

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3510 of 29 December, 2005



I ASSENT,
FRANCIS RICHARDS,
GOVERNOR.

22nd December, 2005.



GIBRALTAR

No. 70 of 2005

AN ORDINANCE to transpose into the law of Gibraltar Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures as amended by Council Directive 2001/44/EC.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Part may be cited as the Mutual Legal Assistance (Schengen Convention) (Amendment) Ordinance 2005 and comes into effect on the date of publication.

Amendment of the Mutual Legal Assistance (Schengen Convention) Ordinance, 2004.

2.(1) The Mutual Legal Assistance (Schengen Convention) Ordinance, 2004 is amended in accordance with the provisions of the section.

(2) For the long title, there shall be substituted the following—

“AN ORDINANCE to implement article 48 to 53 of the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 relating to mutual legal assistance; to make further provision for mutual legal assistance between Gibraltar and other jurisdictions; to enable further provision to be made by regulation, making arrangements for mutual legal assistance in favour of the United Kingdom and other Member States; and other provisions in that respect.”.

(3) Prior to section 1 there is inserted the following heading—

**“PART I
PRELIMINARY”.**

(4) Section 1 is amended—

- (a) by substituting for “Schengen Convention”, “European Union”;
- (b) by substituting “2005” for “2004”.

(5) Following section 1, there shall be inserted the following heading—

“PART II

**MUTUAL LEGAL ASSISTANCE IN RESPECT OF
COURT OR OTHER PROCEEDINGS”**

(6) Section 2 is amended by substituting “In this Ordinance and unless the context otherwise requires” for the words “In this Part and unless the context otherwise requires”.

(7) Sections 3(1) and (2), 12(5), 19(1) 22 and 23 are amended by substituting “this Ordinance” for “this Part”.

(8) Section 14 is amended by inserting “1” after the word “Schedule”.

(9) The following is inserted after section 23—

“PART III

**MUTUAL LEGAL ASSISTANCE IN MATTERS NOT FALLING
WITHIN THE SCOPE OF PART II**

Interpretation.

24. In this Part and unless the context otherwise requires—

“applicant authority” means the authority of a Member State making a request for assistance to the competent authority in respect of a claim referred to in section 25 and which is authorised to make such a request pursuant to article 19 of the directive;

“court” means the Supreme Court;

“competent authority” means such person as the Minister may, from time to time, designate by notice in the Gazette (being such person as is authorised to make or receive a request for assistance in respect of a claim referred to in section 25 and who is authorised to make or receive such a request pursuant to article 19 of the directive);

“directive” means Council Directive 76/308/EEC as amended;

“export duties” means customs duties and charges having equivalent effect on exports, and export charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable to certain goods resulting from the processing of agricultural products;

“import duties” means customs duties and charges having equivalent effect on imports, and import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable to certain goods resulting from the processing of agricultural products;

“Member State” means such State as the Minister may provide by regulations made pursuant to this Part ;

“Minister” means the Minister with responsibility for public finance;

“requested authority” means the authority of a Member State receiving a request for assistance from the competent authority in respect of a claim referred to in section 25 and which is authorised to receive such a request pursuant to article 19 of the directive;

“taxes on income and capital” and “taxes on insurance premiums” means such taxes as the Minister may provide by notice in the Gazette.

Application.

25.(1) This Part makes provision—

- (a) for the recovery in a Member State of claims referred to in subsection (2) arising in Gibraltar;
- (b) for the recovery in Gibraltar of claims referred to in subsection (2) arising in a Member State.

(2) Subject to subsection (3), this Part applies to claims relating to the levies, duties, taxes and other measures listed in Schedule 2.

(3) This Part shall not apply in relation to any administrative penalties or fines deemed by the competent authority to be of a criminal nature.

Supply of information.

