



# Insurance Companies Act 1981

## 1981 CHAPTER 31

### PART I

#### RESTRICTION ON CARRYING ON INSURANCE BUSINESS

##### *Preliminary*

#### **1 Classification**

- (1) For the purposes of this Act and of the Insurance Companies Act 1974 (" the 1974 Act") insurance business is divided into long term business and general business; and—
  - " long term business" means insurance business of any of the classes specified in Schedule 1 to this Act, and
  - " general business " means insurance business of any of the classes specified in Part I of Schedule 2 to this Act.
- (2) For the purposes of this Act and the 1974 Act the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first-mentioned class, and no other, if subsection (3) or (4) below applies to the contract.
- (3) This subsection applies to a contract whose principal object is within any class of long term business but which contains subsidiary provisions within general business class 1 or 2 if the insurer is authorised under section 3 or 4 below to carry on long term business class I.
- (4) This subsection applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes, not being class 14 or 15.

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## **2 Restriction on carrying on insurance business**

- (1) Subject to the following provisions of this section, no person shall carry on any insurance business in the United Kingdom unless authorised to do so under section 3 or 4 below.
- (2) Subsection (1) above shall not apply to insurance business (other than industrial assurance business) carried on—
  - (a) by a member of Lloyd's; or
  - (b) by a body registered under the enactments relating to friendly societies; or
  - (c) by a trade union or employers' association where the insurance business carried on by the union or association is limited to the provision for its members of provident benefits or strike benefits.

In this subsection " trade union " and " employers' association " have (throughout the United Kingdom) the meanings assigned to them by section 28 of the Trade Union and Labour Relations Act 1974.

- (3) Subsection (1) above shall not apply to industrial assurance business carried on by a friendly society registered under the enactments relating to such societies.
- (4) Subsection (1) above shall not apply to general business of class 14, 15, 16 or 17 if it is carried on solely in the course of carrying on, and for the purposes of, banking business.
- (5) Subsection (1) above shall not apply to general business consisting in the effecting and carrying out, by an insurance company that carries on no other insurance business, of contracts of such descriptions as may be prescribed, being contracts under which the benefits provided by the insurer are exclusively or primarily benefits in kind.

### *Authorised insurance companies*

## **3 Authorisation by Secretary of State**

- (1) The Secretary of State may authorise a body to carry on in the United Kingdom such of the classes of insurance business specified in Schedule 1 or 2 to this Act, or such parts of those classes, as may be specified in the authorisation.
- (2) An authorisation under this section may be restricted to industrial assurance business or to reinsurance business; and a body may not carry on industrial assurance business by virtue of an authorisation under this section unless the authorisation expressly extends to such business.
- (3) An authorisation under this section may identify classes or parts of classes of general business by referring to the appropriate groups specified in Part II of Schedule 2 to this Act.
- (4) On the issue to a body of an authorisation under this section, any previous authorisation of that body under this section or section 4 below shall lapse.

## **4 Existing insurance companies**

- (1) A body that was, immediately before the commencement of this section, authorised under section 3 of the 1974 Act to carry on in the United Kingdom insurance business

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of a class relevant for the purposes of that Act (or of any part of such a class) shall be authorised to carry on there insurance business of the corresponding class specified in Schedule 1 or 2 to this Act (or of the appropriate part of that class).

- (2) For the purposes of subsection (1) above, each of the two classes of long term business relevant for the purposes of the 1974 Act shall be taken to correspond with classes I, II, III, IV, VI, and VII in Schedule 1 to this Act; and a class of general business relevant for the purposes of the 1974 Act shall be taken to correspond with the class identified in Part I of Schedule 2 to this Act by the same number.
- (3) A body may not carry on industrial assurance business by virtue of this section unless it was carrying on such business immediately before the commencement of this Act.

