

**CREDIT INSTITUTIONS (REORGANISATION AND WINDING UP) ACT 2005****Principal Act**

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| <b>Act. No. 2005-58</b> | <i>Commencement</i> | 1.12.2005  |
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**Implementing:**

Directive No. 2001/24/EC

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AN ACT TO IMPLEMENT INTO THE LAW OF GIBRALTAR DIRECTIVE 2001/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 4 APRIL 2001 ON THE REORGANISATION AND WINDING UP OF CREDIT INSTITUTIONS.

**Title and commencement.**

1.(1) This Act may be cited as the Credit Institutions (Reorganisation and Winding Up) Act 2005.

(2) This Act comes into operation on the date of publication.

**Interpretation.**

2.(1) In this Act, unless the context requires otherwise—

the “Authority” means such persons or body as the Minister with responsibility for financial services may from time to time by regulations appoint, to exercise the powers, discretions and functions conferred on the Authority under this Act;

“banking consolidation directive” means the directive of the European Parliament and the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (2000/12/EC) as most recently amended by the directive of the European Parliament and the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (2002/87/EC);

“branch”, in relation to an EEA or Gibraltar credit institution has the meaning given by Article 1(3) of the banking consolidation directive;

“claim” means a claim submitted by a creditor of a Gibraltar credit institution in the course of a winding up, with a view to recovering his debt in whole or in part;

“creditors’ voluntary winding up” has the meaning given by section 273(3) of the Companies Act;

“directive reorganisation measure” means a reorganisation measure as defined in Article 2 of the reorganisation and winding up directive which was adopted or imposed on or after the date on which this Act comes into operation;

“directive winding up proceedings” means winding up proceedings as defined in Article 2 of the reorganisation and winding up directive which were opened on or after the date on which this Act comes into operation;

“EEA credit institution” means an EEA undertaking, other than a Gibraltar credit institution, of the kind mentioned in Article 1(1) and (3) and subject to the conditions in Article 2(3) of the banking consolidation directive;

“EEA creditor” means a creditor of a Gibraltar credit institution who—

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

“EEA regulator” means a competent authority (within the meaning of Article 1(4) of the banking consolidation directive) of an EEA State;

“EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, and this definition does not include a reference to Gibraltar;

“Gibraltar credit institution” means an undertaking whose head office is in Gibraltar and which is licensed under the Financial Services (Banking) Act to accept deposits or to issue electronic money as the case may be but does not include an undertaking which is also licensed under the Insurance Companies Act to effect or carry out contracts of insurance;

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

“liquidator”, except for the purposes of section 4, includes any person or body which is not a body corporate appointed by the administrative or judicial authorities whose task is to administer winding up proceedings in respect of a Gibraltar credit institution;

“officer”, in relation to a company includes a director, manager or secretary;

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“official language” means a language specified in Article 1 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (Regulation 1/58/EEC), as amended from time to time;

“the reorganisation and winding up directive” means the directive of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (2001/24/EC);

“section 205 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a Gibraltar credit institution under section 205 of the Companies Act, but does not include a compromise or arrangement falling within section 206 or 207 of that Act (reconstructions or amalgamations);

“winding up” means—

- (a) winding up by the court, or
- (b) a creditors’ voluntary winding up.

(2) In subsection (1)—

- (a) for the purposes of the definition of “directive reorganisation measure”, a reorganisation measure is adopted at the time when it is treated as adopted or imposed by the law of 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 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 2

### *Insolvency Measures and Proceedings: Jurisdiction in Relation to Credit Institutions*

**Prohibition against winding up etc. EEA credit institutions in Gibraltar.**

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

- (a) make a winding up order pursuant to section 352 of the Companies Act; or
- (b) appoint a provisional liquidator.

(2) Subsection (1)(a) does not prevent—

- (a) the court from making a winding up order on or after the relevant date in relation to an EEA credit institution if—
  - (i) a provisional liquidator was appointed in relation to that credit institution 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 credit institution on or 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 credit institution appointed before the relevant date from acting in relation to that credit institution on or after that date.

