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STATUTORY INSTRUMENTS

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**1994 No. 1516**

**The Insurance Companies Regulations 1994**

**PART VII**

**CONDUCT OF BUSINESS**

**Contents of advertisements: overseas insurers**

**35.**—(1) Subject to regulation 37 below, paragraphs (2) and (3) of this regulation apply to any insurance advertisement which relates to a contract of insurance with an insurance company which, at the time when the advertisement is issued—

- (a) does not have its head office in an EEA State; and
- (b) is not authorised to carry on insurance business in the United Kingdom by virtue of section 3 or 4 of the Act.

(2) An advertisement to which this paragraph applies shall include the following statement—

“This advertisement relates to an insurance company which is not authorised to carry on insurance business in the United Kingdom. This means that the management and solvency of the company are not supervised by Her Majesty’s Government and you will not be protected by the Policyholders Protection Act 1975 if the company should be unable to meet its liabilities to you.”

(3) An advertisement to which this paragraph applies and in which an insurer is named (whether by his full name or by a name under which he ordinarily carries on business) shall include the full name of the insurance company, the country where the insurance company is registered and the country where the principal office is situated (if different).

(4) Subject to regulation 37 below, any insurance advertisement in respect of long term business which either does not relate to a contract of insurance, or relates to such a contract but does not name the insurance company, shall include a statement that the advertisement is about insurance if that advertisement is issued by or on behalf of an insurance company which, at the time when the advertisement is issued—

- (a) does not have its head office in an EEA State; and
- (b) is not authorised to carry on long term business in the United Kingdom by virtue of section 3 or 4 of the Act.

**Contents of advertisements: statement of capital**

**36.** Any insurance advertisement which contains the name of an insurance company to which Part II of the Act applies, or of an EC company carrying on insurance business in the United Kingdom, being a company incorporated with a share capital, and which states the amount of the authorised capital of the company shall also state the amount of that capital which has been subscribed and the amount thereof which has been paid up at the time the advertisement is issued.

### **Interpretation of and provisions supplemental to regulations 35 and 36**

**37.**—(1) For the purposes of regulations 35 and 36 above, “insurance advertisement” means an insurance advertisement which invites any person to enter into or offer to enter into, or which contains information calculated to lead directly or indirectly to any person entering into or offering to enter into, any contract of insurance other than a contract of reinsurance.

(2) The matters required to be included in an advertisement pursuant to regulation 35 above shall be shown prominently, clearly and legibly.

(3) The words specified in regulation 35(2) above shall appear prominently and shall, if the insurer is named, appear—

- (a) immediately after or alongside the statement of the full name of the insurer, or
- (b) if the name (whether the full name or any other name) of the insurer is stated more than once in the advertisement, immediately after or alongside the most prominent statement of the name; and, for this purpose, if two or more statements of the name are equally prominent, that which appears first in the advertisement shall be treated as the most prominent.

(4) Regulations 35 and 36 above shall not apply to insurance advertisements which—

- (a) relate to a contract which will cover large risks only; or
- (b) are investment advertisements approved by an authorised person under section 57 of the Financial Services Act 1986<sup>(1)</sup>.

### **Intermediaries: connected persons**

**38.**—(1) For the purposes of regulation 39 below a person is connected with an insurance company if—

- (a) that person, or any partner, director, controller or manager of that person, is a partner, director, controller or manager of the insurance company or of any controller thereof;
- (b) the insurance company, or any partner, director, controller or manager of the insurance company, is a partner, director, controller or manager of that person or of any controller thereof;
- (c) that person or any controller thereof has an interest in 10 per cent. or more of the shares of the insurance company or of any controller thereof;
- (d) the insurance company or any controller thereof has an interest in 10 per cent. or more of the shares of that person or of any controller thereof;
- (e) that person, under any contract, not being a contract of employment, or under any other arrangement (whether legally enforceable or not) with the insurance company or with any associated company, undertakes not to perform any services relating to any class or part of a class of insurance business for any insurance company other than the insurance company and, where the undertaking also relates to any associated company, the associated company: Provided that an individual who gives an undertaking of the kind referred to above to any registered society shall not, by virtue of such undertaking, be a person connected with the society or with any company which is, within the meaning of section 736(2) Companies Act 1985<sup>(2)</sup> or Article 4(5)(b) of the Companies (Northern Ireland) Order 1986<sup>(3)</sup>, a wholly owned subsidiary of the society.

