

SCHEDULE 1

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

CHAPTER I

GENERAL PROVISIONS

Article 1. Scope of Application

1. This Law applies where—
 - (a) assistance is sought in Great Britain by a foreign court or a foreign representative in connection with a foreign proceeding; or
 - (b) assistance is sought in a foreign State in connection with a proceeding under British insolvency law; or
 - (c) a foreign proceeding and a proceeding under British insolvency law in respect of the same debtor are taking place concurrently; or
 - (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under British insolvency law.
2. This Law does not apply to a proceeding concerning—
 - (a) a company holding an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991⁽¹⁾ (water and sewage undertakers) or a qualifying licensed water supplier within the meaning of section 23(6) of that Act (meaning and effect of special administration order);
 - (b) Scottish Water established under section 20 of the Water Industry (Scotland) Act 2002 (Scottish Water)⁽²⁾;
 - (c) a protected railway company within the meaning of section 59 of the Railways Act 1993⁽³⁾ (railway administration order) (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996⁽⁴⁾ (administration));
 - (d) a licence company within the meaning of section 26 of the Transport Act 2000⁽⁵⁾ (air traffic services);
 - (e) a public private partnership company within the meaning of section 210 of the Greater London Authority Act 1999⁽⁶⁾ (public-private partnership agreement);
 - (f) a protected energy company within the meaning of section 154(5) of the Energy Act 2004⁽⁷⁾ (energy administration orders);
 - (g) a building society within the meaning of section 119 of the Building Societies Act 1986⁽⁸⁾ (interpretation);

(1) 1991 c. 56, section 23(6) was amended by the Water Act 2003 (c. 37), Schedule 8, paragraphs 2 and 8(1) and (6).

(2) 2002 asp 3.

(3) 1993 c. 43; relevant amendments to section 59 are made by the Railways Act 2005 (c. 14), Schedule 13, Part 1 and S.I. 2005/3050.

(4) 1996 c. 61.

(5) 2000 c. 38.

(6) 1999 c. 29.

(7) 2004 c. 20; there are amendments to section 119 which are not relevant to these Regulations.

(8) 1986 c. 53.

- (h) a UK credit institution or an EEA credit institution or any branch of either such institution as those expressions are defined by regulation 2 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004⁽⁹⁾ (interpretation);
- (i) a third country credit institution within the meaning of regulation 36 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (interpretation of this Part);
- (j) a person who has permission under or by virtue of Parts 4 or 19 of the Financial Services and Markets Act 2000⁽¹⁰⁾ to effect or carry out contracts of insurance;
- (k) an EEA insurer within the meaning of regulation 2 of the Insurers (Reorganisation and Winding Up) Regulations 2004⁽¹¹⁾ (interpretation);
- (l) a person (other than one included in paragraph 2(j)) pursuing the activity of reinsurance who has received authorisation for that activity from a competent authority within an EEA State; or
- (m) any of the Concessionaires within the meaning of section 1 of the Channel Tunnel Act 1987⁽¹²⁾.

3. In paragraph 2 of this article—

- (a) in sub-paragraph (j) the reference to “contracts of insurance” must be construed in accordance with—
 - (i) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment);
 - (ii) any relevant order under that section; and
 - (iii) Schedule 2 to that Act (regulated activities);
- (b) in sub-paragraph (1) “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.

4. The court shall not grant any relief, or modify any relief already granted, or provide any co-operation or coordination, under or by virtue of any of the provisions of this Law if and to the extent that such relief or modified relief or cooperation or coordination would—

- (a) be prohibited under or by virtue of—
 - (i) Part 7 of the Companies Act 1989⁽¹³⁾;
 - (ii) Part 3 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999⁽¹⁴⁾; or
 - (iii) Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003⁽¹⁵⁾;
 in the case of a proceeding under British insolvency law; or
- (b) interfere with or be inconsistent with any rights of a collateral taker under Part 4 of the Financial Collateral Arrangements (No. 2) Regulations 2003 which could be exercised in the case of such a proceeding.

⁽⁹⁾ S.I. 2004/1045.

⁽¹⁰⁾ 2000 c. 8.

⁽¹¹⁾ S.I. 2004/353, to which there are amendments not relevant to these Regulations.

⁽¹²⁾ 1987 c. 53.

⁽¹³⁾ 1989 c. 40, amended by the Bank of England Act 1998 (c. 11), Schedule 5, paragraph 48, the Enterprise Act 2002 (c. 40), Schedule 17, paragraphs 44 to 47, S.I. 1991/880, 1992/1315, 1998/1748, 2001/3649 and 2001/3929.

⁽¹⁴⁾ S.I. 1999/2979, relevant amendments are made by S.I. 2000/2952, 2001/3929, 2002/765 and 2003/2096.

⁽¹⁵⁾ S.I. 2003/3226.

5. Where a foreign proceeding regarding a debtor who is an insured in accordance with the provisions of the Third Parties (Rights against Insurers) Act 1930⁽¹⁶⁾ is recognised under this Law, any stay and suspension referred to in article 20(1) and any relief granted by the court under article 19 or 21 shall not apply to or affect—

- (a) any transfer of rights of the debtor under that Act; or
- (b) any claim, action, cause or proceeding by a third party against an insurer under or in respect of rights of the debtor transferred under that Act.

6. Any suspension under this Law of the right to transfer, encumber or otherwise dispose of any of the debtor's assets—

- (a) is subject to section 26 of the Land Registration Act 2002⁽¹⁷⁾ where owner's powers are exercised in relation to a registered estate or registered charge;
- (b) is subject to section 52 of the Land Registration Act 2002, where the powers referred to in that section are exercised by the proprietor of a registered charge; and
- (c) in any other case, shall not bind a purchaser of a legal estate in good faith for money or money's worth unless the purchaser has express notice of the suspension.

