
STATUTORY INSTRUMENTS

2016 No. 1239

The Bank Recovery and Resolution Order 2016

PART 3

Resolution of UK branches of third-country institutions

Resolution of UK branches of third-country institutions

- 29.**—(1) The Banking Act 2009 is amended as follows.
- (2) In the Table in section 1(6) after the entry for sections 89H to 89J^{M1}, insert—

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| “Section 89JA | Resolution of UK branches of third-country institutions” |
|---------------|--|

- (3) In section 2, after subsection (9) insert—
- “(10) Section 89JA applies this Part to UK branches of third-country institutions with modifications.”.
- (4) Section 75^{M2} is amended as follows—
- (a) in subsection (5)—
- (i) at the end of paragraph (cb) omit “or”;
- (ii) after paragraph (cb) insert—
- “(cc) to third-country institutions,
(cd) to UK branches, or”;
- (b) after subsection (8), insert—
- “(9) For the purposes of this section—
- “third-country institution” has the meaning given by Article 2.1(86) of the recovery and resolution directive;
- “UK branch” means a branch located in the United Kingdom of a third-country institution authorised for the purposes of the Financial Services and Markets Act 2000 by the PRA or the FCA.”
- (5) In Part 1, after section 89J (third-country instruments: supplementary provision) insert—

“CHAPTER 6A

RESOLUTION OF UK BRANCHES OF THIRD-COUNTRY INSTITUTIONS

89JA Resolution of UK branches of third-country institutions

(1) The provisions of Chapters 1, 3 and 4 of this Part apply in relation to UK branches subject to the modifications specified in subsections (4) to (10) and in the Table in subsection (11).

(2) In this Chapter—

- (a) “UK branch” means a branch located in the United Kingdom of a third-country institution authorised for the purpose of the Financial Services and Markets Act 2000 by the PRA or the FCA,
- (b) references to the business of a UK branch are to—
 - (i) any rights and liabilities of the third-country institution arising as a result of the operations of the UK branch, and
 - (ii) any other property in the United Kingdom of the third-country institution,
- (c) “third-country institution” has the meaning given by Article 2.1(86) of the recovery and resolution directive, and a third-country institution is “FCA-regulated” if it does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000,
- (d) references to a third-country institution are to the third-country institution in respect of whose UK branch the Bank of England—
 - (i) is considering making a property transfer instrument, or
 - (ii) has made a property transfer instrument,
- (e) “immediate group” has the meaning given by section 421ZA ^{M3} of the Financial Services and Markets Act 2000 ^{M4}.

(3) For the purposes of subsection (2)(b) liabilities arising as a result of the operations of the UK branch include liabilities in respect of deposits—

- (a) which are held at the UK branch, or
- (b) in respect of which withdrawals may be made at the UK branch,

and “deposit” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ^{M5}, but ignoring the exclusions in article 6.

(4) For section 6E (pre-resolution valuation) ^{M6}, substitute—

(1) Before the Bank of England makes a property transfer instrument in respect of a UK branch, it must ensure that the business of the UK branch is valued.

(2) Unless subsection (3) applies, the Bank of England must arrange for the appointment of an independent valuer in accordance with section 62A ^{M7} to carry out a valuation for the purposes of subsection (1).

(3) Where the Bank of England considers that the urgency of the case makes it appropriate to make a property transfer instrument before a valuation can be carried out by a person appointed in accordance with subsection (2), the Bank may carry out a provisional valuation of the business of the UK branch for the purposes of subsection (1).

(4) The purpose of a valuation carried out pursuant to subsection (1) is to—

- (a) inform the decision as to—
 - (i) which stabilisation option should be employed,
 - (ii) what property, rights or liabilities (if any) are to be transferred by a property transfer instrument,
 - (iii) the value of any consideration to be paid to the third-country institution for any property, rights or liabilities so transferred, and
 - (iv) (where special bail-in provision is being made in the property transfer instrument) the extent to which any eligible liabilities should be modified or converted, and
 - (b) ensure that the full extent of any losses on the business of the UK branch is appreciated at the time the Bank of England makes a property transfer instrument.
- (5) In carrying out a valuation required under subsection (1), the person carrying out the valuation must—
- (a) make prudent assumptions as to possible rates of default and the severity of losses suffered by the third-country institution;
 - (b) disregard potential financial assistance which may be provided by the relevant third-country authority (within the meaning of Article 2.1(90) of the recovery and resolution directive^{M8}), the Bank of England or the Treasury after the Bank has made a property transfer instrument (except for ordinary market assistance offered by the Bank on its usual terms),
 - (c) take account of the fact that—
 - (i) the Bank of England and the Treasury may recover expenses incurred in connection with the making of a property transfer instrument under section 58(2)(b),
 - (ii) the Bank of England and the Treasury may charge interest or fees in respect of any loans or guarantees provided to the third-country institution after the Bank has made a property transfer instrument in respect of its UK branch.
- (6) The valuation carried out under this section must follow the methodology specified in regulatory technical standards adopted by the European Commission under Article 36.16 of the recovery and resolution directive.
- (7) A valuation under subsection (1) must be accompanied by—
- (a) a balance sheet of the business of the UK branch as at the date of the valuation,
 - (b) a report on the financial position of the UK branch,
 - (c) an analysis and an estimate of the accounting value of the property and rights of the third-country institution which form part of the business of the UK branch,
 - (d) a list of the outstanding liabilities of the third-country institution which form part of the business of the UK branch (including any off-balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would receive in insolvency proceedings, and
 - (e) an estimate of the amount that each class of creditors and shareholders might be expected to receive if the third-country institution went into insolvency proceedings.
- (8) For the purposes of subsection (7) “insolvency proceedings” means such insolvency proceedings (whether or not under the law of a third country) as the person

carrying out the valuation, after consultation with the Bank of England and the Treasury, considers relevant.

