



# Policyholders Protection Act 1975

## 1975 CHAPTER 75

### *Powers of the Board to protect policyholders of companies in financial difficulties*

#### **16 Companies in financial difficulties: transfers of business, etc.**

- (1) An authorised insurance company, not being a company in liquidation, is a company in financial difficulties for the purposes of this section if—
- (a) it is a company in provisional liquidation within the meaning of section 15 above;
  - (b) it has been proved, in any proceedings on a petition for the winding up of the company under the Companies Act 1948 or (as the case may be) the Companies Act (Northern Ireland) 1960, to be unable to pay its debts ; or
  - (c) an application has been made to the court under section 206 of the Companies Act 1948 or section 197 of the Companies Act (Northern Ireland) 1960 for the sanctioning of a compromise or arrangement proposed between the company and its creditors or any class of them (whether or not any of its members are also parties there to) and the terms of the compromise or arrangement provide for reducing the liabilities or the benefits provided for under any of the company's policies;

provided that, in a case falling within paragraph (b) above, the petition was presented after 29th October 1974, and in a case falling within paragraph (c) above, the application was made after that date.

- (2) Subject to section 17 below and to the following provisions of this section, the Board may exercise any power conferred on them by subsection (3) or (4) below for the purpose of safeguarding policyholders of a company in financial difficulties who are eligible for protection under this section, or any class or description of such policyholders, to any extent appearing to the Board to be appropriate in any case or in any class or description of case, against loss arising from the financial difficulties of the company.
- (3) Subject to section 17 below and to the following provisions of this section, the Board may take any measures appearing to them to be appropriate for securing or facilitating the transfer of all or any part of the insurance business carried on by a company in

financial difficulties to another authorised insurance company, on terms (including terms reducing the liabilities or the benefits provided for under any policies) appearing to the Board to be appropriate in any case or in any class or description of case.

- (4) Subject to section 17 below and to the following provisions of this section, in any case where it appears to the Board that it would be practicable to secure the purpose mentioned in subsection (2) above by giving assistance to the company in financial difficulties to enable it to continue to carry on insurance business, the Board may take such measures as appear to them to be appropriate for giving such assistance.
- (5) Without prejudice to the generality of subsection (4) above, the Board may make the giving of any assistance to a company in financial difficulties under subsection (4) above conditional on the reduction of any liabilities or benefits provided for under any policies of the company to any extent appearing to them to be appropriate in any case or in any class or description of case.
- (6) The Board shall not exercise any power conferred on them by subsection (3) or (4) above for the purpose of safeguarding any policyholders of a company in financial difficulties in any case where it appears to the Board that—
- (a) persons who were members of the company at the relevant time; or
  - (b) persons who had any responsibility for or who may have profited from the circumstances giving rise to the company's financial difficulties;

would benefit to any material extent as a result of any measures the Board may take under either of those subsections.

In this subsection and in the following provisions of this section " the relevant time " means—

- (a) in a case falling within subsection (1)(a) above, the time when the provisional liquidator was appointed;
  - (b) in a case falling within subsection (1)(b) above, the time when the winding up petition was presented; and
  - (c) in a case falling within subsection (1)(c) above, the time when the application was made under section 206 of the Companies Act 1948 or (as the case may be) under section 197 of the Companies Act (Northern Ireland) 1960.
- (7) The Board shall disregard for the purposes of subsection (6) above any benefit which may accrue to any such persons as are there mentioned who are policyholders of the company in financial difficulties in their capacity as such.
- (8) The Board shall not take any measures in pursuance of subsection (3) or (4) above for the purpose of safeguarding any policyholders of a company in financial difficulties in any case where it appears to the Board that to take whatever measures may be required for the assistance of the policyholders in question under sections 6 to 11 above in the event of the company's going into liquidation would cost them less than to take the measures in question under subsection (3) or (4) above.
- (9) A policyholder of a company in financial difficulties is eligible for protection under this section if he is a policyholder in respect of a general policy or a long term policy of the company which was a United Kingdom policy at the relevant time.

## **17 Special provision with respect to long term business of a company in financial difficulties**

- (1) Without prejudice to subsection (8) of section 16 above, the Board shall not take any measures in pursuance of subsection (3) or (4) of that section for the purpose of safeguarding any policyholders of a company in financial difficulties in respect of long term policies of the company, other than measures allowed by subsection (2) below, in any case where it appears to the Board that to take those other measures would cost them more than to take measures allowed by subsection (2) below.
- (2) The measures allowed by this subsection are any measures open to the Board under subsection (3) or (4) of section 16 above for the purpose of safeguarding policyholders of a company in financial difficulties which involve the imposition by the Board, as a prerequisite of their incurring any expenditure or liabilities for that purpose, of conditions requiring—
  - (a) the reduction of all liabilities of the company under relevant long term policies and of all benefits provided for under any such policies which have not fallen due to be paid by the company before the time when the reduction is to take effect, to ninety per cent, of the amount which would otherwise have been payable in accordance with the terms of the policies; and
  - (b) the reduction of all premiums under any such policies which have not fallen due before that time to ninety per cent, of the amount which would otherwise have been so payable.

A long term policy is a relevant long term policy for the purposes of this subsection if it is included in any transfer secured or facilitated by the Board under subsection (3) of section 16 or in any business continued by virtue of any assistance given by the Board under subsection (4) of that section.

- (3) Without prejudice to the power of the Board to impose conditions in relation to taking any measures under subsection (3) or (4) of section 16 above with respect to matters other than those covered by the conditions mentioned in subsection (2) above, the benefits mentioned in paragraph (a) of subsection (2) shall not include any bonus provided for under a policy unless it was declared before the time when any such reduction of liabilities and benefits under that policy as is mentioned in that paragraph is to take effect.
- (4) If it appears to the Board, in the case of any long term policy of a company in financial difficulties which was a United Kingdom policy at the relevant time as defined by section 16(6) above, that the benefits provided for thereunder are or may be excessive in any respect, having regard to the premiums paid or payable and to any other terms of the policy, the Board shall refer the policy to an independent actuary.
- (5) Where an actuary to whom a policy of a company in financial difficulties is referred under subsection (4) above makes to the Board a report in writing—
  - (a) stating, with respect to any of the benefits provided for under the policy, that in his view the benefit or benefits in question are excessive ; and
  - (b) recommending, accordingly, that for the purposes of any measures to be taken by the Board in pursuance of subsection (3) or (4) of section 16 above for safeguarding the policyholder in question against loss arising from the financial difficulties of the company any such benefit should be treated as reduced or (as the case may be) disregarded ;

the Board may determine in the light of any recommendation contained in the actuary's report that any benefit to which that recommendation relates shall be treated as reduced or disregarded for those purposes.

- (6) Where in a case falling within subsection (5) above the Board determine that the benefit in question shall be disregarded for the purposes there mentioned, the conditions mentioned in subsection (2) above shall include conditions requiring the cancellation of that benefit or (as the case may be) of any liability representing that benefit.
- (7) Where in a case falling within subsection (5) above the Board determine that the benefit in question shall be treated as reduced for the purposes there mentioned, subsection (2)(a) above shall apply in relation to the policy as if the amount of that benefit or (as the case may be) of any liability representing that benefit, as reduced in accordance with the Board's determination, were the amount which would otherwise have been payable in accordance with the terms of the policy.
- (8) In this section " company in financial difficulties " has the same meaning as in section 16 above.