



Insurance Companies Act 1982 (repealed)

1982 CHAPTER 50

PART II

REGULATION OF INSURANCE COMPANIES

Transfers of long term business

49 Sanction of court for transfer of long term business.

(1) [^{F1}Subject to section 49A below], where it is proposed to carry out a scheme under which the whole or part of the long term business carried on in the United Kingdom by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another body whether incorporated or not (“the transferee company”) the transferor company or transferee company may apply to the court, by petition, for an order sanctioning the scheme.

[^{F2}(1A) If any such scheme involves a compromise or arrangement falling within section 427A(1) of the Companies Act or Article 420A(1) of the Companies (Northern Ireland) Order 1986 (application of provisions about compromises and arrangements to mergers and divisions of public companies), the following provisions, namely—

- (a) sections 425 to 427 of that Act, or
- (b) Articles 418 to 420 of that Order,

shall have effect, as regards that compromise or arrangement, as provided by section 427A(1) or Article 420A(1) (as the case may be), but without prejudice to the operation of the provisions of this section in relation to the scheme.]

(2) The court shall not determine an application under this section unless the petition is accompanied by a report on the terms of the scheme by an independent actuary and the court is satisfied that the requirements of subsection (3) below have been complied with.

(3) The said requirements are—

- (a) that a notice has been published in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national

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newspapers stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) below will be available as required by that paragraph;

- (b) except where the court has otherwise directed, that a statement—
 - (i) setting out the terms of the scheme; and
 - (ii) containing a summary of the report mentioned in subsection (2) above sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the companies concerned,

has been sent to each of those policy holders and to every member of those companies;

- (c) that a copy of the petition, of the report mentioned in subsection (2) above and of any statement sent out under paragraph (b) above has been served on the Secretary of State and that a period of not less than twenty-one days has elapsed since the date of service;
- (d) that copies of the petition and of the report mentioned in subsection (2) above have been open to inspection at offices in the United Kingdom of the companies concerned for a period of not less than twenty-one days beginning with the date of the first publication of a notice in accordance with paragraph (a) above.
- [^{F3}(e) in the case of any such scheme as is mentioned in subsection (1A) above, that copies of the documents listed in paragraph 6(1) of Schedule 15A to the Companies Act or in paragraph 6(1) of Schedule 15A to the Companies (Northern Ireland) Order 1986 had been served on the Secretary of State by the beginning of the period referred to in paragraph 3(e) of that Schedule.]

- (4) Each of the companies concerned shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the petition and of the report mentioned in subsection (2) above to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- (5) On any petition under this section—
 - (a) the Secretary of State, and
 - (b) any person (including any employee of the transferor company or the transferee company) who alleges that he would be adversely affected by the carrying out of the scheme,
 shall be entitled to be heard.
- (6) The court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or immediately after the making of the order will be, authorised under section 3 or 4 above to carry on long term business of the class or classes to be transferred under the scheme.
- (7) No such transfer as is mentioned in subsection (1) above shall be carried out unless the scheme relating to the transfer has been sanctioned by the court in accordance with this section; [^{F4}and, except in the case of any such scheme as is mentioned in subsection (1A) above, no order shall be made under any of the provisions specified in paragraph (a) or (b) of that subsection] in respect of so much of any compromise or arrangement as involves any such transfer.
- (8) In this section “the court” means the High Court of Justice in England except that it means—

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- (a) the Court of Session if the transferor company and the transferee company are both registered or both have their head offices in Scotland; and
- (b) the High Court of Justice in Northern Ireland if the transferor company and the transferee company are both registered or both have their head offices in Northern Ireland; and
- (c) either the High Court of Justice in England or the Court of Session if either the transferor company or the transferee company is registered or has its head office in Scotland; and
- (d) either the High Court of Justice in England or the High Court of Justice in Northern Ireland if either the transferor company or the transferee company is registered or has its head office in Northern Ireland; and
- (e) either the Court of Session or the High Court of Justice in Northern Ireland if the transferor company or the transferee company is registered or has its head office in Scotland and the other such company is registered or has its head office in Northern Ireland.

Textual Amendments

- F1** Words in s. 49(1) inserted (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 120(1), **Sch. 21 para 6(1)**; S.I. 1993/16, art. 2, **Sch. 3**
- F2** S. 49(1A) inserted by S.I. 1987/2118, **reg. 2(2)**
- F3** S. 49(3)(e) added by S.I. 1987/2118, **reg. 2(3)**
- F4** Words substituted by S.I. 1987/2118, **reg. 2(4)**

Modifications etc. (not altering text)

- C2** S. 49 modified by S.I. 1990/1207, **reg. 2(1)**

[^{F6}49A ^{F5}Transfer of long term business to friendly society.

- (1) Section 49 above applies, with the following adaptations, to a transfer of business to an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992.
- (2) In subsection (3)(c) (service of documents), after the words “the Secretary of State” there shall be inserted the words “and on the Friendly Societies Commission”.
- (3) In subsection (5) (persons entitled to be heard on petition), in paragraph (a) after the words “the Secretary of State” there shall be inserted the words “and the Friendly Societies Commission”.
- (4) In subsection (6) (requirement that transferee company be authorised to carry on long term business), for the words “authorised under section 3 or 4 above” there shall be substituted the words “authorised under Part IV of the Friendly Societies Act 1992.”]

