

**THE INSURERS REORGANISATION AND WINDING-UP DIRECTIVE  
(2001/17/EC): A TRANSPOSITION NOTE**

The Directive was implemented in the UK through Regulations (SI 1102/2003) made by HM Treasury. The Regulations implement the directive throughout the UK and makes the necessary amendments to Scottish and Northern Ireland legislation.

This note only describes the transposition of the main elements of the directive.

| <b>Article</b> | <b>Purpose</b>   | <b>Implementation</b>  |
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| Title II       | Reorganisation Measures  |  |
| 4              | Adoption of reorganisation measures – Applicable Law<br><br>(1) Only competent authorities in the home member state shall be entitled to decide on reorganisation measures.<br><br>(3) Reorganisation measures will be effective throughout the Community without further formalities. | Regulation 4 – this prohibits a UK court from initiating or approving a reorganisation measure or winding-up proceeding with respect to an insurer based in another Member State.<br><br>Regulation 6(1) – requires any insolvency measure (whether a reorganisation or winding-up proceeding) by another Member State to have effect as if it were part of general UK insolvency law. |
| 5              | Information to the supervisory authorities.  | Regulation 9 – this requires the court to inform the FSA (as the supervisory authority in the UK) of any decision to open reorganisation or winding-up proceedings.<br><br>Regulation 10 – requires the FSA, to inform the regulatory authorities in other Member States of any decision in the UK to open reorganisation or winding-up proceedings.                                   |
| 6              | Publication  | Regulation 11 – requires publication in the <i>Official Journal of the European Communities</i> of summary information concerning reorganisation and winding-up proceedings opened in the UK.  |
| 7              | Information to known creditors – right to lodge  | Existing UK law does not require claims to be formally lodged in order   |

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|           | claims   | to receive payments. No action is, therefore, needed to implement this article of the Directive as it does not impact on existing legislation.   |
| Title III | Winding-Up Proceedings   |  |
| 8         | <p>Opening of winding-up proceedings – information to the supervisory authorities.</p> <p>(1) Only competent authorities in the home member state shall be entitled to decide the opening of winding-up proceedings.</p> <p>(2) Winding-up measures shall be recognised throughout the Community without further formalities.</p> <p>(3) Supervisory authorities to be informed.</p> | <p>See Regulation 4 above.</p> <p>See Regulation 6(1) above.</p> <p>See Regulations 8 and 10 above.</p>  |
| 9         | Applicable law   | Regulation 37 implements this article by stating that winding-up proceedings within the UK will be conducted in accordance with the general law of insolvency of the UK.   |
| 10        | Treatment of insurance claims  | <p>Part IV of the Regulations implements this article. The Treasury is implementing the directive using Article 10's option (b) – insurance claims to have priority over all the assets of the insurer with the exception of preferential creditors and creditors with claims on assets subject to rights in rem.</p> <p>Regulation 21 implements this article with regard to long term insurers, general insurers and composite insurers where the long term business of that insurer has been transferred to another provider.</p> |

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|    |   | <p>Regulations 22-30 implement article 10 with respect to composite insurers where the long term business cannot be transferred to another provider. In these circumstances the regulations require the two parts (long term insurance and general insurance) of the business to be wound up as if they were separate companies. However, any surplus on one side should be used to cover any shortfall on the other.</p> <p>Regulation 33 requires any voluntary arrangement proposed to treat any distribution to creditors in accordance with the provisions of article 10.</p> |
| 11 | Subrogation to a guarantee scheme               | Regulation 32 provides that where an insurance creditor has assigned his/her rights to the Financial Services Compensation Scheme (FSCS) then when the insurer is wound up the debt will be paid to the FSCS in the same order of priority as any other insurance debt. This will allow the FSCS to stand in the place of the insurance creditor. This provision preserves the current practice.   |
| 12 | Representation of preferential claims by assets | FSA rules already require insurers to hold sufficient assets to cover all liabilities. Therefore, no additional measures are required to implement this article.   |
| 13 | Withdrawal of authorisation                     | FSA rules already require the withdrawal of authorisation from an insurer which enters winding-up proceedings as required by this article. No further action is, therefore, required to implement this article.  |
| 14 | Publication                                     | See Regulation 11 above.   |
| 15 | Information to known creditors                  | Regulation 12(1)– requires all known creditors to be informed in writing as soon as reasonably practicable that winding-up proceedings have been   |

