DIRECTIVE 2001/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 March 2001

on the reorganisation and winding-up of insurance undertakings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 55 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance [4], as supplemented by Directive 92/49/EEC [5], and the First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance [6], as supplemented by Directive 92/96/EEC [7], provide for a single authorisation of the insurance undertakings granted by the home Member State supervisory authority. This single authorisation allows the insurance undertaking to carry out its activities in the Community by means of establishment or free provision of services without any further authorisation by the host Member State and under the sole prudential supervision of the home Member State supervisory authorities.

(2) The insurance directives providing a single authorisation with a Community scope for the insurance undertakings do not contain coordination rules in the event of winding-up proceedings. Insurance undertakings as well as other financial institutions are expressly excluded from the scope of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [8]. It is in the interest of the proper functioning of the internal market and of the protection of creditors that coordinated rules are established at Community level for winding-up proceedings in respect of insurance undertakings.

(3) Coordination rules should also be established to ensure that the reorganisation measures, adopted by the competent authority of a Member State in order to preserve or restore the financial soundness of an insurance undertaking and to prevent as much as possible a winding-up situation, produce full effects throughout the Community. The reorganisation measures covered by this Directive are those affecting pre-existing rights of parties other than the insurance undertaking itself. The measures provided for in Article 20 of Directive 73/239/EEC and Article 24 of Directive 79/267/EEC should be included within the scope of this Directive provided that they comply with the conditions contained in the definition of reorganisation measures.

(4) This Directive has a Community scope which affects insurance undertakings as defined in Directives 73/239/EEC and 79/267/EEC which have their head office in the Community, Community branches of insurance undertakings which have their head office in third countries and creditors resident in the Community. This Directive should not regulate the effects of the reorganisation measures and winding-up proceedings vis-à-vis third countries.

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[1] OJ C 71, 19.3.1987, p. 5, and OJ C 253, 6.10.1989, p. 3.

[2] OJ C 319, 30.11.1987, p. 10.

[3] Opinion of the European Parliament of 15 March 1989 (OJ C 96, 17.4.1989, p. 99), confirmed on 27 October 1999, Council Common Position of 9 October 2000 (OJ C 344, 1.12.2000, p. 23) and Decision of the European Parliament of 15 February 2001.

[4] OJ L 228, 16.8.1973, p. 3. Directive as last amended by European Parliament and Council Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

[5] Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance directive) (OJ L 228, 11.8.1992, p. 1).

[6] OJ L 63, 13.3.1979, p. 1. Directive as last amended by Directive 95/26/EC.

[7] Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance directive) (OJ L 360, 9.12.1992, p. 1).

[8] OJ L 160, 30.6.2000, p. 1.

(5) This Directive should concern winding-up proceedings whether or not they are founded on insolvency and whether they are voluntary or compulsory. It should apply to collective proceedings as defined by the home Member State's legislation in accordance with Article 9 involving the realisation of the assets of an insurance undertaking and the distribution of their proceeds. Winding-up proceedings which, without being founded on insolvency, involve for the payment of insurance claims a priority order in accordance with Article 10 should also be included in the scope of this Directive. Claims by the employees of an insurance undertaking arising from employment contracts and employment relationships should be capable of being subrogated to a national wage guarantee scheme; such subrogated claims should benefit from the treatment determined by the home Member State's law (lex concursus) according to the principles of this Directive. The provisions of this Directive should apply to the different cases of winding-up proceedings as appropriate.

(6) The adoption of reorganisation measures does not preclude the opening of winding-up proceedings. Winding-up proceedings may be opened in the absence of, or following, the adoption of reorganisation measures and they may terminate with composition or other analogous measures, including reorganisation measures.

(7) The definition of branch, in accordance with existing insolvency principles, should take account of the single legal personality of the insurance undertaking. The home Member State's legislation should determine the way in which the assets and liabilities held by independent persons who have a permanent authority to act as agent for an insurance undertaking should be treated in the winding-up of an insurance undertaking.

(8) A distinction should be made between the competent authorities for the purposes of reorganisation measures and winding-up proceedings and the supervisory authorities of the insurance undertakings. The competent authorities may be administrative or judicial authorities depending on the Member State's legislation. This Directive does not purport to harmonise national legislation concerning the allocation of competences between such authorities.

