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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Bank Recovery and Resolution Order 2014**

**Termination rights, etc**

**62.** After section 48Y (inserted by Article 61) insert—

*“Termination rights etc*

**Termination rights etc**

**48Z.**—(1) In this section—

“crisis management measure” has the meaning given in Article 2.1(102) of the recovery and resolution directive, and accordingly in relation to the United Kingdom means—

- (a) the exercise of a stabilisation power in relation to the bank by the Bank of England or the Treasury,
- (b) the appointment of a resolution administrator under section 62B,
- (c) the recognition by the Bank of England of third-country resolution action (or part of such action) in accordance with Chapter 5 of this Part, or
- (d) the exercise by the Bank of a stabilisation power by virtue of section 89I(3) (exercise of powers in support of third-country resolution action);

“crisis prevention measure” has the meaning given in Article 2.1(101) of the recovery and resolution directive, and accordingly in relation to the United Kingdom means—

- (a) the imposition by the PRA or the FCA of a requirement to take relevant measures described in Article 6(6) of the resolution and recovery directive,
- (b) the imposition by the Bank of England of a requirement to take measures to remove impediments to resolvability under Article 17 or 18 of the recovery and resolution directive,
- (c) the imposition by the FCA or the PRA of a requirement to take action described in Article 27 of the recovery and resolution directive, or
- (d) the making of a mandatory reduction instrument by the Bank of England under section 6B;

“default event provision” means a Type 1 or Type 2 default event provision (see subsections (2) and (3));

“group” has the meaning given by section 474 of the Companies Act 2006<sup>(1)</sup>;

“Part 1 instrument” means—

- (a) a mandatory reduction instrument,
- (b) a share transfer instrument,

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(1) 2006 c.46. Section 474 has been amended, but the amendments are not relevant to this Order.

- (c) a property transfer instrument, or
- (d) a resolution instrument.

“recognised third-country resolution action” means third-country resolution action, or a part of such action, recognised by the Bank of England in an instrument under section 89H(2)(2);

“third-country institution” has the meaning given by Article 2.1(86) of the recovery and resolution directive;

“third-country parent undertaking” has the meaning given by Article 2.1(87) of that directive.

(2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises—

- (a) the agreement is terminated, modified or replaced,
- (b) rights or duties under the agreement are terminated, modified or replaced,
- (c) a right accrues to terminate, modify or replace the agreement,
- (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
- (e) a sum becomes payable or ceases to be payable,
- (f) delivery of anything becomes due or ceases to be due,
- (g) a right to claim a payment or delivery accrues, changes or lapses,
- (h) any other right accrues, changes or lapses, or
- (i) an interest is created, changes or lapses.

(3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement—

- (a) takes effect only if a specified event occurs or does not occur,
- (b) takes effect only if a specified situation arises or does not arise,
- (c) has effect only for so long as a specified event does not occur,
- (d) has effect only while a specified situation lasts,
- (e) applies differently if a specified event occurs,
- (f) applies differently if a specified situation arises, or
- (g) applies differently while a specified situation lasts.

(4) For the purposes of subsections (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).

(5) Subsection (6) applies where a contract or other agreement—

- (a) is entered into by a bank, a third-country institution or a third-country parent undertaking,
- (b) is entered into by a subsidiary undertaking of a bank, a third-country institution or a third-country parent undertaking, whose obligations are guaranteed by a company which is a member of the same group as the bank, third-country institution or third-country parent undertaking, or
- (c) is entered into by an undertaking which is a member of the same group as a bank, third-country institution, or third country parent undertaking,

and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

(6) The following are to be disregarded in determining whether a default event provision applies—

- (a) a crisis prevention measure, crisis management measure or recognised third-country resolution action taken in relation to the bank, third country institution or a member of the same group as the bank or third country institution, and
- (b) the occurrence of any event directly linked to the application of such a measure or action.

(7) A Part 1 instrument or share transfer order may provide for subsection (8) or (9) to apply (but need not apply either) in circumstances where subsection (6) would not apply.

(8) If this subsection applies, the Part 1 instrument or share transfer order is to be disregarded in determining whether a default event provision applies.

(9) If this subsection applies, the Part 1 instrument or share transfer order is to be disregarded in determining whether a default event provision applies except so far as the instrument or order provides otherwise.

(10) In subsections (7), (8) and (9) a reference to the Part 1 instrument or share transfer order is a reference to—

- (a) the making of the instrument or order,
- (b) anything that is done by the instrument or order or is to be, or may be, done under or by virtue of the instrument or order, and
- (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument or order.

(11) Provision under subsection (7) may apply subsection (8) or (9)—

- (a) generally or only for specified purposes, cases or circumstances, or
- (b) differently for different purposes, cases or circumstances.

(12) A thing is not done by virtue of a Part 1 instrument or share transfer order for the purposes of subsection (10)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument or order.”