



# Insurance Companies Act 1974

## 1974 CHAPTER 49

### PART II

#### REGULATION OF INSURANCE COMPANIES

##### *Assets and liabilities attributable to long term business*

#### **26 Restriction on transactions with connected persons**

- (1) Neither an insurance company to which this Part of this Act applies which carries on long term business nor a subordinate company of any such insurance company shall enter into a transaction to which this section applies—
- (a) at a time when the aggregate of the value of the assets and the amount of the liabilities attributable to such transactions already entered into by the insurance company and its subordinate companies exceeds the prescribed percentage of the total amount standing to the credit of the insurance company's long term funds ; or
  - (b) at any other time when the aggregate of the value of those assets and the amount of those liabilities would exceed that percentage if the transaction were entered into.
- (2) This section applies to any transaction entered into by any such insurance company as is mentioned in subsection (1) above (whether or not itself a subordinate company of another company), being a transaction under which—
- (a) a person connected with the insurance company will owe it money; or
  - (b) the insurance company acquires shares in a company which is a person connected with it; or
  - (c) the insurance company undertakes a liability to meet an obligation of a person connected with it or to help such a person to meet an obligation,
- if the right to receive the money would constitute a long term asset of the insurance company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.

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(3) Without prejudice to subsection (2) above, this section applies to any transaction entered into by a subordinate company of any such insurance company as is mentioned in subsection (1) above, being a transaction under which—

- (a) the insurance company or a person connected with it will owe money to the subordinate company (not being money owed by the insurance company which can be properly paid out of its long term funds); or
- (b) the subordinate company acquires shares in the insurance company or in a company which is a person connected with the insurance company ; or
- (c) the subordinate company undertakes a liability to meet an obligation of the insurance company or of a person connected with that company or to help the insurance company or such a person to meet an obligation ;

but where the subordinate company is itself such an insurance company as is mentioned in subsection (1) above this section shall not by virtue of this subsection apply to any such transaction if the right to receive the money would constitute a long term asset of the subordinate company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.

(4) In this section " subordinate company", in relation to any such insurance company as is mentioned in subsection (1) above, means—

- (a) a company having equity share capital some or all of which is held by the insurance company as part of its long term assets where the share capital so held by the insurance company—
  - (i) amounts to more than half in nominal value of that share capital; and
  - (ii) confers on the insurance company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company ;
- (b) a company having equity share capital some or all of which is held by another company which is itself a subordinate company of the insurance company where the share capital held by that other company—
  - (i) amounts to more than half in nominal value of that share capital; and
  - (ii) confers on that other company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;

and for the purposes of this subsection share capital held for any person by a nominee shall (except where that person is concerned only in a fiduciary capacity) be treated as held by that person, and share capital held by a person in a fiduciary capacity or by way of security shall be treated as not held by that person.

(5) For the purposes of this section a person is connected with any such insurance company as is mentioned in subsection (1) above if that person is not a subordinate company of the insurance company but—

- (a) controls, or is a partner of a person who controls, the insurance company; or
- (b) being a company, is controlled by the insurance company or by another person who also controls the insurance company; or
- (c) is a director of the insurance company or the wife or husband or a minor son or daughter of such a director;

and for the purposes of this subsection a person controls a company if he is a controller of it within the meaning of section 7(2)(c) above.

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- (6) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.
- (7) In this section—
- " company " (except in the expression " insurance company ") and " equity share capital " have the meaning given in section 154(5) of the Companies Act 1948 ;
  - " liability " includes a contingent liability;
  - " long term assets " and " long term funds ", in relation to an insurance company, mean respectively assets representing the fund or funds maintained by the company in respect of its long term business and that fund or those funds;
  - " the prescribed percentage " means 5 per cent. or such greater percentage as may from time to time be prescribed for the purposes of this section by regulations;
  - " share " has the same meaning as in the Companies Act 1948;
  - " son " includes step-son and adopted son, " daughter " includes step-daughter and adopted daughter, and " minor ", in relation to Scotland, includes pupil.
- (8) This section shall not be construed as making any transaction unenforceable as between the parties thereto or as otherwise making unenforceable any rights or liabilities in respect of property.