

**2004 No. 1045**

**INSOLVENCY  
COMPANIES**

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

*Made - - - - - 1st April 2004*

*Laid before Parliament 5th April 2004*

*Coming into force - - 5th May 2004*

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The Treasury, being a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to credit and financial institutions and to the taking of deposits or other repayable funds from the public, in exercise of the powers conferred by that section, hereby make the following Regulations:

## PART 1

### *General*

#### **Citation and commencement**

1. These Regulations may be cited as the Credit Institutions (Reorganisation and Winding up) Regulations 2004, and come into force on 5th May 2004.

#### **Interpretation**

2.—(1) In these Regulations—

“the 1985 Act” means the Companies Act 1985(c);

“the 1986 Act” means the Insolvency Act 1986(d);

“the 2000 Act” means the Financial Services and Markets Act 2000(e);

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989(f);

“administrator” has the meaning given by paragraph 13 of Schedule B1 to the 1986 Act or section 8(2) of the 1986 Act as the case may be;

“Article 418 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a UK credit institution under Article 418 of the Companies Order, but does not include a compromise or arrangement falling within Article 420 or Article 420A of that Order (reconstructions or amalgamations);

“the Authority” means the Financial Services Authority;

“banking consolidation directive” means the directive of the European Parliament and the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (2000/12/EC)(g) as most recently amended by the directive of the European Parliament and the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (2002/87/EC)(h);

“branch”, in relation to an EEA or UK credit institution has the meaning given by Article 1(3) of the banking consolidation directive;

“claim” means a claim submitted by a creditor of a UK credit institution in the course of—

- (a) a winding up,
- (b) an administration, or
- (c) a voluntary arrangement,

with a view to recovering his debt in whole or in part, and includes a proof, within the meaning of rule 2.72 of the Insolvency Rules, or a proof of debt within the meaning of rule

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(a) By S.I. 2001/3495.

(b) 1972 c. 68; by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). Section 57(1) Scotland Act 1998 (1998 c. 46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(c) 1985 c. 6.

(d) 1986 c. 45 as amended by the Insolvency Act 2000 (c. 39), the Enterprise Act 2002 (c. 40), S.I. 2002/1037 and S.I. 2002/1240; Part II was replaced by the Enterprise Act 2002, section 248 and Schedule 16. The provisions of Part II continue to apply by virtue of the Enterprise Act 2002 (Commencement No. 4 and Transitional Provisions and Savings) Order 2003 (S.I. 2003/2093) insofar as is necessary to give effect to the Insolvent Partnerships Order 1994 (S.I. 1994/2421) and the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090). The provisions of Part II (as modified) continue to apply to building societies by virtue of sections 249(1)(e) and 249(2) of the Enterprise Act 2002.

(e) 2000 c. 8.

(f) S.I. 1989/2504 (N.I. 19).

(g) O.J. No. L126, 26.5.2000, p. 1.

(h) O.J. No. L035, 11.2.2003, p. 1.

4.73(4) of the Insolvency Rules or Rule 4.079(4) of the Insolvency Rules (Northern Ireland), as the case may be, or in Scotland a claim made in accordance with rule 4.15 of the Insolvency (Scotland) Rules;

“the Companies Order” means the Companies (Northern Ireland) Order 1986(a);

“creditors’ voluntary winding up” has the meaning given by section 90 of the 1986 Act or Article 76 of the 1989 Order as the case may be;

“debt”—

- (a) in relation to a winding up or administration of a UK credit institution, has the meaning given by rule 13.12 of the Insolvency Rules or Article 5(1) of the 1989 Order except that where the credit institution is not a company, references in rule 13.12 or Article 5(1) to a company are to be read as references to the credit institution, and
- (b) in a case where a voluntary arrangement has effect, in relation to a UK credit institution, means a debt which would constitute a debt in relation to the winding up of that credit institution, except that references in paragraph (1) of rule 13.12 or paragraph (1) of Article 5 of the 1989 Order to the date on which the company goes into liquidation are to be read as references to the date on which the voluntary arrangement has effect;
- (c) in Scotland—
  - (i) in relation to the winding up of a UK credit institution, shall be interpreted in accordance with Schedule 1 of the Bankruptcy (Scotland) Act 1985 as applied by Chapter 5 of Part 4 of the Insolvency (Scotland) Rules; and
  - (ii) in a case where a voluntary arrangement has effect in relation to a UK credit institution, means a debt which would constitute a debt in relation to the winding up of that credit institution, except that references in Chapter 5 of Part 4 of the Insolvency (Scotland) Rules to the date of commencement of winding up are to be read as references to the date on which the voluntary arrangement has effect;

“directive reorganisation measure” means a reorganisation measure as defined in Article 2 of the reorganisation and winding up directive which was adopted or imposed on or after the 5th May 2004;

“directive winding-up proceedings” means winding-up proceedings as defined in Article 2 of the reorganisation and winding up directive which were opened on or after the 5th May 2004;

“Disclosure Regulations” means the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(b);

“EEA credit institution” means an EEA undertaking, other than a UK credit institution, of the kind mentioned in Article 1(1) and (3) and subject to the conditions in Article 2(3) of the banking consolidation directive;

“EEA creditor” means a creditor of a UK credit institution who—

- (a) in the case of an individual, is ordinarily resident in an EEA State; and
- (b) in the case of a body corporate or unincorporated association of persons, has its head office in an EEA State;

“EEA regulator” means a competent authority (within the meaning of Article 1(4) of the banking consolidation directive) of an EEA State;

“EEA State” means a State, other than the United Kingdom, which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992;

“home state regulator”, in relation to an EEA credit institution, means the relevant EEA regulator in the EEA State where its head office is located;

“the Insolvency Rules” means the Insolvency Rules 1986(c);

“the Insolvency Rules (Northern Ireland)” means the Insolvency Rules (Northern Ireland) 1991(d);

“the Insolvency (Scotland) Rules” means the Insolvency (Scotland) Rules 1986(e);

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(a) S.I. 1986/1032 (N.I. 6).

