

Credit Institutions (Reorganisation and Winding Up) Act 2005

Principal Act

Act. No. 2005-58	<i>Commencement</i>	1.12.2005
	<i>Assent</i>	24.11.2005

Amending enactments	Relevant current provisions	Commencement date
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Implementing:

Directive No. 2001/24/EC

Transposing:

Directive 2014/59/EU

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2005-58 Credit Institutions (Reorganisation and Winding Up)

AN ACT TO IMPLEMENT INTO THE LAW OF GIBRALTAR 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.

Title and commencement.

1.(1) This Act may be cited as the Credit Institutions (Reorganisation and Winding Up) Act 2005.

(2) This Act comes into operation on the date of publication.

Interpretation.

2.(1) In this Act, unless the context requires otherwise—

the “Authority” means such persons or body as the Minister with responsibility for financial services may from time to time by regulations appoint, to exercise the powers, discretions and functions conferred on the Authority under this Act;

“claim” means a claim submitted by a creditor of a Gibraltar credit institution in the course of a winding up, with a view to recovering his debt in whole or in part;

“creditors’ voluntary winding up” has the meaning given by section 273(3) of the Companies Act;

“Gibraltar credit institution” means an undertaking whose head office is in Gibraltar with permission under Part 7 of the Financial Services Act 2019 to accept deposits or issue electronic money (as the case may be) but does not include an undertaking which also has permission under that Part to effect or carry out contracts of insurance;

“liquidator” includes any person or body which is not a body corporate appointed by the administrative or judicial authorities whose task is to administer winding up proceedings in respect of a Gibraltar credit institution;

“officer”, in relation to a company includes a director, manager or secretary;

“section 205 compromise or arrangement” means a compromise or arrangement sanctioned by the court in relation to a Gibraltar credit institution under section 205 of the Companies Act, but does not include a compromise or arrangement falling within section 206 or 207 of that Act (reconstructions or amalgamations);

“winding up” means—

(a) winding up by the court, or

(b) a creditors' voluntary winding up.

(2) *Omitted.*

PART 2

Omitted

3. to 6. *Omitted.*

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 Gibraltar credit institutions subject to the provisions of this Part.

Consultation of the Authority prior to a voluntary winding up.

8.(1) Where, on or after the date on which this Act comes into operation, a Gibraltar credit institution ("the institution") intends to pass a resolution to wind up the institution under paragraph (b) or (c) of section 268(1) of the Companies Act, the institution must give written notice of the resolution to the Authority before it passes the resolution.

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

Notification of relevant decision to the Authority.

9.(1) Where on or after the date on which this Act comes into operation the court makes an order or appointment of any of the following kinds—

- (a) a winding up order under section 223 of the Companies Act;
- (b) the appointment of a provisional liquidator under section 235(1) of the Companies Act;

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 liquidator is appointed as mentioned in section 275 of the Companies Act, the liquidator must inform the Authority forthwith of his appointment.

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

(4) A liquidator who fails without reasonable excuse to comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

10. *Omitted.*

Withdrawal of authorisation.

11.(1) For the purposes of this section—

- (a) a qualifying order means a winding up order under section 223 of the Companies Act;
- (b) a qualifying appointment means—
 - (i) the appointment of a provisional liquidator under section 235(1) of the Companies Act; or
 - (ii) the appointment of a liquidator as mentioned in section 275 of the Companies Act.

(2) When the Authority is informed of a qualifying order or qualifying appointment, the Authority will as soon as reasonably practicable arrange for the Gibraltar credit institution's permission under Part 7 of the Financial Services Act 2019 to accept deposits or issue electronic money (as the case may be) to be varied or cancelled.

12. *Omitted.*

13. *Omitted.*

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 Gibraltar credit institution on or after the date on which this Act comes into operation, the appointed officer must, as soon as is reasonably practicable, notify in writing all known creditors of that credit institution—

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

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

(3) For the purposes of this section—

(a) “relevant order” means—

- (i) a winding up order under section 223 of the Companies Act (powers of the court on hearing a petition); or
- (iii) an order appointing a provisional liquidator in accordance with section 235 of the Companies Act; and

(b) a “relevant appointment” means the appointment of a liquidator as mentioned in section 275 of the Companies Act (appointment of liquidator in a creditors’ voluntary winding up).

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

- (a) that a relevant order or appointment has been made, or a relevant decision taken, in relation to the Gibraltar 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 subsection (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 subsection (1)(b), the notification must be headed with the words “Invitation to lodge a claim. Time limits to be observed”.

