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*Status: Point in time view as at 10/08/2005.*

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## STATUTORY INSTRUMENTS

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# 2004 No. 353

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

### PART IV

#### PRIORITY OF PAYMENT OF INSURANCE CLAIMS IN WINDING UP ETC.

**Modifications etc. (not altering text)**

**C1** Pt. IV applied (with modifications) (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), regs. 1, **40(1)-(11)** (with reg. 32)

#### Interpretation of this Part

17.—(1) For the purposes of this Part—

“composite insurer” means a UK insurer who is authorised to carry on both general business and long term business, in accordance with article 18(2) of the life insurance directive;

“floating charge” has the meaning given by section 251 of the 1986 Act or paragraph (1) of Article 5 of the 1989 Order;

“general business” means the business of effecting or carrying out a contract of general insurance;

“general business assets” means the assets of a composite insurer which are, or should properly be, apportioned to that insurer’s general business, in accordance with the requirements of Article 18(3) of the life insurance directive (separate management of long term and general business of a composite insurer);

“general business liabilities” means the debts of a composite insurer which are attributable to the general business carried on by that insurer;

“general insurer” means a UK insurer who carries on exclusively general business;

“long term business” means the business of effecting or carrying out a contract of long term insurance;

“long term business assets” means the assets of a composite insurer which are, or should properly be, apportioned to that insurer’s long term business, in accordance with the requirements of Article 18(3) of the first life insurance directive (separate management of long term and general business of a composite insurer);

“long term business liabilities” means the debts of a composite insurer which are attributable to the long term business carried on by that insurer;

“long term insurer” means a UK insurer who—

- (a) carries on long term business exclusively, or
- (b) carries on long term business and permitted general business;

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“non-transferring composite insurer” means a composite insurer the long term business of which has not been, and is not to be, transferred as a going concern to a person who may lawfully carry out those contracts, in accordance with section 376(2) of the 2000 Act;

“other assets” means any assets of a composite insurer which are not long term business assets or general business assets;

“other business”, in relation to a composite insurer, means such of the business (if any) of the insurer as is not long term business or general business;

“permitted general business” means the business of effecting or carrying out a contract of general insurance where the risk insured against relates to either accident or sickness;

“preferential debt” means a debt falling into any of categories 4 or 5 of the debts listed in Schedule 6 to the 1986 Act or Schedule 4 to the 1989 Order, that is—

- (a) contributions to occupational pension schemes, etc., and
- (b) remuneration etc. of employees;

“society” means—

- (a) a friendly society incorporated under the Friendly Societies Act 1992 <sup>M1</sup>,
- (b) a society which is a friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974 <sup>M2</sup>, and registered within the meaning of that Act, or
- (c) an industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.

(2) In this Part, references to assets include a reference to proceeds where an asset has been realised, and any other sums representing assets.

(3) References in paragraph (1) to a contract of long term or of general 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.

#### Marginal Citations

**M1** 1992 c. 40.

**M2** 1974 c. 46.

#### Application of regulations 19 to 27

**18.**—(1) Subject to paragraph (2), regulations 19 to 27 apply in the winding up of a UK insurer where—

- (a) in the case of a winding up by the court, the winding up order is made on or after 20th April 2003; or
- (b) in the case of a creditors' voluntary winding up, the liquidator is appointed, as mentioned in section 100 of the 1986 Act, paragraph 83 of Schedule B1 or Article 86 of the 1989 Order, on or after 20th April 2003.

(2) Where a relevant section 425 or Article 418 compromise or arrangement is in place,

- (a) no winding up proceedings may be opened without the permission of the court, and

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- (b) the permission of the court is to be granted only if required by the exceptional circumstances of the case.
- (3) For the purposes of paragraph (2), winding up proceedings include proceedings for a winding up order or for a creditors' voluntary liquidation with confirmation by the court.
- (4) Regulations 20 to 27 do not apply to a winding up falling within paragraph (1) where, in relation to a UK insurer—
  - (a) an administration order was made before 20th April 2003, and that order is not discharged until the commencement date; or
  - (b) a provisional liquidator was appointed before 20th April 2003, and that appointment is not discharged until the commencement date.
- (5) For purposes of this regulation, “the commencement date” means the date when a UK insurer goes into liquidation within the meaning given by section 247(2) of the 1986 Act or Article 6(2) of the 1989 Order.

