



Banking Act 2009

2009 CHAPTER 1

PART 2

BANK INSOLVENCY

Process of bank liquidation

99 Objectives

- (1) A bank liquidator has two objectives.
- (2) Objective 1 is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor—
 - (a) has the relevant account transferred to another financial institution, or
 - (b) receives payment from (or on behalf of) the FSCS.
- (3) Objective 2 is to wind up the affairs of the bank so as to achieve the best result for the bank's creditors as a whole.
- (4) Objective 1 takes precedence over Objective 2 (but the bank liquidator is obliged to begin working towards both objectives immediately upon appointment).

100 Liquidation committee

- (1) Following a bank insolvency order a liquidation committee must be established, for the purpose of ensuring that the bank liquidator properly exercises the functions under this Part.
- (2) The liquidation committee shall consist initially of 3 individuals, one nominated by each of—
 - (a) the Bank of England,
 - (b) the FSA, and
 - (c) the FSCS.

Status: This is the original version (as it was originally enacted).

- (3) The bank liquidator must report to the liquidation committee about any matter—
 - (a) on request, or
 - (b) which the bank liquidator thinks is likely to be of interest to the liquidation committee.
- (4) In particular, the bank liquidator—
 - (a) must keep the liquidation committee informed of progress towards Objective 1 in section 99, and
 - (b) must notify the liquidation committee when in the bank liquidator’s opinion Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable.
- (5) As soon as is reasonably practicable after receiving notice under subsection (4)(b) the liquidation committee must either—
 - (a) resolve that Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable (a “full payment resolution”), or
 - (b) apply to the court under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (6) Where a liquidation committee passes a full payment resolution—
 - (a) the bank liquidator must summon a meeting of creditors,
 - (b) the meeting may elect 2 or 4 individuals as new members of the liquidation committee,
 - (c) those individuals replace the members nominated by the Bank of England and the FSA,
 - (d) the FSCS may resign from the liquidation committee (in which case 3 or 5 new members may be elected under paragraph (b)), and
 - (e) if no individuals are elected under paragraph (b), or the resulting committee would have fewer than 3 members or an even number of members, the liquidation committee ceases to exist at the end of the meeting.
- (7) Subject to provisions of this section, rules under section 411 of the Insolvency Act 1986 (as amended by section 125 below) may make provision about—
 - (a) the establishment of liquidation committees,
 - (b) the membership of liquidation committees,
 - (c) the functions of liquidation committees, and
 - (d) the proceedings of liquidation committees.

101 Liquidation committee: supplemental

- (1) A meeting of the liquidation committee may be summoned—
 - (a) by any of the members, or
 - (b) by the bank liquidator.
- (2) While the liquidation committee consists of the initial members (or their nominated replacements) a meeting is quorate only if all the members are present.
- (3) A person aggrieved by any action of the liquidation committee before it has passed a full payment resolution may apply to the court, which may make any order (including an order for the repayment of money).

- (4) The court may (whether on an application under subsection (3), on the application of a bank liquidator or otherwise) make an order that the liquidation committee is to be treated as having passed a full payment resolution.
- (5) If a liquidation committee fails to comply with section 100(5) the bank liquidator must apply to the court—
 - (a) for an order under subsection (4) above, or
 - (b) for directions under or by virtue of section 168(3) or 169(2) of the Insolvency Act 1986 as applied by section 103 below.
- (6) A nominating body under section 100(2) may replace its nominee at any time.
- (7) After the removal of the nominated members under section 100(6)(c) the FSA and the Bank of England—
 - (a) may attend meetings of the liquidation committee,
 - (b) are entitled to copies of documents relating to the liquidation committee's business,
 - (c) may make representations to the liquidation committee, and
 - (d) may participate in legal proceedings relating to the bank insolvency.
- (8) Where a liquidation committee ceases to exist by virtue of section 100(6)(e)—
 - (a) it may be re-formed by a creditors' meeting summoned by the bank liquidator for the purpose, and
 - (b) the bank liquidator must summon a meeting for the purpose if requested to do so by one-tenth in value of the bank's creditors.
- (9) Where a liquidation committee ceases to exist by virtue of section 100(6)(e) and has not been re-formed under subsection (8) above or under section 141(2) or 142(2) of the Insolvency Act 1986 (as applied by section 103 below)—
 - (a) ignore a reference in this Part to the liquidation committee,
 - (b) for section 113(2) to (4) substitute requirements for the bank liquidator, before making a proposal—
 - (i) to produce a final report,
 - (ii) to send copies in accordance with section 113(2)(b),
 - (iii) to make it available in accordance with section 113(2)(c), and
 - (iv) to be satisfied as specified in section 113(4)(b),
 - (c) ignore Condition 2 in section 114, and
 - (d) for section 115(1) to (5) substitute a power for the bank liquidator to apply to the Secretary of State or Accountant of Court for release and requirements that before making an application the bank liquidator must—
 - (i) produce a final report,
 - (ii) send copies in accordance with section 115(2)(b),
 - (iii) make it available in accordance with section 115(2)(c), and
 - (iv) notify the court and the registrar of companies of the intention to vacate office and to apply for release.

