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STATUTORY INSTRUMENTS

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**2004 No. 353**

**INSOLVENCY**

**COMPANIES**

**The Insurers (Reorganisation and  
Winding Up) Regulations 2004**

<i>Made</i>	- - - -	<i>12th February 2004</i>
<i>Laid before Parliament</i>		<i>12th February 2004</i>
<i>Coming into force</i>	- -	<i>18th February 2004</i>

The Treasury, being a government department designated<sup>(1)</sup> for the purposes of section 2 (2) of the European Communities Act 1972<sup>(2)</sup> in relation to the insolvency of insurers, in exercise of the powers conferred by that section, hereby make the following Regulations:

**PART I**

**GENERAL**

**Citation and Commencement**

1. These Regulations may be cited as the Insurers (Reorganisation and Winding Up) Regulations 2004, and come into force on 18th February 2004.

**Interpretation**

2.—(1) In these Regulations—  
“the 1985 Act” means the Companies Act 1985<sup>(3)</sup>;

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(1) [S.I. 2002/2840](#).

(2) [1972 c. 68](#); by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act [1993 \(c. 51\)](#) regulations may be made under section 2(2) to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). Section 57(1) of the Scotland Act [1998 \(c. 46\)](#) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(3) [1985 c. 6](#).

“the 1986 Act” means the Insolvency Act 1986<sup>(4)</sup>;

“the 2000 Act” means the Financial Services and Markets Act 2000<sup>(5)</sup>;

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989<sup>(6)</sup>;

“administrator” has the meaning given by paragraph 13 of Schedule B1;

“Article 418 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a UK insurer under Article 418 of the Companies Order, but does not include a compromise or arrangement falling within Article 420 or Articles 420A of that Order (reconstruction and amalgalations);

“the Authority” means the Financial Services Authority;

“branch”, in relation to an EEA or UK insurer has the meaning given by Article 1(b) of the life insurance directive or the third non-life insurance directive;

“claim” means a claim submitted by a creditor of a UK insurer in the course of—

- (a) a winding up,
- (b) an administration, or
- (c) a voluntary arrangement,

with a view to recovering his debt in whole or in part, and includes a proof of debt, within the meaning of Rule 4.73(4) of the Insolvency Rules, Rule 4.079(4) of the Insolvency Rules (Northern Ireland) or in Scotland a claim made in accordance with rule 4.15 of the Insolvency (Scotland) Rules;

“the Companies Order” means the Companies (Northern Ireland) Order 1986<sup>(7)</sup>;

“creditors' voluntary winding up” has the meaning given by section 90 of the 1986 Act or Article 76 of the 1989 Order;

“debt”—

- (a) in England and Wales and Northern Ireland—

- (i) in relation to a winding up or administration of a UK insurer, has the meaning given by Rule 13.12 of the Insolvency Rules or Article 5 of the 1989 Order, and
- (ii) in a case where a voluntary arrangement has effect, in relation to a UK insurer, means a debt which would constitute a debt in relation to the winding up of that insurer, except that references in paragraph (1) of Rule 13.12 or paragraph (1) of Article 5 of the 1989 Order to the date on which the company goes into liquidation are to be read as references to the date on which the voluntary arrangement has effect;

- (b) in Scotland—

- (i) in relation to a winding up of a UK insurer, shall be interpreted in accordance with Schedule 1 to the Bankruptcy (Scotland) Act 1985<sup>(8)</sup> as applied by Chapter 5 of Part 4 of the Insolvency (Scotland) Rules, and
- (ii) in a case where a voluntary arrangement has effect in relation to a UK insurer, means a debt which would constitute a debt in relation to the winding up of that insurer, except that references in Chapter 5 of Part 4 of the Insolvency (Scotland) Rules to the date of commencement of winding up are to be read as references to the date on which the voluntary arrangement has effect;

<sup>(4)</sup> 1986 c. 45, as last amended by the Enterprise Act 2002 (2002 c. 40).

<sup>(5)</sup> 2000 c. 8.

<sup>(6)</sup> S.I. 1989/2405 (N.I. 19).

<sup>(7)</sup> S.I. 1986/1032 (N.I. 6).

<sup>(8)</sup> 1985 c. 66.

“directive reorganisation measure” means a reorganisation measure as defined in Article 2(c) of the reorganisation and winding-up directive which was adopted or imposed on or after 20th April 2003;

“directive winding up proceedings” means winding up proceedings as defined in Article 2(d) of the reorganisation and winding-up directive which were opened on or after 20th April 2003;

“EEA creditor” means a creditor of a UK insurer who—

- (a) in the case of an individual, is ordinarily resident in an EEA State, and
- (b) in the case of a body corporate or unincorporated association of persons, has its head office in an EEA State;

“EEA insurer” means an undertaking, other than a UK insurer, pursuing the activity of direct insurance (within the meaning of Article 1 of the first life insurance directive or the first non-life insurance directive) which has received authorisation under Article 6 from its home state regulator;

“EEA regulator” means a competent authority (within the meaning of Article 1(1) of the life insurance directive or Article 1(k) of the third non-life insurance directive, as the case may be) of an EEA State;

“EEA State” means a State, other than the United Kingdom, which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992;

“the first non-life insurance directive” means the Council Directive (73/239/EEC) of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>(9)</sup>;

“home state regulator”, in relation to an EEA insurer, means the relevant EEA regulator in the EEA State where its head office is located;

“the Insolvency Rules” means the Insolvency Rules 1986<sup>(10)</sup>;

“the Insolvency Rules (Northern Ireland)” means the Insolvency Rules (Northern Ireland) 1991<sup>(11)</sup>;

“the Insolvency (Scotland) Rules” means the Insolvency (Scotland) Rules 1986<sup>(12)</sup>;

“insurance claim” means any claim in relation to an insurance debt;

“insurance creditor” means a person who has an insurance claim against a UK insurer (whether or not he has claims other than insurance claims against that insurer);

“insurance debt” means a debt to which a UK insurer is, or may become liable, pursuant to a contract of insurance, to a policyholder or to any person who has a direct right of action against that insurer, and includes any premium paid in connection with a contract of insurance (whether or not that contract was concluded) which the insurer is liable to refund;

“life insurance directive” means the Directive (2002/83/EC) of the European Parliament and of the Council concerning life assurance;

“officer”, in relation to a company, has the meaning given by section 744 of the 1985 Act or Article 2 of the Companies Order;

“official language” means a language specified in Article 1 of Council Regulation No 1 of 15th April 1958 determining the languages to be used by the European Economic Community (Regulation 1/58/EEC)<sup>(13)</sup>, most recently amended by paragraph (a) of Part XVIII of Annex I to the Act of Accession 1994 (194 N)<sup>(14)</sup>;

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<sup>(9)</sup> O.J. No. L228, 16.8.73, p.3.

<sup>(10)</sup> S.I. 1986/1925.

<sup>(11)</sup> S.I. 1991/364.

<sup>(12)</sup> S.I. 1986/1915.

<sup>(13)</sup> O.J. No. 17, 6.10.58, p.385/58; English Special Edition, Series 1, Chapter 1952–1958, p.0059.

