Draft Regulations laid before Parliament under section 14 of the Insolvency Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No. 0000

INSOLVENCY

COMPANIES

INDIVIDUALS

The Cross-Border Insolvency Regulations 2006

Made - - - -	*2006*
Coming into force - -	*2006*

These Regulations are made in exercise of the powers conferred by section 14 of the Insolvency Act 2000(**1**).

In accordance with section 14(6) of that Act, the Lord Chancellor and the Scottish Ministers have agreed to the making of these Regulations.

A draft of these Regulations has been laid before Parliament in accordance with section 14(5) of that Act and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Cross-Border Insolvency Regulations 2006 and shall come into force on the day after the day on which they are made.

(2) In these Regulations "the UNCITRAL Model Law" means the Model Law on cross-border insolvency as adopted by the United Nations Commission on International Trade Law on 30th May 1997.

UNCITRAL Model Law to have force of law

2.—(1) The UNCITRAL Model Law shall have the force of law in Great Britain in the form set out in Schedule 1 to these Regulations (which contains the UNCITRAL Model Law with certain modifications to adapt it for application in Great Britain).

(**1**) 2000 c. 39.

(2) Without prejudice to any practice of the courts as to the matters which may be considered apart from this paragraph, the following documents may be considered in ascertaining the meaning or effect of any provision of the UNCITRAL Model Law as set out in Schedule 1 to these Regulations—

(a) the UNCITRAL Model Law;

(b) any documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the UNCITRAL Model Law; and

(c) the Guide to Enactment of the UNCITRAL Model Law (UNCITRAL document A/CN.9/442)(**2**) prepared at the request of the United Nations Commission on International Trade Law made in May 1997.

Modification of British insolvency law

3.—(1) British insolvency law (as defined in article 2 of the UNCITRAL Model Law as set out in Schedule 1 to these Regulations) and Part 3 of the Insolvency Act 1986(**3**) shall apply with such modifications as the context requires for the purpose of giving effect to the provisions of these Regulations.

(2) In the case of any conflict between any provision of British insolvency law or of Part 3 of the Insolvency Act 1986 and the provisions of these Regulations, the latter shall prevail.

Procedural matters in England and Wales

4. Schedule 2 to these Regulations (which makes provision about procedural matters in England and Wales in connection with the application of the UNCITRAL Model Law as set out in Schedule 1 to these Regulations) shall have effect.

Procedural matters in Scotland

5. Schedule 3 to these Regulations (which makes provision about procedural matters in Scotland in connection with the application of the UNCITRAL Model Law as set out in Schedule 1 to these Regulations) shall have effect.

Notices delivered to the registrar of companies

6. Schedule 4 to these Regulations (which makes provision about notices delivered to the registrar of companies under these Regulations) shall have effect.

Co-operation between courts exercising jurisdiction in relation to cross-border insolvency

7.—(1) An order made by a court in either part of Great Britain in the exercise of jurisdiction in relation to the subject matter of these Regulations shall be enforced in the other part of Great Britain as if it were made by a court exercising the corresponding jurisdiction in that other part.

(2) However, nothing in paragraph (1) requires a court in either part of Great Britain to enforce, in relation to property situated in that part, any order made by a court in the other part of Great Britain.

(3) The courts having jurisdiction in relation to the subject matter of these Regulations in either part of Great Britain shall assist the courts having the corresponding jurisdiction in the other part of Great Britain.

(**2**) A United Nations Publication, ISBN 92-1-133608−2.
(**3**) 1986 c. 45.

Disapplication of section 388 of the Insolvency Act 1986

8. Nothing in section 388 of the Insolvency Act 1986(**4**) applies to anything done by a foreign representative—

(a) under or by virtue of these Regulations;

(b) in relation to relief granted or cooperation or coordination provided under these Regulations.

Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs,
Date Department of Trade and Industry

I agree to the making of these Regulations

Date *C*

The Scottish Ministers agree to the making of these Regulations

Date A member of the Scottish Executive

(**4**) Section 388 is 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.

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(**5**) (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)(**6**);

(c) a protected railway company within the meaning of section 59 of the Railways Act 1993(**7**) (railway administration order) (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996(**8**) (administration));

(d) a licence company within the meaning of section 26 of the Transport Act 2000(**9**) (air traffic services);

(e) a public private partnership company within the meaning of section 210 of the Greater London Authority Act 1999(**10**) (public-private partnership agreement);

(f) a protected energy company within the meaning of section 154(5) of the Energy Act 2004(**11**) (energy administration orders);

(g) a building society within the meaning of section 119 of the Building Societies Act 1986(**12**) (interpretation);

(**5**) 1991 c. 56, section 23(6) was amended by the Water Act 2003 (c. 37), Schedule 8, paragraphs 2 and 8(1) and (6).
(**6**) 2002 asp 3.
(**7**) 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.
(**8**) 1996 c. 61.
(**9**) 2000 c. 38.
(**10**) 1999 c. 29.
(**11**) 2004 c. 20; there are amendments to section 119 which are not relevant to these Regulations.
(**12**) 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(**13**) (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(**14**) 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(**15**) (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(**16**).

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(**17**);

(ii) Part 3 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**18**); or

(iii) Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003(**19**);

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.

(**13**) S.I. 2004/1045.
(**14**) 2000 c. 8.
(**15**) S.I. 2004/353, to which there are amendments not relevant to these Regulations.
(**16**) 1987 c. 53.
(**17**) 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.
(**18**) S.I. 1999/2979, relevant amendments are made by S.I. 2000/2952, 2001/3929, 2002/765 and 2003/2096.
(**19**) S.I. 2003/3226.