
STATUTORY INSTRUMENTS

2005 No. 1998

**The Insurers (Reorganisation and
Winding Up) (Lloyd's) Regulations 2005**

PART 3

**MODIFICATION OF LAW OF INSOLVENCY:
NOTIFICATION AND PUBLICATION**

Application of Parts 3 and 4

32. Parts 3 and 4 of these Regulations apply where a Lloyd's market reorganisation order is in force and in respect of a member or former member in relation to whom no order under regulation 13(3) is in force.

Notification of relevant decision to Authority

33.—(1) Regulation 9 of the principal Regulations applies to a member or former member in the circumstances set out in paragraph (2) and has effect as if the modifications set out in paragraphs (3) and (4) were included in it as regards members or former members.

(2) The circumstances are where—

- (a) the member or former member is subject to a Lloyd's market reorganisation order which remains in force; and
- (b) no order has been made in respect of that member or former member under regulation 13(3) of these Regulations and has not been revoked.

(3) In paragraph (1) of regulation 9 of the principal Regulations, insert—

(a) after sub-paragraph (b)—

“(ba) a bankruptcy order under section 264 of the 1986 Act or under Article 245 or 247 of the 1989 Order;

(bb) an award of sequestration under the Bankruptcy (Scotland) Act 1985;”;

(b) after paragraph (c)—

“(ca) the appointment of an interim trustee under section 286 or 287 of the 1986 Act or under Article 259 or 260 of the 1989 Order;

(cb) the appointment of a trustee in bankruptcy under sections 295, 296 or 300 of that Act or under Articles 268, 269 or 273 of that Order;

(cc) the appointment of an interim or permanent trustee under the Bankruptcy (Scotland) Act 1985;”.

(4) In paragraph (2) of that regulation after “voluntary arrangement”, insert “or individual voluntary arrangement” and after “supervisor” insert “or nominee (as the case may be)”.

(5) In paragraph (7) of that regulation, in the definition of “qualifying arrangement”,

- (a) after “voluntary arrangement” insert “or individual voluntary arrangement”; and
 - (b) for “insurer”, wherever appearing substitute “member or former member”.
- (6) In paragraph (8), after “supervisor” insert “, nominee, trustee in bankruptcy, trustee under a trust deed for creditors”.

Notification of relevant decision to EEA Regulators

- 34.** Regulation 10 of the principal Regulations applies as if—
- (a) in paragraph (1)(b)(i) for “the business of an insurer” there were substituted “the insurance business of a member or former member”; and
 - (b) in paragraph (1)(b)(ii) for “an insurer” there were substituted “a member or former member”.

Application of certain publication requirements in the principal Regulations to members

35.—(1) Regulation 11 of the principal Regulations (publication of voluntary arrangement, administration order, winding up order or scheme of arrangement) applies, with the following, where a qualifying decision has effect, or a qualifying order or appointment is made, in relation to a member or former member.

(2) References in regulation 11(2) to a “qualifying decision”, a “qualifying order” and a “qualifying appointment” have the same meaning as in that regulation, subject to the modifications set out in paragraphs (3) and (5).

(3) Regulation 11(2)(a) has effect as if a qualifying decision included a decision with respect to the approval of a proposed individual voluntary arrangement in relation to a member in accordance with section 258 of the 1986 Act or Article 232 of the 1989 Order (decisions of creditors' meeting: individual voluntary arrangements) or in Scotland the grant of a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985).

(4) In the case of a qualifying decision of a kind mentioned in paragraph (3) above, regulation 11(4) has effect as if the information mentioned therein included the court to which an application under sections 262 (challenge of the meeting’s decision) and 263(3) (implementation and supervision of approved voluntary arrangement) of the 1986 Act may be made or Articles 236 (challenge of the meeting’s decision) and 237(3) (implementation and supervision of approved voluntary arrangement) of the 1989 Order, or in Scotland under paragraph 12 of Schedule 5 to the Bankruptcy (Scotland) Act 1985.

(5) Regulation 11(2)(b) has effect as if a qualifying order included in relation to a member or former member a bankruptcy order under Part 9 of the 1986 Act or Part 9 of the 1989 Order, or in Scotland, an award of sequestration under the Bankruptcy (Scotland) Act.

