

Subsidiary Legislation made under s.495(2)(ii) and (iii).

**Insolvency (Cross Border Insolvencies) Regulations 2014****LN.2014/198**

		<i>Commencement</i>	<b>1.11.2014</b>
Amending enactments	Relevant current provisions	Commencement date	
LN. 2015/197	r. 34, Sch.		3.11.2015

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## **SCHEDULE**

**2011-26**

**Insolvency**

**2014/198 Insolvency (Cross Border Insolvencies) Regulations 2014**

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*In exercise of the powers conferred on him by section 495(2)(ii) and (iii) of the Insolvency Act 2011, the Minister has made the following Regulations—*

**PART 1**

**PRELIMINARY**

**Title and commencement.**

1. These Regulations may be cited as the Insolvency (Cross Border Insolvencies) Regulations 2014 and come into effect on the 1st day of November 2014.

**Interpretation.**

2. In these Regulations, unless the context otherwise requires,—

“Act” means the Insolvency Act 2011;

“EC Insolvency Regulation” means Council Regulation (EC) No. 1346/2000;

“establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;

“foreign ancillary proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

“foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

“foreign main proceeding” means a foreign proceeding taking place in the country where the debtor has the centre of his main interests;

“foreign proceeding” means a collective judicial or administrative proceeding in a designated foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation, liquidation or bankruptcy;

“foreign representative” means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding;

“Gibraltar insolvency proceeding” means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to the Act, or to any other enactment in Gibraltar, relating–

- (a) to the bankruptcy, liquidation or administration of a debtor; or
- (b) to the reorganisation of a debtor’s affairs,

where, in all cases, the property of the debtor is or will be realised for the benefit of secured or unsecured creditors.

“insolvency law”, in relation to a specified country or territory, means so much of the law of the part of the specified country or territory that corresponds to provisions falling within the Act and any subsidiary legislation made under the Act;

“insolvency officer” means–

- (a) the Official Receiver, when acting as liquidator, provisional liquidator, interim receiver, bankruptcy trustee, supervisor or interim supervisor; and
- (b) a person acting as an insolvency practitioner, but excluding a person acting as an administrative receiver; and

“specified country or territory” means a country or territory specified for the purpose of this regulation by the Minister in a notice published in the Gazette; and

“UNCITRAL Model Law” means the Model Law on Cross–Border Insolvency as adopted by the United National Commission on International Trade Law on 30th May 1997.

## **PART 2**

### **EC INSOLVENCY REGULATION AND COOPERATION BETWEEN COURTS**

#### **Application of EC Insolvency Regulation in relation to United Kingdom.**

3. For all purposes connected to the operation of the EC Insolvency Regulation, and its application to the Act, Gibraltar and the United Kingdom shall be treated as if each were a separate EEA State.

#### **Obligations under the EC Insolvency Regulation.**

4. To the extent that the Act and any subsidiary legislation made under the Act conflict with an obligation of Gibraltar under the EC Insolvency Regulation, the requirements of the EC Insolvency Regulation prevail.

### **PART 3**

#### **UNCITRAL MODEL LAW**

##### **Scope and objectives of this Part.**

5.(1) This Part gives effect in Gibraltar to the provisions of the UNCITRAL Model Law, as modified by this Part.

(2) The purpose of the provisions that give effect to this Part is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of—

- (a) cooperation between—
    - (i) the Court and insolvency officers of Gibraltar; and
    - (ii) the courts and other competent authorities of foreign countries involved in cases of cross-border insolvency;
  - (b) greater legal certainty for trade and investment;
  - (c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
  - (d) the protection and maximisation of the value of the debtor's assets; and
  - (e) the facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.
- (3) This Part applies where—
- (a) assistance is sought in Gibraltar by a foreign court or a foreign representative in connection with a foreign proceeding;
  - (b) assistance is sought in a foreign country in connection with a Gibraltar insolvency proceeding;

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- (c) a foreign proceeding and a Gibraltar insolvency proceeding in respect of the same debtor are taking place concurrently; or
- (d) creditors or other interested persons in a designated foreign country have an interest in requesting the commencement of, or participating in, a Gibraltar insolvency proceeding.

(4) This Part does not apply to an Authorised person who holds, or at any time has held, a prescribed financial services licence of a type designated by the Minister for the purposes of this regulation by notice published in the Gazette.

(5) In the interpretation of this Part, the Court shall have regard to its international origin and to the need to promote an application of this Part that is consistent with the application of similar laws adopted by foreign jurisdictions.

**Public policy exception.**

6. Nothing in this Part prevents the Court from refusing to take an action governed by this Part if the action would be contrary to the public policy of Gibraltar.

**Disapplication of section 476 of Act.**

7. Nothing in section 476 of the Act applies to anything done by a foreign representative—

- (a) under or by virtue of this Part; or
- (b) in relation to relief granted or cooperation or coordination provided under this Part.

