

Insurance Companies Act, 1981  
with effect from 1st January, 1982

The new U.K. Insurance Companies' Act 1981 received Royal Assent on 2nd July 1981 and it will largely be brought into effect at the beginning of 1982.

The Act implements the E.E.C. Life Establishment Directive of March, 1979 and completes the implementation of the E.E.C. Non-Life Establishment Directive of 1973 (no substantial change is made to the system of supervision dealt with by the Insurance Companies Act, 1974, itself largely a consolidation measure) including, inter alia, matching and localisation of assets. The Act also consolidates the regulations already made under the European Communities Act 1972 to implement the latter Directive. In addition, the Act:

- applies to certain agents of insurance companies the requirement already applying to directors, controllers, managers and general representatives of insurance companies that the person concerned must be fit and proper;
- enables the Secretary of State for Trade to make regulations so that insurance companies providing only benefits in kind may be exempted from the requirement to be authorised and from the requirements of Part II of the Insurance Companies Act 1974 (as amended by the Act);
- amends the provisions of the 1974 Act relating to the use of the assets of the life business of an insurance company and the calculation and distribution of the surplus of those assets over the corresponding liabilities.

As regards the Co-insurance Directive of 1980, as the U.K. already has freedom of co-insurance, it was only necessary for the Act to include a provision on the amount of outstanding claims reserves required to be held by 'followers' on a co-insurance contract.

Editor

### The Insurance Companies Act 1981

The Insurance Companies Act 1981 is a cleaning up of the United Kingdom legislation on the supervision of insurance companies. It amends the Insurance Companies Act 1974 which consolidated most of previous legislation in this sphere. That previous legislation antedated the EEC directive on the control of insurance other than life assurance. (No 73/239/EEC of July 25, 1973). The directive required various changes to be made to UK law. Some of these changes were made by regulations issued under the Insurance Companies Act 1974, and others by regulations issued by the European Communities Act 1972, which in effect overrode provisions of the 1974 Act. Further changes have now become necessary because of the EEC life assurance directive of 1979. (No 79/267/EEC of March 5, 1979). The 1981 Act now embodies the changes required by both the 1973 and 1979 EEC regulations and also takes the opportunity of amending the law in various respects, mostly minor.

Part I of the new Act starts by stating the classification of insurance business used by the EEC, namely, seven classes of long-term business and 17 classes of general business (s.1). It requires all insurance companies carrying on business in the UK to obtain authorisation from the Department of Trade (s.3). Applications for authorisation must be dealt with in six months (s.5). Authorisation will not be given for a company to transact both long term and general business if it is not already doing so (s.6). Nor will a UK company be authorised if the Secretary of State considers that any director, controller or main agent is not a fit and proper person for his position. The reference to 'main agent' is new. A main agent is described as an agent for general business who is authorised to enter into insurance contracts without any limit on the aggregate of premiums or with a limit in excess of 10 per cent of the company's last recorded gross premium (s.7). Section 8 applies similar provisions to insurance companies whose head office is in the EEC.

Section 9 applies to companies whose head office is outside the EEC. These may be required additionally to show that they have assets in the UK and, unless they are seeking authorisation for reinsurance only, to make a deposit. The 1981 Act adds a new section to the 1974 Act (s.22.A) which provides that such companies must keep in the UK proper accounts and records of their UK business.

All overseas companies must have a designated representative, with power to act generally, resident in the U.K.

Sections 11, 12 and 13 deal with the withdrawal of authorisations and the procedure that must be followed by the Secretary of State. Section 14 prescribes new maximum penalties for carrying on business in contravention of the Act or supplying false information.

Part II of the Act deals with the regulation of insurance companies. It begins by providing that an insurance company shall not carry on any activities otherwise than in connection with or for the purposes of its insurance business (s.15). Section 17 requires companies which transact long-term business to have an actuarial investigation every year instead of every three years. Section 18 provides that regulations shall be issued prescribing who in a company must sign the various returns and report required by legislation.

Sections 19 and 20 tighten up the provisions of the 1974 Act which are designed to prevent assets of long term business being used or transferred except for the purpose of such business.

New sections (26 A - D) are added to the 1974 Act with reference to margins of solvency. Regulations will prescribe these margins for:

- (a) UK companies and companies transacting reinsurance only in the UK;
- (b) External (non-EEC) companies, with the exception of (i) those transacting reinsurance only or (ii) those authorised to transact insurance in the UK and in one or more other EEC countries whose deposit is not in the UK.

By the new section C26 companies supervised in other EEC states are required to secure that their assets in the UK do not fall below the liabilities on their UK business. Section D26 gives power to prescribe by regulation where assets shall be held and their appropriateness so far as their assets exceed their liabilities on UK business.

Sections 22 and 23 of the 1981 Act modify the powers of the Secretary of State to intervene in the affairs of an insurance company.

Where long term business is to be transferred from one insurance company to another the 1974 Act requires the transfer to be sanctioned by a court. Section 25 of the new Act deals with transfers of general business for which the sanction of the Secretary of State will be required in future. Section 28 amends the requirements for notification of changes of directors, chief executives and main agents. The remaining provisions are of minor importance only.

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