#### **Application of this Part: assets subject to a section 425 or Article 418 compromise or arrangement**

- 19.**—(1) For the purposes of this Part, the insolvent estate of a UK insurer shall not include any assets which at the commencement date are subject to a relevant section 425 or Article 418 compromise or arrangement.
- (2) In this regulation—
- (a) “assets” has the same meaning as “property” in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;
  - (b) “commencement date” has the meaning given in [F1 regulation 18(5)];
  - (c) “insolvent estate”—
    - (i) in England, Wales and Northern Ireland has the meaning given by Rule 13.8 of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland), and
    - (ii) in Scotland means the company’s assets;
  - (d) “relevant section 425 or Article 418 compromise or arrangement” means
    - (i) a section 425 or Article 418 compromise or arrangement which was sanctioned by the court before 20th April 2003, or
    - (ii) any subsequent section 425 or Article 418 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of a kind mentioned in paragraph (i).

#### **Textual Amendments**

**F1** Words in reg. 19(2)(b) substituted (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), regs. 1, 49 (with reg. 32)

#### **Preferential debts: disapplication of section 175 of the 1986 Act or Article 149 of the 1989 Order**

**20.** Except to the extent that they are applied by regulation 27, section 175 of the 1986 Act or Article 149 of the 1989 Order (preferential debts (general provision)) does not apply in the case of a winding up of a UK insurer, and instead the provisions of regulations 21 to 26 have effect.

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## Preferential debts: long term insurers and general insurers

21.—(1) This regulation applies in the case of a winding up of—

- (a) a long term insurer;
- (b) a general insurer;
- (c) a composite insurer, where the long term business of that insurer has been or is to be transferred as a going concern to a person who may lawfully carry out the contracts in that long term business in accordance with section 376(2) of the 2000 Act.

(2) Subject to paragraph (3), the debts of the insurer must be paid in the following order of priority—

- (a) preferential debts;
- (b) insurance debts;
- (c) all other debts.

(3) Preferential debts rank equally among themselves [<sup>F2</sup>after the expenses of the winding up] and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(4) Insurance debts rank equally among themselves and must be paid in full, unless the assets available after the payment of preferential debts are insufficient to meet them, in which case they abate in equal proportions.

(5) Subject to paragraph (6), so far as the assets of the insurer available for the payment of unsecured creditors are insufficient to meet the preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer, and must be paid accordingly out of any property comprised in or subject to that charge.

(6) The order of priority specified in paragraph (2)(a) and (b) applies for the purposes of any payment made in accordance with paragraph (5).

(7) Section 176A of the 1986 Act has effect with regard to an insurer so that insurance debts must be paid out of the prescribed part in priority to all other unsecured debts.

### Textual Amendments

- F2** Words in [reg. 21\(3\)](#) inserted (3.3.2004) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2004 \(S.I. 2004/546\)](#), regs. 1, **2(4)**

## Composite insurers: preferential debts attributable to long term and general business

22.—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer.

(2) Subject to the payment of costs in accordance with regulation 30, the long term business assets and the general business assets must be applied separately in accordance with paragraphs (3) and (4).

(3) Subject to paragraph (6), the long term business assets must be applied in discharge of the long term business preferential debts in the order of priority specified in regulation 23(1).

(4) Subject to paragraph (8), the general business assets must be applied in discharge of the general business preferential debts in the order of priority specified in regulation 24(1).

(5) Paragraph (6) applies where the value of the long term business assets exceeds the long term business preferential debts and the general business assets are insufficient to meet the general business preferential debts.

(6) Those long term business assets which represent the excess must be applied in discharge of the outstanding general business preferential debts of the insurer, in accordance with the order of priority specified in regulation 24(1).

(7) Paragraph (8) applies where the value of the general business assets exceeds the general business preferential debts, and the long term business assets are insufficient to meet the long term business preferential debts.

(8) Those general business assets which represent the excess must be applied in discharge of the outstanding long term business preferential debts of the insurer, in accordance with the order of priority specified in regulation 23(1).

