

**INSURERS (REORGANISATION AND WINDING UP)  
ACT 2004**

**Repealed by Act No. 2015-07 as from 1.1.2016**

**Principal Act**

<b>Act. No. 2004-16</b>	<i>Commencement</i>	21.7.2004
	<i>Assent</i>	21.7.2004

Amending enactments	Relevant current provisions	Commencement date
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None

**EU Legislation/International Agreements involved:**

Directive 73/239/EEC  
 Directive 79/267/EEC  
 Directive 88/357/EEC  
 Directive 90/619/EEC  
 Directive 93/22/EEC  
 Directive 2001/17/EC  
 Regulation 1/58/EEC

**English sources:**

None cited

**2004-16**  
**Repealed**

## Insurers (Reorganisation and Winding Up)

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**PART I**

*General*

**Title.**

1. This Act may be cited as the Insurers (Reorganisation and Winding Up) Act 2004.

**Interpretation.**

2.(1) In this Act—

“branch”, in relation to an EEA or Gibraltar insurer has the meaning given by Article 1(b) of the third life insurance directive or the third non-life insurance directive;

“claim” means a claim incurred by a creditor of a Gibraltar insurer in the course of—

- (a) a winding up, or
- (b) a voluntary arrangement,

with a view to recovering his debt in whole or in part;

“EEA creditor” means a creditor of a Gibraltar insurer who—

- (a) in the case of an individual, is ordinarily resident in Gibraltar or an EEA State; and
- (b) in the case of a body corporate or unincorporated association of persons, has its head office in Gibraltar or an EEA State;

“directive reorganisation measure” means a reorganisation measure as defined in Article 2(c) of the reorganisation and winding-up directive which was adopted or imposed on or after the 20th April 2003;

“directive winding up proceedings” means winding up proceedings as defined in Article 2(d) of the reorganisation and winding-up directive which were opened on or after the 20th April 2003;

“EEA insurer” has the meaning given in section 2(2) of the Insurance Companies Act<sup>1</sup>;

“EEA regulator” means a competent authority (within the meaning of Article 1(1) of the third life insurance directive or Article 1(k) of the third non-life insurance directive, as the case may be) of Gibraltar or an EEA State;

“the first life insurance directive” means the Council Directive of 5th March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No.79/267/EEC);

“the first non-life insurance directive” means the Council Directive of 24th July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (No.73/239/EEC);

“Gibraltar insurer” has the meaning given in section 2(2) of the Insurance Companies Act;

“home state regulator”, in relation to an EEA insurer, means the relevant EEA regulator in the EEA State where its head office is located;

“insurance claim” means any claim in relation to an insurance debt;

“insurance creditor” means a person who has an insurance claim against a Gibraltar insurer (whether or not he has claims other than insurance claims against that insurer);

“insurance debt” means a debt to which a Gibraltar insurer is, or may become liable, pursuant to a contract of insurance to a policyholder or to any person who has a direct right of action against that insurer, and includes any premium paid in connection with a contract of insurance (whether or not that contract was concluded) which the insurer is liable to refund;

“official language” means a language specified in Article 1 of Council Regulation No. 1 of 15th April 1958 determining the languages to be used by the European Economic Community (Regulation

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<sup>1</sup> **1987-10**

1/58/EEC), most recently amended by paragraph (a) of Part XVIII of Annex 1 to the Act of Accession 1994 (194 N);

“the reorganisation and winding-up directive” means the directive of the European Parliament and of the Council of 19th March 2001 on the reorganisation and winding-up of insurance undertakings (2001/17/EC);

“the third life insurance directive” means the Council Directive of 10th November 1992 on the co-ordination of laws, etc, and amending directives 79/267/EEC and 90/619/EEC (No. 92/96/EEC);

“the third non-life insurance directive” means the Council Directive of 18th June 1992 on the co-ordination of laws, etc, and amending directives 73/239/EEC and 88/357/EEC (No. 92/49/EEC);

(2) In subsection (1)–

- (a) for the purposes of the definition of “directive reorganisation measure”, a reorganisation measure is adopted or imposed at the time when it is treated as adopted or imposed by the law of Gibraltar or the relevant EEA State; and
- (b) for the purposes of the definition of “directive winding up proceedings”, winding up proceedings are opened at the time when they are treated as opened by the law of Gibraltar or the relevant EEA State,

and in this subsection “relevant EEA State” means the EEA State under the law of which the reorganisation is adopted or imposed, or the winding up proceedings are opened, as the case may be.

