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STATUTORY INSTRUMENTS

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**1994 No. 1696**

**The Insurance Companies (Third  
Insurance Directives) Regulations 1994**

**PART II**

**AMENDMENTS OF 1982 ACT**

**CHAPTER II**

*REGULATION OF INSURANCE COMPANIES*

*Powers of intervention*

**Grounds on which powers of intervention are exercisable**

**19.**—(1) In subsection (2) of section 37 of the 1982 Act (grounds on which powers are exercisable)—

(a) after paragraph (a) insert—

“(aa) that the company is a UK or non-EC company and it appears to him that any of the criteria of sound and prudent management is not or has not been or may not be or may not have been fulfilled with respect to the company;”;

(b) in paragraph (b), sub-paragraph (ia)(1) shall cease to have effect; and

(c) in paragraph (g), for the words “a member State where it has its head office or” substitute the words “an EFTA State where it has its head office or an EEA State where it”.

(2) In subsection (3) of that section—

(a) for the words “sections 39 and 40” substitute the words “sections 39, 40 and 40A”;

(b) in paragraph (a) for the words “section 11 above” substitute the words “section 11 or 12A above”; and

(c) after paragraph (c) insert

“or

(d) on the grounds that the company is a UK or non-EC company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 32 or 35A above.”

(3) After subsection (4) of that section insert—

“(4A) The powers conferred on the Secretary of State by sections 43A and 44 below shall be exercisable in respect of a UK or non-EC company to obtain information to enable him to perform his functions under this Act.”

(4) In subsection (5) of that section—

- (a) in paragraph (b), for the words “section 7(4)(c) above” substitute the words “section 96C(1)(c), (d) or (e) below”;
- (b) after that paragraph insert—
  - “(c) any UK company in a case where a person has notified an intention to acquire a notifiable holding in accordance with section 61A(1) below,”; and
- (c) after the words “became such a controller” insert the words “or acquired such a holding”.

### **Requirements about investments**

**20.** In subsection (3)(a) of section 38 of the 1982 Act<sup>(2)</sup> (requirements about investments), for the words from “whose head office” to “insurance company” substitute—

- “(i) whose head office is in an EFTA State, or
- (ii) which has in accordance with section 9(2) above made a deposit in an EEA State other than the United Kingdom, or
- (iii) which is a Swiss general insurance company,”.

### **Maintenance of assets in the United Kingdom**

**21.**—(1) For subsection (1) of section 39 of the 1982 Act (maintenance of assets in the United Kingdom) substitute—

- “(1) The Secretary of State may require—
  - (a) in the case of a UK company, that assets of the company of a value which at any time is equal to the whole or a specified proportion of the amount of its EC liabilities shall be maintained in the European Community; and
  - (b) in the case of an insurance company which is not a UK company, that assets of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in the United Kingdom.”

(2) In subsection (2) of that section, for the words “as assets maintained in the United Kingdom” substitute—

- “(a) in the case of a UK company, as assets maintained in the European Community; and
- (b) in the case of an insurance company which is not a UK company, as assets maintained in the United Kingdom”.

(3) In subsection (3) of that section, for the words “domestic liabilities” substitute the words “EC or domestic liabilities”.

(4) For subsection (5) of that section substitute—

- “(5) In this section—
  - (a) any reference to an EC liability is a reference to a liability of the business carried on by the company in the European Community; and
  - (b) any reference to a domestic liability is a reference to a liability of the business carried on by the company in the United Kingdom.”

### **Prohibition on disposal of assets**

**22.** After section 40 of the 1982 Act insert—

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(2) Subsection (3)(a) was amended by [S.I. 1993/3127](#), reg 3(7).

**“Prohibition on disposal of assets.**

**40A.**—(1) If on the application of the Secretary of State it appears to the court that any of the grounds set out in section 37(3) above are established in relation to a UK company, the court may grant an injunction restraining, or in Scotland an interdict prohibiting, the company from disposing of or otherwise dealing with any of its assets to the value of its EC liabilities.

(2) Where a court makes an order under subsection (1) above, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Secretary of State to perform his functions under this Act.