(4) In this section and section 4, “relevant date” means the date on which this Act comes into operation.

#### **Schemes of arrangement.**

4.(1) For the purposes of section 205(5) of the Companies Act, an EEA credit institution or a branch of an EEA credit institution is to be treated as a company liable to be wound up under that Act if it would be liable to be wound up under that Act but for the prohibition in section 3(1)(a).

(2) But a court may not make a relevant order under section 205(2) of the Companies Act in relation to an EEA credit institution which is subject to a directive reorganisation measure or directive winding up proceedings, or a branch of an EEA credit institution which is subject to such a measure or proceedings, unless the conditions set out in subsection (3) are satisfied.

(3) Those conditions are—

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- (a) the person proposing the section 205 compromise or arrangement (“the proposal”) has given–
  - (i) the administrator or liquidator, and
  - (ii) the relevant administrative or judicial authority,

reasonable notice of the details of that proposal; and

- (b) no person notified in accordance with paragraph (a) has objected to the proposal.

(4) Nothing in this section invalidates a compromise or arrangement which was sanctioned by the court by an order made before the relevant date.

(5) For the purposes of subsection (2), a relevant order means an order sanctioning a section 205 compromise or arrangement which–

- (a) is intended to enable the credit institution, and the whole or any part of its undertaking, to survive as a going concern and which affects the rights of persons other than the credit institution or its contributories; or
- (b) includes among its purposes a realisation of some or all of the assets of the EEA credit institution to which the order relates and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that credit institution.

(6) For the purposes of this section–

- (a) “administrator” means an administrator, as defined by Article 2 of the reorganisation and winding up directive, who is appointed in relation to the EEA credit institution in relation to which the proposal is made;
- (b) “liquidator” means a liquidator, as defined by Article 2 of the reorganisation and winding up directive, who is appointed in relation to the EEA credit institution in relation to which the proposal is made;
- (c) “administrative or judicial authority” means the administrative or judicial authority, as defined by Article 2 of the reorganisation and winding up directive, which is competent

for the purposes of the directive reorganisation measure or directive winding up proceedings mentioned in subsection (2).

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

5.(1) An EEA insolvency measure has effect in Gibraltar in relation to—

- (a) any branch of an EEA credit institution;
- (b) any property or other assets of that credit institution;
- (c) any debt or liability of that credit institution,

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

(3) The condition mentioned in subsection (2) 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—



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- (a) may not take any action which would constitute an unlawful use of force;
- (b) may not rule on any dispute arising from a matter falling within Part 4 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 which have effect in Gibraltar.

(5) For the purposes of subsection (4)(c), “relevant laws or rules as to procedure” means–

- (a) requirements as to consultation with or notification of employees of an EEA credit institution;
- (b) law and procedures relevant to the realisation of assets;
- (c) where the competent officer is bringing or defending legal proceedings in the name of, or on behalf of, an EEA credit institution, the relevant rules of court.

(6) In this section–

“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 directive winding up proceedings which have effect in relation to an EEA credit institution by virtue of the law of the relevant EEA State;

“relevant EEA State”, in relation to an EEA credit institution, means the EEA State in which that credit institution has been authorised in accordance with Article 4 of the banking consolidation directive.

#### **Confirmation by the court of a creditors’ voluntary winding up.**

6. Where a Gibraltar credit institution has passed a resolution for voluntary winding up, and no declaration under section 273 of the Companies Act has

been made, the liquidator must apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 10 and 28 of the reorganisation and winding up directive.

### PART 3

#### *Modifications of the Law of Insolvency: Notification and Publication*

##### **Modifications of the law of insolvency.**

7. The general law of insolvency has effect in relation to Gibraltar credit institutions subject to the provisions of this Part.

