

## SCHEDULES

[<sup>F1</sup>SCHEDULE ZA1 N.I.]

Article 13AA

### MORATORIUM: ELIGIBLE COMPANIES

**F1** Sch. ZA1 inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 5** (with ss. 2(2), 5(2), 13)

**Modifications etc. (not altering text)**

**C1** Sch. ZA1 modified (temp.) (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 8 para. 6(1)(c)** (with ss. 2(2), 5(2), Sch. 8 para. 1)

**C2** Sch. ZA1 modified (temp.) (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 8 para. 7(b)** (with ss. 2(2), 5(2), Sch. 8 para. 1)

#### *Eligible companies*

**1** A company is “eligible” for the purposes of this Part unless it is excluded from being eligible by any of the following—

- paragraph 2 (current or recent insolvency procedure);
- paragraph 3 (insurance companies);
- paragraph 4 (banks);
- paragraph 5 (electronic money institutions);
- paragraph 6 (investment banks and investment firms);
- paragraph 7 (market contracts, market charges, etc);
- paragraph 8 (participants in designated systems);
- paragraph 9 (payment institutions);
- paragraph 10 (operators of payment systems, infrastructure providers etc);
- paragraph 11 (recognised investment exchanges, clearing houses and CSDs);
- paragraph 12 (securitisation companies);
- paragraph 13 (parties to capital market arrangements);
- paragraph 15 (public-private partnership project companies);
- paragraph 18 (certain overseas companies).

#### *Companies subject to, or recently subject to, moratorium or an insolvency procedure*

**2.—(1)** A company is excluded from being eligible if—

- (a) on the filing date, a moratorium for the company is in force, or
- (b) at any time during the period of 12 months ending with the filing date, a moratorium for the company was in force (but see Article 13F(6) for power of the High Court to modify the effect of this paragraph).

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- (2) A company is excluded from being eligible if—
- (a) on the filing date, the company is subject to an insolvency procedure, or
  - (b) at any time during the period of 12 months ending with the filing date, the company was subject to an insolvency procedure within sub-paragraph (3)(a) or (b).
- (3) For the purposes of sub-paragraph (2), a company is subject to an insolvency procedure at any time if at that time—
- (a) a voluntary arrangement has effect in relation to the company,
  - (b) the company is in administration,
  - (c) paragraph 45 of Schedule B1 applies in relation to the company (administration: interim moratorium),
  - (d) there is an administrative receiver of the company,
  - (e) there is a provisional liquidator of the company,
  - (f) the company is being wound up, or
  - (g) a relevant petition for the winding up of the company has been presented and has not been withdrawn or determined.
- (4) In sub-paragraph (3)(g) “relevant petition” means a petition under—
- (a) Article 104A (winding up on grounds of public interest),
  - (b) Article 104B (winding up of SE), or
  - (c) Article 104C (winding up of SCE).

#### *Insurance companies*

- 3.—(1) A company is excluded from being eligible if—
- (a) it carries on the regulated activity of effecting or carrying out contracts of insurance, and
  - (b) it 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;
- “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) A company is excluded from being eligible if—
- (a) it has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits,
  - (b) it is a banking group company within the meaning of Part 1 of the Banking Act 2009 (see section 81D of that Act), or
  - (c) it 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.

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### *Electronic money institutions*

**5** A company is excluded from being eligible if it 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)** A company is excluded from being eligible if it is an investment bank or an investment firm.

(2) In this paragraph—

“investment bank” means a company 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,

but does not include a company that has permission to arrange for one or more others to carry on the activity mentioned in paragraph (a) if it does not otherwise have permission to carry on any of the activities mentioned in paragraphs (a) to (e);

“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.

### *Companies that are party to market contracts or subject to market charges, etc*

**7.—(1)** A company is excluded from being eligible if it is a party to a market contract for the purposes of Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (see Article 80 of that Order).

(2) A company is excluded from being eligible if any of its property is subject to a market charge for the purposes of Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 (see Article 95 of that Order).

(3) A company is excluded from being eligible if any of its property is subject to a charge that is a system-charge, within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.R. (N.I.) 1996/252) (see regulation 2 of those Regulations).

### *Participants in designated systems*

**8** A company is excluded from being eligible if—

- (a) it is a participant in a designated system, within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) (see regulation 2 of those Regulations), or
- (b) any of its property is subject to a collateral security charge within the meaning of those Regulations (see regulation 2 of those Regulations).

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#### *Payment institutions*

**9** A company is excluded from being eligible if it 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).

#### *Operators of payment systems, infrastructure providers etc*

**10** A company is excluded from being eligible if—

- (a) it is 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) it is an infrastructure company, within the meaning of Part 6 of that Act (see section 112 of that Act).

#### *Recognised investment exchanges, clearing houses and CSDs*

**11** A company is excluded from being eligible if it 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*

**12** A company is excluded from being eligible if it 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).

#### *Parties to capital market arrangement*

**13.—(1)** A company is excluded from being eligible if, on the filing date—

- (a) it is a party to an agreement which is or forms part of a capital market arrangement (see sub-paragraph (2)),
- (b) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement (at any time during the life of the capital market arrangement), and
- (c) the arrangement involves the issue of a capital market investment (see paragraph 14).