## PART II

*Insolvency measures and proceedings: jurisdiction in relation to insurers*

### **Prohibition against winding up etc. EEA insurers in Gibraltar.**

3.(1) On or after the relevant date a court in Gibraltar may not, in relation to an EEA insurer or any branch of an EEA insurer–

- (a) make a winding up order;
- (b) appoint a provisional liquidator;
- (c) make an administration order.

- (2) Subsection (1)(a) does not prevent–
- (a) the court from making a winding up order after the relevant date in relation to an EEA insurer if–
    - (i) a provisional liquidator was appointed in relation to that insurer before the relevant date, and
    - (ii) that appointment continues in force until immediately before that winding up order is made,
  - (b) the winding up of an EEA insurer after the relevant date pursuant to a winding up order which was made, and has not been discharged, before that date.
- (3) Subsection (1)(b) does not prevent a provisional liquidator of an EEA insurer appointed before the relevant date from acting in relation to that insurer after that date.
- (4) Subsection (1)(c) does not prevent an administrator appointed before the relevant date from acting after that date in a case in which the administration order under which he or his predecessor was appointed remains in force after that date.
- (5) In this section, “relevant date” means the date this Act comes into operation.

**Reorganisation measures and winding up proceedings in respect of EEA insurers effective in Gibraltar.**

- 4.(1) An EEA insolvency measure has effect in Gibraltar in relation to–
- (a) any branch of an EEA insurer,
  - (b) any property or other assets of that insurer,
  - (c) any debt or liability of that insurer

as if it were part of the general law of insolvency of Gibraltar.

- (2) Subject to subsection (4)–
- (a) a competent officer who satisfies the condition mentioned in subsection (3); or

- (b) a qualifying agent appointed by a competent officer who satisfies the condition mentioned in subsection (3),

may exercise in Gibraltar, in relation to the EEA insurer which is subject to an EEA insolvency measure, any function which, pursuant to that measure, he is entitled to exercise in relation to that insurer in the relevant EEA State.

(3) The condition mentioned in subsection (2)(a) is that the appointment of the competent officer is evidenced—

- (a) by a certified copy of the order or decision by a judicial or administrative authority in the relevant EEA State by or under which the competent officer was appointed; or
- (b) by any other certificate issued by the judicial or administrative authority which has jurisdiction in relation to the EEA insolvency measure,

and accompanied by a certified translation of that order, decision or certificate (as the case may be).

(4) In exercising the functions of the kind mentioned in subsection (2), the competent officer or qualifying agent—

- (a) may not take any action which would constitute an unlawful use of force in Gibraltar;
- (b) may not rule on any dispute arising from a matter falling within Part V of this Act which is justiciable by a court in Gibraltar; and
- (c) notwithstanding the way in which functions may be exercised in the relevant EEA State, must act in accordance with relevant laws or rules as to procedure in Gibraltar.

(5) In this regulation—

“competent officer” means a person appointed under or in connection with an EEA insolvency measure for the purpose of administering that measure;

“qualifying agent” means an agent validly appointed (whether in Gibraltar or elsewhere) by a competent officer in accordance with the relevant law in the relevant EEA State;

“EEA insolvency measure” means, as the case may be, a directive reorganisation measure or a directive winding up proceedings

which has effect in relation to an EEA insurer by virtue of the law of the relevant EEA State;

“relevant EEA State”, in relation to an EEA insurer, means the EEA State in which that insurer has been authorised in accordance with Article 6 of the first life insurance directive or of the first non-life insurance directive.

### **PART III**

#### *Modifications of the law of insolvency: notification and publication*

##### **Notification of relevant decision to EEA regulators.**

5.(1) Where the Commissioner of Insurance is informed of a decision, winding-up order or appointment of a liquidator, the Commissioner must as soon as is practicable inform the EEA regulators in every EEA State—

- (a) that the decision, order or appointment has been made; and
- (b) in general terms, of the possible effect of a decision, order or appointment of that kind on—
  - (i) the business of an insurer, and
  - (ii) the rights of policyholders under contracts of insurance effected and carried out by an insurer.

(2) Where the Commissioner of Insurance has been represented at all hearings in connection with the application in relation to which the decision, order or appointment has been made, the Commissioner must inform the EEA regulators in every EEA State of the matters mentioned in subsection (1) as soon as is practicable after that decision, order or appointment has been made.

##### **Notification to creditors: winding up proceedings.**

6.(1) When an administration or winding-up order (a “relevant order”) or appointment of a liquidator is made, or a decision on a voluntary arrangement is taken, in relation to a Gibraltar insurer on or after the date this Act comes into operation, the appointed officer must notify in writing all known creditors of that insurer—

- (a) of the matters mentioned in subsection (3) and, if applicable, subsection (4); and
- (b) of the matters mentioned in subsection (5),

as soon as is reasonably practicable in any case.