“policyholder” has the meaning given by the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001<sup>(15)</sup>;

“the reorganisation and winding-up directive” means the Directive (2001/17/EC) of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings<sup>(16)</sup>;

“Schedule B1” means Schedule B1 to the 1986 Act as inserted by section 248 of the Enterprise Act 2002<sup>(17)</sup>;

“section 425 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a UK insurer under section 425 of the 1985 Act, but does not include a compromise or arrangement falling within section 427 or section 427A of that Act (reconstructions or amalgamations);

“section 425 or Article 418 compromise or arrangement” means a section 425 compromise or arrangement or an Article 418 compromise or arrangement;

“supervisor” has the meaning given by section 7 of the 1986 Act or Article 20 of the 1989 Order;

“the third non-life insurance directive” means the Council Directive (92/49/EEC) of 18th June 1992 on the co-ordination of laws, etc, and amending directives 73/239/EEC and 88/357/EEC<sup>(18)</sup>;

“UK insurer” means a person who has permission under Part IV of the 2000 Act to effect or carry out contracts of insurance, but does not include a person who, in accordance with that permission, carries on that activity exclusively in relation to reinsurance contracts;

“voluntary arrangement” means a voluntary arrangement which has effect in relation to a UK insurer in accordance with section 4A of the 1986 Act or Article 17A of the 1989 Order; and

“winding up” means—

- (a) winding up by the court, or
- (b) a creditors' voluntary winding up.

(2) In paragraph (1)—

- (a) for the purposes of the definition of “directive reorganisation measure”, a reorganisation measure is adopted or imposed at the time when it is treated as adopted or imposed by the law of the relevant EEA State; and
- (b) for the purposes of the definition of “directive winding up proceedings”, winding up proceedings are opened at the time when they are treated as opened by the law of the relevant EEA State,

and in this paragraph “relevant EEA State” means the EEA State under the law of which the reorganisation is adopted or imposed, or the winding up proceedings are opened, as the case may be.

(3) In these Regulations, references to the general law of insolvency of the United Kingdom include references to every provision made by or under the 1986 Act or the 1989 Order; and in relation to friendly societies or to industrial and provident societies references to the law of insolvency or to any provision of the 1986 Act or the 1989 Order are to that law as modified by the Friendly Societies Act 1992<sup>(19)</sup> or by the Industrial and Provident Societies Act 1965<sup>(20)</sup> or the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>(21)</sup> (as the case may be).

<sup>(14)</sup> O.J. No. C241, 29.08.94, p.258.

<sup>(15)</sup> S.I. 2001/2361.

<sup>(16)</sup> O.J. No. L110, 20.4.01, p.28.

<sup>(17)</sup> 2002 c. 40.

<sup>(18)</sup> O.J. No. L228, 11.8.92, p.1.

<sup>(19)</sup> 1992 c. 40.

<sup>(20)</sup> 1965 c. 12.

(4) References in these Regulations to a “contract of insurance” must be read with—

- (a) section 22 of the 2000 Act;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act,

but for the purposes of these Regulations a contract of insurance does not include a reinsurance contract.

(5) Functions imposed or falling on the Authority by or under these Regulations shall be deemed to be functions under the 2000 Act.

### **Scope**

3. For the purposes of these Regulations, neither the Society of Lloyd’s nor the persons specified in section 316(1) of the 2000 Act are UK insurers.

## **PART II**

### **INSOLVENCY MEASURES AND PROCEEDINGS: JURISDICTION IN RELATION TO INSURERS**

#### **Prohibition against winding up etc. EEA insurers in the United Kingdom**

4.—(1) On or after the relevant date a court in the United Kingdom may not, in relation to an EEA insurer or any branch of an EEA insurer—

- (a) make a winding up order pursuant to section 221 of the 1986 Act or Article 185 of the 1989 Order;
- (b) appoint a provisional liquidator;
- (c) make an administration order.

(2) Paragraph (1)(a) does not prevent—

- (a) the court from making a winding up order after the relevant date in relation to an EEA insurer if—
  - (i) a provisional liquidator was appointed in relation to that insurer before the relevant date, and
  - (ii) that appointment continues in force until immediately before that winding up order is made;
- (b) the winding up of an EEA insurer after the relevant date pursuant to a winding up order which was made, and has not been discharged, before that date.

(3) Paragraph (1)(b) does not prevent a provisional liquidator of an EEA insurer appointed before the relevant date from acting in relation to that insurer after that date.

(4) Paragraph (1)(c) does not prevent an administrator appointed before the relevant date from acting after that date in a case in which the administration order under which he or his predecessor was appointed remains in force after that date.

(5) An administrator may not, in relation to an EEA insurer, be appointed under paragraphs 14 or 22 of Schedule B1.

(6) A proposed voluntary arrangement shall not have effect in relation to an EEA insurer if a decision, under section 4 of the 1986 Act or Article 17 of the 1989 Order, with respect to the approval of that arrangement was made after the relevant date.

(7) Section 377 of the 2000 Act (reducing the value of contracts instead of winding up) does not apply in relation to an EEA insurer.

(8) An order under section 253 of the Enterprise Act 2002 (application of insolvency law to a foreign company) may not provide for any of the following provisions of the 1986 Act to apply in relation to an EEA insurer—

- (a) Part I (company voluntary arrangements);
- (b) Part II (administration);
- (c) Chapter VI of Part IV (winding up by the Court).

(9) In this regulation and regulation 5, “relevant date” means 20th April 2003.

#### **Schemes of arrangement: EEA insurers**

**5.—**(1) For the purposes of section 425(6)(a) of the 1985 Act or Article 418(5)(a) of the Companies Order, an EEA insurer or a branch of an EEA insurer is to be treated as a company liable to be wound up under the 1986 Act or the 1989 Order if it would be liable to be wound up under that Act or Order but for the prohibition in regulation 4(1)(a).

(2) But a court may not make a relevant order under section 425(2) of the 1985 Act or Article 418(2) of the Companies Order in relation to an EEA insurer which is subject to a directive reorganisation measure or directive winding up proceedings, or a branch of an EEA insurer which is subject to such a measure or proceedings unless the conditions set out in paragraph (3) are satisfied.

(3) Those conditions are—

- (a) the person proposing the section 425 or Article 418 compromise or arrangement (“the proposal”) has given—
  - (i) the administrator or liquidator, and
  - (ii) the relevant competent authority,
 reasonable notice of the details of that proposal; and
- (b) no person notified in accordance with sub-paragraph (a) has objected to the proposal.

(4) Nothing in this regulation invalidates a compromise or arrangement which was sanctioned by the court by an order made before the relevant date.

(5) For the purposes of paragraph (2), a relevant order means an order sanctioning a section 425 or Article 418 compromise or arrangement which—

- (a) is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern and which affects the rights of persons other than the insurer or its contributories; or
- (b) includes among its purposes a realisation of some or all of the assets of the EEA insurer to which the order relates and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.

(6) For the purposes of this regulation—

- (a) “administrator” means an administrator, as defined by Article 2(i) of the reorganisation and winding up directive, who is appointed in relation to the EEA insurer in relation to which the proposal is made;

- (b) “liquidator” means a liquidator, as defined by Article 2(j) of the reorganisation and winding up directive, who is appointed in relation to the EEA insurer in relation to which the proposal is made;
- (c) “competent authority” means the competent authority, as defined by Article 2(g) of the reorganisation and winding up directive, which is competent for the purposes of the directive reorganisation measure or directive winding up proceedings mentioned in paragraph (2).

**Reorganisation measures and winding up proceedings in respect of EEA insurers effective in the United Kingdom**

6.—(1) An EEA insolvency measure has effect in the United Kingdom in relation to—

- (a) any branch of an EEA insurer,
- (b) any property or other assets of that insurer,
- (c) any debt or liability of that insurer

as if it were part of the general law of insolvency of the United Kingdom.

