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## STATUTORY INSTRUMENTS

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# 2005 No. 1998

## The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005

### PART 4

#### APPLICATION OF PARTS 4 AND 5 OF THE PRINCIPAL REGULATIONS

##### Priority for insurance claims

**40.**—(1) Part 4 of the principal Regulations applies with the modifications set out in paragraphs (2) to (11).

(2) References, in relation to a UK insurer, to a winding up by the court have effect as if they included a reference to the bankruptcy or sequestration of a member or former member.

(3) References to the making of a winding up order in relation to a UK insurer have effect as if they included a reference to the making of a bankruptcy order or, in Scotland, an award of sequestration in relation to an individual member or a member or former member that is a Scottish limited partnership.

(4) References to an administration order in relation to a UK insurer have effect as if they included a reference to an individual voluntary arrangement in relation to an individual member and a trust deed for creditors within the meaning of section 5(4A) of the Bankruptcy (Scotland) Act.

(5) Regulation 20 (preferential debts: disapplication of section 175 of the 1986 Act or Article 149 of the 1989 Order) has effect as if the references to section 175 of the 1986 Act and Article 149 of the 1989 Order included a reference to section 328 of that Act, Article 300 of that Order and section 51(1) (d) to (h) of the Bankruptcy (Scotland) Act 1985.

(6) Regulation 21(3) (preferential debts : long term insurers and general insurers) has effect as if after the words “rank equally among themselves” there were inserted the words “after the expenses of the bankruptcy or sequestration”.

(7) Regulation 27 (composite insurers: application of other assets) has effect as if the reference to section 175 of the 1986 Act or Article 149 of the 1989 Order included a reference to section 328 of that Act, Article 300 of that Order and section 51(1) (e) to (h) of the Bankruptcy (Scotland) Act.

(8) Regulation 29 (composite insurers: general meetings of creditors) has effect as if [<sup>F1</sup>in paragraph (1) the words from “, but only if” to the end were omitted and] after paragraph (2) there were inserted—

[<sup>F2</sup>“(3) If the bankrupt’s creditors propose to establish a creditors’ committee pursuant to section 301(1) of the 1986 Act or if the general meeting of the bankrupt’s creditors proposes to establish a creditors’ committee pursuant to Article 274(1) of the 1989 Order, separate committees must be established for creditors in respect of long-term business liabilities and creditors in respect of general business liabilities.]

(4) The committee of creditors in respect of long-term business liabilities may exercise the functions of a creditors' committee under the 1986 Act or the 1989 Order in relation to long term business liabilities only.

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**Changes to legislation:** *The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005, Section 40 is up to date with all changes known to be in force on or before 24 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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(5) The committee of creditors in respect of general business liabilities may exercise the functions of a creditors' committee under the 1986 Act or the 1989 Order in relation to general business liabilities only.

(6) If, in terms of section 30(1) of the Bankruptcy (Scotland) Act 1985, at the statutory meeting or any subsequent meeting of creditors it is proposed to elect one or more commissioners (or new or additional commissioners) in the sequestration, it shall elect separate commissioners in respect of the long-term business liabilities and the general business liabilities.

(7) Any commissioner elected in respect of the long-term business liabilities shall exercise his functions under the Bankruptcy (Scotland) Act 1985 in respect of the long-term business liabilities only.

(8) Any commissioner elected in respect of the general business liabilities shall exercise his functions under the Bankruptcy (Scotland) Act 1985 in respect of the general business liabilities only.”

(9) Regulation 30 (composite insurers: apportionment of costs payable out of the assets) has effect as if in its application to members or former members who are individuals or Scottish limited partnerships—

- (a) in England and Wales, the reference to [F<sup>3</sup>rule 6.42 or 7.108] of the Insolvency Rules (general rule as to priority) included a reference to [F<sup>4</sup>rule 10.149] of the Insolvency Rules (general rule as to priority (bankruptcy));
- (b) in Northern Ireland, the reference to Rule 4.228 of the Insolvency Rules (Northern Ireland) (general rule as to priority) included a reference to Rule 6.222 of the Insolvency Rules (Northern Ireland) (general rule as to priority (bankruptcy)); and
- (c) in Scotland, the reference to [F<sup>5</sup>Rule 7.28 of the Insolvency (Scotland) (Receivership and Winding up) Rules 2018] includes reference to—
  - (i) any finally determined outlays or remuneration in a sequestration within the meaning of section 53 of the Bankruptcy (Scotland) Act 1985 and shall be calculated and applied separately in respect of the long-term business assets and the general business assets of that member; and
  - (ii) the remuneration and expenses of a trustee under a trust deed for creditors within the meaning of the Bankruptcy (Scotland) Act 1985,

and references to a liquidator include references to a trustee in bankruptcy, interim or permanent trustee, trustee under a trust deed for creditors, Accountant in Bankruptcy or Commissioners where appropriate.

