STATUTORY RULES OF NORTHERN IRELAND

2005 No. 399

INSOLVENCY

The Insurers (Winding-Up) Rules (Northern Ireland) 2005

Made - - - -	*18th August 2005*
To be laid before Parliament	
Coming into operation	*19th September 2005*

The Lord Chancellor, in exercise of the powers conferred upon him by Article 359 of the Insolvency (Northern Ireland) Order 1989(**1**), and section 379 of the Financial Services and Markets Act 2000(**2**) and of all other powers enabling him in that behalf, with the concurrence of the Department of Enterprise, Trade and Investment(**3**), and after consulting the committee existing for that purpose under Article 360 of the said Order, hereby makes the following Rules:

Citation, commencement and revocation

1.—(1) These Rules may be cited as the Insurers (Winding-Up) Rules (Northern Ireland) 2005 and shall come into operation on 19th September 2005.

(2) The Insurance Companies (Winding-Up) Rules (Northern Ireland) 1992(**4**) are hereby revoked.

Interpretation

2.—(1) In these Rules—

"the 2000 Act" means the Financial Services and Markets Act 2000;

"the Authority" means the Financial Services Authority;

"company" means an insurer which is being wound up;

(**1**) The Insolvency (Northern Ireland) Order 1989 (S.I.1989/2405 (N.I. 19)); Article 359 is applied by section 372 of the Financial Services and Markets Act 2000 and was amended by Regulation 4(2) of the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 223)

(**2**) The Financial Services and Markets Act 2000 (2000 c. 8)

(**3**) Formerly the Department of Economic Development; *see* the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)), Article 3(5)

(**4**) The Insurance Companies (Winding-Up) Rules (Northern Ireland) 1992 (S.R. 1992 No. 307)

"contract of general insurance" and "contract of long-term insurance" have the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**5**);

"the Department" means the Department of Enterprise, Trade and Investment;

"excess of the long-term business assets" means the amount, if any, by which the value of the assets representing the fund or funds maintained by the company in respect of its long-term business as at the liquidation date exceeds the value as at that date of the liabilities of the company attributable to that business;

"excess of the other business assets" means the amount, if any, by which the value of the assets of the company which do not represent the fund or funds maintained by the company in respect of its long-term business as at the liquidation date exceeds the value as at that date of the liabilities of the company (other than liabilities in respect of share capital) which are not attributable to that business;

"Financial Services Compensation Scheme" means the scheme established under section 213 of the 2000 Act;

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

"the general regulations" means the Insolvency Regulations (Northern Ireland) 1996(**6**);

"insurer" has the meaning given by Article 2 of the Financial Services and Markets Act 2000 (Insolvency) (Definition of "Insurer") Order 2001(**7**);

"linked liability" means any liability under a policy the effecting of which constitutes the carrying on of long-term business the amount of which is determined by reference to—

(a) the value of property of any description (whether or not specified in the policy),

(b) fluctuations in the value of such property,

(c) income from any such property, or

(d) fluctuations in an index of the value of such property;

"linked policy" means a policy which provides for linked liabilities and a policy which when made provided for linked liabilities is deemed to be a linked policy even if the policy holder has elected to convert his rights under the policy so that at the liquidation date there are no longer linked liabilities under the policy;

"liquidation date" means the date of the winding-up order or the date on which a resolution for the winding-up of the company is passed by the members of the company (or the policy holders in the case of a mutual insurance company) and, if both a winding-up order and winding-up resolution have been made, the earlier date;

"long-term business" means the business of effecting or carrying out any contract of long-term insurance;

"non-linked policy" means a policy which is not a linked policy;

"the 1979 Order" means the Industrial Assurance (Northern Ireland) Order 1979(**8**);

"the 1986 Order" means the Companies (Northern Ireland) Order 1986(**9**);

(**5**) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) as amended by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (S.I. 2003/1475) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476)

(**6**) The Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996 No. 574)

(**7**) The Financial Services and Markets Act 2000 (Insolvency) (Definition of "Insurer") Order 2001 (S.I. 2001/2634) as amended by the Financial Services and Markets Act 2000 (Administration Orders relating to Insurers) Order 2002 (S.I. 2002/1242)

(**8**) The Industrial Assurance (Northern Ireland) Order 1979 (S.I. 1979/1574 (N.I. 13))

(**9**) The Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989;

"other business", in relation to a company carrying on long-term business, means such of the business of the company as is not long-term business;

"the principal Rules" means the Insolvency Rules (Northern Ireland) 1991(**10**);

"stop order", in relation to a company, means an order of the High Court made under section 376(2) of the 2000 Act, ordering the liquidator to stop carrying on the long-term business of the company;

"unit" in relation to a policy means any unit (whether or not described as a unit in the policy) by reference to the numbers and value of which the amount of the liabilities under the policy at any time is measured.

(2) Unless the context otherwise requires, words or expressions contained in these Rules bear the same meaning as in the principal Rules, the general regulations, the 1989 Order, the 2000 Act or any statutory modification thereof respectively.

(3) The Interpretation Act (Northern Ireland) 1954(**11**) shall apply to these Rules as it applies to an Act of the Northern Ireland Assembly.

Application

3.—(1) These Rules apply to proceedings for the winding-up of an insurer which commence on or after the date on which these Rules come into operation.

(2) These Rules supplement the principal Rules and the general regulations which continue to apply to the proceedings in the winding-up of an insurer under the 1989 Order as they apply to proceedings in the winding-up of any company under that Order; but in the event of a conflict between these Rules and the principal Rules or the general regulations these Rules prevail.

