



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XII

#### PREFERENTIAL [<sup>F1</sup>AND NON-PREFERENTIAL] DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY

##### [<sup>F1</sup>387A. Financial institutions and their non-preferential debts

- (1) In this Act “relevant financial institution” means any of the following—
  - (a) a credit institution,
  - (b) an investment firm,
  - (c) a financial holding company,
  - (d) a mixed financial holding company,
  - (e) a financial institution which is—
    - (i) a subsidiary of an entity referred to in sub-paragraphs (a) to (d), and
    - (ii) covered by the supervision of that entity on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013, or
  - (f) a mixed-activity holding company.
- (2) The definitions in Article 4 of Regulation (EU) No. 575/2013 apply for the purposes of subsection (1).
- (3) In this Act, in relation to a relevant financial institution—
  - (a) “ordinary non-preferential debts” means non-preferential debts which are neither secondary non-preferential debts nor tertiary non-preferential debts;
  - (b) “secondary non-preferential debts” means non-preferential debts issued under an instrument where—
    - (i) the original contractual maturity of the instrument is of at least one year,
    - (ii) the instrument is not a derivative and contains no embedded derivative, and

*Status: Point in time view as at 31/12/2020. This version of this provision has been superseded.*

*Changes to legislation: Insolvency Act 1986, Section 387A is up to date with all changes known to be in force on or before 08 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (iii) the relevant contractual documentation and where applicable the prospectus related to the issue of the debts explain the priority of the debts under this Act, and
- (c) “tertiary non-preferential debts” means all subordinated debts, including (but not limited to) debts under Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).
- (4) In subsection (3)(b), “derivative” has the same meaning as in Article 2(5) of Regulation (EU) No 648/2012.
- (5) For the purposes of subsection (3)(b)(ii) an instrument does not contain an embedded derivative merely because—
- (a) it provides for a variable interest rate derived from a broadly used reference rate, or
  - (b) it is not denominated in the domestic currency of the person issuing the debt (provided that the principal, repayment and interest are denominated in the same currency).]

#### **Textual Amendments**

- F1** S. 387A inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **11** (with art. 3)

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

- C1** S. 387A applied (with modifications) (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), **arts. 1(2), 14(2)** (with art. 3)
- C2** S. 387A modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(4), **113** (with reg. 108)

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