Textual Amendments

- F5** S. 49A inserted (1.2.1993) by Friendly Societies Act 1992 (c. 40) s. 120(1), Sch. 21 para. 6(2); S.I. 1993/16, art. 2, **Sch.3**
- F6** S. 49 substituted for ss. 49-52 (1.7.1994) by S.I. 1994/1696, **reg. 28(1)(3)**

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VALID FROM 20/05/1993

[^{F7F8}49B] Modifications of section 49 in certain cases.

- (1) This section applies where–
 - (a) it is proposed to carry out a scheme under which the whole or part of any long term business (other than reinsurance) carried on in the United Kingdom by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another insurance company (“the transferee company”);
 - (b) all of the policies comprised in the business proposed to be transferred were written in the course of the provision of services in a member State other than the United Kingdom; and
 - (c) the head office of the transferee company is situated in a member State.
- (2) In any case where this section applies, section 49 above shall have effect as if–
 - (a) in paragraph (a) of subsection (3), for the words “in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national newspapers” there were substituted the words “in two national newspapers in the United Kingdom, and in such publications or in such manner in the member State of the commitment as the court has directed,”;
 - (b) in paragraph (d) of that subsection, for the words “at offices in the United Kingdom of the companies concerned” there were substituted the words “at offices in the United Kingdom of the transferor company and at such place in the member State of the commitment as the court has directed”;
 - (c) for the provisions of subsections (6) to (6B) there were substituted the following provisions of this section.
- (3) Where the establishment of the transferee company to which the policies are to be transferred is situated in the United Kingdom, the court shall not make an order sanctioning the scheme unless it is satisfied that–
 - (a) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;
 - (b) the supervisory authorities of that member State agree to the transfer; and
 - (c) the transferee company is, or immediately after the making of the order will be, authorised under section 3 or 4 above to carry on long term business of the class or classes to be transferred under the scheme.
- (4) Where the establishment of the transferee company to which the policies are to be transferred is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless–
 - (a) it is satisfied that the supervisory authorities of the member State where the establishment of the transferee company to which the policies are to be transferred is situated agree to the transfer; and
 - (b) where the member State of the commitment is not the member State in which the establishment is situated, it is also satisfied that–
 - (i) the establishment fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;

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- (ii) the law of that member State provides for the possibility of such a transfer; and
 - (iii) the supervisory authorities of that member State agree to the transfer.
- (5) Where the head office of the transferee company is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless the supervisory authorities of that member State certify that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account.
- (6) Where the court makes an order sanctioning the scheme, it shall direct that—
- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the member State of the commitment; and
 - (b) the notice shall specify a period during which any policy holder affected may cancel the policy;
- and such an instrument or order shall not bind such a policy holder if either such a notice is not so published or the policy holder cancels the policy during the period so specified.]

Textual Amendments

F7 S. 49 substituted for ss. 49-52 (1.7.1994) by S.I. 1994/1696, reg. 28(1)(3)

F8 S. 49A inserted (subsequently renumbered 49B)(20.5.1993) by S.I. 1993/174, reg. 3(3)

Modifications etc. (not altering text)

C3 S. 49A renumbered 49B (20.5.1993) by S.I. 1993/1327, reg. 3(1)

^{F9}50 Provisions supplementary to section 49.

- (1) Where the court makes an order under section 49 above sanctioning a scheme the court may, either by that order or by any subsequent order, make provision for all or any of the following matters—
- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
 - (d) the dissolution, without winding up, of the transferor company;
 - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- (2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.

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- (3) For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property (including in particular section [F10 183(1)] of the [F11 Companies Act], section 56(4) of the M1 Finance Act 1946, [F12 Article 193(1) and (2)] of the [F13 Companies (Northern Ireland) Order 1986] and section 27(4) of the M2 Finance (No. 2) Act (Northern Ireland) 1946) an order which by virtue of this section operates to transfer any property shall be treated as an instrument of transfer.
- (4) Where a scheme is sanctioned by an order of the court under section 49 above the transferee company shall, within ten days from the date on which the order is made or such longer period as the Secretary of State may allow, deposit two office copies of the order with the Secretary of State.
- (5) In this section “property” includes property, rights and powers of every description, “liabilities” includes duties and “shares” and “debentures” have the same meaning as in the [F11 Companies Act] or the [F13 Companies (Northern Ireland) Order 1986]

Textual Amendments

- F9** S. 49 substituted for ss. 49-52 (1.7.1994) by S.I. 1994/1696, **reg. 28(1)(3)**
- F10** Figure substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**
- F11** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**
- F12** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**
- F13** Words substituted by S.I. 1986/1035 (N.I. 9), art. 23, **Sch. 1 Pt. II**

Marginal Citations

- M1** 1946 c. 64.
- M2** 1946 c. 17 (N.I.)

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