(2) The appointed officer may comply with the requirement in subsection (1)(a) and the requirement in subsection (1)(b) by separate notifications.

(3) For the purposes of this section the matters which must be notified to all known creditors in accordance with subsection (1)(a) are as follows—

- (a) that a relevant order or appointment has been made, or a relevant decision taken, in relation to the Gibraltar insurer; and
- (b) the date from which that order, appointment or decision has effect.

(4) In addition to the matters mentioned in subsection (3), insurance creditors must be notified, in accordance with subsection (1)(a), of the following matters—

- (a) the effect which the relevant order, appointment or decision will, or is likely to have on the kind of contract of insurance under, or in connection with, which that creditor's insurance claim against the insurer is founded; and
- (b) the date from which any variation (resulting from the relevant order or relevant decision) to the risks covered by, or the sums recoverable under, that contract has effect.

(5) The matters which must be notified to all known creditors in accordance with subsection (1)(b) are as follows—

- (a) if applicable, the date by which a creditor must submit his claim in writing;
- (b) the matters which must be stated in a creditor's claim;
- (c) details of any category of debt in relation to which a claim is not required;
- (d) the person to whom any such claim or any observations on a claim must be submitted; and
- (e) the consequences of any failure to submit a claim by any specified deadline.

(6) Subject to subsection (7), where a creditor is notified in accordance with subsection (1)(b), the notification must be headed with the words “Invitation to lodge a claim: time limits to be observed”, and that heading must be given in either–

- (a) the official language, or one of the official languages, of Gibraltar or the EEA State in which that creditor is ordinarily resident; or
- (b) every official language.

(7) Where a creditor notified in accordance with subsection (1)(a) or (b) is–

- (a) an insurance creditor; and
- (b) ordinarily resident in Gibraltar or an EEA State,

the notification must be given in the official language, or one of the official languages, of Gibraltar or that EEA State.

(8) An appointed officer commits an offence if he fails without reasonable excuse to comply with an applicable requirement under this section, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) For the purposes of this section–

- (a) “appointed officer” means a liquidator, provisional liquidator or administrator; and
- (b) a creditor is a “known” creditor if the appointed officer is aware of, or should reasonably be aware of–
  - (i) his identity,
  - (ii) his claim or potential claim, and
  - (iii) a recent address where he is likely to receive a communication.

**Submission of claims by EEA creditors.**

7.(1) An EEA creditor who on or after the date this Act comes into operation submits a claim or observations relating to his claim in any relevant proceedings (irrespective of when those proceedings were commenced or had effect) may do so in his domestic language, provided that the requirements in subsections (3) and (4) are complied with.

- (2) For the purposes of this section, “relevant proceedings” means–
- (a) a winding up;
  - (b) a qualifying voluntary arrangement, that is a voluntary arrangement which–
    - (i) varies the rights of creditors as against the insurer and is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern; or
    - (ii) includes a realisation of some or all of the assets of the insurer and distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.
- (3) Where an EEA creditor submits a claim in his domestic language, the document must be headed with the words “Lodgement of claim” (in English).
- (4) Where an EEA creditor submits observations on his claim (otherwise than in the document by which he submits his claim), the observations must be headed with the words “Submission of observations relating to claims” (in English).
- (5) Subsection (3) does not apply where an EEA creditor submits his claim using–
- (a) in the case of a winding up, a form of proof supplied by the liquidator;
  - (b) in the case of a qualifying voluntary arrangement, a form approved by the court for that purpose.
- (6) In this section “domestic language”, in relation to Gibraltar or an EEA creditor, means the official language, or one of the official languages, of Gibraltar or the EEA State in which he is ordinarily resident or, if the creditor is not an individual, in which the creditor’s head office is located.

## **Reports to creditors.**

- 8.(1) This section applies where, on or after the date this Act comes into operation–
- (a) a liquidator is appointed;

- (b) a winding up order is made by the court; or
- (c) a provisional liquidator is appointed.

(2) The liquidator or provisional liquidator (as the case may be) must send a report once in every 12 months beginning with the date when his appointment has effect to every known creditor.

(3) The requirement in subsection (2) does not apply where a liquidator or provisional liquidator is required by order of the court to send a report to creditors at intervals which are more frequent than those required by this section.

(4) This section is without prejudice to any requirement to send a report to creditors, imposed by the court on the liquidator or provisional liquidator, which is supplementary to the requirements of this section.