##### **Consultation of the Authority prior to a voluntary winding up.**

8.(1) Where, on or after the date on which this Act comes into operation, a Gibraltar credit institution ("the institution") intends to pass a resolution to wind up the institution under paragraph (b) or (c) of section 268(1) of the Companies Act, the institution must give written notice of the resolution to the Authority before it passes the resolution.

(2) Where notice is given under subsection (1), the resolution may be passed only after the end of the period of five business days beginning with the day on which the notice was given.

##### **Notification of relevant decision to the Authority.**

9.(1) Where on or after the date on which this Act comes into operation the court makes an order or appointment of any of the following kinds—

- (a) a winding up order under section 223 of the Companies Act;
- (b) the appointment of a provisional liquidator under section 235(1) of the Companies Act;

it must immediately inform the Authority, or cause the Authority to be informed, of the order or appointment which has been made.

(2) Where a liquidator is appointed as mentioned in section 275 of the Companies Act, the liquidator must inform the Authority forthwith of his appointment.

(3) Subsections (1) and (2) do not apply in any case where the Authority was represented at all hearings in connection with the application in relation to which the order or appointment is made.

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(4) A liquidator who fails without reasonable excuse to comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Notification to EEA regulators.**

10.(1) Where the Authority is informed of an order or appointment in accordance with section 9, the Authority must as soon as is practicable inform the relevant person—

- (a) that the order or appointment has been made; and
- (b) in general terms, of the possible effect of an order or appointment of that kind on the business of a credit institution.

(2) Where the Authority has been represented at all hearings in connection with the application in relation to which the order or appointment has been made, the Authority must inform the relevant person of the matters mentioned in subsection (1) as soon as is practicable after that order or appointment has been made.

(3) Where, on or after the date on which this Act comes into operation, it appears to the Authority that a directive reorganisation measure should be adopted in relation to or imposed on an EEA credit institution which has a branch in Gibraltar, it will inform the home state regulator as soon as is practicable.

(4) In this section, the “relevant person” means the EEA regulator of any EEA State in which the Gibraltar credit institution has a branch.

#### **Withdrawal of authorisation.**

11.(1) For the purposes of this section—

- (a) a qualifying order means a winding up order under section 223 of the Companies Act;
- (b) a qualifying appointment means—
  - (i) the appointment of a provisional liquidator under section 235(1) of the Companies Act; or
  - (ii) the appointment of a liquidator as mentioned in section 275 of the Companies Act.

(2) When the Authority is informed of a qualifying order or qualifying appointment, the Authority will as soon as reasonably practicable arrange for the Gibraltar credit institution's licence under the Financial Services (Banking) Act to accept deposits or to issue electronic money as the case may be to be varied or cancelled.

**Publication of winding up order or scheme of arrangement.**

12.(1) This section applies where a qualifying order or qualifying appointment is made, in relation to a Gibraltar credit institution on or after the date on which this Act comes into operation.

(2) For the purposes of this section—

(a) a qualifying order means—

(i) an order appointing a provisional liquidator in accordance with section 235 of the Companies Act, or

(iii) a winding up order made by the court under section 223 of the Companies Act;

(b) a qualifying appointment means the appointment of a liquidator as provided for in section 275 of the Companies Act.

(3) Subject to subsection (6), as soon as is reasonably practicable after a qualifying order or a qualifying appointment has been made, the relevant officer must publish, or cause to be published, in the Official Journal of the European Communities and in two national newspapers in each EEA State in which the Gibraltar credit institution has a branch the information mentioned in subsection (4) and (if applicable) subsection (5).

(4) That information is—

(a) a summary of the terms of the qualifying appointment or the provisions of the qualifying order (as the case may be);

(b) the identity of the relevant officer;

(c) the statutory provisions in accordance with which the qualifying decision has effect or the qualifying order or appointment has been made or takes effect.

(5) In the case of a qualifying appointment, that information includes the court to which an application under section 295 of the Companies Act may be made.