(b) S.I. 2001/2188, as amended by the Enterprise Act 2002 (c. 40), section 2, S.I. 2001/3437, S.I. 2001/3624, S.I. 2001/3648, S.I. 2002/1775, S.I. 2003/693, S.I. 2003/1092, S.I. 2003/1473, S.I. 2003/2066, S.I. 2003/2174 and S.I. 2003/2817.

(c) S.I. 1986/1925 as most recently amended by S.I. 2004/584.

(d) S.R. 1991 No. 364.

(e) S.I. 1986/1915.

“liquidator”, except for the purposes of regulation 4, includes any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings in respect of a UK credit institution which is not a body corporate;

“officer”, in relation to a company, has the meaning given by section 744 of the 1985 Act or Article 2 of the Companies Order;

“official language” means a language specified in Article 1 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (Regulation 1/58/EEC)(a), most recently amended by paragraph (a) of Part XVIII of Annex I to the Act of Accession 1994 (194 N)(b);

“the reorganisation and winding up directive” means the directive of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (2001/24/EC)(c);

“section 425 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a UK credit institution under section 425 of the 1985 Act, but does not include a compromise or arrangement falling within section 427 or section 427A of that Act (reconstructions or amalgamations);

“supervisor” has the meaning given by section 7 of the 1986 Act or Article 20 of the 1989 Order as the case may be;

“UK credit institution” means an undertaking whose head office is in the United Kingdom with permission under Part 4 of the 2000 Act to accept deposits or to issue electronic money as the case may be but does not include—

(a) an undertaking which also has permission under Part 4 of the 2000 Act to effect or carry out contracts of insurance; or

(b) a credit union within the meaning of section 1 of the Credit Unions Act 1979(d);

“voluntary arrangement” means a voluntary arrangement which has effect in relation to a UK credit institution in accordance with section 4A of the 1986 Act or Article 17A of the 1989 Order as the case may be; and

“winding up” means—

(a) winding up by the court, or

(b) a creditors’ voluntary winding up.

(2) In paragraph (1)—

(a) for the purposes of the definition of “directive reorganisation measure”, a reorganisation measure is adopted at the time when it is treated as adopted or imposed by the law of the relevant EEA State; and

(b) for the purposes of the definition of “directive winding-up proceedings”, winding-up proceedings are opened at the time when they are treated as opened by the law of the relevant EEA State,

and in this paragraph “relevant EEA State” means the EEA State under the law of which the reorganisation is adopted or imposed, or the winding-up proceedings are opened, as the case may be.

(3) In these Regulations, references to the law of insolvency of the United Kingdom include references to every provision made by or under the 1986 Act or the 1989 Order as the case may be; and in relation to partnerships, limited liability partnerships or building societies, references to the law of insolvency or to any provision of the 1986 Act or the 1989 Order are to that law as modified by the Insolvent Partnerships Order 1994(e), the Insolvent Partnerships Order (Northern Ireland) 1995(f), the Limited Liability Partnerships Regulations 2001(g) or the Building Societies Act 1986(h) (as the case may be).

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(a) O.J. No. 17, 6.10.1958, p. 385/58; Special Edition, Series 1, Chapter 1952–1958, p. 0059.

(b) O.J. No. C241, 29.8.94, p. 258.

(c) O.J. No. L125, 5.5.2001, p. 15.

(d) 1979 c. 34.

(e) S.I. 1994/2421.

(f) S.R. 1995 No. 225.

(g) S.I. 2001/1090.

(h) 1986 c. 53.

(4) References in these Regulations to “accepting deposits” and a “contract of insurance” must be read with—

- (a) section 22 of the 2000 Act;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act.

(5) For the purposes of the 2000 Act, functions imposed or falling on the Authority under these Regulations shall be deemed to be functions under the 2000 Act.

## 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)(a) 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.

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(a) 2002 c. 40.

### **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.”.

## PART 3

### *Modifications of the Law of Insolvency: Notification and Publication*

#### **Modifications of the law of insolvency**

7. The general law of insolvency has effect in relation to UK credit institutions subject to the provisions of this Part.

#### **Consultation of the Authority prior to a voluntary winding up**

8.—(1) Where, on or after 5th May 2004, a UK credit institution (“the institution”) intends to pass a resolution to wind up the institution under paragraph (b) or (c) of section 84(1) of the 1986 Act or sub-paragraph (b) or (c) of Article 70(1) of the 1989 Order, the institution must give written notice of the resolution to the Authority before it passes the resolution.

(2) Where notice is given under paragraph (1), the resolution may be passed only after the end of the period of five business days beginning with the day on which the notice was given.

#### **Notification of relevant decision to the Authority**

9.—(1) Where on or after 5th May 2004 the court makes a decision, order or appointment of any of the following kinds—

- (a) an administration order under paragraph 13 of Schedule B1 to the 1986 Act or section 8(1) of the 1986 Act;
- (b) a winding-up order under section 125 of the 1986 Act or Article 105 of the 1989 Order;
- (c) the appointment of a provisional liquidator under section 135(1) of the 1986 Act or Article 115(1) of the 1989 Order;
- (d) the appointment of an administrator in an interim order under paragraph 13(1)(d) of Schedule B1 to the 1986 Act or Article 22(4) of the 1989 Order,

it must immediately inform the Authority, or cause the Authority to be informed, of the order or appointment which has been made.

(2) Where a decision with respect to the approval of a voluntary arrangement has effect, and the arrangement which is the subject of that decision is a qualifying arrangement, the supervisor must forthwith inform the Authority of the arrangement which has been approved.

