



Companies Act 1989

1989 CHAPTER 40

PART VII

FINANCIAL MARKETS AND INSOLVENCY

[^{F1}Recognised bodies]

158 Modifications of the law of insolvency.

[^{F1}(1) The general law of insolvency has effect in relation to—

- (a) market contracts,
- (b) action taken under the rules of [^{F2}a recognised body other than a recognised central counterparty], with respect to market contracts,
- (c) action taken under the rules of a recognised central counterparty to transfer clearing member client contracts, or settle clearing member client contracts or clearing member house contracts, in accordance with the default rules of the recognised central counterparty,
- (d) where clearing member client contracts transferred in accordance with the default rules of a recognised central counterparty were entered into by the clearing member [^{F3}or client] as a principal, action taken to transfer ^{F4}... client trades, or groups of client trades, corresponding to those clearing member client contracts,
- (e) action taken to transfer qualifying collateral arrangements in conjunction with a transfer of clearing member client contracts as mentioned in paragraph (c) or a transfer of client trades as mentioned in paragraph (d), and
- (f) qualifying property transfers,

subject to the provisions of sections 159 to 165.]

(2) So far as those provisions relate to insolvency proceedings in respect of a person other than a defaulter, they apply in relation to—

- [^{F5}(a) proceedings in respect of a recognised investment exchange or a member or designated non-member of a recognised investment exchange,

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- (aa) proceedings in respect of a recognised clearing house or a member of a recognised clearing house, ^{F6}...
- [^{F7}(ab) proceedings in respect of a recognised CSD or a member of a recognised CSD, and]
- (b) proceedings in respect of a party to a market contract [^{F8}other than a client trade which are] begun after [^{F9}a recognised body] has taken action under its default rules in relation to a person party to the contract as principal, but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts fall to be dealt with in the proceedings.
- (3) The reference in subsection (2)(b) to the beginning of insolvency proceedings is to—
- (a) [^{F10}the making of a bankruptcy application or] the presentation of a bankruptcy petition or a petition for sequestration of a person's estate, or
- [^{F11}(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up,]
- (c) the appointment of an administrative receiver.
- [^{F12}(3A) In subsection (3)(b) the reference to an application for an administration order shall be taken to include a reference to—
- (a) in a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and
- (b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the court, the appointment of the administrator.]
- (4) The Secretary of State may make further provision by regulations modifying the law of insolvency in relation to the matters mentioned in [^{F13}paragraphs (a) to (d) of] subsection (1).
- (5) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

Textual Amendments

- F1** S. 158(1) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **4(5)(a)** (with regs. 52-58)
- F2** Words in s. 158(1)(b) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(5)(a)** (with regs. 7(4), 9(1))
- F3** Words in s. 158(1)(d) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(4)(a)**
- F4** Word in s. 158(1)(d) omitted (26.8.2013) by virtue of [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(4)(b)**
- F5** S. 158(2)(a)(aa) substituted for s. 158(2)(a) (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(4)(a)** (with reg. 1(2)(3))

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- F6** Word in s. 158(2)(aa) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(5)(b)(i)** (with regs. 7(4), 9(1))
- F7** S. 158(2)(ab) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(5)(b)(ii)** (with regs. 7(4), 9(1))
- F8** Words in s. 158(2)(b) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(5)(b)** (with regs. 52-58)
- F9** Words in s. 158(2)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(5)(b)(iii)** (with regs. 7(4), 9(1))
- F10** Words in s. 158(3)(a) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(3)**
- F11** S. 158(3)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 44(a) (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F12** S. 158(3A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 44(b) (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F13** Words in s. 158(4) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(5)(c)** (with regs. 52-58)

Modifications etc. (not altering text)

- C1** S. 158(4)(5): certain functions made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, **Sch. 2 para. 7** (with art. 6)

Commencement Information

- I1** S. 158 wholly in force; s. 158(4)(5) in force for certain purposes at 25.3.1991 and wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, **art. 2(2)**; 1991/878, art. 2, Sch.

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