Implementation of the Credit Institutions Reorganisation and Winding Up Directive

Consultation Document

November 2003

HM TREASURY

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IMPLEMENTATION OF THE CREDIT INSTITUTIONS REORGANISATION AND WINDING UP DIRECTIVE

PREFACE

This consultation document seeks views on proposed legislative measures for implementing the Credit Institutions Reorganisation and Winding up Directive (2001/24/EC) into UK law.

Drafts of the proposed Regulations are attached at Annex A.

A partial Regulatory Impact Assessment is attached at Annex B.

The Treasury would be grateful for any comments on the draft Regulations or on the partial Regulatory Impact Assessment to be sent by 27 February 2004 to:

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Please could respondents give details of any organisation whose views they represent.

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Chapter 1 - INTRODUCTION

THE DIRECTIVE

1. The European Parliament and the Council of the European Union adopted a Directive on the reorganisation and winding up of credit institutions on 4 April 2001.

2. The purpose of the Directive is to establish, for the proper functioning of the internal market and the protection of creditors:

* Coordination rules to ensure that the reorganisation measures adopted by the competent authority of the home Member State in order to preserve or restore the financial soundness of a credit institution, as well as the measures adopted by persons or bodies appointed by those authorities to administer the reorganisation measures, are recognised and implemented throughout the Community; and
* Coordination rules for winding up proceedings in order to ensure that these proceedings commenced in the home Member State are recognised and have full effects throughout the Community, in accordance with the principles of unity and universality.

3. The main purpose of the Directive, therefore, is to ensure that reorganisation measures or winding up proceedings affecting a credit institution are recognised in all Member States without further formality. Only the administrative or judicial authorities (in the UK context this will be the Courts) of the Member State in which the credit institution is authorised (the credit institution's "home Member State"), can authorise the implementation of reorganisation measures or the opening of winding up proceedings in respect of that credit institution, including branches of that credit institution in other Member States.

4. For the purposes of the Directive, "reorganisation measures" are defined as measures "which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims".

5. "Winding up proceedings" are defined as "collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure".

SCOPE OF THE DIRECTIVE

6. Article 1 states that the provisions of the Directive apply to reorganisation measures and winding up proceedings affecting credit institutions and their branches set up in Member States other than those in which they have their head offices, as defined in Article 1(1) and (3) of the Banking Consolidation

Directive (2000/12/EC). A credit institution is an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account. In the UK this means that the Directive applies to any bank or building society or other person authorised by the FSA to carry on the regulated activity of accepting deposits. Article 2(3) of the Banking Consolidation Directive contains a number of exceptions, such as municipal banks and credit unions.

7. Articles 8 and 19 of the Directive also make provision in relation to reorganisation measures and winding up proceedings affecting branches within Member States of credit institutions, which have their head office outside the Community and branches in at least two Member States of the Community.

IMPLEMENTING THE DIRECTIVE

8. The Directive will be implemented in UK law through Regulations in a statutory instrument. The draft Regulations are at Annex A. The proposed provisions of the draft Regulations are discussed in the subsequent chapters of this consultation document.

9. It is not the purpose of the Directive to harmonise reorganisation and winding up arrangements across Member States. Therefore, in implementing the Directive the fundamental principle which we intend following wherever possible is to maintain existing insolvency law, making only the minimum changes necessary to comply with the requirements of the Directive. To ensure a consistent approach in UK law, we have taken into account the approach adopted in the Insurers (Reorganisation and Winding Up) Regulations 2003 which implemented the Insurance undertakings reorganisation and winding up Directive (2001/17/EC) which put in place a similar regime for insurance undertakings. A revised version of these Regulations is in preparation and will be made shortly. Proposals in the draft Regulations reflect the provisions of the revised insurance undertakings Regulations.

10. In general, we have not expressly amended general insolvency law, although, where necessary, the general law of insolvency is modified by these Regulations in so far as it applies to a credit institution. Rather, where the undertaking involved is a credit institution, the provisions of these implementing Regulations will either apply in addition to existing insolvency legislation, or will replace provisions of the Insolvency Act 1986, the Companies (Northern Ireland) Order 1986, the Insolvency Rules 1986, the Insolvency Rules (Northern Ireland) 1991 or the Insolvency (Scotland) Rules 1986 where those have been expressly disapplied. In the descriptions below of the provisions in the Regulations, reference is made to them as they apply in England and Wales, but modifications necessary to achieve the same effects in Northern Ireland and Scotland are included in the Regulations where necessary.

Chapter 2 - PART 1 - GENERAL

11. Article 2 of the Directive and draft regulation 2 defines many of the terms used in the Order.

12. Article 1 of the Directive applies to credit institutions as defined in Article 1(1) and (3) of the Banking Consolidation Directive (and subject to the exclusions in Article 2(3)). The definition means “an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account”. It also applies to electronic money institutions within the meaning of the E-Money Directive (2000/46/EC).

13. The Banking Consolidation Directive has been transposed into UK law by the Financial Services and Markets Act 2000 (FSMA) and Orders made under FSMA. Under the FSMA regime, the relevant regulated activity is “accepting deposits” (Schedule 2, paragraph 4 and article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001). For the purposes of the application of the Regulations to UK credit institutions, we have adopted this definition. In relation to EEA credit institutions, we have adopted the definition set out in the Directive.

14. We have excluded firms with authorisation under Part 4 of FSMA to carry out contracts of insurance, as these firms will be subject to the Insurers (Reorganisation and Winding Up) Regulations 2003.

15. Question 1 – Do consultees agree with our approach to the definition of credit institution?

16. It follows that under paragraph 1(2) of Schedule 6 of FSMA, a person in the UK who has permission to carry on a regulated activity constituting accepting deposits must be a body corporate or a partnership. As far as UK credit institutions are concerned, we have therefore applied the Regulations to the provisions of UK insolvency law in relation to the following entities: companies, building societies, partnerships, limited liability partnerships, friendly societies and industrial and provident societies.

