
STATUTORY INSTRUMENTS

2004 No. 353

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

PART II

**INSOLVENCY MEASURES AND PROCEEDINGS:
JURISDICTION IN RELATION TO INSURERS**

Prohibition against winding up etc. EEA insurers in the United Kingdom

4.—(1) On or after the relevant date a court in the United Kingdom may not, in relation to an EEA insurer or any branch of an EEA insurer—

- (a) make a winding up order pursuant to section 221 of the 1986 Act or Article 185 of the 1989 Order;
- (b) appoint a provisional liquidator;
- (c) make an administration order.

(2) Paragraph (1)(a) does not prevent—

- (a) the court from making a winding up order after the relevant date in relation to an EEA insurer if—
 - (i) a provisional liquidator was appointed in relation to that insurer before the relevant date, and
 - (ii) that appointment continues in force until immediately before that winding up order is made;
- (b) the winding up of an EEA insurer after the relevant date pursuant to a winding up order which was made, and has not been discharged, before that date.

(3) Paragraph (1)(b) does not prevent a provisional liquidator of an EEA insurer appointed before the relevant date from acting in relation to that insurer after that date.

(4) Paragraph (1)(c) does not prevent an administrator appointed before the relevant date from acting after that date in a case in which the administration order under which he or his predecessor was appointed remains in force after that date.

(5) An administrator may not, in relation to an EEA insurer, be appointed under paragraphs 14 or 22 of Schedule B1.

(6) A proposed voluntary arrangement shall not have effect in relation to an EEA insurer if a decision, under section 4 of the 1986 Act or Article 17 of the 1989 Order, with respect to the approval of that arrangement was made after the relevant date.

(7) Section 377 of the 2000 Act (reducing the value of contracts instead of winding up) does not apply in relation to an EEA insurer.

(8) An order under section 253 of the Enterprise Act 2002 (application of insolvency law to a foreign company) may not provide for any of the following provisions of the 1986 Act to apply in relation to an EEA insurer—

- (a) Part I (company voluntary arrangements);
- (b) Part II (administration);
- (c) Chapter VI of Part IV (winding up by the Court).

(9) In this regulation and regulation 5, “relevant date” means 20th April 2003.

Schemes of arrangement: EEA insurers

5.—(1) For the purposes of section 425(6)(a) of the 1985 Act or Article 418(5)(a) of the Companies Order, an EEA insurer or a branch of an EEA insurer is to be treated as a company liable to be wound up under the 1986 Act or the 1989 Order if it would be liable to be wound up under that Act or Order but for the prohibition in regulation 4(1)(a).

(2) But a court may not make a relevant order under section 425(2) of the 1985 Act or Article 418(2) of the Companies Order in relation to an EEA insurer which is subject to a directive reorganisation measure or directive winding up proceedings, or a branch of an EEA insurer which is subject to such a measure or proceedings unless the conditions set out in paragraph (3) are satisfied.

(3) Those conditions are—

- (a) the person proposing the section 425 or Article 418 compromise or arrangement (“the proposal”) has given—
 - (i) the administrator or liquidator, and
 - (ii) the relevant competent authority,
 reasonable notice of the details of that proposal; and
- (b) no person notified in accordance with sub-paragraph (a) has objected to the proposal.

(4) Nothing in this regulation invalidates a compromise or arrangement which was sanctioned by the court by an order made before the relevant date.

(5) For the purposes of paragraph (2), a relevant order means an order sanctioning a section 425 or Article 418 compromise or arrangement which—

- (a) is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern and which affects the rights of persons other than the insurer or its contributories; or
- (b) includes among its purposes a realisation of some or all of the assets of the EEA insurer to which the order relates and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.