(2) Subject to paragraph (4)—

- (a) a competent officer who satisfies the condition mentioned in paragraph (3); or
- (b) a qualifying agent appointed by a competent officer who satisfies the condition mentioned in paragraph (3),

may exercise in the United Kingdom, in relation to the EEA insurer which is subject to an EEA insolvency measure, any function which, pursuant to that measure, he is entitled to exercise in relation to that insurer in the relevant EEA State.

(3) The condition mentioned in paragraph (2) is that the appointment of the competent officer is evidenced—

- (a) by a certified copy of the order or decision by a judicial or administrative authority in the relevant EEA State by or under which the competent officer was appointed; or
- (b) by any other certificate issued by the judicial or administrative authority which has jurisdiction in relation to the EEA insolvency measure,

and accompanied by a certified translation of that order, decision or certificate (as the case may be).

(4) In exercising functions of the kind mentioned in paragraph (2), the competent officer or qualifying agent—

- (a) may not take any action which would constitute an unlawful use of force in the part of the United Kingdom in which he is exercising those functions;
- (b) may not rule on any dispute arising from a matter falling within Part V of these Regulations which is justiciable by a court in the part of the United Kingdom in which he is exercising those functions; and
- (c) notwithstanding the way in which functions may be exercised in the relevant EEA State, must act in accordance with relevant laws or rules as to procedure which have effect in the part of the United Kingdom in which he is exercising those functions.

(5) For the purposes of paragraph (4)(c), “relevant laws or rules as to procedure” mean—

- (a) requirements as to consultation with or notification of employees of an EEA insurer;
- (b) law and procedures relevant to the realisation of assets;
- (c) where the competent officer is bringing or defending legal proceedings in the name of, or on behalf of, an EEA insurer, the relevant rules of court.

(6) In this regulation—

“competent officer” means a person appointed under or in connection with an EEA insolvency measure for the purpose of administering that measure;

“qualifying agent” means an agent validly appointed (whether in the United Kingdom or elsewhere) by a competent officer in accordance with the relevant law in the relevant EEA State;

“EEA insolvency measure” means, as the case may be, a directive reorganisation measure or directive winding up proceedings which has effect in relation to an EEA insurer by virtue of the law of the relevant EEA State;

“relevant EEA State”, in relation to an EEA insurer, means the EEA State in which that insurer has been authorised in accordance with Article 4 of the life insurance directive or Article 6 of the first non-life insurance directive.

### **Confirmation by the court of a creditors' voluntary winding up**

7.—(1) Rule 7.62 of the Insolvency Rules or Rule 7.56 of the Insolvency Rules (Northern Ireland) applies in relation to a UK insurer with the modification specified in paragraph (2) or (3).

(2) In Rule 7.62 r paragraph (1), after the words

“the Insurers (Reorganisation and Winding Up) Regulations 2003” insert the words “or the Insurers (Reorganisation and Winding Up) Regulations 2004”.

In Rule 7.56 of the Insolvency Rules (Northern Ireland) paragraph (1), after the words “the Insurers (Reorganisation and Winding Up) Regulations 2003” insert the words “or the Insurers (Reorganisation and Winding Up) Regulations 2004”.

## **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 18th February 2004 the court makes a decision, order or appointment of any of the following kinds—

- (a) an administration order under paragraph 13 of Schedule B1(22);
- (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;
- (d) an interim order under paragraph 13(1)(d) of Schedule B1;
- (e) a decision to reduce the value of one or more of the insurer’s contracts, in accordance with section 377 of the 2000 Act,

(22) Part II of the 1986 Act was applied to insurers by [S.I. 2002/1242](#), article 3, as amended by [S.I. 2003/2134](#) articles 2 and 4 and regulation 53 of these Regulations.



it must immediately inform the Authority, or cause the Authority to be informed of the decision, 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.

(3) Where a liquidator is appointed as mentioned in section 100 of the 1986 Act, paragraph 83 of Schedule B1 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.

(6) 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 decision, order or appointment is made.

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

- (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.

(8) An administrator, supervisor or liquidator who fails without reasonable excuse to comply with paragraph (2), (3), or (4) (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 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 20th April 2003.

(2) For the purposes of this regulation—

- (a) a qualifying decision means a decision with respect to the approval of a proposed voluntary arrangement, in accordance with section 4A of the 1986 Act or Article 17A of the 1989 Order;
  - (b) a qualifying order means—
    - (i) an administration order under paragraph 13 of Schedule B1,
    - (ii) an order appointing a provisional liquidator in accordance with section 135 of the 1986 Act or Article 115 of the 1989 Order, or
    - (iii) a winding up order made by the court under Part IV of the 1986 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, or 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 or qualifying appointment or the provisions of the qualifying order (as the case may be);
  - (b) the identity of the relevant officer; and
  - (c) the statutory provisions in accordance with which the qualifying decision has effect or the qualifying order or appointment has been made or takes effect.
- (5) In the case of a qualifying appointment falling within paragraph (2)(c), 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) 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).
- (8) 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.
- (9) 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.
- (10) A qualifying decision, qualifying order or qualifying appointment is not invalid or ineffective if the relevant official fails to comply with paragraph (3) of this regulation.
- (11) In this regulation, “relevant officer” means—
- (a) in the case of a voluntary arrangement, the supervisor;
  - (b) in the case of an administration order or the appointment of an administrator, the administrator;
  - (c) in the case of a creditors' voluntary winding up, the liquidator;
  - (d) in the case of winding up order, the liquidator;
  - (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 as soon as is reasonably practicable—

- (a) notify all known creditors of that insurer in writing of—
  - (i) the matters mentioned in paragraph (4), and
  - (ii) the matters mentioned in paragraph (5); and
- (b) notify all known insurance creditors of that insurer in writing of the matters mentioned in paragraph 6,

in any case.

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

(3) For the purposes of this regulation—

- (a) “relevant order” means—
  - (i) an administration order made under section 8 of the 1986 Act before 15th September 2003, or made on or after that date under paragraph 13 of Schedule B1 in the prescribed circumstances,
  - (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) “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) “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)(i) 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) The matters which must be notified to all known creditors in accordance with paragraph (1)(a)(ii) 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.

(6) The matters which must be notified to all known insurance creditors, in accordance with paragraph (1)(b), are as follows—

- (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.
- (7) Subject to paragraph (8), where a creditor is notified in accordance with paragraph (1)(a)(ii), 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—
- (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) 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)(a)(ii) 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 any of those rules applies, provided that the form of proof complies with paragraph (7) or (8) (whichever is applicable).
- (10) The prescribed circumstances are where the administrator includes in the statement of required under Rule 2.2 of the Insolvency Rules 1986 a statement to the effect that the objective set out in paragraph 3(1)(a) of Schedule B1 is not reasonably likely to be achieved.
- (11) Where, after the appointment of an administrator, the administrator concludes that it is not reasonably practicable to achieve the objective specified in paragraph 3(1)(a) of Schedule B1, he shall inform the court and the Authority in writing of that conclusion and upon so doing the order by which he was appointed shall be a relevant order for the purposes of this regulation and the obligation under paragraph (1) shall apply as from the date on which he so informs the court and the Authority.
- (12) 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.
- (13) For the purposes of this regulation—
- (a) "appointed officer" means—
    - (i) in the case of a relevant order falling within paragraph (3)(a)(i) or a relevant appointment falling within paragraph (3)(b)(i), the administrator,
    - (ii) in the case of a relevant order falling within paragraph (3)(a)(ii) or (iii) or a relevant appointment falling within paragraph (3)(b)(ii), 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, 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.

