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*Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, PART 2. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 12

#### WRITE-DOWN ORDERS

#### PART 2

##### THE MANAGER OF A WRITE-DOWN ORDER

2 After Schedule 19 to FSMA 2000 (competition information), insert—

“SCHEDULE  
19A

Section 377G

##### THE MANAGER OF A WRITE-DOWN ORDER

#### Application of Schedule

- 1 (1) This Schedule applies where—
  - (a) a write-down order has been made under section 377A in relation to an insurer, and
  - (b) one or more persons have been appointed under section 377G to act as the manager of the order.
- (2) Where only one person acts as the manager, a reference in this Schedule to “the manager” is to that person.
- (3) Where two or more persons act jointly as the manager—
  - (a) a reference in this Schedule to the manager is a reference to those persons acting jointly;
  - (b) where an offence of omission is committed by the manager, each of the persons appointed to act jointly—
    - (i) commits the offence, and
    - (ii) may be proceeded against and punished individually.
- (4) Where persons act jointly in respect of only some of the functions of the manager, sub-paragraph (3) applies only in relation to those functions.
- (5) Where two or more persons act concurrently as the manager, a reference in this Schedule to the manager is a reference to any of the persons appointed (or any combination of them).
- (6) In this Schedule, “creditor” includes a contingent or prospective creditor.

#### Status of the manager

- 2 The manager is an officer of the court.

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### **Monitoring the insurer's affairs**

- 3
- (1) The manager must monitor the insurer's affairs for the purpose of forming a view as to whether—
    - (a) it remains the case that the write-down order is reasonably likely to lead to a better outcome for the insurer's policyholders and other creditors (taken as a whole) than if the write-down order were not in effect, or
    - (b) that will remain the case, or once again be the case, if the directors of the insurer were to take certain action or refrain from taking certain action.
  - (2) If the manager forms the view mentioned in sub-paragraph (1)(b), the manager may make such recommendations to the directors of the insurer as the manager thinks appropriate.
  - (3) In forming a view mentioned in sub-paragraph (1), the manager is entitled to rely on information provided by the insurer, unless the manager has reason to doubt its accuracy.
  - (4) If directed to do so by the FCA or the PRA, the manager must provide a report to that regulator on such matters relating to the insurer's affairs, and at such intervals, as that regulator may specify.

### **Application by manager to revoke or vary a write-down order**

- 4
- (1) This paragraph applies if the manager forms the view that it is in the interests of the insurer's policyholders and other creditors (taken as a whole) for the write-down order to be—
    - (a) revoked, or
    - (b) varied in one or more respects.
  - (2) The manager must apply to the court for such orders (whether under section 377I or otherwise) as the manager thinks likely to achieve the best outcome for the insurer's policyholders and other creditors (taken as a whole).
  - (3) In forming the view mentioned in sub-paragraph (1), the manager may have regard, among other things—
    - (a) to whether recommendations under paragraph 3(2) have been made (and if so, whether they have been acted upon);
    - (b) to whether recommendations, or further recommendations, under paragraph 3(2) could be made (and if so, the likelihood that they will be acted upon).

### **Provision of information and assistance to the manager**

- 5
- (1) The manager may require a relevant person to provide such information or assistance as the manager may reasonably require for the purpose of carrying out the manager's functions.
  - (2) Each of the following is a "relevant person" for these purposes—

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- (a) a director of the insurer, or of a body corporate in the same group as the insurer;
  - (b) an employee of the insurer, or of a body corporate in the same group as the insurer;
  - (c) a person providing a service to the insurer, or to a body corporate in the same group as the insurer;
  - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c).
- (3) A relevant person must comply with a requirement under this paragraph to provide information as soon as is practicable.
- (4) The obligation imposed by sub-paragraph (3) is enforceable, on the application of the manager—
- (a) by an injunction, or
  - (b) in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

#### **Application by manager for directions**

- 6 The manager may apply to the court for directions about the carrying out of the manager's functions.

#### **Challenges to the manager's actions**

- 7 (1) Any of the following persons may apply to the court on the ground that an act, omission or decision of the manager has unfairly harmed the interests of the applicant—
- (a) a director of the insurer;
  - (b) a shareholder of the insurer;
  - (c) a policyholder or other creditor of the insurer;
  - (d) any other person affected by the write-down order.
- (2) Any of the following persons may apply to the court on the ground that an act, omission or decision of the manager is not in the interests of the insurer's policyholders and other creditors (taken as a whole)—
- (a) the FCA;
  - (b) the PRA;
  - (c) the scheme manager of the Financial Services Compensation Scheme (see section 212(1));
  - (d) a provisional liquidator of the insurer.
- (3) Before making an application under sub-paragraph (2)—
- (a) the FCA must consult the PRA;
  - (b) the PRA must consult the FCA;
  - (c) the scheme manager of the Financial Services Compensation Scheme must notify the FCA and the PRA.
- (4) On an application under this paragraph the court may—
- (a) confirm, reverse or modify any act or decision of the manager,
  - (b) give the manager directions, or

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- (c) make such other order as the court thinks appropriate (but may not, under this paragraph, order the manager to pay any compensation).
- (5) Where an application under this paragraph relates to a failure by the manager to apply to the court for the variation or termination of the write-down order, the court may treat the application as an application for an order under section 377I made by a person entitled to apply for an order under that section.”

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**Commencement Information**

**II** Sch. 12 para. 2 in force at 29.8.2023, see s. 86(2)(e)

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