
Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, Paragraph 92. (See end of Document for details)

SCHEDULES

SCHEDULE 11

CENTRAL COUNTERPARTIES

PART 5

SPECIAL RESOLUTION ACTION

General continuity obligation: share transfers

- 92 (1) In this paragraph and paragraph 93—
- (a) “transferred CCP” means a CCP all or part of the ownership of which has been transferred in accordance with paragraph 27(2), 29(3), or 30(2),
 - (b) “former group company” means anything which was a group undertaking in relation to the transferred CCP immediately before the transfer (whether or not it is also a group undertaking in relation to the transferred CCP immediately after the transfer),
 - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006.
- (2) In this paragraph a reference to insolvency includes a reference to liquidation, administration, receivership, composition with creditors and a scheme of arrangement.
- (3) Each former group company must provide such services and facilities as are required to enable the transferred CCP to operate effectively.
- (4) The duty under sub-paragraph (3) (the “continuity obligation”) may be enforced as if created by contract between the transferred CCP and the former group company.
- (5) The continuity obligation continues to apply despite the former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.
- (6) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (7) But if the services and facilities provided in pursuance of the continuity obligation were provided to the transferred CCP, under an agreement with that CCP, before the share transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and sub-paragraph (6) does not apply).
- (8) The continuity obligation is not limited to the provision of services or facilities directly to the transferred CCP.

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- (9) The Bank may by notice to a former group company state that in the Bank's opinion—
- (a) specified activities are required to be undertaken in accordance with the continuity obligation;
 - (b) activities are required to be undertaken in accordance with the continuity obligation on specified terms.
- (10) A notice under sub-paragraph (9) is to be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.
- (11) The Bank may act under or by virtue of sub-paragraph (9) only with the consent of the Treasury.

Commencement Information

I1 Sch. 11 para. 92 not in force at Royal Assent, see **s. 86(3)**

I2 Sch. 11 para. 92 in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**

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