(6) Subsection (3) does not apply where a qualifying order falling within subsection (2)(a) affects the interests only of the members, or any class of members, or employees of the credit institution (in their capacity as members or employees).

(7) This section is without prejudice to any requirement to publish information imposed upon a relevant officer under any provision of the general law of insolvency.

(8) A relevant officer who fails to comply with subsection (3) of this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) A qualifying order or qualifying appointment is not invalid or ineffective if the relevant official fails to comply with subsection (3) of this section.

(10) In this section, “relevant officer” means—

- (a) in the case of a creditors’ voluntary winding up, the liquidator;
- (b) in the case of winding up order, the liquidator; or
- (c) in the case of an order appointing a provisional liquidator, the provisional liquidator.

(11) The information to be published in accordance with subsection (3) of this section shall be—

- (a) in the case of the Official Journal of the European Communities, in the official language or languages of each EEA State in which the Gibraltar credit institution has a branch;
- (b) in the case of the national newspapers of each EEA State in which the Gibraltar credit institution has a branch, in the official language or languages of that EEA State.

#### **Honouring of certain obligations.**

13.(1) This section applies where, on or after the date on which this Act comes into operation, a relevant obligation has been honoured for the benefit of a relevant credit institution by a relevant person.

(2) Where a person has honoured a relevant obligation for the benefit of a relevant credit institution, he shall be deemed to have discharged that obligation if he was unaware of the winding up of that credit institution.

(3) For the purposes of this section—

- (a) a “relevant obligation” is an obligation which, after the commencement of the winding up of a relevant credit institution, should have been honoured for the benefit of the liquidator of that credit institution;
- (b) a relevant credit institution is a Gibraltar credit institution which—
  - (i) is not a body corporate; and
  - (ii) is the subject of a winding up;
- (c) a relevant person is a person who at the time the obligation is honoured—
  - (i) is in the territory of an EEA State; and
  - (ii) is unaware of the winding up of the relevant credit institution.

(4) For the purposes of subsection (3)(c)(ii) of this section—

- (a) a relevant person shall be presumed, in the absence of evidence to the contrary, to have been unaware of the winding up of a relevant credit institution where the relevant obligation was honoured before date of the publication provided for in section 12 in relation to that winding up;
- (b) a relevant person shall be presumed, in the absence of evidence to the contrary, to have been aware of the winding up of the relevant credit institution where the relevant obligation was honoured on or after the date of the publication provided for in section 12 in relation to that winding up.

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

14.(1) When a relevant order or appointment is made, or a relevant decision is taken, in relation to a Gibraltar credit institution on or after the date on which this Act comes into operation, the appointed officer must, as soon as

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is reasonably practicable, notify in writing all known creditors of that credit institution–

- (a) of the matters mentioned in subsection (4); and
- (b) of the matters mentioned in subsection (5).

(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–

- (a) “relevant order” means–
  - (i) a winding up order under section 223 of the Companies Act (powers of the court on hearing a petition) ; or
  - (iii) an order appointing a provisional liquidator in accordance with section 235 of the Companies Act; and
- (b) a “relevant appointment” means the appointment of a liquidator as mentioned in section 275 of the Companies Act (appointment of liquidator in a creditors’ voluntary winding up).

(4) 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 credit institution; and
- (b) the date from which that order, appointment or decision 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) 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 every official language.

(7) The obligation under subsection (1)(b) may be discharged by sending a form of proof, provided that the form of proof complies with subsection (6).

(8) An appointed officer commits an offence if he fails without reasonable excuse to comply with a requirement under subsection (1) of 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 the liquidator or provisional liquidator, as the case may be;
- (b) a creditor is a “known” creditor if the appointed officer is 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.**

15.(1) An EEA creditor who, on or after the date on which 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 winding up.



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(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) In this section–

“domestic language”, in relation to an EEA creditor, means the official language, or one of the official languages, of 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.**

16.(1) This section applies where, on or after the date on which this Act comes into operation–

- (a) a liquidator is appointed in accordance with section 275 of the Companies Act;
- (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 to every known creditor once in every 12 months beginning with the date when his appointment has effect.

