



Banking Act 2009

2009 CHAPTER 1

PART 1

SPECIAL RESOLUTION REGIME

Transfer of property

38 Termination rights, &c.

- (1) In this section “default event provision” means a Type 1 or Type 2 default event provision as defined in subsections (2) and (3).
- (2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises—
 - (a) the agreement is terminated, modified or replaced,
 - (b) rights or duties under the agreement are terminated, modified or replaced,
 - (c) a right accrues to terminate, modify or replace the agreement,
 - (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
 - (e) a sum becomes payable or ceases to be payable,
 - (f) delivery of anything becomes due or ceases to be due,
 - (g) a right to claim a payment or delivery accrues, changes or lapses,
 - (h) any other right accrues, changes or lapses, or
 - (i) an interest is created, changes or lapses.
- (3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement—
 - (a) takes effect only if a specified event occurs or does not occur,
 - (b) takes effect only if a specified situation arises or does not arise,
 - (c) has effect only for so long as a specified event does not occur,
 - (d) has effect only while a specified situation lasts,
 - (e) applies differently if a specified event occurs,

Status: Point in time view as at 21/02/2009. This version of this provision has been superseded.

Changes to legislation: Banking Act 2009, Section 38 is up to date with all changes known to be in force on or before 21 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (f) applies differently if a specified situation arises, or
 - (g) applies differently while a specified situation lasts.
- (4) For the purposes of subsections (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).
- (5) A property transfer instrument may provide for subsection (6) or (7) to apply (but need not apply either).
- (6) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies.
- (7) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies except in so far as the instrument provides otherwise.
- (8) In subsections (6) and (7) a reference to the property transfer instrument is a reference to—
- (a) the making of the instrument,
 - (b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, and
 - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument.
- (9) Provision under subsection (5) may apply subsection (6) or (7)—
- (a) generally or only for specified purposes, cases or circumstances;
 - (b) differently for different purposes, cases or circumstances.
- (10) A thing is not done by virtue of an instrument for the purposes of subsection (8)
- (b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been transferred by the instrument.

Commencement Information

II S. 38 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

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