(9) Where appropriate, the information in subsection (7)(c) may be supplemented by an analysis and estimate of the value of the business of the UK branch on a market value basis in order to inform the decision referred to in paragraph (a)(ii) or (iii) of subsection (4).

(10) Where a provisional valuation is carried out under subsection (3)—

- (a) the Bank of England need only comply with subsection (7) as far as it is reasonable to do so in the circumstances, and
- (b) the requirement in subsection (8) to consult the Bank of England does not apply.

(11) A provisional valuation carried out under subsection (1) must make provision in respect of additional losses by the third-country institution in accordance with regulatory technical standards adopted by the European Commission under Article 36.16 of the recovery and resolution directive.”

(5) For section 7 (general conditions), substitute—

(1) The Bank of England may make a property transfer instrument in respect of a UK branch only if the Treasury has approved the making of the instrument, and one of the following applies—

- (a) the PRA (or in the case of a third-country institution which is FCA-regulated, the FCA) is satisfied that Condition 1 is met, and the Bank of England is satisfied that Conditions 2, 4 and 5 are met, or
- (b) the Bank of England is satisfied that Conditions 3 and 4 are met, or
- (c) the Bank of England is satisfied that Condition 4 is met and Condition 5 is met by virtue of subsection 6(a).

(2) Condition 1 is that the third-country institution is failing or likely to fail.

(3) Condition 2 is that, having regard to timing and other relevant circumstances, it is not reasonably likely that action will be taken by or in respect of the third-country institution that will result in Condition 1 ceasing to be met.

(4) Condition 3 is that—

- (a) the third-country institution is unable or unwilling, or is likely in the near future to be unable or unwilling, to pay its debts or other liabilities owed to EEA creditors or otherwise arising from the business of the UK branch as they fall due, and
- (b) no third-country resolution action has been taken, no normal insolvency proceedings have been initiated, and no such action or proceedings are likely in the near future to be taken or initiated, in relation to the institution.

(5) Condition 4 is that making a property transfer instrument is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.

(6) Condition 5 is that—

- (a) third-country resolution action has been taken, or the Bank of England has been notified that such action will be taken, in relation to the third-country institution and the Bank has refused or proposes to refuse to recognise such action for one or more of the reasons specified in section 89H(4), or

(b) third-country resolution action has not been, and is not likely to be, taken in relation to the third-country institution.

(7) For the purposes of Condition 1, a third-country institution is failing or likely to fail if it is failing, or is likely to fail, to satisfy the threshold conditions in circumstances where that failure would justify the variation or cancellation by the PRA (or in the case of an FCA-regulated third-country institution, the FCA) under section 55J of the Financial Services and Markets Act 2000 ^{M9} of the institution's permission under Part 4A of that Act to carry on one or more regulated activities in the United Kingdom.

(8) “The threshold conditions” means the threshold conditions, as defined by subsection (1) of section 55B of the Financial Services and Markets Act 2000, for which the PRA (or in the case of an FCA-regulated third-country institution, the FCA) is treated as responsible under subsection (2) of that section.

(9) For the purposes of Condition 3—

“EEA creditor”, in relation to a third-country institution, means a creditor of a third-country institution who—

- (a) in the case of an individual, is ordinarily resident in an EEA State; and
- (b) in the case of a body corporate or unincorporated association, has its head office in an EEA State;

“normal insolvency proceedings” has the meaning given in Article 2.1(47) of the recovery and resolution directive.

(10) For the purposes of Conditions 3 and 5, “third-country resolution action” has the meaning given in section 89H(7) ^{M10}.

(11) Before determining that Condition 1 is met, the PRA (or in the case of an FCA-regulated third-country institution, the FCA) must consult the Bank of England.

(12) Before determining whether or not Condition 2 or 4 is met the Bank of England must, subject to subsection (13), consult—

- (a) the PRA,
- (b) the FCA, and
- (c) the Treasury.

(13) In the case of an FCA-regulated third-country institution, the Bank of England need only consult the PRA before determining whether or not Condition 2 or 4 is met if the third-country institution has as a member of its immediate group a PRA-authorized person.”.

(6) For section 7A (effect on other group members, financial stability in EU etc) ^{M11} substitute—

“**7A.** Where the Bank of England is considering making a property transfer instrument in respect of a UK branch of a third-country institution which is a member of a group, the Bank must have regard to—

- (a) the need to minimise the effect of making the property transfer instrument on other undertakings in the same group,
- (b) the need to minimise any adverse effects on the financial stability of the European Union or of the EEA states (particularly those EEA states in which any member of that group is operating), and
- (c) the potential effect of making the property transfer instrument on the financial stability of the third country in which the head office of the third-

country institution is established, and any other third country (as defined in section 89H(7)) in which any member of the group is operating.”.

