

SCHEDULES

SCHEDULE 20

Section 101.

LAW APPLICABLE TO CERTAIN CONTRACTS OF INSURANCE

General rules as to applicable law

- 1 (1) Where the person (“the person insured”) who has entered into the contract of insurance with a friendly society has his habitual residence within the territory of the member State where the risk is situated, the law applicable to the contract is the law of that member State.

However, where the law of that member State so allows, the parties may choose the law of another country.

- (2) Where the person insured does not have his habitual residence within the territory of the member State where the risk is situated, the parties to the contract may choose to apply either—
- (a) the law of the member State where the risk is situated, or
 - (b) the law of the country in which the person insured has his habitual residence.

- (3) Where the person insured carries on a business and the contract covers two or more risks relating to his business which are situated in different member States, the freedom of choice of the law applicable to the contract extends to the laws of those member States and of the country in which he has his habitual residence.

In this sub-paragraph “business” includes a trade or profession.

- (4) Where the member States referred to in sub-paragraph (2) or (3) grant greater freedom of choice of the law applicable to the contract, the parties may take advantage of that freedom.
- (5) Notwithstanding sub-paragraphs (1) to (3) above, when the risks covered by the contract are limited to events occurring in a member State other than the member State where the risk is situated, the parties may always choose the law of the former State.

Applicable law in the absence of choice

- 2 (1) The choice referred to in paragraph 1 above must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.
- (2) If that is not so, or if no choice has been made, the contract shall be governed by the law of the country (from amongst those considered in the relevant sub-paragraphs) with which it is most closely connected.
- (3) Nevertheless, a severable part of the contract which has a closer connection with another country (from amongst those considered in the relevant sub-paragraphs) may by way of exception be governed by the law of that other country.

Status: This is the original version (as it was originally enacted).

- (4) A contract is rebuttably presumed to be most closely connected with the member State where the risk is situated.

Mandatory rules

- 3 (1) The fact that in the cases referred to in paragraph 1 above the parties have chosen a law does not, where all the other elements relevant to the situation at the time of the choice are connected with one member State only, prejudice the application of the mandatory rules of the law of that member State, which means the rules from which the law of that member State allows no derogation by means of a contract.
- (2) Nothing in this Schedule restricts the application of the rules of a part of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

Supplementary provisions

- 4 (1) Where a member State includes several territorial units, each of which has its own rules concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.
- (2) The provisions of this Schedule apply to conflicts between the laws of the different parts of the United Kingdom.
- 5 (1) Subject to the preceding provisions of this Schedule, a court in a part of the United Kingdom shall apply the general rules of private international law of that part of the United Kingdom concerning contractual obligations.
- (2) In particular, reference shall be made to those rules—
- (a) to ascertain for the purposes of paragraph 1 above what freedom of choice the parties have under the law of a part of the United Kingdom; and
 - (b) to determine whether the mandatory rules of another member State should be applied in accordance with paragraph 3(1) above where the law otherwise applicable is the law of a part of the United Kingdom.