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|          |  | commenced, together with other relevant information.   |
| 16       | Right to lodge claims  | Creditors, wherever domiciled already have a right to lodge claims under UK law. No further provision is necessary to implement this article.                                    |
| 17       | Languages and form<br><br>(1) Information to known creditors to be headed in a prescribed form and, in the case of insurance creditors, in an official language of the Member state where the creditor resides.<br><br>(2) Creditors may submit claims in an official language of the Member State in which they reside. | Regulation 12(7) and 12(8) implements this article.<br><br>Regulation 13 implements this article.  |
| 18       | Regular information to creditors   | Regulation 14 requires a liquidator to send a report to creditors once every twelve months. This does not prevent a court from providing for reports to be sent more frequently. |
| Title IV | Provisions common to reorganisation measures and winding-up proceedings  |  |
| 19       | Effects on certain contracts and rights  | Regulations 38-40  |
| 20       | Third party rights in rem  | Regulation 41  |
| 21       | Reservation of title   | Regulation 42  |
| 22       | Set-off  | Regulation 43  |
| 23       | Regulated markets  | Regulation 44  |
| 24       | Detrimental acts   | Regulation 45  |
| 25       | Protection of third-party purchasers   | Regulation 46  |
| 26       | Lawsuits pending   | Regulation 47  |
| 27       | Administrators and liquidators<br><br>(1) Appointment to be evidenced by a copy of the original decision appointing him. Recognition in other Member States must be  | Regulation 6(3)  |

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|    | <p>recognised without further formality (although a translation of the appointment order can be required).</p> <p>(2) Administrators and liquidators shall be entitled to exercise within the territory of all Member States the powers which they can exercise in their home Member State.</p> <p>(3) In exercising powers in accordance with home Member State legislation the administrator or liquidator shall comply with the law of the Member State within whose territory he wishes to take action.</p> | <p>Regulation 6(2)</p> <p>Regulation 6(4)</p>   |
| 29 | Professional secrecy  | Regulation 16 – this applies existing legislation concerning confidential information to information disclosed in connection with the provisions of this directive. |
| 30 | Branches of third country insurance undertakings  | Part VI of the Regulations implement this article (Regulations 48-50). Branches of third country insurers can continue to be wound-up by the UK authorities.        |

**THE INSURERS REORGANISATION AND WINDING-UP DIRECTIVE  
(2001/17/EC): A TRANSPOSITION NOTE IN RELATION TO LLOYD'S**

The Directive was implemented in the UK originally through Regulations (SI 1102/2003) made by HM Treasury. Those Regulations implemented the directive throughout the UK, except in relation to Lloyd's and made the necessary amendments to Scottish and Northern Ireland legislation. Those Regulations were replaced by further Regulations in 2004 (SI 2004/353) (referred to hereafter as the "principal Regulations") made by HM Treasury which adapted those original provisions to take into account the new UK provisions relating to administration of companies contained in Schedule B1 to the Insolvency Act 1986 and introduced by the Enterprise Act 2002. The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 ("the Lloyd's Regulations") to which this Note relates provide for the application of the principal Regulations in the case of Lloyd's. The original transposition note is also attached and should be read in conjunction with this one.