(7) For section 44B (property transfer instruments: special bail-in provision) ^{M12}, substitute—

(1) A property transfer instrument within subsection (2) may make special bail-in provision (see section 48B) with respect to the liabilities of the third-country institution or the resolution company which are being transferred by that instrument (“transferred liabilities”).

(2) The instruments referred to in subsection (1) are—

- (a) a property transfer instrument under section 11(2), 12(2) or 12ZA(3) ^{M13},
- (b) a supplemental property transfer instrument under section 42 in relation to which the original instrument is—
 - (i) a property transfer instrument under section 11(2), 12(2) or 12ZA(3), or
 - (ii) an onward property transfer instrument under section 43(2), or
- (c) an onward property transfer instrument under section 43(2).

(3) In the case of—

- (a) a property transfer instrument under section 12(2) or 12ZA(3),
- (b) a supplemental property transfer instrument under section 42 in relation to which the original instrument is—
 - (i) a property transfer instrument under section 12(2) or 12ZA(3), or
 - (ii) an onward property transfer instrument under section 43(2), or
- (c) an onward property transfer instrument under section 43(2),

the power under subsection (1) to make the provision described in section 48B(1)(a) (see also rule 2(a) and (b) of section 48B(5)) includes power to make the provision referred to in subsection (4).

(4) The provision referred to in subsection (3) is provision replacing a transferred liability (of any form)—

- (a) of the third-country institution mentioned in subsection (1), in the case of instruments within subsection (3)(a) and (b)(i),
- (b) of the resolution company mentioned in section 43(1), in the case of instruments within subsection (3)(b)(ii) and (c),

with a relevant security (of any form or class).

(5) The following are relevant securities for the purpose of subsection (4)—

- (a) where the instrument within subsection (3)(a), or the original instrument, is made under section 12, a security of the bridge bank mentioned in section 12(1),
- (b) where the instrument within subsection (3)(a), or the original instrument, is made under section 12ZA, a security of the asset management vehicle mentioned in section 12ZA(1).

(6) In subsection (5), references to the original instrument are—

- (a) in relation to an instrument within subsection (3)(b), the original instrument referred to in that paragraph,

- (b) in relation to an instrument within subsection (3)(c), the original instrument as defined in section 43(1).
- (7) Where securities of the bridge bank or asset management vehicle (“B”) are, as a result of subsection (3), held by a person other than the Bank of England, that does not prevent B from being regarded for the purposes of this Part (see particularly section 12(1A) and 12ZA(2)) as being wholly owned by the Bank of England, as long as the Bank of England is entitled to exercise, or control the exercise of, voting rights in respect of all the ordinary shares issued by B.”
- (8) For section 48B (special bail-in provision)^{M14}, substitute—
- (1) “Special bail-in provision”, for the purposes of section 44B(1), means any of the following (or any combination of the following)—
- (a) provision modifying, or changing the form of, a relevant liability;
 - (b) provision that a contract under which the relevant institution has a relevant liability is to have effect as if a specified right had been exercised under it.
- (2) “Special bail-in provision”, for the purposes of section 44B, also includes any associated provision (see subsection (3)) that the Bank of England may think it appropriate to make in consequence of any provision under subsection (1) that—
- (a) is made in the same property transfer instrument, or
 - (b) has been made in another property transfer instrument in respect of the UK branch, or (where the institution in relation to which special bail-in provision is made is a resolution company) in respect of the resolution company.
- (3) “Associated provision” means provision modifying a contract under which a company which is a banking group company in relation to the third-country institution has a liability (whether or not the institution in relation to which special bail-in provision is made is the third-country institution).
- (4) A power to make special bail-in provision—
- (a) may be exercised only for the purpose of, or in connection with, reducing or deferring a relevant liability of the relevant institution;
 - (b) may not be exercised so as to affect any excluded liability.
- (5) The following rules apply to the interpretation of subsection (1). 1 The reference to modifying a relevant liability includes a reference to modifying the terms (or the effect of the terms) of a contract under which the relevant institution has a liability. 2 The reference to changing the form of a relevant liability, includes, for example—
- (a) converting an instrument under which the relevant institution owes a relevant liability from one form or class to another,
 - (b) replacing such an instrument with another instrument of a different form or class, or
 - (c) converting those liabilities into securities issued by a bridge bank or a UK parent undertaking.
- (6) For the purposes of rule 2 in subsection (5)—
- “parent undertaking” has the meaning given by Article 4.1(15)(a) of the capital requirements regulation, and
- “UK parent undertaking” means a parent undertaking that is incorporated in, or formed under the law of, any part of the United Kingdom.
- (7) Examples of special bail-in provision include—