26.(1)

- (a) An applicant authority may request the competent authority to provide any information which would be useful to the applicant authority; and
- (b) the competent authority may request a requested authority to provide any information which would be useful to the competent authority,

in the recovery of a claim to which, as the case may be, this Part applies.

(2) In order to obtain information requested under subsection (1)(a), the competent authority shall make use of powers provided under Gibraltar law for the recovery of similar claims arising in Gibraltar.

(3)

- (a) A request for information referred to in subsection (1)(b) shall indicate; and
- (b) the competent authority shall not offer assistance under subsection (1)(a) unless the following information is supplied—
 - (i) the name and address of the person in relation to whom the information is being requested ;
 - (ii) the nature and amount of the claim in respect of which the request is being made; and
 - (iii) any other information which is relevant to the identification of the person in relation to whom the information is being requested and to which the authority requesting the information normally has access.

- (4) The competent authority shall not be obliged to supply information—
- (a) where the request made by the applicant authority does not contain the information set out in sub-section (3)(b) ;
 - (b) which it would not be able to obtain for the purpose of recovering similar claims arising under Gibraltar law;
 - (c) which would disclose any commercial, industrial or professional secrets; or
 - (d) the disclosure of which would be liable to prejudice the security of Gibraltar or be contrary to the public policy of the Government of Gibraltar.
- (5) Where the competent authority refuses a request for information, it shall inform the applicant authority of the grounds for refusal.

Service of official documents.

27.(1) The competent authority—

- (a) shall at the request of the applicant authority, and in accordance with the law in force for the service of similar instruments or decisions in Gibraltar, serve on the addressee all instruments and decisions, including those of a judicial nature, transmitted to it by the applicant authority;
- (b) may request a requested authority to serve on the addressee, all instruments and decisions, including those of a judicial nature, which it has transmitted to the requested authority

and which relate to a claim or to its recovery.

(2)

- (a) A request for the service of documents referred to in subsection (1)(b) shall indicate; and

- (b) the competent authority shall not offer assistance under pursuant to subsection (1)(a) unless the following information is supplied—
 - (i) the name and address of the addressee concerned ;
 - (ii) any other information which is relevant to the identification of the addressee concerned and to which the authority making the request normally has access;
 - (iii) the nature and the subject of the instrument or decision to be served;
 - (iv) if necessary—
 - (a) the name and address of the debtor; and
 - (b) any other information which is relevant to the identification of the debtor and to which the authority making the request normally has access;
 - (v) the claim to which the instrument or decision relates; and
 - (vi) any other useful information.

(3) The competent authority shall promptly inform the applicant authority of the action taken on its request under subsection (1)(a) and the date on which the instrument or decision was forwarded to the addressee.

Enforcement of claims.

28.(1) At the request of the applicant authority, the competent authority shall—

- (a) acting in accordance with the laws, regulations and administrative provisions applying to the recovery of similar claims arising in Gibraltar; and

- (b) upon being satisfied that the recovery of the claim has been authorised by the applicant authority,

assist with the recovery of claims which are the subject of an instrument permitting their enforcement.

(2) Subject to the provisions of this Part, any claim in respect of which a request for recovery has been made to the competent authority shall, for the purpose of its enforcement, be deemed by the court to be a debt owed under Gibraltar law.

(3) Notwithstanding subsection (2), the Minister may make regulations to provide for claims to be recovered by the competent authority under this Part not to benefit from such privileges as may be accorded to debts owed under Gibraltar law.

Requirements for a request for the recovery of a claim.

29.(1) This section applies to a request for the recovery of a claim made by—

- (a) an applicant authority to the competent authority under section 28 ; or
- (b) the competent authority to a requested authority under article 7 of the directive.

(2)

- (a) A request for recovery referred to in subsection (1)(b) shall include; and
- (b) the competent authority shall not offer assistance under pursuant to subsection (1)(a) unless the following documents are supplied—
 - (i) an official or certified copy of the instrument permitting the enforcement of the claim, issued by the competent body in the jurisdiction where the authority making the request is situated ; and

- (ii) the original or a certified copy of any other documents deemed necessary for recovery.