17. Question 2 – Are consultees content that this includes all the entities in the UK which may be credit institutions? Are any entities included which should not be?

18. We have not attempted to define, for the general purposes of these Regulations, 'reorganisation measures' and 'winding up' proceedings in terms of particular measures under UK insolvency law. This is because we consider there to be significant blurring between the two categories. However, we have taken the view that the UK measures which *certainly* fall into one category or the other (depending on whether or not the purpose of the measure is to rehabilitate the company or to effect a winding up of the whole or part of its business) are:

* Administration;

* Winding up by the court;
* A creditor's voluntary winding up which has been confirmed by order of the court;
* The appointment of a provisional liquidator.

19. Measures which *may* fall within one or both of these categories (again, depending on the purposes for which the measure is adopted) are:

* Company voluntary arrangements (CVAs);
* Compositions or arrangements under s.425 of the Companies Act 1985, where the purpose of such a composition or arrangement brings it within the scope of a "reorganisation measure" or a winding up, as those terms are defined in the Directive.

20. However, we consider that it is less clear whether these measures fall within the scope of the Directive, even if on a strict or literal construction of the provisions they appear to be caught by the definition of "reorganisation measure" or "winding up proceedings".

21. In the case of administration where the administrator is appointed by the creditors or company, generally this falls within the definition of "reorganisation measures" as it will include measures intended to preserve or restore the financial situation of the credit institution and could affect third parties' pre-existing rights. However, in certain circumstances, the purpose of an administration can also be to realise the assets of the company and distribute them. The scheme of the Directive implies that the Member States' administrative or judicial authorities alone have power to decide on the implementation of such measures. This could be taken to exclude administrations where the appointment is not by the court. For consistency, we have taken the view that all administrations should be brought within the Regulations.

22. A similar problem exists for company voluntary arrangements and again we have taken the view that these measures should be brought within the Regulations where the purpose of the voluntary arrangement falls within the definition of a reorganisation measure or winding up proceedings.

23. In the case of s.425 schemes, we have taken the provisional view that these arrangements cannot be viewed in principle as reorganisation measures or winding up proceedings within the meaning of the Directive. However, in certain exceptional circumstances, in order to give proper effect to the purpose of the Directive special provision should be made for such arrangements.

24. Question 3 - Do consultees agree that a proper implementation of the Directive requires us to treat any or all Administrations, CVAs, or s.425 schemes as being within the scope of the Directive?

Chapter 3 - PART 2 - INSOLVENCY MEASURES AND PROCEEDINGS: JURISDICTION IN RELATION TO CREDIT INSTITUTIONS

25. Article 3 of the Directive requires that only the relevant judicial or administrative authorities of the home Member State shall be entitled to decide on reorganisation measures with respect to a credit institution, including branches in other Member States. Article 9 makes similar provision with respect to winding up measures. These Articles also provide that the effects of any reorganisation or winding up will be effective throughout the Community without further formalities. Article 28 deals with the appointment and powers of an administrator or liquidator. Part 2 of the draft Regulations implements these provisions of the Directive.

26. Draft regulation 3 prohibits the reorganisation or winding up of an EEA credit institution under the law of the United Kingdom. The relevant UK measures to which this regulation applies are set out in the regulation.

27. Draft regulation 4 provides that the UK courts may impose section 425 schemes on an EEA credit institution or a branch of an EEA credit institution in certain circumstances. Where the credit institution or branch is subject to a reorganisation measure or winding up proceedings in its home Member State, the scheme cannot be confirmed by the court without the consent of the administrator or liquidator and the relevant administrative or judicial authority. This will allow a creditor to propose an arrangement to the administrator, ensure that this procedure is available and maximises the options available for dealing with a credit institution in financial difficulties.

28. Paragraph 1 of draft regulation 5 provides for the recognition in the UK of reorganisation measures or winding up proceedings which have effect under the law of another Member State in relation to a credit institution which is authorised in that Member State.

29. The remainder of draft regulation 5 implements the requirements of the Directive with regard to the rights and duties within the UK of competent officers appointed by judicial or administrative authorities in other Member States. Article 28 requires that the appointment of such an officer shall be recognised in other Member States without legal formality. However, the appointment must be evidenced (and we have taken advantage of the Directive provision that a translation of this must be provided) and the competent officer must not act contrary to UK law in carrying out his functions within the UK.

30. Question 4 - Are consultees content with our proposals for implementing the Directive requirements with regard to jurisdiction?

Chapter 4 - PART 3 - MODIFICATIONS OF THE LAW OF INSOLVENCY: NOTIFICATION AND PUBLICATION

INTRODUCTION

31. Part 3 of the draft Regulations modifies general insolvency law, as it has effect in relation to UK credit institutions, in order to implement the provisions of the Directive relating to notification to regulators and creditors. As draft regulation 7 makes clear, general insolvency law applies except to the extent necessary to comply with the specific requirements of the Directives.

CONSULTATION OF REGULATOR BEFORE VOLUNTARY WINDING UP

32. Article 11 of the Directive requires that the competent authorities of the home Member State be consulted before the governing bodies of a credit institution take any voluntary winding up decision. We have taken the view that this Article captures both Creditors' and Members' voluntary winding up proceedings as in both cases the winding up is commenced by a resolution of the shareholders of the credit institution.

33. Draft regulation 8 therefore provides that before or at the time the service of notice of a meeting at which such a resolution is to be moved, the credit institution must send a copy of the notice of the meeting to the FSA. We take the view that the FSA's powers more generally under FSMA will be sufficient to ensure that the appropriate steps are then taken. It is advance notice of the voluntary winding up that is necessary.