- (a) provision that transactions or events of any specified kind have or do not have (directly or indirectly) specified consequences or are to be treated in a specified manner for specified purposes;
 - (b) provision discharging persons from further performance of obligations under a contract and dealing with the consequences of persons being so discharged.
- (8) The form and class of the instrument (“the resulting instrument”) into which an instrument is converted, or with which it is replaced, do not matter for the purposes of paragraphs (a) and (b) of rule 2 in subsection (5); for instance, the resulting instrument may (if it is a security) fall within Class 1 or any other Class in section 14.
- (9) Liabilities of the relevant institution are “excluded liabilities” if they are—
- (a) liabilities listed in subsection (10), or
 - (b) liabilities which the Bank of England has excluded under subsection (12) from the application of special bail-in provision.
- (10) The following liabilities of the relevant institution are the excluded liabilities referred to in subsection (9)(a)—
- (a) liabilities representing protected deposits;
 - (b) any liability, so far as it is secured;
 - (c) liabilities that the relevant institution has by virtue of holding client assets;
 - (d) liabilities with an original maturity of less than 7 days owed by the relevant institution to a credit institution or investment firm;
 - (e) liabilities with a remaining maturity of less than 7 days arising from participation in designated settlement systems and owed to such systems or to operators of, or participants in, such systems;
 - (f) liabilities owed to an employee or former employee in relation to salary or other remuneration, except—
 - (i) variable remuneration that is not regulated by a collective bargaining agreement, and
 - (ii) variable remuneration of material risk takers as referred to in Article 92(2) of 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 supervision of credit institutions and investment firms^{M15},
 - (g) liabilities owed to a pension scheme, except for liabilities owed in connection with variable remuneration of the kind mentioned in paragraph (f)(i) or (ii);
 - (h) liabilities owed to creditors arising from the provision to the relevant institution of goods or services (other than financial services) that are critical to the daily functioning of the operations of the third-country institution or of its UK branch (or in the case of an instrument made in relation to a resolution company, of the resolution company);
 - (i) liabilities owed by the relevant institution to the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000) in relation to levies imposed by the scheme manager for the purpose of meeting expenses in relation to payments required to be made by Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes^{M16}.

(11) The following special rules apply in cases involving banking group companies (whether or not the institution in relation to which special bail-in provision is made is the third-country institution)—

- (a) a liability is not within subsection (10)(d) if the credit institution or investment firm to which the liability is owed is a banking group company in relation to the third-country institution (see section 81D);
- (b) in subsection (10)(h) the reference to creditors does not include companies which are banking group companies in relation to the third-country institution.

(12) The Bank of England may, in a property transfer instrument, exclude any eligible liability or class of eligible liabilities from the application of any special bail-in provision in relation to a relevant institution under section 44B if, and only if, the Bank of England—

- (a) thinks the exclusion is justified on one or more of the grounds set out in subsection (14), and
- (b) notifies the European Commission of its intention to exclude the liabilities before making the instrument that gives effect to the exclusion.

(13) The power conferred by subsection (12) may be exercised to exclude only part of an eligible liability, or part of each of the eligible liabilities of a particular class; and where it is so exercised that part is treated as an eligible liability excluded under that subsection and the remainder is treated as an eligible liability which has not been so excluded.

(14) The grounds are—

- (a) that it is not reasonably possible to give effect to special bail-in provision in relation to the liability or class within a reasonable time;
- (b) that the exclusion is necessary and proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the third-country institution or its UK branch (or in the case of an instrument made in relation to a resolution company, of the resolution company) to continue key operations, services and transactions;
- (c) that the exclusion is necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards protected deposits held by natural persons or micro-enterprises, small enterprises or medium-sized enterprises, which would severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause a serious disturbance to the economy of an EEA state;
- (d) that the making of special bail-in provision in relation to the liability would cause a reduction in value such that the losses borne by other creditors would be higher than if the liability were excluded.

(15) When deciding whether to exclude liabilities under subsection (12) or (13), the Bank of England must give due consideration to—

- (a) the principle that all the relevant liabilities of the relevant institution ought to be treated in accordance with the priority they would enjoy if the relevant institution went into insolvency proceedings, and
- (b) the principle that any creditors who would have equal priority in insolvency proceedings ought to bear losses on an equal footing with each other,

and for the purposes of this subsection “insolvency proceedings” means such insolvency proceedings (whether or not under the law of a third country) as the Bank of England, after consultation with the Treasury, considers relevant.

(17) For the purposes of subsection (14)—

“protected deposit” has the meaning given by section 48C, and

“micro-enterprise”, “small-enterprise” and “medium-sized enterprise” have the meaning given by Article 2.1(107) of the recovery and resolution directive.

(18) For the purposes of this section—

(a) “relevant liability” means a liability of a third-country institution or resolution company which is transferred in the property transfer instrument which makes special bail-in provision,

(b) “relevant institution” means the third-country institution or resolution company whose liabilities are so transferred.”.

(9) For section 48X (replacement of Bank's provisional valuation)^{M17}, substitute—

(1) Where the Bank of England has carried out a provisional valuation under section 6E(3) before making a property transfer instrument in relation to a UK branch, the Bank must arrange for the appointment of an independent valuer in accordance with section 62A to carry out a full valuation in accordance with this section as soon as reasonably practicable.

(2) The purpose of the valuation carried out under subsection (1) is to—

(a) ensure the full extent of any losses on the property and rights of the third-country institution which formed part of the business of the UK branch is recognised in the accounting records of the third-country institution, and

(b) inform a decision by the Bank as to whether—

(i) additional consideration should be paid by a bridge bank or asset management vehicle for any property, rights or liabilities transferred by the property transfer instrument, or

(ii) the Bank should exercise the power under section 48Y(1) to increase a liability which has been reduced by the property transfer instrument.

