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STATUTORY INSTRUMENTS

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**2004 No. 1045**

**The Credit Institutions (Reorganisation  
and Winding up) Regulations 2004**

**PART 2**

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

**Prohibition against winding up etc. EEA credit institutions in the United Kingdom**

**3.—**(1) On or after the relevant date a court in the United Kingdom 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 221 of the 1986 Act or Article 185 of the 1989 Order;
- (b) appoint a provisional liquidator;
- (c) make an administration order.

(2) Paragraph (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) Paragraph (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) Paragraph (1)(c) does not prevent an administrator appointed before the relevant date from acting on or after that date in a case in which the administration order under which he or his predecessor was appointed remains in force after that date.

(5) On or after the relevant date, an administrator may not, in relation to an EEA credit institution, be appointed under paragraphs 14 or 22 of Schedule B1 of the 1986 Act.

(6) A proposed voluntary arrangement shall not have effect in relation to an EEA credit institution if a decision under section 4 of the 1986 Act or Article 17 of the 1989 Order with respect to the approval of that arrangement was taken on or after the relevant date.

(7) An order under section 254 of the Enterprise Act 2002 (application of insolvency law to a foreign company)(**1**) may not provide for any of the following provisions of the 1986 Act to apply in relation to an incorporated EEA credit institution—

- (a) Part 1 (company voluntary arrangements);
  - (b) Part 2 (administration);
  - (c) Chapter 4 of Part 4 (creditors' voluntary winding up);
  - (d) Chapter 6 of Part 4 (winding up by the Court).
- (8) In this regulation and regulation 4, “relevant date” means the 5th May 2004.

### **Schemes of arrangement**

4.—(1) For the purposes of section 425(6)(a) of the 1985 Act or Article 418(5)(a) of the Companies Order, 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 the 1986 Act or the 1989 Order if it would be liable to be wound up under that Act or Order but for the prohibition in regulation 3(1)(a).

(2) But a court may not make a relevant order under section 425(2) of the 1985 Act or Article 418(2) of the Companies Order 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 paragraph (3) are satisfied.

(3) Those conditions are—

- (a) the person proposing the section 425 or Article 418 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 sub-paragraph (a) has objected to the proposal.

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

(5) For the purposes of paragraph (2), a relevant order means an order sanctioning a section 425 or Article 418 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 regulation—

- (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 paragraph (2).

## **Reorganisation measures and winding-up proceedings in respect of EEA credit institutions effective in the United Kingdom**

5.—(1) An EEA insolvency measure has effect in the United Kingdom 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 the United Kingdom.

(2) Subject to paragraph (4)—

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

may exercise in the United Kingdom, 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 paragraph (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 paragraph (2), the competent officer or qualifying agent—

- (a) may not take any action which would constitute an unlawful use of force in the part of the United Kingdom in which he is exercising those functions;
- (b) may not rule on any dispute arising from a matter falling within Part 4 of these Regulations which is justiciable by a court in the part of the United Kingdom in which he is exercising those functions; 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 the part of the United Kingdom in which he is exercising those functions.

(5) For the purposes of paragraph (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 regulation—

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

“qualifying agent” means an agent validly appointed (whether in the United Kingdom 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.—(1) Rule 7.62 of the Insolvency Rules or Rule 7.56 of the Insolvency Rules (Northern Ireland) applies in relation to a UK credit institution with the modification specified in paragraph (2) or (3).

(2) For the purposes of this regulation, rule 7.62 has effect as if there were substituted for paragraph (1)—

“(1) Where a UK credit institution (within the meaning of the Credit Institutions (Reorganisation and Winding up) Regulations 2004) has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 10 and 28 of 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.”.

(3) For the purposes of this regulation, Rule 7.56 of the Insolvency Rules (Northern Ireland) has effect as if there were substituted for paragraph (1)—

“(1) Where a UK credit institution (within the meaning of the Credit Institutions (Reorganisation and Winding up) Regulations 2004) has passed a resolution for voluntary winding up, and no declaration under Article 75 has been made, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 10 and 28 of 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.”.