34. Question 5 - Do consultees agree with this approach to implementing Article 11?

NOTIFICATION TO REGULATORS

35. Draft regulation 9 sets out the circumstances in which the FSA must be informed that reorganisation measures or winding up proceedings have been commenced. The regulation imposes this duty on the court, as Articles 4 and 9 of the Directive require notification by the administrative or judicial authorities. Draft regulation 9 imposes a requirement on the FSA to inform the host Member State competent authorities about the commencement of such proceedings without delay.

36. Draft regulations 9 and 10 also implement Article 5, which creates an obligation on the administrative or judicial authorities of the host Member State to inform the home Member State of any reorganisation measures in the host Member State. This Article appears to contradict the underlying scheme of the Directive which is that only the home Member State's authorities have power to decide on reorganisation measures or winding up proceedings of credit institutions. We have taken the view that this Article refers to implementation of reorganisation measures by the UK courts in respect of a branch of an EEA credit institution on behalf of or at the request of the home

Member State's authorities, although we are currently investigating the approach taken by other EU states as to the implementation of this Article.

37. Question 6 - Do consultees agree with our approach to the implementation of Article 5?

WITHDRAWAL OF AUTHORISATION

38. Article 12 of the Directive requires the authorisation of a credit institution which is the subject of winding up proceedings to be withdrawn. However, the Directive allows the credit institution to continue to carry out its activities subject to the Regulator's supervision. We have implemented this by requiring the Regulator to use its powers under section 45 of FSMA to vary or cancel the credit institution's permission to accept deposits. We take the view that this approach will allow the Regulator sufficient latitude of action to protect the interests of creditors and investors.

39. Question 7 - Are consultees content with this approach to implementation of Article 12?

PUBLICATION

40. Draft regulation 12 implements Articles 6 and 13 of the Directive. These are concerned with the requirements for the publication of decisions to commence reorganisation or winding up proceedings respectively. The required information must be published in the Official Journal of the European Communities and two national newspapers in each host Member State, in the appropriate languages. The provisions of this regulation are supplementary to, and do not displace, any requirements in general insolvency law to publish information.

41. As far as publication of reorganisation measures is concerned, the requirements of Article 6 apply where an appeal against a reorganisation measure is possible and where it is likely to affect the rights of third parties in a host Member State. UK law has provisions for referring questions to the High Court (administration orders), challenging an administrator's conduct (all administrations), challenging the decision to implement a voluntary arrangement and applying to the court to protect the interests of creditors and members (provisional liquidation).

42. We have taken a purposive approach, and treated these provisions as an "appeal" in the context of Article 6 since it would seem to be consistent with the kind of protection conferred by this Article to ensure that creditors are informed about the means of challenge. Therefore, we have taken the view that publication should be required for all these cases.

43. Question 8 - Are the proposed cases where we have required publication of details in the OJEC and two national newspapers appropriate?

OBLIGATIONS DISCHARGED IN FAVOUR OF CREDIT INSTITUTIONS WHICH ARE NOT LEGAL PERSONS

44. Draft regulation 13 implements Article 15 of the Directive. This Article provides that a person who "honours an obligation" to a credit institution which is not a "legal person" and which is the subject of winding up proceedings in "another Member State" is deemed to have discharged his obligation to the credit institution if he was unaware of the winding up proceedings.

45. We propose to implement this obligation in relation to a creditor who is outside the UK and who has discharged an obligation to a UK credit institution which is being wound up. We have not explicitly defined the terms "honour" or "obligation" as by doing so we may inadvertently restrict the application of the Article which appears to be intended to address obligations outside the UK and which may be subject to laws other than the laws of the UK.

46. Question 9 - Do consultees agree to our approach to the implementation of Article 15?

NOTIFICATION OF CREDITORS

47. Article 7(1) of the Directive requires notification of creditors in other EEA states of a reorganisation measure where the law of the home Member State either (i) requires that creditors lodge claims as a condition of recognition of their claims or (ii) provides for compulsory notification of the reorganisation measure to creditors resident in the home Member State. Article 7(2) provides that where legislation in the home Member State provides a "right" to domestic creditors to lodge claims or submit observations on their claims then these rights must be extended to creditors in other EEA states.

48. In our view, UK legislation has no requirements for such lodgement or compulsory notification, nor does it provides "rights" of the sort contemplated by Article 7. That said, UK law does provide for claims from creditors to be dealt with by the administrator or liquidator in the same way, wherever the creditor is based. Therefore, no action is needed in relation to Article 7

49. Question 10 - Do consultees agree with this approach to Article 7?

50. Draft regulation 14 sets out the procedures to be followed regarding the notification of creditors in the event of the winding up of a credit institution. This implements Articles 14 and 17 of the Directive

51. Article 14 requires that creditors be notified of the commencement of winding up proceedings "without delay". We have taken the view that this requires liquidators (or other relevant officials) to inform creditors that winding up proceedings have commenced as soon as is practically possible.

52. Question 11 – Is this proposed timescale for notifying creditors appropriate?

53. Paragraphs (4) and (5) of regulation 14 set out the requirements as to the content of the notice to creditors to be observed in order to comply with Article 14. The information required will 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 of claims and the other measures laid down.

54. Paragraphs (6) and (7) of regulation 14 implement the language requirements from Article 17(1). This Article requires that the information provided for in Articles 13 and 14 should be in one of the official languages of the home Member State and that a form marked "Invitation to lodge a claim. Time limits to be observed" or where allowed, "Invitation to submit observations relating to a claim. Time limits to be observed" in all official EU languages should be used.

55. Similar notification and language requirements apply in relation to winding up procedures as are required in the case of reorganisation procedures.

"KNOWN CREDITORS"

56. The requirements of Article 14 only apply to "known" creditors. Regulation 14(9) defines a known creditor as one where the credit institution or appointed officer "is aware of his claim or potential claim at the time that the order is made or relevant decision taken". The definition does not specify that the identity of the creditor must also be known. Is it the case that if a claim or potential claim is known, the identity of the person entitled to make that claim will also necessarily be known? That would seem a prerequisite if notification is to be practicable.