This note only describes the transposition of the main elements of the directive in relation to Lloyd's to the extent that special provisions for the Lloyd's market have been found to be necessary.

| <b>Article</b> | <b>Purpose</b>                              | <b>Implementation</b>  |
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| Title I        | Definitions                                 |  |
| 2              | Definition of insurance undertaking         | Regulations 3, 4 and 5 describe the Lloyd's market reorganisation order, the conditions that have to be met before an application can be made and the objectives of the of the order. Regulation 13 provides for the application of the principal Regulations to members and former members of Lloyd's who are within the scope of a Lloyd's market reorganisation order   |
| Title II       | Reorganisation Measures                     |  |
| 5              | Information to the supervisory authorities. | Regulation 9 of the principal Regulations as adapted by regulation 33 of the Lloyd's Regulations – this requires the court to inform the FSA (as the supervisory authority in the UK) of any decision to open reorganisation or winding-up proceedings.<br><br>Regulation 10 as adapted by regulation 34 – requires the FSA, to inform the regulatory authorities in other Member States of any decision in the UK to open reorganisation or |

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|           |  | winding-up proceedings.  |
| 6         | Publication  | Regulation 11 as adapted by regulation 35 – requires publication in the <i>Official Journal of the European Communities</i> of summary information concerning a Lloyd's market reorganisation order and measures or proceedings in relation to particular members or former members of Lloyd's..   |
| 7         | Information to known creditors – right to lodge claims   | Existing UK law does not require claims to be formally lodged in order to receive payments. No action is, therefore, needed to implement this article of the Directive as it does not impact on existing legislation.  |
| Title III | Winding-Up Proceedings   |  |
| 8         | Opening of winding-up proceedings – information to the supervisory authorities.<br><br>(3) Supervisory authorities to be informed. | See principal Regulations 8 and 10 above.  |
| 9         | Applicable law   | Regulation 37 as adapted by regulation 46(4) implements this article by stating that winding-up proceedings within the UK will be conducted in accordance with the general law of insolvency of the UK.  |
| 10        | Treatment of insurance claims  | Part 4 of the principal Regulations implements this article. These provisions have been adapted by regulations 40 and 43 of the Lloyd's Regulations. The Treasury is implementing the directive using Article 10's option (b) – insurance claims to have priority over all the assets of the insurer with the exception of preferential creditors and creditors with claims on assets subject to rights in rem.<br><br>Detailed adaptations are made in regulation 40 to allow for the |

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|          |   | provisions of the principal Regulations to be applied to members of Lloyd's of all descriptions. Regulation 41 of the Lloyd's Regulations provides that in relation to risks that are covered by a member under a reinsurance to close contract, if a debt would be treated as an insurance debt but for it being subject of a reinsurance to close contract it is to be regarded as an insurance debt of the member or members who at the time of the Lloyd's market reorganisation order have reinsured to close. |
| 14       | Publication   | See Regulation 11 above.  |
| 15       | Information to known creditors  | Regulation 12(1) as adapted by regulation 36 – requires all known creditors to be informed in writing as soon as reasonably practicable that winding-up proceedings have been commenced, together with other relevant information.  |
| 16       | Right to lodge claims   | Creditors, wherever domiciled already have a right to lodge claims under UK law. No further provision is necessary to implement this article.   |
| 17       | Languages and form<br><br>Creditors may submit claims in an official language of the Member State in which they reside. | Regulation 13 as adapted by regulation 37 implements this article.  |
| 18       | Regular information to creditors  | Regulation 14 as adapted by regulation 38 requires a liquidator to send a report to creditors once every twelve months. This does not prevent a court from providing for reports to be sent more frequently.  |
| Title IV | Provisions common to reorganisation measures and winding-up proceedings   |   |
| 19       | Effects on certain contracts and rights   | Articles 19 to 26 require no special adaptations  |
| 20       | Third party rights in rem   | Regulation 41 of the principal Regulations implemented this.  |

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|  |  | Consequently, the definition in regulation 2(1) of affected market participants does not include relevant trust funds at Lloyd's or their trustees. |
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