(5) A liquidator or provisional liquidator commits an offence if he fails without reasonable excuse to comply with an applicable requirement under this section, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) For the purposes of this section—

- (a) “known creditor” means—
  - (i) a creditor who is known to the liquidator or provisional liquidator, and
  - (ii) in a case falling within subsection (1)(b) or (c), a creditor who is specified in the insurer’s statement of affairs.
- (b) “report” means a written report setting out the position generally as regards the progress of the winding up or provisional liquidation (as the case may be).

**Service of notices and documents.**

9.(1) This section applies to any notification, report or other document which is required to be sent to a creditor of a Gibraltar insurer by a provision of this Part (“a relevant notification”).

(2) A relevant notification may be sent to a creditor by one of the following methods—

- (a) by posting it to the proper address of the creditor;

(b) by transmitting it electronically, in accordance with subsection (4).

(3) For the purposes of subsection (2)(a), the proper address of a creditor is any current address provided by that person as an address for service of a relevant notification and, if no such address is provided—

- (a) the last known address of that creditor (whether his residence or a place where he carries on business);
- (b) in the case of a body corporate, the address of its registered or principal office; or
- (c) in the case of an unincorporated association, the address of its principal office.

(4) A relevant notification may be transmitted electronically only if it is sent to—

- (a) an electronic address notified to the relevant officer by the creditor for this purpose; or
- (b) if no such address has been notified, to an electronic address at which the relevant officer reasonably believes the creditor will receive the notification.

(5) The requirement to send a relevant notification to a creditor shall also be treated as satisfied if the conditions set out in subsection (6) are satisfied.

(6) The conditions of this subsection are satisfied in the case of a relevant notification if—

- (a) the creditor has agreed with—
  - (i) the Gibraltar insurer which is liable under the creditor's claim, or
  - (ii) the relevant officer,  
  
that information which is required to be sent to him (whether pursuant to a statutory or contractual obligation, or otherwise) may instead be accessed by him on a web site;
- (b) the agreement applies to the relevant notification in question;
- (c) the creditor is notified of—

- (i) the publication of the relevant notification on a web site,
- (ii) the address of that web site,
- (iii) the place on that web site where the relevant notification may be accessed, and how it may be accessed; and

- (d) the relevant notification is published on that web site throughout a period of at least one month beginning with the date on which the creditor is notified in accordance with paragraph (c).

(7) Where, in a case in which subsection (5) is relied on for compliance with a requirement of section 6 or 8–

- (a) a relevant notification is published for a part, but not all, of the period mentioned in subsection (6)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the relevant officer to prevent or avoid,

no offence is committed under section 6(8) or section 8(5) (as the case may be) by reason of that failure.

(8) In this section–

- (a) “electronic address” includes any number or address used for the purposes of receiving electronic communications which are sent electronically;
- (b) “electronic communication” means an electronic communication within the meaning of the Electronic Commerce Act 2001<sup>3</sup> the processing of which on receipt is intended to produce writing; and
- (c) “relevant officer” means (as the case may be) an administrator, liquidator or provisional liquidator who is required to send a relevant notification to a creditor by a provision of this Part.

**Disclosure of confidential information received from an EEA regulator.**

10.(1) This section applies to information (“insolvency information”) which–

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<sup>3</sup> 2001-07

- (a) relates to the business or affairs of any other person; and
- (b) is supplied to the Commissioner of Insurance by an EEA regulator acting in accordance with Articles 5, 8 or 30 of the reorganisation and winding up directive.

(2) No disclosure of any insolvency information shall be made to any person except in accordance with Schedule 16 to the Insurance Companies Act.

#### **PART IV**

*Priority of payment of insurance claims in winding up etc.*

#### **Interpretation of this Part.**

11.(1) For the purposes of this Part–

“general business” means the business of effecting or carrying out a contract of general insurance;

“general business assets” means the assets of a composite insurer which are, or should properly be, apportioned to that insurer’s general business, in accordance with the requirements of Article 14 of the first life insurance directive (separate management of long term and general business of a composite insurer);

“general business liabilities” means the debts of a composite insurer which are attributable to the general business carried on by that insurer;

“general insurer” means a Gibraltar insurer who carries on exclusively general business;

“long term business” means the business of effecting or carrying out a contract of long term insurance;

“long term business assets” means the assets of a composite insurer which are, or should properly be, apportioned to that insurer’s long term business, in accordance with the requirements of Article 14 of the first life insurance directive (separate management of long term and general business of a composite insurer);

“long term business liabilities” means the debts of a composite insurer which are attributable to the long term business carried on by that insurer;

“long term insurer” means a Gibraltar insurer who–

- (a) carries on long term business exclusively; or
- (b) carries on long term business and permitted general business;

“other assets” means any assets of a composite insurer which are not long term business assets or general business assets;

“other business”, in relation to a composite insurer, means such of the business (if any) of the insurer which is not long term business or general business;

“permitted general business” means the business of effecting or carrying out a contract of general insurance where the risk insured against relates to either accident or sickness;

“preferential debt” means a debt owed to–

- (a) the Commissioner of Income Tax;
- (b) social security contributions;
- (c) employees in respect of remuneration etc;
- (d) an occupational pension scheme.