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(1) 1986 c. 60.

(2) Section 736 was substituted by the Companies Act 1989 (c. 40), section 144(1).

(3) S.I. 1986/1032 (N.I.6.).

(2) For the purposes of paragraph (1)(c) and (d) above, a person shall be treated as having an interest in shares of a company if, by virtue of Part I of Schedule 13 to the Companies Act 1985 (other than paragraph (4)(b)), he would be so treated for the purposes of sections 324 to 328 of that Act.

(3) A person who issues an invitation of the kind mentioned in regulation 39(1) below in respect of a contract of insurance which will be underwritten at Lloyd's shall, in respect of that contract of insurance, be connected with the insurance company to which that contract relates if that person or any partner, director, controller or manager of that person will take a share in the contract as a member of Lloyd's.

(4) In this regulation—

“associated company”, in relation to a body corporate, means a subsidiary or holding company or subsidiary of the holding company of that body;

“controller”, in relation to a body corporate which is not an insurance company, means a person who is or would be, if he were a company, a holding company of that body;

“manager”, in relation to a body corporate which is not an insurance company, means a person who directly or indirectly takes part in or is concerned in the management of the affairs of that body.

### **Invitation by intermediary**

**39.**—(1) Subject to regulation 40 below, any person who invites another person who is ordinarily resident in the United Kingdom to make an offer or proposal or to take any other step with a view to entering into a contract of insurance with an insurance company shall, if he is connected with that company at the time the invitation is issued, provide the person to whom the invitation is issued, in the manner specified in paragraph (3) below, with information indicating the circumstances of his connection with that company.

(2) Subject to regulation 40 below, any person who, in the course of carrying on any business or profession, invites another person who is ordinarily resident in the United Kingdom to make an offer or proposal or to take any other step with a view to entering into a contract of insurance with an insurance company which is not an authorised or permitted insurer shall provide the person to whom the invitation is issued, in the manner specified in paragraph (3) below, with information indicating that the insurance company to which the invitation relates is not an authorised or permitted insurer in respect of the contract in question.

(3) An intermediary shall provide the information required under paragraph (1) or (2) above in the following manner—

(a) where the invitation is issued in writing and is sent or delivered, by sending or (as the case may be) by delivering with the invitation a written statement containing that information;

(b) where the invitation is issued orally, by supplying that person with the information orally, and—

(i) if the person is present when the invitation is issued, by delivering to him immediately thereafter a written statement containing that information; or

(ii) if the person is not so present, by sending by post or causing to be delivered to him as soon as reasonably practicable, at the address supplied by him for the purpose or at his last known address, a written statement containing that information.

(4) The requirement of the written statement referred to in paragraph (3) above shall be deemed to have been complied with where the invitation issued by the intermediary under paragraph (1) above is issued on stationery having printed upon it, in prominent positions, on the side on which the invitation is contained, the name of the intermediary, the name of the insurance company and a clear statement of the relationship between them and which contains in the body of the invitation a

clear indication of the name of the insurance company to which the invitation relates, expressed in the same style as in the printed statement:

Provided that where the intermediary is a Lloyd's broker or a member of Lloyd's and it is clearly indicated in the invitation that the contract will be underwritten at Lloyd's there may be inserted, in place of the statement of relationship referred to above, the expression "Lloyd's Brokers" or (as the case may be) "Mr. \_\_\_\_\_ is a member of Lloyd's" without a reference to the names of the underwriters concerned.

(5) In this regulation—

"authorised", in relation to an insurer, means authorised to carry on insurance business in the United Kingdom by virtue of section 3 or 4 of the Act;

"contract of insurance" does not include a contract of reinsurance or a contract of insurance the effecting and carrying out of which constitutes the carrying on of industrial assurance business or insurance business of groups 3 and 4 as specified in Part II of Schedule 2 to the Act;

"intermediary" means a person to whom the requirements of paragraph (1) or (2) above apply in respect of an invitation issued by him;

"permitted", in relation to an insurer, means permitted to carry on insurance business in the United Kingdom otherwise than by virtue of section 3 or 4 of the Act.