(9) For the purposes of this regulation and regulations 23 and 24—

“long term business preferential debts” means those debts mentioned in regulation 23(1) and, unless the court orders otherwise, any expenses of the winding up which are apportioned to the long term business assets in accordance with regulation 30;

“general business preferential debts” means those debts mentioned in regulation 24(1) and, unless the court orders otherwise, any expenses of the winding up which are apportioned to the general business assets in accordance with regulation 30.

(10) For the purposes of paragraphs (6) and (8)—

“outstanding long term business preferential debts” means those long term business preferential debts, if any, which remain unpaid, either in whole or in part, after the application of the long term business assets, in accordance with paragraph (3);

“outstanding general business preferential debts” means those general business preferential debts, if any, which remain unpaid, either in whole or in part, after the application of the general business assets, in accordance with paragraph (3).

### **Preferential debts: long term business of a non-transferring composite insurer**

**23.—**(1) For the purpose of compliance with the requirement in regulation 22(3), the long term business assets of a non-transferring composite insurer must be applied in discharge of the following debts and in the following order of priority—

- (a) relevant preferential debts;
- (b) long term insurance debts.

(2) Relevant preferential debts rank equally among themselves, unless the long term business assets, any available general business assets and other assets (if any) applied in accordance with regulation 24 are insufficient to meet them, in which case they abate in equal proportions.

(3) Long term insurance debts rank equally among themselves, unless the long term business assets available after the payment of relevant preferential debts and any available general business assets and other assets (if any) applied in accordance with regulation 25 are insufficient to meet them, in which case they abate in equal proportions.

(4) So far as the long term business assets, and any available general business assets, which are available for the payment of unsecured creditors are insufficient to meet the relevant preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer over any of its long term business assets, and must be paid accordingly out of any property comprised in or subject to that charge.

(5) The order of priority specified in paragraph (1) applies for the purposes of any payment made in accordance with paragraph (4).

(6) For the purposes of this regulation—

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“available general business assets” means those general business assets which must be applied in discharge of the insurer’s outstanding long term business preferential debts, in accordance with regulation 22(8);

“long term insurance debt” means an insurance debt which is attributable to the long term business of the insurer;

“relevant preferential debt” means a preferential debt which is attributable to the long term business of the insurer.

### **Preferential debts: general business of a composite insurer**

**24.**—(1) For the purpose of compliance with the requirement in regulation 22(4), the long term business assets of a non-transferring composite insurer must be applied in discharge of the following debts and in the following order of priority—

- (a) relevant preferential debts;
- (b) general insurance debts.

(2) Relevant preferential debts rank equally among themselves, unless the general business assets, any available long term business assets, and other assets (if any) applied in accordance with regulation 25 are insufficient to meet them, in which case they abate in equal proportions.

(3) General insurance debts rank equally among themselves, unless the general business assets available after the payment of relevant preferential debts, any available long term business assets, and other assets (if any) applied in accordance with regulation 26 are insufficient to meet them, in which case they abate in equal proportions.

(4) So far as the other business assets and available long term assets of the insurer which are available for the payment of unsecured creditors are insufficient to meet relevant preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer, and must be paid accordingly out of any property comprised in or subject to that charge.

(5) The order of priority specified in paragraph (1) applies for the purposes of any payment made in accordance with paragraph (4).

(6) For the purposes of this regulation—

“available long term business assets” means those long term business assets which must be applied in discharge of the insurer’s outstanding general business preferential debts, in accordance with regulation 22(6);

“general insurance debt” means an insurance debt which is attributable to the general business of the insurer;

“relevant preferential debt” means a preferential debt which is attributable to the general business of the insurer.

### **Insufficiency of long term business assets and general business assets**

**25.**—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer where the long term business assets and the general business assets, applied in accordance with regulation 22, are insufficient to meet in full the preferential debts and insurance debts.

(2) In a case in which this regulation applies, the other assets (if any) of the insurer must be applied in the following order of priority—

- (a) outstanding preferential debts;
- (b) unattributed preferential debts;
- (c) outstanding insurance debts;

(d) all other debts.

