



Banking Act 1987

1987 CHAPTER 22

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

Information

38 Reports of large exposures

- (1) An authorised institution, other than one whose principal place of business is outside the United Kingdom, shall make a report to the Bank if—
 - (a) it has entered into a transaction or transactions relating to any one person as a result of which it is exposed to the risk of incurring losses in excess of 10 per cent of its available capital resources; or
 - (b) it proposes to enter into a transaction or transactions relating to any one person which, either alone or together with a previous transaction or previous transactions entered into by it in relation to that person, would result in its being exposed to the risk of incurring losses in excess of 25 per cent of those resources.
- (2) Subsection (1) above applies also where the transaction or transactions relate to different persons if they are connected in such a way that the financial soundness of any of them may affect the financial soundness of the other or others or the same factors may affect the financial soundness of both or all of them.
- (3) If an authorised institution to which subsection (1) above applies has one or more subsidiaries which are not authorised institutions the Bank may by notice in writing to that institution direct that that subsection shall apply to it as if the transactions and available capital resources of the subsidiary or subsidiaries, or such of them as are specified in the notice, were included in those of the institution.
- (4) The reports required to be made by an institution under subsection (1) above shall be made, in a case within paragraph (a) of that subsection, in respect of such period or periods and, in a case within paragraph (b) of that subsection, at such time before the

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transaction or transactions are entered into, as may be specified by notice in writing given to the institution by the Bank; and those reports shall be in such form and contain such particulars as the Bank may reasonably require.

- (5) For the purposes of this section a transaction entered into by an institution relates to a person if it is—
- (a) a transaction under which that person incurs an obligation to the institution or as a result of which he may incur such an obligation;
 - (b) a transaction under which the institution will incur, or as a result of which it may incur, an obligation in the event of that person defaulting on an obligation to a third party; or
 - (c) a transaction under which the institution acquires or incurs an obligation to acquire, or as a result of which it may incur an obligation to acquire, an asset the value of which depends wholly or mainly on that person performing his obligations or otherwise on his financial soundness;

and the risk of loss attributable to a transaction is, in a case within paragraph (a) or (b) above, the risk of the person concerned defaulting on the obligation there mentioned and, in a case within paragraph (c) above, the risk of the person concerned defaulting on the obligations there mentioned or of a deterioration in his financial soundness.

- (6) Any question whether an institution is or would be exposed to risk as mentioned in subsection (1) above (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Bank or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the extent to which any such amount is to be taken into account for the purposes of this section.
- (7) For the purposes of this section the available capital resources of an institution (or, in a case within subsection (3) above, of an institution and its relevant subsidiary or subsidiaries) and the value of those resources at any time shall be determined by the Bank and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Bank after consultation with the institution concerned and in accordance with principles published by the Bank.
- (8) The principles referred to in subsections (6) and (7) above may make different provision for different cases and those referred to in subsection (6) may, in particular, exclude from consideration, either wholly or in part, risks resulting from transactions of a particular description or entered into in particular circumstances or with persons of particular descriptions.
- (9) An institution which fails to make a report as required by this section shall be guilty of an offence; but where an institution shows that at the time when the report was required to be made it did not know that the facts were such as to require the making of the report it shall not be guilty of an offence by reason of its failure to make a report at that time but shall be guilty of an offence unless it makes the report within seven days of becoming aware of those facts.
- (10) An institution guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (11) The Treasury may after consultation with the Bank by order—

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- (a) amend subsection (1) above so as to substitute for either of the percentages for the time being specified in that subsection such other percentage as may be specified in the order;
- (b) make provision, whether by amending subsection (5) above or otherwise, with respect to the transactions and risks to be taken into account for the purposes of this section,

but any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (12) For the avoidance of doubt it is hereby declared that references in this section to "one person" include references to a partnership.