### **Cases excepted from regulation 39**

**40.**—(1) Regulation 39 above shall not apply to—

- (a) an invitation for the renewal or amendment of the terms of any contract of insurance effected before 11th October 1976;
- (b) an invitation for the renewal or amendment of the terms of a contract of insurance effected as a result of an invitation issued by an intermediary in accordance with regulation 39 above where there has been no significant change in the circumstances relevant to the information provided when the contract was first effected;
- (c) an amendment of an invitation issued by an intermediary in accordance with regulation 39 above where there has been no significant change in the circumstances relevant to the information provided when the invitation was first issued;
- (d) an invitation for the effecting of a contract of insurance in respect of general business where—
  - (i) the contract relates to business of group 2 or 5 as specified in Part II of Schedule 2 to the Act and the initial premium to be paid in respect of that contract exceeds £5,000; or where the person to whom the invitation is made has, through the intermediary, prior to that invitation entered into other contracts of insurance of the class to which the contract relates and has paid premiums in respect thereof which in the aggregate either exceed £5,000 in the previous calendar year or exceed that figure in the calendar year during which the invitation in question is made; or
  - (ii) the contract relates to any other class of insurance business and the initial premium to be paid exceeds £1,000; or where the person to whom the invitation is made has, through the intermediary, prior to that invitation entered into contracts of insurance of the class to which the contract relates and has paid premiums in respect thereof which in the aggregate either exceed £1,000 in the previous calendar year or exceed that figure in the calendar year during which the invitation is made;
- (e) an invitation for the effecting of a contract of insurance with such persons as are mentioned in section 2(2)(b) or (c) of the Act.

(2) Regulation 39(1) above shall not apply to an invitation for the effecting of a contract of insurance the carrying out of which is to be shared between two or more insurance companies where the share to be taken by any company, or the share in the aggregate to be taken by two or more companies, with which the intermediary is connected, does not exceed one-quarter of the total.

(3) Regulation 39(2) above shall not apply to an invitation for the effecting of a contract of insurance the carrying out of which is to be shared between two or more insurance companies where the share to be taken by any company which is not an authorised or permitted insurer, or the share in the aggregate to be taken by two or more companies which are not authorised or permitted insurers, does not exceed one-quarter of the total.

(4) In this regulation “authorised”, “contract of insurance”, “intermediary” and “permitted” have the same meaning as in regulation 39 above.

### **Notice of long-term contract**

**41.**—(1) Subject to the following provisions of this regulation—

- (a) a statutory notice in relation to a long-term contract which is not an investment agreement shall have the contents and be in the form set out in Schedule 7;
- (b) a statutory notice in relation to a long-term contract which is an investment agreement shall have the contents and be in the form set out in Schedule 8; and
- (c) the notice of cancellation annexed to a statutory notice shall have the contents and be in the form set out in Schedule 9.

(2) A statutory notice shall be printed on a single sheet of paper.

(3) The lettering of statutory notices and notices of cancellation shall be easily legible; and capital letters and figures shall be used in all the places in which they are shown in the form as set out in each Schedule.

(4) In statutory notices the lettering of the words “IMPORTANT! YOU SHOULD READ THIS CAREFULLY” shall be set out in larger printing than all other lettering and in bolder printing than all other lettering except that of main headings and sub-headings.

(5) In statutory notices and notices of cancellation the lettering of all main headings and sub-headings shall be set out in bolder printing than all other lettering except (in the case of a statutory notice) that of the words “IMPORTANT! YOU SHOULD READ THIS CAREFULLY”.

(6) In statutory notices and notices of cancellation there shall be substituted for words contained within square brackets in the appropriate Schedule and for the square brackets containing them the information or wording which, as indicated by those words, should be inserted there.

(7) For the purposes of this regulation and Schedules 7, 8 and 9—

- “EC contract” has the same meaning as in section 75(5B)(4) of the Act;
- “investment agreement” has the same meaning as in section 44(9) of the Financial Services Act 1986;
- “long-term contract” means a contract for long-term insurance;
- “non-EC contract” has the same meaning as in section 75(5B) of the Act;
- “notice of cancellation” means a notice of the kind mentioned in section 75(2)(b) of the Act;
- “statutory notice” means a notice of the kind mentioned in section 75(2) of the Act;

and in the paragraphs in the forms set out in Schedules 7 and 8 headed “Your right to withdraw from the transaction” the description or title of the person to whom the notice of cancellation should be sent may be substituted for or included with the name of that person.

