

PROJET DE LOI

ENTITLED

The Third Parties (Rights against Insurers) (Guernsey) Law, 1936 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. X, p. 381; as amended by the Insurance Business (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 214). This Law is applied, with modifications, to the Island of Alderney by the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950 (Ordres en Conseil Vol. XIV, p. 209); and to the Island of Herm by the Herm Laws Ordinance, 1948 (Recueil d'Ordonnances Tome IX, p. 247). See also the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (No. VIII of 2004).

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ARRANGEMENT OF SECTIONS

1. Rights of third parties against insurers on bankruptcy, etc., of the insured.
2. Duty to give necessary information to third parties.
3. Settlement between insurers and insured persons.
4. Short Title.

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LES ÉTATS ont approuvé les dispositions suivantes rédigées en anglais, lesquelles moyennant la Sanction de Sa Très Excellente Majesté en Conseil, auront force de Loi en cette Île.

Rights of third parties against insurers on bankruptcy, etc., of the insured.

1. (1) Where under any contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then –

- (a) in the event of the insured making a composition or arrangement with his creditors or being declared "en état de faillite" or of the affairs of the insured being declared "en état de désastre", or
- (b) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to the company,

if, either before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Law or rule of law to the contrary, be transferred and vest [to and in the third party].

(2) Where the Court has sanctioned the abandonment of the estate of a deceased debtor by all the persons entitled thereto or if the affairs of all the persons entitled to the estate of a deceased debtor, the abandonment of which has

not been so sanctioned, are declared "en état de désastre" or if all such persons are declared "en état de faillite" or if a composition or arrangement is made with the creditors of such deceased debtor, then, if any debt provable against the estate so abandoned or in the "désastre" or "faillite" of any of the persons entitled thereto is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the commencement of this Law in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1) of this section or upon the Court sanctioning the abandonment of his estate by all the persons entitled thereto or upon all the persons entitled to his estate, the abandonment of which has not been so sanctioned, being declared "en état de faillite" or upon their affairs being declared "en état de désastre", the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or subsection (2) of this section, the insurer shall, subject to the provisions of section three of this Law, be under the same liability to the third party as he would have been under to the insured, but –

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Law shall affect the rights of the insured against the insurer in respect of the excess, and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Law shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this Law, the expression "**liabilities to third parties**", in relation to a person insured under any contract of insurance, shall

not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This Law shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company.

NOTES

In section 1, the words in square brackets in subsection (1) were substituted by the Insurance Business (Guernsey) Law, 1986, section 67, Schedule 6, with effect from 31st December, 1986.

The Law is applied to the Island of Alderney by the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950, section 1, Schedule, with effect from 3rd February, 1950, subject to the exceptions, adaptations and modifications in section 2 of the 1950 Law.

The Law is applied to the Island of Herm by the Herm Laws Ordinance, 1948, Article 1, Schedule, Part IF, with effect from 13th March, 1948.

In its application to the Island of Alderney, section 1 is modified in accordance with the provisions of the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950, section (2)(b), with effect from 3rd February, 1950.

In accordance with the provisions of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 173(5), this Law shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 171 of the 2002 Law relates (being a certificate complying with the provisions of section 171(3) of the 2002 Law and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1992).

Duty to give necessary information to third parties.

2. (1) In the event of any person making a composition or arrangement with his creditors or being declared "en état de faillite" or of the affairs of any person being declared "en état de désastre", or in the event of the Court sanctioning the abandonment of the estate of a deceased debtor by all the persons entitled thereto or of all the persons entitled to the estate of a deceased debtor, the abandonment of which has not been so sanctioned, being declared "en état de faillite" or upon their affairs being declared "en état de désastre", or in the event of a winding-up being made, or a resolution for a voluntary winding-up being passed, with respect to any company, it shall be the duty of the debtor, person or persons

declared "en état de faillite" or whose affairs are declared "en état de désastre", personal representatives of the deceased, person or persons abandoning the estate of the deceased or company and, as the case may be, of the trustee, "comité des créanciers", "créanciers arrêtants", "saisi des biens meubles", liquidator, or person in possession of the property to give at the request of any person claiming that the debtor person "en état de faillite" or whose affairs are "en état de désastre", deceased debtor, or company is under a liability to him such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Law and for the purpose of enforcing such rights, if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any information in the events aforesaid or otherwise to prohibit or prevent the giving thereof in the said events shall be of no effect.

(2) If the information given to any person in pursuance of subsection (1) of this section discloses reasonable ground for supposing that there have or may have been transferred to him under this Law rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said subsection on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected in this Island and copies thereof to be taken in this Island.

NOTE

In its application to the Island of Alderney, section 2 is modified in accordance with the provisions of the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950, section 2(a) and section (2)(b), with effect from 3rd February, 1950.

Settlement between insurers and insured persons.

3. Where the insured has been declared "en état de faillite" or the affairs of the insured have been declared "en état de désastre" or where, in the case of the insured being a company, a winding-up order has been made or a resolution

for a voluntary winding-up has been passed, with respect to the company, no agreement made between the insurer and the insured after liability has been incurred to a third party and after the commencement of the proceedings "en faillite" or "en désastre" or of the winding-up, as the case may be, nor any waiver, assignment, or other disposition made by, or payment made to the insured after the commencement aforesaid shall be effective to defeat or affect the rights transferred to the third party under this Law, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment has been made.

Short Title.

4. This Law may be cited as the Third Parties (Rights against Insurers) (Guernsey) Law, 1936.

NOTES

The Law received Royal Sanction on 24th July, 1936 and was registered on the Records of the Island of Guernsey and came into force on 15th August, 1936.

In the printed version of this enactment, the Law is styled the "Loi par rapport aux Tierces Parties (Droits contre Assureurs) 1936".