(3) Where a liquidator is appointed as mentioned in section 100 of the 1986 Act, paragraph 83 of Schedule B1 to the 1986 Act or Article 86 of the 1989 Order (appointment of liquidator in a creditors’ voluntary winding up), the liquidator must inform the Authority forthwith of his appointment.

(4) Where in the case of a members’ voluntary winding up, section 95 of the 1986 Act (effect of company’s insolvency) or Article 81 of the 1989 Order applies, the liquidator must inform the Authority forthwith that he is of that opinion.

(5) Paragraphs (1), (2) and (3) do not apply in any case where the Authority was represented at all hearings in connection with the application in relation to which the order or appointment is made.

(6) For the purposes of paragraph (2), a “qualifying arrangement” means a voluntary arrangement which—

- (a) varies the rights of creditors as against the credit institution and is intended to enable the credit institution, and the whole or any part of its undertaking, to survive as a going concern; or

(b) includes a realisation of some or all of the assets of the credit institution, with a view to terminating the whole or any part of the business of that credit institution.

(7) A supervisor, administrator or liquidator who fails without reasonable excuse to comply with paragraph (2), (3), or (4) (as the case may be) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Notification to EEA regulators**

**10.—(1)** Where the Authority is informed of a decision, order or appointment in accordance with regulation 9, the Authority must as soon as is practicable inform the relevant person—

- (a) that the decision, order or appointment has been made; and
- (b) in general terms, of the possible effect of a decision, order or appointment of that kind on the business of a credit institution.

(2) Where the Authority has been represented at all hearings in connection with the application in relation to which the decision, order or appointment has been made, the Authority must inform the relevant person of the matters mentioned in paragraph (1) as soon as is practicable after that decision, order or appointment has been made.

(3) Where, on or after 5th May 2004, it appears to the Authority that a directive reorganisation measure should be adopted in relation to or imposed on an EEA credit institution which has a branch in the United Kingdom, it will inform the home state regulator as soon as is practicable.

(4) In this regulation, the “relevant person” means the EEA regulator of any EEA State in which the UK credit institution has a branch.

#### **Withdrawal of authorisation**

**11.—(1)** For the purposes of this regulation—

- (a) a qualifying decision means a decision with respect to the approval of a voluntary arrangement where the voluntary arrangement includes a realisation of some or all of the assets of the credit institution with a view to terminating the whole or any part of the business of that credit institution;
- (b) a qualifying order means—
  - (i) a winding-up order under section 125 of the 1986 Act or Article 105 of the 1989 Order; or
  - (ii) an administration order under paragraph 13 of Schedule B1 to the 1986 Act in the prescribed circumstances;
- (c) a qualifying appointment means—
  - (i) the appointment of a provisional liquidator under section 135(1) of the 1986 Act or Article 115(1) of the 1989 Order; or
  - (ii) the appointment of a liquidator as mentioned in section 100 of the 1986 Act, Article 86 of the 1989 Order (appointment of liquidator in a creditors’ voluntary winding up) or paragraph 83 of Schedule B1 to the 1986 Act (moving from administration to creditors’ voluntary liquidation).

(2) The prescribed circumstances are where, after the appointment of an administrator, the administrator concludes that it is not reasonably practicable to achieve the objective specified in paragraph 3(1)(a) of Schedule B1 to the 1986 Act.

(3) When the Authority is informed of a qualifying decision, qualifying order or qualifying appointment, the Authority will as soon as reasonably practicable exercise its power under section 45 of the 2000 Act to vary or to cancel the UK credit institution’s permission under Part 4 of that Act to accept deposits or to issue electronic money as the case may be.

#### **Publication of voluntary arrangement, administration order, winding-up order or scheme of arrangement**

**12.—(1)** This regulation applies where a qualifying decision is approved, or a qualifying order or qualifying appointment is made, in relation to a UK credit institution on or after 5th May 2004.

- (2) For the purposes of this regulation—
- (a) a qualifying decision means a decision with respect to the approval of a proposed voluntary arrangement, in accordance with section 4A of the 1986 Act or Article 17A of the 1989 Order;
  - (b) a qualifying order means—
    - (i) an administration order under paragraph 13 of Schedule B1 to the 1986 Act or section 8(1) of the 1986 Act,
    - (ii) an order appointing a provisional liquidator in accordance with section 135 of that Act or Article 115 of that Order, or
    - (iii) a winding-up order made by the court under Part 4 of that Act or Part V of the 1989 Order;
  - (c) a qualifying appointment means the appointment of a liquidator as mentioned in section 100 of the 1986 Act or Article 86 of the 1989 Order (appointment of liquidator in a creditors' voluntary winding up).
- (3) Subject to paragraph (7), as soon as is reasonably practicable after a qualifying decision has effect or a qualifying order or a qualifying appointment has been made, the relevant officer must publish, or cause to be published, in the Official Journal of the European Communities and in 2 national newspapers in each EEA State in which the UK credit institution has a branch the information mentioned in paragraph (4) and (if applicable) paragraphs (5) or (6).
- (4) That information is—
- (a) a summary of the terms of the qualifying decision, qualifying appointment or the provisions of the qualifying order (as the case may be);
  - (b) the identity of the relevant officer;
  - (c) the statutory provisions in accordance with which the qualifying decision has effect or the qualifying order or appointment has been made or takes effect.
- (5) In the case of a qualifying appointment, that information includes the court to which an application under section 112 of the 1986 Act (reference of questions to the court), section 27 of the 1986 Act or Article 98 of the 1989 Order (reference of questions to the High Court) may be made.
- (6) In the case of a qualifying decision, that information includes the court to which an application under section 6 of the 1986 Act or Article 19 of the 1989 Order (challenge of decisions) may be made.
- (7) Paragraph (3) does not apply where a qualifying decision or qualifying order falling within paragraph (2)(b)(i) affects the interests only of the members, or any class of members, or employees of the credit institution (in their capacity as members or employees).
- (8) This regulation is without prejudice to any requirement to publish information imposed upon a relevant officer under any provision of the general law of insolvency.
- (9) A relevant officer who fails to comply with paragraph (3) of this regulation commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) A qualifying decision, qualifying order or qualifying appointment is not invalid or ineffective if the relevant official fails to comply with paragraph (3) of this regulation.
- (11) In this regulation, “relevant officer” means—
- (a) in the case of a voluntary arrangement, the supervisor;
  - (b) in the case of an administration order, the administrator;
  - (c) in the case of a creditors' voluntary winding up, the liquidator;
  - (d) in the case of winding-up order, the liquidator; or
  - (e) in the case of an order appointing a provisional liquidator, the provisional liquidator.
- (12) The information to be published in accordance with paragraph (3) of this regulation shall be—
- (a) in the case of the Official Journal of the European Communities, in the official language or languages of each EEA State in which the UK credit institution has a branch;
  - (b) in the case of the national newspapers of each EEA State in which the UK credit institution has a branch, in the official language or languages of that EEA State.