(3) So far as the long term business assets, and any available general business assets, which are available for the payment of unsecured creditors are insufficient to meet the outstanding preferential debts and the unattributed preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer over any of its other assets, and must be paid accordingly out of any property comprised in or subject to that charge.

(4) For the purposes of this regulation—

“outstanding insurance debt” means any insurance debt, or any part of an insurance debt, which was not discharged by the application of the long term business assets and the general business assets in accordance with regulation 22;

“outstanding preferential debt” means any preferential debt attributable either to the long term business or the general business of the insurer which was not discharged by the application of the long term business assets and the general business assets in accordance with regulation 23;

“unattributed preferential debt” means a preferential debt which is not attributable to either the long term business or the general business of the insurer.

#### **Composite insurers: excess of long term business assets and general business assets**

26.—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer where the value of the long term business assets and the general business assets, applied in accordance with regulation 22, exceeds the value of the sum of the long term business preferential debts and the general business preferential debts.

(2) In a case to which this regulation applies, long term business assets or general business assets which have not been applied in discharge of long term business preferential debts or general business preferential debts must be applied in accordance with regulation 27.

(3) In this regulation, “long term business preferential debts” and “general business preferential debts” have the same meaning as in regulation 22.

#### **Composite insurers: application of other assets**

27.—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer where regulation 25 does not apply.

(2) The other assets of the insurer, together with any outstanding business assets, must be paid in discharge of the following debts in accordance with section 175 of the 1986 Act or Article 149 of the 1989 Order—

(a) unattributed preferential debts;

(b) all other debts.

(3) In this regulation—

“unattributed preferential debt” has the same meaning as in regulation 25;

“outstanding business assets” means assets of the kind mentioned in regulation 26(2).

#### **Composite insurers: proof of debts**

28.—(1) This regulation applies in the case of the winding up of a non-transferring composite insurer in compliance with the requirement in regulation 23(2).

(2) The liquidator may in relation to the insurer’s long term business assets and its general business assets fix different days on or before which the creditors of the company who are required

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to prove their debts or claims are to prove their debts or claims, and he may fix one of those days without at the same time fixing the other.

(3) In submitting a proof of any debt a creditor may claim the whole or any part of such debt as is attributable to the company's long term business or to its general business, or he may make no such attribution.

(4) When he admits any debt, in whole or in part, the liquidator must state in writing how much of what he admits is attributable to the company's long term business, how much is attributable to the company's general business, and how much is attributable to its other business (if any).

(5) Paragraph (2) does not apply in Scotland.

### **Composite insurers: general meetings of creditors**

**29.**—(1) This regulation applies in the same circumstances as regulation 28.

(2) The creditors mentioned in section 168(2) of the 1986 Act, Article 143(2) of the 1989 Order or rule 4.13 of the Insolvency (Scotland) Rules (power of liquidator to summon general meetings of creditors) are to be—

- (a) in relation to the long term business assets of that insurer, only those who are creditors in respect of long term business liabilities; and
- (b) in relation to the general business assets of that insurer, only those who are creditors in respect of general business liabilities,

and, accordingly, any general meetings of creditors summoned for the purposes of that section, Article or rule are to be separate general meetings of creditors in respect of long term business liabilities and general business liabilities.

### **Composite insurers: apportionment of costs payable out of the assets**

**30.**—(1) In the case of the winding up of a non-transferring composite insurer, Rule 4.218 of the Insolvency Rules or Rule 4.228 of the Insolvency Rules (Northern Ireland) (general rules as to priority) or rule 4.67 (order of priority of expenses of liquidation) of the Insolvency (Scotland) Rules applies separately to long-term business assets and to the general business assets of that insurer.

(2) But where any fee, expense, cost, charge, or remuneration does not relate exclusively to the long-term business assets or to the general business assets of that insurer, the liquidator must apportion it amongst those assets in such manner as he shall determine.

### **Summary remedy against liquidators**

**31.** Section 212 of the 1986 Act or Article 176 of the 1989 Order (summary remedy against delinquent directors, liquidators etc.) applies in relation to a liquidator who is required to comply with regulations 21 to 27, as it applies in relation to a liquidator who is required to comply with section 175 of the 1986 Act or Article 149 of the 1989 Order.

