

## Policyholders Protection Act of 1975

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Résumé de l'article

Notre collaborateur résume ici les dispositions prises en Angleterre pour protéger l'assuré contre la faillite de l'assureur. Son intention n'est pas d'entrer dans les détails, mais simplement de donner un aperçu des mesures prévues pour donner aux affaires d'assurance, traitées en Angleterre, la plus grande sécurité possible.

## Policyholders Protection Act of 1975<sup>(1)</sup>

by

ERIC A. PEARCE, F.C.I.I.

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There was a time when the larger and more important insurance companies were making regular and comfortable underwriting profits; companies going into liquidation were few and usually small. There seemed then to be an unwritten and certainly unpublished agreement between the more important companies that they would, in the event of a liquidation, offer to take over outstanding claims and run-off the unexpired liability on policies of those insured who were prejudiced by the liquidation. Presumably there was an agreement between insurer and insured regarding renewal. Obviously any policyholder was completely free to refuse the offer.

This practice ceased as profit margins dwindled, and in one instance where there was a spectacular collapse and a great number of Motor Third Party claims were involved, the British Insurance Association persuaded its members (comprising practically all the British insurers) to form a fund to meet such claims. There was great reluctance to agree to this measure, particularly as it was widely believed that the company which had collapsed was directly responsible for keeping market rates at an unprofitable level for years, and so bringing other companies into grave difficulties. Nor was the department responsible for the control of insurance companies without its critics.

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(1) A synopsis of the above United Kingdom law and a review of its operation up to 31st of March 1982.

It was in this atmosphere that the Policyholders Protection Act was introduced before the British Parliament. Although it was a completely new concept relative to insurance, it was one of several "consumer protection" laws of the period and it became law on 12th November 1975. The following is an outline of the main provisions of the Act.

1. The Act is to make provision for indemnifying (in whole or in part) or otherwise assisting or protecting policyholders and others who have been or may be prejudiced in consequence of the inability of authorised insurance companies in the United Kingdom to meet their liabilities under policies issued or securities given by them, and for imposing levies on the insurance industry for the purpose.

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2. The Policyholders Protection Board is brought into being to administer the Act. It perhaps makes for clearer understanding of the text if it is realised that the method of administration is for the Board to establish its financial requirements and then to obtain the necessary funds by means of a levy on authorised insurance companies not in liquidation. The Board is in effect a collecting and distribution agency without any financial commitment of its own. So we find set out in the Act such phrases as " — it shall be the duty of the Board to secure that a sum equal to —".

3. The Act applies only to United Kingdom policies issued by authorised insurance companies. Are specifically excluded :

(a) Reinsurances.

(b) Marine, aviation and transport insurances.

4. The Act applies :

(a) when a resolution has been passed for the voluntary winding up of the company, otherwise than merely for the purposes of reconstruction of the company etc.

(b) when an order has been made for the winding up of the company by the court.

For the sake of brevity, these are referred to as "a company in liquidation", and such liquidation must have commenced after 29th October 1974.

5. Long term policies are dealt with in paragraph 6 below, apart from which the Act applies to three categories, which can be sum-



marised as policies relative to compulsory insurance, on which the full amount is paid ; other liability policies and general policies on which 90% is paid.

However, as this is the important aspect of the Act from the point of view of the public, it is worthy of being expressed in greater detail, thus :

(a) *Compulsory insurance policies and securities.*

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These are in the main, liability policies such as Employers' Liability, Motor Third Party (Road Traffic Act), Nuclear Installation Act. In respect of which : "it shall be the duty of the Board to secure that a sum equal to the full amount of any liability of a company in liquidation towards any policyholder or security holder under the terms of any policy or security to which this section applies is paid to the policyholder or security holder as soon as reasonably practicable after the beginning of the liquidation."

(b) *Other liability policies.*

and (c) *General policies other than as above.*

It is stated that : "it shall be the duty of the Board to secure that a sum equal to ninety percent of the amount of any liability of a company in liquidation towards a private policyholder — is paid to the policyholder as soon as reasonably practicable after the beginning of the liquidation."

Nevertheless, in any of the above three cases, if any other insurance company not in liquidation is jointly liable, the Board is not required to make a payment to the policyholder.

6. How to deal with long term policies is, of necessity, a complicated procedure, but briefly the following provisions apply :

(a) The amount due to the policyholder at the beginning of the liquidation. On this ninety percent is paid.

(b) The amount of future benefits (any bonus is not recognised unless it was declared before the liquidation). The Board shall make arrangements for the continuity of the insurance, but for ninety percent of the benefits, on terms corresponding (so far as appears to the Board to be reasonable) to the terms which would have applied under the policy. This may be accomplished by transfer of the business, or by the issue by another insurance company of policies in substitution. Amounts becoming due before these arrangements can be completed are dealt with as in (a) above.