57. Question 12 - Is the above definition of a "known" creditor adequate?

SUBMISSION OF CLAIMS

58. Draft regulation 15 deals with Article 16, together with 17(2). Article 16 provides that any creditor in a Member State other than the home Member State has the right to lodge claims or observations relating to claims. We do not need expressly to provide a right for EEA creditors to submit claims or observations in relation to claims since there is no express positive right which currently applies only to UK creditors. All creditors, wherever domiciled, currently have a right to submit claims, which appears to satisfy Article 16(1), and currently receive equal treatment, which satisfies the requirement in Article 16(2). Accordingly, we have simply dealt with the language point in 17(2). Claims can be submitted in the creditor's domestic language, provided the document contains the specified heading in English. We have provisionally disapplied this where a creditor in a winding up submits a claim using the form of proof sent out by the liquidator under the Insolvency Rules, on the assumption that its status as a claim would be self-evident and the additional heading pointless.

REPORTS TO CREDITORS

59. Draft regulation 16 is intended to deal with Article 18. This provides that liquidators shall keep creditors regularly informed of the progress of winding up proceedings. The UK regime already imposes reporting requirements in relation to voluntary liquidations (s.105 of the Insolvency Act) and supervisors of Part I voluntary arrangements (Rule 1.26(2) Insolvency Rules), which we consider to be adequate to comply with Article 18. Accordingly, regulation 16 imposes requirements only on liquidators in a winding up by the court, where the legislation does not currently require regular reports. The reporting obligation we have suggested is minimal - a report at least once every 12 months, but subject to any alternative order which may be made by the court.

60. Question 13 - Are any additional requirements in reporting to creditors necessary in order to comply with the Directive?

SERVICE OF NOTICES AND DOCUMENTS

61. Draft regulation 17 is intended to add some provision about how things may or should be "sent" in accordance with various requirements of the Regulations.

62. The provisions suggested are permissive and basic and mirror those in the Insurers (Reorganisation and Winding Up) Regulations 2003. The provisions permit any document which is required to be given under this part of the Regulations to be sent either using post, or using electronic means of communication of information (such as e-mail). The draft regulation then provides for the proper postal address, and prescribes the circumstances in which electronic communications may be used. Electronic communications may be used only if the creditor has provided an electronic address for this purpose.

63. No provision has been made about the date on which a document sent by either of the specified methods is to be treated as having been received by the creditor. As far as we are aware, there are no significant time limits that are calculated from that date.

64. Question 14 – Do consultees agree with our proposals for draft regulation 17?

DISCLOSURE OF CONFIDENTIAL INFORMATION

65. Draft regulation 18 implements Article 33 of the Directive. This requires all persons required to receive or divulge information given to or by the regulatory authorities to be bound by professional secrecy as required by existing Directives.

66. This can be implemented in the UK by applying existing legislation on restrictions on disclosure.

Chapter 5 - PART 4 - REORGANISATION OR WINDING UP OF UK CREDIT INSTITUTIONS: RECOGNITION OF EEA RIGHTS

INTRODUCTION

67. This part of the draft Order implements Articles 20 - 27 and 30 - 32 of the Directive. These Articles confer protection in relation to rights against a credit institution, which are, broadly speaking, connected with property situated in another Member State, and which are to be determined according to the law of that other Member State. These Articles generally require UK courts and insolvency practitioners to recognise and give effect to rights attaching to certain assets under the law of another Member State.

68. As is made clear in draft regulation 19 the provisions of Part 4 of the draft Regulations apply to both winding up proceedings and reorganisation measures within the meaning of the Directive.

69. Generally, we have adopted the approach of "copying out" the terms of the Directive in relation to these exceptions to the rule that the home Member State law applies. These concepts will be relevant when a UK credit institution is the subject of winding up proceedings or reorganisation measures. The exceptions provide that in some circumstances, UK law will not be applied to those proceedings or measures. Any attempt by us to implement these exceptions by using concepts under UK insolvency laws would run the risk of failing to implement properly. There is no guarantee that a concept under UK law would mirror a similar concept under another Member State's laws. This was the approach taken in the Insurers (Reorganisation and Winding Up) Regulations 2003.

70. Question 15 – Do consultees agree with our approach to implementation of Articles 20 to 27 and 30 to 32?

IMPLEMENTATION OF ARTICLE 20

71. Draft regulations 23 to 25 implement Article 20. This Article provides derogations from Articles 3 and 9 (which require winding up proceedings and reorganisation measures to be carried out under the law of the home Member State) for certain contracts and rights by requiring that these be determined in accordance with the law of the Member State which governs the contract, or where the interest is registered.

72. Regulation 23 concerns contracts of employment that are governed by the law of another Member State. Regulation 24 concerns contracts in connection with immovable property situated in another Member State. Regulation 25 concerns assets that are subject to registration in a public register in another Member State.

73. The Directive makes clear that the items covered by Article 20(b) and (c) should be dealt with under the law of the Member State where the item is situated or registered.

THIRD PARTIES' RIGHTS IN REM

74. Draft regulation 26 implements Article 21 of the Directive. The main effect of this Article is that the opening of reorganisation measures or winding up proceedings will not affect the rights of third parties who have proprietary rights in relation to property or other assets which are situated in the territory of another Member State. The rights in question include, but are not restricted to, the rights of secured creditors.

RESERVATION OF TITLE

75. Draft regulation 27 implements Article 22. It provides that reorganisation measures or winding up proceedings must not interfere with the seller's exercise of those rights in any case where the goods are situated in a Member State other than the home State of the credit institution.

RIGHTS TO SET OFF

76. Draft regulation 28 implements Article 23 of the Directive. This requires that the commencement of reorganisation measures or winding up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution where this is permitted.