102 Objective 1: (a) or (b)?

- (1) As soon as is reasonably practicable, a liquidation committee must recommend the bank liquidator to pursue—

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- (a) Objective 1(a) in section 99,
 - (b) Objective 1(b) in section 99, or
 - (c) Objective 1(a) for one specified class of case and Objective 1(b) for another.
- (2) In making a recommendation the liquidation committee must consider—
- (a) the desirability of achieving Objective 1 as quickly as possible, and
 - (b) Objective 2 in section 99.
- (3) If the liquidation committee thinks that the bank liquidator is failing to comply with their recommendation, they must apply to the court for directions under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (4) Where the liquidation committee has not made a recommendation the bank liquidator may apply to the court under section 101(3); and the court may, in particular, make a direction in lieu of a recommendation if the liquidation committee fail to make one within a period set by the court.

103 General powers, duties and effect

- (1) A bank liquidator may do anything necessary or expedient for the pursuit of the Objectives in section 99.
- (2) The following provisions of this section provide for—
- (a) general powers and duties of bank liquidators (by application of provisions about liquidators), and
 - (b) the general process and effects of bank insolvency (by application of provisions about winding up).
- (3) The provisions set out in the Table apply in relation to bank insolvency as in relation to winding up, with—
- (a) the modifications set out in subsection (4),
 - (b) any other modification specified in the Table, and
 - (c) any other necessary modification.
- (4) The modifications are that—
- (a) a reference to the liquidator is a reference to the bank liquidator,
 - (b) a reference to winding up is a reference to bank insolvency,
 - (c) a reference to winding up by the court is a reference to the imposition of bank insolvency by order of the court,
 - (d) a reference to being wound up under Part IV or V of the Insolvency Act 1986 is a reference to being made the subject of a bank insolvency order,
 - (e) a reference to the commencement of winding up is a reference to the commencement of bank insolvency,
 - (f) a reference to going into liquidation is a reference to entering bank insolvency,
 - (g) a reference to a winding-up order is a reference to a bank insolvency order, and
 - (h) a reference to a company is a reference to the bank.
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.

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- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

TABLE OF APPLIED PROVISIONS

| <i>Provision of Insolvency Act 1986</i> | <i>Subject</i> | <i>Modification or comment</i> |
|---|------------------------------------|--|
| Section 127 | Avoidance of property dispositions | Ignore section 127(2). |
| Section 128 | Avoidance of attachment, &c. | |
| Section 130 | Consequences of winding-up order | Ignore section 130(4). |
| Section 131 | Company's statement of affairs | (a) Treat references to the official receiver as references to the bank liquidator. (b) A creditor or contributory of the bank is entitled to receive a copy of a statement under section 131 on request to the bank liquidator. |
| Section 135 | Provisional appointment | (a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank insolvency order. (b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply). (c) Ignore the reference to the official receiver. (d) Only a person who is qualified to act as an insolvency practitioner and who consents to act may be appointed. |

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| <i>Provision of Insolvency Act 1986</i> | <i>Subject</i> | <i>Modification or comment</i> |
|---|--|--|
| Section 141 | Liquidation Committee (England and Wales) | <p>(e) A provisional bank liquidator may not pay dividends to creditors.</p> <p>(f) The appointment of a provisional bank liquidator lapses on the appointment of a bank liquidator.</p> <p>The application of section 141 is subject to—</p> <p>(a) sections 100, 101 and 109 of this Act,</p> <p>(b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 141 to reflect</p> <p>(i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and</p> <p>(c) the omission of references to the official receiver.</p> |
| Section 142 | Liquidation Committee (Scotland) | <p>The application of section 142 is subject to—</p> <p>(a) sections 100, 101 and 109 of this Act,</p> <p>(b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 142 to reflect</p> <p>(i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors'</p> |