“society” means–

- (a) a friendly society incorporated under the Friendly Societies Act<sup>2</sup>; or
- (b) an industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act.

(2) In this Part, references to assets include a reference to proceeds where an asset has been realised, or any other sums representing assets.

**Applications of sections 13 to 19.**

12.(1) Subject to subsection (2), sections 13 to 19 apply in the winding up of a Gibraltar insurer where–

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<sup>2</sup> 1888-11

- (a) in the case of a winding up by the court, the winding up order is made on or after the date this Act comes into operation; or
  - (b) in the case of a creditors' voluntary winding up, the liquidator is appointed;
- (2)
- (a) Where a compromise or arrangement is in place, no winding up proceedings may be opened without the permission of the court.
  - (b) The permission of the court is to be granted only if required by the exceptional circumstances of the case.
  - (c) For the purposes of this subsection winding up proceedings include proceedings for a winding up order or for a creditors' voluntary liquidation with confirmation by the court.
- (3) Sections 13 to 19 do not apply to a winding up falling within subsection (1) where, in relation to a Gibraltar insurer—
- (a) an administration order was made before the date this Act comes into operation, and that order is not discharged until the commencement date; or
  - (b) a provisional liquidator was appointed before the date this Act comes into operation, and that appointment is not discharged until the commencement date.
- (4) For the purposes of this section, “the commencement date” means the date when a Gibraltar insurer goes into liquidation.

**Preferential debts: long term general insurers.**

13.(1) This section applies in the case of a winding up of—

- (a) a long term insurer;
- (b) a general insurer;
- (c) a composite insurer, where the long term business of that insurer has been or is to be transferred as a going concern to an insurer who may lawfully carry out those contracts in accordance with paragraph 7(1) of Schedule 8 to the Insurance Companies Act.

(2) Subject to subsection (3), the debts of the insurer must be paid in the following order of priority–

- (a) preferential debts;
- (b) insurance debts;
- (c) all other debts.

(3) Preferential debts rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(4) Insurance debts rank equally among themselves and must be paid in full, unless the assets available after the payment of preferential debts are insufficient to meet them, in which case they abate in equal proportions.

(5) So far as the assets of the insurer available for the payment of unsecured creditors are insufficient to meet the preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer, and must be paid accordingly out of any property comprised in or subject to that charge.

(6) The order of priority specified in subsection (2)(a) and (b) applies for the purposes of any payment made in accordance with subsection (5).

**Composite insurers: preferential debts attributable to long-term and general business.**

14.(1) This section applies in the case of the winding up of a non-transferring composite insurer.

(2) The long term business assets and the general business assets must be applied separately in accordance with subsections (3) and (4).

(3) The general business assets must be applied in discharge of the general business preferential debts in the order of priority specified in section 16(1).

(4) Subsection (5) applies where the value of the long term business assets exceeds the long term business preferential debts and the general business assets are insufficient to meet the general business preferential debts.

(5) Those long term business assets which represent the excess must be applied in discharge of the outstanding general business preferential debts of the insurer, in accordance with the order of priority specified in section 16.

(6) For the purposes of this section and section 16–

“general business preferential debts” means those debts mentioned in section 16(1) and, unless the court orders otherwise, any expenses of the winding up which are apportioned to the general business assets.

**Preferential debts: long term business of a non-transferring composite insurer.**

15.(1) For the purpose of compliance with the requirement in section 14(3), the long term business assets of a non-transferring composite insurer must be applied in discharge of the following debts and in the following order of priority–

- (a) relevant preferential debts;
- (b) long term insurance debts.

(2) Relevant preferential debts rank equally among themselves, unless the long term business assets, any available general business assets and other assets (if any) applied in accordance with section 16 are insufficient to meet them, in which case they abate in equal proportions.

(3) Long term insurance debts rank equally among themselves, unless the long term business assets available after the payment of relevant preferential debts and any available general business assets and other assets (if any) applied in accordance with section 16 are insufficient to meet them, in which case they abate in equal proportions.

(4) So far as the long term business assets, and any available general business assets, which are available for the payment of unsecured creditors are insufficient to meet the relevant preferential debts, those debts (and only those debts) have priority over the claims of holder of debentures secured by, or holders of, any floating charge created by the insurer over any of its long term business assets, and must be paid accordingly out of any property comprised in or subject to that charge.