LEX REI SITAE

77. Draft regulation 33 implements Article 24. This Article deals with rights in "instruments". This is defined by reference to draft regulation 31(3) which itself refers to Section B of the Annex to the Investment Services Directive (93/22/EEC). It means, effectively, securities which can be traded on financial markets. The Article provides that the enforcement of proprietary rights in these securities or other rights the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system is governed by the law of the Member State where the register, account or centralised deposit system is held. This is intended to ensure the proper functioning of such central registers in accordance with the law where they are situated.

NETTING AGREEMENTS

78. Article 25 provides for netting agreements to be governed by the law of the netting agreement and is implemented by draft regulation 34. Again, this is intended to ensure strict legal certainty in respect of such agreements. There is no definition of netting agreements although we believe that it should include, for example, master netting agreements.

REPURCHASE AGREEMENTS

79. Draft regulation 35 implements Article 26 which provides that repurchase agreements are governed by the law of the contract. Again, this is intended to

ensure strict legal certainty in respect of such agreements. As with netting agreements, there is no definition and we have not attempted to provide one.

REGULATED MARKETS

80. Draft regulation 29 implements Article 27 of the Directive. This is intended to ensure that transactions on a regulated market to which a credit institution undergoing reorganisation or winding up proceedings is a party will be dealt with in accordance with the rules of that market. This ensures that the market will not be disrupted by the commencement of reorganisation measures or winding up proceedings against a credit institution.

DETRIMENTAL ACTS

81. Draft regulation 30 implements Article 30 of the Directive. This Article introduces a derogation from the normal principle that a reorganisation measure or winding up of a credit institution may only be carried out under the law of the home State of that credit institution, by providing that where a person who has benefited from a legal act detrimental to all the creditors can provide proof that the act was carried out in accordance with the law of another Member State, and that the law of that Member State does not allow the act to be challenged.

DISPOSITION OF ASSETS TAKING PLACE AFTER THE OPENING OF WINDING UP PROCEEDINGS ETC

82. Draft regulation 31 implements Article 31 of the Directive. This Article introduces a derogation from the normal principle that the law of the home state will be used exclusively to carry out reorganisation measures or winding up procedures in relation to that credit institution, by requiring that the validity of the sale of certain classes of asset will be determined in accordance with the laws of the Member State in which the assets are situated.

83. The Article applies where, after the adoption of reorganisation measures or the opening of a winding up in relation to a credit institution, a third party concludes the purchase of a specified kind of asset from that credit institution. Where that sale would be valid, in spite of the opening of reorganisation measures or winding up proceedings, under the laws of the Member State in which the assets are situated, it may not be set aside or declared void under the insolvency law of the credit institution's home State.

LAWSUITS PENDING

84. Draft regulation 32 implements Article 32 of the Directive. This Article introduces a further derogation from the normal principle that the law of the home Member State will be used exclusively to carry out reorganisation measures or winding up procedures. It applies where a lawsuit is pending in a Member State other than the credit institution's home State when the reorganisation or winding up procedures in relation to that credit institution are opened in the home State. Under this Article, the effect of opening home

State insolvency measures or proceedings on the lawsuit will be governed by the law of the Member State in which the suit is pending.

Chapter 6 - PART 5 - THIRD COUNTRY CREDIT INSTITUTIONS

85. Draft regulations 36 to 38 implement Articles 8, 19 and 33 (in as far as it relates to third country credit institutions). These Articles apply to branches within a Member State of credit institutions whose head office is situated outside the Community.

86. The Directive requires that a branch of a third country credit institutions should, in the event of reorganisation measures or winding up proceedings affecting that branch, be treated as if its host Member State is the State in which it has been authorised to carry on as a credit institution. If a third country credit institution has branches in more than one Member State then, in the event of reorganisation or winding up proceedings, each branch shall be treated individually for the purpose of the Directive.

87. A branch of a third country credit institution situated in the UK should, therefore, be treated as if it were a UK credit institution. The other provisions of the Directive will then apply as if the branch were a UK credit institution.

88. Draft regulation 38 sets out the requirements concerning disclosure of confidential information with respect to third country credit institutions.

Chapter 7 - TIMETABLE FOR IMPLEMENTATION

89. The consultation period on the proposed legislative measures for implementing the Credit Institutions Reorganisation and Winding Up Directive into UK law closes on 27 February 2004. We will then consider any amendments necessary to our proposals in time to allow for the implementing legislation to be laid before Parliament in April 2004.

90. Where appropriate changes to insolvency rules will have been approved by the Insolvency Rules Committee prior to being laid before Parliament.

91. We propose that the legislation implementing the Directive should come into force on 5 May 2004 - the date specified by the Directive.

92. The provisions of the Directive will apply to any credit institution that is the subject of reorganisation measures or winding-up procedures after the date that the legislation implementing the Directive comes into force. Any reorganisation or winding-up proceedings, which are partly completed at this date, will be completed under the legislation in force at the time the proceedings were commenced.

Chapter 8 - SUMMARY OF QUESTIONS

93. Question 1 – Do consultees agree with our approach to the definition of credit institution?

94. Question 2 – Are consultees content that this includes all the entities in the UK which may be credit institutions? Are any entities included which should not be?

95. Question 3 - Do consultees agree that a proper implementation of the Directive requires us to treat any or all Administrations, CVAs, or s.425 schemes as being within the scope of the Directive?

96. Question 4 - Are consultees content with our proposals for implementing the Directive requirements with regard to jurisdiction?

97. Question 5 - Do consultees agree with this approach to implementing Article 11?

98. Question 6 - Do consultees agree with our approach to the implementation of Article 5?

99. Question 7 – Are consultees content with this approach to implementation of Article 12?

100. Question 8 - Are the proposed cases where we have required publication of details in the OJEC and two national newspapers appropriate?

