

SCHEDULE 1

Regulation 2(1)

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

CHAPTER I

GENERAL PROVISIONS

Article 1. Scope of Application

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

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

(2) 2002 asp 3.

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

(4) 1996 c. 61.

(5) 2000 c. 38.

(6) 1999 c. 29.

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

(8) 1986 c. 53.

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

3. In paragraph 2 of this article—

- (a) in sub-paragraph (j) the reference to “contracts of insurance” must be construed in accordance with—
 - (i) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment);
 - (ii) any relevant order under that section; and
 - (iii) Schedule 2 to that Act (regulated activities);
- (b) in sub-paragraph (1) “EEA State” means a State, other than the United Kingdom, which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992.

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

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

⁽⁹⁾ S.I. 2004/1045.

⁽¹⁰⁾ 2000 c. 8.

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

⁽¹²⁾ 1987 c. 53.

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

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

⁽¹⁵⁾ S.I. 2003/3226.

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

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

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

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

7. In paragraph 6—

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

Article 2. Definitions

For the purposes of this Law—

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

⁽¹⁶⁾ 1930 c. 25.

⁽¹⁷⁾ 2002 c. 9.

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

⁽¹⁹⁾ 1986 c. 45.

⁽²⁰⁾ 1985 c. 66.

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

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

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

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

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

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

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

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

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

Article 4. Competent court

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

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

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

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

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

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

Article 6. Public policy exception

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

Article 7. Additional assistance under other laws

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

Article 8. Interpretation

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

CHAPTER II

ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN GREAT BRITAIN

Article 9. Right of direct access

A foreign representative is entitled to apply directly to a court in Great Britain.

Article 10. Limited jurisdiction

The sole fact that an application pursuant to this Law is made to a court in Great Britain by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of Great Britain or any part of it for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under British insolvency law

A foreign representative appointed in a foreign main proceeding or foreign non-main proceeding is entitled to apply to commence a proceeding under British insolvency law if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a proceeding under British insolvency law

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under British insolvency law.

Article 13. Access of foreign creditors to a proceeding under British insolvency law

1. Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under British insolvency law as creditors in Great Britain.

2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under British insolvency law, except that the claim of a foreign creditor shall not be given a lower priority than that of general unsecured claims solely because the holder of such a claim is a foreign creditor.

3. A claim may not be challenged solely on the grounds that it is a claim by a foreign tax or social security authority but such a claim may be challenged—

- (a) on the ground that it is in whole or in part a penalty, or
- (b) on any other ground that a claim might be rejected in a proceeding under British insolvency law.

Article 14. Notification to foreign creditors of a proceeding under British insolvency law

1. Whenever under British insolvency law notification is to be given to creditors in Great Britain, such notification shall also be given to the known creditors that do not have addresses in Great Britain. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. Such notification shall be made to the foreign creditors individually, unless—

- (a) the court considers that under the circumstances some other form of notification would be more appropriate; or

- (b) the notification to creditors in Great Britain is to be by advertisement only, in which case the notification to the known foreign creditors may be by advertisement in such foreign newspapers as the British insolvency officeholder considers most appropriate for ensuring that the content of the notification comes to the notice of the known foreign creditors.
3. When notification of a right to file a claim is to be given to foreign creditors, the notification shall—
- (a) indicate a reasonable time period for filing claims and specify the place for their filing;
 - (b) indicate whether secured creditors need to file their secured claims; and
 - (c) contain any other information required to be included in such a notification to creditors pursuant to the law of Great Britain and the orders of the court.
4. In this article “the court” means the court which has jurisdiction in relation to the particular proceeding under British insolvency law under which notification is to be given to creditors.

CHAPTER III

RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

Article 15. Application for recognition of a foreign proceeding

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—
- (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (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 sub-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, proceedings under British insolvency law and section 426 requests in respect of the debtor that are known to the foreign representative.
4. The foreign representative shall provide the court with a translation into English of documents supplied in support of the application for recognition.