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| | | meetings under other provisions, and |
| | | (c) the omission of references to the official receiver. |
| Section 143 | General functions of liquidator | (a) Section 143(1) is subject to Objective 1 in section 99 above. (b) Ignore section 143(2). |
| Section 144 | Custody of property | |
| Section 145 | Vesting of property | |
| <i>Section 146</i> | <i>Duty to summon final meeting</i> | <i>Section 146 is not applied—but section 115 below makes similar provision.</i> |
| Section 147 | Power to stay or sist proceedings | An application may be made only by— (a) the bank liquidator, (b) the FSA, (c) the Bank of England, (d) the FSCS, or (e) a creditor or contributory (but only if the liquidation committee has passed a full payment resolution). |
| Section 148 | List of contributories and application of assets | <i>By virtue of the Insolvency Rules the functions under this section are largely delegated to the liquidator—rules by virtue of section 125 may achieve a similar delegation to the bank liquidator.</i> |
| Section 149 | Debts due from contributories | |
| Section 150 | Power to make calls | |
| Section 152 | Order on contributory: evidence | |
| Section 153 | Exclusion of creditors | |

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| <i>Provision of Insolvency Act 1986</i> | <i>Subject</i> | <i>Modification or comment</i> |
|---|--|--|
| Section 154 | Adjustment of rights of contributories | |
| Section 155 | Inspection of books by creditors | In making or considering whether to make an order under section 155 the court shall have regard to Objective 1 in section 99 above. |
| Section 156 | Payment of expenses of winding up | |
| Section 157 | Attendance at company meetings (Scotland) | |
| Section 158 | Power to arrest absconding contributory | |
| <i>Section 159</i> | <i>Powers to be cumulative</i> | <i>Section 159 is not applied—but subsection (5) above makes similar provision.</i> |
| Section 160 | Delegation of powers to liquidator (England and Wales) | |
| Section 161 | Orders for calls on contributories (Scotland) | |
| Section 162 | Appeals from orders (Scotland) | An appeal may be brought only if the liquidation committee has passed a full payment resolution. |
| Section 167 and Schedule 4 | General powers of liquidator | (a) An application to the court may not be made under section 167(3) unless the liquidation committee has passed a full payment resolution (although a creditor or contributory may apply to the court with respect to any action (or inaction) of the liquidation committee, under section 101(3) above). (b) In exercising or considering whether |

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| | | to exercise a power under Schedule 4 the bank liquidator shall have regard to Objective 1 in section 99. |
| | | (c) A reference to the liquidation committee is to the liquidation committee established by section 100. |
| | | (d) The power in paragraph 4 of Schedule 4 includes the power to submit matters to arbitration. |
| | | <i>Some additional general powers are conferred by section 104 below.</i> |
| Section 168 | Supplementary powers of liquidator | (a) A direction or request under section 168(2) has no effect unless the liquidation committee has passed a full payment resolution. |
| | | (b) Section 168(5) also applies in the case of the imposition of bank insolvency by order of the Court of Session. |
| | | (c) An application to the court may not be made under section 168(5) unless the liquidation committee has passed a full payment resolution (except as provided in section 100 or 102 above). |
| Section 169 | Supplementary powers (Scotland) | (a) Ignore section 169(1). |

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| | | (b) Powers of the bank liquidator by virtue of section 169(2) are subject to Objective 1 in section 99 above. |
| Section 170 | Liquidator's duty to make returns | The liquidation committee is added to the list of persons able to apply under section 170(2). |
| Section 172 | Removal of liquidator | <i>Section 172 is not applied to a bank liquidator—but section 108 makes similar provision.</i> Section 172(1), (2) and (5) are applied to a provisional bank liquidator. |
| <i>Section 174</i> | <i>Release of liquidator</i> | <i>Section 174 is not applied—but section 115 makes similar provision.</i> |
| Section 175 | Preferential debts | |
| Section 176 | Preferential charge on goods restrained | |
| Section 176ZA | Expenses of winding up | |
| Section 176A | Share of assets for unsecured creditors | |
| Section 177 | Appointment of special manager | |
| Section 178 | Power to disclaim onerous property | |
| Section 179 | Disclaimer of leaseholds | |
| Section 180 | Land subject to rentcharge | |
| Section 181 | Disclaimer: powers of court | |
| Section 182 | Leaseholds | |
| Section 183 | Effect of execution or attachment (England and Wales) | |
| Section 184 | Execution of writs (England and Wales) | |