### **Honouring of certain obligations**

**13.—(1)** This regulation applies where, on or after 5th May 2004, a relevant obligation has been honoured for the benefit of a relevant credit institution by a relevant person.

(2) Where a person has honoured a relevant obligation for the benefit of a relevant credit institution, he shall be deemed to have discharged that obligation if he was unaware of the winding up of that credit institution.

(3) For the purposes of this regulation—

- (a) a relevant obligation is an obligation which, after the commencement of the winding up of a relevant credit institution, should have been honoured for the benefit of the liquidator of that credit institution;
- (b) a relevant credit institution is a UK credit institution which—
  - (i) is not a body corporate; and
  - (ii) is the subject of a winding up;
- (c) a relevant person is a person who at the time the obligation is honoured—
  - (i) is in the territory of an EEA State; and
  - (ii) is unaware of the winding up of the relevant credit institution.

(4) For the purposes of paragraph (3)(c)(ii) of this regulation—

- (a) a relevant person shall be presumed, in the absence of evidence to the contrary, to have been unaware of the winding up of a relevant credit institution where the relevant obligation was honoured before date of the publication provided for in regulation 12 in relation to that winding up;
- (b) a relevant person shall be presumed, in the absence of evidence to the contrary, to have been aware of the winding up of the relevant credit institution where the relevant obligation was honoured on or after the date of the publication provided for in regulation 12 in relation to that winding up.

### **Notification to creditors: winding-up proceedings**

**14.—(1)** When a relevant order or appointment is made, or a relevant decision is taken, in relation to a UK credit institution on or after 5th May 2004, the appointed officer must, as soon as is reasonably practicable, notify in writing all known creditors of that credit institution—

- (a) of the matters mentioned in paragraph (4); and
- (b) of the matters mentioned in paragraph (5).

(2) The appointed officer may comply with the requirement in paragraphs (1)(a) and the requirement in paragraph (1)(b) by separate notifications.

(3) For the purposes of this regulation—

- (a) “relevant order” means—
  - (i) an administration order under paragraph 13 of Schedule B1 to the 1986 Act in the prescribed circumstances or an administration order made for the purposes set out in section 8(3)(b) or (d) of the 1986 Act, as the case may be,
  - (ii) a winding-up order under section 125 of the 1986 Act (powers of the court on hearing a petition) or Article 105 of the 1989 Order (powers of High Court on hearing of petition),
  - (iii) the appointment of a liquidator in accordance with section 138 of the 1986 Act (appointment of a liquidator in Scotland), or
  - (iv) an order appointing a provisional liquidator in accordance with section 135 of that Act or Article 115 of the 1989 Order;
- (b) a “relevant appointment” means the appointment of a liquidator as mentioned in section 100 of the 1986 Act or Article 86 of the 1989 Order (appointment of liquidator in a creditors’ voluntary winding up); and
- (c) a “relevant decision” means a decision as a result of which a qualifying voluntary arrangement has effect.

(4) The matters which must be notified to all known creditors in accordance with paragraph (1)(a) are as follows—

- (a) that a relevant order or appointment has been made, or a relevant decision taken, in relation to the UK credit institution; and

- (b) the date from which that order, appointment or decision has effect.
- (5) The matters which must be notified to all known creditors in accordance with paragraph (1)(b) are as follows—
- (a) if applicable, the date by which a creditor must submit his claim in writing;
  - (b) the matters which must be stated in a creditor’s claim;
  - (c) details of any category of debt in relation to which a claim is not required;
  - (d) the person to whom any such claim or any observations on a claim must be submitted; and
  - (e) the consequences of any failure to submit a claim by any specified deadline.
- (6) Where a creditor is notified in accordance with paragraph (1)(b), the notification must be headed with the words “Invitation to lodge a claim. Time limits to be observed”, and that heading must be given in every official language.
- (7) The obligation under paragraph (1)(b) may be discharged by sending a form of proof in accordance with rule 4.74 of the Insolvency Rules, Rule 4.080 of the Insolvency Rules (Northern Ireland) or Rule 4.15(2) of the (Insolvency) Scotland Rules as applicable in cases where any of those rules applies, provided that the form of proof complies with paragraph (6).
- (8) The prescribed circumstances are where, after the appointment of an administrator, the administrator concludes that it is not reasonably practicable to achieve the objective specified in paragraph 3(1)(a) of Schedule B1 to the 1986 Act.
- (9) Where, after the appointment of an administrator, the administrator concludes that it is not reasonably practicable to achieve the objective specified in paragraph 3(1)(a) of Schedule B1 to the 1986 Act, he shall inform the court and the Authority in writing of that conclusion and upon so doing the order by which he was appointed shall be a relevant order for the purposes of this regulation and the obligation under paragraph (1) shall apply as from the date on which he so informs the court and the Authority.
- (10) An appointed officer commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph (1) of this regulation, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) For the purposes of this regulation—
- (a) “appointed officer” means—
    - (i) in the case of a relevant order falling within paragraph (3)(a)(i), the administrator,
    - (ii) in the case of a relevant order falling within paragraph (3)(a)(ii) or (iii) or a relevant appointment falling within paragraph (3)(b), the liquidator,
    - (iii) in the case of a relevant order falling within paragraph (3)(a)(iv), the provisional liquidator, or
    - (iv) in the case of a relevant decision, the supervisor; and
  - (b) a creditor is a “known” creditor if the appointed officer is aware of—
    - (i) his identity,
    - (ii) his claim or potential claim, and
    - (iii) a recent address where he is likely to receive a communication.
- (12) For the purposes of paragraph (3), a voluntary arrangement is a qualifying voluntary arrangement if its purposes include a realisation of some or all of the assets of the UK credit institution to which the order relates with a view to terminating the whole or any part of the business of that credit institution.