(3) The competent authority may refuse a request for the recovery of a claim under section 28 where it has reason to believe that—

- (a) the claim or the instrument permitting its enforcement are contested in the Member State in which the applicant authority is situated; or
- (b) the applicant authority has, in the Member State in which it is situated, applied appropriate recovery procedures available to it on the basis of the instrument referred to in subsection (2)(a)(i), and the measures taken have resulted in the payment in full of the claim.

(4) Subsection (3)(a) shall be applied subject to section 32 (7) and (8).

(5)

- (a) A claim referred to in subsection (1)(b) shall indicate; and
- (b) the competent authority shall not offer assistance under subsection (1)(a) unless the following information is supplied -
 - (i) the name, address and any other relevant information relating to the identification of the person concerned or to any third party holding assets on behalf of that person;
 - (ii) the name, address and any other relevant information relating to the identification of the authority making the request;
 - (iii) a reference to the instrument permitting the enforcement of the claim issued in the jurisdiction in which the authority making the request is situated;
 - (iv) the nature and the amount of the claim, including the principal, the interest, and any other penalties, fines

and costs due indicated in Sterling and in the currency of the Member State in which the applicant or the requested authority, as the case may be, is situated ;

- (v) the date of notification of the instrument referred to in paragraph (c) above to the addressee;
- (vi) the date from which and the period during which enforcement is possible under the laws in force in the jurisdiction in which the authority making the request is situated; and
- (vii) any other relevant information.

(6) The request for recovery shall also contain a declaration—

- (a) by the applicant authority in a case falling within subsection (1)(a); and
- (b) by the competent authority in a case falling within subsection (1)(b) -

confirming that—

- (i) the claim or the instrument permitting its enforcement are not contested in its own jurisdiction ; and
- (ii) in a case falling within subsection (1)(a), it has applied appropriate recovery procedures available to it on the basis of the instrument referred to in subsection (2)(a)(i) within its own jurisdiction, and the measures taken will not result in the payment in full of the claim.

(6) Where the competent authority has made a request pursuant to subsection (1)(b) the competent authority shall, if so requested by the requested authority, undertake that any further information relating to the matter which gave rise to the request for recovery which comes to its knowledge shall be forwarded to the requested authority forthwith.

(7) In acknowledging receipt of a request under subsection (1)(a), the competent authority shall seek an undertaking from the applicant authority that any further information relating to the matter which gave rise to the request for recovery which comes to its knowledge shall be forwarded to the competent authority forthwith.

Recognition of instruments permitting enforcement of a claim.

30.(1) Where an applicant authority submits to the competent authority an instrument to which section 29(1)(a) refers, that instrument shall not be enforced in Gibraltar unless an order of the Court to the effect is first obtained.

(2) Where—

- (a) an instrument to which section 29(1)(a) refers has been received by the competent authority; and
- (b) an order of court under subsection (1) has not been obtained within three months of the receipt referred to in paragraph (a),

the competent authority shall inform the applicant authority of the grounds for the delay.

(3) The court shall not refuse an order for the enforcement of an instrument to which section 29(1)(a) refers where the instrument has been properly drawn up in accordance with the laws of the Member State in which the applicant authority is situated.

(4) Section 32(2) to (8) shall apply where the making of an order under subsection (1) is contested for any reason.

Payment of recovered claims.

31.(1) An order under section 30 (1) shall provide for the remittance by the competent authority to the applicant authority of the funds recovered, and any interest charged under subsection (3), in Sterling.

(2) Where the applicant authority does not object, an order under section 30(1) may provide for the debtor to settle the debt by instalments.

Mutual Legal Assistance (Schengen Convention) (Amendment)

Ordinance 2005

[No. 70 of 2005]

(3) An order under section 30(1) shall make provision for interest to be charged where the debtor pays late or not at all.

