

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4087 of 12th June, 2014



I ASSENT,

JAMES DUTTON,

GOVERNOR.

11th June, 2014.



GIBRALTAR

No. 14 of 2014

AN ACT to provide for the repeal and amendment of certain enactments consequent on the enactment of the Insolvency Act 2011.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Insolvency (Consequential Provisions) Act 2014 and comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different purposes.

Bankruptcy Act repealed.

2. The Bankruptcy Act is repealed.

Miscellaneous consequential repeals and amendments.

3. The enactments specified in the first column of Schedule 1 are repealed or amended to the extent specified in the second column of that Schedule.

SCHEDULE 1

REPEALS AND AMENDMENTS

Enactment	Extent of Repeal or amendment
Crime (Money Laundering and Proceeds) Act 2007	1. In section 27 - (a) in subsection (9)(b), delete “winding up under an order” and substitute “order appointing a liquidator”; and (b) repeal subsection 10 and substitute the following- “(10) For the purposes of subsection (9), “preferential debts” means debts that are “preferential debts” within the meaning of the Insolvency Act 2011.”.
	2. In section 36(2)(a), delete “person who has been adjudged bankrupt” and substitute “person against whom a bankruptcy order has been made”.
	3. In section 37– (a) in subsection (1)– (i) delete “Where a person who holds realisable property is adjudged bankrupt” and substitute “ Where a bankruptcy order is made against a person who holds realisable property”; (ii) in paragraph (a), delete “order adjudging him bankrupt” and substitute “bankruptcy order”; and (iii) delete “Bankruptcy Act” and substitute “Insolvency Act 2011”; (b) in subsection (2)–

	(i) delete “Where a person has been adjudged bankrupt” and substitute “Where a bankruptcy order has been made against a person”; (ii) in paragraph (a), delete “Bankruptcy Act” and substitute “Insolvency Act 2011”; and (iii) in paragraph (b), delete “section 25(2) of the Bankruptcy Act” and substitute “section 412(1)(c) of the Insolvency Act 2011”; (c) in subsection (3), (i) in paragraph (a), delete “order adjudging the person bankrupt” and substitute “bankruptcy order was made against the person”; and (ii) in paragraph (b), “order adjudging him bankrupt” and substitute “bankruptcy order”; (d) in subsection (4), delete “section 10 of the Bankruptcy Act” and substitute “section 334 of the Insolvency Act 2011”; (e) in subsection (5)– (i) delete “Where a person is adjudged bankrupt and” and substitute “Where a bankruptcy order is made against a person who”; (ii) in paragraph (a), delete “section 26 or 42 of the Bankruptcy Act (avoidance of certain transactions)” and substitute “Part 15 of the Insolvency Act 2011 (Voidable Transactions)”; (iii) in paragraph (b), delete “section 26 or 42 of the Bankruptcy Act” and substitute “Part 15 of the Insolvency
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	Act 2011”; and (f) in subsection (6)– (i) delete “Section 27 of the Bankruptcy Act” and substitute “Section 413 of the Insolvency Act 2011”; (ii) delete “debt excepted under subsection (1)(a)” and substitute “liability excepted under subsection (3)(c)”.
	4. In section 38– (a) in the section heading, delete “Winding up” and substitute “Liquidation or Administration”; (b) in subsection (1), delete “an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up of the company, the functions of the liquidator (or any provisional liquidator)” and substitute “a liquidator or administrator has been appointed under the Insolvency Act 2011 or a voluntary liquidator has been appointed under the Companies Act 2014, the functions of the liquidator, administrator or voluntary liquidator”; (c) in subsection (2)– (i) delete “such an order has been made or such a resolution has been passed” and substitute “a liquidator, administrator or voluntary liquidator has been appointed”; (ii) delete “functions of the liquidator” and substitute “functions of the liquidator, administrator or voluntary