(3) A valuation carried out under subsection (1) must comply with subsections (5) and (6) of section 6E, and be accompanied by the information required in subsection (7) of that section.”.

(10) For section 48Y (consequences of a replacement valuation)—

(1) Where the independent valuation carried out under section 48X(1) produces a higher valuation of the net asset value of the business of the UK branch transferred by the property transfer instrument than the provisional valuation carried out under section 6E(3), the Bank of England may—

(a) modify any liability of the third-country institution which has been reduced or deferred by the property transfer instrument so as to increase or reinstate that liability; or

(b) instruct a resolution company to pay additional consideration to the third-country institution for any property, rights or liabilities transferred to the resolution company by a property transfer instrument.

(2) The power in subsection (1)(a)—

- (a) may not be exercised so as to increase the value of the liability beyond the value it would have had if the property transfer instrument which reduced or deferred it had not been made, and
- (b) must be exercised by a supplemental property transfer instrument (whether or not that instrument contains any other provision authorised by this Part).”

(11) The Table mentioned in subsection (1) is as follows—

Table of Modifications

| <i>Provision</i> | <i>Modification</i> |
|---|--|
| Sections 6A (cases where mandatory write-down, conversion, etc applies) to 6D (mandatory reduction instruments: supplementary matters) M18 | Ignore sections 6A to 6D. |
| Section 8 (specific condition: private sector purchaser, bridge bank or asset management vehicle) | Ignore section 8. |
| Section 8ZA (specific conditions: asset management vehicle) M19 | In subsection (1) treat the reference to a bank as a reference to a UK branch. In subsection (2), treat the first reference to the bank as a reference to the UK branch, and the second reference to the bank as a reference to the third-country institution. In subsection (3)(b) treat the first reference to the bank as a reference to the third-country institution. If the third-country institution is FCA-regulated, ignore subsection (4) (a) unless the third-country institution has as a member of its immediate group a PRA-authorised person. In subsection (6), ignore the reference to section 8. |
| Section 9 (specific conditions: temporary public ownership) | Ignore section 9. |
| Section 11 (private sector purchaser) | In subsection (1), treat the reference to the bank as a reference to the UK branch. Ignore subsection (2)(a). |
| Section 11A (private sector purchaser: marketing) M20 | In subsections (1), (2)(c) and (5), treat the reference to the bank as a reference to the third-country institution. In subsection (1), ignore paragraph (a). In subsections (2)(d) and (3)(a), ignore the reference to securities. |
| Section 12 (bridge bank) | In subsection (1), treat the reference to the bank as a reference to the UK branch. In subsection (1A)(c) ^{M21} , treat the reference to the bank or its business as a reference to the business of the UK branch. Ignore subsection (2)(a). |
| Section 12ZA (asset management vehicle) M22 | In subsection (1)(a), treat the reference to the bank as a reference to the UK branch. In subsection (1)(b)— (a) ignore the reference to shares, |

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| | (b) treat the reference to property, rights or liabilities of the bank as a reference to property, rights or liabilities of the third-country institution which form part of the business of the UK branch. |
| | In subsection (2)(c) treat the first reference to banks as including a reference to third-country institutions. |
| Sections 12A (bail-in option) M23 | Ignore sections 12A, 12AA and 13. |
| , 12AA (bail-in: sequence of write down and conversion of capital instruments and liabilities) M24 | |
| and 13 (temporary public ownership) | |
| Sections 15 (share transfer instrument) to 29 (reverse share transfer orders) | Ignore sections 15 to 29. |
| Sections 30 (resolution company: share transfers) and 31 (resolution company: reverse transfer) | Ignore sections 30 and 31. |
| Section 33 (property transfer instrument) | In subsections (1) and (2), treat references to property, rights or liabilities of a specified bank as references to property, rights or liabilities of the third-country institution which form part of the business of a specified UK branch, or to property, rights or liabilities of a resolution company. Ignore subsection (3). |
| Section 36A (directors and senior managers) M25 | In subsections (1) and (2), ignore each reference to a director. In subsections (1) and (4) treat each reference to a specified bank as a reference to a specified UK branch. In subsection (2) treat the reference to a specified bank as a reference to the third-country institution. In subsection (5), treat the first reference to a bank as a reference to a UK branch or a third-country institution, and ignore the words “(whether or not it is a bank)”. |
| Section 39A (banks which are clearing houses) M26 | Ignore section 39A. |
| Section 41 (procedure) | In subsection (1)— (a) treat the first reference to a bank as a reference to a UK branch, (b) in paragraph (a), treat the reference to the bank as a reference to the third-country institution, (c) if the third-country institution is FCA-regulated, ignore paragraph (c). In subsection (2) treat the references to the bank as references to the third-country institution. In subsection (4), treat the first reference to a bank as a reference to a UK branch or a third-country institution, and ignore the words “even if it is not a bank”. |

