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## STATUTORY INSTRUMENTS

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# 2014 No. 3348

## The Bank Recovery and Resolution (No. 2) Order 2014

### PART 1

#### Introductory provisions

##### Interpretation

2.—(1) In this Order, except where provision is made to the contrary—

“another EEA State” means an EEA State other than the United Kingdom;

“appropriate regulator”—

(a) in relation to an institution which is not part of a group subject to supervision on a consolidated basis in accordance with Article 111 of the capital requirements directive—

(i) if the institution is a PRA-authorised person, means the PRA;

(ii) if the institution is any other UK authorised person, means the FCA;

(b) in relation to a relevant group—

(i) where the PRA is the consolidating supervisor, means the PRA;

(ii) where the FCA is the consolidating supervisor, means the FCA;

(iii) where neither the PRA nor the FCA is the consolidating supervisor, means the PRA in relation to a PRA-authorised person and the FCA in relation to any other UK authorised person;

“the Bank” means the Bank of England [<sup>F1</sup>acting otherwise than in its capacity as the Prudential Regulation Authority];

“the capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervisions of credit institutions and investment firms, amending Directive [2002/87/EC](#) and repealing Directives [2006/48/EC](#) and [2006/49/EC](#)<sup>M1</sup>;

“the capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012<sup>M2</sup>;

“college”, in relation to a relevant group, except in Chapters 1, 2 and 3 of Part 16—

(a) means the resolution college<sup>M3</sup> established for that group by—

(i) the Bank under Chapter 2 of that Part; or

(ii) the resolution authority<sup>M4</sup> established in another EEA State in accordance with Article 88 of the recovery and resolution directive (resolution colleges); and

(b) includes an existing grouping or college used to facilitate the performance of the tasks which would otherwise be performed by a resolution college established for that group;

“competent authority”—

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- (a) for a participating member State within the meaning given by point (1) of Article 2 (definitions) of Council Regulation (EU) No. 1024/2013 of 15th October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions <sup>M5</sup>—
  - (i) in relation to tasks conferred by that Council Regulation on the European Central Bank, means the European Central Bank;
  - (ii) in relation to any other tasks carried out for prudential supervisory purposes or other purposes relating to the authorisation and supervision of institutions <sup>M6</sup>, has the same meaning as it has for other EEA States;
- (b) for any other EEA State, means a public authority or body officially recognised by national law which is empowered by national law to supervise institutions as part of the supervisory system in operation in the EEA State concerned;

“conditions for resolution”—

- (a) in relation to an institution authorised by the PRA or FCA, means the conditions for the exercise of stabilisation powers in section 7 of the Banking Act 2009 <sup>M7</sup> (general conditions for exercise of stabilisation powers);
- (b) in relation to an undertaking set up in the United Kingdom, other than an institution, means the conditions for the exercise of stabilisation powers in section 81B (groups: sale to commercial purchaser and transfer to bridge bank), section 81ZBA (transfer to asset management vehicle) or section 81BA (groups: bail-in option) of the Banking Act 2009 <sup>M8</sup>; and
- (c) in relation to an undertaking set up in any other EEA State, means the conditions referred to in Article 32.1 of the recovery and resolution directive (conditions for resolution);

“the consolidating supervisor” means the competent authority responsible for the exercise of supervision on the basis of the consolidated situation (within the meaning given by point (47) of Article 4.1 of the capital requirements regulation) of—

- (a) an EEA parent institution; or
- (b) institutions controlled <sup>M9</sup> by an EEA parent financial holding company or EEA parent mixed financial holding company;

“critical functions”—

- (a) in relation to an undertaking set up in the United Kingdom, has the meaning given in section 3 of the Banking Act 2009 <sup>M10</sup> (interpretation: other expressions); and
- (b) in relation to an undertaking set up in any other EEA State, has the meaning given by point (35) of Article 2.1 of the recovery and resolution directive (definitions);

“derivative contract” has the meaning given by point (5) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories <sup>M11</sup>;

“EBA” means the European Banking Authority established by the EBA Regulation;

“the EBA Regulation” means Regulation (EU) No.1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC <sup>M12</sup>;

“EEA parent financial holding company” means a parent financial holding company in an EEA State which is not a subsidiary of an institution set up in any EEA State or of another financial holding company or a mixed financial holding company set up in any EEA State;

“EEA parent institution” means a parent institution in an EEA State which is not a subsidiary of another institution set up in any EEA State or of a financial holding company or mixed financial holding company set up in any EEA State;

“EEA parent mixed financial holding company” means a parent mixed financial holding company in an EEA State which is not a subsidiary of an institution set up in any EEA State or of a financial holding company or another mixed financial holding company set up in any EEA State;

“EEA parent undertaking” means an EEA parent institution, EEA parent financial holding company or EEA parent mixed financial holding company