(9) This Directive does not seek to harmonise national legislation concerning reorganisation measures and winding-up proceedings but aims at ensuring mutual recognition of Member States' reorganisation measures and winding-up legislation concerning insurance undertakings as well as the necessary cooperation. Such mutual recognition is implemented in this Directive through the principles of unity, universality, coordination, publicity, equivalent treatment and protection of insurance creditors.

(10) Only the competent authorities of the home Member State should be empowered to take decisions on winding-up proceedings concerning insurance undertakings (principle of unity). These proceedings should produce their effects throughout the Community and should be recognised by all Member States. All the assets and liabilities of the insurance undertaking should, as a general rule, be taken into consideration in the winding-up proceedings (principle of universality).

(11) The home Member State's law should govern the winding-up decision concerning an insurance undertaking, the winding-up proceedings themselves and their effects, both substantive and procedural, on the persons and legal relations concerned, except where this Directive provides otherwise. Therefore all the conditions for the opening, conduct and closure of winding-up proceedings should in general be governed by the home Member State's law. In order to facilitate its application this Directive should include a non-exhaustive list of aspects which, in particular, are subject to the general rule of the home Member State's legislation.

(12) The supervisory authorities of the home Member State and those of all the other Member States should be informed as a matter of urgency of the opening of winding-up proceedings (principle of coordination).

(13) It is of utmost importance that insured persons, policy-holders, beneficiaries and any injured party having a direct right of action against the insurance undertaking on a claim arising from insurance operations be protected in winding-up proceedings. Such protection should not include claims which arise not from obligations under insurance contracts or insurance perations but from civil liability caused by an agent in negotiations for which, according to the law applicable to the insurance contract or operation, the agent himself is not responsible under such insurance contract or operation. In order to achieve this objective Member States should ensure special treatment for insurance creditors according to one of two optional methods provided for in this Directive. Member States may choose between granting insurance claims absolute precedence over any other claim with respect to assets representing the technical provisions or granting insurance claims a special rank which may only be preceded by claims on salaries, social security, taxes and rights ‘in rem’ over the whole assets of the insurance

undertaking. Neither of the two methods provided for in this Directive impedes a Member State from establishing a ranking between different categories of insurance claims.

(14) This Directive should ensure an appropriate balance between the protection of insurance creditors and other privileged creditors protected by the Member State's legislation and not harmonise the different systems of privileged creditors existing in the Member States.

(15) The two optional methods for treatment of insurance claims are considered substantially equivalent. The first method ensures the affectation of assets representing the technical provisions to insurance claims, the second method ensures insurance claims a position in the ranking of creditors which not only affects the assets representing the technical provisions but all the assets of the insurance undertaking.

(16) Member States which, in order to protect insurance creditors, opt for the method of granting insurance claims absolute precedence with respect to the assets representing the technical provisions should require their insurance undertakings to establish and keep up to date a special register of such assets. Such a register is a useful instrument for identifying the assets affected to such claims.

(17) In order to strengthen equivalence between both methods of treatment of insurance claims, this Directive should oblige the Member States which apply the method set out in Article 10(1)(b) to require every insurance undertaking to represent, at any moment and independently of a possible winding-up, claims, which according to that method may have precedence over insurance claims and which are registered in the insurance undertaking's accounts, by assets allowed by the insurance directives in force to represent the technical provisions.

(18) The home Member State should be able to provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in such home Member State, claims by that scheme should not benefit from the treatment of insurance claims under this Directive.

(19) The opening of winding-up proceedings should involve the withdrawal of the authorisation to conduct business granted to the insurance undertaking unless such authorisation has previously been withdrawn.

(20) The decision to open winding-up proceedings, which may produce effects throughout the Community according to the principle of universality, should have appropriate publicity within the Community. In order to protect interested parties, the decision should be published in accordance with the home Member State's procedures and in the *Official Journal of the European Communities* and, further, by any other means decided by the other Member States' supervisory authorities within their respective territories. In addition to publication of the decision, known creditors who are resident in the Community should be individually informed of the decision and this information should contain at least the elements specified in this Directive. Liquidators should also keep creditors regularly informed of the progress of the winding-up proceedings.

