;
- (c) references in Part III to the provision of insurance in the United Kingdom are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in the United Kingdom—
 - (i) through an establishment in another member State; or
 - (ii) through an establishment in an EFTA State.

(3) In sub-paragraph 2(b) and (c)(ii) above—

- (a) references to a risk do not include a risk falling within any of the following classes of Schedule 2 to this Act (general business), namely—
 - class 1, so far as it relates to accidents at work;
 - classes 9 and 13, so far as they relate to the compulsory insurance of building works;
 - class 13, so far as it relates to nuclear civil liability and pharmaceutical product liability; and
- (b) references to a commitment do not include a commitment falling within any of classes VII, VIII and IX of Schedule 1 to this Act (long term insurance).”

(1) O.J. L8, 11.1.84, page 17.