101. Question 9 – Do consultees agree to our approach to the implementation of Article 15?

102. Question 10 – Do consultees agree with the approach to Article 7?

103. Question 11 - Is this proposed timescale for notifying creditors appropriate?

104. Question 12 - Is the above definition of a "known" creditor adequate?

105. Question 13 - Are any additional requirements in reporting to creditors necessary in order to comply with the Directive?

106. Question 14 - Do consultees agree with our proposals for draft regulation 17?

107. Question 15 – Do consultees agree with our approach to implementation of Articles 20 to 27 and 30 to 32?

108. Question 16 - can a realistic estimate of the monetary value of the savings to be made from implementing the Directive (particularly those flowing from the first point) be made?

109. Question 17 - can the compliance costs be estimated?

STATUTORY INSTRUMENTS

2004 No.

INSOLVENCY

COMPANIES

The Credit Institutions (Reorganisation and Winding up) Regulations 2004

Made - - - -	*2004*
Laid before Parliament	*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:

(**a**) By [tbc].

(**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.

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(**a**);

"the 1986 Act" means the Insolvency Act 1986(**b**);

"the 2000 Act" means the Financial Services and Markets Act 2000 (**c**);

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989 (**d**);

"administrator" has the meaning given by paragraph 1(1) of Schedule B1 to the 1986 Act or Article 5(1) of the 1989 Order;

"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)(**e**) 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)(**f**);

"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, or

(b) a voluntary arrangement,

with a view to recovering his debt in whole or in part, and includes a proof of debt, within the meaning of rule 4.73(4) of the Insolvency Rules, Rule 4.079(4) of the Insolvency Rules (Northern Ireland) 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(**g**);

"creditors' voluntary winding up" has the meaning given by section 90 of the 1986 Act or Article 76 of the 1989 Order;

"debt" -

(**a**) 1985 c.6
(**b**) 1986 c.45; Part II was replaced by the Enterprise Act 2002 (c.40), section 248 and Schedule 16.
(**c**) 2000 c.8
(**d**) S.I. 1989/2504 (N.I.19)
(**e**) O.J. No. L126, 26.5.2000, p. 1.
(**f**) O.J. No. L035, 11/01/2003, p. 1.
(**g**) S.I. 1886/1032 (N.I. 6).

(a) in relation to a winding up of a UK credit institution, has the meaning given by rule 13.12 of the Insolvency Rules or Article 5 of the 1989 Order except that where the credit institution is not a company, references in rule 13.12 or Article 5 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 1995 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;

"EEA credit institution" means an EEA firm 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 (**a**);

"the Insolvency Rules (Northern Ireland)" means the Insolvency Rules (Northern Ireland) 1991(**b**);

"the Insolvency (Scotland) Rules" means the Insolvency (Scotland) Rules 1986(**c**);

"liquidator" 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

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(**a**) S.I. 1986/1925.
(**b**) S.I. 1991/364.
(**c**) S.I. 1986/1915.

(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 insurer 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;

"UK credit institution" means a person whose head office is in the United Kingdom with permission under Part 4 of the 2000 Act to accept deposits except for any such person who also has permission under Part 4 of the 2000 Act to effect or carry out contracts of insurance;

"voluntary arrangement" means a voluntary arrangement which has effect in relation to a UK credit institution in accordance with Part I of the 1986 Act or Part II of the 1989 Order; 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 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; and in relation to partnerships, limited liability partnerships, building societies, friendly societies and industrial and provident 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(**d**), the Insolvent Partnerships Order (Northern Ireland) 1995(**e**), the Limited Liability Partnerships Regulations 2001(**f**), the Building Societies Act 1986(**g**), the Friendly Societies Act 1992(**h**) or the Industrial and Provident Societies Act 1965(**i**) (as the case may be).

(4) References in these Regulations to "accept 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.

(**a**) O.J. No. 17, 6.10.1958, p. 385/58; Special Edition, Series I, 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**) S.I. 1994/2921.
(**e**) S.I. 1995/225 (N.I.).
(**f**) S.I. 2001/1090.
(**g**) 1986 c. 53.
(**h**) 1992 c. 40.
(**i**) 1965 c. 12.

(5) In these Regulations, functions imposed or falling on the Authority 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 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 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 after that date.

(4) Paragraph (1)(c) does not prevent an administrator appointed before the relevant date from acting 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 be appointed under paragraphs 14 or 22 of Schedule B1 of the 1986 Act or Article 26 of the 1989 Order in relation to an EEA credit institution or any branch of an EEA credit institution.

(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 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 I (company voluntary arrangements);

(b) Part II (administration);

(c) Chapter VI of Part IV (winding up by the Court).

(8) In this regulation and regulation 4, "relevant date" means the 5th May 2004.

Schemes of arrangement

4.—(1) For the purposes of section 425(6)(a) of the 1985 Act or Article 418(5)(a) of the Companies Order, an EEA credit institution or a branch of an EEA credit institution is to be

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(**a**) 2002 c.40.

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" mean –

(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. Where, on or after 5th May 2004, a UK credit institution ("the institution") intends to serve a notice of a meeting of the institution at which a resolution to wind up the institution voluntarily under paragraph (b) or (c) of section 84(1) of the 1986 Act is to be moved, prior to or immediately after the service of the notice, the institution must send a copy of the notice to the Authority.

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 in relation to a UK credit institution–

(a) an administration order under paragraph 12 of Schedule B1 to the 1986 Act or Article 21 of the 1989 Order;

(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 an administrator is appointed under paragraphs 14 or 22 of Schedule B1 to the 1986 Act or Article 21 of the 1989 Order, the administrator must immediately inform the Authority of the administration.

(4) 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.

(5) 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.

(6) Paragraph (1) does 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.

(7) 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.

