



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

##### *Voluntary winding up*

#### **365 [F<sup>1</sup>Powers of FCA and PRA] to participate in proceedings.**

- (1) This section applies in relation to a company which—
  - (a) is being wound up voluntarily;
  - (b) is an authorised person [F<sup>2</sup>or recognised investment exchange]; and
  - (c) is not an insurer effecting or carrying out contracts of long-term insurance.
- (2) The [F<sup>3</sup>appropriate regulator] may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.
- (3) The [F<sup>3</sup>appropriate regulator] is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.
- (4) Any notice or other document required to be sent to a creditor of the company must also be sent to the [F<sup>3</sup>appropriate regulator].
- (5) A person appointed for the purpose by the [F<sup>3</sup>appropriate regulator] is entitled—
  - (a) to attend any meeting of creditors of the company summoned under any enactment;
  - (b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and
  - (c) to make representations as to any matter for decision at such a meeting.

[F<sup>4</sup>(5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company.]

*Status: Point in time view as at 26/06/2020.*

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- (6) The voluntary winding up of the company does not bar the right of the <sup>[F3]</sup>appropriate regulator] to have it wound up by the court.
- (7) If, during the course of the winding up of the company, a compromise or arrangement <sup>[F5]</sup>in relation to which Part 26 of the Companies Act 2006 applies] is proposed between the company and its creditors, or any class of them, the <sup>[F3]</sup>appropriate regulator] may apply to the court under <sup>[F6]</sup>section 896 or 899 of <sup>[F7]</sup>that Act]].
- <sup>[F8]</sup>(7A) If, during the course of the winding up of the company, a compromise or arrangement in relation to which Part 26A of the Companies Act 2006 applies is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 901C or 901F of that Act.]
- <sup>[F9]</sup>(8) “The appropriate regulator” means—
- (a) where the company is a PRA-authorized person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
  - (b) in any other case, the FCA.]

#### Textual Amendments

- F1** Words in s. 365 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 12\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F2** Words in s. 365(1)(b) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 12\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F3** Words in s. 365(2)-(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 12\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F4** S. 365(5A) inserted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\), regs. 1\(3\), 4\(5\)\(a\)](#) (with [reg. 17](#))
- F5** Words in s. 365(7) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 9 para. 20\(4\)\(a\)\(i\)](#) (with [ss. 2\(2\), 5\(2\)](#))
- F6** Words in s. 365(7) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\), Sch. 1 para. 211\(4\)](#) (with [arts. 6, 11, 12](#))
- F7** Words in s. 365(7) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 9 para. 20\(4\)\(a\)\(ii\)](#) (with [ss. 2\(2\), 5\(2\)](#))
- F8** S. 365(7A) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 9 para. 20\(4\)\(b\)](#) (with [ss. 2\(2\), 5\(2\)](#))
- F9** S. 365(8) substituted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\), regs. 1\(3\), 4\(5\)\(b\)](#) (with [reg. 17](#))

#### Modifications etc. (not altering text)

- C1** S. 365 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, regs. 1, 6](#)
- C2** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\), reg. 6](#)

### 366 Insurers effecting or carrying out long-term contracts or insurance.

- (1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the <sup>[F10]</sup>PRA].

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- (2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the [F11PRA] as soon as practicable after he becomes aware of it.
- (3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- [F12(4) A winding up resolution may not be passed—
- (a) as a written resolution (in accordance with Chapter 2 of Part 13 of the Companies Act 2006), or
  - (b) at a meeting called in accordance with section 307(4) to (6) or 337(2) of that Act (agreement of members to calling of meeting at short notice).]

(5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with [F13section 30 of the Companies Act 2006] must be accompanied by a certificate issued by the [F14PRA] stating that it consents to the voluntary winding up of the insurer.

(6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.

(7) If subsection (5) is not complied with, the resolution has no effect.

(8) “Winding-up resolution” means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.

[F15(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.

(10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity—

    - (a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and
    - (b) subsection (9) does not apply.]

#### Textual Amendments

- F10** Word in s. 366(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 13\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F11** Word in s. 366(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 13\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F12** S. 366(4) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\), art. 10\(1\), Sch. 4 para. 93\(2\)](#)
- F13** Words in s. 366(5) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\), art. 10\(1\), Sch. 4 para. 93\(3\)](#)
- F14** Word in s. 366(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 13\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F15** S. 366(9)(10) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 13\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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