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STATUTORY INSTRUMENTS

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**2004 No. 353**

**The Insurers (Reorganisation and  
Winding Up) Regulations 2004**

**PART I  
GENERAL**

**Citation and Commencement**

**1.** These Regulations may be cited as the Insurers (Reorganisation and Winding Up) Regulations 2004, and come into force on 18th February 2004.

**Interpretation**

**2.—(1)** In these Regulations—

“the 1985 Act” means the Companies Act 1985<sup>(1)</sup>;

“the 1986 Act” means the Insolvency Act 1986<sup>(2)</sup>;

“the 2000 Act” means the Financial Services and Markets Act 2000<sup>(3)</sup>;

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989<sup>(4)</sup>;

“administrator” has the meaning given by paragraph 13 of Schedule B1;

“Article 418 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a UK insurer under Article 418 of the Companies Order, but does not include a compromise or arrangement falling within Article 420 or Articles 420A of that Order (reconstruction and amalgalations);

“the Authority” means the Financial Services Authority;

“branch”, in relation to an EEA or UK insurer has the meaning given by Article 1(b) of the life insurance directive or the third non-life insurance directive;

“claim” means a claim submitted by a creditor of a UK insurer in the course of—

- (a) a winding up,
- (b) an administration, or
- (c) a voluntary arrangement,

with a view to recovering his debt in whole or in part, and includes a proof of debt, within the meaning of Rule 4.73(4) of the Insolvency Rules, Rule 4.079(4) of the Insolvency Rules (Northern Ireland) or in Scotland a claim made in accordance with rule 4.15 of the Insolvency (Scotland) Rules;

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(1) 1985 c. 6.

(2) 1986 c. 45, as last amended by the Enterprise Act 2002 (2002 c. 40).

(3) 2000 c. 8.

(4) S.I. 1989/2405 (N.I. 19).

“the Companies Order” means the Companies (Northern Ireland) Order 1986<sup>(5)</sup>;

“creditors' voluntary winding up” has the meaning given by section 90 of the 1986 Act or Article 76 of the 1989 Order;

“debt”—

(a) in England and Wales and Northern Ireland—

- (i) in relation to a winding up or administration of a UK insurer, has the meaning given by Rule 13.12 of the Insolvency Rules or Article 5 of the 1989 Order, and
- (ii) in a case where a voluntary arrangement has effect, in relation to a UK insurer, means a debt which would constitute a debt in relation to the winding up of that insurer, except that references in paragraph (1) of Rule 13.12 or paragraph (1) of Article 5 of the 1989 Order to the date on which the company goes into liquidation are to be read as references to the date on which the voluntary arrangement has effect;

(b) in Scotland—

- (i) in relation to a winding up of a UK insurer, shall be interpreted in accordance with Schedule 1 to the Bankruptcy (Scotland) Act 1985<sup>(6)</sup> as applied by Chapter 5 of Part 4 of the Insolvency (Scotland) Rules, and
- (ii) in a case where a voluntary arrangement has effect in relation to a UK insurer, means a debt which would constitute a debt in relation to the winding up of that insurer, except that references in Chapter 5 of Part 4 of the Insolvency (Scotland) Rules to the date of commencement of winding up are to be read as references to the date on which the voluntary arrangement has effect;

“directive reorganisation measure” means a reorganisation measure as defined in Article 2(c) of the reorganisation and winding-up directive which was adopted or imposed on or after 20th April 2003;

“directive winding up proceedings” means winding up proceedings as defined in Article 2(d) of the reorganisation and winding-up directive which were opened on or after 20th April 2003;

“EEA creditor” means a creditor of a UK insurer who—

- (a) in the case of an individual, is ordinarily resident in an EEA State, and
- (b) in the case of a body corporate or unincorporated association of persons, has its head office in an EEA State;

“EEA insurer” means an undertaking, other than a UK insurer, pursuing the activity of direct insurance (within the meaning of Article 1 of the first life insurance directive or the first non-life insurance directive) which has received authorisation under Article 6 from its home state regulator;

“EEA regulator” means a competent authority (within the meaning of Article 1(1) of the life insurance directive or Article 1(k) of the third non-life insurance directive, as the case may be) of an EEA State;

“EEA State” means a State, other than the United Kingdom, which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992;

“the first non-life insurance directive” means the Council Directive (73/239/EEC) of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance<sup>(7)</sup>;

<sup>(5)</sup> S.I. 1986/1032 (N.I. 6).

<sup>(6)</sup> 1985 c. 66.

<sup>(7)</sup> O.J. No. L228, 16.8.73, p.3.