Recovery: supplementary.

32.(1) The competent authority shall keep the applicant authority informed of the steps being taken to give effect to the request for recovery, including any interlocutory proceedings or proceedings for injunctive relief which have been commenced.

(2) Where, before the enforcement of an order under section 30(1), an interested party contests the claim or the instrument referred to in section 29(1)(a) before the competent body of the Member State in which the applicant authority is situated—

- (a) the interested party shall notify the competent authority of the existence of the action referred to in subsection (2) as soon as practicable after such an action is commenced;
- (b) subject to subsections (3) and (4), immediately upon receiving the notification referred to in paragraph (a) from either the applicant authority or the interested party as the case may be, the competent authority shall take no steps to enforce an order under section 29(1)(a) pending the delivery of a decision by the body competent in the matter.

(3) Notwithstanding subsection (2)(b) and without prejudice to any interlocutory proceedings or proceedings for injunctive relief which it may commence pursuant to subsection (1), where the competent authority deems it necessary it shall take precautionary measures to guarantee recovery.

(4) The competent authority shall take the precautionary measures referred to in subsection (3) only where the laws of Gibraltar would allow such measures to be taken in relation to a similar claim for recovery arising within Gibraltar.

(5) Notwithstanding subsection (2)(b), the applicant authority may request the competent authority to recover a claim where the relevant laws, regulations and administrative practices in force in its Member State allow such a recovery to take place notwithstanding the fact that such a claim or the instrument referred to in section 29(1)(a) are being contested before a competent body.

(6) Where the competent authority acts pursuant to a request made to it by an applicant authority under subsection (5) and the competent body referred to in that subsection subsequently renders a ruling in favour of the debtor, the applicant authority shall be liable for the reimbursement of any sums recovered by the competent authority, together with any compensation that may be due, in accordance with the laws of Gibraltar.

(7) Where an interested party contests the making of an order under section 30(1) or is appealing against such an order having been made, the action shall be brought before the court or Court of Appeal as the case may be.

(8) Where subsection (2) applies and for all purposes connected with this Part, where the competent body in a Member State is a judicial or administrative tribunal which has heard the action, the decision of that tribunal, in so far as it is favourable to the applicant authority and permits recovery of the claim in the Member State where the applicant authority is situated, shall be treated by the competent authority as an instrument to which section 29(1)(a) refers.

Conditions for non-assistance.

33.(1) The competent authority shall not be obliged to grant the assistance provided for—

- (a) in sections 28 to 32 if—
 - (i) the laws, regulations and administrative practices in force in Gibraltar do not allow it to take such action in relation to similar claims arising within Gibraltar ;
 - (ii) recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in Gibraltar; or
- (b) in sections 4 to 32 if the initial request under section 26, 27 or 28 applies to claims more than five years old—
 - (i) dating from the moment the instrument permitting the recovery was issued; or

- (ii) where the claim or instrument are contested before a competent body of the Member State in which the applicant authority is situated, dating from the moment that such a body establishes that the claim or the enforcement order permitting recovery may no longer be contested; and until
- (iii) the date of the request.

(2) Where subsection (1) applies, the competent authority shall ensure that the applicant authority and the European Commission are informed of the reasons why it has refused a request for assistance.

Limitation periods.

34.(1) The Limitation Ordinance shall not apply in relation to any act or omission by the competent authority relating to any request for assistance it receives under this Part.

(2) An act or omission carried out by the competent authority under the provisions of this Part pursuant to a request for assistance from an applicant authority shall have the effect of suspending or interrupting the period of limitation applicable where, had it been carried out by the applicant authority in the Member State in which the applicant authority concerned is situated, it would have had such an effect.

Duty of confidentiality.

35. Documents and information sent to the competent authority pursuant to this Part shall remain confidential and may only be communicated by the competent authority to—

- (a) the debtor;
- (b) those persons and authorities responsible for the recovery of the claims, and solely for that purpose; and
- (c) officers of the court hearing the application for an order under section 30(1) or proceedings under section 32(9).