(8) A supervisor, administrator or liquidator who fails without reasonable excuse to comply with paragraph (2), (3), (4) or (5) (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 of relevant decision to EEA regulators

10.—(1) Where the Authority is informed of a decision, order or appointment in accordance with paragraph (1), (2), (3), (4) or (5) of 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) In this regulation, the "relevant person" means–

(a) in respect of a UK credit institution, the EEA regulator of any EEA State in which the UK credit institution has a branch.;

(b) in respect of an EEA credit institution, its home state regulator.

Withdrawal of authorisation

11.—(1) This regulation applies where the Authority is informed of a qualifying decision, qualifying order or qualifying appointment on or after 5th May 2004 in accordance with regulation 10.

(2) 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 a winding up order under section 125 of the 1986 Act of Article 105 of the 1989 Order;

(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).

(3) When the Authority is informed of a qualifying decision, qualifying order or qualifying appointment in accordance with this regulation, the Authority will 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.

Publication of voluntary arrangement, administration order, winding up order or scheme of arrangement

12.—(1) This regulation applies where a qualifying decision has effect, 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 a proposed voluntary arrangement, in accordance with Part 1 of the 1986 Act;

(b) a qualifying order means -

(i) an administration order under paragraph 12 of Schedule B1 to the 1986 Act or Article 21 of the 1989 Order,

(ii) an order appointing a provisional liquidator in accordance with section 135 of that Act or Article 115 of that Order, and

(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—

(i) 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), and

(ii) the appointment of an administrator under paragraphs 14 or 22 of Schedule B1 to the 1986 Act or Article 26 of the 1989 Order.

(3) Subject to paragraph (9), as soon as is reasonably practicable after a qualifying decision has effect, 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), (6), (7) or (8).

(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 falling within paragraph (2)(c)(i), that information includes the court to which an application under section 112 of the 1986 Act (reference of questions to the court) or Article 98 of the 1989 Order (reference of questions to the High Court) may be made.

(6) In the case of a qualifying appointment falling within paragraph (2)(c)(ii), that information includes the court to which an application under paragraph 74 of Schedule B1 to the 1986 Act (challenge to administrator's conduct of company) or Article 39 of the 1989 Order (protection of interests of creditors and members) may be made.

(7) 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.

(8) In the case of a qualifying order falling within paragraph (2)(b)(i), that information includes the court to which an application under paragraphs 74, 75 and 79 of Schedule B1 to the 1986 Act or Article 39 of the 1989 Order (protection of interests of creditors and members) may be made.

(9) Paragraph (3) does not apply where a qualifying decision, qualifying order falling within paragraph (2)(b)(i) or qualifying appointment falling within paragraph (2)(c)(ii) 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).

(10) 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.

(11) 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.

(12) A qualifying decision, qualifying order or qualifying appointment falling within paragraph (2)(c)(ii) is not invalid or ineffective if the relevant official fails to comply with paragraph (3) of this regulation.

(13) In this regulation, "relevant officer" means –

(a) in the case of a voluntary arrangement, the supervisor;

(b) in the case of an administration order or the appointment of an administrator, 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.

(14) 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 an EEA State; and

(ii) is unaware of the winding up of the relevant credit institution.

(4) For the purposes of sub-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 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 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),

as soon as is reasonably practicable in any case.

(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) a "relevant order" means –

(i) an administration order under paragraph 12 of Schedule B1 to the 1986 Act or Article 21(1) of the 1989 Order where the order is made for the achievement of a purpose mentioned in paragraphs 3(1)(b) or (c) of Schedule B1 to that Act or Article 21(3)(b), (c) or (d) of that Order,

(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), and

(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–

(i) the appointment of an administrator in accordance with paragraphs 14 or 22 of Schedule B1 to the 1986 Act or Article 26 of the 1989 Order where the appointment is made for the achievement of a purpose mentioned in paragraphs 3(1)(b) or (c) of Schedule B1 to that Act or Article 21(3)(d) of that Order, and

(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); 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 either of those rules applies, provided that the form of proof complies with paragraph (6).

(8) An appointed officer 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.

(9) For the purposes of this regulation –

(a) "appointed officer" means –

(i) in the case of a relevant order falling within paragraph (3)(a)(i) or a relevant appointment falling with paragraph (3)(b)(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)(ii), 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 , or should reasonably be aware of –

(i) his identity,

(ii) his claim or potential claim, and

(iii) a recent address where he is likely to receive a communication.

(10) For the purposes of paragraph (3), and of regulations 15 and 16 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.

Submission of claims by EEA creditors

15.—(1) An EEA creditor who on or after 5th April 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.

(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 as the case may be;

(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" has the meaning given by regulation 14(10).

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; or

(c) a provisional liquidator is appointed.

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

(3) The requirement in paragraph (2) does not apply where a liquidator or provisional liquidator 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 or provisional liquidator, which is supplementary to the requirements of this regulation.

(5) A liquidator or provisional liquidator 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 or provisional liquidator, 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 or provisional liquidation (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) The requirement 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(8) 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

(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

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(**a**) 2000 c. 7.

(b) is supplied to the Authority by an EEA regulator acting in accordance with Articles 4, 5, 8, 9, 11 or 19 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 in the same way 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).

(5) In this regulation, "the Disclosure Regulations" means the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**a**).

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 Part 1 of the 1986 Act on or after 5th May 2004 in relation to a UK credit institution;

(b) where an administration order made under paragraph 12 of Schedule B1 to the 1986 Act or Article 21 of the 1989 Order on or after 5th May 2004 is in force in relation to a UK credit institution or an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the 1986 Act or Article 26 of the 1989 Order and the appointment continues in effect;

(c) where a UK credit institution is subject to a relevant winding up;

(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 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 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.

(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.

(**a**) 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 and S.I. 2003/2174.

Application of this Part: assets subject to a section 425 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 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 12 of Schedule B1 to the 1986 Act or Article 21 of the 1989 Order is in force, the date of the making of that order;

(d) in any other case where an administrator has been appointed, the date of that appointment; and

(e) 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) in particular 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 immovable 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 in particular 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, as referred to in regulation 22(3)(m).