(10) Regulation 31 (summary remedies against liquidators) has effect as if—

- (a) the reference to section 212 of the 1986 Act or Article 176 of the 1989 Order included a reference to section 304 of that Act or Article 277 of that Order (liability of trustee);
- (b) the references to a liquidator included a reference to a trustee in bankruptcy in respect of a qualifying insolvent member; and
- (c) the reference to section 175 of the 1986 Act or Article 149 of the 1989 Order included a reference to section 328 of that Act or Article 300 of that Order.

(11) Regulation 33 (voluntary arrangements: treatment of insurance debts) has effect as if after paragraph (3) there were inserted—

“(4) The modifications made by paragraph (5) apply where an individual member proposes an individual voluntary arrangement in accordance with Part 8 of the 1986 Act or Part 8 of the 1989 Order, 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 member in the course of, or with a view to, terminating the whole or any part of the insurance business of that member carried on at Lloyd's.
- (5) Section 258 of the 1986 Act [<sup>F6</sup>(approval of debtor's proposal)] has effect as if—
  - (a) after subsection (5) there were inserted—

“(5A) [<sup>F7</sup>Where a Lloyd's market reorganisation order is in force and the debtor is an individual member, the debtor's creditors] shall not approve any proposal or modification under which any insurance debt of that member is to be paid otherwise than in priority to such of his debts as are not insurance debts or preferential debts.”;
  - (b) after subsection (7) 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;
    - (b) “Lloyd's market reorganisation order” and “individual member” have the meaning they have in the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005.”.
- (6) Article 232 of the 1989 Order (Decisions of creditors' meeting) has effect as if—
  - (a) after paragraph (6) there were inserted—

“(6A) A meeting so summoned in relation to an individual member and taking place when a Lloyd's market reorganisation order is in force shall not approve any proposal or modification under which any insurance debt of that member is to be paid otherwise than in priority to such of his debts as are not insurance debts or preferential debts.”;
  - (b) after paragraph (9) there were inserted—

“(10) For the purposes of this Article—

    - (a) “insurance debt” has the meaning it has in the Insurers (Reorganisation and Winding Up) Regulations 2004;
    - (b) “Lloyd's market reorganisation order” and “individual member” have the meaning they have in the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005.”.
- (7) In Scotland, where a member or former member grants a trust deed for creditors, Schedule 5 to the Bankruptcy (Scotland) Act 1985 shall be read as if after paragraph 4 there were included paragraphs 4A and 4B as follows—

“**4A.** Whether or not provision is made in any trust deed, where such a trust deed includes a composition in satisfaction of any insurance debts of a member or former member and a distribution to creditors of some or all of the assets of that member or former member in the course of or with a view to meeting obligations of his insurance business carried on at Lloyd's, the trustee may not provide for any insurance debt to be paid otherwise than in priority to such of his debts as are not insurance debts or preferred debts within the meaning of section 51(2).

**4B** For the purposes of paragraph 4A ,

- (a) “insurance debt” has the meaning it has in the Insurance (Reorganisation and Winding Up) Regulations 2004; and

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- (b) “member” and “former member” have the meaning given in regulation 2(1) of the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 .”.”.

(12) The power to apply to court in section 303 of the 1986 Act or Article 276 of the 1989 Order or section 63 of the Bankruptcy (Scotland) Act (general control of trustee by court) may be exercised by the reorganisation controller if it appears to him that any act, omission or decision of a trustee of the estate of a member contravenes the provisions of Part 4 of the principal Regulations (as applied by this regulation).

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| <b>F1</b> | Words in reg. 40(8) omitted (13.3.2018) by virtue of <a href="#">The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208)</a> , regs. 1(3), <b>10(10)(a)(i)</b> (with reg. 21) |
| <b>F2</b> | Words in reg. 40(8) substituted (13.3.2018) by <a href="#">The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208)</a> , regs. 1(3), <b>10(10)(a)(ii)</b> (with reg. 21)      |
| <b>F3</b> | Words in reg. 40(9)(a) substituted (23.4.2019) by <a href="#">The Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 (S.I. 2019/755)</a> , regs. 1, <b>6(6)(a)(i)</b>   |
| <b>F4</b> | Words in reg. 40(9)(a) substituted (23.4.2019) by <a href="#">The Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 (S.I. 2019/755)</a> , regs. 1, <b>6(6)(a)(ii)</b>  |
| <b>F5</b> | Words in reg. 40(9)(c) substituted (23.4.2019) by <a href="#">The Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 (S.I. 2019/755)</a> , regs. 1, <b>6(6)(b)</b>  |
| <b>F6</b> | Words in reg. 40(11) substituted (13.3.2018) by <a href="#">The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208)</a> , regs. 1(3), <b>10(10)(b)(i)</b> (with reg. 21)      |
| <b>F7</b> | Words in reg. 40(11) substituted (13.3.2018) by <a href="#">The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208)</a> , regs. 1(3), <b>10(10)(b)(ii)</b> (with reg. 21)     |

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)