**Submission of claims by EEA creditors**

**15.—**(1) An EEA creditor who, on or after 5th May 2004, submits a claim or observations relating to his claim in any relevant proceedings (irrespective of when those proceedings were commenced or had effect) may do so in his domestic language, provided that the requirements in paragraphs (3) and (4) are complied with.

- (2) For the purposes of this regulation, “relevant proceedings” means—
- (a) a winding up;
  - (b) a qualifying voluntary arrangement; or

(c) administration.

(3) Where an EEA creditor submits a claim in his domestic language, the document must be headed with the words “Lodgement of claim” (in English).

(4) Where an EEA creditor submits observations on his claim (otherwise than in the document by which he submits his claim), the observations must be headed with the words “Submission of observations relating to claims” (in English).

(5) Paragraph (3) does not apply where an EEA creditor submits his claim using—

(a) in the case of a winding up, a form of proof supplied by the liquidator in accordance with rule 4.74 of the Insolvency Rules, Rule 4.080 of the Insolvency Rules (Northern Ireland) or rule 4.15(2) of the Insolvency (Scotland) Rules;

(b) in the case of a qualifying voluntary arrangement, a form approved by the court for that purpose.

(6) In this regulation—

(a) “domestic language”, in relation to an EEA creditor, means the official language, or one of the official languages, of the EEA State in which he is ordinarily resident or, if the creditor is not an individual, in which the creditor’s head office is located; and

(b) “qualifying voluntary arrangement” means a voluntary arrangement whose purposes include a realisation of some or all of the assets of the UK credit institution to which the order relates with a view to terminating the whole or any part of the business of that credit institution.

### **Reports to creditors**

**16.—**(1) This regulation applies where, on or after 5th May 2004—

(a) a liquidator is appointed in accordance with section 100 of the 1986 Act, Article 86 of the 1986 Order (creditors’ voluntary winding up: appointment of liquidator) or paragraph 83 of Schedule B1 to the 1986 Act (moving from administration to creditors’ voluntary liquidation);

(b) a winding-up order is made by the court;

(c) a provisional liquidator is appointed; or

(d) administration.

(2) The liquidator, provisional liquidator or administrator (as the case may be) must send a report to every known creditor once in every 12 months beginning with the date when his appointment has effect.

(3) The requirement in paragraph (2) does not apply where a liquidator, provisional liquidator or administrator is required by order of the court to send a report to creditors at intervals which are more frequent than those required by this regulation.

(4) This regulation is without prejudice to any requirement to send a report to creditors, imposed by the court on the liquidator, provisional liquidator or administrator, which is supplementary to the requirements of this regulation.

(5) A liquidator, provisional liquidator or administrator commits an offence if he fails without reasonable excuse to comply with an applicable requirement under this regulation, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) For the purposes of this regulation—

(a) “known creditor” means—

(i) a creditor who is known to the liquidator, provisional liquidator or administrator, and

(ii) in a case falling within paragraph (1)(b) or (c), a creditor who is specified in the credit institution’s statement of affairs (within the meaning of section 131 of the 1986 Act or Article 111 of the 1989 Order);

(b) “report” means a written report setting out the position generally as regards the progress of the winding up, provisional liquidation or administration (as the case may be).

## Service of notices and documents

17.—(1) This regulation applies to any notification, report or other document which is required to be sent to a creditor of a UK credit institution by a provision of this Part (“a relevant notification”).

(2) A relevant notification may be sent to a creditor by one of the following methods—

- (a) by posting it to the proper address of the creditor;
- (b) by transmitting it electronically, in accordance with paragraph (4).

(3) For the purposes of paragraph (2)(a), the proper address of a creditor is any current address provided by that person as an address for service of a relevant notification and, if no such address is provided—

- (a) the last known address of that creditor (whether his residence or a place where he carries on business);
- (b) in the case of a body corporate, the address of its registered or principal office; or
- (c) in the case of an unincorporated association, the address of its principal office.

(4) A relevant notification may be transmitted electronically only if it is sent to—

- (a) an electronic address notified to the relevant officer by the creditor for this purpose; or
- (b) if no such address has been notified, to an electronic address at which the relevant officer reasonably believes the creditor will receive the notification.

(5) Any requirement in this Part to send a relevant notification to a creditor shall also be treated as satisfied if the conditions set out in paragraph (6) are satisfied.