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, as referred to in regulation 22(3)(m).

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 applicable EEA law.

(2) In paragraph (1), "applicable EEA law" means the law of the EEA State which is applicable to the claim of the affected credit institution.

(3) 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, as referred to in regulation 22(3)(m).

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 10 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, as referred to in regulation 22(3)(m).

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 immoveable asset is situated or under whose authority the register, account or system is kept, as the case may be.

(3) In this regulation and regulation 33, "relevant instruments" means all 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)(**b**).

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 lei 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–

(**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) and European Parliament and Council Directive 97/9/EC (O.J. No.L84, 26.3.97, p.22).

(**b**) O.J. No. L141, 11.6.93, p. 46

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

"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; or

(ii) an administration order made under paragraph 12 of Schedule B1 to the 1986 Act or Article 21 of the 1989 Order.

(b) "third country credit institution" means a person –

(i) who has permission under the 2000 Act to accept deposits; 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. Parts 3 and 4 of these Regulations apply where a third country credit institution is subject to a relevant measure, as if references in those Parts 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 Financial Services and Markets Act 2000 (‘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 the 2000 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-

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

“EEA administrator” and “EEA liquidator” mean an administrator or liquidator 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.

Signatory text

Name

Address — Two of the Lords Commissioners

Date — of Her Majesty’s Treasury

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 5 May 2004, no winding up proceedings or voluntary arrangements 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

(**a**) 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 and S.I. 2003/2174.

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.

ANNEX B: IMPLEMENTATION OF THE CREDIT INSTITUTIONS REORGANISATION AND WINDING UP DIRECTIVE - A PARTIAL REGULATORY IMPACT ASSESSMENT

Purpose and intended effect

The Credit Institutions Reorganisation and Winding Up Directive (2001/24/EC) creates unified proceedings for EU credit institutions that are being wound-up or subject to reorganisation measures. The Directive provides that, with some exceptions, the national law of a credit institution's home State will apply in the event of a reorganisation or winding up proceedings, including in respect of its branches in other Member States. The Directive also provides that only the administrative or judicial authorities in the home Member State of a credit institution can authorise the implementation of reorganisation measures or the opening of winding up proceedings in respect of that credit institution, including in respect of its branches in other Member States.

The principle purposes of the Directive are:
- to simplify proceedings when an EU credit institution is in financial difficulties, enabling efficient reorganisation or distribution of assets; and
- to ensure that all EU creditors are treated equally.

It is not the purpose of the Directive to harmonise reorganisation and winding up arrangements across Member States. Therefore, in implementing the Directive the fundamental principle which we intend following wherever possible is to maintain existing insolvency law, making only the minimum changes necessary to comply with the requirements of the Directive. To ensure a consistent approach in UK law, we have taken into account the approach adopted in the Insurers (Reorganisation and Winding Up) Regulations 2003 which implemented the Insurance undertakings reorganisation and winding up Directive (2001/17/EC) which put in place a similar regime for insurance undertakings.

Scope of the Directive

The provisions of the Directive apply to reorganisation measures and winding up proceedings affecting credit institutions and their branches set up in Member States other than those in which they have their head offices, as defined in Article 1(1) and (3) of the Banking Consolidation Directive (2000/12/EC). A credit institution is an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account. In the UK, this means that the Directive applies to any bank or building society or other person authorised by the FSA to carry on the regulated activity of accepting deposits. Article 2(3) of the Banking Consolidation Directive contains a number of exceptions, such as municipal banks and credit unions. We have applied the Regulations to the provisions of UK insolvency law in relation to the following entities: companies, building societies, partnerships, limited liability partnerships, friendly societies and industrial and provident societies.

The UK Government must implement the Directive. The Directive provides only very limited flexibility for Member States to decide how they implement it.

Benefits

The principal benefits of the Directive are:
- costs of reorganisations and winding ups should be reduced due to:
* the avoidance of multiple separate proceedings in different Member States; and
* the ability of officials acting in insolvency proceedings to have automatic recognition and enforcement of the proceedings and their effects throughout the EU without the need to make applications to foreign courts.

- it will be possible to take action more quickly and effectively to protect the interests of creditors when an EU credit institution gets into financial difficulties; and

- a single set of proceedings for EU credit institutions will ensure that creditors are treated equitably.

It is, however, hard to quantify these benefits.

Question 16 - can a realistic estimate of the monetary value of the savings to be made from implementing the Directive (particularly those flowing from the first point) be made?

Business sectors affected

The main business sectors which will be affected are:
- credit institutions; and
- finance, property and professional services, in particular insolvency practitioners.

Other business sectors will only be affected to the extent that individual firms may be creditors of a credit institution undergoing reorganisation or winding up procedures.

The implementation of this Directive will not affect charities and voluntary organisations (except to the extent that such bodies may be creditors of a credit institution undergoing reorganisation or winding up procedures). Likewise small businesses will not be affected except to the extent that they are creditors of affected credit institutions - so no small business litmus test has been carried out.

Compliance costs for a typical business

Most of the provisions of the Directive only affect credit institutions once they are in financial difficulties. Due to the regime of prudential supervision of credit institutions under EC law cases of cross border reorganisation or

insolvency measures being undertaken are rare. Therefore, the impact on UK businesses of the Directive will be very limited.

The requirements in the Directive to enable creditors from other Member States to lodge claims and for them to be kept informed of the progress of the reorganisation or winding up measures will impose additional costs (principally due to the translation requirements).

Question 17 - can the compliance costs be estimated?

Competition issues

A competition filter has been completed and our initial view is that these proposals will not raise competition issues. This will be reviewed after the consultation exercise.

Consultation
The Treasury's proposals for implementing the Directive were put out for consultation on 28 November 2003.