

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 IV

**PROVISIONS COMMON TO REORGANISATION
MEASURES AND WINDING-UP PROCEEDINGS**

Article 20

Effects on certain contracts and rights

The effects of a reorganisation measure or the opening of winding-up proceedings on:

- (a) employment contracts and relationships shall be governed solely by the law of the Member State applicable to the employment contract;
- (b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated. That law shall determine whether property is movable or immovable;
- (c) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

Article 21

Third parties' rights *in re*

1 The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights *in re* of creditors or third parties in respect of tangible or intangible, movable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings.

2 The rights referred to in paragraph 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 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 a guarantee;
- c the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- d a right *in re* to the beneficial use of assets.

3 The right, recorded in a public register and enforceable against third parties, under which a right *in re* within the meaning of paragraph 1 may be obtained, shall be considered a right *in re*.

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4 Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(1).

Article 22

Reservation of title

1 The adoption of reorganisation measures or the opening of winding-up proceedings concerning a credit institution purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the adoption of such measures or opening of such proceedings the asset is situated within the territory of a Member State other than the State in which the said measures were adopted or the said proceedings were opened.

2 The adoption of reorganisation measures or the opening of winding-up proceedings concerning 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 the adoption of such measures or the opening of such proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures were adopted or such proceedings were opened.

3 Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(1).

Article 23

Set-off

1 The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim.

2 Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(1).

Article 24

Lex rei sitae

The enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located.

[^{F1}Article 25

Netting agreements

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU, netting agreements shall be governed solely by the law of the contract which governs such agreements.]

Textual Amendments

- F1** Substituted by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Text with EEA relevance).

[^{F1}Article 26

Repurchase agreements

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU and Article 24 of this Directive, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.]

Textual Amendments

- F1** Substituted by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Text with EEA relevance).

Article 27

Regulated markets

Without prejudice to Article 24, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.

Article 28

Proof of liquidators' appointment

1 The administrator or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the administrative or judicial authority of the home Member State.

A translation into the official language or one of the official languages of the Member State within the territory of which the administrator or liquidator wishes to act may be required. No legalisation or other similar formality shall be required.

2 Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State. They may also appoint persons to assist or, where appropriate, represent them in the course of the reorganisation measure or winding-up proceedings, in particular in

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host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in the host Member State.

3 In exercising his powers, an administrator or liquidator shall comply with the law of the Member States within the territory of which he wishes to take action, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

Article 29

Registration in a public register

1 The administrator, liquidator or any administrative or judicial authority of the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the trade register and any other public register kept in the other Member States.

A Member State may, however, prescribe mandatory registration. In that event, the person or authority referred to in the preceding subparagraph shall take all the measures necessary to ensure such registration.

2 The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 30

Detrimental acts

1 Article 10 shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that:

- the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State, and
- that law does not allow any means of challenging that act in the case in point.

2 Where a reorganisation measure decided on by a judicial authority provides for rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole performed before adoption of the measure, Article 3(2) shall not apply in the cases provided for in paragraph 1 of this Article.

Article 31

Protection of third parties

Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, a credit institution disposes, for consideration, of:

- an immovable asset,
- a ship or an aircraft subject to registration in a public register, or
- instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system held or located in a Member State,

the validity of that act shall be governed by the law of the Member State within the territory of which the immovable asset is situated or under the authority of which that register, account or deposit system is kept.

Article 32

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the credit institution has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

Article 33

Professional secrecy

All persons required to receive or divulge information in connection with the information or consultation procedures laid down in Articles 4, 5, 8, 9, 11 and 19 shall be bound by professional secrecy, in accordance with the rules and conditions laid down in Article 30 of Directive 2000/12/EC, with the exception of any judicial authorities to which existing national provisions apply.