	liquidator”; (iii) in paragraph (b), delete “liquidator or any provisional liquidator properly incurred in the winding up” and substitute “liquidator, administrator or voluntary liquidator properly incurred in the liquidation, administration or voluntary liquidation”; and (iv) insert before “Companies Act”, “Insolvency Act 2011 or”; and (d) in subsection (4)– (i) in the definition of company, delete “which may be wound up under the Companies Act; and” and substitute “in respect of which a liquidator, administrator or voluntary liquidator, as the case may be, may be appointed”; (ii) insert the following definition– ““liquidator” includes a provisional liquidator; and”; and (iii) repeal the definition of “the relevant time” and substitute the following definition– ““the relevant time”– (a) in the case of a company in liquidation or administration, has the meaning specified in section 2 of the Insolvency Act 2011; and (b) in the case of a company in voluntary liquidation, means the commencement of the voluntary liquidation
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	within the meaning of the Companies Act 2014.”.
	5. In section 39, in subsection (1)– (a) delete “any enactment contained in the Bankruptcy Act” and substitute “a provision in the Insolvency Act 2011”; and (b) delete “liquidation, bankruptcy” and substitute “liquidation, voluntary liquidation, administration, bankruptcy”.
Deposit Guarantee Scheme Act 1997	In section 10(2), repeal paragraph (b) and substitute the following– “(b) in respect of a participant incorporated in Gibraltar– (i) a liquidator is appointed under section 146 or 160 of the Insolvency Act 2011; (ii) a receiver being appointed, whether by the Court or otherwise; or (iii) a supervisor being appointed under Part 2 of the Insolvency Act 2011; or”
Drug Trafficking Offences Act 1995	1. In section 2(20) delete “vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy Act or a liquidator” and substitute “vested in or held by the person’s liquidator, provisional liquidator, administrator, bankruptcy trustee or interim receiver appointed under the Insolvency Act 2011 or by a voluntary liquidator appointed under the Companies Act 2014.

	2. In section 7– (a) in subsection (4)(b), delete “winding up under an order of the court” and substitute “order appointing a liquidator”; and (b) repeal subsection 5 and substitute the following– “(5) For the purposes of subsection (4), “preferential debts” means debts that are “preferential debts” within the meaning of the Insolvency Act 2011.”.
	3. In section 16(2)(a), delete “who has been adjudged bankrupt” and substitute “against whom a bankruptcy order has been made”.
	4. In section 33– (a) in subsection (1)– (i) delete “Where a person who holds realisable property is adjudged bankrupt” and substitute “ Where a bankruptcy order is made against a person who holds realisable property”; (ii) in paragraph (a), delete “order adjudging him bankrupt” and substitute “bankruptcy order”; and (iii) delete “Bankruptcy Act” and substitute “Insolvency Act 2011”; (b) in subsection (2)– (i) delete “Where a person has been adjudged bankrupt” and substitute “ Where a bankruptcy order has been made against a person”; (ii) in paragraph (a), delete “Bankruptcy Act” and substitute “Insolvency Act

	2011”; and (iii) in paragraph (b), delete “section 25(2) of the Bankruptcy Act” and substitute “section 412(1)(c) of the Insolvency Act 2011”; (c) in subsection (3), (i) in paragraph (a), delete “order adjudging the person bankrupt” and substitute “bankruptcy order was made against the person”; and (ii) in paragraph (b), “order adjudging him bankrupt” and substitute “bankruptcy order”; (d) in subsection (4), delete “section 10 of the Bankruptcy Act” and substitute “section 334 of the Insolvency Act 2011”; (e) in subsection (5)– (i) delete “Where a person is adjudged bankrupt and” and substitute “Where a bankruptcy order is made against a person who”; (ii) in paragraph (a), delete “section 26 or 42 of the Bankruptcy Act” and substitute “Part 15 of the Insolvency Act 2011 (Voidable Transactions)”; and (iii) in paragraph (b), delete “section 26 or 42 of the Bankruptcy Act” and substitute “Part 15 of the Insolvency Act 2011”; and (f) in subsection (7)– (i) delete “Section 27 of the Bankruptcy Act” and substitute “Section 413 of the Insolvency Act 2011”; (ii) delete “debt excepted under
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	subsection (1)(a)” and substitute “liability excepted under subsection (3)(c)”.
	5. In section 34- (a) in the section heading, delete “Winding up” and substitute “Liquidation or Administration”; (b) in subsection (1), delete “an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up of the company, the functions of the liquidator (or any provisional liquidator)” and substitute “a liquidator or administrator has been appointed under the Insolvency Act 2011 or a voluntary liquidator has been appointed under the Companies Act 2014, the functions of the liquidator, administrator or voluntary liquidator”; (c) in subsection (2)– (i) delete “such an order has been made or such a resolution has been passed” and substitute “a liquidator, administrator or voluntary liquidator has been appointed”; (ii) delete “functions of the liquidator” and substitute “functions of the liquidator, administrator or voluntary liquidator”; (iii) in paragraph (b), delete “liquidator or any provisional liquidator properly incurred in the winding up” and substitute “liquidator, administrator or voluntary liquidator properly incurred in the liquidation, administration or voluntary