(21) Creditors should have the right to lodge claims or to submit written observations in winding-up proceedings. Claims by creditors resident in a Member State other than the home Member State should be treated in the same way as equivalent claims in the home Member State without any discrimination on the grounds of nationality or residence (principle of equivalent treatment).

(22) This Directive should apply to reorganisation measures adopted by a competent authority of a Member State principles which are similar 'mutatis mutandis' to those provided for in winding-up proceedings. The publication of such reorganisation measures should be limited to the case in which an appeal in the home Member State is possible by parties other than the insurance undertaking itself. When reorganisation measures affect exclusively the rights of shareholders, members or employees of the insurance undertaking considered in those capacities, the competent authorities should determine the manner in which the parties affected should be informed in accordance with relevant legislation.

(23) This Directive provides for coordinated rules to determine the law applicable to reorganisation measures and winding-up proceedings of insurance undertakings. This Directive does not seek to establish rules of private international law determining the law applicable to contracts and other legal relations. In particular, this Directive does not seek to govern the applicable rules on the existence of a contract, the rights and obligations of parties and the evaluation of debts.

(24) The general rule of this Directive, according to which reorganisation measures and the winding-up proceedings are governed by the law of the home Member State, should have a series of exceptions in

order to protect legitimate expectations and the certainty of certain transactions in Member States other than the home Member State. Such exceptions should concern the effects of such reorganisation measures or winding-up proceedings on certain contracts and rights, third parties' rights in rem, reservations of title, set-off, regulated markets, detrimental acts, third party purchasers and lawsuits pending.

(25) The exception concerning the effects of reorganisation measures and winding-up proceedings on certain contracts and rights provided for in Article 19 should be limited to the effects specified therein and should not include any other issues related to reorganisation measures and winding-up proceedings such as the lodging, verification, admission and ranking of claims regarding such contracts and rights, which should be governed by the home Member State's legislation.

(26) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending should be governed by the law of the Member States in which the lawsuit is pending concerning an asset or a right of which the insurance undertaking has been divested as an exception to the application of the law of the home Member State. The effects of such measures and proceedings on individual enforcement actions arising from these lawsuits should be governed by the home Member State's legislation, according to the general rule of this Directive.

(27) All persons required to receive or divulge information connected with the procedures of communication provided for in this Directive should be bound by professional secrecy in the same manner as that established in Article 16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC, with the exception of any judicial authority to which specific national legislation applies.

(28) For the sole purpose of applying the provisions of this Directive to reorganisation measures and winding-up proceedings concerning branches situated in the Community of an insurance undertaking whose head office is located in a third country the home Member State should be defined as the Member State in which the branch is located and the supervisory authorities and competent authorities as the authorities of that Member State.

(29) Where there are branches in more than one Member State of an insurance undertaking whose head office is located outside the Community, each branch should be treated independently with regard to the application of this Directive. In that case the competent authorities, supervisory authorities, administrators and liquidators should endeavour to coordinate their actions,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Directive applies to reorganisation measures and winding-up proceedings concerning insurance undertakings.

2. This Directive also applies, to the extent provided for in Article 30, to reorganisation measures and winding-up proceedings concerning branches in the territory of the Community of insurance undertakings having their head office outside the Community.

Article 2

Definitions

For the purpose of this Directive:

(a) 'insurance undertaking' means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;

(b) 'branch' means any permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which carries out insurance business;

(c) 'reorganisation measures' means measures involving any intervention by administrative bodies or judicial authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

(d) 'winding-up proceedings' means collective proceedings involving realising the assets of an insurance undertaking and distributing the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the administrative or the judicial authorities of a Member State, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;

(e) 'home Member State' means the Member State in which an insurance undertaking has been authorised in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;

(f) 'host Member State' means the Member State other than the home Member State in which an insurance undertaking has a branch;

(g) 'competent authorities' means the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;

(h) 'supervisory authorities' means the competent authorities within the meaning of Article 1(k) of Directive 92/49/EEC and of Article 1(l) of Directive 92/96/EEC;

(i) 'administrator' means any person or body appointed by the competent authorities for the purpose of administering reorganisation measures;

(j) 'liquidator' means any person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking, as appropriate, for the purpose of administering winding-up proceedings;

(k) 'insurance claims' means any amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in Article 1(2) and (3), of Directive 79/267/EEC in direct insurance business, including amounts set aside for the aforementioned persons, when some elements of the debt are not yet known. The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such contracts or operations before the opening of the winding-up proceedings shall also be considered insurance claims.