(6) The conditions of this paragraph are satisfied in the case of a relevant notification if—

- (a) the creditor has agreed with—
  - (i) the UK credit institution which is liable under the creditor’s claim, or
  - (ii) the relevant officer,

that information which is required to be sent to him (whether pursuant to a statutory or contractual obligation, or otherwise) may instead be accessed by him on a web site;

- (b) the agreement applies to the relevant notification in question;
- (c) the creditor is notified of—
  - (i) the publication of the relevant notification on a web site,
  - (ii) the address of that web site,
  - (iii) the place on that web site where the relevant notification may be accessed, and how it may be accessed; and
- (d) the relevant notification is published on that web site throughout a period of at least one month beginning with the date on which the creditor is notified in accordance with sub-paragraph (c).

(7) Where, in a case in which paragraph (5) is relied on for compliance with a requirement of regulation 14 or 16—

- (a) a relevant notification is published for a part, but not all, of the period mentioned in paragraph (6)(d) but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the relevant officer to prevent or avoid,

no offence is committed under regulation 14(10) or regulation 16(5) (as the case may be) by reason of that failure.

(8) In this regulation—

- (a) “electronic address” includes any number or address used for the purposes of receiving electronic communications which are sent electronically;
- (b) “electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000(a) the processing of which on receipt is intended to produce writing; and

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(a) 2000 c. 7.

- (c) “relevant officer” means (as the case may be) an administrator, liquidator, provisional liquidator or supervisor who is required to send a relevant notification to a creditor by a provision of this Part.

#### **Disclosure of confidential information received from an EEA regulator**

- 18.**—(1) This regulation applies to information (“insolvency information”) which—
- (a) relates to the business or affairs of any other person; and
  - (b) is supplied to the Authority by an EEA regulator acting in accordance with Articles 4, 5, 9, or 11 of the reorganisation and winding up directive.

(2) Subject to paragraphs (3) and (4), sections 348, 349 and 352 of the 2000 Act apply in relation to insolvency information as they apply in relation to confidential information within the meaning of section 348(2) of the 2000 Act.

(3) Insolvency information is not subject to the restrictions on disclosure imposed by section 348(1) of the 2000 Act (as it applies by virtue of paragraph (2)) if it satisfies any of the criteria set out in section 348(4) of the 2000 Act.

(4) The Disclosure Regulations apply in relation to insolvency information as they apply in relation to single market directive information (within the meaning of those Regulations).

### **PART 4**

#### *Reorganisation or Winding up of UK Credit Institutions: Recognition of EEA Rights*

#### **Application of this Part**

- 19.**—(1) This Part applies as follows—
- (a) where a decision with respect to the approval of a proposed voluntary arrangement having a qualifying purpose is made under section 4A of the 1986 Act or Article 17A of the 1989 Order on or after 5th May 2004 in relation to a UK credit institution;
  - (b) where an administration order made under paragraph 13 of Schedule B1 to the 1986 Act or section 8(1) of the 1986 Act on or after 5th May 2004 is in force in relation to a UK credit institution;
  - (c) where a UK credit institution is subject to a relevant winding up; or
  - (d) where a provisional liquidator is appointed in relation to a UK credit institution on or after 5th May 2004.

(2) For the purposes of paragraph (1)(a), a voluntary arrangement has a qualifying purpose if it—

- (a) varies the rights of the creditors as against the credit institution and is intended to enable the credit institution, and the whole or any part of its undertaking, to survive as a going concern; or
- (b) includes a realisation of some or all of the assets of the credit institution to which the compromise or arrangement relates, with a view to terminating the whole or any part of the business of that credit institution.

- (3) For the purposes of paragraph (1)(c), a winding up is a relevant winding up if—
- (a) in the case of a winding up by the court, the winding-up order is made on or after 5th May 2004; or
  - (b) in the case of a creditors’ voluntary winding up, the liquidator is appointed in accordance with section 100 of the 1986 Act, Article 86 of the 1989 Order or paragraph 83 of Schedule B1 to the 1986 Act on or after 5th May 2004.

#### **Application of this Part: assets subject to a section 425 or Article 418 compromise or arrangement**

**20.**—(1) For the purposes of this Part, the insolvent estate of a UK credit institution shall not include any assets which at the commencement date are subject to a relevant section 425 or Article 418 compromise or arrangement.



- (2) In this regulation—
- (a) “assets” has the same meaning as “property” in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;
  - (b) “commencement date” means the date when a UK credit institution goes into liquidation within the meaning given by section 247(2) of the 1986 Act or Article 6(2) of the 1989 Order;
  - (c) “insolvent estate” has the meaning given by rule 13.8 of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland) and in Scotland means the company’s assets;
  - (d) “relevant section 425 or Article 418 compromise or arrangement” means—
    - (i) a section 425 or Article 418 compromise or arrangement which was sanctioned by the court before 5th May 2004, or
    - (ii) any subsequent section 425 or Article 418 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of a kind mentioned in paragraph (i).

**Interpretation of this Part**

21.—(1) For the purposes of this Part—

- (a) “affected credit institution” means a UK credit institution which is the subject of a relevant reorganisation or winding up;
- (b) “relevant reorganisation” or “relevant winding up” means any voluntary arrangement, administration, winding up, or order referred to in regulation 19(1) to which this Part applies; and
- (c) “relevant time” means the date of the opening of a relevant reorganisation or a relevant winding up.

(2) In this Part, references to the opening of a relevant reorganisation or a relevant winding up mean—

- (a) in the case of winding-up proceedings—
  - (i) in the case of a winding up by the court, the date on which the winding-up order is made, or
  - (ii) in the case of a creditors’ voluntary winding up, the date on which the liquidator is appointed in accordance with section 100 of the 1986 Act, Article 86 of the 1989 Order or paragraph 83 of Schedule B1 to the 1986 Act;
- (b) in the case of a voluntary arrangement, the date when a decision with respect to the approval of that voluntary arrangement has effect in accordance with section 4A(2) of the 1986 Act or Article 17A(2) of the 1989 Order;
- (c) in a case where an administration order under paragraph 13 of Schedule B1 to the 1986 Act or section 8(1) of the 1986 Act is in force, the date of the making of that order; and
- (d) in a case where a provisional liquidator has been appointed, the date of that appointment,

and references to the time of an opening must be construed accordingly.