(5) The order of priority specified in subsection (1) applies for the purpose of any payment made in accordance with subsection (4).

(6) For the purposes of this section–

“available general business assets” means those general business assets which must be applied in discharge of the insurer’s outstanding long term business preferential debts, in accordance with section 14(6);

“long term insurance debt” means an insurance debt which is attributable to the long term business of the insurer;

“relevant preferential debt” means a preferential debt which is attributable to the long term business of the insurer.

**Preferential debts: general business of a composite insurer.**

16.(1) For the purpose of compliance with the requirement in section 14(3), the long term business assets of a non-transferring composite insurer must be applied in discharge of the following debts and in the following order of priority—

- (a) relevant preferential debts;
- (b) general insurance debts.

(2) Relevant preferential debts rank equally among themselves, unless the general business assets, any available long term business assets, and other assets (if any) applied in accordance with section 17 are insufficient to meet them, in which case they abate in equal proportions.

(3) General insurance debts rank equally among themselves, unless the general business assets available after the payment of relevant preferential debts, any available long term business assets, and other assets (if any) applied in accordance with section 17 are insufficient to meet them, in which case they abate in equal proportions.

(4) So far as the other business assets and available long term assets of the insurer which are available for the payment of unsecured creditors are insufficient to meet relevant preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer, and must be paid accordingly out of any property comprised in or subject to that charge.

(5) The order of priority specified in subsection (1) applies for the purposes of any payment made in accordance with subsection (4).

(6) For the purposes of this regulation—

“available long term business assets” means those long term business assets which must be applied in discharge of the insurer’s

outstanding general business preferential debts, in accordance with section 14(6);

“general insurance debt” means an insurance debt which is attributable to the general business of the insurer;

“relevant preferential debt” means a preferential debt which is attributable to the general business of the insurer.

## **Insufficiency of long term business assets and general business assets.**

17.(1) This section applies in the case of the winding up of a non-transferring composite insurer where the long term business assets and the general business assets, applied in accordance with section 14, are insufficient to meet in full the preferential debts and insurance debts.

(2) In a case in which this section applies, the other assets (if any) of the insurer must be applied in the following order of priority–

- (a) outstanding preferential debts;
- (b) unattributed preferential debts;
- (c) outstanding insurance debts;
- (d) all other debts.

(3) So far as the long term business assets, and any available general business assets, which are available for the payment of unsecured creditors are insufficient to meet the outstanding preferential debts and the unattributed preferential debts, those debts (and only those debts) have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the insurer over any of its other assets, and must be paid accordingly out of any property comprised in or subject to that charge.

(4) For the purposes of this section–

“outstanding insurance debt” means any insurance debt, or any part of an insurance debt, which was not discharged by the application of the long term business assets and the general business assets in accordance with section 14;

“outstanding preferential debt” means any preferential debt attributable either to the long term business or the general business of the insurer which was not discharged by the application of the long

term business assets and the general business assets in accordance with section 15;

“unattributed preferential debt” means a preferential debt which is not attributable to either the long term business or the general business of the insurer.

**Composite insurers: excess of long term business assets and general business assets.**

18.(1) This section applies in the case of the winding up of a non-transferring composite insurer where the value of the long term business assets and the general business assets, applied in accordance with section 14, exceeds the value of the sum of the long term business preferential debts and the general business preferential debts.

(2) In a case to which this section applies, long term business assets or general business assets which have not been applied in discharge of long term business preferential debts or general business preferential debts must be applied in accordance with section 19.

(3) In this section, “long term business preferential debts” and “general business preferential debts” have the same meaning as in sections 14 and 15.

**Composite insurers: application of other assets.**

19.(1) This section applies in the case of the winding up of a non-transferring composite insurer where section 17 does not apply.

(2) The other assets of the insurer, together with any outstanding business assets, must be paid in discharge of the following debts—

- (a) unattributed preferential debts;
- (b) all other debts.

(3) In this section—

“unattributed preferential debt” has the same meaning as in section 16;

“outstanding business assets” means assets of the kind mentioned in section 18(2).

**Composite insurers: proof of debts.**

20.(1) This section applies in the case of the winding up of a non-

transferring composite insurer in compliance with the requirement in section 14(2).

(2) The liquidator may in relation to the insurer's long term business assets and its general business assets fix different days on or before which the creditors of the company who are required to prove their debts or claims are to prove their debts or claims, and he may fix one of those days without at the same time fixing the other.