(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 a creditor who is known to the liquidator or provisional liquidator;
- (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.**

17.(1) This section applies to any notification, report or other document which is required to be sent to a creditor of a Gibraltar credit institution 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.

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(5) Any requirement in this Part 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 credit institution 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 14 or 16—

- (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 14(8) or section 16(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 a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) while in electronic form, the processing of which on receipt is intended to produce writing; and
- (c) “relevant officer” means (as the case may be) an administrator, liquidator, provisional liquidator or supervisor 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.**

18.(1) This section applies to information (“insolvency information”) which—

- (a) relates to the business or affairs of any other person; and
- (b) is supplied to the Authority by an EEA regulator acting in accordance with Articles 4, 5, 9, or 11 of the reorganisation and winding up directive.

(2) Sections 86 and 86A of the Financial Services (Banking) Act apply in relation to insolvency information as they apply in relation to confidential information within the meaning of that Act except that nothing shall prohibit the provision of any such information by the Authority to the Minister with responsibility for financial services to whom the Authority shall provide all such information upon request.

**PART 4**

***Reorganisation or Winding up of Gibraltar credit institutions:  
Recognition of EEA Rights***

**Application of this Part.**

19.(1) This Part applies as follows—

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- (a) where a Gibraltar credit institution is subject to a relevant winding up; or
- (b) where a provisional liquidator is appointed in relation to a Gibraltar credit institution on or after the date on which this Act comes into operation.

(2) For the purposes of subsection (1)(b), a winding up is a relevant winding up if–

- (a) in the case of a winding up by the court, the winding up order is made on or after the date on which this Act comes into operation; or
- (b) in the case of a creditors' voluntary winding up, the liquidator is appointed in accordance with section 275 of the Companies Act on or after the date on which this Act comes into operation.

**Application of this Part: assets subject to a section 205 compromise or arrangement.**

20.(1) For the purposes of this Part, the insolvent estate of a Gibraltar credit institution shall not include any assets which at the commencement date are subject to a relevant section 205 compromise or arrangement.

(2) In this section–

- (a) “assets” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;
- (b) “commencement date” means the date when a Gibraltar credit institution passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution;
- (c) “insolvent estate” means the company’s assets;
- (d) “relevant section 205 compromise or arrangement” means–
  - (i) a section 205 compromise or arrangement which was sanctioned by the court before the date on which this Act comes into operation, or

- (ii) any subsequent section 205 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of a kind mentioned in paragraph (i).

**Interpretation of this Part.**

21.(1) For the purposes of this Part–

- (a) “affected credit institution” means a Gibraltar credit institution which is the subject of a relevant winding up;
- (b) “relevant winding up” means any winding up referred to in section 19(1) to which this Part applies; and
- (c) “relevant time” means the date of the opening of a relevant winding up.

(2) In this Part, references to the opening of 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 in accordance with section 275 of the Companies Act; and
- (b) 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 credit institution.**

22.(1) This section is subject to the provisions of sections 23 to 35.

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

(3) Those matters are–

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- (a) the assets which form part of the estate of the affected credit institution;
- (b) the treatment of assets acquired by the affected credit institution after the opening of the relevant winding up;
- (c) the respective powers of the affected credit institution and the liquidator or provisional liquidator;
- (d) the conditions under which set-off may be invoked;
- (e) the effects of the relevant winding up on current contracts to which the affected credit institution 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 credit institution;
- (h) the treatment of claims against the affected credit institution 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.**

23.(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 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 an EEA State.

**Contracts in connection with immovable property.**

24.(1) 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 an EEA State shall be determined in accordance with the law of that State.

(2) The law of the EEA State in whose territory the property is situated shall determine whether the property is movable or immovable.