(14) 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;
- (c) administration.

(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 1989 Order (creditors' voluntary winding up: appointment of liquidator) or, on or after 15th September 2003, paragraph 83 of Schedule B1 (moving from administration to creditors' voluntary liquidation);
- (b) a winding up order is made by the court;
- (c) a provisional liquidator is appointed; or
- (d) administration.

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

(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); and

(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 either of the following methods—

(a) posting it to the proper address of the creditor;

(b) 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 creditor as an address for service of a relevant notification or, 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, an electronic address at which the relevant officer reasonably believes the creditor will receive the notification.

(5) Any requirement in this part to send a relevant notification to a creditor shall also be treated as satisfied 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 subparagraph (c):
- (6) 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 (5)(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.
- (7) In this regulation—
  - (a) “electronic address” includes any number or address used for the purposes of receiving electronic communications;
  - (b) “electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000<sup>(23)</sup> 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
  - (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<sup>(24)</sup>.

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<sup>(23)</sup> 2000 c. 7.

<sup>(24)</sup> S.I. 2001/2188, as amended by S.I. 2001/3437 and 3624, S.I. 2002/1775, and S.I. 2003/693, 1473, 2066, 2174 and 2817.

## PART IV

### PRIORITY OF PAYMENT OF INSURANCE CLAIMS IN WINDING UP ETC.

#### Interpretation of this Part

17.—(1) For the purposes of this Part—

“composite insurer” means a UK insurer who is authorised to carry on both general business and long term business, in accordance with article 18(2) of the life insurance directive;

“floating charge” has the meaning given by section 251 of the 1986 Act or paragraph (1) of Article 5 of the 1989 Order;

“general business” means the business of effecting or carrying out a contract of general insurance;

“general business assets” means the assets of a composite insurer which are, or should properly be, apportioned to that insurer’s general business, in accordance with the requirements of Article 18(3) of the life insurance directive (separate management of long term and general business of a composite insurer);

“general business liabilities” means the debts of a composite insurer which are attributable to the general business carried on by that insurer;

“general insurer” means a UK insurer who carries on exclusively general business;

“long term business” means the business of effecting or carrying out a contract of long term insurance;

“long term business assets” means the assets of a composite insurer which are, or should properly be, apportioned to that insurer’s long term business, in accordance with the requirements of Article 18(3) of the first life insurance directive (separate management of long term and general business of a composite insurer);

“long term business liabilities” means the debts of a composite insurer which are attributable to the long term business carried on by that insurer;

“long term insurer” means a UK insurer who—

- (a) carries on long term business exclusively, or
- (b) carries on long term business and permitted general business;

“non-transferring composite insurer” means a composite insurer the long term business of which has not been, and is not to be, transferred as a going concern to a person who may lawfully carry out those contracts, in accordance with section 376(2) of the 2000 Act;

“other assets” means any assets of a composite insurer which are not long term business assets or general business assets;

“other business”, in relation to a composite insurer, means such of the business (if any) of the insurer as is not long term business or general business;

“permitted general business” means the business of effecting or carrying out a contract of general insurance where the risk insured against relates to either accident or sickness;

“preferential debt” means a debt falling into any of categories 4 or 5 of the debts listed in Schedule 6 to the 1986 Act or Schedule 4 to the 1989 Order, that is—

- (a) contributions to occupational pension schemes, etc., and
- (b) remuneration etc. of employees;

“society” means—



- (a) a friendly society incorporated under the Friendly Societies Act 1992<sup>(25)</sup>,
- (b) a society which is a friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974<sup>(26)</sup>, and registered within the meaning of that Act, or
- (c) an industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.

(2) In this Part, references to assets include a reference to proceeds where an asset has been realised, and any other sums representing assets.

(3) References in paragraph (1) to a contract of long term or of general insurance must be read with—

- (a) section 22 of the 2000 Act;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act.

#### **Application of regulations 19 to 27**

**18.**—(1) Subject to paragraph (2), regulations 19 to 27 apply in the winding up of a UK insurer where—

- (a) in the case of a winding up by the court, the winding up order is made on or after 20th April 2003; or
- (b) in the case of a creditors' voluntary winding up, the liquidator is appointed, as mentioned in section 100 of the 1986 Act, paragraph 83 of Schedule B1 or Article 86 of the 1989 Order, on or after 20th April 2003.

(2) Where a relevant section 425 or Article 418 compromise or arrangement is in place,

- (a) no winding up proceedings may be opened without the permission of the court, and
- (b) the permission of the court is to be granted only if required by the exceptional circumstances of the case.

(3) For the purposes of paragraph (2), winding up proceedings include proceedings for a winding up order or for a creditors' voluntary liquidation with confirmation by the court.

(4) Regulations 20 to 27 do not apply to a winding up falling within paragraph (1) where, in relation to a UK insurer—

- (a) an administration order was made before 20th April 2003, and that order is not discharged until the commencement date; or
- (b) a provisional liquidator was appointed before 20th April 2003, and that appointment is not discharged until the commencement date.

(5) For purposes of this regulation, “the commencement date” means the date when a UK insurer goes into liquidation within the meaning given by section 247(2) of the 1986 Act or Article 6(2) of the 1989 Order.

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<sup>(25)</sup> 1992 c. 40.

<sup>(26)</sup> 1974 c. 46.

**Application of this Part: assets subject to a section 425 or Article 418 compromise or arrangement**

**19.**—(1) For the purposes of this Part, the insolvent estate of a UK insurer shall not include any assets which at the commencement date are subject to a relevant section 425 or Article 418 compromise or arrangement.

(2) In this regulation—

- (a) “assets” has the same meaning as “property” in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;
- (b) “commencement date” has the meaning given in regulation 18(4);
- (c) “insolvent estate”—
  - (i) in England, Wales and Northern Ireland has the meaning given by Rule 13.8 of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland), and
  - (ii) in Scotland means the company’s assets;
- (d) “relevant section 425 or Article 418 compromise or arrangement” means
  - (i) a section 425 or Article 418 compromise or arrangement which was sanctioned by the court before 20th April 2003, or
  - (ii) any subsequent section 425 or Article 418 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of a kind mentioned in paragraph (i).

**Preferential debts: disapplication of section 175 of the 1986 Act or Article 149 of the 1989 Order**

**20.** Except to the extent that they are applied by regulation 27, section 175 of the 1986 Act or Article 149 of the 1989 Order (preferential debts (general provision)) does not apply in the case of a winding up of a UK insurer, and instead the provisions of regulations 21 to 26 have effect.

**Preferential debts: long term insurers and general insurers**

**21.**—(1) This regulation applies in the case of a winding up of—

- (a) a long term insurer;
- (b) a general insurer;
- (c) a composite insurer, where the long term business of that insurer has been or is to be transferred as a going concern to a person who may lawfully carry out the contracts in that long term business in accordance with section 376(2) of the 2000 Act.

(2) Subject to paragraph (3), the debts of the insurer must be paid in the following order of priority—

- (a) preferential debts;
- (b) insurance debts;
- (c) all other debts.

(3) Preferential debts rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(4) Insurance debts rank equally among themselves and must be paid in full, unless the assets available after the payment of preferential debts are insufficient to meet them, in which case they abate in equal proportions.

(5) Subject to paragraph (6), so far as the assets of the insurer available for the payment of unsecured creditors are insufficient to meet the preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer, and must be paid accordingly out of any property comprised in or subject to that charge.

