

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5055 GIBRALTAR Thursday 1st June 2023

B. 16/23

BILL

FOR

AN ACT to provide for the recognition of judgments or orders made by the Courts of EEA States sanctioning Schemes of Arrangement relating to reinsurance business transfers; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Insurance Schemes of Arrangement (Recognition) Act 2023.

Commencement.

2. This Act comes into operation on a day to be appointed by the Minister by notice in the Gazette.

Interpretation.

3. In this Act—

“Approval Order” means an order, decision or judgment issued by a court in an EEA State approving a Scheme of Arrangement under the laws of that State, which provides for the transfer of reinsurance business from a company authorised by the relevant supervisory authority in that State to a Gibraltar reinsurer and in respect of which transfer the GFSC has given its prior written consent in accordance with section 4;

“EEA State” means a member state of the European Economic Area;

“the GFSC” means the Gibraltar Financial Services Commission;

“Gibraltar reinsurer” means an undertaking with permission under Part 7 of the Financial Services Act 2019 to effect and carry out contracts of reinsurance;

“the Minister” means the Minister with responsibility for financial services;

“Scheme of Arrangement” means an arrangement or compromise which has been entered into between a company and—

- (a) its shareholders (or any class of them) in respect of its share capital; or
- (b) its creditors (or any class of them) in respect of its liabilities,

which has been approved by those shareholders or creditors (as the case may be) in accordance with the applicable law of the EEA State in which the company is incorporated, and approved by a court in that EEA State.

GFSC’s consent required.

4.(1) A Gibraltar reinsurer which proposes to accept the transfer of any reinsurance business under a Scheme of Arrangement must obtain the GFSC’s prior written consent.

(2) No Approval Order is to have effect in Gibraltar unless the GFSC has given its prior written consent to the Scheme of Arrangement approved by that Order.

(3) The Gibraltar reinsurer must submit a consent application to the GFSC—

- (a) in the form and manner it directs; and
- (b) containing or accompanied by such information as the GFSC may reasonably require.

(4) The information which the GFSC may require under subsection (3)(b) includes details of the proposed Scheme of Arrangement and, before submitting the consent application, the Gibraltar reinsurer must obtain the transferor company’s agreement for the Gibraltar reinsurer to be provided with such information and to provide it to the GFSC.

(5) A consent application must be made in good time for the GFSC to properly consider the proposed transfer and, in any event, before the transferor company seeks approval for the Scheme of Arrangement from its shareholders or creditors (as the case may be) or the approval of the Scheme by the court in the relevant EEA State.

(6) The GFSC must not consent to a Scheme of Arrangement unless it is satisfied that—

- (a) any policy included in the proposed transfer evidences a contract of reinsurance;
- (b) the Gibraltar reinsurer has permission to carry on reinsurance business of the kind to be transferred; and
- (c) the Gibraltar reinsurer possesses the necessary margin of solvency after taking the proposed transfer into account.

(7) The GFSC must not consent to a Scheme of Arrangement unless it considers that in all the circumstances it is appropriate to do so.

Recognition of Approval Order.

5. An Approval Order shall be recognised in Gibraltar in accordance with the provisions of this Act.

6. A party who wishes to invoke an Approval Order in Gibraltar shall file at the Supreme Court:

- (a) a copy of the Approval Order certified and/or attested by the issuing court which the Registrar of the Supreme Court is satisfied meets the conditions necessary to establish its authenticity;
- (b) an affidavit sworn by a barrister or solicitor registered under the Legal Services Act 2017 containing the information set out in the Schedule; and
- (c) a translation of the Approval Order where this is not in English.

7. The Supreme Court may suspend the proceedings, in whole or in part, if:

- (a) the Approval Order is challenged in the EEA State in which it was given; or
- (b) an application has been submitted for a decision that the recognition is to be refused—
 - (i) by the GFSC, on the basis that the Approval Order approves a Scheme of Arrangement to which it has not given its prior written consent; or
 - (ii) by any other interested party, on the basis of one of the grounds set out in section 13.

Enforcement of Approval Order.

8. An Approval Order given in an EEA State which is enforceable in that EEA State shall be enforceable in Gibraltar without any declaration of enforceability being required.

