

Status: Point in time view as at 26/03/2001.

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989,
Cross Heading: Recognised investment exchanges and clearing houses. (See end of Document for details)*

SCHEDULES

SCHEDULE 22

FINANCIAL MARKETS AND INSOLVENCY: PROVISIONS APPLYING TO PRE-COMMENCEMENT CASES

Recognised investment exchanges and clearing houses

- 2 (1) This Schedule applies to the following descriptions of contract connected with a recognised investment exchange or recognised clearing house.

The contracts are referred to in this Schedule as “market contracts”.

- (2) In relation to a recognised investment exchange, this Schedule applies to—
- (a) contracts entered into by a member or designated non-member of the exchange which are—
- (i) made on or otherwise subject to the rules of the exchange,
 - (ii) on terms expressed to be as traded on the exchange, or
 - (iii) on the same terms as those on which an equivalent contract would be made on the exchange; and
- (b) contracts subject to the rules of the exchange entered into by the exchange for the purposes of or in connection with the provision of clearing services.

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

- (3) In relation to a recognised clearing house, this Schedule applies to contracts subject to the rules of the clearing house entered into by the clearing house for the purposes of or in connection with the provision of clearing services for a recognised investment exchange.

This includes contracts effected under or in consequence of action taken by the clearing house under its default rules.

Commencement Information

II Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 3 The general law of insolvency has effect in relation to market contracts, and action taken under the rules of a recognised investment exchange or recognised clearing house with respect to such contracts, subject to the following provisions of this Schedule.

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Commencement Information

I2 Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 4 (1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration, or in the administration of an insolvent estate—
- (a) a market contract,
 - (b) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts,
 - (c) the default rules of a recognised investment exchange or recognised clearing house.
- (2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the ^{M1}Insolvency Act 1986 or the ^{M2}Bankruptcy (Scotland) Act 1985, shall not be exercised in such a way as to prevent or interfere with—
- (a) the settlement of a market contract in accordance with the rules of a recognised investment exchange or recognised clearing house,
 - (b) any action taken under the default rules of such an exchange or clearing house.
- (3) Nothing in the following provisions of this Schedule shall be construed as affecting the generality of sub-paragraph (2).
- (4) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or bankruptcy, or in Scotland claimed in a winding up or sequestration, until the completion of the default proceedings.

A debt or other liability which by virtue of this sub-paragraph may not be proved or claimed shall not be taken into account for the purposes of any set-off until the completion of the default proceedings.

Commencement Information

I3 Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

M1 1986 c. 45.

M2 1985 c. 66.

- 5 (1) A liquidator or trustee of a defaulter shall not—
- (a) declare or pay any dividend to the creditors, or
 - (b) return any capital to contributories,
- unless he has retained what he reasonably considers to be an adequate reserve in respect of any claims arising as a result of the default proceedings of the exchange or clearing house concerned.

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- (2) Nothing in section 11(3), 130 or 285 of the Insolvency Act 1986 (which restrict the taking of certain legal proceedings and other steps), and nothing in the Bankruptcy (Scotland) Act 1985, shall affect any action taken by an exchange or clearing house for the purpose of its default proceedings.

Commencement Information

I4 Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 6 (1) The following provisions apply with respect to the net sum certified by a recognised investment exchange or recognised clearing house, upon the completion of proceedings under its default rules, to be payable by or to a defaulter.
- (2) If, in England and Wales, a bankruptcy or winding up order has been made, or a resolution for voluntary winding up has been passed, the debt—
- (a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder, and
 - (b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act 1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of a winding up,
- in the same way as a debt due before the commencement of the bankruptcy or winding up.
- (3) If, in Scotland, an award of sequestration or a winding-up order has been made, or a resolution for voluntary winding up has been passed, the debt—
- (a) may be claimed in the sequestration or winding up or, as the case may be, is payable to the relevant office-holder, and
 - (b) shall be taken into account for the purposes of any rule of law relating to compensation or set-off applicable in sequestration or winding up,
- in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the Bankruptcy (Scotland) Act 1985) or the commencement of the winding up.

Commencement Information

I5 Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

- 7 (1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to—
- (a) a market contract, or
 - (b) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to market contracts.
- In the application of this sub-paragraph in Scotland, the reference to sections 178 and 315 shall be construed as a reference to any rule of law having the like effect as those sections.

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- (2) Sections 127 and 284 of the ^{M3}Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition) do not apply to—
- (a) a market contract, or any disposition of property in pursuance of such a contract,
 - (b) the provision of margin in relation to market contracts,
 - (c) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to a market contract, or any disposition of property in pursuance of such a contract, or
 - (d) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.
- (3) However, if a person enters into a market contract knowing that a petition has been presented for the winding up or bankruptcy of the other party to the contract, the value of any profit or benefit to him arising from the contract is recoverable from him by the relevant office-holder unless the court directs otherwise.
- (4) Any sum recoverable by virtue of sub-paragraph (3) has the same priority, in the event of the insolvency of the person from whom it is due, as if it were secured by a fixed charge.

Commencement Information

I6 Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

M3 1986 c. 45.

- 8 (1) No order shall be made in relation to a market contract under—
- (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an under-value),
 - (b) section 239 or 340 of that Act (preferences), or
 - (c) section 423 of that Act (transactions defrauding creditors),
- unless the court is satisfied that the person in favour of whom the contract was made knew at the time he entered into it that it was at an under-value (within the meaning of the relevant provision) or, as the case may be, that a preference was being given.
- (2) As respects Scotland, no decree shall be granted in relation to a market contract—
- (a) under section 34 or 36 of the ^{M4}Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences), or
 - (b) at common law,
- unless the court is satisfied that the person with whom the contract was made knew at the time he entered into it that it was challengeable under any of the provisions mentioned in paragraph (a) or at common law.
- (3) Sub-paragraphs (1) and (2) apply in relation to—
- (a) a disposition of property in pursuance of a market contract,
 - (b) the provision of margin in relation to market contracts,

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- (c) a contract effected by a recognised investment exchange or recognised clearing house for the purpose of realising property provided as margin, or
 - (d) a disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin,
- as they apply in relation to the making of a market contract.

Commencement Information

I7 Sch. 22 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

M4 [1985 c.66.](#)

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