(6) The order of priority specified in paragraph (2)(a) and (b) applies for the purposes of any payment made in accordance with paragraph (5).

(7) Section 176A of the 1986 Act has effect with regard to an insurer so that insurance debts must be paid out of the prescribed part in priority to all other unsecured debts.

### **Composite insurers: preferential debts attributable to long term and general business**

**22.—**(1) This regulation applies in the case of the winding up of a non-transferring composite insurer.

(2) Subject to the payment of costs in accordance with regulation 30, the long term business assets and the general business assets must be applied separately in accordance with paragraphs (3) and (4).

(3) Subject to paragraph (6), the long term business assets must be applied in discharge of the long term business preferential debts in the order of priority specified in regulation 23(1).

(4) Subject to paragraph (8), the general business assets must be applied in discharge of the general business preferential debts in the order of priority specified in regulation 24(1).

(5) Paragraph (6) applies where the value of the long term business assets exceeds the long term business preferential debts and the general business assets are insufficient to meet the general business preferential debts.

(6) Those long term business assets which represent the excess must be applied in discharge of the outstanding general business preferential debts of the insurer, in accordance with the order of priority specified in regulation 24(1).

(7) Paragraph (8) applies where the value of the general business assets exceeds the general business preferential debts, and the long term business assets are insufficient to meet the long term business preferential debts.

(8) Those general business assets which represent the excess must be applied in discharge of the outstanding long term business preferential debts of the insurer, in accordance with the order of priority specified in regulation 23(1).

(9) For the purposes of this regulation and regulations 23 and 24—

“long term business preferential debts” means those debts mentioned in regulation 23(1) and, unless the court orders otherwise, any expenses of the winding up which are apportioned to the long term business assets in accordance with regulation 30;

“general business preferential debts” means those debts mentioned in regulation 24(1) and, unless the court orders otherwise, any expenses of the winding up which are apportioned to the general business assets in accordance with regulation 30.

(10) For the purposes of paragraphs (6) and (8)—

“outstanding long term business preferential debts” means those long term business preferential debts, if any, which remain unpaid, either in whole or in part, after the application of the long term business assets, in accordance with paragraph (3);

“outstanding general business preferential debts” means those general business preferential debts, if any, which remain unpaid, either in whole or in part, after the application of the general business assets, in accordance with paragraph (3).

**Preferential debts: long term business of a non-transferring composite insurer**

**23.**—(1) For the purpose of compliance with the requirement in regulation 22(3), the long term business assets of a non-transferring composite insurer must be applied in discharge of the following debts and in the following order of priority—

- (a) relevant preferential debts;
- (b) long term insurance debts.

(2) Relevant preferential debts rank equally among themselves, unless the long term business assets, any available general business assets and other assets (if any) applied in accordance with regulation 24 are insufficient to meet them, in which case they abate in equal proportions.

(3) Long term insurance debts rank equally among themselves, unless the long term business assets available after the payment of relevant preferential debts and any available general business assets and other assets (if any) applied in accordance with regulation 25 are insufficient to meet them, in which case they abate in equal proportions.

(4) So far as the long term business assets, and any available general business assets, which are available for the payment of unsecured creditors are insufficient to meet the relevant preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer over any of its long term business assets, and must be paid accordingly out of any property comprised in or subject to that charge.

(5) The order of priority specified in paragraph (1) applies for the purposes of any payment made in accordance with paragraph (4).

(6) For the purposes of this regulation—

“available general business assets” means those general business assets which must be applied in discharge of the insurer’s outstanding long term business preferential debts, in accordance with regulation 22(8);

“long term insurance debt” means an insurance debt which is attributable to the long term business of the insurer;

“relevant preferential debt” means a preferential debt which is attributable to the long term business of the insurer.

**Preferential debts: general business of a composite insurer**

**24.**—(1) For the purpose of compliance with the requirement in regulation 22(4), the long term business assets of a non-transferring composite insurer must be applied in discharge of the following debts and in the following order of priority—

- (a) relevant preferential debts;
- (b) general insurance debts.

(2) Relevant preferential debts rank equally among themselves, unless the general business assets, any available long term business assets, and other assets (if any) applied in accordance with regulation 25 are insufficient to meet them, in which case they abate in equal proportions.

(3) General insurance debts rank equally among themselves, unless the general business assets available after the payment of relevant preferential debts, any available long term business assets, and other assets (if any) applied in accordance with regulation 26 are insufficient to meet them, in which case they abate in equal proportions.

(4) So far as the other business assets and available long term assets of the insurer which are available for the payment of unsecured creditors are insufficient to meet relevant preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by,

or holders of, any floating charge created by the insurer, and must be paid accordingly out of any property comprised in or subject to that charge.

(5) The order of priority specified in paragraph (1) applies for the purposes of any payment made in accordance with paragraph (4).

(6) For the purposes of this regulation—

“available long term business assets” means those long term business assets which must be applied in discharge of the insurer’s outstanding general business preferential debts, in accordance with regulation 22(6);

“general insurance debt” means an insurance debt which is attributable to the general business of the insurer;

“relevant preferential debt” means a preferential debt which is attributable to the general business of the insurer.

### **Insufficiency of long term business assets and general business assets**

**25.**—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer where the long term business assets and the general business assets, applied in accordance with regulation 22, are insufficient to meet in full the preferential debts and insurance debts.

(2) In a case in which this regulation applies, the other assets (if any) of the insurer must be applied in the following order of priority—

- (a) outstanding preferential debts;
- (b) unattributed preferential debts;
- (c) outstanding insurance debts;
- (d) all other debts.

(3) So far as the long term business assets, and any available general business assets, which are available for the payment of unsecured creditors are insufficient to meet the outstanding preferential debts and the unattributed preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer over any of its other assets, and must be paid accordingly out of any property comprised in or subject to that charge.

(4) For the purposes of this regulation—

“outstanding insurance debt” means any insurance debt, or any part of an insurance debt, which was not discharged by the application of the long term business assets and the general business assets in accordance with regulation 22;

“outstanding preferential debt” means any preferential debt attributable either to the long term business or the general business of the insurer which was not discharged by the application of the long term business assets and the general business assets in accordance with regulation 23;

“unattributed preferential debt” means a preferential debt which is not attributable to either the long term business or the general business of the insurer.

### **Composite insurers: excess of long term business assets and general business assets**

**26.**—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer where the value of the long term business assets and the general business assets, applied in accordance with regulation 22, exceeds the value of the sum of the long term business preferential debts and the general business preferential debts.

(2) In a case to which this regulation applies, long term business assets or general business assets which have not been applied in discharge of long term business preferential debts or general business preferential debts must be applied in accordance with regulation 27.

(3) In this regulation, “long term business preferential debts” and “general business preferential debts” have the same meaning as in regulation 22.

#### **Composite insurers: application of other assets**

**27.**—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer where regulation 25 does not apply.

(2) The other assets of the insurer, together with any outstanding business assets, must be paid in discharge of the following debts in accordance with section 175 of the 1986 Act or Article 149 of the 1989 Order—

- (a) unattributed preferential debts;
- (b) all other debts.

(3) In this regulation—

“unattributed preferential debt” has the same meaning as in regulation 25;

“outstanding business assets” means assets of the kind mentioned in regulation 26(2).

#### **Composite insurers: proof of debts**

**28.**—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer in compliance with the requirement in regulation 23(2).

(2) The liquidator may in relation to the insurer’s long term business assets and its general business assets fix different days on or before which the creditors of the company who are required to prove their debts or claims are to prove their debts or claims, and he may fix one of those days without at the same time fixing the other.

