STATUTORY INSTRUMENTS

2009 No. 3075

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009

Made - - - -	*23rd November 2009*
Laid before Parliament	*24th November 2009*
Coming into force - -	*17th December 2009*

The Treasury, in exercise of the powers conferred by sections 424(3), 417(1)(**a**) and 428(3) of the Financial Services and Markets Act 2000(**b**), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009 and come into force on 17th December 2009.

(2) In these Regulations—

"the 2001 Regulations" means the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001(**c**);

"the Rome I Regulation" means Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17th June 2008 on the law applicable to contractual obligations (Rome I)(**d**).

(3) Expressions used in regulations 4 and 5 and in the Rome I Regulation have the same meaning as in the Rome I Regulation unless the context requires otherwise.

Limited application of the 2001 Regulations

2.—(1) After regulation 3(1) of the 2001 Regulations insert—

"(1A) These Regulations do not apply to contracts of insurance entered into on or after 17th December 2009.".

(2) In regulation 3(2) of the 2001 Regulations, after the words "friendly societies" insert "before 17th December 2009".

Application of the Rome I Regulation: conflicts falling within Article 22(2)

3. Notwithstanding Article 22(2) of the Rome I Regulation, Article 7 of that Regulation applies in the case of conflicts between—

(**a**) See the definition of "prescribed" in section 417 of the Financial Services & Markets Act 2000 (c. 8).
(**b**) 2000 c. 8.
(**c**) S.I. 2001/2635, amended by S.I. 2001/3542 and S.I. 2007/2403.
(**d**) OJ L 177, 4.7.2008, p. 6.

(a) the laws of different parts of the United Kingdom, or

(b) the laws of one or more parts of the United Kingdom and Gibraltar,

in relation to contracts of insurance described in Article 7 of the Rome I Regulation as it applies in the case of conflicts between the laws of different countries.

Contracts of insurance of risks other than large risks: greater freedom of choice of law

4. Where, in the case of a contract of insurance to which Article 7(3) of the Rome I Regulation applies, the law referred to in sub-paragraph (a) or (b) of that Article, or one of the laws referred to in sub-paragraph (e) of that Article, is a law of any part of the United Kingdom, the parties to that contract may also choose as the law applicable to the contract—

(a) the law of another country; or

(b) the law of another part of the United Kingdom,

if that choice complies with Article 3, Article 6 and Articles 9 to 22 of that Regulation.

Community co-insurers

5. Where the parties to the contract may choose the applicable law under the Rome I Regulation or under regulation 4, and where the risk to which the contract relates is covered by Community co-insurance (within the meaning of Council Directive 78/473/EEC on the coordination of laws, regulations and administrative provisions relating to Community insurance(**a**)), co-insurers other than the leading insurer (within the meaning of that Directive) are not to be treated as parties to the contract.

Dave Watts
Bob Blizzard

23rd November 2009 — Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) OJ L 151, 7.6.78, p. 25.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the application of Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) to contracts of insurance ("the Rome I Regulation"). The Rome I Regulation establishes uniform choice of law rules in the field of contractual obligations between Member States.

The amendments made in regulation 2 limit the application of the provisions on the law applicable to contracts of insurance contained in the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 (S.I. 2001/2635) to contracts of insurance entered into before 17th December 2009, the date on which the Rome I Regulation comes into force.

Regulation 3 extends the application of the Rome I Regulation to conflicts between the laws of England and Wales, Scotland, Northern Ireland, or between the laws of any of the foregoing and Gibraltar, that it would not otherwise apply to.

Regulation 4 makes provision permitted by the third subparagraph of Article 7(3) of the Rome I Regulation, allowing parties to contracts insuring risks other than large risks greater freedom of choice of law applicable than would otherwise be available to them under that Article where the risk is situated in the United Kingdom (Article 7(3)(a)), the policyholder has their habitual residence in the United Kingdom (Article 7(3)(b)) or the policyholder carries on a business, trade or profession and the insurance contract covers two or more risks which relate to that business which are situated in different Member States, and the United Kingdom is one of those States or the country of habitual residence of the policyholder (Article 7(3)(e)).

Regulation 5 specifies that where the risk is covered by Community co-insurance, as defined by Council Directive 78/473/EEC on the coordination of laws, regulations and administrative provisions relating to Community co-insurance (OJ L 151, 7.6.78, p.25) the leading insurer is to be treated as the only insurer.

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