**EEA rights: applicable law in the winding up of a UK credit institution**

22.—(1) This regulation is subject to the provisions of regulations 23 to 35.

(2) In a relevant winding up, the matters mentioned in paragraph (3) are to be determined in accordance with the general law of insolvency of the United Kingdom.

(3) Those matters are—

- (a) the assets which form part of the estate of the affected credit institution;
- (b) the treatment of assets acquired by the affected credit institution after the opening of the relevant winding up;
- (c) the respective powers of the affected credit institution and the liquidator or provisional liquidator;
- (d) the conditions under which set-off may be invoked;
- (e) the effects of the relevant winding up on current contracts to which the affected credit institution is a party;

- (f) the effects of the relevant winding up on proceedings brought by creditors;
- (g) the claims which are to be lodged against the estate of the affected credit institution;
- (h) the treatment of claims against the affected credit institution arising after the opening of the relevant winding up;
- (i) the rules governing—
  - (i) the lodging, verification and admission of claims,
  - (ii) the distribution of proceeds from the realisation of assets,
  - (iii) the ranking of claims,
  - (iv) the rights of creditors who have obtained partial satisfaction after the opening of the relevant winding up by virtue of a right in rem or through set-off;
- (j) the conditions for and the effects of the closure of the relevant winding up, in particular by composition;
- (k) the rights of creditors after the closure of the relevant winding up;
- (l) who is to bear the cost and expenses incurred in the relevant winding up;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

#### **Employment contracts and relationships**

**23.**—(1) The effects of a relevant reorganisation or a relevant winding up on EEA employment contracts and EEA employment relationships are to be determined in accordance with the law of the EEA State to which that contract or that relationship is subject.

(2) In this regulation, an employment contract is an EEA employment contract, and an employment relationship is an EEA employment relationship if it is subject to the law of an EEA State.

#### **Contracts in connection with immovable property**

**24.**—(1) The effects of a relevant reorganisation or a relevant winding up on a contract conferring the right to make use of or acquire immovable property situated within the territory of an EEA State shall be determined in accordance with the law of that State.

(2) The law of the EEA State in whose territory the property is situated shall determine whether the property is movable or immovable.

#### **Registrable rights**

**25.** The effects of a relevant reorganisation or a relevant winding up on rights of the affected UK credit institution with respect to—

- (a) immovable property,
- (b) a ship, or
- (c) an aircraft

which is subject to registration in a public register kept under the authority of an EEA State are to be determined in accordance with the law of that State.

#### **Third parties' rights in rem**

**26.**—(1) A relevant reorganisation or a relevant winding up shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets (including both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the affected credit institution which are situated within the territory of an EEA State at the relevant time.

(2) The rights in rem referred to in paragraph (1) shall mean—

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or the 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 guarantee;
- (c) the right to demand the assets from, or to require restitution by, any person having possession or use of them contrary to the wishes of the party so entitled;

(d) a right in rem to the beneficial use of assets.

(3) A right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph (1) may be obtained, is also to be treated as a right in rem for the purposes of this regulation.

(4) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom.

#### **Reservation of title agreements etc.**

**27.**—(1) The adoption of a relevant reorganisation or opening of a relevant winding up in relation to a credit institution purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of that adoption or opening the asset is situated within the territory of an EEA State.

(2) The adoption of a relevant reorganisation or opening of a relevant winding up in relation to 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 that adoption or opening the asset sold is situated within the territory of an EEA State.

(3) Paragraphs (1) and (2) do not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom.

#### **Creditors' rights to set off**

**28.**—(1) A relevant reorganisation or a relevant winding up shall not affect the right of creditors to demand the set-off of their claims against the claims of the affected credit institution, where such a set-off is permitted by the law applicable to the affected credit institution's claim.

(2) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom.

#### **Regulated markets**

**29.**—(1) Subject to regulation 33, the effects of a relevant reorganisation or winding up on transactions carried out in the context of a regulated market operating in an EEA State must be determined in accordance with the law applicable to those transactions.

(2) For the purposes of this regulation, "regulated market" has the meaning given by the Council Directive of 10th May 1993 on investment services in the securities field (No. 93/22/EEC)(a).

#### **Detrimental acts pursuant to the law of an EEA State**

**30.**—(1) In a relevant reorganisation or a relevant winding up, the rules relating to detrimental transactions shall not apply where a person who has benefited from a legal act detrimental to all the creditors provides proof that—

- (a) the said act is subject to the law of an EEA State; and
- (b) that law does not allow any means of challenging that act in the relevant case.

(2) For the purposes of paragraph (1), "the rules relating to detrimental transactions" means any provision of the general law of insolvency relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

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(a) O.J. No. L141, 11.6.93, p. 27, as amended by European Parliament and Council Directive 95/26/EC (O.J. No. L168, 18.7.95, p. 7), European Parliament and Council Directive 97/9/EC (O.J. No. L84, 26.3.97, p. 22), European Parliament and Council Directive 2000/64/EC (O.J. No. L290, 17.11.2000, p. 27) and European Parliament and Council Directive 2002/87/EC (O.J. No. L35, 11.2.2003, p. 1).

### **Protection of third party purchasers**

31.—(1) This regulation applies where, by an act concluded after the adoption of a relevant reorganisation or opening of a relevant winding up, an affected credit institution disposes for a consideration of—

- (a) an immovable asset situated within the territory of an EEA State;
- (b) a ship or an aircraft subject to registration in a public register kept under the authority of an EEA State;
- (c) relevant instruments or rights in relevant instruments whose existence or transfer presupposes entry into a register or account laid down by the law of an EEA State or which are placed in a central deposit system governed by the law of an EEA State.