TITLE II

REORGANISATION MEASURES

Article 3

Scope

This Title applies to the reorganisation measures defined in Article 2(c).

Article 4

Adoption of reorganisation measures — Applicable law

1. Only the competent authorities of the home Member State shall be entitled to decide on the reorganisation measures with respect to an insurance undertaking, including its branches in other Member States. The reorganisation measures shall not preclude the opening of winding-up proceedings by the home Member State.

2. The reorganisation measures shall be governed by the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in Articles 19 to 26.

3. The reorganisation measures shall be fully effective throughout the Community in accordance with the legislation of the home Member State without any further formalities, including against third parties in other Member States, even if the legislation of those other Member States does not provide for such reorganisation measures or alternatively makes their implementation subject to conditions which are not fulfilled.

4. The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken.

Article 5

Information to the supervisory authorities

The competent authorities of the home Member State shall inform as a matter or urgency the home Member State's supervisory authorities of their decision on any reorganisation measure, where possible before the adoption of such a measure and failing that immediately thereafter. The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to adopt reorganisation measures including the possible practical effects of such measures.

Article 6

Publication

1. Where an appeal is possible in the home Member State against a reorganisation measure, the competent authorities of the home Member State, the administrator or any person entitled to do so in the home Member State shall make public its decision on a reorganisation measure in accordance with the publication procedures provided for in the home Member

State and, furthermore, publish in the *Official Journal of the European Communities* at the earliest opportunity an extract from the document establishing the reorganisation measure. The supervisory authorities of all the other Member States which have been informed of the decision on a reorganisation measure pursuant to Article 5 may ensure the publication of such decision within their territory in the manner they consider appropriate.

2. The publications provided for in paragraph 1 shall also specify the competent authority of the home Member State, the applicable law as provided in Article 4(2) and the administrator appointed, if any. They shall be carried out in the official language or in one of the official languages of the Member State in which the information is published.

3. The reorganisation measures shall apply regardless of the provisions concerning publication set out in paragraphs 1 and 2 and shall be fully effective as against creditors, unless the competent authorities of the home Member State or the law of that State provide otherwise.

4. When reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance undertaking, considered in those capacities, this Article shall not apply unless the law applicable to these reorganisation measures provides otherwise. The competent authorities shall determine the manner in which the interested parties affected by such reorganisation measures shall be informed in accordance with the relevant legislation.

Article 7

Information to known creditors — Right to lodge claims

1. Where the legislation of the home Member State requires lodgement of a claim with a view to its recognition or provides for compulsory notification of a reorganisation measure to creditors who have their normal place of residence, domicile or head office in that State, the competent authorities of the home Member State or the administrator shall also inform known creditors who have their normal place of residence, domicile or head office in another Member State, in accordance with the procedures laid down in Articles 15 and 17(1).

2. Where the legislation of the home Member State provides for the right of creditors who have their normal place of residence, domicile or head office in that State to lodge claims or to submit observations concerning their claims, creditors who have their normal place of residence, domicile or head office in another Member State shall have the same right to lodge claims or submit observations in accordance with the procedures laid down in Articles 16 and 17(2).

TITLE III

WINDING-UP PROCEEDINGS

Article 8

Opening of winding-up proceedings — Information to the supervisory authorities

1. Only the competent authorities of the home Member State shall be entitled to take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in other Member States. This decision may be taken in the absence, or following the adoption, of reorganisation measures.

2. A decision adopted according to the home Member State's legislation concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, shall be recognised without further formality within the territory of all other Member States and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.

3. The supervisory authorities of the home Member State shall be informed as a matter of urgency of the decision to open winding-up proceedings, if possible before the proceedings are opened and failing that immediately thereafter. The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to open winding-up proceedings including the possible practical effects of such proceedings.

