



Banking Act 2009

2009 CHAPTER 1

PART 2

BANK INSOLVENCY

Introduction

90 Overview

- (1) This Part provides for a procedure to be known as bank insolvency.
- (2) The main features of bank insolvency are that—
 - (a) a bank enters the process by court order,
 - (b) the order appoints a bank liquidator,
 - (c) the bank liquidator aims to arrange for the bank's eligible depositors to have their accounts transferred or to receive their compensation from the FSCS,
 - (d) the bank liquidator then winds up the bank, and
 - (e) for those purposes, the bank liquidator has powers and duties of liquidators, as applied and modified by the provisions of this Part.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 90 to 93	Introduction
Sections 94 to 98	Bank insolvency order
Sections 99 to 105	Process of bank liquidation
Sections 106 to 112	Tenure of bank liquidator
Sections 113 to 116	Termination of process, &c.
Sections 117 to 122	Other processes

Status: This is the original version (as it was originally enacted).

<i>Sections</i>	<i>Topic</i>
Sections 123 to 135	Miscellaneous

91 Interpretation: “bank”

- (1) In this Part “bank” means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22).
- (2) But “bank” does not include—
 - (a) a building society within the meaning of section 119 of the Building Societies Act 1986,
 - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
 - (c) any other class of institution excluded by an order made by the Treasury.
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) An order under subsection (2)(c)—
 - (a) shall be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) Section 130 makes provision for the application of this Part to building societies.
- (6) Section 131 makes provision for the application of this Part to credit unions.

92 Interpretation: “the court”

In this Part “the court” means—

- (a) in England and Wales, the High Court,
- (b) in Scotland, the Court of Session, and
- (c) in Northern Ireland, the High Court.

93 Interpretation: other expressions

- (1) In this Part “the FSA” means the Financial Services Authority.
- (2) In this Part a reference to “the FSCS” is a reference to—
 - (a) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000), or
 - (b) where appropriate, the scheme manager of that Scheme.
- (3) In this Part “eligible depositors” means depositors who are eligible for compensation under the FSCS.
- (4) For the purposes of a reference in this Part to inability to pay debts—
 - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and

(b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies;
and

for the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.

- (5) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (6) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (7) A reference in this Part to action includes a reference to inaction.
- (8) The expression “fair” is used in this Part as a shorter modern equivalent of the expression “just and equitable” (and is not therefore intended to exclude the application of any judicial or other practice relating to the construction and application of that expression).