**Additional assistance.**

8. Subject to regulation 11, nothing in this Part limits the power of the Court or an insolvency officer to provide additional assistance to a foreign representative where permitted under the Act or under any other enactment or rule of law of Gibraltar.

*Applications*

**Application under this Part.**

9. An application under this Part shall be made to the Court in accordance with the Insolvency Rules.

**Authorisation of insolvency officer to act in a foreign country.**

10. The Court may, on the application of an insolvency officer, authorise him to act in a foreign country on behalf of a Gibraltar insolvency proceeding as permitted by the applicable foreign law.

*Access of Foreign Representatives and Creditors to Courts in Gibraltar*

**Right of direct access.**

11.(1) A foreign representative is entitled to apply to the Court under regulation 16 for recognition of the foreign proceeding in respect of which he is appointed.

(2) Subject to regulation 21, a foreign representative may not be granted comity or cooperation by the Court unless the foreign proceeding in respect of which he is appointed has been granted recognition by the Court.

(3) Upon recognition being granted to the foreign proceeding in respect of which a foreign representative is appointed, he may apply directly to the Court for comity or cooperation or for any other relief under this Part.

**Limited jurisdiction.**

12. The sole fact that a foreign representative makes an application under regulation 16 does not subject the foreign representative to the jurisdiction of the Court for any other purpose.

**Commencement of, and participation in, a Gibraltar insolvency proceeding by foreign representative.**

13. A foreign representative, upon the recognition of the foreign proceeding in respect of which he is appointed, may—

- (a) apply to commence a Gibraltar insolvency proceeding if the conditions for commencing such a proceeding are otherwise met; and
- (b) participate in a Gibraltar insolvency proceeding regarding the debtor.

**Access of foreign creditors to a Gibraltar proceeding.**

14.(1) Subject to sub-regulation (2), foreign creditors have the same rights regarding the commencement of, and participation in, a Gibraltar insolvency proceeding as creditors in Gibraltar.



(2) Sub-regulation (1) does not affect the priority of claims in a Gibraltar insolvency proceeding or the exclusion of foreign penal, revenue and social security claims from such a proceeding.

**Notification to foreign creditors of a Gibraltar insolvency proceeding.**

15.(1) Whenever, under a Gibraltar insolvency proceeding, notification is to be given to creditors in Gibraltar, such notification shall also be given to the known creditors that do not have addresses in Gibraltar.

(2) Where the address of any creditor is not known, the Court may order that appropriate steps be taken with a view to notifying that creditor.

(3) Notification to creditors under sub-regulation (1) shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate and no letters rogatory or other, similar formality is required.

(4) When notification of the commencement of a Gibraltar insolvency proceeding is to be given to foreign creditors, the notification shall—

- (a) indicate the time period for submitting claims and specify the place for their submission;
- (b) indicate whether secured creditors need to submit their secured claims; and
- (c) contain any other information required to be included in such a notification to creditors pursuant to the law of Gibraltar and any order of the Court.

(5) The Rules and any order of the Court as to notice or the submission of a claim time shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

*Recognition of Foreign Proceeding and Relief*

**Application for recognition of foreign proceeding.**

16.(1) A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition shall be accompanied by—

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- (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;
  - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
  - (c) in the absence of evidence referred to in paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.
- (3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.
- (4) If the documents referred to in sub-regulation (2)(a) and (b) are not in English, a certified translation they shall be accompanied by a certified translation of the documents into English.
- (5) The Court may require a certified translation of any other documents supplied in support of the application for recognition into English.

**Presumptions concerning recognition.**

17.(1) If the decision or certificate referred to in regulation 16(2) indicates that the proceeding is a foreign proceeding and that the person or body is a foreign representative, the Court is entitled to presume that this is the case.

(2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

**Recognition of foreign proceedings.**

18.(1) Subject to regulation 6, a foreign proceeding shall be recognised if–

- (a) the proceeding is a foreign proceeding within the meaning of regulation 2;
- (b) the person or body applying for recognition is a foreign representative within the meaning of regulation 2;

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- (c) the application meets the requirements of regulation 16(2); and
  - (d) the application has been made in accordance with this Part and the Rules.
- (2) The foreign proceeding shall be recognised—
- (a) as a foreign main proceeding if it is taking place in the country where the debtor has the centre of his main interests; or
  - (b) as a foreign ancillary proceeding if the debtor has an establishment in the foreign country.
- (3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
- (4) The provisions of this Part do not prevent the modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

#### **Subsequent information.**

19. After the filing of an application for recognition of a foreign proceeding, the foreign representative shall inform the Court promptly—
- (a) if there is any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
  - (b) of any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

#### **Interim relief.**

- 20.(1) Where an application for recognition of a foreign proceeding has been filed but not yet determined or withdrawn, the Court may, on the application of the foreign representative concerned, if it is satisfied that relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant such relief of a provisional nature as it considers appropriate, including—
- (a) staying execution against the debtor's assets;
  - (b) entrusting the administration or realisation of all or part of the debtor's assets located in Gibraltar to the foreign representative or to another person designated

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by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;

(c) any relief mentioned in regulation 22(1)(c), (d) and (f).