“eligible liabilities”—

- (a) in relation to an undertaking set up in the United Kingdom, has the meaning given in section 3(1) of the Banking Act 2009; and
- (b) in relation to an undertaking set up in any other EEA State, has the meaning given by point (71) of Article 2.1 of the recovery and resolution directive;

“the FCA” means the Financial Conduct Authority”;

“financial holding company” has the meaning given by point (20) of Article 4.1 of the capital requirements regulation;

“financial institution”, except in Part 18, has the meaning given by point (26) of Article 4.1 of the capital requirements regulation;

“Financial Policy Committee” means the Financial Policy Committee of the Bank established by section 9B of the Bank of England Act 1998 <sup>M13</sup>;

“FSMA” means the Financial Services and Markets Act 2000;

“group entity”, in relation to a relevant group, means the EEA parent undertaking or a group subsidiary;

“group recovery plan” means a document which provides for measures to be taken in relation to a relevant group to achieve the stabilisation of the group as a whole, or of any institution within the group, where the group or the institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or institution;

“group resolution plan”, in relation to a relevant group, means a document which makes provision for—

- (a) taking resolution action <sup>M14</sup> in respect of the group, whether at the level of the parent undertaking or of an institution within the group; or
- (b) co-ordinating the application of resolution tools and the exercise of resolution powers <sup>M15</sup> by resolution authorities in respect of group entities that meet the conditions for resolution;

“group subsidiary”, in relation to a relevant group, means a subsidiary within that group which is an institution, a financial institution, a financial holding company or a mixed financial holding company;

“insolvency proceedings” includes—

- (a) proceedings under the Insolvency Act 1986 <sup>M16</sup>; and
- (b) the procedure in Part 2 of the Banking Act 2009 (bank insolvency) and in Part 3 of that Act (bank administration);

“mixed activity holding company” has the meaning given by point (22) of Article 4.1 of the capital requirements regulation;

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“mixed financial holding company” has the meaning given by point (21) of Article 4.1 of the capital requirements regulation;

“own funds” has the meaning given by point (118) of Article 4.1 of the capital requirements regulation;

“parent financial holding company in an EEA State” means a financial holding company which is not itself a subsidiary of—

- (a) an institution set up in the same EEA State;
- (b) another financial holding company set up in the same EEA State; or
- (c) a mixed financial holding company set up in the same EEA State;

“parent institution in an EEA State” means an institution which—

- (a) has an institution or financial institution as a subsidiary, or holds a participation (within the meaning given by point (35) of Article 4.1 of the capital requirements regulation) in an institution or financial institution, and
- (b) is not itself a subsidiary of another institution set up in the same EEA State or a financial holding company or mixed financial holding company set up in the same EEA State;

“parent mixed financial holding company in an EEA State” means a mixed financial holding company which is not itself a subsidiary of—

- (a) an institution set up in the same EEA State;
- (b) another mixed financial holding company set up in the same EEA State; or
- (c) a financial holding company set up in the same EEA State;

“parent undertaking” has the meaning given by point (15)(a) of Article 4.1 of the capital requirements regulation;

“the PRA” means the Prudential Regulation Authority;

“PRA-authorized person” means a UK authorised person which is a PRA-authorized person within the meaning given by section 2B(5) of FSMA <sup>M17</sup> (the PRA's general objective);

“the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive [82/891/EEC](#), and Directives [2001/24/EC](#), [2002/47/EC](#), [2005/56/EC](#), [2007/36/EC](#), [2011/35/EU](#), [2012/30/EU](#) and [2013/36/EU](#), and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council <sup>M18</sup>;

“recovery plan” means a document which provides for measures to be taken by an institution authorised by the PRA or FCA which is not part of a group, following a significant deterioration of the financial position of the institution, in order to restore its financial position;

“relevant competent authority”, in relation to a relevant group, means a competent authority, other than the consolidating supervisor, which has authorised a group entity;

“relevant group” means the group <sup>M19</sup> constituted by an EEA parent undertaking and its subsidiaries;

“resolution objectives”, in relation to the application of resolution tools or the exercise of resolution powers—

- (a) means the objectives set out in Article 31.2 of the recovery and resolution directive (resolution objectives); and
- (b) in relation to the United Kingdom, includes the special resolution objectives set out in section 4 of the Banking Act 2009 <sup>M20</sup>;

“resolution plan” means a document which makes provision relating to the resolution action to be taken in the event that an institution or other person meets the conditions for resolution;

“resolution tools”—

- (a) means the sale of business tool, the bridge institution tool, the asset separation tool and the bail-in tool <sup>M21</sup> and any additional tool which—
  - (i) is conferred by an EEA State on a resolution authority;
  - (ii) is for use where an institution or other entity meets the conditions for resolution; and
  - (iii) meets the conditions in Article 37.9(a) and (b) of the recovery and resolution directive (general principles of resolution tools); and
- (b) in relation to the United Kingdom, except in article 4, includes the stabilisation options referred to in paragraphs (a), (b), (ba) and (c) of section 1(3) of the Banking Act 2009 <sup>M22</sup> (overview: special resolution regime);

“subsidiary” has the meaning given by point (16) of Article 4.1 of the capital requirements regulation;

“third country” means a State other than an EEA State; and

“UK authorised person” means an authorised person (within the meaning given in section 31 of FSMA <sup>M23</sup>) which is incorporated in, or formed under the law of, any part of the United Kingdom.