Article 9

Applicable law

1. The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the laws, regulations and administrative provisions applicable in its home Member State unless otherwise provided in Articles 19 to 26.

2. The law of the home Member State shall determine in particular:

(a) the assets which form part of the estate and the treatment of assets acquired by, or devolving on, the insurance undertaking after the opening of the winding-up proceedings;

(b) the respective powers of the insurance undertaking and the liquidator;

(c) the conditions under which set-off may be invoked;

(d) the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;

(e) the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending as provided for in Article 26;

(f) the claims which are to be lodged against the insurance undertaking's estate and the treatment of claims arising after the opening of winding-up proceedings;

(g) the rules governing the lodging, verification and admission of claims;

(h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right in rem or through a set-off;

(i) the conditions for and the effects of closure of winding-up proceedings, in particular by composition;

(j) creditors' rights after the closure of winding-up proceedings;

(k) who is to bear the cost and expenses incurred in the winding-up proceedings;

(l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 10

Treatment of insurance claims

1. Member States shall ensure that insurance claims take precedence over other claims on the insurance undertaking according to one or both of the following methods:

(a) insurance claims shall, with respect to assets representing the technical provisions, take absolute precedence over any other claim on the insurance undertaking;

(b) insurance claims shall, with respect to the whole of the insurance undertaking's assets, take precedence over any other claim on the insurance undertaking with the only possible exception of:

(i) claims by employees arising from employment contracts and employment relationships,

(ii) claims by public bodies on taxes,

(iii) claims by social security systems,

(iv) claims on assets subject to rights in rem.

2. Without prejudice to paragraph 1, Member States may provide that the whole or a part of the expenses arising from the winding-up procedure, as defined by their national legislation, shall take precedence over insurance claims.

3. Member States which have opted for the method provided for in paragraph 1(a) shall require that insurance undertakings establish and keep up to date a special register in line with the provisions set out in the Annex.

Article 11

Subrogation to a guarantee scheme

The home Member State may provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in that Member State, claims by that scheme shall not benefit from the provisions of Article 10(1).

Article 12

Representation of preferential claims by assets

By way of derogation from Article 18 of Directive 73/239/EEC and Article 21 of Directive 79/267/EEC, Member States which apply the method set out in Article 10(1)(b) of this Directive shall require every insurance undertaking to represent, at any moment and independently from a possible winding-up, the claims which may take precedence over insurance claims pursuant to Article 10(1)(b) and which are registered in the insurance undertaking's accounts, by assets mentioned in Article 21 of Directive 92/49/EEC and Article 21 of Directive 92/96/EEC.

Article 13

Withdrawal of the authorisation

1. Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of the insurance undertaking shall be withdrawn, except to the extent necessary for the purposes of paragraph 2, in accordance with the procedure laid down in Article 22 of Directive 73/239/EEC and Article 26 of Directive 79/267/EEC, if the authorisation has not been previously withdrawn.

2. The withdrawal of authorisation pursuant to paragraph 1 shall not prevent the liquidator or any other person entrusted

by the competent authorities from carrying on some of the insurance undertakings' activities in so far as that is necessary or appropriate for the purposes of winding-up. The home Member State may provide that such activities shall be carried on with the consent and under the supervision of the supervisory authorities of the home Member State.

Article 14

Publication

1. The competent authority, the liquidator or any person appointed for that purpose by the competent authority shall publish the decision to open winding-up proceedings in accordance with the publication procedures provided for in the home Member State and also publish an extract from the winding-up decision in the *Official Journal of the European Communities*. The supervisory authorities of all the other Member States which have been informed of the decision to open winding-up proceedings in accordance with Article 8(3) may ensure the publication of such decision within their territories in the manner they consider appropriate.

2. The publication of the decision to open winding-up proceedings provided for in paragraph 1 shall also specify the competent authority of the home Member State, the applicable law and the liquidator appointed. It shall be in the official language or in one of the official languages of the Member State in which the information is published.

