

Directive 2009/138/EC of the European Parliament and of the Council
of 25 November 2009 on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

TITLE IV

REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

CHAPTER III

Winding-up proceedings

Article 273

Opening of winding-up proceedings information to the supervisory authorities

1 Only the competent authorities of the home Member State shall be entitled to take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in other Member States. This decision may be taken in the absence, or following the adoption, of reorganisation measures.

2 A decision concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, adopted in accordance with the legislation of the home Member State shall be recognised without further formality throughout the Community and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.

3 The competent authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of that Member State of the decision to open winding-up proceedings, where possible before the proceedings are opened and failing that immediately thereafter.

The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to open winding-up proceedings including the possible practical effects of such proceedings.

Article 274

Applicable law

1 The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the law applicable in the home Member State unless otherwise provided in Articles 285 to 292.

2 The law of the home Member State shall determine at least the following:

- a the assets which form part of the estate and the treatment of assets acquired by, or devolving to, the insurance undertaking after the opening of the winding-up proceedings;
- b the respective powers of the insurance undertaking and the liquidator;

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- c the conditions under which set-off may be invoked;
- d the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;
- e the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending referred to in Article 292;
- f the claims which are to be lodged against the estate of the insurance undertaking and the treatment of claims arising after the opening of winding-up proceedings;
- g the rules governing the lodging, verification and admission of claims;
- h the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right in rem or through a set-off;
- i the conditions for and the effects of closure of winding-up proceedings, in particular by composition;
- j rights of the creditors after the closure of winding-up proceedings;
- k the party who is to bear the cost and expenses incurred in the winding-up proceedings; and
- l the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 275

Treatment of insurance claims

- 1 Member States shall ensure that insurance claims take precedence over other claims against the insurance undertaking in one or both of the following ways:
 - a with regard to assets representing the technical provisions, insurance claims shall take absolute precedence over any other claim on the insurance undertaking; or
 - b with regard to the whole of the assets of the insurance undertaking, insurance claims shall take precedence over any other claim on the insurance undertaking with the only possible exception of the following:
 - (i) claims by employees arising from employment contracts and employment relationships;
 - (ii) claims by public bodies on taxes;
 - (iii) claims by social security systems;
 - (iv) claims on assets subject to rights in rem.
- 2 Without prejudice to paragraph 1, Member States may provide that the whole or part of the expenses arising from the winding-up procedure, as determined by their national law, shall take precedence over insurance claims.
- 3 Member States which have chosen the option provided for in paragraph 1(a) shall require insurance undertakings to establish and keep up to date a special register in accordance with Article 276.

Article 276

Special register

1 Every insurance undertaking shall keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the law of the home Member State.

2 Where an insurance undertaking carries on both life and non-life insurance activities, it shall keep at its head office separate registers for each type of business.

However, where a Member State authorises insurance undertakings to cover life and the risks listed in classes 1 and 2 of Part A of Annex I, it may provide that those insurance undertakings must keep a single register for the whole of their activities.

3 The total value of the assets entered, valued in accordance with the law applicable in the home Member State, shall at no time be less than the value of the technical provisions.

4 Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph 3.

5 The treatment of an asset in the case of the winding-up of the insurance undertaking with respect to the option provided for in Article 275(1)(a) shall be determined by the legislation of the home Member State, except where Articles 286, 287 or 288 apply to that asset where:

- a the asset used to cover technical provisions is subject to a right in rem in favour of a creditor or a third party, without meeting the conditions set out in paragraph 4;
- b such an asset is subject to a reservation of title in favour of a creditor or of a third party;
- or
- c a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking.

6 Once winding-up proceedings have been opened, the composition of the assets entered in the register in accordance with paragraphs 1 to 5 shall not be changed and no alteration other than the correction of purely clerical errors shall be made in the registers, except with the authorisation of the competent authority.

However, the liquidators shall add to those assets the yield therefrom and the value of the pure premiums received in respect of the class of insurance concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.

7 Where the product of the realisation of assets is less than their estimated value in the registers, the liquidators shall justify this to the supervisory authorities of the home Member States.

