



# Banking Act 2009

## 2009 CHAPTER 1

### PART 2

#### BANK INSOLVENCY

##### *Termination of process, &c.*

#### **113 Company voluntary arrangement**

- (1) A bank liquidator may make a proposal in accordance with section 1 of the Insolvency Act 1986 (company voluntary arrangement).
- (2) Before making a proposal the bank liquidator—
  - (a) shall present a final report on the bank liquidation to the liquidation committee,
  - (b) shall send a copy of the report to—
    - (i) the FSA,
    - (ii) the FSCS,
    - (iii) the Bank of England,
    - (iv) the Treasury, and
    - (v) the registrar of companies, and
  - (c) shall make the report available to members, creditors and contributories on request.
- (3) A proposal may be made only with the consent of the liquidation committee.
- (4) The liquidation committee may consent only if—
  - (a) it has passed a full payment resolution, and
  - (b) the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositor still eligible for compensation under the scheme will be dealt with in accordance with section 99(2)(a) or (b).
- (5) The bank liquidator must be the nominee (see section 1(2) of the 1986 Act).

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*Status: This is the original version (as it was originally enacted).*

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- (6) Part 1 of the 1986 Act shall apply to a proposal made by a bank liquidator, with the following modifications.
- (7) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (8) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank insolvency order.
- (9) On the termination of a company voluntary arrangement the bank liquidator may apply to the court to lift the suspension of the bank insolvency order.

#### **114 Administration**

- (1) A bank liquidator who thinks that administration would achieve a better result for the bank's creditors as a whole than bank insolvency may apply to the court for an administration order (under paragraph 38 of Schedule B1 to the Insolvency Act 1986).
- (2) An application may be made only if the following conditions are satisfied.
- (3) Condition 1 is that the liquidation committee has passed a full payment resolution.
- (4) Condition 2 is that the liquidation committee has resolved that moving to administration might enable the rescue of the bank as a going concern.
- (5) Condition 3 is that the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositors still eligible for compensation under the scheme will receive their payments or have their accounts transferred during administration.

#### **115 Dissolution**

- (1) A bank liquidator who thinks that the winding up of the bank is for practical purposes complete shall summon a final meeting of the liquidation committee.
- (2) The bank liquidator—
  - (a) shall present a final report on the bank insolvency to the meeting,
  - (b) shall send a copy of the report to—
    - (i) the FSA,
    - (ii) the FSCS,
    - (iii) the Bank of England,
    - (iv) the Treasury, and
    - (v) the registrar of companies, and
  - (c) shall make the report available to members, creditors and contributories on request.
- (3) At the meeting the liquidation committee shall—
  - (a) consider the report, and
  - (b) decide whether to release the bank liquidator.
- (4) If the liquidation committee decides to release the bank liquidator, the bank liquidator—
  - (a) shall notify the court and the registrar of companies, and
  - (b) vacates office, and has release, when the court is notified.

- (5) If the liquidation committee decides not to release the bank liquidator, the bank liquidator may apply to the Secretary of State for release; if the application is granted, the bank liquidator—
  - (a) vacates office when the application is granted, and
  - (b) has release from a time determined by the Secretary of State.
- (6) In the case of a bank liquidator in Scotland, a reference in subsection (5) to the Secretary of State is a reference to the Accountant of Court.
- (7) On receipt of a notice under subsection (4)(a) the registrar of companies shall register it.
- (8) At the end of the period of 3 months beginning with the day of the registration of the notice, the bank is dissolved (subject to deferral under section 116).

## **116 Dissolution: supplemental**

- (1) The Secretary of State may by direction defer the date of dissolution under section 115, on the application of a person who appears to the Secretary of State to be interested.
- (2) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (1).
- (3) Subsection (1) does not apply where the bank insolvency order was made by the court in Scotland; but the court may by direction defer the date of dissolution on an application by a person appearing to the court to have an interest.
- (4) A person who obtains deferral under subsection (1) or (3) shall, within 7 days after the giving of the deferral direction, deliver a copy of the direction to the registrar of companies for registration.
- (5) A person who without reasonable excuse fails to comply with subsection (4) is liable to a fine and, for continued contravention, to a daily default fine, in each case of the same amount as for a contravention of section 205(6) of the Insolvency Act 1986 (dissolution).
- (6) The bank liquidator may give the notice summoning the final meeting under section 115 above at the same time as giving notice of any final distribution of the bank's property; but, if summoned for an earlier date the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the bank liquidator is able to report to the meeting that the winding up of the bank is for practical purposes complete.
- (7) A bank liquidator must retain sufficient sums to cover the expenses of the final meeting under section 115 above.