(c) If the Board cannot arrangement continuity of the insurance the policyholder shall receive ninety percent of the surrender (or similar) value of the policy.

(d) To receive certain advantages the policyholder is required to give agreement to the conditions required by the Board.

7. If the Board finds that the benefits under long term policies are excessive in relation to the level of premiums, the conditions can be submitted to an actuary, who will decide if this is so, in which case he can make recommendations for the benefits to be reduced or disregarded. The Board has the power to accept such recommendations.

8. If payment under any policy is due to a person other than the policyholder, or a trust, charge or other agreement binding on the policyholder, the Board can make payment accordingly. But this does not take precedence over any other conditions in which the Board has a duty.

9. The Board has the right of subrogation against the policyholder or other person who benefits from a payment by the Board.

10. Provision is made in certain circumstances, for a payment by the Board to be reduced if the liability of the company in liquidation is met by any other person, in whole or in part.

11. Apart from those defined as "a company in liquidation", the categories of "company in provisional liquidation" and "company in financial difficulties" are also recognised and the Board has wide powers to make payments or interim payments, or by other means to protect the policyholder. The Board can in certain circumstances amend the terms of long term policies for the purpose of improving the financial position of companies in these two categories.

12. Levies are made upon the insurance industry to finance the performance by the Board of its functions, including the cost of administration, both as regards general business and long term business. This includes in some special cases, levies upon intermediaries in respect of long term business.

The levies upon authorised insurance companies are calculated on the net premium income relative to United Kingdom policies for (a) general business and (b) long term business. Broadly, net premium is after deduction of rebates and refunds, and in addition for general business after deduction of reinsurances. Pro-



ceeds of general business levies are applied only on general business expenditure, and similarly for long term business. In Schedule 3, it is provided that in each case, the levy shall not exceed in any financial year one percent of the premium income for the year ending last after the beginning of that financial year. The Board may not impose a levy for the purpose of financing expenditure unless the expenditure has been incurred, or is expected to be incurred within twelve months.

The actual rate of levy is notified to the insurance companies from time to time, and it then becomes payable.

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Provision is made for funds considered to be surplus to requirements, to be distributed to the insurance companies.

The Board has issued a Report and Accounts for the first period from 12th November 1975 to 31st March 1976 and for the six subsequent financial years, which terminate on the 31st March in each case. The first period can be ignored, as the expenditure consisted only of a small sum for administration and the like.

During the first full year, two companies came under the jurisdiction of the Board, to which a third was added in 1980. All were companies issuing long term policies and all were either foreign companies or subsidiaries of foreign companies. In 1981/82 a small UK specialist company working in the general business category became the subject of a voluntary winding up resolution, but virtually no details are yet available.

There has been only one levy so far. It was imposed in 1976/77 on companies carrying on long term business, at the rate of 0.25% of premium income for 1975 in respect of policies effected after 31st December 1974. This yielded £1,512,000. Substantial sums have been received as dividends from liquidators, approximately £3,000,000, and it is expected that further sums will be reimbursed in the future.

The accounts of the Board show the following accumulated surplus or deficit.

## ASSURANCES

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As at 31st March	1977	surplus	£ 381,000 (following the levy)
	1978	deficit	149,000
	1979	deficit	1,212,000
	1980	surplus	1,000
	1981	deficit	28,000
	1982	deficit	8,000.

In view of the amounts so far recovered and expected from liquidators the Board has preferred, in general, to depend on overdraft rather than to raise a further levy.<sup>(1)</sup>

### *Statistique Canada : Institutions financières, 4e trimestre de 1981*

*Statistique Canada* est une publication du ministère des Approvisionnement et Services du Canada. La revue contient un ensemble de chiffres extrêmement intéressants sur la vie économique et financière du pays. On ne saurait trop la recommander comme instrument de travail à celui qui veut se tenir au courant de l'évolution statistique du pays.

Pour notre métier, nous en tirons des données intéressantes permettant, de trimestre en trimestre, de suivre l'évolution de l'assurance dans notre pays, avec ses résultats techniques, ses résultats financiers et ses bénéfices nets ou ses déficits. Nous allions dire que, malheureusement, les chiffres paraissent un peu tard parfois. D'un autre côté, quand on songe à l'effort de compilation qu'ils exigent, on ne peut que s'incliner devant l'efficacité d'un des services gouvernementaux les mieux organisés.

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(1) The reader is reminded that the foregoing is a summary of thirty pages in close print and cannot be considered as a legal interpretation of the Act, in any sense.