7. In paragraph 6—

- (a) "owner's powers" means the powers described in section 23 of the Land Registration Act 2002 and "registered charge" and "registered estate" have the same meaning as in section 132(1) of that Act; and
- (b) "legal estate" and "purchaser" have the same meaning as in section 17 of the Land Charges Act 1972⁽¹⁸⁾.

Article 2. Definitions

For the purposes of this Law—

- (a) "British insolvency law" means—
 - (i) in relation to England and Wales, provision extending to England and Wales and made by or under the Insolvency Act 1986⁽¹⁹⁾ (with the exception of Part 3 of that Act) or by or under that Act as extended or applied by or under any other enactment (excluding these Regulations); and
 - (ii) in relation to Scotland, provision extending to Scotland and made by or under the Insolvency Act 1986 (with the exception of Part 3 of that Act), the Bankruptcy (Scotland) Act 1985⁽²⁰⁾ or by or under those Acts as extended or applied by or under any other enactment (excluding these Regulations);
- (b) "British insolvency officeholder" means—
 - (i) the official receiver within the meaning of section 399 of the Insolvency Act 1986⁽²¹⁾ when acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement;
 - (ii) a person acting as an insolvency practitioner within the meaning of section 388⁽²²⁾ of that Act but shall not include a person acting as an administrative receiver; and

⁽¹⁶⁾ 1930 c. 25.

⁽¹⁷⁾ 2002 c. 9.

⁽¹⁸⁾ 1972 c. 61; there are amendments to section 17 which are not relevant to these Regulations.

⁽¹⁹⁾ 1986 c. 45.

⁽²⁰⁾ 1985 c. 66.

⁽²¹⁾ Section 399 was amended by the Enterprise Act 2002 (c. 40), Schedule 23, paragraphs 1 and 14.

⁽²²⁾ Section 388 was amended by section 11 of the Bankruptcy (Scotland) Act 1993 (c. 6), section 4 of the Insolvency Act 2000 (c. 39), S.I. 1994/2421, 2002/2708 and 2002/1240.

- (iii) the Accountant in Bankruptcy within the meaning of section 1 of the Bankruptcy (Scotland) Act 1985⁽²³⁾ when acting as interim or permanent trustee;
- (c) “the court” except as otherwise provided in articles 14(4) and 23(6)(b), means in relation to any matter the court which in accordance with the provisions of article 4 of this Law has jurisdiction in relation to that matter;
- (d) “the EC Insolvency Regulation” means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings⁽²⁴⁾;
- (e) “establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and assets or services;
- (f) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;
- (g) “foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (h) “foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of sub-paragraph (e) of this article;
- (i) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (j) “foreign representative” means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;
- (k) “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
- (l) “section 426 request” means a request for assistance in accordance with section 426 of the Insolvency Act 1986⁽²⁵⁾ made to a court in any part of the United Kingdom;
- (m) “secured creditor” in relation to a debtor, means a creditor of the debtor who holds in respect of his debt a security over property of the debtor;
- (n) “security” means—
 - (i) in relation to England and Wales, any mortgage, charge, lien or other security; and
 - (ii) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off);
- (o) in the application of Articles 20 and 23 to Scotland, “an individual” means any debtor within the meaning of the Bankruptcy (Scotland) Act 1985;
- (p) in the application of this Law to Scotland, references howsoever expressed to—
 - (i) “filing” an application or claim are to be construed as references to lodging an application or submitting a claim respectively;
 - (ii) “relief” and “standing” are to be construed as references to “remedy” and “title and interest” respectively; and

⁽²³⁾ Section 1 was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 22.

⁽²⁴⁾ Council Regulation (EC) 1346/2000, OJ No. L160, 30.06.00 p. 1.

⁽²⁵⁾ Relevant amendments are made to section 426 by the Insolvency Act 2000 (c. 39), Schedule 4, paragraph 16.

- (iii) a “stay” are to be construed as references to restraint, except in relation to continuation of actions or proceedings when they shall be construed as a reference to sist; and
- (q) references to the law of Great Britain include a reference to the law of either part of Great Britain (including its rules of private international law).

Article 3. International obligations of Great Britain under the EC Insolvency Regulation

To the extent that this Law conflicts with an obligation of the United Kingdom under the EC Insolvency Regulation, the requirements of the EC Insolvency Regulation prevail.

Article 4. Competent court

1. The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the High Court and assigned to the Chancery Division, as regards England and Wales and the Court of Session as regards Scotland.

2. Subject to paragraph 1 of this article, the court in either part of Great Britain shall have jurisdiction in relation to the functions referred to in that paragraph if—

- (a) the debtor has—
 - (i) a place of business; or
 - (ii) in the case of an individual, a place of residence; or
 - (iii) assets,
situated in that part of Great Britain; or
- (b) the court in that part of Great Britain considers for any other reason that it is the appropriate forum to consider the question or provide the assistance requested.

3. In considering whether it is the appropriate forum to hear an application for recognition of a foreign proceeding in relation to a debtor, the court shall take into account the location of any court in which a proceeding under British insolvency law is taking place in relation to the debtor and the likely location of any future proceedings under British insolvency law in relation to the debtor.

Article 5. Authorisation of British insolvency officeholders to act in a foreign State

A British insolvency officeholder is authorised to act in a foreign State on behalf of a proceeding under British insolvency law, as permitted by the applicable foreign law.

Article 6. Public policy exception

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of Great Britain or any part of it.

Article 7. Additional assistance under other laws

Nothing in this Law limits the power of a court or a British insolvency officeholder to provide additional assistance to a foreign representative under other laws of Great Britain.

Article 8. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Status: *This is the original version (as it was originally made).*