9. An Approval Order which is enforceable in Gibraltar shall be enforced under the same conditions as a judgment of the Supreme Court of Gibraltar.

10. Notwithstanding section 9, the grounds for refusal or suspension of enforcement under the law of Gibraltar shall apply in so far as they are not incompatible with the grounds referred to in section 13.

11.(1) For the purposes of enforcement of an Approval Order, the applicant shall provide the Supreme Court of Gibraltar with:

- (a) a copy of the Approval Order which satisfies the conditions necessary to establish its authenticity; and

- (b) an affidavit sworn by a barrister or solicitor registered under the Legal Services Act 2017 containing the information set out in the Schedule.

(2) The Supreme Court may, where necessary, require the applicant to provide a translation or transliteration of the contents of the Approval Order.

Service of affidavit.

12. Where enforcement of an Approval Order is sought, a copy of the Approval Order and the affidavit referred to in section 11(1)(b) shall be served on the person against whom the enforcement is sought prior to the first enforcement measure.

Refusal of recognition.

13.(1) On the application of any interested party, the recognition of an Approval Order shall be refused:

- (a) if such recognition is manifestly contrary to public policy in Gibraltar;
- (b) if the Approval Order is irreconcilable with a judgment given between the same parties before the Supreme Court;
- (c) if the Approval Order is irreconcilable with an earlier judgment given in another country involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Gibraltar; or
- (d) where the interested party is the GFSC, if the Approval Order approves a Scheme of Arrangement to which the GFSC has not given its prior written consent.

(2) The jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in subsection (1)(a) shall not be applied to the rules relating to jurisdiction.

Refusal of enforcement.

14.(1) On the application of a person against whom enforcement is sought, the enforcement of an Approval Order shall be refused where one of the grounds referred to in section 13 is found to exist.

(2) The application for refusal of enforcement shall be filed with the Supreme Court of Gibraltar.

(3) The applicant shall provide the court with a copy of the Approval Order and, where necessary, a translation or transliteration of it, unless the court dispenses with the requirement.

Appeal.

15.(1) The decision on the application for refusal of enforcement may be appealed against by either party.

(2) The appeal is to be filed with the Court of Appeal.

Rules of Court.

16. Rules of court may make provision for regulating the procedure to be followed in any court in connection with any provision of this Act.

Regulations.

17.(1) The Minister may make Regulations under this Act generally, for carrying out the purposes of this Act.

(2) The Minister may make regulations providing for the payment to the GFSC of such fees as may be specified in the regulations in connection with the exercise of the GFSC's functions under this Act.

(3) Regulations under this section may, in particular—

(a) make different provision for different purposes; and

(b) make supplementary, incidental, consequential, transitional or saving provision.

SCHEDULE

Information to be contained in the Affidavit (with relevant documents exhibited thereto) made pursuant to section 11(1)(b).

1. Confirmation of the name and address of the Court approving the Scheme of Arrangement;
2. Name and address of the parties to the proceedings leading to approval of the Scheme of Arrangement;
3. Date of the Approval Order;
4. Written confirmation from a lawyer in the EEA State in which the Approval Order is given that the Approval Order is enforceable in that EEA State without further conditions having to be met; and
5. Evidence in writing that the GFSC provided prior written consent to the transfer of the relevant reinsurance business to the Gibraltar reinsurer as set out in the Scheme of Arrangement approved by the Approval Order.

EXPLANATORY MEMORANDUM

This Bill creates a regime which largely mirrors parts of the Chapter III provisions under Regulation (EU) 1215/2012 in relation to the automatic recognition of judgments of Member States in Gibraltar, for the purposes of the recognition of orders given in EEA States sanctioning a Scheme of Arrangement. This Bill is intended to close a gap which would otherwise arise as a result of the intended revocation of Regulation (EU) 1215/2012 following EU Withdrawal. Also to be noted that following EU Withdrawal it is no longer possible to undertake insurance EEA portfolio transfers under the Solvency II Regulations to Gibraltar insurers and that an alternative legal mechanism for such proposed transfers is a Scheme of Arrangement sanctioned by a foreign court and recognised in Gibraltar.

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