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|---|---|---|
| Section 185 | Effect of diligence (Scotland) | In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 the reference to an order of the court awarding winding up is a reference to the making of the bank insolvency order. |
| Section 186 | Rescission of contracts by court | |
| Section 187 | Transfer of assets to employees | |
| Section 188 | Publicity | |
| Section 189 | Interest on debts | |
| Section 190 | Exemption from stamp duty | |
| Section 191 | Company's books as evidence | |
| Section 192 | Information about pending liquidations | |
| Section 193 | Unclaimed dividends (Scotland) | |
| Section 194 | Resolutions passed at adjourned meetings | |
| Section 195 | Meetings to ascertain wishes of creditors or contributories | The power to have regard to the wishes of creditors and contributories is subject to Objective 1 in section 99. |
| Section 196 | Judicial notice of court documents | |
| Section 197 | Commission for receiving evidence | |
| Section 198 | Court order for examination of persons (Scotland) | |
| Section 199 | Costs of application for leave to proceed (Scotland) | |
| Section 200 | Affidavits | |
| Section 206 | Fraud in anticipation of winding up | |

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| <i>Provision of Insolvency Act 1986</i> | <i>Subject</i> | <i>Modification or comment</i> |
|---|--|--|
| Section 207 | Transactions in fraud of creditors | |
| Section 208 | Misconduct in course of winding up | |
| Section 209 | Falsification of company's books | |
| Section 210 | Material omissions | |
| Section 211 | False representations to creditors | |
| Section 212 | Summary remedy against directors, &c. | |
| Section 213 | Fraudulent trading | |
| Section 214 | Wrongful trading | |
| Section 215 | Sections 213 & 214: procedure | |
| Section 216 | Restriction on re-use of company names | |
| Section 217 | Personal liability for debts | |
| Section 218 | Prosecution of officers and members of company | <ul style="list-style-type: none"> (a) Ignore subsections (4) and (6). (b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State. (c) In subsection (5) treat the reference to subsection (4) as a reference to subsection (3). |
| Section 219 | Obligations under section 218 | |
| Section 231 | Appointment of 2 or more persons | |
| Section 232 | Validity of acts | |
| Section 233 | Utilities | |
| Section 234 | Getting in company's property | |
| Section 235 | Co-operation with liquidator | Ignore references to the official receiver |

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|---|--|--|
| Section 236 | Inquiry into company's dealings | Ignore references to the official receiver |
| Section 237 | Section 236: enforcement by court | |
| Section 238 | Transactions at undervalue (England and Wales) | Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 238. |
| Section 239 | Preferences (England and Wales) | Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to giving a preference for the purpose of section 239. |
| Section 240 | Sections 238 & 239: relevant time | |
| Section 241 | Orders under sections 238 & 239 | Having notice of the relevant proceedings means having notice of— (a) an application by the Bank of England, the FSA or the Secretary of State for a bank insolvency order, or (b) notice under section 120 below. |
| Section 242 | Gratuitous alienations (Scotland) | Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a gratuitous alienation for the purpose of section 242 or any other rule of law. |
| Section 243 | Unfair preferences (Scotland) | Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to an unfair preference for the |

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| | | purpose of section 243 or any other rule of law. |
| Section 244 | Extortionate credit transactions | |
| Section 245 | Avoidance of floating charges | |
| Section 246 | Unenforceability of liens | |
| Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993) | Preferential debts | |
| Section 389 | Offence of acting without being qualified | Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator. |
| Section 390 | Persons not qualified to act | Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator. |
| Section 391 | Recognised professional bodies | An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency. |
| Sections 423–425 | Transactions defrauding creditors | Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 423. |
| Sections 430 to 432 and Schedule 10 | Offences | |
| Section 433 | Statements: admissibility | For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part. |

104 Additional general powers

(1) A bank liquidator has the following powers.

- (2) Power to effect and maintain insurances in respect of the business and property of the bank.
- (3) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank.
- (4) Power to make any payment which is necessary or incidental to the performance of the bank liquidator's functions.

105 Status of bank liquidator

A bank liquidator is an officer of the court.