(2) The validity of that act is to be determined in accordance with the law of the EEA State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept, as the case may be.

(3) In this regulation, “relevant instruments” means the instruments referred to in Section B of the Annex to the Council Directive of 10th May 1993 on investment services in the securities field (No. 93/22/EEC).

### **Lawsuits pending**

32.—(1) The effects of a relevant reorganisation or a relevant winding up on a relevant lawsuit pending in an EEA State shall be determined solely in accordance with the law of that EEA State.

(2) In paragraph (1), “relevant lawsuit” means a lawsuit concerning an asset or right of which the affected credit institution has been divested.

### ***Lex rei sitae***

33.—(1) The effects of a relevant reorganisation or a relevant winding up on the enforcement of a relevant proprietary right shall be determined by the law of the relevant EEA State.

(2) In this regulation—

“relevant proprietary right” means proprietary rights in relevant instruments or other rights in relevant instruments the existence or transfer of which is recorded in a register, an account or a centralised deposit system held or located in an EEA state;

“relevant EEA State” means the Member State where the register, account or centralised deposit system in which the relevant proprietary right is recorded is held or located;

“relevant instrument” has the meaning given by regulation 31(3).

### **Netting agreements**

34. The effects of a relevant reorganisation or a relevant winding up on a netting agreement shall be determined in accordance with the law applicable to that agreement.

### **Repurchase agreements**

35. Subject to regulation 33, the effects of a relevant reorganisation or a relevant winding up on a repurchase agreement shall be determined in accordance with the law applicable to that agreement.

## **PART 5**

### *Third Country Credit Institutions*

### **Interpretation of this Part**

36.—(1) In this Part—

- (a) “relevant measure”, in relation to a third country credit institution, means—
  - (i) a winding up;
  - (ii) a provisional liquidation; or
  - (iii) an administration order made under paragraph 13 of Schedule B1 to the 1986 Act or section 8(1) of the 1986 Act as the case may be.

- (b) “third country credit institution” means a person—
  - (i) who has permission under the 2000 Act to accept deposits or to issue electronic money as the case may be; and
  - (ii) whose head office is not in the United Kingdom or an EEA State.
- (2) In paragraph (1), the definition of “third country credit institution” must be read with—
  - (a) section 22 of the 2000 Act;
  - (b) any relevant order made under that section; and
  - (c) Schedule 2 to that Act.

**Application of these Regulations to a third country credit institution**

37. Regulations 9 and 10 apply where a third country credit institution is subject to a relevant measure, as if references in those regulations to a UK credit institution included a reference to a third country credit institution.

**Disclosure of confidential information: third country credit institution**

38.—(1) This regulation applies to information (“insolvency practitioner information”) which—

- (a) relates to the business or other affairs of any person; and
  - (b) is information of a kind mentioned in paragraph (2).
- (2) Information falls within paragraph (1)(b) if it is supplied to—
- (a) the Authority by an EEA regulator; or
  - (b) an insolvency practitioner by an EEA administrator or liquidator,
- in accordance with or pursuant to Articles 8 or 19 of the reorganisation and winding up directive.
- (3) Subject to paragraphs (4), (5) and (6), sections 348, 349 and 352 of the 2000 Act apply in relation to insolvency practitioner information in the same way as they apply in relation to confidential information within the meaning of section 348(2) of that Act.
- (4) For the purposes of this regulation, sections 348, 349 and 352 of the 2000 Act and the Disclosure Regulations have effect as if the primary recipients specified in subsection (5) of section 348 of the 2000 Act included an insolvency practitioner.
- (5) Insolvency practitioner information is not subject to the restrictions on disclosure imposed by section 348(1) of the 2000 Act (as it applies by virtue of paragraph (2)) if it satisfies any of the criteria set out in section 348(4) of the 2000 Act.
- (6) The Disclosure Regulations apply in relation to insolvency practitioner information as they apply in relation to single market directive information (within the meaning of those Regulations).
- (7) In this regulation—
- “EEA administrator” and “EEA liquidator” mean an administrator or liquidator of a third country credit institution as the case may be within the meaning of the reorganisation and winding up directive;
  - “insolvency practitioner” means an insolvency practitioner, within the meaning of section 388 of the 1986 Act or Article 3 of the 1989 Order, who is appointed or acts in relation to a third country credit institution.

*Nick Ainger*  
*Jim Murphy*  
Two of the Lords Commissioners  
of Her Majesty’s Treasury

1st April 2004

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations implement the directive of the Parliament and the Council on the reorganisation and winding up of credit institutions (2001/24/EC) for all UK credit institutions.

These Regulations provide that as from 5th May 2004, no winding-up proceedings or reorganisation measures in respect of EEA credit institutions can be undertaken in the UK except in the circumstances permitted by the Regulations. EEA reorganisation measures and winding-up proceedings are to be recognised in the UK. Provisions are made for the exercise by EEA liquidators of their functions in the UK. Provision is made for the notification of reorganisation measures and winding-up proceedings to competent authorities in other EEA Member States. Modifications are made to UK insolvency law in respect of notifications of various other matters including important stages in the relevant procedures and forms in which creditors in other EEA States may enter claims, to the Financial Services Authority, EEA authorities and creditors.

The Regulations make provision for application to credit institutions whose head office is outside the UK and the EEA. Provision is made for detailed amendment of existing secondary legislation including the insolvency rules in all UK jurisdictions dealing with the reorganisation or winding up of credit institutions.



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STATUTORY INSTRUMENTS

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**2004 No. 1045**

**INSOLVENCY  
COMPANIES**

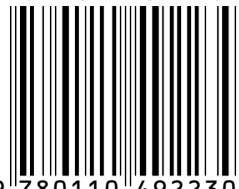
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