“home state regulator”, in relation to an EEA insurer, means the relevant EEA regulator in the EEA State where its head office is located;

“the Insolvency Rules” means the Insolvency Rules 1986<sup>(8)</sup>;

“the Insolvency Rules (Northern Ireland)” means the Insolvency Rules (Northern Ireland) 1991<sup>(9)</sup>;

“the Insolvency (Scotland) Rules” means the Insolvency (Scotland) Rules 1986<sup>(10)</sup>;

“insurance claim” means any claim in relation to an insurance debt;

“insurance creditor” means a person who has an insurance claim against a UK insurer (whether or not he has claims other than insurance claims against that insurer);

“insurance debt” means a debt to which a UK insurer is, or may become liable, pursuant to a contract of insurance, to a policyholder or to any person who has a direct right of action against that insurer, and includes any premium paid in connection with a contract of insurance (whether or not that contract was concluded) which the insurer is liable to refund;

“life insurance directive” means the Directive (2002/83/EC) of the European Parliament and of the Council concerning life assurance;

“officer”, in relation to a company, has the meaning given by section 744 of the 1985 Act or Article 2 of the Companies Order;

“official language” means a language specified in Article 1 of Council Regulation No 1 of 15th April 1958 determining the languages to be used by the European Economic Community (Regulation 1/58/EEC)<sup>(11)</sup>, most recently amended by paragraph (a) of Part XVIII of Annex I to the Act of Accession 1994 (194 N)<sup>(12)</sup>;

“policyholder” has the meaning given by the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001<sup>(13)</sup>;

“the reorganisation and winding-up directive” means the Directive (2001/17/EC) of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings<sup>(14)</sup>;

“Schedule B1” means Schedule B1 to the 1986 Act as inserted by section 248 of the Enterprise Act 2002<sup>(15)</sup>;

“section 425 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a UK insurer under section 425 of the 1985 Act, but does not include a compromise or arrangement falling within section 427 or section 427A of that Act (reconstructions or amalgamations);

“section 425 or Article 418 compromise or arrangement” means a section 425 compromise or arrangement or an Article 418 compromise or arrangement;

“supervisor” has the meaning given by section 7 of the 1986 Act or Article 20 of the 1989 Order;

“the third non-life insurance directive” means the Council Directive (92/49/EEC) of 18th June 1992 on the co-ordination of laws, etc, and amending directives 73/239/EEC and 88/357/EEC<sup>(16)</sup>;

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<sup>(8)</sup> S.I. 1986/1925.

<sup>(9)</sup> S.I. 1991/364.

<sup>(10)</sup> S.I. 1986/1915.

<sup>(11)</sup> O.J. No. 17, 6.10.58, p.385/58; English Special Edition, Series 1, Chapter 1952–1958, p.0059.

<sup>(12)</sup> O.J. No. C241, 29.08.94, p.258.

<sup>(13)</sup> S.I. 2001/2361.

<sup>(14)</sup> O.J. No. L110, 20.4.01, p.28.

<sup>(15)</sup> 2002 c. 40.

<sup>(16)</sup> O.J. No. L228, 11.8.92, p.1.

“UK insurer” means a person who has permission under Part IV of the 2000 Act to effect or carry out contracts of insurance, but does not include a person who, in accordance with that permission, carries on that activity exclusively in relation to reinsurance contracts;

“voluntary arrangement” means a voluntary arrangement which has effect in relation to a UK insurer in accordance with section 4A of the 1986 Act or Article 17A of the 1989 Order; and

“winding up” means—

- (a) winding up by the court, or
- (b) a creditors' voluntary winding up.

(2) In paragraph (1)—

(a) for the purposes of the definition of “directive reorganisation measure”, a reorganisation measure is adopted or imposed at the time when it is treated as adopted or imposed by the law of the relevant EEA State; and

(b) for the purposes of the definition of “directive winding up proceedings”, winding up proceedings are opened at the time when they are treated as opened by the law of the relevant EEA State,

and in this paragraph “relevant EEA State” means the EEA State under the law of which the reorganisation is adopted or imposed, or the winding up proceedings are opened, as the case may be.

(3) In these Regulations, references to the general law of insolvency of the United Kingdom include references to every provision made by or under the 1986 Act or the 1989 Order; and in relation to friendly societies or to industrial and provident societies references to the law of insolvency or to any provision of the 1986 Act or the 1989 Order are to that law as modified by the Friendly Societies Act 1992<sup>(17)</sup> or by the Industrial and Provident Societies Act 1965<sup>(18)</sup> or the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>(19)</sup> (as the case may be).

(4) References in these Regulations to a “contract of insurance” must be read with—

- (a) section 22 of the 2000 Act;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act,

but for the purposes of these Regulations a contract of insurance does not include a reinsurance contract.

(5) Functions imposed or falling on the Authority by or under these Regulations shall be deemed to be functions under the 2000 Act.

## Scope

**3.** For the purposes of these Regulations, neither the Society of Lloyd’s nor the persons specified in section 316(1) of the 2000 Act are UK insurers.

<sup>(17)</sup> 1992 c. 40.

<sup>(18)</sup> 1965 c. 12.

<sup>(19)</sup> 1969 c. 24 (N.I.).