- Section 41A (transfer of property subsequent to resolution instrument) Ignore section 41A.
M27
- Section 42 (supplemental instruments) In subsections (1) and (6), ignore the reference to section 41A(2).
In subsection (4), ignore the reference to section 8.
If the third-country institution is FCA-regulated, ignore subsection (5)(a) unless the third-country institution has as a member of its immediate group a PRA-authorized person.
- Section 42A (private sector purchaser: reverse property transfer) In subsection (1), treat the reference to property, rights or liabilities of a bank as a reference to property, rights or liabilities of a third-country institution which form part of the business of a UK branch.
M28
In subsection (5), ignore the reference to section 8.
If the third-country institution is FCA-regulated, ignore subsection (6)(a) unless the third-country institution has as a member of its immediate group a PRA-authorized person.
- Section 43 (onward transfer) In subsection (6), ignore the reference to section 8.
If the third-country institution is FCA-regulated, ignore subsection (7)(a) unless the third-country institution has as a member of its immediate group a PRA-authorized person.
- Section 44 (resolution company: reverse property transfer) In subsection (5), ignore the reference to section 8.
If the third-country institution is FCA-regulated, ignore subsection (6)(a) unless the third-country institution has as a member of its immediate group a PRA-authorized person.
- Section 44A (bail-in: reverse property transfer) Ignore section 44A.
M29
- Section 44BA (property transfer instruments and bail-in: supplementary matters) Ignore section 44BA.
M30
- Section 44C (report on special bail-in provision) In subsection (4), treat each reference to “on a liquidation” as a reference to “in insolvency proceedings”.
In subsection (4)(a), treat the reference to “the liabilities of the bank” as a reference to “the relevant liabilities of the third-country institution” (and for this purpose, “relevant liability” has the meaning given in section 48B(17)).
In subsection (4), after paragraph (b), insert “ and for the purposes of this subsection “insolvency proceedings” means such insolvency proceedings (whether or not under the law of a third country) as the Bank of England, after consultation with the Treasury, considers relevant. ”
- Sections 44D (bridge bank: supplemental property transfer powers) Ignore sections 44D to 46.
M31
- to 46 (temporary public ownership: reverse property transfer)

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| Section 47 (restriction of partial transfers) | In subsection (1), treat the reference to a bank as a reference to a third-country institution. In subsection (1A) ^{M32} , treat the first reference to a bank as a reference to a third-country institution, and ignore the words “(even if it is not a bank)”. |
| Section 48A (creation of liabilities) <small>M33</small> | In subsection (1) ignore the reference to sections 44A(3)(b), 44D(3)(b), 44E(3)(b), 45(3)(b) and 46(3)(b). |
| Section 48C (meaning of “protected deposit”) <small>M34</small> | In subsection (4), treat the reference to section 48B(8)(a) as a reference to section 48B(10)(a). |
| Section 48D (general interpretation of section 48B) | In the definition of client assets, treat the reference to the bank as a reference to the third-country institution. |
| Section 48E (report on special bail-in provision) | Ignore section 48E. |
| Section 48F (power to amend definition of “excluded liabilities”) | In subsection (1) treat the reference to section 48B(8) as including a reference to section 48B(10). |
| Section 48H (business reorganisation plan) | Ignore section 48H. |
| Sections 48L (powers in relation to securities) to 48O (directions in or under resolution instruments) | Ignore sections 48L to 48O. |
| Section 48Q (continuity) | Treat references to a resolution instrument as references to a property transfer instrument within section 44B(2) that makes special bail-in provision under section 48B(1). |
| Section 48R (execution and registration of instruments, etc.) | Treat references to a resolution instrument as references to a property transfer instrument within section 44B(2) that makes special bail-in provision under section 48B(1). |
| Section 48S (resolution instruments: general matters) | Treat references to a resolution instrument as references to a property transfer instrument within section 44B(2) that makes special bail-in provision under section 48B(1). |
| Sections 48T (procedure) to 48WA (bail-in option: recovery of expenses) <small>M35</small> | Ignore sections 48T to 48WA. |
| Section 48Z (termination rights etc) <small>M36</small> | In subsection (1), in paragraph (a) of the definition of “crisis management measure”, treat the reference to the bank as including a reference to a UK branch. In subsection (6)(a), treat the first reference to the third-country institution as including a reference to the UK branch. |
| Section 57 (valuation principles) | In subsection (4) treat the reference to the bank as a reference to the third-country institution. |
| Section 60 (third party compensation) | In subsection (3)— (a) in paragraph (a) treat the second reference to a bank as including a reference to a third-country institution; (b) in paragraph (c) treat the reference to insolvency as including any proceedings under the law of the third country |