(2) Except where provision is made to the contrary, any expression used in this Order which is defined in Article 2.1 of the recovery and resolution directive and not defined in paragraph (1) has the meaning given in that Article.

(3) In this Order any reference, in relation to a company, undertaking, subsidiary or other entity, to the State in which the entity is set up is a reference to—

- (a) the State in which the entity is authorised by a competent authority or, if the State is a third country, by an authority which, in the country concerned, exercises any function equivalent to a function of a competent authority; or
- (b) if the entity is not authorised by such an authority, the State in which the entity is incorporated or under whose law (including the law of any part of that State) the entity is formed.

[<sup>F2</sup>(4) In this Order any reference to an EU regulation within the meaning of the European Union (Withdrawal) Act 2018 is to be read as a reference to the instrument as it had effect on the day on which [<sup>F3</sup>the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019] were made.]

#### Textual Amendments

- F1** Words in art. 2(1) inserted (1.3.2017) by [The Bank of England and Financial Services \(Consequential Amendments\) Regulations 2017 \(S.I. 2017/80\)](#), reg. 1, **Sch. para. 40**
- F2** Art. 2(4) inserted (21.12.2018) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(3), **Sch. 3 para. 1(29)**; (as amended by [The Securities Financing Transactions, Securitisation and Miscellaneous Amendments \(EU Exit\) Regulations 2020 \(S.I. 2020/1385\)](#), reg. 1(4), **Sch. para. 1(1)(2)(i)(k)(iii)**);
- F3** Words in art. 2(4) substituted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **12(2)**

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### **Marginal Citations**

- M1** OJ No. L 176, 27.6.2013, p. 338. For corrigenda see OJ No. L 208, 2.8.2013, p. 73.
- M2** OJ No. L 176, 27.6.2013, p. 1-137. For corrigenda see OJ No. L 208, 2.8.2013, p. 68 and OJ No. L 321, 30.11.2013, p. 6.
- M3** For the meaning of “resolution college” see the recovery and resolution directive, Article 2.1, point (46).
- M4** For the meaning of “resolution authority” see the recovery and resolution directive, Article 2.1, point (18).
- M5** OJ No. L 287, 29.10.2013, p. 63.
- M6** For the meaning of “institution” see the recovery and resolution directive, Article 2.1, point (23).
- M7** Section 7 was amended by the Financial Services Act 2012, Schedule 17, paragraphs 1 and 8, and by [S.I. 2014/3329](#).
- M8** Section 81B was inserted by the Financial Services Act 2012, section 100; and was amended by [S.I. 2014/3329](#). Section 81ZBA was inserted by [S.I. 2014/3329](#). Section 81BA was inserted by the [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [Schedule 2, paragraphs 1 and 7\(1\)](#); and was amended by [S.I. 2014/3329](#).
- M9** For the meaning of “controlled” (in the definition of “consolidating supervisor”) see the definition of “control” in point (37) of Article 4.1 of the capital requirements regulation.
- M10** Section 3 was amended by the Financial Services Act 2012, section 96(2) and Schedule 17, paragraphs 1 and 4, and by [S.I. 2014/3329](#).
- M11** OJ No. L 201, 27.7.2012, p. 1-59.
- M12** OJ No. L 331, 15.12.2010, p. 12.
- M13** [1998 c. 11](#). Section 9B was inserted by the Financial Services Act 2012, section 4(1).
- M14** For the meaning of “resolution action” see the recovery and resolution directive, Article 2.1, point (40).
- M15** For the meaning of “resolution power” see the recovery and resolution directive, Article 2.1, point (20).
- M16** [1986 c. 45](#).
- M17** Section 2B was substituted by the Financial Services Act 2012, section 6(1), which substituted Part 1A of FSMA.
- M18** OJ No. L 173, 12.6.2014, p. 190.
- M19** For the meaning of “group” see the recovery and resolution directive, Article 2.1, point (26).
- M20** Section 4 was amended by [S.I. 2014/3329](#).
- M21** For the meaning of these tools see the recovery and resolution directive, Article 2.1, points (58), (60), (55) and (57).
- M22** Section 1(3) was substituted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 12(1) and (3); and was amended by [S.I. 2014/3329](#). Paragraphs (a), (b), (ba) and (c) refer to four of the five stabilisation options, namely transfer to a private sector purchaser, transfer to a bridge bank, the bail-in option and transfer to an asset management vehicle (the fifth option is transfer to temporary public ownership referred to in paragraph (d)).
- M23** Section 31 was amended by the Financial Services Act 2012, section 11(1).

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**Changes to legislation:**

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