(2) For the purposes of this paragraph, an arrangement is a “capital market arrangement” if any of the following applies—

- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement;
- (b) at least one party guarantees the performance of obligations of another party;
- (c) at least one party provides security in respect of the performance of obligations of another party;
- (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).

(3) For the purposes of sub-paragraph (2)—

- (a) a reference to holding a security as trustee includes a reference to holding it as nominee or agent,

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- (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
- (c) a reference to holding a capital market investment is to holding a legal or beneficial interest in it.

(4) For the purposes of sub-paragraph (1)(b), where a debt is denominated wholly or partly in a foreign currency, the sterling equivalent is to be calculated as at the time when the arrangement is entered into.

**14.—(1)** For the purposes of paragraph 13 an investment is a “capital market investment” if condition A or B is met.

(2) Condition A is that the investment—

- (a) is within article 77 or 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and
- (b) is rated, listed or traded or designed to be rated, listed or traded.

(3) In sub-paragraph (2)—

“listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation);

“rated” means rated for the purposes of investment by an internationally recognised rating agency;

“traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(4) In sub-paragraph (3)—

“foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (foreign markets);

“recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

(5) Condition B is that the investment consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529);
- (b) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that Order;
- (c) a person to whom article 49(2) of that Order applies (high net worth company, etc);
- (d) a person who, when the agreement mentioned in paragraph 13(1) is entered into, is a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that Order;
- (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(6) For the purposes of sub-paragraph (5)—

- (a) in applying article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005—
  - (i) in article 19(5)(b), ignore the words after “exempt person”,

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- (ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “ a controlled activity ”, and
- (iii) in article 19(5)(e), ignore the words from “where the communication” to the end;
- (b) in applying article 49(2) of that Order, ignore article 49(2)(e);
- (c) “bond” means—
  - (i) a bond that is within article 77(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or
  - (ii) an alternative finance investment bond within the meaning of article 77A of that Order;
- (d) “commercial paper” has the meaning given by article 9(3) of that Order.

*Public-private partnership project companies*

**15.—(1)** A company is excluded from being eligible if, on the filing date, it is a project company of a project which—

- (a) is a public-private partnership project (see paragraph 16), and
- (b) includes step-in rights (see paragraph 17).

(2) For the purposes of this paragraph a company is a “project company” of a project if any of the following applies—

- (a) it holds property for the purpose of the project;
- (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project;
- (c) it is one of a number of companies which together carry out the project;
- (d) it has the purpose of supplying finance to enable the project to be carried out;
- (e) it is the holding company of a company within any of paragraphs (a) to (d).

(3) But a company is not a “project company” of a project if—

- (a) it performs a function within sub-paragraph (2)(a) to (d) or is within sub-paragraph (2)(e), but
- (b) it also performs a function which is not—
  - (i) within sub-paragraph (2)(a) to (d),
  - (ii) related to a function within sub-paragraph (2)(a) to (d), or
  - (iii) related to the project.

(4) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

**16.—(1)** For the purposes of paragraph 15 “public-private partnership project” means a project—

- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
- (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(2) In sub-paragraph (1) “public body” means—

- (a) a body which exercises public functions,
- (b) a body specified for the purposes of this paragraph by the Department, or

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- (c) a body within a class specified for the purposes of this paragraph by the Department.
- (3) In sub-paragraph (1)(a) “resources” includes—
  - (a) funds (including payment for the provision of services or facilities);
  - (b) assets;
  - (c) professional skill;
  - (d) the grant of a concession or franchise;
  - (e) any other commercial resource.
- (4) A specification under sub-paragraph (2) may be—
  - (a) general, or
  - (b) for the purpose of the application of paragraph 15 to a specified case.

**17.—**(1) For the purposes of paragraph 15 a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
- (b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

#### *Overseas companies with corresponding functions*

**18** A company is excluded from being eligible if its registered office or head office is outside the United Kingdom and—

- (a) its functions correspond to those of a company mentioned in any of the previous paragraphs of this Schedule apart from paragraph 2 and, if it were a company registered under the Companies Act 2006 in Northern Ireland, it would be excluded from being eligible by that paragraph, or
- (b) it has entered into a transaction or done anything else that, if done in Northern Ireland by a company registered under the Companies Act 2006 in Northern Ireland, would result in the company being excluded by any of the previous paragraphs of this Schedule apart from paragraph 2.

#### *Interpretation of Schedule*

**19.—**(1) This paragraph applies for the purposes of this Schedule.

(2) “Agreement” includes any agreement or undertaking effected by—

- (a) contract,
- (b) deed, or
- (c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction.

(3) “The filing date” means the date on which documents are filed with the High Court under Article 13B, 13BA or 13BB.

(4) “Party” to an arrangement includes a party to an agreement which—

- (a) forms part of the arrangement,
- (b) provides for the raising of finance as part of the arrangement, or

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(c) is necessary for the purposes of implementing the arrangement.

*Power to amend Schedule*

**20.—**(1) Regulations may amend this Schedule, apart from paragraph 2, so as to alter the circumstances in which a company is “eligible” for the purposes of this Part.

(2) Regulations may not be made under this paragraph unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.]



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