Appointment of liquidator

4. Where the High Court is considering whether to appoint a liquidator under—

(a) Article 118(4) of the 1989 Order (appointment of liquidator where conflict between creditors and contributories), or

(b) Article 119 of the 1989 Order (appointment of liquidator following administration or voluntary arrangement),

the manager of the Financial Services Compensation Scheme may appear and make representations to the Court as to the person to be appointed.

Maintenance of separate financial records for long-term and other business in winding-up

5.—(1) This rule applies in the case of a company carrying on long-term business in whose case no stop order has been made.

(2) The liquidator shall prepare and keep separate financial records in respect of the long-term business and the other business of the company.

(3) Paragraphs (4) and (5) apply in the case of a company to which this rule applies which also carries on permitted general business ('a hybrid insurer').

(**10**) The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No. 261) and the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No. 549)

(**11**) The Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.))

(4) Where, before the liquidation date, a hybrid insurer has, or should properly have, apportioned the assets and liabilities attributable to its permitted general business to its long-term business for the purposes of any accounts, those assets and liabilities must be apportioned to its long-term business for the purposes of complying with paragraph (2) of this rule.

(5) Where, before the liquidation date, a hybrid insurer has, or should properly have, apportioned the assets and liabilities attributable to its permitted general business other than to its long-term business for the purposes of any accounts, those assets and liabilities must be apportioned to its other business for the purposes of complying with paragraph (2) of this rule.

(6) Regulation 10 of the general regulations (financial records) applies only in relation to the company's other business.

(7) In relation to the long-term business, the liquidator shall, with a view to the long-term business of the company being transferred to another insurer, maintain such accounting, valuation and other records as will enable such other insurer upon the transfer being effected to comply with the requirements of any rules made by the Authority under Part X of the 2000 Act relating to accounts and statements of insurers.

(8) In paragraphs (4) and (5)—

(a) "accounts" means any accounts or statements maintained by the company in compliance with a requirement under the 1986 Order or any rules made by the Authority under Part X of the 2000 Act;

(b) "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.

Valuation of general business policies

6. Except in relation to amounts which have fallen due for payment before the liquidation date and liabilities referred to in paragraph 2(1)(b) of Schedule 1, the holder of a general business policy shall be admitted as a creditor in relation to his policy without proof for an amount equal to the value of the policy and for this purpose the value of a policy shall be determined in accordance with Schedule 1.

Valuation of long-term policies

7.—(1) This Rule applies in relation to a company's long-term business where no stop order has been made.

(2) In relation to a claim under a policy which has fallen due for payment before the liquidation date, a policy holder shall be admitted as a creditor without proof for such amount as appears from the records of the company to be due in respect of that claim.

(3) In all other respects a policy holder shall be admitted as a creditor in relation to his policy without proof for an amount equal to the value of the policy and for this purpose the value of a policy of any class shall be determined in the manner applicable to policies of that class provided by Schedules 2, 3 and 4.

(4) This Rule applies in relation to a person entitled to apply for a free paid-up policy under Article 30 of the 1979 Order (provisions as to forfeited policies) and to whom no such policy has been issued before the liquidation date (whether or not it was applied for) as if such a policy had been issued immediately before the liquidation date—

(a) for the minimum amount determined in accordance with Article 30(2) and (3) of the 1979 Order, or

(b) if the liquidator is satisfied that it was the practice of the company during the five years immediately before the liquidation date to issue policies under Article 30 of that Order in

excess of the minimum amounts so determined, for the amount determined in accordance with that practice.

8.—(1) This Rule applies in relation to a company's long-term business where a stop order has been made.

(2) In relation to a claim under a policy which has fallen due for payment on or after the liquidation date and before the date of the stop order, a policy holder shall be admitted as a creditor without proof for such amount as appears from the records of the company and of the liquidator to be due in respect of that claim.

(3) In all other respects a policy holder shall be admitted as a creditor in relation to his policy without proof for an amount equal to the value of the policy and for this purpose the value of a policy of any class shall be determined in the manner applicable to policies of that class provided by Schedule 5.

(4) Rule 7(4) applies for the purposes of this Rule as if references to the liquidation date (other than that in sub-paragraph (b) of that paragraph) were references to the date of the stop order.

Attribution of liabilities to company's long-term business

9.—(1) This Rule applies in the case of a company carrying on long-term business if at the liquidation date there are liabilities of the company in respect of which it is not clear from the accounting and other records of the company whether they are or not attributable to the company's long-term business.

(2) The liquidator shall, in such manner and according to such accounting principles as he shall determine, identify the liabilities referred to in paragraph (1) as attributable or not attributable to a company's long-term business and those liabilities shall for the purpose of the winding-up be deemed as at the liquidation date to be attributable or not as the case may be.

(3) For the purpose of paragraph (2) the liquidator may—

(a) determine that some liabilities are attributable to the company's long-term business and that others are not (the first method); or

(b) determine that a part of a liability shall be attributable to the company's long-term business and that the remainder of the liability is not (the second method),

and he may use the first method for some of the liabilities and the second method for the remainder of them.

(4) Notwithstanding anything in paragraph (1) to (3), the High Court may order that the determination of which (if any) of the liabilities referred to in paragraph (1) are attributable to the company's long-term business and which (if any) are not shall be made in such manner and by such methods as the Court may direct or the Court may itself make the determination.

Attribution of assets to company's long-term business

10.—(1) This Rule applies in the case of a company carrying on long-term business if at the liquidation date there are assets of the company in respect of which—

(a) it is not clear from the accounting and other records of the company whether they do or do not represent the fund or funds maintained by the company in respect of its long-term business, and

(b) it cannot be inferred from the source of the income out of which those assets were provided whether they do or do not represent those funds.

(2) Subject to paragraph (6) the liquidator shall determine which (if any) of the assets referred to in paragraph (1) are attributable to those funds and which (if any) are not and those assets shall,