

SCHEDULES

[^{F1}SCHEDULE 2ZZA

Article 197B

PROTECTION OF SUPPLIES UNDER ARTICLE 197B: EXCLUSIONS

F1 Sch. 2ZZA inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), Sch. 13 para. 1 (with ss. 2(2), 5(2), 18(4))

PART 1

ESSENTIAL SUPPLIES

Essential supplies

- 1.—(1) Article 197B(3) and (4) do not apply in relation to provision of a contract if—
- (a) the company becomes subject to a relevant insolvency procedure as specified in Article 197B(2)(b) or (d), and
 - (b) the provision of the contract ceases to have effect under Article 197A(1).
- (2) Article 197B(7) does not apply in relation to a supply to the company if—
- (a) the company becomes subject to a relevant insolvency procedure as specified in Article 197B(2)(b) to (f), and
 - (b) the supply is a supply mentioned in Article 197(3).

PART 2

PERSONS INVOLVED IN FINANCIAL SERVICES

Introductory

2 Article 197B does not apply in relation to a contract for the supply of goods or services to a company (“the company”) where any of paragraphs 3 to 11 applies.

Insurers

- 3.—(1) This paragraph applies where either the company or the supplier—
- (a) carries on the regulated activity of effecting or carrying out contracts of insurance, and
 - (b) is not an exempt person in relation to that activity.
- (2) In this paragraph—
- “exempt person”, in relation to a regulated activity, has the meaning given by section 417 of the Financial Services and Markets Act 2000;

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“regulated activity” has the meaning given by section 22 of that Act, taken with Schedule 2 to that Act and any order under that section.

Banks

- 4.—(1) This paragraph applies where either the company or the supplier—
- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,
 - (b) is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or
 - (c) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987.

(2) In sub-paragraph (1)(a) “regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

Electronic money institutions

5 This paragraph applies where either the company or the supplier is an electronic money institution within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

Investment banks and investment firms

6.—(1) This paragraph applies where either the company or the supplier is an investment bank or an investment firm.

- (2) In this paragraph—
- “investment bank” means a company or other entity that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of—
- (a) safeguarding and administering investments,
 - (b) managing an AIF or a UCITS,
 - (c) acting as trustee or depositary of an AIF or a UCITS,
 - (d) dealing in investments as principal, or
 - (e) dealing in investments as agent;

“investment firm” has the same meaning as in the Banking Act 2009 (see section 258A of that Act), disregarding any order made under section 258A(2)(b) of that Act;

“regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section.

Payment institutions

7 This paragraph applies where either the company or the supplier is an authorised payment institution, a small payment institution or a registered account information service provider within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations).

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Operators of payment systems, infrastructure providers etc

- 8** This paragraph applies where either the company or the supplier is—
- (a) the operator of a payment system or an infrastructure provider within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 42 of that Act), or
 - (b) an infrastructure company within the meaning of Part 6 of that Act (see section 112 of that Act).

Recognised investment exchanges etc

9 This paragraph applies where either the company or the supplier is a recognised investment exchange, a recognised clearing house or a recognised CSD within the meaning of the Financial Services and Markets Act 2000 (see section 285 of that Act).

Securitisation companies

10 This paragraph applies where either the company or the supplier is a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296) (see regulation 4 of those Regulations).

Overseas activities

11 This paragraph applies where either the company or the supplier does or has done anything outside the United Kingdom which, if done in the United Kingdom, would cause any of the preceding paragraphs of this Part of this Schedule to apply.

PART 3

CONTRACTS INVOLVING FINANCIAL SERVICES

Introductory

12 To the extent that anything to which any of paragraphs 13 to 18 applies is a contract for the supply of goods or services, Article 197B does not apply in relation to it.

Financial contracts

- 13.**—(1) This paragraph applies to a financial contract.
- (2) “Financial contract” means—
- (a) a contract for the provision of financial services consisting of—
 - (i) lending (including the factoring and financing of commercial transactions),
 - (ii) financial leasing, or
 - (iii) providing guarantees or commitments;
 - (b) a securities contract, including—
 - (i) a contract for the purchase, sale or loan of a security or group or index of securities;
 - (ii) an option on a security or group or index of securities;
 - (iii) a repurchase or reverse repurchase transaction on any such security, group or index;
 - (c) a commodities contract, including—

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- (i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
- (ii) an option on a commodity or group or index of commodities;
- (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
- (d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
- (e) a swap agreement, including—
 - (i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
 - (ii) a total return, credit spread or credit swap;
 - (iii) any agreement or transaction similar to an agreement that is referred to in subparagraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets;
- (f) an inter-bank borrowing agreement where the term of the borrowing is three months or less;
- (g) a master agreement for any of the contracts or agreements referred to in paragraphs (a) to (f).
- (3) For the purposes of this paragraph “commodities” includes—
 - (a) units recognised for compliance with the requirements of EU Directive [2003/87/EC](#) establishing a scheme for greenhouse gas emission allowance trading,
 - (b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and
 - (c) renewables obligation certificates issued—
 - (i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or
 - (ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

Securities financing transactions

14.—(1) This paragraph applies to—

- (a) a securities financing transaction, and
- (b) a master agreement for securities financing transactions.

(2) “Securities financing transaction” has the meaning given by Article 3(11) of [Regulation \(EU\) 2015/2365](#) on the transparency of securities financing transactions.

(3) But for the purposes of that Article as it applies for the purposes of this paragraph, references to “commodities” in that Regulation are to be taken as including the units, allowances and certificates referred to in paragraph 13(3)(a) to (c).

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Derivatives

- 15.**—(1) This paragraph applies to—
- (a) a derivative, and
 - (b) a master agreement for derivatives.
- (2) “Derivative” has the meaning given by Article 2(5) of [Regulation \(EU\) No. 648/2012](#).

Spot contracts

- 16.**—(1) This paragraph applies to—
- (a) a spot contract, and
 - (b) a master agreement for spot contracts.
- (2) “Spot contract” has the meaning given by Article 7(2) or 10(2) of Commission Delegated Regulation of 25.4.2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Capital market investments

- 17.**—(1) This paragraph applies to an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment.
- (2) “Capital market investment” has the meaning given by paragraph 14 of Schedule ZA1.

Contracts forming part of a public-private partnership

- 18** This paragraph applies to a contract forming part of a public-private partnership project within the meaning given by paragraph 16 of Schedule ZA1.

PART 4

OTHER EXCLUSIONS

Financial markets and insolvency

- 19** Nothing in Article 197B affects the operation of—
- (a) Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (financial markets and insolvency),
 - (b) the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. 1996/252),
 - (c) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), or
 - (d) the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).

Set-off and netting

- 20** Nothing in Article 197B affects any set-off or netting arrangements (within the meanings given by section 48(1)(c) and (d) of the Banking Act 2009).

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Aircraft equipment

21 Nothing in Article 197B affects the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912).]

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