1992 No. 307

COMPANIES

The Insurance Companies (Winding-Up) Rules (Northern Ireland) 1992

Made . . . . . *2nd July 1992*

Coming into operation . . *1st September 1992*

To be laid before Parliament

The Lord Chancellor, in exercise of the powers conferred on him by Article 359 of the Insolvency (Northern Ireland) Order 1989(**a**) and section 59 of the Insurance Companies Act 1982(**b**), with the concurrence of the Department of Economic Development, and after consulting the committee existing for that purpose under Article 360 of the Insolvency (Northern Ireland) Order 1989, hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Insurance Companies (Winding-Up) Rules (Northern Ireland) 1992 and shall come into operation on 1st September 1992.

Interpretation

2.—(1) In these Rules—

"the 1982 Act" means the Insurance Companies Act 1982;

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

"the Department" means the Department of Economic Development;

"excess of the long term business assets" means the amount, if any, by which the value as at the date of the winding-up order of the assets representing the fund or funds maintained by the company in respect of its long term business 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 as at the date of the winding-up order 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 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;

(**a**) S.I. 1989/2405 (N.I. 19)

(**b**) 1982 c. 50; section 59 was amended by Part II of Schedule 1 to the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 [S.I. 1986/1035 (N.I. 9)] and by paragraph 37 of Part II of Schedule 9 to the Insolvency (Northern Ireland) Order 1989 [S.I. 1989/2405 (N.I. 19)]

"general business policy" means a policy the effecting of which by the company constitutes the carrying on of general business;

"the general regulations" means the Insolvency Regulations (Northern Ireland) 1991(**a**);

"insurance company" means an insurance company to which Part II of the 1982 Act applies;

"linked liability" means any liability under a policy the effecting of which constitutes the carrying on of long term insurance 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 shall be deemed to be a linked policy even if the policy holder has elected to convert his rights under the policy so that at the date of the winding-up order there are no longer linked liabilities under the policy;

"long term policy" means a policy the effecting of which by the company constitutes the carrying on of long term business;

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

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

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

"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(**d**);

"stop order" in relation to a company means an order of the court, made under section 56(2) of the 1982 Act, ordering the liquidator to stop carrying on the long term business of the company;

"unit" in relation to a linked 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 linked liabilities under the policy at any time is measured.

(**a**) S.R. 1991 No. 388
(**b**) S.I. 1979/1574 (N.I. 13)
(**c**) S.I. 1986/1032 (N.I. 6)
(**d**) S.R. 1991 No. 364

(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 1982 Act, the 1989 Order, or any statutory modification thereof respectively.

Application

3.—(1) These Rules apply to proceedings for the winding up of an insurance company 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 insurance company under the 1989 Order as they apply to proceedings in the winding up of any company under that Order but in the event of conflict between these Rules and the principal Rules or the general regulations these Rules prevail.

Appointment of liquidator

4. Where the High Court considers the appointment of a liquidator under—

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

(*b*) Article 119 of that Order (High Court appointment of liquidator following administration or voluntary arrangement),

the Policyholders Protection Board may appear on the application or (as the case may be) the petition, and make representations as to the person to be appointed.

Separation of long term and other business in winding-up

5.—(1) This Rule applies in the case of a company carrying on long term business.

(2) The assets of the company which in accordance with section 55(3) and (4) of the 1982 Act are available for meeting the liabilities of the company attributable to its long term business shall, in pursuance of Article 126 of the 1989 Order, be applied in discharge of those liabilities as though those assets and those liabilities were the assets and liabilities of a separate company.

(3) The assets of the company which in accordance with section 55(3) and (4) of the 1982 Act are available for meeting the liabilities of the company attributable to its other business shall, in pursuance of Article 126 of the 1989 Order, be applied in discharge of those liabilities as though those assets and those liabilities were the assets and liabilities of a separate company.

Valuation of general business policies

6. Except in relation to amounts which have fallen due for payment before the date of the winding-up order, 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 date of the winding-up order, 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 and to whom no such policy has been issued before the date of the winding-up order (whether or not it was applied for) as if such a policy had been issued immediately before the date of the winding-up order—

(*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 date of the winding-up order 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 date of the winding-up order 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 date of the winding-up order (other than that in sub-paragraph (*b*) of that paragraph) were references to the date of the stop order.

Attribution of assets and liabilities to the long term business

9.—(1) This Rule applies in the case of a company carrying on long term business if at the date of the winding-up order 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 are 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 purposes of the winding up be deemed as at the date of the winding-up order to be so attributable or not as the case may be.

(3) In making his determination under this Rule the liquidator may determine that some liabilities are attributable to the company's long term business and that others are not or he may determine that a part of a liability is attributable to the company's long term business and that the remainder of that liability is not and he may use one method for some of the liabilities and the other method for the remainder of them.

10.—(1) This Rule applies in the case of a company carrying on long term business if at the date of the winding-up order 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, for the purpose of the winding up, be deemed as at the date of the winding-up order to represent those funds or not in accordance with the liquidator's determination.

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

(*a*) determine that some of those assets shall be attributable to those funds and that others of them shall not (the first method); or

(*b*) determine that a part of the value of one of those assets shall be attributable to those funds and that the remainder of that value shall not (the second method),

and he may use the first method for some of those assets and the second method for others of them.

(4) (*a*) In making the attribution the liquidator's objective shall in the first instance be so far as possible to reduce any deficit that may exist, at the date of the winding-up order and before any attribution is made, either in the company's long term business or in its other business.

(*b*) If there is a deficit in both the company's long term business and its other business the attribution shall be in the ratio that the amount of the one deficit bears to the amount of the other until the deficits are eliminated.

(*c*) Thereafter the attribution shall be in the ratio which the aggregate amount of the liabilities attributable to the company's long term business bears to the aggregate amount of the liabilities not so attributable.