(3) In submitting a proof of any debt a creditor may claim the whole or any part of such debt as is attributable to the company’s long term business or to its general business, or he may make no such attribution.

(4) When he admits any debt, in whole or in part, the liquidator must state in writing how much of what he admits is attributable to the company’s long term business, how much is attributable to the company’s general business, and how much is attributable to its other business (if any).

(5) Paragraph (2) does not apply in Scotland.

#### **Composite insurers: general meetings of creditors**

**29.**—(1) This regulation applies in the same circumstances as regulation 28.

(2) The creditors mentioned in section 168(2) of the 1986 Act, Article 143(2) of the 1989 Order or rule 4.13 of the Insolvency (Scotland) Rules (power of liquidator to summon general meetings of creditors) are to be—

- (a) in relation to the long term business assets of that insurer, only those who are creditors in respect of long term business liabilities; and
- (b) in relation to the general business assets of that insurer, only those who are creditors in respect of general business liabilities,

and, accordingly, any general meetings of creditors summoned for the purposes of that section, Article or rule are to be separate general meetings of creditors in respect of long term business liabilities and general business liabilities.

### **Composite insurers: apportionment of costs payable out of the assets**

**30.**—(1) In the case of the winding up of a non-transferring composite insurer, Rule 4.218 of the Insolvency Rules or Rule 4.228 of the Insolvency Rules (Northern Ireland) (general rules as to priority) or rule 4.67 (order of priority of expenses of liquidation) of the Insolvency (Scotland) Rules applies separately to long-term business assets and to the general business assets of that insurer.

(2) But where any fee, expense, cost, charge, or remuneration does not relate exclusively to the long-term business assets or to the general business assets of that insurer, the liquidator must apportion it amongst those assets in such manner as he shall determine.

### **Summary remedy against liquidators**

**31.** Section 212 of the 1986 Act or Article 176 of the 1989 Order (summary remedy against delinquent directors, liquidators etc.) applies in relation to a liquidator who is required to comply with regulations 21 to 27, as it applies in relation to a liquidator who is required to comply with section 175 of the 1986 Act or Article 149 of the 1989 Order.

### **Priority of subrogated claims by the Financial Services Compensation Scheme**

**32.**—(1) This regulation applies where an insurance creditor has assigned a relevant right to the scheme manager (“a relevant assignment”).

(2) For the purposes of regulations 21, 23 and 24, where the scheme manager proves for an insurance debt in the winding up of a UK insurer pursuant to a relevant assignment, that debt must be paid to the scheme manager in the same order of priority as any other insurance debt.

(3) In this regulation—

“relevant right” means any direct right of action against a UK insurer under a contract of insurance, including the right to prove for a debt under that contract in a winding up of that insurer;

“scheme manager” has the meaning given by section 212(1) of the 2000 Act.

### **Voluntary arrangements: treatment of insurance debts**

**33.**—(1) The modifications made by paragraph (2) apply where a voluntary arrangement is proposed under section 1 of the 1986 Act or Article 14 of the 1989 Order in relation to a UK insurer, and that arrangement includes—

- (a) a composition in satisfaction of any insurance debts; and
- (b) a distribution to creditors of some or all of the assets of that insurer in the course of, or with a view to, terminating the whole or any part of the business of that insurer.

(2) Section 4 of the 1986 Act (decisions of meetings) has effect as if—

(a) after subsection (4) there were inserted—

“(4A) A meeting so summoned and taking place on or after 20th April 2003 shall not approve any proposal or modification under which any insurance debt of the company is to be paid otherwise than in priority to such of its debts as are not insurance debts or preferential debts.

(4B) Paragraph (4A) does not apply where—

- (a) a winding up order made before 20th April 2003 is in force; or
- (b) a relevant insolvency appointment made before 20th April 2003 has effect, in relation to the company.”;

(b) for subsection (7) there were substituted—

“(7) References in this section to preferential debts mean debts falling into any of categories 4 and 5 of the debts listed in Schedule 6 to this Act; and references to preferential creditors are to be construed accordingly.”; and

(c) after subsection (7) as so substituted there were inserted—

“(8) For the purposes of this section—

(a) “insurance debt” has the meaning it has in the Insurers ( Reorganisation and Winding up) Regulations 2004; and

(b) “relevant insolvency measure” means—

(i) the appointment of a provisional liquidator, or

(ii) the appointment of an administrator,

where an effect of the appointment will be, or is intended to be, a realisation of some or all of the assets of the insurer and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.”.

(3) Article 17 of the 1989 Order (decisions of meetings) has effect as if—

(a) after paragraph (4) there were inserted—

“(4A) A meeting so summoned and taking place on or after 20th April 2003 shall not approve any proposal or modification under which any insurance debt of the company is to be paid otherwise than in priority to such of its debts as are not insurance debts or preferential debts.

(4B) Paragraph (4A) does not apply where—

(a) a winding up order made before 20th April 2003 is in force; or

(b) a relevant insolvency appointment made before 20th April 2003 has effect, in relation to the company.”;

(b) for paragraph (7) there were substituted—

“(7) References in this Article to preferential debts mean debts falling into any of categories 4 and 5 of the debts listed in Schedule 4 to this Order, and references to preferential creditors are to be construed accordingly.”; and

(c) after paragraph (7) as so substituted there were inserted—

“(8) For the purposes of this section—

(a) “insurance debt” has the meaning it has in the Insurers (Reorganisation and Winding Up) Regulations 2004 and

(b) “relevant insolvency measure” means—

(i) the appointment of a provisional liquidator, or

(ii) the appointment of an administrator,

where an effect of the appointment will be, or is intended to be, a realisation of some or all of the assets of the insurer and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.”.



## PART V

### REORGANISATION OR WINDING UP OF UK INSURERS: RECOGNITION OF EEA RIGHTS

#### **Application of this Part**

**34.**—(1) This Part applies—

- (a) where a decision with respect to the approval of a proposed voluntary arrangement having a qualifying purpose is made under section 4A of the 1986 Act or Article 17A of the 1989 Order on or after 20th April 2003 in relation to a UK insurer;
  - (b) where an administration order made under section 8 of the 1986 Act on or after 20th April 2003 or, on or after 15th September 2003, made under paragraph 13 of Schedule B1 is in force in relation to a UK insurer;
  - (c) where on or after 20th April 2003 the court reduces the value of one or more of the contracts of a UK insurer under section 377 of the 2000 Act or section 24(5) of the Friendly Societies Act 1992;
  - (d) where a UK insurer is subject to a relevant winding up;
  - (e) where a provisional liquidator is appointed in relation to a UK insurer on or after 20th April 2003.
- (2) For the purposes of paragraph (1)(a), a voluntary arrangement has a qualifying purpose if it—
- (a) varies the rights of the 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 to which it relates and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.
- (3) For the purposes of paragraph (1)(d), a winding up is a relevant winding up if—
- (a) in the case of a winding up by the court, the winding up order is made on or after 20th April 2003; or
  - (b) in the case of a creditors' voluntary winding up, the liquidator is appointed in accordance with section 100 of the 1986 Act, paragraph 83 of Schedule B1 or Article 86 of the 1989 Order on or after 20th April 2003.

#### **Application of this Part: assets subject to a section 425 or Article 418 compromise or arrangement**

**35.**—(1) For the purposes of this Part, the insolvent estate of a UK insurer shall not include any assets which at the commencement date are subject to a relevant section 425 or Article 418 compromise or arrangement.