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(4) Section 75(5B) was inserted by [S.I. 1993/1327](#), reg. 2(3).

## Exemptions from regulation 41

42. Section 75(1) of the Act<sup>(5)</sup> and regulation 41 above shall not apply to—
- (a) contracts where none of the proposers or policy holders is an individual;
  - (b) contracts of term assurance effected for periods of six months or less;
  - (c) contracts of reinsurance;
  - (d) contracts which insure a policy holder's obligations to make payments under a personal credit agreement of the kind mentioned in section 8(1) of the Consumer Credit Act 1974<sup>(6)</sup> or a consumer hire agreement of the kind mentioned in section 15(1) of that Act<sup>(6)</sup> where the terms of that personal credit agreement or consumer hire agreement have been entered into on the understanding that the long-term contract will remain in force.

## Linked contracts

43.—(1) Benefits payable under any contract to which this regulation applies shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of, property of any description other than property of any of the descriptions specified in Part I of Schedule 10 which, where appropriate, comply with the provisions of paragraph 16 of that Schedule.

(2) Benefits payable under any contract to which this regulation applies shall not be determined, whether directly or indirectly, either wholly or partly by reference to fluctuations in any index of the value of property other than an index described in Part II of Schedule 10.

(3) This regulation applies to ordinary long-term contracts which are—

- (a) contracts entered into by—
  - (i) insurance companies to which Part II of the Act applies;
  - (ii) EC companies the effecting of which constitutes the carrying on of ordinary long-term insurance business in the United Kingdom; or
  - (iii) members of Lloyd's,
 or have been entered into by any such insurance company or other person at any time before 1st July 1975 and are still in force;
- (b) contracts under which the benefits payable to the policy holder are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified); and
- (c) not contracts specified in paragraph (4) below as being contracts to which this regulation does not apply.

(4) The contracts referred to in paragraph (3)(c) above to which this regulation does not apply are—

- (a) contracts entered into before, or in pursuance of a contract subsisting at the date of, the coming into force of these Regulations to the extent that they provide for benefits to be determined by reference to the value of, or the income from, or fluctuations in property of any description to which benefits were permitted to be determined before the coming into force of these Regulations;
- (b) contracts with any policy holder who is a person not ordinarily resident in the United Kingdom;

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(5) Section 75(1) was substituted by S.I. 1993/1327, reg. 2(1) and further substituted by S.I. 1994/1696, reg. 43.

(6) 1974 c. 39; as amended by S.I. 1983/1878, article 4, Schedule Part II.

(6) 1974 c. 39; as amended by S.I. 1983/1878, article 4, Schedule Part II.

- (c) contracts entered into by an insurance company to which Part II of the Act applies by reason only that the policy holder is eligible to participate in any established surplus as defined in section 30(4) of the Act;
  - (d) contracts entered into by an EC company by reason only that the policy holder is eligible to participate in an excess of assets representing the whole or a particular part of the fund or funds maintained by the company in respect of its long term business over the liabilities, or a particular part of the liabilities, of the company attributable to that business as determined in accordance with the law of the member State in which the head office of the company is situated;
  - (e) subject to paragraph (5) below, contracts to manage the investments of pension funds that are not combined with contracts of insurance covering either conservation of capital or payment of a minimum interest;
    - (f) contracts entered into before 30th June 1995 to the extent that they provide for benefits to be determined by reference to a collective investment scheme within the meaning of the Financial Services Act 1986 which was a listed security immediately before the coming into force of these Regulations.
- (5) Benefits payable under contracts referred to in paragraph (4)(e) above shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of derivative contracts other than permitted derivative contracts as defined in paragraph 15 of Schedule 10.
- (6) In this regulation, “ordinary long-term contract” means a contract for ordinary long-term insurance business.
- (7) Any reference in this regulation to contracts of a similar description to any specified contract is a reference to contracts which correspond with that contract in both the following respects—
- (a) the provisions defining the descriptions of property or indices by reference to which the benefits payable thereunder are to be determined are the same as in that contract; and
  - (b) the insurance company or other person undertaking to pay the benefits provided for thereunder is the same as in that contract.
- (8) This regulation does not apply in relation to contracts linked to property of the description in paragraph 11(b) of Schedule 10 entered into before 1st February 1992 save to the extent that responsibility as mentioned in that paragraph extends at least to acts or omissions after that date.