Article 16. Presumptions concerning recognition

1. If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (i) of article 2 and that the foreign representative is a person or body within the meaning of sub-paragraph (j) of article 2, the court is entitled to so presume.
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.

Article 17. Decision to recognise a foreign proceeding

1. Subject to article 6, a foreign proceeding shall be recognised if—
 - (a) it is a foreign proceeding within the meaning of sub-paragraph (i) of article 2;
 - (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (j) of article 2;
 - (c) the application meets the requirements of paragraphs 2 and 3 of article 15; and
 - (d) the application has been submitted to the court referred to in article 4.
2. The foreign proceeding shall be recognised—
 - (a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
 - (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (e) of article 2 in the foreign State.
3. An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
4. The provisions of articles 15 to 16, this article and article 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist and in such a case, the court may, on the application of the foreign representative or a person affected by recognition, or of its own motion, modify or terminate recognition, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Article 18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of—

- (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding, proceeding under British insolvency law or section 426 request regarding the same debtor that becomes known to the foreign representative.

Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

1. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, 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 Great Britain to the foreign representative or another person designated 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; and
 - (c) any relief mentioned in paragraph 1 (c), (d) or (g) of article 21.
2. Unless extended under paragraph 1(f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.
3. The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

Article 20. Effects of recognition of a foreign main proceeding

1. Upon recognition of a foreign proceeding that is a foreign main proceeding, subject to paragraph 2 of this article—

- (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
- (b) execution against the debtor's assets is stayed; and
- (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

2. The stay and suspension referred to in paragraph 1 of this article shall be—

- (a) the same in scope and effect as if the debtor, in the case of an individual, had been adjudged bankrupt under the Insolvency Act 1986⁽²⁶⁾ or had his estate sequestrated under the Bankruptcy (Scotland) Act 1985⁽²⁷⁾, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under the Insolvency Act 1986; and
- (b) subject to the same powers of the court and the same prohibitions, limitations, exceptions and conditions as would apply under the law of Great Britain in such a case,

and the provisions of paragraph 1 of this article shall be interpreted accordingly.

3. Without prejudice to paragraph 2 of this article, the stay and suspension referred to in paragraph 1 of this article, in particular, does not affect any right—

- (a) to take any steps to enforce security over the debtor's property;
- (b) to take any steps to repossess goods in the debtor's possession under a hire-purchase agreement;
- (c) exercisable under or by virtue of or in connection with the provisions referred to in article 1(4); or
- (d) of a creditor to set off its claim against a claim of the debtor,

being a right which would have been exercisable if the debtor, in the case of an individual, had been adjudged bankrupt under the Insolvency Act 1986 or had his estate sequestrated under the Bankruptcy (Scotland) Act 1985, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under the Insolvency Act 1986.

4. Paragraph 1(a) of this article does not affect the right to—

- (a) commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; or
- (b) commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

5. Paragraph 1 of this article does not affect the right to request or otherwise initiate the commencement of a proceeding under British insolvency law or the right to file claims in such a proceeding.

6. In addition to and without prejudice to any powers of the court under or by virtue of paragraph 2 of this article, the court may, on the application of the foreign representative or a person affected by the stay and suspension referred to in paragraph 1 of this article, or of its own motion, modify or terminate such stay and suspension or any part of it, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

⁽²⁶⁾ 1986 c. 45.

⁽²⁷⁾ 1985 c. 66.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

1. Upon recognition of a foreign proceeding, whether main or non-main, 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 assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1(a) of article 20;
- (b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1(b) of article 20;
- (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1(c) of article 20;
- (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 Great Britain to the foreign representative or another person designated by the court;
- (f) extending relief granted under paragraph 1 of article 19; and
- (g) granting any additional relief that may be available to a British insolvency officeholder under the law of Great Britain, including any relief provided under paragraph 43 of Schedule B1 to the Insolvency Act 1986⁽²⁸⁾.

2. Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Great Britain to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in Great Britain are adequately protected.