(2) In this regulation—

- (a) “assets” has the same meaning as “property” in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;
- (b) “commencement date” has the meaning given in regulation 18(4);
- (c) “insolvent estate” in England and Wales and Northern Ireland has the meaning given by Rule 13.8 of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland) and in Scotland means the company’s assets;
- (d) “relevant section 425 or Article 418 compromise or arrangement” means—

- (i) a section 425 or Article 418 compromise or arrangement which was sanctioned by the court before 20th April 2003, or
- (ii) any subsequent section 425 or Article 418 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of the kind mentioned in paragraph (i).

### **Interpretation of this Part**

**36.**—(1) For the purposes of this Part—

- (a) “affected insurer” means a UK insurer which is the subject of a relevant reorganisation or a relevant winding up;
- (b) “relevant reorganisation or a relevant winding up” means any voluntary arrangement, administration order, winding up, or order referred to in regulation 34(1)(d) to which this Part applies; and
- (c) “relevant time” means the date of the opening of a relevant reorganisation or a relevant winding up.

(2) In this Part, references to the opening of a relevant reorganisation or a relevant winding up mean—

- (a) in the case of winding up proceedings—
  - (i) in the case of a winding up by the court, the date on which the winding up order is made, or
  - (ii) in the case of a creditors' voluntary winding up, the date on which the liquidator is appointed in accordance with section 100 of the 1986 Act<sup>(27)</sup>, paragraph 83 of Schedule B1 or Article 86 of the 1989 Order;
- (b) in the case of a voluntary arrangement, the date when a decision with respect to that voluntary arrangement has effect in accordance with section 4A(2) of the 1986 Act or Article 17A(2) of the 1989 Order;
- (c) in a case where an administration order under paragraph 13 of Schedule B1 is in force, the date of the making of that order;
- (d) in a case where an administrator is appointed under paragraphs 14 or 22 of Schedule B1 the date on which that appointment takes effect;
- (e) in a case where the court reduces the value of one or more of the contracts of a UK insurer under section 377 of the 2000 Act or section 24(5) of the Friendly Societies Act 1992, the date the court exercises that power; and
- (f) in a case where a provisional liquidator has been appointed, the date of that appointment,

and references to the time of an opening must be construed accordingly.

### **EEA rights: applicable law in the winding up of a UK insurer**

**37.**—(1) This regulation is subject to the provisions of regulations 38 to 47.

(2) In a relevant winding up, the matters mentioned in paragraph (3) in particular are to be determined in accordance with the general law of insolvency of the United Kingdom.

(3) Those matters are—

- (a) the assets which form part of the estate of the affected insurer;

(27) Section 4A was inserted into the 1986 Act by the [Insolvency Act 2000\(c. \)](#), section 2(a) and Schedule 2 paragraphs 1 and 5.

- (b) the treatment of assets acquired by, or devolving on, the affected insurer after the opening of the relevant winding up;
  - (c) the respective powers of the affected insurer and the liquidator or provisional liquidator;
  - (d) the conditions under which set-off may be revoked;
  - (e) the effects of the relevant winding up on current contracts to which the affected insurer is a party;
  - (f) the effects of the relevant winding up on proceedings brought by creditors;
  - (g) the claims which are to be lodged against the estate of the affected insurer;
  - (h) the treatment of claims against the affected insurer arising after the opening of the relevant winding up;
  - (i) the rules governing—
    - (i) the lodging, verification and admission of claims,
    - (ii) the distribution of proceeds from the realisation of assets,
    - (iii) the ranking of claims,
    - (iv) the rights of creditors who have obtained partial satisfaction after the opening of the relevant winding up by virtue of a right in rem or through set-off;
  - (j) the conditions for and the effects of the closure of the relevant winding up, in particular by composition;
  - (k) the rights of creditors after the closure of the relevant winding up;
  - (l) who is to bear the cost and expenses incurred in the relevant winding up;
  - (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.
- (4) In this regulation, “relevant winding up” has the meaning given by regulation 34(3).

### **Employment contracts and relationships**

**38.**—(1) The effects of a relevant reorganisation or a relevant winding up on any EEA employment contract and any EEA employment relationship are to be determined in accordance with the law of the EEA State to which that contract or that relationship is subject.

(2) In this regulation, an employment contract is an EEA employment contract, and an employment relationship is an EEA employment relationship, if it is subject to the law of an EEA State.

### **Contracts in connection with immovable property**

**39.** The effects of a relevant reorganisation or a relevant winding up on a contract conferring the right to make use of or acquire immovable property situated within the territory of an EEA State are to be determined in accordance with the law of that State.

### **Registrable rights**

**40.** The effects of a relevant reorganisation or a relevant winding up on rights of the affected insurer with respect to—

- (a) immovable property,
- (b) a ship, or
- (c) an aircraft

which is subject to registration in a public register kept under the authority of an EEA State are to be determined in accordance with the law of that State.

### **Third parties' rights in rem**

**41.—**(1) A relevant reorganisation or a relevant winding up shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets (including both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the affected insurer which are situated within the territory of an EEA State at the relevant time.

(2) The rights in rem referred to in paragraph (1) shall in particular include—

- (a) the right to dispose of the assets in question or have them disposed of and to obtain satisfaction from the proceeds of or the income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met out of the assets in question, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of guarantee;
- (c) the right to demand the assets in question from, or to require restitution by, any person having possession or use of them contrary to the wishes of the party otherwise entitled to the assets;
- (d) a right in rem to the beneficial use of assets.

(3) A right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph (1) may be obtained, is also to be treated as a right in rem for the purposes of this regulation.

(4) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

### **Reservation of title agreements etc.**

**42.—**(1) The opening of a relevant reorganisation or a relevant winding up in relation to an insurer purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of that opening the asset is situated within the territory of an EEA State.

(2) The opening of a relevant reorganisation or a relevant winding up in relation to an insurer selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of that opening the asset sold is situated within the territory of an EEA State.

(3) Paragraphs (1) and (2) do not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

### **Creditors' rights to set off**

**43.—**(1) A relevant reorganisation or a relevant winding up shall not affect the right of creditors to demand the set-off of their claims against the claims of the affected insurer, where such a set-off is permitted by the applicable EEA law.

(2) In paragraph (1), "applicable EEA law" means the law of the EEA State which is applicable to the claim of the affected insurer.

(3) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

### **Regulated markets**

**44.—**(1) Without prejudice to regulation 40, the effects of a relevant reorganisation measure or winding up on the rights and obligations of the parties to a regulated market operating in an EEA State must be determined in accordance with the law applicable to that market.

(2) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

(3) For the purposes of this regulation, “regulated market” has the meaning given by Council Directive (93/22/EEC) of 10th May 1993 on investment services in the securities field<sup>(28)</sup>.

### **Detrimental acts pursuant to the law of an EEA State**

**45.—**(1) In a relevant reorganisation or a relevant winding up, the rules relating to detrimental transactions shall not apply where a person who has benefited from a legal act detrimental to all the creditors provides proof that—

- (a) the said act is subject to the law of an EEA State; and
- (b) that law does not allow any means of challenging that act in the relevant case.

(2) For the purposes of paragraph (1), “the rules relating to detrimental transactions” means any provisions of the general law of insolvency relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors, as referred to in regulation 37(3)(m).

