



# Banking Act 2009

## 2009 CHAPTER 1

### PART 2

#### BANK INSOLVENCY

##### *Other processes*

#### 117 Bank insolvency as alternative order

- (1) On a petition for a winding up order or an application for an administration order in respect of a bank the court may, instead, make a bank insolvency order.
- (2) A bank insolvency order may be made under subsection (1) only—
  - (a) on the application of the [<sup>F1</sup>PRA] made with the consent of the Bank of England [<sup>F2</sup>and the FCA], or
  - (b) on the application of the Bank of England.

#### Textual Amendments

- F1** Word in s. 117(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 43\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F2** Words in s. 117(2)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 43\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

- I1** S. 117 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

#### 118 Voluntary winding-up

A resolution for voluntary winding up of a bank under section 84 of the Insolvency Act 1986 shall have no effect without the prior approval of the court.

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#### Commencement Information

**I2** S. 118 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

### 119 Exclusion of other procedures

- (1) The following paragraphs of Schedule B1 to the Insolvency Act 1986 (administration) apply to a bank insolvency order as to an administration order.
- (2) Those paragraphs are—
  - (a) paragraph 40 (dismissal of pending winding-up petition), and
  - (b) paragraph 42 (moratorium on insolvency proceedings).
- (3) For that purpose—
  - (a) a reference to an administration order is a reference to a bank insolvency order,
  - (b) a reference to a company being in administration is a reference to a bank being in bank insolvency, and
  - (c) a reference to an administrator is a reference to a bank liquidator.

#### Commencement Information

**I3** S. 119 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

### 120 Notice to [<sup>F3</sup>PRA] of preliminary steps

- (1) An application for an administration order in respect of a bank may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a bank may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a bank may not be made unless the conditions below are satisfied.
- (4) An administrator of a bank may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the [<sup>F4</sup>PRA] has been notified—
  - (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the bank, that a resolution for voluntary winding up may be made, or
  - (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed [<sup>F5</sup>(in Scotland, lodged)] with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—

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- (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
  - (b) both—
    - (i) the [F4PRA] has informed the person who gave the notice that it does not intend to apply for a bank insolvency order, and
    - (ii) the Bank of England has informed the person who gave the notice that it does not intend to apply for a bank insolvency order or to exercise a stabilisation power under Part 1 [F6](and Condition 5 has been met, if applicable)].
- (8) Condition 4 is that no application for a bank insolvency order is pending.
- [F7(8A) Condition 5—
- (a) applies only if a resolution instrument has been made under section 12A with respect to the bank in the 3 months ending with the date on which the PRA receives the notification under Condition 1, and
  - (b) is that the Bank of England has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates going ahead.]
- (9) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a bank's creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (10) Where the [F4PRA] receives notice under Condition 1—
- (a) the [F4PRA] shall inform the Bank of England [F8and the FCA],
  - (b) the [F4PRA] shall inform the person who gave the notice, within the period in Condition 3(a), whether it intends to apply for a bank insolvency order, F9 ...
  - (c) if the Bank of England decides to apply for a bank insolvency order or to exercise a stabilisation power under Part 1, the Bank shall inform the person who gave the notice, within the period in Condition 3(a)[F10, and
  - (d) if Condition 5 applies, the Bank of England must, within the period in Condition 3(a), inform the person who gave the notice whether or not it consents to the insolvency procedure to which the notice relates going ahead.]
- [F11(11) References in this section to the insolvency procedure to which the notice relates are to the procedure for the determination, resolution or appointment in question (see subsections (1) to (4)).]

#### Textual Amendments

- F3** Word in s. 120 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F4** Word in s. 120 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F5** Words in s. 120(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F6** Words in s. 120(7)(b)(ii) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(a\)](#); [S.I. 2014/3160, art. 2\(1\)\(b\)](#)
- F7** S. 120(8A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(b\)](#); [S.I. 2014/3160, art. 2\(1\)\(b\)](#)
- F8** Words in s. 120(10)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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- F9** Word in s. 120(10)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F10** S. 120(10)(d) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F11** S. 120(11) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(d\)](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I4** S. 120 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

## 121 Disqualification of directors

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act—
- a reference to liquidation includes a reference to bank insolvency,
  - a reference to winding up includes a reference to making or being subject to a bank insolvency order,
  - a reference to becoming insolvent includes a reference to becoming subject to a bank insolvency order, and
  - a reference to a liquidator includes a reference to a bank liquidator.
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank insolvency order, the responsible office-holder is the bank liquidator.
- (4) After section 21 of the Disqualification Act (interaction with Insolvency Act) insert—

### “21A Bank insolvency

Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.”

#### Commencement Information

- I5** S. 121 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

## 122 Application of insolvency law

- (1) The Secretary of State and the Treasury may by order made jointly—
- provide for an enactment about insolvency to apply to bank insolvency (with or without specified modifications);
  - amend, or modify the application of, an enactment about insolvency in consequence of this Part.
- (2) An order under subsection (1)—
- shall be made by statutory instrument, and
  - may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

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**Commencement Information**

- I6** S. 122 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)
- I7** S. 122 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

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