(6) For the purposes of this regulation—

- (a) “administrator” means an administrator, as defined by Article 2(i) of the reorganisation and winding up directive, who is appointed in relation to the EEA insurer in relation to which the proposal is made;
- (b) “liquidator” means a liquidator, as defined by Article 2(j) of the reorganisation and winding up directive, who is appointed in relation to the EEA insurer in relation to which the proposal is made;
- (c) “competent authority” means the competent authority, as defined by Article 2(g) of the reorganisation and winding up directive, which is competent for the purposes of the directive reorganisation measure or directive winding up proceedings mentioned in paragraph (2).

Reorganisation measures and winding up proceedings in respect of EEA insurers effective in the United Kingdom

6.—(1) An EEA insolvency measure has effect in the United Kingdom in relation to—

- (a) any branch of an EEA insurer,
- (b) any property or other assets of that insurer,
- (c) any debt or liability of that insurer

as if it were part of the general law of insolvency of the United Kingdom.

(2) Subject to paragraph (4)—

- (a) a competent officer who satisfies the condition mentioned in paragraph (3); or
- (b) a qualifying agent appointed by a competent officer who satisfies the condition mentioned in paragraph (3),

may exercise in the United Kingdom, in relation to the EEA insurer which is subject to an EEA insolvency measure, any function which, pursuant to that measure, he is entitled to exercise in relation to that insurer in the relevant EEA State.

(3) The condition mentioned in paragraph (2) is that the appointment of the competent officer is evidenced—

- (a) by a certified copy of the order or decision by a judicial or administrative authority in the relevant EEA State by or under which the competent officer was appointed; or
- (b) by any other certificate issued by the judicial or administrative authority which has jurisdiction in relation to the EEA insolvency measure,

and accompanied by a certified translation of that order, decision or certificate (as the case may be).

(4) In exercising functions of the kind mentioned in paragraph (2), the competent officer or qualifying agent—

- (a) may not take any action which would constitute an unlawful use of force in the part of the United Kingdom in which he is exercising those functions;
- (b) may not rule on any dispute arising from a matter falling within Part V of these Regulations which is justiciable by a court in the part of the United Kingdom in which he is exercising those functions; and
- (c) notwithstanding the way in which functions may be exercised in the relevant EEA State, must act in accordance with relevant laws or rules as to procedure which have effect in the part of the United Kingdom in which he is exercising those functions.

(5) For the purposes of paragraph (4)(c), “relevant laws or rules as to procedure” mean—

- (a) requirements as to consultation with or notification of employees of an EEA insurer;
- (b) law and procedures relevant to the realisation of assets;
- (c) where the competent officer is bringing or defending legal proceedings in the name of, or on behalf of, an EEA insurer, the relevant rules of court.

(6) In this regulation—

“competent officer” means a person appointed under or in connection with an EEA insolvency measure for the purpose of administering that measure;

“qualifying agent” means an agent validly appointed (whether in the United Kingdom or elsewhere) by a competent officer in accordance with the relevant law in the relevant EEA State;

“EEA insolvency measure” means, as the case may be, a directive reorganisation measure or directive winding up proceedings which has effect in relation to an EEA insurer by virtue of the law of the relevant EEA State;

“relevant EEA State”, in relation to an EEA insurer, means the EEA State in which that insurer has been authorised in accordance with Article 4 of the life insurance directive or Article 6 of the first non-life insurance directive.

Confirmation by the court of a creditors' voluntary winding up

7.—(1) Rule 7.62 of the Insolvency Rules or Rule 7.56 of the Insolvency Rules (Northern Ireland) applies in relation to a UK insurer with the modification specified in paragraph (2) or (3).

(2) In Rule 7.62 r paragraph (1), after the words

“the Insurers (Reorganisation and Winding Up) Regulations 2003” insert the words “or the Insurers (Reorganisation and Winding Up) Regulations 2004”.

In Rule 7.56 of the Insolvency Rules (Northern Ireland) paragraph (1), after the words “the Insurers (Reorganisation and Winding Up) Regulations 2003” insert the words “or the Insurers (Reorganisation and Winding Up) Regulations 2004”.