



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

##### *Voluntary winding up*

#### **365 [F<sup>1</sup>Powers of FCA and PRA] to participate in proceedings.**

- (1) This section applies in relation to a company which—
  - (a) is being wound up voluntarily;
  - (b) is an authorised person [F<sup>2</sup>or recognised investment exchange]; and
  - (c) is not an insurer effecting or carrying out contracts of long-term insurance.
- (2) The [F<sup>3</sup>appropriate regulator] may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.
- (3) The [F<sup>3</sup>appropriate regulator] is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.
- (4) Any notice or other document required to be sent to a creditor of the company must also be sent to the [F<sup>3</sup>appropriate regulator].
- (5) A person appointed for the purpose by the [F<sup>3</sup>appropriate regulator] is entitled—
  - (a) to attend any meeting of creditors of the company summoned under any enactment;
  - (b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and
  - (c) to make representations as to any matter for decision at such a meeting.
- (6) The voluntary winding up of the company does not bar the right of the [F<sup>3</sup>appropriate regulator] to have it wound up by the court.
- (7) If, during the course of the winding up of the company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the

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[<sup>F3</sup>appropriate regulator] may apply to the court under [<sup>F4</sup>section 896 or 899 of the Companies Act 2006].

[<sup>F5</sup>(8) "The appropriate regulator" means—

- (a) for the purposes of subsections (2) to (4), (6) and (7)—
  - (i) where the company is a PRA-authorized person, each of the FCA and the PRA, and
  - (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
  - (i) where the company is a PRA-authorized person, the FCA or the PRA, and
  - (ii) in any other case, the FCA.]

#### Textual Amendments

- F1** Words in s. 365 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 12(5)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F2** Words in s. 365(1)(b) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 12(2)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F3** Words in s. 365(2)-(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 12(3)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F4** Words in s. 365(7) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 211(4)** (with arts. 6, 11, 12)
- F5** S. 365(8) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 12(4)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.

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

- C1** S. 365 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1, 6**
- C2** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

### 366 Insurers effecting or carrying out long-term contracts or insurance.

- (1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the [<sup>F6</sup>PRA].
- (2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the [<sup>F7</sup>PRA] as soon as practicable after he becomes aware of it.
- (3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[<sup>F8</sup>(4) A winding up resolution may not be passed—

- (a) as a written resolution (in accordance with Chapter 2 of Part 13 of the Companies Act 2006), or
  - (b) at a meeting called in accordance with section 307(4) to (6) or 337(2) of that Act (agreement of members to calling of meeting at short notice).]
- (5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with [<sup>F9</sup>section 30 of the Companies Act 2006] must be accompanied by

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- a certificate issued by the [<sup>F10</sup>PRA] stating that it consents to the voluntary winding up of the insurer.
- (6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.
- (7) If subsection (5) is not complied with, the resolution has no effect.
- (8) “Winding-up resolution” means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.
- [<sup>F11</sup>(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.
- (10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity—
- (a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and
  - (b) subsection (9) does not apply.]

#### Textual Amendments

- F6** Word in s. 366(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 13(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F7** Word in s. 366(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 13(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F8** S. 366(4) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 93(2)**
- F9** Words in s. 366(5) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 93(3)**
- F10** Word in s. 366(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 13(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F11** S. 366(9)(10) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 13(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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