#### *Applications for authorisation*

### **5 Submission of proposals etc.**

- (1) The Secretary of State shall not issue an authorisation under section 3 above unless—
  - (a) the applicant has submitted to him such proposals as to the manner in which it proposes to carry on business, such financial forecasts and such other information as may be required by or in accordance with regulations under the 1974 Act, and
  - (b) he is satisfied on the basis of that and any other information received by him that the application ought to be granted.
- (2) The Secretary of State shall decide an application for an authorisation under section 3 above within six months of receiving the information referred to in subsection (1) (a) above; and if he refuses to issue the authorisation he shall inform the applicant in writing of the reasons for the refusal.

### **6 Combination of long term and general business**

The Secretary of State shall not under section 3 above authorise a body to carry on both long term business and general business unless—

- (a) the long term business is restricted to reinsurance, or
- (b) the body is at the time the authorisation is issued already lawfully carrying on in the United Kingdom both long term business and general business (in neither case restricted to reinsurance).

### **7 United Kingdom applicants**

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom unless the applicant is—
  - (a) a company as defined in section 455 of the Companies Act 1948 or section 399 of the Companies Act (Northern Ireland) 1960, or
  - (b) a registered society, or
  - (c) a body corporate established by royal charter or Act of Parliament and already authorised under section 3 or 4 above to carry on insurance business (though not to the extent proposed in the application).
- (2) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom if it has an issued share capital

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any part of which was issued after the commencement of this section but is not fully paid up.

- (3) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom if it appears to the Secretary of State that any director, controller, manager or main agent of the applicant is not a fit and proper person to hold the position held by him.
- (4) In this section " controller ", in relation to the applicant, means—
- (a) a managing director of the applicant or of a body corporate of which the applicant is a subsidiary;
  - (b) a chief executive of the applicant or of a body corporate, being an insurance company, of which the applicant is a subsidiary;
  - (c) a person—
    - (i) in accordance with whose directions or instructions the directors of the applicant or of a body corporate of which it is a subsidiary are accustomed to act, or
    - (ii) who either alone or with any associate or associates is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the applicant or of a body corporate of which it is a subsidiary.
- (5) In this section " manager ", in relation to the applicant, means an employee of the applicant (other than a chief executive) who, under the immediate authority of a director or chief executive of the applicant—
- (a) exercises managerial functions, or
  - (b) is responsible for maintaining accounts or other records of the applicant,
- not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.
- (6) In this section " main agent", in relation to the applicant, means, subject to such exceptions as may be prescribed by regulations under the 1974 Act, a person appointed by the applicant to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the applicant in any financial year—
- (a) without limit on the aggregate amount of premiums ; or
  - (b) with a limit in excess of 10 per cent, of the premium limit as determined in accordance with Schedule 3 to this Act.
- (7) In this section " chief executive ", in relation to the applicant or a body corporate of which it is a subsidiary, means an employee of the applicant or that body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of the applicant or that body corporate.
- (8) In this section " associate" in relation to any person means—
- (a) the wife or husband or minor son or daughter" of that person;
  - (b) any company of which that person is a director ;
  - (c) any person who is an employee or partner of that person;
  - (d) if that person is a company—
    - (i) any director of that company ;
    - (ii) any subsidiary of that company ;
    - (iii) any director or employee of any such subsidiary ;

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and for the purposes of this subsection " son " includes step-son, " daughter " includes step-daughter and " minor ", in relation to Scotland, includes pupil.