(3) In submitting a proof of any debt a creditor may claim the whole or any part of such debt as attributable to the company's long term business or to its general business, or he may make no such attribution.

(4) When he admits any debt, in whole or in part, the liquidator shall state in writing how much of what he admits is attributable to the company's long term business, how much is attributable to the company's general business, and how much is attributable to its other business (if any).

## **Composite insurers: general meetings of creditors.**

21. The creditors are to be—

- (a) in relation to the long term business assets of that insurer, only those who are creditors in respect of long term business liabilities; and
- (b) in relation to the general business assets of that insurer, only those who are creditors in respect of general business liabilities,

and, accordingly, any general meetings of creditors summoned are to be separate general meetings of creditors in respect of long term business liabilities and general business liabilities.

## **PART V**

### *Reorganisation or winding up of Gibraltar insurers: recognition of EEA rights*

#### **Interpretation of this Part.**

22.(1) For the purposes of this Part—

- (a) “affected insurer” means a Gibraltar insurer which is the subject of a relevant reorganisation or winding up;

- (b) “relevant reorganisation” or “relevant winding up” means any voluntary arrangement, administration order, winding up, to which this Part applies; and
- (c) “relevant time” means the date of the opening of a relevant reorganisation or a relevant winding up.

(2) In this Part, references to the opening of a relevant reorganisation or a relevant winding up mean—

- (a) in the case of winding up proceedings—
  - (i) in the case of a winding up by the court, the date on which the winding up order is made, or
  - (ii) in the case of a creditors’ voluntary winding up, the date on which the liquidator is appointed;
- (b) in the case of a voluntary arrangement, the date when a decision with respect to that voluntary arrangement has effect;
- (c) in a case where a provisional liquidator has been appointed, the date of that appointment,

and references to the time of an opening must be construed accordingly.

**EEA rights: applicable law in the winding up of a Gibraltar insurer.**

23.(1) This section is subject to the provisions of sections 24 to 33.

(2) In a relevant winding up, the matters mentioned in subsection (3) in particular are to be determined in accordance with the general law of Gibraltar.

- (3) Those matters are—
  - (a) the assets which form part of the estate of the affected insurer;
  - (b) the treatment of assets acquired by, or devolving on, the affected insurer after the opening of the relevant winding up;
  - (c) the respective powers of the affected insurer and the liquidator or provisional liquidator;
  - (d) the conditions under which set-off may be evoked;

- (e) the effects of the relevant winding up on current contracts to which the affected insurer is a party;
- (f) the effects of the relevant winding up on proceedings brought by creditors;
- (g) the claims which are to be lodged against the estate of the affected insurer;
- (h) the treatment of claims against the affected insurer arising after the opening of the relevant winding up;
- (i) the rules governing—
  - (i) the lodging, verification and admission of claims,
  - (ii) the distribution of proceeds from the realisation of assets,
  - (iii) the ranking of claims,
  - (iv) the rights of creditors who have obtained partial satisfaction after the opening of the relevant winding up by virtue of a right in rem or through set-off;
- (j) the conditions for and the effects of the closure of the relevant winding up, in particular by composition;
- (k) the rights of creditors after the closure of the relevant winding up;
- (l) who is to bear the cost and expenses incurred in the relevant winding up;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

## **Employment contracts and relationships.**

24.(1) The effects of a relevant reorganisation or a relevant winding up on EEA employment contracts and EEA employment relationships are to be determined in accordance with the law of Gibraltar or the EEA State to which that contract or that relationship is subject.

(2) In this section, an employment contract is an EEA employment contract, and an employment relationship is an EEA employment relationship if it is subject to the law of Gibraltar or an EEA State.

**Contracts in connection with immovable property.**

25. The effects of a relevant reorganisation or a relevant winding up on a contract conferring the right to make use of or acquire immovable property situated within the territory of Gibraltar or an EEA State are to be determined in accordance with the law of Gibraltar or that State.

**Registrable rights.**

26. The effects of a relevant reorganisation or a relevant winding up on right of the affected Gibraltar insurer with respect to—

- (a) immovable property,
- (b) a ship, or
- (c) an aircraft

which is subject to registration in a public register kept under the authority of an EEA State are to be determined in accordance with the law of Gibraltar or that State.

**Third parties' rights in rem.**

27.(1) A relevant reorganisation or a relevant winding up shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets (including both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the affected insurer which are situated within the territory of Gibraltar or an EEA State at the relevant time.

(2) The rights in rem referred to in subsection (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 the 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 guarantee;
- (c) the right to demand the assets from, or to require restitution by, any person 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) A right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of subsection (1) may be obtained, is also to be treated as a right in rem for the purposes of this section.