### **Priority of subrogated claims by the Financial Services Compensation Scheme**

**32.**—(1) This regulation applies where an insurance creditor has assigned a relevant right to the scheme manager ("a relevant assignment").

(2) For the purposes of regulations 21, 23 and 24, where the scheme manager proves for an insurance debt in the winding up of a UK insurer pursuant to a relevant assignment, that debt must be paid to the scheme manager in the same order of priority as any other insurance debt.

(3) In this regulation—



“relevant right” means any direct right of action against a UK insurer under a contract of insurance, including the right to prove for a debt under that contract in a winding up of that insurer;

“scheme manager” has the meaning given by section 212(1) of the 2000 Act.

### **Voluntary arrangements: treatment of insurance debts**

**33.**—(1) The modifications made by paragraph (2) apply where a voluntary arrangement is proposed under section 1 of the 1986 Act or Article 14 of the 1989 Order in relation to a UK insurer, and that arrangement includes—

- (a) a composition in satisfaction of any insurance debts; and
- (b) a distribution to creditors of some or all of the assets of that insurer in the course of, or with a view to, terminating the whole or any part of the business of that insurer.

(2) Section 4 of the 1986 Act (decisions of meetings) has effect as if—

(a) after subsection (4) there were inserted—

“(4A) A meeting so summoned and taking place on or after 20th April 2003 shall not approve any proposal or modification under which any insurance debt of the company is to be paid otherwise than in priority to such of its debts as are not insurance debts or preferential debts.

(4B) Paragraph (4A) does not apply where—

- (a) a winding up order made before 20th April 2003 is in force; or
- (b) a relevant insolvency appointment made before 20th April [F32003] has effect, in relation to the company.”;

(b) for subsection (7) there were substituted—

“(7) References in this section to preferential debts mean debts falling into any of categories 4 and 5 of the debts listed in Schedule 6 to this Act; and references to preferential creditors are to be construed accordingly.”; and

(c) after subsection (7) as so substituted there were inserted—

“(8) For the purposes of this section—

(a) “insurance debt” has the meaning it has in the Insurers ( Reorganisation and Winding up) Regulations 2004; and

(b) “relevant insolvency measure” means—

- (i) the appointment of a provisional liquidator, or
- (ii) the appointment of an administrator,

where an effect of the appointment will be, or is intended to be, a realisation of some or all of the assets of the insurer and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.”.

(3) Article 17 of the 1989 Order (decisions of meetings) has effect as if—

(a) after paragraph (4) there were inserted—

“(4A) A meeting so summoned and taking place on or after 20th April 2003 shall not approve any proposal or modification under which any insurance debt of the company is to be paid otherwise than in priority to such of its debts as are not insurance debts or preferential debts.

(4B) Paragraph (4A) does not apply where—

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- (a) a winding up order made before 20th April 2003 is in force; or
  - (b) a relevant insolvency appointment made before 20th April [<sup>F4</sup>2003] has effect, in relation to the company.”;
- (b) for paragraph (7) there were substituted—
- “(7) References in this Article to preferential debts mean debts falling into any of categories 4 and 5 of the debts listed in Schedule 4 to this Order, and references to preferential creditors are to be construed accordingly.”; and
- (c) after paragraph (7) as so substituted there were inserted—
- “(8) For the purposes of this section—
- (a) “insurance debt” has the meaning it has in the Insurers (Reorganisation and Winding Up) Regulations 2004 and
  - (b) “relevant insolvency measure” means—
    - (i) the appointment of a provisional liquidator, or
    - (ii) the appointment of an administrator,
 where an effect of the appointment will be, or is intended to be, a realisation of some or all of the assets of the insurer and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.”.

#### Textual Amendments

- F3** Word in reg. 33(2) inserted (3.3.2004) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2004 \(S.I. 2004/546\)](#), regs. 1, **2(5)**
- F4** Word in reg. 33(3) inserted (3.3.2004) by [The Insurers \(Reorganisation and Winding Up\) \(Amendment\) Regulations 2004 \(S.I. 2004/546\)](#), regs. 1, **2(5)**

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