## **8 Applicants from other member States**

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in a member State other than the United Kingdom unless the applicant has a representative fulfilling the requirements of section 10 below.
- (2) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in a member State other than the United Kingdom if it appears to the Secretary of State that any relevant executive or main agent of the applicant is not a fit and proper person to hold the position held by him.
- (3) Where an applicant whose head office is in a member State other than the United Kingdom seeks an authorisation under section 3 above restricted to reinsurance business—
  - (a) the Secretary of State shall not issue the authorisation unless he is satisfied that the applicant is a body corporate entitled under the law of that State to carry on insurance business there ; and .
  - (b) subsection (2) above shall have effect as if the reference to any relevant executive were a reference to any person who is a director, controller or manager of the applicant or a person within paragraph (a) or (b) of subsection (4) below.
- (4) In this section " relevant executive" in relation to the applicant means a person who is—
  - (a) the representative referred to in subsection (1) above or the individual representative referred to in section 10(5) below;
  - (b) an officer or employee of the applicant who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—
    - (i) is also responsible for the conduct of insurance business carried on by the applicant elsewhere, and
    - (ii) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom ; or
  - (c) an employee of the applicant who, under the immediate authority of a director or of an officer or employee within paragraph (b) above.—
    - (i) exercises managerial functions, or
    - (ii) is responsible for maintaining accounts or other records of the applicant,not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom;and "controller", "manager" and "main agent" have the same meanings as in section 7 above.

## **9 Applicants from outside the Community**

- (1) The Secretary of State shall not issue an authorisation under section 3 above in respect of long term or general business to an applicant whose head office is not in a member State unless he is satisfied—

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- (a) that the applicant is a body corporate entitled under the law of the place where its head office is situated to carry on long term or, as the case may be, general business there;
  - (b) that the applicant has in the United Kingdom assets of such value as may be prescribed ; and
  - (c) that the applicant has made a deposit of such amount and with such person as may be prescribed ;
- but subject to subsections (2) and (3) below.
- (2) Where the applicant seeks to carry on insurance business in the United Kingdom and one or more other member States, the Secretary of State and the supervisory authority in the other State or States concerned may agree that this subsection shall apply to the applicant; and in that event—
- (a) paragraph (b) of subsection (1) above shall have effect as if the reference to the United Kingdom were a reference to the member States concerned taken together ; and
  - (b) paragraph (c) of that subsection shall have effect as if the reference to such person as may be prescribed were a reference to such person as may be agreed between the Secretary of State and the other supervisory authority or authorities concerned.
- (3) Paragraph (c) of subsection (1) above shall not apply where the authorisation sought is one restricted to reinsurance.
- (4) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is not in a member State unless the applicant has a representative fulfilling the requirements of section 10 below.
- (5) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is not in a member State if it appears to the Secretary of State that—
- (a) the representative of the applicant referred to in subsection (4) above or the individual representative referred to in section 10(5) below, or
  - (b) any director, controller or manager of the applicant, or
  - (c) a main agent of the applicant,
- is not a fit and proper person to hold the position held by him.
- (6) In this section "controller", "manager" and "main agent" have the same meanings as in section 7 above, except that for the purposes of this section the controllers of the applicant shall be taken to include any officer or employee who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—
- (a) is also responsible for the conduct of insurance business carried on by it elsewhere ; and
  - (b) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom.
- (7) Regulations under the 1974 Act may make such provision as to deposits under this section as appears to the Secretary of State to be necessary or expedient, including provision for the deposit of securities instead of money, and, in relation to deposits with the Accountant General of the Supreme Court, provision applying (with or without modification) any of the provisions of the rules for the time being in force under section 7 of the Administration of Justice Act 1965.

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## **10 General representatives**

- (1) The requirements referred to in sections 8(1) and 9(4) above are those set out in the following provisions of this section.
- (2) The representative must be a person resident in the United Kingdom who has been designated as the applicant's representative for the purposes of this section.
- (3) The representative must be authorised to act generally, and to accept service of any document, on behalf of the applicant.
- (4) The representative must not be an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the applicant.
- (5) If the representative is not an individual, it must be a company as defined in section 455 of the Companies Act 1948 or section 399 of the Companies Act (Northern Ireland) 1960 with its head office in the United Kingdom and must itself have an individual representative resident in the United Kingdom who is authorised to act generally, and to accept service of any document, on behalf of the company in its capacity as representative of the applicant.