Article 15

Information to known creditors

1. When winding-up proceedings are opened, the competent authorities of the home Member State, the liquidator or any person appointed for that purpose by the competent authorities shall without delay individually inform by written notice each known creditor who has his normal place of residence, domicile or head office in another Member State thereof.

2. The notice referred to in paragraph 1 shall in particular deal with time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims or observations relating to claims and the other measures laid down. The notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims. In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Article 16

Right to lodge claims

1. Any creditor who has his normal place of residence, domicile or head office in a Member State other than the home Member State, including Member States' public authorities, shall have the right to lodge claims or to submit written observations relating to claims.

2. The claims of all creditors who have their normal place of residence, domicile or head office in a Member State other than the home Member State, including the aforementioned authorities, shall be treated in the same way and accorded the same ranking as claims of an equivalent nature lodgeable by creditors who have their normal place of residence, domicile or head office in the home Member State.

3. Except in cases where the law of the home Member State allows otherwise, a creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and the amount, whether he alleges preference, security in rem or reservation of title in respect of the claim and what assets are covered by his security. The precedence granted to insurance claims by Article 10 need not be indicated.

Article 17

Languages and form

1. The information in the notice referred to in Article 15 shall be provided in the official language or one of the official languages of the home Member State. For that purpose a form shall be used bearing the heading 'Invitation to lodge a claim; time limits to be observed' or, where the law of the home Member State provides for the submission of observations relating to claims, 'Invitation to submit observations relating to a claim; time limits to be observed', in all the official languages of the European Union.

However, where a known creditor is a holder of an insurance claim, the information in the notice referred to in Article 15 shall be provided in the official language or one of the official languages of the Member State in which the creditor has his normal place of residence, domicile or head office.

2. Any creditor who has his normal place of residence, domicile or head office in a Member State other than the home Member State may lodge his claim or submit observations relating to his claim in the official language or one of the official languages of that other Member State. However, in that event the lodgement of his claim or the submission of observations on his claim, as appropriate, shall bear the heading 'Lodgement of claim' or 'Submission of observations relating to claims', as appropriate, in the official language or one of the official languages of the home Member State.

Article 18

Regular information to the creditors

1. Liquidators shall keep creditors regularly informed, in an appropriate manner, in particular regarding the progress of the winding-up.

2. The supervisory authorities of the Member States may request information on developments in the winding-up procedure from the supervisory authorities of the home Member State.

TITLE IV

PROVISIONS COMMON TO REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS

Article 19

Effects on certain contracts and rights

By way of derogation from Articles 4 and 9, the effects of the opening of reorganisation measures or of winding-up proceedings on the contracts and rights specified below shall be governed by the following rules:

(a) employment contracts and employment relationships shall be governed solely by the law of the Member State applicable to the employment contract or employment relationship;

(b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State in whose territory the immovable property is situated;

(c) rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register shall be governed by the law of the Member State under whose authority the register is kept.

Article 20

Third parties' rights in rem

1. The opening of reorganisation measures or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the insurance undertaking which are situated within the territory of another Member State at the time of the opening of such measures or proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right in rem to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability referred to in Article 9(2)(l).

Article 21

Reservation of title

1. The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of a Member State other than the State in which such measures or proceedings were opened.

2. The opening of reorganisation measures or winding-up proceedings against an insurance undertaking selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures or proceedings were opened.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability referred to in Article 9(2)(l).

Article 22

Set-off

1. The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the insurance undertaking's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability referred to in Article 9(2)(l).

Article 23

Regulated markets

1. Without prejudice to Article 20 the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.

2. Paragraph 1 shall not preclude any action for voidness, voidability, or unenforceability referred to in Article 9(2)(l) which may be taken to set aside payments or transactions under the law applicable to that market.

Article 24

Detrimental acts

Article 9(2)(l) shall not apply, where a person who has benefited from a legal act detrimental to all the creditors provides proof that:

(a) the said act is subject to the law of a Member State other than the home Member State, and

(b) that law does not allow any means of challenging that act in the relevant case.

Article 25

Protection of third-party purchasers

Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for a consideration, of:

(a) an immovable asset,

(b) a ship or an aircraft subject to registration in a public register, or

(c) transferable or other securities whose existence or transfer presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State,

the validity of that act shall be governed by the law of the Member State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept.