**Registrable rights.**

25. The effects of a relevant reorganisation or a relevant winding up on rights of the affected Gibraltar credit institution 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 that State.

**Third parties' rights in rem.**

26.(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 credit institution which are situated within the territory of an EEA State at the relevant time.



- (2) The rights in rem referred to in subsection(1) shall 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.

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

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

(2) The adoption of a relevant reorganisation or opening of a relevant winding up in relation to a credit institution 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 adoption or opening the asset sold is situated within the territory of 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 insolvency of Gibraltar.

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

28.(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 credit institution, where such a set-off is permitted by the law applicable to the affected credit institution's claim.

(2) 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.

#### **Regulated markets.**

29.(1) Subject to section 33, the effects of a relevant reorganisation or winding up on transactions carried out in the context of a regulated market operating in an EEA State must be determined in accordance with the law applicable to those transactions.

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

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

30.(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) that act is subject to the law of 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 of insolvency relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

#### **Protection of third party purchasers.**

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

- (a) an immovable asset situated within the territory of an EEA State;

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

(2) The validity of that act is to be determined in accordance with the law of 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.

(3) In this section, “relevant instruments” means the instruments referred to in Section B of the Annex to the Council Directive of 10th May 1993 on investment services in the securities field (No. 93/22/EEC).

#### **Lawsuits pending.**

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

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

#### ***Lex rei sitae.***

33.(1) The effects of a relevant reorganisation or a relevant winding up on the enforcement of a relevant proprietary right shall be determined by the law of the relevant EEA State.

(2) In this section–

“relevant proprietary right” means proprietary rights in relevant instruments or other rights in relevant instruments the existence or transfer of which is recorded in a register, an account or a centralised deposit system held or located in an EEA state;

“relevant EEA State” means the Member State where the register, account or centralised deposit system in which the relevant proprietary right is recorded is held or located;

“relevant instrument” has the meaning given by section 31(3).

**Netting agreements.**

34. The effects of a relevant reorganisation or a relevant winding up on a netting agreement shall be determined in accordance with the law applicable to that agreement.

**Repurchase agreements.**

35. Subject to section 33, the effects of a relevant reorganisation or a relevant winding up on a repurchase agreement shall be determined in accordance with the law applicable to that agreement.

**PART 5*****Third Country Credit Institutions*****Interpretation of this Part.**

36. In this Part—

- (a) “relevant measure”, in relation to a third country credit institution, means—
  - (i) a winding up; or
  - (ii) a provisional liquidation;
- (b) “third country credit institution” means a person—
  - (i) who is licensed under the Financial Services (Banking) Act to accept deposits or to issue electronic money as the case may be; and
  - (ii) whose head office is not in Gibraltar or an EEA State.

**Application of this Act to a third country credit institution.**

37. Sections 9 and 10 apply where a third country credit institution is subject to a relevant measure, as if references in those sections to a Gibraltar credit institution included a reference to a third country credit institution.

**Disclosure of confidential information: third country credit institution.**

38.(1) This section applies to information (“insolvency practitioner information”) which—

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- (a) relates to the business or other affairs of any person; and
- (b) is information of a kind mentioned in subsection (2).

(2) Information falls within subsection (1)(b) if it is supplied to—

- (a) the Authority by an EEA regulator; or
- (b) an insolvency practitioner by an EEA administrator or liquidator,

in accordance with or pursuant to Articles 8 or 19 of the reorganisation and winding up directive.

(3) Sections 86 and 86A of the Financial Services (Banking) Act apply in relation to insolvency practitioner information as they apply in relation to confidential information within the meaning of that Act except that nothing shall prohibit the provision of any such information by the Authority or an insolvency practitioner to the Minister with responsibility for financial services to whom the Authority or an insolvency practitioner shall provide such information upon request.

(4) In this section—

“EEA administrator” and “EEA liquidator” mean an administrator or liquidator of a third country credit institution as the case may be within the meaning of the reorganisation and winding up directive.