

Draft Order laid before Parliament under sections 47(5) and 81D(3) of the Banking Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 000

FINANCIAL SERVICES AND MARKETS

The Banking Act 2009 (Banking Group Companies) Order 2014

Made - - - - *00 July 2014*

Coming into force - - *1st August 2014*

The Treasury make the following Order in exercise of the powers conferred by sections 47, 81D(1) and 259(1) of the Banking Act 2009(a).

A draft of this Order has been laid before and approved by resolution of each House of Parliament in accordance with sections 47(5) and 81D(3) of that Act.

Citation and commencement

1. This Order may be cited as the Banking Act 2009 (Banking Group Companies) Order 2014, and comes into force on 1st August 2014.

Interpretation

2.—(1) In this Order—

“the bank”, in relation to any undertaking, means the bank in the same group as that undertaking in respect of which the PRA is satisfied that the general conditions for the exercise of a stabilisation power are met;

“covered bond vehicle” means a limited liability partnership—

(a) which is a party to a capital market arrangement (within the meaning given in section 72B of the Insolvency Act 1986(b)) or a transaction in pursuance of such a capital market arrangement; and

(b) whose trade or business (ignoring any incidental activities) consists wholly or mainly of one or both of the following—

(i) providing guarantees;

(ii) acquiring, owning and managing assets directly or indirectly forming the whole or part of the security for the capital market arrangement;

“financial holding company” means a company which is—

(a) a financial institution; and

(a) 2009 c. 1. Section 81D was inserted by the Financial Services Act 2012 (c. 21), section 100.

(b) 1986 c. 45. See paragraph 1 of Schedule 2A to the Act. Section 72B and Schedule 2A were inserted by the Enterprise Act 2002 (c. 40), section 250 and Schedule 18.

(b) a parent whose subsidiaries are exclusively or mainly—

- (i) credit institutions;
- (ii) financial institutions;
- (iii) investment exchanges;
- (iv) investment firms; or
- (v) central counterparties;

“financial institution” has the meaning given by point (26) of Article 4(1) of the Capital Requirements Regulation;

“mixed activity holding company” means a parent—

(a) whose subsidiaries include at least one—

- (i) credit institution;
- (ii) investment firm; or
- (iii) central counterparty;

(b) which is not itself a credit institution, investment firm or central counterparty; and

(c) which, together with its subsidiaries, constitutes a group which—

- (i) fails to meet condition (b)(i) in point 14 of Article 2 of the Supplementary Supervision Directive (condition for group being considered a financial conglomerate that its activities occur mainly in the financial sector);
- (ii) if its subsidiaries include a central counterparty or investment exchange, would fail to meet that condition if such entities were financial sector entities for the purposes of Article 3(1) of the Supplementary Supervision Directive;

“parent” means a parent undertaking within the meaning given by section 1162 of the Companies Act 2006(a);

“securitisation company” means—

(a) a company of a kind mentioned in section 83(2) of the Finance Act 2005(b) (meaning of “securitisation company”); or

(b) a company that meets condition A specified in regulation 4 of the Taxation of Securitisation Companies Regulations 2006(c) (meaning of “securitisation company”); and

“subsidiary” means a “subsidiary undertaking” within the meaning given by section 1162 of the Companies Act 2006.

(2) In this article, for the interpretation of “financial holding company”, “financial institution” and “mixed activity holding company”—

“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(d);

“central counterparty” has the meaning given by section 313(1) of the Financial Services and Markets Act 2000(e);

“credit institution” has the meaning given by point (1) of Article 4(1) of the Capital Requirements Regulation;

“investment firm” has the meaning given by point (2) of Article 4(1) of the Capital Requirements Regulation; and

(a) 2006 c. 46.

(b) 2005 c. 7.

(c) S.I. 2006/3296 as amended by S.I. 2007/3401 and 2007/3339. There are other amendments not relevant to this Order.

(d) 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.

(e) 2000 c. 8. The definition of “central counterparty” was inserted by S.I. 2013/504. There are other amendments to section 313(1) not relevant to this Order.

“the Supplementary Supervision Directive” means Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council(a).

Specified conditions

3.—(1) The following conditions are specified for the purposes of section 81D(1) of the Banking Act 2009.

(2) Subject to paragraphs (3) and (4), the undertaking must be—

- (a) a subsidiary of the bank;
- (b) a parent of the bank; or
- (c) a group subsidiary.

(3) Where the bank is a subsidiary of a mixed activity holding company (“the MAHC”) and of a financial holding company which is also a subsidiary of the MAHC—

- (a) the MAHC is not a parent for the purposes of paragraph (2)(b); and
- (b) a group subsidiary which is a subsidiary of the MAHC is not a group subsidiary for the purposes of paragraph (2)(c) unless it is—
 - (i) a financial institution; or
 - (ii) a subsidiary of a financial institution which is also a subsidiary of the MAHC.