### **Protection of third party purchasers**

**46.—**(1) This regulation applies where, by an act concluded after the opening of a relevant reorganisation or a relevant winding up, an affected insurer disposes for a consideration of—

- (a) an immovable asset situated within the territory of an EEA State;
- (b) a ship or an aircraft subject to registration in a public register kept under the authority of an EEA State; or
- (c) securities whose existence or transfer presupposes entry into a register or account laid down by the law of an EEA State or which are placed in a central deposit system governed by the law of an EEA State.

(2) The validity of that act is to be determined in accordance with the law of the EEA State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept, as the case may be.

### **Lawsuits pending**

**47.—**(1) The effects of a relevant reorganisation or a relevant winding up on a relevant lawsuit pending in an EEA State shall be determined solely in accordance with the law of that EEA State.

(2) In paragraph (1), “relevant lawsuit” means a lawsuit concerning an asset or right of which the affected insurer has been divested.

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<sup>(28)</sup> O.J. No. L141, 11.6.93, p.27, as amended by European Parliament and Council Directive 95/26/EC (O.J. No. L84, 26.3.97, p.22).

## PART VI

### THIRD COUNTRY INSURERS

#### Interpretation of this Part

**48.**—(1) In this Part—

- (a) “relevant measure”, in relation to a third country insurer, means
  - (i) a winding up;
  - (ii) an administration order made under paragraph 13 of Schedule B1;
 or
  - (iii) a decision of the court to reduce the value of one or more of the insurer’s contracts, in accordance with section 377 of the 2000 Act;
- (b) “third country insurer” means a person—
  - (i) who has permission under the 2000 Act to effect or carry out contracts of insurance; and
  - (ii) whose head office is not in the United Kingdom or an EEA State.

(2) In paragraph (1), the definition of “third country insurer” must be read with—

- (a) section 22 of the 2000 Act;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act.

#### Application of these Regulations to a third country insurer

**49.** Parts III, IV and V of these Regulations apply where a third country insurer is subject to a relevant measure, as if references in those Parts to a UK insurer included a reference to a third country insurer.

#### Disclosure of confidential information: third country insurers

**50.**—(1) This regulation applies to information (“insolvency practitioner information”) which—

- (a) relates to the business or other affairs of any person; and
- (b) is information of a kind mentioned in paragraph (2).

(2) Information falls within paragraph (1)(b) if it is supplied to—

- (a) the Authority by an EEA regulator; or
- (b) an insolvency practitioner by an EEA administrator or liquidator,

in accordance with or pursuant to Article 30 of the reorganisation and winding up directive.

(3) Subject to paragraphs (4), (5) and (6), sections 348, 349 and 352 of the 2000 Act apply in relation to insolvency practitioner information in the same way as they apply in relation to confidential information within the meaning of section 348(2) of that Act.

(4) For the purposes of this regulation, sections 348, 349 and 352 of the 2000 Act and the Disclosure Regulations have effect as if the primary recipients specified in subsection (5) of section 348 of the 2000 Act included an insolvency practitioner.

(5) Insolvency practitioner 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 (3)) if it satisfies any of the criteria set out in section 348(4) of the 2000 Act.

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

(7) In this regulation—

“the Disclosure Regulations” means the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001;

“EEA administrator” and “EEA liquidator” mean respectively an administrator or liquidator within the meaning of the reorganisation and winding up directive;

“insolvency practitioner” means an insolvency practitioner, within the meaning of section 388 of the 1986 Act or Article 3 of the 1989 Order, who is appointed or acts in relation to a third country insurer.

## PART VII

### REVOCATION AND AMENDMENTS

#### **Amendment of the Insurers (Winding Up) Rules 2001 and the Insurers (Winding Up) (Scotland) Rules 2001**

**51.**—(1) The Insurers (Winding Up) Rules 2001<sup>(29)</sup> (“the Winding Up Rules”) and the Insurers (Winding Up) (Scotland) Rules 2001<sup>(30)</sup> (“the Scottish Winding Up Rules”) are amended as follows—

(2) In Rule 24 paragraph 1A(b) of the Winding Up Rules (meetings of creditors) or “regulation 29 Insurers (Reorganisation and Winding Up) Regulations 2003<sup>(31)</sup>” substitute “regulation 29 Insurers Reorganisation and Winding Up) (No.2) Regulations 2004”,

(3) In Rule 24 (1A)(b) of the Winding Up (Scotland) Rules, for “regulation 28 of Insurers (Reorganisation and Winding Up) Regulations 2003<sup>(32)</sup>”, substitute “regulation 28 of the Insurers (Reorganisation and Winding Up) Regulations 2004”.

#### **Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002**

**52.** Regulation 3 of the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002<sup>(33)</sup> is amended by the addition after the words “(administration orders)” of the words “, other than paragraph 14 of Schedule B1 (power of holder of floating charge to appoint administrator) and paragraph 22 of Schedule B1 (power of company or directors to appoint administrator),”.

#### **Revocation and Transitional**

**53.**—(1) Except as provided in this regulation, the Insurers (Reorganisation and Winding Up) Regulations 2003 are revoked.

(2) Subject to (3), the provisions of Parts III and IV shall continue in force in respect of decisions orders or appointments referred to therein and made before the coming into force of these Regulations.

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(29) [S.I. 2001/3635](#).

(30) [S.I. 2001/4040](#), paragraph 1A was inserted into Rule 24 by [S.I. 2003/1102](#).

(31) [S.I. 2003/1102](#).

(32) [S.I. 2003/1102](#).

(33) [S.I. 2002/1242](#) as amended by [S.I. 2003/2134](#).

(3) Where an administrator has been appointed in respect of a UK insurer on or after 15th September 2003, he shall be treated as being so appointed on the date these regulations come into force.

*Nick Ainger*

*Joan Ryan*

Two of the Lords Commissioners of Her  
Majesty's Treasury

12th February 2004



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace in their entirety the Insurers (Reorganisation and Winding Up) Regulations 2003 ([SI 2003/1102](#)) which implemented the directive of the Parliament and the Council on the reorganisation and winding up of insurance undertakings ([2001/17/EC](#)) for all UK insurers except Lloyd's. They take account of the changes to insolvency law brought about by the commencement of the Enterprise Act 2002 and in particular the new administration procedures in the new Schedule B1 to the Insolvency Act 1986. The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002 ([SI 2002/1242](#)) is amended to disapply paragraphs 14 and 22 of Schedule B1 because the reorganisation and winding up directive does not permit the appointment of an administrator other than by a court. These Regulations continue to provide that no winding up proceedings or voluntary arrangements in respect of EEA insurers can be undertaken in the UK except in the circumstances permitted by the Regulations. EEA reorganisation and winding up proceedings are to be recognised in the UK. Provisions are made for the exercise by EEA liquidators of their functions in the UK. Provision is made for the notification of reorganisation and winding up proceedings to competent authorities in other EEA Member States. Modifications are made to UK insolvency law in respect of notifications of various other matters including important stages in the relevant procedures and forms in which creditors in other EEA States may enter claims, to the FSA, EEA authorities and creditors. There are detailed changes from the provisions in the Regulations replaced with regard to administration and in particular to accommodate the ability for companies, Directors and holders of floating charges to appoint an administrator without a court order. The Regulations provide for the special order of priority for insurance debts created by the directive to apply to UK insurers and for the carrying through of the consequences of this in insolvency law. They make provision for application to insurers whose head office is outside the UK and the EEA. Provision is made for detailed amendment of existing secondary legislation including the insolvency rules in all UK jurisdictions dealing with the reorganisation or winding up of insurers.