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Article 277

Subrogation to a guarantee scheme

The home Member State may provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in that Member State, claims by that scheme shall not benefit from the provisions of Article 275(1).

Article 278

Representation of preferential claims by assets

Member States which choose the option set out in Article 275(1)(b) shall require every insurance undertaking to ensure that the claims which may take precedence over insurance claims pursuant to Article 275(1)(b) and which are registered in the insurance undertaking's accounts are represented, at any moment and independently of a possible winding-up, by assets.

Article 279

Withdrawal of the authorisation

1 Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of that undertaking shall be withdrawn in accordance with the procedure laid down in Article 144, except to the extent necessary for the purposes of paragraph 2.

2 The withdrawal of authorisation pursuant to paragraph 1 shall not prevent the liquidator or any other person appointed by the competent authorities from pursuing some of the activities of the insurance undertaking in so far as that is necessary or appropriate for the purposes of winding-up.

The home Member State may provide that such activities shall be pursued with the consent and under the supervision of the supervisory authorities of that Member State.

Article 280

Publication of decisions on winding-up proceedings

1 The competent authority, the liquidator or any person appointed for that purpose by the competent authority shall publish the decision to open winding-up proceedings in accordance with the publication procedures provided for in the home Member State and also publish an extract from the winding-up decision in the *Official Journal of the European Union*.

The supervisory authorities of all other Member States which have been informed of the decision to open winding-up proceedings in accordance with Article 273(3) may ensure the publication of such decision within their territories in the manner they consider appropriate.

2 The publication referred to in paragraph 1 shall specify the competent authority of the home Member State, the applicable law and the liquidator appointed. It shall be in the official

language or in one of the official languages of the Member State in which the information is published.

Article 281

Information to known creditors

1 When winding-up proceedings are opened, the competent authorities of the home Member State, the liquidator or any person appointed for that purpose by the competent authorities shall without delay individually inform by written notice each known creditor whose habitual residence, domicile or head office is situated in another Member State.

2 The notice referred to in paragraph 1 shall cover time-limits, the sanctions laid down with regard to those time-limits, the body or authority empowered to accept the lodging of claims or observations relating to claims and any other measures.

The notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims.

In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Article 282

Right to lodge claims

1 Any creditor, including public authorities of Member States, whose habitual residence, domicile or head office is situated in a Member State other than the home Member State shall have the right to lodge claims or to submit written observations relating to claims.

2 The claims of all creditors referred to in paragraph 1 shall be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors whose habitual residence, domicile or head office is situated in the home Member State. Competent authorities shall therefore operate without discrimination at Community level.

3 Except in cases where the law of the home Member State otherwise allows, a creditor shall send to the competent authority copies of any supporting documents and shall indicate the following:

- a the nature and the amount of the claim;
- b the date on which the claim arose;
- c whether he alleges preference, security in rem or reservation of title in respect of the claim;
- d where appropriate, what assets are covered by his security.

The precedence granted to insurance claims by Article 275 need not be indicated.

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Article 283

Languages and form

1 The information in the notice referred to in Article 281(1) shall be provided in the official language or one of the official languages of the home Member State.

For that purpose a form shall be used bearing either of the following headings in all the official languages of the European Union:

- a 'Invitation to lodge a claim; time-limits to be observed'; or
- b where the law of the home Member State provides for the submission of observations relating to claims, 'Invitation to submit observations relating to a claim; time-limits to be observed'.

However, where a known creditor is the holder of an insurance claim, the information in the notice referred to in Article 281(1) shall be provided in the official language or one of the official languages of the Member State in which the habitual residence, domicile or head office of the creditor is situated.

2 Creditors whose habitual residence, domicile or head office is situated in a Member State other than the home Member State may lodge their claims or submit observations relating to claims in the official language or one of the official languages of that other Member State.

However, in that case, the lodging of their claims or the submission of observations on their claims, as appropriate, shall bear the heading 'Lodgement of claim' or 'Submission of observations relating to claims', as appropriate, in the official language or in one of the official languages of the home Member State.

Article 284

Regular information to the creditors

1 Liquidators shall, in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.

2 The supervisory authorities of the Member States may request information on developments in the winding-up procedure from the supervisory authorities of the home Member State.