(7) The obligation under subsection (1)(b) may be discharged by sending a form of proof, provided that the form of proof complies with subsection (6).

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(8) An appointed officer commits an offence if he fails without reasonable excuse to comply with a requirement under subsection (1) of this section, and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) For the purposes of this section—

- (a) “appointed officer” means the liquidator or provisional liquidator, as the case may be;
- (b) a creditor is a “known” creditor if the appointed officer is aware of—
 - (i) his identity,
 - (ii) his claim or potential claim, and
 - (iii) a recent address where he is likely to receive a communication.

15. *Omitted.*

Reports to creditors.

16.(1) This section applies where, on or after the date on which this Act comes into operation—

- (a) a liquidator is appointed in accordance with section 275 of the Companies Act;
- (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 to every known creditor once in every 12 months beginning with the date when his appointment has effect.

(3) The requirement in subsection (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 section.

(4) This section 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 section.

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

(6) For the purposes of this section—

- (a) “known creditor” means a creditor who is known to the liquidator or provisional liquidator;
- (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 section applies to any notification, report or other document which is required to be sent to a creditor of a Gibraltar 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 subsection (4).

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

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

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

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

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

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

- (a) the creditor has agreed with—

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- (i) the Gibraltar 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 paragraph (c).

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

- (a) a relevant notification is published for a part, but not all, of the period mentioned in subsection (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 section 14(8) or section 16(5) (as the case may be) by reason of that failure.

(8) In this section—

- (a) “electronic address” includes any number or address used for the purposes of receiving electronic communications which are sent electronically;
- (b) “electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or

vice versa) while in electronic form, 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.

18. *Omitted.*

PART 4

Reorganisation or Winding up of Gibraltar credit institutions

Application of this Part.

19.(1) This Part applies as follows—

- (a) where a Gibraltar credit institution is subject to a relevant winding up; or
- (b) where a provisional liquidator is appointed in relation to a Gibraltar credit institution on or after the date on which this Act comes into operation.

(2) For the purposes of subsection (1)(b), 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 the date on which this Act comes into operation; or
- (b) in the case of a creditors’ voluntary winding up, the liquidator is appointed in accordance with section 275 of the Companies Act on or after the date on which this Act comes into operation.

Application of this Part: assets subject to a section 205 compromise or arrangement.

20.(1) For the purposes of this Part, the insolvent estate of a Gibraltar credit institution shall not include any assets which at the commencement date are subject to a relevant section 205 compromise or arrangement.

(2) In this section—

- (a) “assets” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

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- (b) “commencement date” means the date when a Gibraltar credit institution passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution;
- (c) “insolvent estate” means the company’s assets;
- (d) “relevant section 205 compromise or arrangement” means–
 - (i) a section 205 compromise or arrangement which was sanctioned by the court before the date on which this Act comes into operation, or
 - (ii) any subsequent section 205 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 Gibraltar credit institution which is the subject of a relevant winding up;
- (b) “relevant winding up” means any winding up referred to in section 19(1) to which this Part applies; and
- (c) *Omitted*

(2) In this Part, references to the opening of 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 275 of the Companies Act; and
- (b) 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.

Applicable law in the winding up of a Gibraltar credit institution.

22. The general law of insolvency of Gibraltar is applicable in a relevant winding up, subject only to the provisions of sections 28, 29, 34 and 35.

23. to 27. *Omitted.*

Creditors' rights to set off.

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

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

Regulated markets.

29.(1) the effects of a relevant reorganisation or winding up on transactions carried out in the context of a Gibraltar regulated market must be determined in accordance with the law applicable to those transactions.

(2) For the purposes of this section, "Gibraltar regulated market" has the meaning given in paragraph 1(1) of Schedule 2 to the Financial Services Act 2019.

30. to 33. *Omitted.*

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. 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. In this Part—

(a) "relevant measure", in relation to a third country credit institution, means—

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- (i) a winding up; or
 - (ii) a provisional liquidation;
- (b) “third country credit institution” means a person—
- (i) with permission under Part 7 of the Financial Services Act 2019 to accept deposits or issue electronic money (as the case may be); and
 - (ii) whose head office is not in Gibraltar.

Application of this Act to a third country credit institution.

37. Section 9 applies to a third country credit institution which is subject to a relevant measure.

38. *Omitted.*