### *Withdrawal of authorisation*

## **11 Withdrawal of authorisation in respect of new business**

- (1) The Secretary of State may, at the request of the company or on any grounds set out in subsection (2) below, direct that an insurance company authorised under section 3 or 4 above to carry on insurance business shall cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.
- (2) The grounds referred to in subsection (1) above are—
  - (a) that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of the 1974 Act or this Act;
  - (b) that there exists a ground on which he would be prohibited by section 7, 8 or 9 above from issuing an authorisation to the company;
  - (c) that the company has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in a member State where it has its head office or where it has in accordance with section 9(2) above made a deposit.
- (3) After giving a direction under this section otherwise than at the request of the company concerned the Secretary of State shall inform the company in writing of his reasons for giving the direction.
- (4) A direction under this section shall not prevent a company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
- (5) Where a direction under this section has been given in respect of a company which has its head office, or has in accordance with section 9(2) above made a deposit, in a member State other than the United Kingdom, the Secretary of State may revoke or vary the direction if after consultation with the supervisory authority in that member State he considers it appropriate to do so.
- (6) Subject to subsection (5) above a direction given under this section in respect of any insurance company may not be revoked or varied; but if the Secretary of State subsequently issues to the company under section 3 above an authorisation to carry on

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insurance business of a class to which the direction relates, the direction shall cease to have effect in relation to such business.

## **12 Notices of withdrawal under section 11**

- (1) Before giving a direction under section 11 above otherwise than at the request of the company concerned the Secretary of State shall serve on the company a written notice stating—
  - (a) that he is considering giving a direction and the ground on which he is considering it; and
  - (b) that the company may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if the company so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (2) Before giving a direction under section 11 above in respect of a company on the ground that he would be prohibited by section 7(3), 8(2) or 9(5) from issuing an authorisation to the company, the Secretary of State shall serve on the person whose fitness is in question a written notice stating—
  - (a) that he is considering giving a direction on that ground ; and
  - (b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if that person so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (3) Subject to subsection (4) below, the Secretary of State shall consider any representations made in response to a notice under subsection (2) above before serving a notice under subsection (1) above.
- (4) Subsection (3) above shall not apply where the position held by the person on whom the notice under subsection (2) above is served, and whose fitness for that position is in question, is controller of a company.
- (5) A notice under subsection (1) or (2) above shall give particulars of the ground on which the Secretary of State is considering giving a direction.
- (6) Where representations are made in response to a notice under subsection (1) or (2) above, the Secretary of State shall take them into consideration before giving a direction.
- (7) Any notice to be served on a person under subsection (1) or (2) above may be served by post, and a letter containing the notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in the United Kingdom.
- (8) After giving a direction under section 11 above the Secretary of State shall publish notice of it in the London, Edinburgh and Belfast Gazettes and in such other ways as appear to him expedient for notifying the public.

## **13 Final withdrawal of authorisation**

- (1) Where an insurance company ceases to carry on in the United Kingdom any insurance business, or insurance business of any class, the Secretary of State may direct that it



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shall cease to be authorised under section 3 or 4 above to carry on insurance business, or insurance business of that class.

- (2) If a body authorised under section 3 above to carry on insurance business of any class has not at any time carried on business of that class, and at least twelve months have elapsed since the issue of the authorisation, the Secretary of State may direct that it shall cease to be authorised to carry on business of that class.
- (3) A direction under this section is without prejudice to the subsequent issue of an authorisation to carry on insurance business of a class to which the direction relates.

### *Offences*

#### **14 Offences under Part I**

- (1) A person who carries on business in contravention of this Part of this Act shall be guilty of an offence.
- (2) A person who for the purpose of obtaining the issue of an authorisation furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both ;
  - (b) on summary conviction—
    - (i) in England and Wales and Northern Ireland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 ;
    - (ii) in Scotland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975;

and for the purposes of the application of this subsection in Northern Ireland, the provisions of the Magistrates' Courts Act 1980 which relate to the sum mentioned in paragraph (b)(i) above shall extend to Northern Ireland.