Requests for assistance to be in English.

36. The competent authority shall not offer assistance under this Part unless—

- (a) the request for assistance;
 - (b) the instrument to which section 29(1)(a) refers;
- and
- (c) all the other relevant documents submitted by the applicant authority,

if not in the English language, are accompanied by an English translation certified correct by the applicant authority.

Recovery of cost of assistance.

37.(1) An application to the court for an order under section 30(1) shall include an application for the recovery from the debtor of the competent authority's expenses and costs relating to the recovery, and where the amount recovered does not cover the expenses and costs owed to the applicant authority and competent authority, the court shall apportion the sum recovered equitably.

(2) Subject to subsection (3) and (4), the competent authority shall have no claim against an applicant authority for the refund of costs resulting from any assistance granted under this Part.

(3) Notwithstanding subsection (2), where assistance granted under this Part—

- (a) poses a specific problem;
- (b) concerns a very large amount in costs; or
- (c) relates to the fight against organised crime,

such assistance shall not be granted unless the applicant authority and the competent authority agree reimbursement arrangements specific to the case in question.

(4) Notwithstanding subsection (2), the Member State in which the applicant authority is situated shall be liable to the Gibraltar Government for any costs incurred where the substance of the claim or the validity of the instrument issued by the applicant authority are held to be unfounded.

Rules of court.

38. The Chief Justice may make rules of court in relation to any matter arising under this Part.

Regulations.

39.(1) The Minister may make regulations making provision for anything that may be provided for under this Part and generally to give effect to the provisions of this Part.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) may provide for the transposition into Gibraltar law, of Commission Directive 2002/94/EC of 9 December 2002 laying down detailed rules for implementing certain provisions of Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended from time to time.

(3) Regulations made under subsection (1) may give effect to any agreement or arrangement that may be entered into by the Government of Gibraltar with any other country in relation to any matter falling within the scope of this Part.

(4) Regulations made under subsection (1) may provide for the levying of such fees and the creation of such offences as the Minister deems appropriate.

Notification to the European Commission.

40.(1) The Government shall ensure the European Commission is informed of the adoption of this Part.

(2) The Government shall ensure the European Commission is notified in writing every year of the following information in respect to the year covered by the notification—

- (a) the number of requests for information, notification and recovery which it has sent ;
- (b) the number of requests for information, notification and recovery which it has received ;
- (c) the amount of the claims involved ; and
- (d) the amounts recovered.

(3) The notification referred to in subsection (2) shall be made in accordance with regulations made under section 17.”.

(9) After Schedule 1 there is inserted the following Schedule—

“SCHEDULE 2

Section 25 (2)

The levies, duties, taxes and other measures referred to in section 25(2) are the following ones :

- (a) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guidance and Guarantee Fund (EAGGF), including sums to be collected in connection with these actions;
- (b) levies and other duties provided for under the common organisation of the market for the sugar sector;
- (c) import duties;
- (d) export duties;

Mutual Legal Assistance (Schengen Convention) (Amendment)
Ordinance 2005 [No. 70 of 2005]

- (e) value added tax;
 - (f) excise duties on -
 - manufactured tobacco;
 - alcohol and alcoholic beverages;
 - mineral oils;
 - (g) taxes on income and capital as provided by regulations made under Part III of the Ordinance;
 - (h) taxes on insurance premiums as provided by regulations made under Part III of the Ordinance;
 - (i) interest, administrative penalties and fines, and costs incidental to the claims referred to in paragraphs (a) to (h).
-

Passed by the Gibraltar House of Assembly on the 13th day of December, 2005.

D. J. REYES,

Clerk to the Assembly.

Printed by the Gibraltar Chronicle Limited
Printing Office, 2, Library Gardens,
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £0.80p.