(4) Subsection (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of Gibraltar, as referred to in section 23(3)(m).

## **Reservation of title agreements etc.**

28.(1) The opening of a relevant reorganisation or a relevant winding up in relation to an insurer purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of that opening the asset is situated within the territory of Gibraltar or an EEA State.

(2) The opening of a relevant reorganisation or a relevant winding up in relation to an insurer 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 that opening the asset sold is situated within the territory of Gibraltar or an EEA State.

(3) Subsections (1) and (2) do not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of Gibraltar, as referred to in section 23(3)(m).

## **Creditors' rights to set off.**

29.(1) A relevant reorganisation or a relevant winding up shall not affect the right of creditors to demand the set-off of their claims against the claims of the affected insurer, where such a set-off is permitted by the applicable EEA law.

(2) In subsection (1), "applicable EEA law" means the law of the EEA State which is applicable to the claim of the affected insurer.

(3) Subsection (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of Gibraltar, as referred to in section 23(3)(m).

## **Regulated markets.**

30.(1) Without prejudice to section 26, the effects of a relevant reorganisation measure or winding up on the rights and obligations of the parties to a regulated market operating in Gibraltar or an EEA State must be determined in accordance with the law applicable to that market.

(2) Subsection (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of Gibraltar, as referred to in section 23(3)(m).

(3) For the purposes of this section, “regulated market” has the meaning given by the Council Directive of 10 May 1993 on investment services in the securities field (No. 93/22/EEC).

**Detrimental acts pursuant to the law of Gibraltar or an EEA State.**

31.(1) In a relevant reorganisation or a relevant winding up, the rules relating to detrimental transactions shall not apply where a person who has benefited from a legal act detrimental to all the creditors provides proof that—

- (a) the act is subject to the law of Gibraltar or an EEA State; and
- (b) that law does not allow any means of challenging that act in the relevant case.

(2) For the purposes of subsection (1), “the rules relating to detrimental transactions” means any provision of the general law relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors, as referred to in section 23(3)(m).

**Protection of third party purchasers.**

32.(1) This section applies where, by an act concluded after the opening of a relevant reorganisation or a relevant winding up, an affected insurer disposes for a consideration of—

- (a) an immovable asset situated within the territory of Gibraltar or an EEA State;
- (b) a ship or an aircraft subject to registration in a public register kept under the authority of Gibraltar or an EEA State;
- (c) securities whose existence or transfer presupposes entry into a register or account laid down by the law of Gibraltar or an EEA State or which are placed in a central deposit system governed by the law of Gibraltar or an EEA State.

(2) The validity of that act is to be determined in accordance with the law of Gibraltar or the EEA State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept, as the case may be.

**Lawsuits pending.**

33.(1) The effects of a relevant reorganisation measure or a relevant winding up on a relevant lawsuit pending in Gibraltar or an EEA State shall be determined solely in accordance with the law of Gibraltar or that EEA State.

(2) In subsection (1), “relevant lawsuit” means a lawsuit concerning an asset or right of which the affected insurer has been divested.

**PART VI**

*Reorganisation or winding up of third country insurers*

**Interpretation of this Part.**

34. In this Part—

- (a) “relevant measure”, in relation to a Gibraltar branch of a third country insurer, means—
  - (i) a winding up;
  - (ii) an administration order;
  - (iii) a decision of the court to reduce the value of one or more of the insurer’s contracts,

made in Gibraltar under this or any other Act;

- (b) “third country insurer” means a person—
  - (i) with a branch in Gibraltar authorised to effect or carry out contracts of insurance under the Insurance Companies Act; and
  - (ii) whose head office is not in Gibraltar or an EEA State.

**Application of this Act to a branch of a third country insurer.**

35.(1) Parts I, III, IV and V of this Act apply where a third country insurer is subject to a relevant measure, as if references in those Parts to a Gibraltar insurer included a reference to a third country insurer.

(2) For the purposes of this section, a Gibraltar branch of a third country insurer shall be treated as if it were a Gibraltar insurer provided that where

such a third country insurer has branches in another or other EEA States, then the Gibraltar branch shall be treated independently with regard to the application of this Act and the Commissioner of Insurance (and any liquidator appointed) shall attempt to co-ordinate their actions with the appropriate authorities in the other relevant EEA States.

**Disclosure of confidential information.**

36. Information about the business or other affairs of any person which is supplied to the Commissioner of Insurance by an EEA regulator or to an insolvency practitioner in accordance with Article 30 of the reorganisation and winding up directive shall not be disclosed to any other person except in accordance with Schedule 16 to the Insurance Companies Act.