(6) In the case of a qualifying order of the kind mentioned in paragraph (5) above, regulation 11(4) has effect as if the information mentioned therein included the court to which an application may be made under section 303 or 375 of the 1986 Act or Article 276 of the 1989 Order, or in Scotland included the court having jurisdiction to sequester.

- (7) Regulation 11(11) has effect as if the meaning of “relevant officer” included—
- (a) in the case of a voluntary arrangement under Part 9 of the 1986 Act or Part 9 of the 1989 Order, the nominee;
 - (b) in the case of a bankruptcy order, the trustee in bankruptcy;
 - (c) in Scotland,
 - (i) the trustee acting under a trust deed;

- (ii) in the case of an award of sequestration, the interim or permanent trustee, as the case may be.

Notification to creditors: winding up proceedings relating to members

36.—(1) Regulation 12 of the principal Regulations (notification to creditors: winding up proceedings) applies, with the following modifications, where a relevant order or appointment is made, or a relevant decision is taken, in relation to a member or former member.

(2) References in paragraph (3) of that regulation to a “relevant order”, a “relevant appointment” and a “relevant decision” have the meaning they have in that regulation, subject to the modifications set out in paragraphs (3) and (7).

(3) Paragraph (3) of that regulation has effect, for the purposes of this regulation, as if—

- (a) a relevant order included a bankruptcy order made in relation to a member or former member under Part 9 of the 1986 Act or Part 9 of the 1989 Order or an award of sequestration under the Bankruptcy (Scotland) Act 1985; and
- (b) a relevant decision included a decision as a result of which a qualifying individual voluntary arrangement in relation to a member or former member has effect in accordance with section 258 of the 1986 Act or Article 232 of the 1989 Order (decisions of creditors' meeting: individual voluntary arrangements) or in Scotland the grant of a qualifying trust deed.

(4) Paragraph (4)(a) of that regulation has effect as if the reference to a UK insurer included a reference to a member or former member who is to be treated as a UK insurer for the purposes of the application of the principal Regulations.

(5) Paragraph (9) of that regulation has effect as if, in a case where a bankruptcy order is made in relation to a member or former member, it permitted the obligation under paragraph (1)(a)(ii) of that regulation to be discharged by sending a form of proof in accordance with rule 6.97 of the Insolvency Rules or Rule 6.095 of the Insolvency Rules (Northern Ireland) or submitting a claim in accordance with section 48 of the Bankruptcy (Scotland) Act 1985, provided that the form of proof or submission of claim complies with paragraph (7) or (8) of that regulation (whichever is applicable).

(6) Paragraph (13)(a) of that regulation has effect as if the meaning of “appointed officer” included—

- (a) in the case of a qualifying individual voluntary arrangement approved in relation to a member or former member, the nominee;
- (b) in the case of a bankruptcy order in relation to an individual member or former member, the trustee in bankruptcy;
- (c) in Scotland in the case of a sequestration, the interim or permanent trustee; and
- (d) in Scotland in the case of a relevant decision, the trustee.

(7) For the purposes of paragraph (3) of that regulation, an individual voluntary arrangement approved in relation to an individual member or former member is a qualifying individual voluntary arrangement and a trust deed within section 5(4A) of the Bankruptcy (Scotland) Act 1985 is a qualifying trust deed if its purposes or objects, as the case may be, include a realisation of some or all of the assets of that member or former member and a distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that member carried on or formerly carried on in connection with contracts of insurance written at Lloyd's.

Submission of claims by EEA creditor

37.—(1) Regulation 13 of the principal Regulations (submission of claims by EEA creditors) applies, with the modifications set out in paragraphs (3) to (6) below, in the circumstances set out

in paragraph (2) below, in the same way as it applies where an EEA creditor submits a claim or observations in the circumstances set out in paragraph (1) of that regulation.

(2) Those circumstances are where, after the date these Regulations come into force an EEA creditor submits a claim or observations relating to his claim in any relevant proceedings in respect of a member or former member (irrespective of when those proceedings were commenced or had effect).

(3) Paragraph (2) of that regulation has effect as if the “relevant proceedings” included—

- (a) bankruptcy or sequestration; or
- (b) a qualifying individual voluntary arrangement or in Scotland a qualifying trust deed for creditors.