(4) If the undertaking is a covered bond vehicle or a securitisation company, it must be—

- (a) an investment firm(b); or
- (b) a financial institution.

(5) A company which is a warehouse company within the meaning given by section 83(6) of the Finance Act 2005 or regulation 8 of the Taxation of Securitisation Companies Regulations 2006 is not a securitisation company for the purposes of paragraph (4) unless its business is carried on for the purposes of an existing asset-holding or note-issuing company.

(6) In this article “group subsidiary” means a subsidiary of a parent of the bank which is not a parent or subsidiary of the bank.

Amendment to the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009

4.—(1) The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(c) is amended as follows.

(2) In article 1(3) (citation, commencement and interpretation), in the definition of “banking institution”—

- (a) after paragraph (a), insert—
 - “(aa) an investment firm;”;and
- (b) in paragraph (b), after “bank” insert “or an investment firm”.

(3) After article 9 (termination rights), insert—

(a) OJ No. L 35, 11.2.2003, p. 1-27, as amended by Directive 2011/89/EU (OJ No. L 326, 8.12.2011, p. 113-141) and Directive 2013/36/EU (OJ No. L176, 27.6.2013, p. 338). There are other amendments not relevant to this Order.

(b) By virtue of S.I. 2014/9999 “investment firm” in the Banking Act 2009 does not include an investment firm of a description given in Article 29 of Directive 2013/36/EU (OJ No. L 176, 27.6.2013, p. 338-436), which is not subject to the initial capital requirement (EUR 730,000) specified in Article 28(2) of that Directive.

(c) S.I. 2009/322, to which there are amendments not relevant to this Order.

“Banking Group Companies

9A.—(1) A partial property transfer—

- (a) to which this Order applies, and
- (b) under which the transferor is a relevant company,

may not transfer property, rights or liabilities of the company unless the property, rights or liabilities are necessary for the carrying on of relevant business.

(2) For these purposes it does not matter whether relevant business has been transferred by a property transfer instrument.

(3) In this article—

“financial institution” has the meaning given by point (26) of Article 4(1) of 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;

“relevant business” means the business, or any part of the business, of a banking institution, recognised central counterparty or other banking group company which is (or, but for the exercise of a stabilisation power, would be) in the same group as the relevant company; and

“relevant company” means a company, other than a financial institution, which—

- (a) is a banking group company in relation to which this Order has effect by virtue of section 81C of the Act^(a); and
- (b) is not a parent undertaking of the banking institution in the same group in respect of which the PRA is satisfied for the purpose of section 81B(2) of the Act^(b) that the general conditions for the exercise of a stabilisation power are met.

(4) For the purpose of the definition of “relevant business” undertakings are in the same group if they are group undertakings in respect of each other.

(5) Expressions defined in the Companies Act 2006^(c) have the same meaning in this article as in that Act.”.

Date

Name
Name
Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Section 81C was inserted by the Financial Services Act 2012, section 100.
(b) Section 81B was inserted by the Financial Services Act 2012, section 100.
(c) 2006 c. 46.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies conditions which must be met in respect of an undertaking which is in the same group as a bank if it is to be a “banking group company” for the purposes of Part 1 of the Banking Act 2009 (c. 1) (“the Act”). Section 81B of the Act empowers the Bank of England to exercise a stabilisation power in respect of a banking group company to achieve a transfer to a commercial purchaser or a bridge bank.

For these purposes “bank” means a bank (as defined in section 2 of the Act), a building society, an investment firm or a recognised central counterparty which meets the conditions for the exercise of a stabilisation power.

A banking group company may be a parent or subsidiary undertaking of the bank or another company in the same group.

There are excluded from the meaning of “banking group company”—

- a mixed activity holding company where the bank is a subsidiary of an intermediate financial holding company;
- a subsidiary of such a mixed activity holding company, other than a parent or subsidiary of the bank, if it is neither a financial institution nor a subsidiary of a financial institution; and
- a covered bond vehicle or securitisation company which is not an investment firm or a financial institution (within the meaning given in 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).

Article 4 amends the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (S.I. 2009/322) to restrict partial property transfers in respect of the property, rights or liabilities of a banking group company (unless it is a financial institution or a parent undertaking of the bank). Such a transfer must be necessary for carrying on the business, or any part of the business, of a banking institution, recognised central counterparty or other banking group company in the same group.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on <http://www.hm-treasury.gov.uk/> and is published alongside the Order on <http://www.legislation.gov.uk/>.

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