



Insurance Companies Act 1958

1958 CHAPTER 72

Insolvency and winding up

13 Margin of solvency for general business

(1) Subject to the provisions of the Second Schedule to this Act, an insurance company to which this Act applies, being a company which carries on general business, shall be deemed, for the purposes of section two hundred and twenty-two of the Companies Act, 1948 (which authorises the court to wind up a company unable to pay its debts), to be unable to pay its debts if the value of its assets does not exceed the amount of its liabilities by whichever is the greater of the following amounts, namely—

- (a) fifty thousand pounds ; or
- (b) one-tenth of the general premium income of the company in its last preceding financial year;

and the provisions of this Act relating to winding up shall have effect accordingly:

Provided that this section shall not apply to an insurance company unless and until a period of two years, or such longer period as the Board of Trade may in any case allow, has expired from the date of its commencing to carry on general business.

(2) For the purposes of this section—

- (a) in computing the amount of the liabilities of an insurance company, all contingent and prospective liabilities shall be taken into account, but not liabilities in respect of share capital; and
- (b) the general premium income of an insurance company in any year shall be taken to be the net amount, after deduction of any premiums paid by the company for reinsurance, of the premiums received by the company in that year in respect of all insurance business (whether or not being insurance business of a Class specified in section one of this Act) other than long term business.

(3) Regulations made for the purposes of this section may require that, in every balance sheet prepared under section four of this Act by an insurance company carrying on general business, there shall be included a certificate—

Status: This is the original version (as it was originally enacted).

- (a) in such form and signed by such persons as may be prescribed by the regulations ; and
- (b) containing such a statement with respect to the assets and liabilities of the company as may be so prescribed ;

and if any such company fails to comply with the regulations so made, the value of its assets shall, in any proceedings under this section for the winding up of the company, be deemed, until the contrary is proved, not to exceed the amount of its liabilities by the amount required by subsection (1) of this section.

- (4) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with, whether by virtue of section three of this Act or otherwise.

14 Investigation of company of doubtful solvency

- (1) The Board of Trade, by notice in writing served upon an insurance company to which this Act applies, being a company which may be wound up by the court under the provisions of the Companies Act, 1948—
 - (a) may require the company to furnish to the Board within such time as may be specified in the notice such explanations, information, accounts, balance sheets, abstracts, and statements as they consider to be necessary for the purpose of determining whether the company is insolvent, or was insolvent at any date (not earlier than the close of the period to which the accounts and balance sheet of the company last deposited under section eight of this Act relate) specified in the notice, and
 - (b) may require any such explanations, information, accounts, balance sheets, abstracts, or statements to be signed by such number of the directors and by such officers of the company, and to be accompanied by such copies of documents, as may be specified in the notice, and to be certified as correct by an auditor approved by the Board, or by an actuary so approved, or by both such an auditor and such an actuary,
- (2) If, after a notice has been served upon an insurance company under the foregoing subsection, either—
 - (a) the company does not, before the expiration of the time limited by the notice, comply with all the requirements of the notice, other than such requirements, if any, as may have been withdrawn by the Board, or
 - (b) the Board, after considering the material furnished pursuant to the said requirements, consider it to be expedient for the purpose aforesaid so to do,

the Board may serve upon the company a notice in writing stating that they propose to appoint one or more inspectors to investigate the affairs of the company and to report thereon in such manner as the Board may require, and unless the company within a period of seven days from the date of the service of the notice upon it gives notice in writing to the Board that it objects to such an appointment being made, the Board may after the expiration of that period make such an appointment.
- (3) If the company within the said period gives notice in writing to the Board that it objects to such an appointment being made, the Board may apply to the court for leave to make such an appointment, and the court shall grant leave unless it is satisfied by the company that such an appointment cannot reasonably be required for the purpose aforesaid, and on leave being granted the Board may make such an appointment.

- (4) Where an appointment is made under this section the provisions of sections one hundred and sixty-six and one hundred and sixty-seven of the Companies Act, 1948, shall apply with respect to an inspector appointed under this section in like manner as they apply to an inspector appointed under section, one hundred and sixty-four of that Act.
- (5) The expenses of and incidental to an investigation carried out by an inspector appointed under this section shall be defrayed by the Board:

Provided that—

- (a) where the court grants leave to make an appointment, the court may, if it thinks fit, direct the company to repay to the Board the whole or any part of the said expenses; and
- (b) if an order for the winding up of the company by the court is made at any time within twelve months from the date on which the report of the inspector is made to the Board, or, if more than one report is so made, from the date when the first report is so made, the said expenses shall be deemed, for the purposes of the Companies Act, 1948, to be expenses properly incurred in the winding up and the amount thereof, after deducting any sum repaid to the Board pursuant to a direction given by the court under the foregoing paragraph, shall be paid out of the assets of the company *pari passu* with the taxed costs of the petition.
- (6) In this section " the court" means the court having jurisdiction to wind up the company.

15 Winding up

- (1) The court may order the winding up, in accordance with the Companies Act, 1948, of an insurance company to which this Act applies (not being a company registered or having its head office in Northern Ireland), and the provisions of that Act shall apply accordingly, subject to the modification that the company may be ordered to be wound up on the petition of ten or more policy holders owning policies of an aggregate value of not less than ten thousand pounds:

Provided that such a petition shall not be presented except by leave of the court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the court and until security for costs for such amount as the court may think reasonable has been given.

- (2) The Board of Trade may, with the leave of the court, present a petition for the winding up, in accordance with the Companies Act, 1948, of an insurance company to which this Act applies, being a company which may be wound up by the court under the provisions of the said Act of 1948, on the ground—
- (a) that the company is unable to pay its debts within the meaning of sections two hundred and twenty-two and two hundred and twenty-three of the said Act of 1948, or
- (b) that, an inspector having been appointed to investigate the affairs of the company under section fourteen of this Act, any such refusal has taken place as, under subsection (3) of section one hundred and sixty-seven of the said Act of 1948, as applied by the said section fourteen, is, or might be, made the ground of the punishment of an officer or agent of the company.

In this subsection " the court" means the court having jurisdiction to wind up the company.

16 Subsidiary companies

- (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to an insurance company to which this Act applies under an arrangement in pursuance of which the first-mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which the transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the court, the court shall, subject to the provisions of this section, order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the court necessary, with a view to the companies being wound up as if they were one company.
- (2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the court, be the commencement of the winding up of the subsidiary company.
- (3) In adjusting the rights and liabilities of the members of the several companies between themselves, the court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.
- (4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.
- (5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.
- (6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

17 Supplemental provisions as to winding up

- (1) In any proceedings upon a petition to wind up an insurance company presented by the Board of Trade under subsection (2) of section fifteen of this Act, evidence that the company was insolvent at the close of the period to which the accounts and balance sheet of the company last deposited under section eight of this Act relate, or at any date specified in a notice served under subsection (1) of section fourteen of this Act,

shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.

- (2) Where an insurance company to which this Act applies is being wound up by the court, or subject to the supervision of the court, or voluntarily, the value of a policy of any class or of a liability under such a policy requiring to be valued in the winding up shall be estimated in the manner applicable to policies and liabilities of that class provided by the Third Schedule to this Act.
- (3) The rules in the Third and Fourth Schedules to this Act shall be of the same force, and may be revoked or amended, as if they were rules made in pursuance of section three hundred and sixty-five of the Companies Act, 1948; and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

18 Reduction of contracts as alternative to winding up

In the case of an insurance company which has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the court thinks just, in place of making a winding up order.