3. In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of Great Britain, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

4. No stay under paragraph 1(a) of this article shall affect the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

Article 22. Protection of creditors and other interested persons

1. In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph 3 of this article or paragraph 6 of article 20, the court must be satisfied that the interests of the creditors (including any secured creditors or parties to hire-purchase agreements) and other interested persons, including if appropriate the debtor, are adequately protected.

2. The court may subject relief granted under article 19 or 21 to conditions it considers appropriate, including the provision by the foreign representative of security or caution for the proper performance of his functions.

3. The court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or of its own motion, modify or terminate such relief.

⁽²⁸⁾ Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248(2) and Schedule 16.

Article 23. Actions to avoid acts detrimental to creditors

1. Subject to paragraphs 6 and 9 of this article, upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the court for an order under or in connection with sections 238, 239, 242, 243, 244, 245, 339, 340, 342A, 343, and 423 of the Insolvency Act 1986⁽²⁹⁾ and sections 34, 35, 36, 36A and 61 of the Bankruptcy (Scotland) Act 1985⁽³⁰⁾.

2. Where the foreign representative makes such an application (“an article 23 application”), the sections referred to in paragraph 1 of this article and sections 240, 241, 341, 342, 342B to 342F, 424 and 425 of the Insolvency Act 1986⁽³¹⁾ and sections 36B and 36C of the Bankruptcy (Scotland) Act 1985⁽³²⁾ shall apply—

- (a) whether or not the debtor, in the case of an individual, has been adjudged bankrupt or had his estate sequestrated, or, in the case of a debtor other than an individual, is being wound up or is in administration, under British insolvency law; and
- (b) with the modifications set out in paragraph 3 of this article.

3. The modifications referred to in paragraph 2 of this article are as follows—

- (a) for the purposes of sections 241(2A)(a) and 342(2A)(a) of the Insolvency Act 1986, a person has notice of the relevant proceedings if he has notice of the opening of the relevant foreign proceeding;
- (b) for the purposes of sections 240(1) and 245(3) of that Act, the onset of insolvency shall be the date of the opening of the relevant foreign proceeding;
- (c) the periods referred to in sections 244(2), 341(1)(a) to (c) and 343(2) of that Act shall be periods ending with the date of the opening of the relevant foreign proceeding;
- (d) for the purposes of sections 242(3)(a), (3)(b) and 243(1) of that Act, the date on which the winding up of the company commences or it enters administration shall be the date of the opening of the relevant foreign proceeding; and
- (e) for the purposes of sections 34(3)(a), (3)(b), 35(1)(c), 36(1)(a) and (1)(b) and 61(2) of the Bankruptcy (Scotland) Act 1985, the date of sequestration or granting of the trust deed shall be the date of the opening of the relevant foreign proceeding.

4. For the purposes of paragraph 3 of this article, the date of the opening of the foreign proceeding shall be determined in accordance with the law of the State in which the foreign proceeding is taking place, including any rule of law by virtue of which the foreign proceeding is deemed to have opened at an earlier time.

5. When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the article 23 application relates to assets that, under the law of Great Britain, should be administered in the foreign non-main proceeding.

6. At any time when a proceeding under British insolvency law is taking place regarding the debtor—

(29) 1986 c. 45; sections 238 and 242–245 are amended by the Enterprise Act 2002 (c. 40), Schedule 17, paragraphs 9, 25 and 28–31 and, in the case of section 245, Schedule 26; sections 339 and 423 are amended by the Civil Partnership Act 2004 (c. 33), Schedule 27, paragraphs 119 and 121; section 342A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 15.

(30) 1985 c. 66; section 34 is amended by the Civil Partnerships Act 2004 (c. 33), Schedule 28, paragraph 35, section 35 is amended by the Welfare Reform and Pensions Act 1999, Schedule 12, paragraphs 67 and 68 and section 36A is substituted by the Welfare Reform and Pensions Act 1999, section 16.

