

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3978 of 24 January, 2013

LEGAL NOTICE NO. 8 OF 2013.

GIBRALTAR DEVELOPMENT CORPORATION ACT 1990

GIBRALTAR DEVELOPMENT CORPORATION (EMPLOYER'S INSOLVENCY) (AMENDMENT) REGULATIONS 2013

In exercise of the powers conferred on it by section 26 of the Gibraltar Development Corporation Act 1990 and all other enabling powers and for the purposes of transposing into the law of Gibraltar Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Development Corporation (Employer's Insolvency) (Amendment) Regulations 2013 and come into operation on the date of publication.

Amendment of regulations.

2. The Gibraltar Development Corporation (Employer's Insolvency) Regulations 1991 (the principal Regulations) are amended in accordance with regulations 3 to 6.

Amendment of regulation 2.

3. Regulation 2 of the principal Regulations is amended by—

- (a) deleting the definition "Community";
- (b) inserting the following definition after the definition "date of insolvency";

"Directive" means Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, as the same may be amended from time to time;

- (c) inserting the following definition after the definition of “inspector”–

““Member State” means a Member State of the European Union;”; and

- (d) substituting “European Union” for “Community” in the definition of “worker”.

Amendment of regulation 3.

4. Regulation 3 of the principal Regulations is amended–

- (a) in paragraph (a) by substituting for the words “when a petition is presented to the court under section 5 of the Bankruptcy Act for the making of a receiving order against him” the words “when he has been adjudged bankrupt or has made a composition or arrangement with his creditors”;
- (b) in paragraph (b) by substituting for the words “a petition is presented to the court under section 101 of the Bankruptcy Act for an order” the words “an order has been made under section 101 of the Bankruptcy Act”;
- (c) in paragraph (c)(i) by substituting for the words “petition is presented to the court under section 158 of the Companies Act for the winding up of the company on the ground that the company is unable to pay its debts” the words “winding up order has been made in respect of the company”;
- (d) in paragraph (d) by substituting for the words “petition for winding up is presented by a judgement creditor under section 23(1)(d) of the Building Society Act” the words “winding up order has been made in relation to that building society”;
- (e) in paragraph (e) by substituting for the words “Receiver is appointed by the Registrar under section 39(2)” the words “winding up order has been made under section 39”;
- (f) in paragraph (f) by substituting for the words “application is made to the Registrar under section 72 of that Act for investigation into the affairs of the society” the words “an

instrument of dissolution is made under section 68 of that Act or where the Registrar has made an award that the society be dissolved under section 73”;

- (g) at the end of paragraph (g) by inserting “or”
- (h) in paragraph (h) by substituting for the words “a petition for winding up is presented to the court; or” the words “a winding up order has been made in respect of that partnership;”;
- (i) by deleting paragraph (i).

Insertion of regulation 7A.

5. After regulation 7 of the principal Regulations insert the following regulation—

“Limitation of claims.

7A. For the purposes of calculating any sum due under regulation 7, a person’s weekly wage, salary, overtime, bonus or commission shall be deemed not to exceed the sum of double the amount set out in the entry “Weekly Remuneration” in the Schedule to the Conditions of Employment (Standard Minimum Wage) Order 2001, as the same may be amended from time to time.”.

Insertion of regulation 13A.

6. The principal Regulations are amended by inserting the following regulation after regulation 13—

Refusal of application.

13A. The administrator may, in relation to an application by a worker, refuse the application—

- (a) where the Administrator considers it necessary to avoid an abuse by the applicant;
- (b) if it appears that payment would be unjustifiable because of the existence of special links between the

worker and the employer and of common interests resulting in collusion between them;

- (c) in cases where the worker, on his own or together with his close relatives, was the owner of an essential part of the employer's undertaking or business and had a considerable influence on its activities.”.

Amendments to regulation 14.

7. Regulation 14 of the principal Regulations is amended—

- (a) by inserting the following subregulation after subregulation (1)–

“(1A) A worker may also present a complaint to the Industrial Tribunal where—

- (a) the Administrator has refused an application pursuant to regulation 13A; or
- (b) the Administrator has erred in determining that the worker falls outside the scope of these Regulations by virtue of regulation 18(b).”;

- (b) by inserting the following subregulation after subregulation (3)–

“(3A) Where the Industrial Tribunal finds that the Administrator erred in holding that regulation 18(b) applied to that worker, the Industrial Tribunal shall direct the Administrator to consider the application under regulation 18(a).”.

New regulations.

8. After regulation 17 of the principal Regulations insert the following regulations—

“Application of Regulations: transnational workers.

18. Where an undertaking carries out its activities in Gibraltar and in at least one Member State and is insolvent, any outstanding claims shall—

- (a) if the worker worked or habitually worked in Gibraltar, be dealt with in accordance with these Regulations; or
- (b) if the worker worked or habitually worked in a Member State, be dealt with in accordance with the law of that State.

Administrator to determine applications.

19. Where an application for payment is made under regulation 10, the Administrator shall—

- (a) determine whether the case falls within regulation 18(a), and if it does the Administrator shall consider the application in accordance with regulation 10; or
- (b) determine whether the case falls within regulation 18(b), and if it does the Administrator shall refuse the application and notify the applicant of such refusal including the reasons therefor.

Information sharing.

20.(1) Where the Administrator receives an application from a worker to whom regulation 18 applies, the Administrator shall—

- (a) make such enquires as he considers necessary to satisfy himself of the matters in regulation 11(a) to (c), including making enquiries of the competent guarantee institutions in Member States; and
- (b) take into account the decisions taken in the context of insolvency proceedings in the relevant Member State when determining the employer's state of insolvency within the meaning of these Regulations.

- (2) The Administrator may share relevant information with the competent administrative authority and any guarantee institution in a Member State concerned for the purposes of making it possible, in particular, to inform the guarantee institution responsible for meeting the workers' outstanding claims, and any restriction on disclosure imposed under these Regulations shall not apply to the extent that such disclosure is required by Article 10(1) of the Directive.”.

Amendment to the Schedule.

9. The Schedule to the principal Regulations is amended

- (a) by deleting paragraph 1; and
- (b) by inserting at the end of paragraph (2) “(also known as “share-fishermen”)”.

Dated 24th January, 2013.

JJ BOSSANO,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose into Gibraltar law of Gibraltar Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (“the recast Directive”).

The recast Directive consolidates 3 earlier Directives and repeals them, subject to the obligation to have transposed them.

Directive 2002/87/EC of 23 September 2002 amended Council Directive 80/987/EEC and ought to have been transposed. Through these Regulations outstanding provisions are now transposed.

GIBRALTAR GAZETTE, No 3978, Thursday 24 January, 2013

**Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £0.80p**