(2) The foreign representative in whose favour an order is made under sub-regulation (1) shall notify the debtor of the order as soon as practicable or within such time as the Court may order.

(3) Unless extended under regulation 22(1)(f), the relief granted under this article terminates when the Court determines the application for recognition.

(4) The Court may refuse to grant relief under this regulation if such relief would interfere with the administration of a foreign main proceeding.

**Effects of recognition of foreign main proceeding.**

21.(1) Upon recognition of a foreign proceeding that is a foreign main proceeding—

(a) commencement or continuation of individual actions or individual proceedings concerning the property of the debtor within Gibraltar, rights, obligations or liabilities is stayed;

(b) execution against the debtor's property within Gibraltar is stayed; and

(c) the right to transfer, encumber or otherwise dispose of any property of the debtor within Gibraltar is suspended.

(2) Notwithstanding sub-regulation (1), the Court may, on the application of any creditor or interested person, order that the stay or suspension does not apply in respect of any particular action or proceeding or in respect of any particular property, rights, obligation or liability.

(3) An order under sub-regulation (2) may be made subject to such terms as it considers appropriate.

(4) Sub-regulation (1)(a) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(5) Sub-regulation (1) does not affect the right to request the commencement of a Gibraltar insolvency proceeding or the right to file claims in such a proceeding.

**Relief that may be granted upon recognition of foreign proceeding.**

22.(1) Upon recognition of a foreign proceeding, whether main or ancillary, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including–

- (a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations or liabilities, to the extent they have not been stayed under regulation 21(1)(a);
- (b) staying execution against the debtor's property to the extent it has not been stayed under regulation 21(1)(b);
- (c) suspending the right to transfer, encumber or otherwise dispose of any property of the debtor to the extent this right has not been suspended under regulation 21(1)(c);
- (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (e) entrusting the administration or realisation of all or part of the debtor's assets located in Gibraltar to the foreign representative or another person designated by the Court;
- (f) extending relief granted under regulation 20(1);

(2) Upon recognition of a foreign proceeding, whether main or ancillary, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's property located in Gibraltar to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Gibraltar are adequately protected.

(3) In granting relief under this regulation to a representative of a foreign ancillary proceeding, the Court shall be satisfied that the relief relates to property that, under the law of Gibraltar, should be administered in the foreign ancillary proceeding or concerns information required in that proceeding.

**Protection of creditors and other interested persons.**

23.(1) In granting or denying relief under regulation 20 or 22, or in modifying or terminating relief under sub-regulation (3), the Court shall be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under regulation 20 or 22 to such conditions as it considers appropriate, including the giving of any security interest or the filing of any bond.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under regulation 20 or 22, or of its own motion, modify or terminate the relief.

**Actions to avoid acts detrimental to creditors.**

24.(1) Subject to sub-regulation (2), upon recognition of a foreign proceeding, the foreign representative shall have power to apply to the Court for an order under section 253 or section 438 of the Act, as the case may be.

(2) The Court shall not make an order under section 253 or section 438 of the Act on the application of the foreign representative of a recognised foreign proceeding unless it is satisfied that—

- (a) in the case of an application under section 253, the foreign representative has roles and functions that are equivalent or broadly similar to the roles and functions of a liquidator appointed under the Act; and
- (b) in the case of an application under section 438, the foreign representative has roles and functions that are equivalent or broadly similar to the roles and functions of a bankruptcy trustee appointed under the Act.

(3) When the foreign proceeding is a foreign ancillary proceeding, the Court shall be satisfied that the action relates to property that, under the law of Gibraltar, should be administered in the foreign ancillary proceeding.

**Intervention by foreign representative in proceedings in Gibraltar.**

25. Upon recognition of a foreign proceeding, the foreign representative may, if the requirements of the law of Gibraltar are met, intervene in any proceedings in which the debtor is a party.

*Cooperation with Foreign Courts and Foreign Representatives*

**Cooperation and direct communication between court of Gibraltar and foreign courts or foreign representatives.**

26.(1) In matters relating to this Part, the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency officer.

(2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties to notice and participation at hearings.

