

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 III

WINDING-UP PROCEEDINGS

A.

Credit institutions having their head offices within the Community

Article 9

**Opening of winding-up proceedings — Information
to be communicated to other competent authorities**

1 The administrative or judicial authorities of the home Member State which are responsible for winding up shall alone be empowered to decide on the opening of winding-up proceedings concerning a credit institution, including branches established in other Member States.

A decision to open winding-up proceedings taken by the administrative or judicial authority of the home Member State shall be recognised, without further formality, within the territory of all other Member States and shall be effective there when the decision is effective in the Member State in which the proceedings are opened.

2 The administrative or judicial authorities of the home Member State shall without delay inform, by any available means, the competent authorities of the host Member State of their decision to open winding-up proceedings, including the practical effects which such proceedings may have, if possible before they open or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the home Member State.

Article 10

Law applicable

1 A credit institution shall be wound up in accordance with the laws, regulations and procedures applicable in its home Member State insofar as this Directive does not provide otherwise.

2 The law of the home Member State shall determine in particular:

- a the goods subject to administration and the treatment of goods acquired by the credit institution after the opening of winding-up proceedings;
- b the respective powers of the credit institution and the liquidator;
- c the conditions under which set-offs may be invoked;
- d the effects of winding-up proceedings on current contracts to which the credit institution is party;
- e the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 32;

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- f the claims which are to be lodged against the credit institution and the treatment of claims arising after the opening of winding-up proceedings;
- g the rules governing the lodging, verification and admission of claims;
- h the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right *in re* or through a set-off;
- i the conditions for, and the effects of, the closure of insolvency proceedings, in particular by composition;
- j creditors' rights after the closure of winding-up proceedings;
- k who is to bear the costs and expenses incurred in the winding-up proceedings;
- l the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 11

Consultation of competent authorities before voluntary winding up

1 The competent authorities of the home Member State shall be consulted in the most appropriate form before any voluntary winding-up decision is taken by the governing bodies of a credit institution.

2 The voluntary winding up of a credit institution shall not preclude the adoption of a reorganisation measure or the opening of winding-up proceedings.

Article 12

Withdrawal of a credit institution's authorisation

1 Where the opening of winding-up proceedings is decided on in respect of a credit institution in the absence, or following the failure, of reorganisation measures, the authorisation of the institution shall be withdrawn in accordance with, in particular, the procedure laid down in Article 22(9) of Directive 2000/12/EC.

2 The withdrawal of authorisation provided for in paragraph 1 shall not prevent the person or persons entrusted with the winding up from carrying on some of the credit institution's activities insofar as that is necessary or appropriate for the purposes of winding up.

The home Member State may provide that such activities shall be carried on with the consent, and under the supervision, of the competent authorities of that Member State.

Article 13

Publication

The liquidators or any administrative or judicial authority shall announce the decision to open winding-up proceedings through publication of an extract from the winding-up decision in the *Official Journal of the European Communities* and at least two national newspapers in each of the host Member States.

Article 14

Provision of information to known creditors

1 When winding-up proceedings are opened, the administrative or judicial authority of the home Member State or the liquidator shall without delay individually inform known creditors who have their domiciles, normal places of residence or head offices in other Member States, except in cases where the legislation of the home State does not require lodgement of the claim with a view to its recognition.

2 That information, provided by the dispatch of a notice, shall in particular deal with time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims or observations relating to claims and the other measures laid down. Such a notice shall also indicate whether creditors whose claims are preferential or secured *in re* need lodge their claims.

Article 15

Honouring of obligations

Where an obligation has been honoured for the benefit of a credit institution which is not a legal person and which is the subject of winding-up proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings. Where such an obligation is honoured before the publication provided for in Article 13 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of winding-up proceedings; where the obligation is honoured after the publication provided for in Article 13 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 16

Right to lodge claims

1 Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State, including Member States' public authorities, shall have the right to lodge claims or to submit written observations relating to claims.

2 The claims of all creditors whose domiciles, normal places of residence or head offices are in Member States other than the home Member State shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors having their domiciles, normal places of residence, or head offices in the home Member State

3 Except in cases where the law of the home Member State provides for the submission of observations relating to claims, a creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security *in re* or reservation of title in respect of the claim and what assets are covered by his security.

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Article 17

Languages

1 The information provided for in Articles 13 and 14 shall be provided in the official language or one of the official languages of the home Member State. For that purpose a form shall be used bearing, in all the official languages of the European Union, the heading ‘Invitation to lodge a claim. Time limits to be observed’ or, where the law of the home Member State provides for the submission of observations relating to claims, the heading ‘Invitation to submit observations relating to a claim. Time limits to be observed’.

2 Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State may lodge his claim or submit observations relating to his claim in the official language or one of the official languages of that other Member State. In that event, however, the lodgement of his claim or the submission of observations on his claim shall bear the heading ‘Lodgement of claim’ or ‘Submission of observations relating to claims’ in the official language or one of the official languages of the home Member State. In addition, he may be required to provide a translation into that language of the lodgement of claim or submission of observations relating to claims.

Article 18

Regular provision of information to creditors

Liquidators shall keep creditors regularly informed, in an appropriate manner, particularly with regard to progress in the winding up.