(3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

(4) In this section “EC liabilities” has the same meaning as in section 39 above.”

**General investigations**

**23.** After section 43 of the 1982 Act insert—

**“General investigations.**

**43A.**—(1) The Secretary of State may appoint one or more competent persons to make an investigation into and report to the Secretary of State on—

- (a) whether the criteria of sound and prudent management are fulfilled with respect to any insurance company which is a UK or non-EC company ; or
- (b) where a person has notified the Secretary of State under section 60 or 61 below of his intention to become a controller of any such company, whether those criteria would be so fulfilled if that person became such a controller;

and the Secretary of State shall give written notice of any such appointment to the company.

(2) It shall be the duty of every person who is or was a director, manager, controller, agent, actuary, auditor or solicitor of a company which is under investigation—

- (a) to produce to the persons appointed under subsection (1) above, within such time and at such place as they may require, all documents relating to the company which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

(3) For the purpose of exercising his powers under this section a person appointed under subsection (1) above may enter any premises occupied by a company which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required would be removed, tampered with or destroyed.

(4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.”

### **Power to obtain information etc.**

**24.**—(1) After subsection (2) of section 44 of the 1982 Act<sup>(3)</sup> (power to obtain information and require production of documents) insert—

“(2A) Subsections (1) and (2) above shall have effect as if any reference to a company included a reference to any person who is or has been a controller, officer, agent or employee of a UK or non-EC company and to any body corporate which is or has been—

- (a) a parent undertaking or subsidiary undertaking of such a company;
- (b) a subsidiary undertaking of a parent undertaking of such a company; or
- (c) a parent undertaking of a subsidiary undertaking of such a company.

(2B) The Secretary of State may require a UK or non-EC company to furnish him, at a specified time, with a report by a specified person, being an actuary or accountant or other person with relevant professional skills, on any matter about which the Secretary of State has required, or could require, the company to provide information under subsection (1) above.”

(2) In subsection (4) of that section, for the words “subsections (2) and (3)” substitute the words “subsections (2), (2A) and (3)”.

(3) After that subsection insert—

“(4A) Any person authorised by the Secretary of State may, on producing if required evidence of his authority, enter any premises occupied by—

- (a) a UK or non-EC company on which a requirement under subsection (1) or (2) above has been imposed; or
- (b) a person on whom or a body on which such a requirement has been imposed by virtue of subsection (2A) above,

for the purpose of obtaining the information or documents required to be furnished or produced and exercising the powers conferred by subsection (4) above.”

### **Residual power to impose requirements for protection of policy holders**

**25.**—(1) For subsection (1) of section 45 of the 1982 Act (residual power to impose requirements for protection of policy holders) substitute—

“(1) The Secretary of State may require a company to take such action as appears to him to be appropriate—

- (a) for the purpose of protecting policy holders or potential policy holders of the company against the risk that the company may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders; or
- (b) in the case of a UK or non-EC company, for the purpose of ensuring that the criteria of sound and prudent management are fulfilled with respect to the company.”

(2) In subsection (2) of that section—

- (a) in paragraph (a), for the words “section 11 above” substitute the words “section 11 or 12A above”; and
- (b) after paragraph (c) insert the words

“or

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(3) Subsection (2) was amended by the Companies Act 1989 (c. 40), section 77(2).

- (d) on the grounds that the company is a UK or non-EC company and it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is or was subject by virtue of section 32 or 35A above.”

### **Restriction on disclosure of information**

**26.**—(1) For section 47A of the 1982 Act(4) substitute—

**“47A Restriction on disclosure of information.**

**47A.** Schedule 2B to this Act (which, subject to certain exceptions, restricts the disclosure of information obtained under or by virtue of this Act) shall have effect.”

(2) After Schedule 2A to that Act insert Schedule 2 to these Regulations (restriction on disclosure of information), as Schedule 2B.

### **Privilege from disclosure**

**27.** In subsection (1) of section 47B of the 1982 Act(5) (privilege from disclosure), for the words “section 44(2) to (4)” substitute the words “section 43A or 44(2) to (4)”.

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(4) Section 47A was inserted by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), section 25.

(5) Section 47B was inserted by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), section 25.