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| | in which the third-country institution is incorporated which are equivalent to the proceedings listed in paragraph (c). |
| Section 60B (principle of no less favourable treatment) M37 | In subsection (1), treat the references to a bank as including references to a third-country institution. In subsection (2)(a) treat the reference to the bank as a reference to the UK branch. Ignore subsection (2)(b). In subsection (3), treat the references to a bank as references to a third-country institution. In subsection (4) treat the reference to insolvency as including any proceedings under the law of the third country in which the third-country institution is incorporated which are equivalent to the proceedings listed in subsection (4). |
| Section 62A M38 | In subsection (1A) M39 |
| (independent valuer: sections 6E and 48X) | , treat the reference to the bank as including a reference to the third-country institution. |
| Sections 62B (resolution administrator) to 62E (resolution administrator: money) M40 | Ignore sections 62B to 62E. |
| Section 63 (general continuity obligations: property transfers) | In subsection (1)(a)— (a) treat the second reference to a bank as a reference to a third-country institution; (b) treat the reference to “whose business” as a reference to the business of whose UK branch; (c) ignore the references to sections 41A(2) and 44D(2). In subsection (1)(d) treat the reference to the bank as a reference to the UK branch. In subsection (1A) ^{M41} treat the reference to insolvency as including any proceedings under the law of the third country in which the third-country institution is incorporated which are equivalent to proceedings listed in subsection (1A). In subsection (4A)— (a) treat each reference to the bank as a reference to the third-country institution; (b) treat the reference to “whose business” as a reference to “the business of whose UK branch”. |
| Section 64 (special continuity obligations: property transfers) M42 | Treat the references to contracts or other arrangements, in each place where they appear, as limited to contracts or other arrangements which were entered into by the third-country institution in relation to the business of its UK branch. |
| Section 65 (continuity obligations: onward property transfers) | In subsection (1), ignore paragraph (a)(ii) ^{M43} . In subsection (3), ignore paragraph (b). In subsection (4), ignore paragraph (c), and in paragraph (d) treat the reference to “(a) to (c)” as a reference to “(a) or (b)”. |
| Sections 66 (share transfers) to 68 (continuity obligations: onward share transfers) | Ignore sections 66 to 68. |

Section 70A (suspension of obligations) For subsection (1), substitute—

M44

“(1) The Bank of England may suspend obligations to make a payment, or delivery, under a contract where—

- (a) one of the parties to the contract is a third-country institution,
- (b) the contract was entered into by the third-country institution in relation to the business of its UK branch, and
- (c) the Bank is making a property transfer instrument in relation to the business of the UK branch.”

In subsection (3)(c) treat the reference to the bank under resolution as a reference to the third-country institution.

In subsection (5), ignore the references to share transfer instruments, resolution instruments and third-country instruments.

Section 70B (restriction of security interests) In subsection (1)—

(a) treat the first reference to the bank as a reference to the UK branch and the second as a reference to the third-country institution;

(b) treat the reference to assets of the bank as a reference to any property or rights of the third-country institution which form part of the business of the UK branch.

In subsection (3), treat the reference to any asset of the bank under resolution as a reference to any property or rights of the third-country institution which form part of the business of the UK branch.

In subsection (4), ignore the references to share transfer instruments, resolution instruments and third-country instruments.

Section 70C (suspension of termination rights) For subsection (2), substitute—

“(2) A contract is a “qualifying contract” for the purpose of this section if—

- (a) one of the parties to the contract is a third-country institution, and the contract was entered into by the third-country institution in relation to the business of its UK branch,
- (b) the Bank is making a property transfer instrument in relation to the business of the UK branch, and
- (c) all the obligations under the contract to make a payment, make delivery or provide collateral continue to be performed.”

Ignore subsection (3).

In subsection (5), ignore the references to share transfer instruments, resolution instruments and third-country instruments.

In subsection (6), ignore the words after paragraph (b).

In subsection (7)—

(a) treat the reference to the bank under resolution as a reference to the third-country institution;

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| | (b) ignore paragraph (b). In subsection (9)— (a) treat the reference to the bank under resolution as a reference to the third-country institution; (b) ignore the words “or the subsidiary undertaking”. |
| Section 71 (pensions) | Ignore section 71. |
| Section 76 (international obligation notice: general) M45 | In subsections (1) and (3) treat the reference to exercising the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or a stabilisation power as a reference to making a property transfer instrument. In subsections (1) and (4) treat the reference to a bank as a reference to a UK branch. Ignore subsection (5). |
| Section 77 (international obligation notice: resolution company) M46 | In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch. |
| Section 78 (public funds: general) M47 | In subsections (1) and (4) treat the reference to exercising the power to make a mandatory reduction instrument or a stabilisation power as a reference to making a property transfer instrument. In subsections (1) and (5), treat the reference to a bank as a reference to a UK branch. |
| Section 78A (pre-conditions for financial assistance) M48 | Ignore section 78A. |
| Section 79 (public funds: resolution company) M49 | In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch. |
| Section 79A (private sector purchaser: report) M50 | In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch. In subsection (2) ignore the reference to share transfer instruments. |
| Section 80 (resolution company: report) M51 | In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch. |
| Sections 80A (transfer for bail-in purposes) M52 | Ignore sections 80A and 81. |
| and 81 (temporary public ownership) | |
| Section 81A (accounting information to be included in reports under section 80) M53 | In subsection (1), ignore the references to sections 80A(2)(b) and 81. Ignore the references to the bank. |
| Sections 81AA to 81CA (groups) M54 | Ignore sections 81AA to 81CA. |
| Section 81D (interpretation: “banking group company”) | In subsection (1)(a)— (a) ignore the reference to a bank and EU institution, |