	liquidation”; and (iv) insert before “Companies Act”, “Insolvency Act 2011 or”; and (d) in subsection (4)– (i) in the definition of company, delete “which may be wound up under the Companies Act; and” and substitute “in respect of which a liquidator, administrator or voluntary liquidator, as the case may be, may be appointed”; (ii) insert the following definition– ““liquidator” includes a provisional liquidator; and”; and (iii) repeal the definition of “the relevant time” and substitute the following definition– ““the relevant time”– (a) in the case of a company in liquidation or administration, has the meaning specified in section 2 of the Insolvency Act 2011; and (b) in the case of a company in voluntary liquidation, means the commencement of the voluntary liquidation within the meaning of the Companies Act 2014.”.
6.	In section 35– (a) in subsection (1), delete “any enactment contained in the Bankruptcy Act” and substitute “a provision in the Insolvency

	Act 2011”; and (b) in subsection (2), delete “liquidation, bankruptcy” and substitute “liquidation, voluntary liquidation, administration, bankruptcy”.
Financial Markets and Insolvency (Settlement Finality) Regulations 2011	In regulation 2, by inserting the following sub-regulation after sub-regulation (4)– “ (5) In these Regulations– (a) a reference to the compulsory winding up of a body includes the appointment by the Court of a liquidator under section 160 of the Insolvency Act 2011; and (b) a reference to a creditors’ voluntary winding up of a body includes the appointment of a liquidator by the members of a company under section 146 of the Insolvency Act 2011.”.
Financial Services Commission Act 2007	1. Repeal section 25 and substitute the following section– “Application for the appointment of liquidator. 25.(1) The Minister or the Commission (with the consent of the Minister), may apply to the Court for the appointment of a liquidator of a company under section 160 of the Insolvency Act 2011 on the public interest ground if– (a) it appears to the Commission that the company is carrying on, or has carried on, financial services business without the necessary licence, authorisation, recognition or registration; (b) the Commission is entitled to

	cancel or suspend the licence, authorisation, recognition or registration of the company under a Supervisory Act; or (c) the company has had its licence, authorisation, recognition or registration cancelled or suspended under a Supervisory Act. (2) Where a report has been made into the affairs of any person under a Supervisory Act, a copy of that report, certified by the Commission to be a true copy, is admissible in legal proceedings under this section as evidence of the opinion of the appointed person in relation to any matter contained in the report. (3) A document purporting to be a certificate under this subsection shall be received in evidence and deemed to be such a certificate unless the contrary is proved. (4) For the purposes of this section, “company” means a company in respect of which the Court may appoint a liquidator under Part 6 of the Insolvency Act 2011.”
	2. Repeal section 26 and substitute the following section- “Deregistration of Part XII companies. 26.(1) The Minister may, at the request of the Commission, direct the Registrar to deregister a company registered under Part XII of the Companies Act 2014 if- (a) it appears to the Commission that the company is carrying on, or

	has carried on, financial services business without the necessary licence, authorisation, recognition or registration; (b) the Commission is entitled to cancel or suspend the licence, authorisation, recognition or registration of the company under a Supervisory Act; or (c) the company has had its licence, authorisation, recognition or registration cancelled or suspended under a Supervisory Act.”.
Financial Services (Temporary Administration of Companies) Act 2010	Amend the Act by– (a) deleting “Authorised Administrator” in each place it occurs in the Act and substituting “Special Administrator”; (b) deleting “Authorised Administrators” in each place it occurs in the Act and substituting “Special Administrators”; and (c) deleting “Authorised Administrator’s” in each place it occurs in the Act and substituting “Special Administrator’s”.
	2. Amend section 12(1), by deleting paragraph (c) and substituting the following paragraph– “(c) the Court appoints an administrator of the company under section 59 or a liquidator of the company under section 160, of the Insolvency Act 2011.”.
Protected Cell Companies Act 2001	1. Amend section 2(1) by– (a) inserting the following definitions– “cell liquidation” means the liquidation of