**Cooperation and direct communication between the insolvency officer and foreign courts or foreign representatives.**

27.(1) In matters relating to this Part, an insolvency officer shall, in the exercise of his functions and subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) Subject to regulation 10, the insolvency officer is entitled, in the exercise of his functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

**Forms of cooperation.**

28. Cooperation referred to in regulations 26 and 27 may be implemented by any appropriate means, including–

- (a) appointment of a person or body to act at the direction of the Court;
- (b) communication of information by any means considered appropriate by the Court;
- (c) coordination of the administration and supervision of the debtor's property and affairs;
- (d) approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) coordination of concurrent proceedings regarding the same debtor.

*Concurrent Proceedings*

**Commencement of a Gibraltar insolvency proceeding after recognition of foreign main proceeding.**

29. After recognition of a foreign main proceeding, a Gibraltar insolvency proceeding may be commenced only if the debtor has assets in Gibraltar and the effects of Gibraltar proceeding shall be restricted to the assets of the debtor that are located in Gibraltar and, to the extent necessary to implement cooperation and coordination under regulations 26 and 27 and 28, to other property of the debtor that, under the law of Gibraltar, should be administered in the recognised proceeding.

**Coordination of a Gibraltar insolvency proceeding and foreign proceeding.**

30. Where a foreign proceeding and a Gibraltar insolvency proceeding are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under regulations 26 and 27 and 28, and the following shall apply—

- (a) when Gibraltar insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed,
  - (i) any relief granted under regulation 20 or 22 shall be consistent with Gibraltar insolvency proceeding ; and
  - (ii) if the foreign proceeding is recognised in Gibraltar as a foreign main proceeding, regulation 21 does not apply;
- (b) when Gibraltar insolvency proceeding commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,
  - (i) any relief in effect under regulation 20 or 22 shall be reviewed by the Court and shall be modified or terminated if inconsistent with Gibraltar insolvency proceeding; and
  - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in regulation 21(1) shall be modified or terminated pursuant to regulation 21(2) if inconsistent with Gibraltar insolvency proceeding;
- (c) in granting, extending or modifying relief granted to a representative of a foreign ancillary proceeding, the Court shall be satisfied that the relief relates to property that, under the law of Gibraltar, should be administered in the foreign ancillary proceeding or concerns information required in that proceeding.

**Coordination of more than one foreign proceeding.**



31. In matters relating to this Part, , in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek cooperation and coordination under regulations 26 and 27 and 28 and the following shall apply–

- (a) any relief granted under regulation 20 or 22 to a representative of a foreign ancillary proceeding after recognition of a foreign main proceeding shall be consistent with the foreign main proceeding;
- (b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign ancillary proceeding, any relief in effect under regulation 20 or 22 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding;
- (c) if, after recognition of a foreign ancillary proceeding, another foreign ancillary proceeding is recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

**Presumption of insolvency based on recognition of foreign main proceeding.**

32. In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a Gibraltar insolvency proceeding proof that the debtor is insolvent.

**Rule of payment in concurrent proceedings.**

33. Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of his claim in a proceeding pursuant to a law relating to insolvency in a foreign country may not receive a payment for the same claim in a Gibraltar insolvency proceeding regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

**Amendment of Insolvency (Cross Border Insolvencies) Regulations 2014.**

34. A “designated foreign country” in the definition of “foreign proceeding” in regulation 2 is a country or territory that has been designated in the Schedule to these Regulations.

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## Insolvency

**2014/198 Insolvency (Cross Border Insolvencies) Regulations 2014**

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	<i>Schedule</i>	<i>Regulations 2, 34</i>
Antigua and Barbuda	Jamaica	South Africa, Republic of
Australia	Japan	South Georgia and the South Islands
Bahamas, The	Jersey	Sri Lanka
Bangladesh	Kenya	St Helena British Indian Ocean Territory
Barbados	Kiribati	St Helena Dependencies (Ascension Island, British Virgin islands Tristan da Cunha)
Belize	Korea, Republic of	St Kitts and Nevis
Bermuda	Lesotho	St Vincent and The Grenadines
Botswana	Malawi	Swaziland
Brazil	Malaysia	Tonga
British Virgin Islands	Maldives	Trinidad and Tobago
Brunei Darussalam	Mexico	Turkey

# Insolvency

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## **Insolvency (Cross Border Insolvencies) Regulations 2014 2014/198**

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Cameroon	Mauritius	Turks and Caicos Islands
Canada	Montserrat	Tuvalu
Cayman Islands	Mozambique	Uganda
China, People's Republic of	Namibia	United Republic of Tanzania
Dominica	Nauru	United States of America
European Union (Member States of)	New Zealand	Vanuatu
Falkland Islands	Nigeria	Zambia".
Fiji	Pakistan	
Ghana	Papua New Guinea	
Grenada	Pitcairn Island	
Guernsey	Russian Federation	
Guyana	Rwanda	
Hong Kong SAR	Saint Lucia	
India	Samoa	

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Indonesia

Seychelles