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| | (b) treat the reference to section 81B(9) as a reference to section 89JA(2)(c). |
| Sections 82 (temporary public ownership) and 83 (supplemental) | Ignore sections 82 and 83. |
| Section 83ZA (information) M55 | For subsection (1), substitute— “(1) This section only applies to information and documents reasonably required in connection with the making by the Bank of England of a property transfer instrument in relation to the UK branch of a third-country institution.” In subsections (2) and (4) treat references to a bank or banking group company as references to a third-country institution. In subsections (7) and (10) treat references to a bank as references to a third-country institution. |
| Section 83ZB (reports by skilled persons) | In subsection (2) treat the references to a bank as a reference to a third-country institution. |
| Section 83ZC (appointment by persons to carry out general investigations) | In subsection (2)(a) treat the reference to the business of a bank as a reference to the business conducted by a UK branch. Ignore subsections (2)(c), (3) and (4). |
| Section 83ZE (investigations etc. in support of foreign resolution authorities) | Ignore section 83ZE. |
| Section 83ZL (entry of premises under warrant) | In subsection (3), treat each reference to a bank as a reference to a third-country institution. |
| Section 83ZR (regulatory sanctions) | In subsection (1)(d), where the third-country institution is an investment firm, treat the references to banks as references to investment firms.” |

Marginal Citations

- M1** Section 89J was inserted by [S.I. 2014/3329](#), with sections 89H to 89M.
- M2** Section 75(5) was amended by section 101 of the Financial Services Act 2012 and [S.I. 2013/504](#).
- M3** Section 421ZA was inserted by section 48(2) of the [Financial Services Act 2012 \(c. 21\)](#).
- M4** 2000 c.8.
- M5** [S.I. 2001/544](#). Article 5(2) was amended by [S.I. 2002/682](#).
- M6** Section 6E was inserted by [S.I. 2014/3329](#).
- M7** Section 62A was inserted by [S.I. 2014/3329](#).
- M8** OJ L173, 12.6.2014, p.190.
- M9** 2000 c.8. Sections 55A to 55Z4 were inserted by section 11 of the [Financial Services Act 2012 \(c.21\)](#).
- M10** Section 89H was inserted, with sections 89I to 89M by [S.I. 2014/3329](#).
- M11** Section 7A was inserted by [S.I. 2014/3329](#).
- M12** Section 44B was inserted, with sections 44A and 44C, by paragraph 5 of Schedule 2 to the [Financial Services \(Banking Reform\) Act 2013 \(c.33\)](#).
- M13** Section 12ZA was inserted by [S.I. 2014/3329](#).
- M14** Section 48B was inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- M15** OJ L176, 27.6.2013, p.338.
- M16** OJ L 173, 12.6.2014, p.149.
- M17** Section 48X was inserted, with section 48Y, by [S.I. 2014/3329](#).

- M18** Sections 6A to 6E were inserted by S.I. 2014/3329.
- M19** Section 8ZA was inserted by S.I. 2014/3329.
- M20** Section 11A is inserted into the Banking Act 2009 by article 8 of this Order.
- M21** Subsection (1A) was inserted S.I. 2014/3329.
- M22** Section 12ZA was inserted by S.I. 2014/3329.
- M23** Section 12A was inserted by paragraph 2 of the Financial Services (Banking Reform) Act 2013.
- M24** Section 12AA was inserted by S.I. 2014/3329.
- M25** Section 36A was inserted by section 100 of the Financial Services Act 2012 (c.21) and amended by S.I. 2014/3329.
- M26** Section 39A was inserted by section 102 of the Financial Services Act 2012, and amended by S.I. 2013/504.
- M27** Section 41A was inserted by paragraph 5(1) of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33), and amended by S.I. 2014/3329.
- M28** Section 42A was inserted by section 97 of the Financial Services Act 2012 (c.21).
- M29** Section 44A was inserted, together with sections 44B and 44C, by paragraph 5(3) of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- M30** Section 44BA is inserted by article 12 of this Order.
- M31** Section 44D is inserted, with section 44E, by article 13 of this Order.
- M32** Subsection (1A) was inserted by S.I. 2014/3329.
- M33** Section 48A was inserted by section 21 of the Financial Services Act 2010 (c. 28).
- M34** Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
- M35** Section 48WA is inserted by article 14 of this Order.
- M36** Section 48Z was inserted by S.I. 29014/3329.
- M37** Section 60B was inserted by S.I.2014/3329.
- M38** Section 62A was inserted by S.I. 2014/3329.
- M39** Subsection (1A) is inserted by article 17 of this Order.
- M40** Sections 62B to 62E were inserted by S.I. 2014/3329.
- M41** Subsections (1A) and (4A) were inserted by S.I. 2014/3329.
- M42** Section 64 was amended by S.I. 2014/3329.
- M43** Subsection (1)(a) was amended by S.I. 2014/3329.
- M44** Section 70A was inserted, with sections 70B to 70D by S.I. 2014/3329.
- M45** Section 76 was amended by S.I. 2014/3329.
- M46** Section 77 was amended by S.I. 2014/3329.
- M47** Section 78 was amended by S.I. 2014/3329.
- M48** Section 78A was inserted by S.I. 2014/3329.
- M49** Section 79 was amended by S.I. 2014/3329.
- M50** Section 79A was inserted by section 99 of the Financial Services Act 2012.
- M51** Section 80 was amended by S.I. 2014/3329.
- M52** Section 80A was inserted by paragraph 25 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- M53** Section 81A was inserted by section 99 of the Financial services Act 2012 and amended by S.I. 2014/3329.
- M54** Section 81AA was inserted by S.I. 2014/3329.
- M55** Section 83ZA was inserted, with sections 83ZB to 83Z2, by S.I.2014/3329.

Changes to legislation:

There are currently no known outstanding effects for the The Bank Recovery and Resolution Order 2016, PART 3.