	a cell under a cell liquidation order; “cell liquidation order” means an order made under section 19; “cell liquidator” means the person appointed as cell liquidator under a cell liquidation order; “licensed insolvency practitioner” has the meaning specified in the Insolvency Act 2011; “liquidation”, in relation to a protected cell company, means liquidation under the Insolvency Act 2011; “liquidator”, in relation to a protected cell company, means a liquidator or provisional liquidator appointed under the Insolvency Act 2011 or a voluntary liquidator; “voluntary liquidation” means voluntary liquidation under the Companies Act 2014; “voluntary liquidator” means a liquidator appointed under Part X of the Companies Act 2014; and (b) deleting the definitions of “receiver” and “receivership order”.
	2. Insert the following section after section 2— “Disapplication of provisions of Insolvency Act 2011. 2A. Parts 2 and 3 of the Insolvency Act 2011 do not apply in relation to a protected cell company.
	3. Amend section 9— (a) in subsection (6)(b), by deleting “the

	receiver (if any) of the cell” and substituting “the cell liquidator (if any)” (b) in subsection (12), by deleting “winding up” and substituting “liquidation”; (c) in subsection (13)– (i) by deleting “If the protected cell company is wound up, or if a receivership order is made” and substituting “If a liquidator or voluntary liquidator is appointed in relation to a protected cell company, or if a cell liquidation order is made”; and (ii) by deleting “in a winding up” and substituting “in the liquidation or voluntary liquidation”.
	4. Amend section 17– (a) in subsection (1)– (i) by deleting the words before paragraph (a) and substituting the following “Notwithstanding the provisions of the Insolvency Act 2011 or Part X of the Companies Act 2014 or any other statutory provision or rule of law to the contrary, in the liquidation or voluntary liquidation of a protected cell company”; (ii) in paragraph (b), by deleting “winding up” and substituting “liquidation or voluntary liquidation”; (b) by inserting the following subsection after subsection (1)– (2) The Insolvency Act 2011 and Part

	X of the Companies Act 2014 apply to the liquidation or voluntary liquidation of a protected cell company subject to such modifications as are necessary to give effect to subsection (1) and, in the event of any conflict between the provisions in the Insolvency Act 2011, or Part X of the Companies Act 2014, and this Act, this Act prevails.”.
	5. Amend section 18– (a) in subsection (7), by deleting paragraphs (a) and (b) and substituting the following– “(a) a liquidator or voluntary liquidator has been appointed in respect of the protected cell company; (b) a cell liquidation order has been made in respect of the cell or any other cell of the company”; (b) in subsection (8), by deleting paragraph (a) and substituting the following– “(a) any liquidator or receiver of the company or any cell liquidator of the cell concerned;”.
	6. Amend the title to Part II by deleting “RECEIVERSHIP” and substituting “CELL LIQUIDATION”
	7. Amend section 19– (a) by deleting the section heading and substituting “Cell liquidation orders”; (b) in subsection (1), by deleting “(a receivership order)” and substituting “(a cell liquidation order)”; (c) in subsection (2), by deleting “A receivership order” and substituting “A

	cell liquidation order”; (d) in subsection (3)– (i) by deleting “A receivership order” and substituting “A cell liquidation order”; and (ii) by deleting “(the receiver)” and substituting “(the cell liquidator)”; (e) by inserting the following subsection after subsection (3)– “(3A) The Court shall not appoint a person as cell liquidator under a cell liquidation order unless the person is a licensed insolvency practitioner.”; (f) in subsection (4)– (i) by deleting “A receivership order” and substituting “A cell liquidation order”; and (ii) by deleting paragraph (a) and substituting the following– “(a) may not be made if a liquidator has been appointed to act in respect of the protected cell company;”; and (g) in subsection (5)– (i) by deleting “voluntary winding up” and substituting “appointment of a voluntary liquidator”; and (ii) by deleting “a receivership order” and substituting “a cell liquidation order”.
	8. Amend section 20– (a) in the section heading, by deleting “receivership orders” and substituting

	“cell liquidation orders”; (b) in subsection (1), by deleting “receivership order” and substituting “cell liquidation order”; (c) in subsection (2)– (i) in paragraph (a), by deleting “receivership order” and substituting “cell liquidation order”; and (ii) in paragraph (b), by deleting “a resolution for voluntary winding up” and substituting “a resolution for the appointment of a voluntary liquidator”; and (d) in subsection (3), by deleting “receivership order” and substituting “cell liquidation order”;
	9. Insert the following section after section 20 “Application of Insolvency Act 2011 to cell liquidations. 20A.(1) The Insolvency Act 2011 applies to a cell liquidation as if the cell was a company in liquidation under that Act and, for the purposes of the cell liquidation, the cell shall be treated as if it were a separate legal person. (2) Notwithstanding subsection (1)– (a) the appointment of the cell liquidator and the powers and duties of the cell liquidator are confined to the cell in respect of which the cell liquidation order is made; and (b) in a cell liquidation, the provisions of the Insolvency Act 2011 are subject to such modifications as are necessary