(4) Paragraph (5) of that regulation has effect as if it also provided that paragraph (3) of that regulation does not apply where an EEA creditor submits his claim using—

- (a) in a case of a bankruptcy or an award of sequestration of a member or former member, a form of proof in accordance with Rule 6.97 of Insolvency Rules or Rule 4.080 of the Insolvency Rules (Northern Ireland) or section 48 of the Bankruptcy (Scotland) Act 1985;
- (b) in the case of a qualifying trust deed, the form prescribed by the trustee; and
- (c) in the case of a qualifying individual voluntary arrangement, a form approved by the court for that purpose.

(5) For the purposes of that regulation (as applied in the circumstances set out in paragraph (2) above), an individual voluntary arrangement approved in relation to an individual member is a qualifying individual voluntary arrangement and a trust deed for creditors within section 5(4A) of the Bankruptcy (Scotland) Act 1985 is a qualifying trust deed for creditors if its purposes or objects as the case may be include a realisation of some or all of the assets of that member or former member and a distribution of the proceeds to creditors including insurance creditors, with a view to terminating the whole or any part of the business of that member carried on in connection with effecting or carrying out contracts of insurance written at Lloyd's.

Reports to creditors

38.—(1) Regulation 14 of the principal Regulations (reports to creditors) applies with the modifications set out in paragraphs (2) to (4) where—

- (a) a liquidator is appointed in respect of a member or former member in accordance with—
 - (i) section 100 of the 1986 Act or Article 86 of the 1989 Order (creditors' voluntary winding up: appointment of a liquidator), or
 - (ii) paragraph 83 of Schedule B1 (moving from administration to creditors' voluntary liquidation);
- (b) a winding up order is made by the court in respect of a member or former member;
- (c) a provisional liquidator is appointed in respect of a member or former member;
- (d) an administrator of a member or former member (within the meaning given by paragraph 1(1) of Schedule B1) includes in the statement required by Rule 2.2 of the Insolvency Rules 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; or
- (e) a bankruptcy order or award of sequestration is made in respect of a member or former member.

(2) Paragraphs (2) to (5) of that regulation have effect as if they each included a reference to—

- (a) an administrator who has made 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;

- (b) the official receiver or a trustee in bankruptcy; and
 - (c) in Scotland, an interim or permanent trustee.
- (3) Paragraph (6)(a) of that regulation has effect as if the meaning of “known creditor” included—
- (a) a creditor who is known to the administrator, the trustee in bankruptcy or the trustee, as the case may be;
 - (b) in a case where a bankruptcy order is made in respect of a member or former member, a creditor who is specified in a report submitted under section 274 of the 1986 Act or Article 149 of the 1989 Order or a statement of affairs submitted under section 288 or Article 261 in respect of the member or former member;
 - (c) in a case where an administrator of a member has made 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, a creditor who is specified in the statement of the member’s affairs required by the administrator under paragraph 47(1) of that Schedule;
 - (d) in a case where a sequestration has been awarded, a creditor who is specified in a statement of assets and liabilities under section 19 of the Bankruptcy (Scotland) Act 1985.
- (4) Paragraph (6)(b) of that regulation has effect as if “report” included a written report setting out the position generally as regards the progress of—
- (a) the bankruptcy or sequestration; or
 - (b) the administration.

Service of notices and documents

39.—(1) Regulation 15 of the principal Regulations (service of notices and documents) applies, with the modifications set out in paragraphs (2) and (3) below, to any notification, report or other document which is required to be sent to a creditor of a member or former member by a provision of Part III of those Regulations as applied and modified by regulations 33 to 35 above.

(2) Paragraph 15(5)(a)(i) of that regulation has effect as if the reference to the UK insurer which is liable under the creditor’s claim included a reference to the member or former member who or which is liable under the creditor’s claim.

(3) Paragraph (7)(c) of that regulation has effect as if “relevant officer” included a trustee in bankruptcy, nominee, receiver or, in Scotland, an interim or permanent trustee under a trust deed within the meaning of section 5(4A) of the Bankruptcy (Scotland) Act who is required to send a notification to a creditor by a provision of Part III of the principal Regulations as applied and modified by regulations 33 to 37 above.