Article 26

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

Article 27

Administrators and liquidators

1. The administrator's or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the competent authorities of the home Member State.

A translation into the official language or one of the official languages of the Member State within the territory of which the administrator or liquidator wishes to act may be required. No legalisation or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State. Persons to assist or, where appropriate, represent administrators and liquidators may be appointed, according to the home Member State's legislation, in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in the host Member State.

3. In exercising his powers according to the home Member State's legislation, an administrator or liquidator shall comply with the law of the Member States within whose territory he wishes to take action, in particular with regard to procedures

for the realisation of assets and the informing of employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

Article 28

Registration in a public register

1. The administrator, liquidator or any other authority or person duly empowered in the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the trade register and any other public register kept in the other Member States.

However, if a Member State prescribes mandatory registration, the authority or person referred to in subparagraph 1 shall take all the measures necessary to ensure such registration.

2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 29

Professional secrecy

All persons required to receive or divulge information in connection with the procedures of communication laid down in Articles 5, 8 and 30 shall be bound by professional secrecy, in the same manner as laid down in Article 16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC, with the exception of any judicial authorities to which existing national provisions apply.

Article 30

Branches of third country insurance undertakings

1. Notwithstanding the definitions laid down in Article 2(e), (f) and (g) and for the purpose of applying the provisions of this Directive to the reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of an insurance undertaking whose head office is located outside the Community:

(a) 'home Member State' means the Member State in which the branch has been granted authorisation according to Article 23 of Directive 73/239/EEC and Article 27 of Directive 79/267/EEC, and

(b) 'supervisory authorities' and 'competent authorities' mean such authorities of the Member State in which the branch was authorised.

2. When an insurance undertaking whose head office is outside the Community has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Directive. The competent authorities and the supervisory authorities of these Member States shall endeavour to coordinate their actions. Any administrators or liquidators shall likewise endeavour to coordinate their actions.

Article 31

Implementation of this Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 20 April 2003. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. National provisions adopted in application of this Directive shall apply only to reorganisation measures or winding-up proceedings adopted or opened after the date referred to in paragraph 1. Reorganisation measures adopted or winding up proceedings opened before that date shall continue to be governed by the law that was applicable to them at the time of adoption or opening.

3. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 32

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 33

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 19 March 2001.

For the European Parliament	*For the Council*
The President	*The President*
N. FONTAINE	A. LINDH

ANNEX

SPECIAL REGISTER REFERRED TO IN ARTICLE 10(3)

1. Every insurance undertaking must keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the home Member State's rules.

2. Where an insurance undertaking transacts both non-life and life business, it must keep at its head office separate registers for each type of business. However, where a Member State authorises insurance undertakings to cover life and the risks listed in points 1 and 2 of Annex A to Directive 73/239/EEC, it may provide that those insurance undertakings must keep a single register for the whole of their activities.

3. The total value of the assets entered, valued in accordance with the rules applicable in the home Member State, must at no time be less than the value of the technical provisions.

4. Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact is recorded in the register and the amount not available is not included in the total value referred to in point 3.

5. Where an asset employed to cover technical provisions is subject to a right in rem in favour of a creditor or a third party, without meeting the conditions of point 4, or where such an asset is subject to a reservation of title in favour of a creditor or of a third party or where a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking, the treatment of such asset in case of the winding-up of the insurance undertaking with respect to the method provided for in Article 10(1)(a) shall be determined by the legislation of the home Member State except where Articles 20, 21 or 22 apply to that asset.

6. The composition of the assets entered in the register in accordance with points 1 to 5, at the time when winding-up proceedings are opened, must not thereafter be changed and no alteration other than the correction of purely clerical errors must be made in the registers, except with the authorisation of the competent authority.

7. Notwithstanding point 6, the liquidators must add to the said assets the yield therefrom and the value of the pure premiums received in respect of the class of business concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.

8. If the product of the realisation of assets is less than their estimated value in the registers, the liquidators must be required to justify this to the home Member States' competent authorities.

9. The supervisory authorities of the Member States must take appropriate measures to ensure full application by the insurance undertakings of the provisions of this Annex.