	to give effect to this Act and in the event of any conflict between the provisions in the Insolvency Act 2011 and this Act, this Act prevails.”.
	10. Amend section 21– (a) in the section heading, by deleting “receiver and effect of receivership order” and substituting “cell liquidator and effect of cell liquidation order”; (b) in subsection (1), by deleting “receiver of a cell” and substituting “cell liquidator”; (c) in subsection (2), (i) by deleting “receiver” and substituting “cell liquidator”; (ii) in paragraph (b), by deleting “receivership order” and substituting “cell liquidation order”; and (iii) in paragraph (c), by deleting “his receivership” and substituting “the liquidation of the cell”; (d) in subsections (3) and (4), by deleting “receiver” in each place that it occurs and substituting “cell liquidator”; (e) by deleting subsection (5) and substituting the following subsections– “(5) When an application has been made for, and during the period of operation of, a cell liquidation order, no proceedings may be commenced or continued against the protected cell company in relation to the cell in respect of which the cell liquidation order was applied for or made except with the consent of the cell liquidator or the leave

	of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose. (5A) Subsection (5) applies in place of section 159 of the Insolvency Act 2011 in relation to an application for a cell liquidation order.”; and (f) in subsection (6), (i) by deleting “receivership order” and substituting “cell liquidation order”; and (ii) in paragraph (b), by deleting “receiver” and substituting “cell liquidator”.
	11. Amend section 22– (a) in the section heading, by deleting “receivership orders” and substituting “cell liquidation orders”; (b) in subsections (1), (2) and (3), by deleting “receivership order” in each place that it occurs and substituting “cell liquidation order”; (c) by inserting the following subsection after subsection (4)– “(4A) Creditors of a cell that is subject to a cell liquidation order shall be regarded as preferential creditors of the cell to the extent that they would be preferential creditors under the Insolvency Act 2011 if– (a) the cell was a company; and (b) the cell liquidator was a liquidator appointed under the Insolvency Act 2011.”;

	and (d) in subsection (5)– (i) in paragraph (a), by deleting “and any rule of law as to preferential payments” and substituting “and, in particular subsection (4A)”; (ii) by deleting “receivership order” and substituting “cell liquidation order”; (e) in subsection (7), by deleting “receivership order” and substituting “cell liquidation order”.
	12. Amend section 23– (a) in the section heading, by deleting “receiver” and substituting “cell liquidator”; (b) by deleting “The remuneration of a receiver and any expenses properly incurred by him” and substituting “The remuneration of a cell liquidator shall be fixed by the Court applying the general principles set out in section 466 of the Insolvency Act 2011 and the remuneration, and any expenses properly incurred by him,”; and (c) in paragraph (a), by deleting “receiver” and substituting “cell liquidator”.
	13. Amend section 24– (a) by inserting the following after subsection (3)– “(3A) The Court shall not appoint a person as administrator under an administration order unless the person is a licensed insolvency practitioner.”; (b) in subsection (4)(b), by deleting

	“receivership of the cell” and substituting “cell liquidation”; and (c) in subsection (5)(a), by– (i) deleting subparagraphs (i) and (ii) and substituting the following– “(i) a liquidator has been appointed to act in respect of the protected cell company;”; and (c) in subsection (6), by deleting “voluntary winding up” and substituting “appointment of a voluntary liquidator”.
	14. Amend section 25(2)(b) by deleting “voluntary winding up” and substituting “the appointment of a voluntary liquidator”.
	15. Amend section 26 by deleting subsection (6) and substituting the following subsection– “(6) When an application has been made for, and during the period of operation of, an administration order, no proceedings may be commenced or continued against the protected cell company in relation to the cell in respect of which the administration order was applied for or made except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose.
	16. Amend section 28 by deleting “The remuneration of an administrator,” and substituting “The remuneration of an administrator shall be fixed by the Court applying the general principles set out in section 466 of the Insolvency Act 2011 and the remuneration,”.

Supreme Court Rules 2000	1. Repeal rule 6(2) and rule 7(a) and 7(c). 2. Amend rules 6(3) and 6(4) by deleting “sub-rules (1) and (2)” and substituting “sub-rule (1)”.
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Passed by the Gibraltar Parliament on the 30th day of May, 2014.

P E MARTINEZ,
Clerk to the Parliament.

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