(31) Sections 240, 241 and 424 are amended by the Enterprise Act 2002, Schedule 17, paragraphs 9, 26, 27 and 36 and, in the case of section 240, Schedule 26; sections 241 and 342 are amended by the Insolvency (No. 2) Act 1994 (c. 12), sections 1 and 2; sections 342B–342F were inserted by the Welfare Reform and Pensions Act 1999, section 15 and Schedule 12, paragraphs 70 and 71.

(32) Sections 36B and 36C are substituted by the Welfare Reform and Pensions Act 1999, section 16.

- (a) the foreign representative shall not make an article 23 application except with the permission of—
 - (i) in the case of a proceeding under British insolvency law taking place in England and Wales, the High Court; or
 - (ii) in the case of a proceeding under British insolvency law taking place in Scotland, the Court of Session; and
- (b) references to “the court” in paragraphs 1, 5 and 7 of this article are references to the court in which that proceeding is taking place.

7. On making an order on an article 23 application, the court may give such directions regarding the distribution of any proceeds of the claim by the foreign representative, as it thinks fit to ensure that the interests of creditors in Great Britain are adequately protected.

8. Nothing in this article affects the right of a British insolvency officeholder to make an application under or in connection with any of the provisions referred to in paragraph 1 of this article.

9. Nothing in paragraph 1 of this article shall apply in respect of any preference given, floating charge created, alienation, assignment or relevant contributions (within the meaning of section 342A(5) of the Insolvency Act 1986) made or other transaction entered into before the date on which this Law comes into force.

Article 24. Intervention by a foreign representative in proceedings in Great Britain

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of Great Britain are met, intervene in any proceedings in which the debtor is a party.

CHAPTER IV

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25. Cooperation and direct communication between a court of Great Britain and foreign courts or foreign representatives

1. In matters referred to in paragraph 1 of article 1, the court may cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a British insolvency officeholder.

2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the British insolvency officeholder and foreign courts or foreign representatives

1. In matters referred to in paragraph 1 of article 1, a British insolvency officeholder shall to the extent consistent with his other duties under the law of Great Britain, 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. The British insolvency officeholder 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.

Article 27. Forms of cooperation

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including—

- (a) appointment of a person 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 assets and affairs;
- (d) approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) coordination of concurrent proceedings regarding the same debtor.

CHAPTER V

CONCURRENT PROCEEDINGS

Article 28. Commencement of a proceeding under British insolvency law after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, the effects of a proceeding under British insolvency law in relation to the same debtor shall, insofar as the assets of that debtor are concerned, be restricted to assets that are located in Great Britain and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that, under the law of Great Britain, should be administered in that proceeding.

Article 29. Coordination of a proceeding under British insolvency law and a foreign proceeding

Where a foreign proceeding and a proceeding under British insolvency law are taking place concurrently regarding the same debtor, the court may seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply—

- (a) when the proceeding in Great Britain is taking place at the time the application for recognition of the foreign proceeding is filed—
 - (i) any relief granted under article 19 or 21 must be consistent with the proceeding in Great Britain; and
 - (ii) if the foreign proceeding is recognised in Great Britain as a foreign main proceeding, article 20 does not apply;
- (b) when the proceeding in Great Britain commences after the filing of the application for recognition of the foreign proceeding—
 - (i) any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in Great Britain;
 - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 6 of article 20, if inconsistent with the proceeding in Great Britain; and
 - (iii) any proceedings brought by the foreign representative by virtue of paragraph 1 of article 23 before the proceeding in Great Britain commenced shall be reviewed by the court and the court may give such directions as it thinks fit regarding the continuance of those proceedings; and
- (c) in granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under

the law of Great Britain, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30. Coordination of more than one foreign proceeding

In matters referred to in paragraph 1 of article 1, in respect of more than one foreign proceeding regarding the same debtor, the court may seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply—

- (a) any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (b) if a foreign main proceeding is recognised after the filing of an application for recognition of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding; and
- (c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under British insolvency law, proof that the debtor is unable to pay its debts or, in relation to Scotland, is apparently insolvent within the meaning given to those expressions under British insolvency law.

Article 32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under British insolvency law 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.