



# Banking Act 2009

## 2009 CHAPTER 1

### PART 2

#### BANK INSOLVENCY

##### *Bank insolvency order*

#### **94 The order**

- (1) A bank insolvency order is an order appointing a person as the bank liquidator of a bank.
- (2) A person is eligible for appointment as a bank liquidator if qualified to act as an insolvency practitioner.
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank insolvency order takes effect in accordance with section 98; and—
  - (a) the process of a bank insolvency order having effect may be described as “bank insolvency” in relation to the bank, and
  - (b) while the order has effect the bank may be described as being “in bank insolvency”.

#### **95 Application**

- (1) An application for a bank insolvency order may be made to the court by—
  - (a) the Bank of England,
  - (b) the FSA, or
  - (c) the Secretary of State.
- (2) An application must nominate a person to be appointed as the bank liquidator.
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below).

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*Status: This is the original version (as it was originally enacted).*

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## 96 Grounds for applying

- (1) In this section—
  - (a) Ground A is that a bank is unable, or likely to become unable, to pay its debts,
  - (b) Ground B is that the winding up of a bank would be in the public interest, and
  - (c) Ground C is that the winding up of a bank would be fair.
- (2) The Bank of England may apply for a bank insolvency order only if—
  - (a) the FSA has informed the Bank of England that the FSA is satisfied that Conditions 1 and 2 in section 7 are met, and
  - (b) the Bank of England is satisfied—
    - (i) that the bank has eligible depositors, and
    - (ii) that Ground A or C applies.
- (3) The FSA may apply for a bank insolvency order only if—
  - (a) the Bank of England consents, and
  - (b) the FSA is satisfied—
    - (i) that Conditions 1 and 2 in section 7 are met,
    - (ii) that the bank has eligible depositors, and
    - (iii) that Ground A or C applies.
- (4) The Secretary of State may apply for a bank insolvency order only if satisfied—
  - (a) that the bank has eligible depositors, and
  - (b) that Ground B applies.
- (5) The sources of information on the basis of which the Secretary of State may be satisfied of the matters specified in subsection (4) include those listed in section 124A(1) of the Insolvency Act 1986 (petition for winding up on grounds of public interest).

## 97 Grounds for making

- (1) The court may make a bank insolvency order on the application of the Bank of England or the FSA if satisfied—
  - (a) that the bank has eligible depositors, and
  - (b) that Ground A or C of section 96 applies.
- (2) The court may make a bank insolvency order on the application of the Secretary of State if satisfied—
  - (a) that the bank has eligible depositors, and
  - (b) that Grounds B and C of section 96 apply.
- (3) On an application for a bank insolvency order the court may—
  - (a) grant the application in accordance with subsection (1) or (2),
  - (b) adjourn the application (generally or to a specified date), or
  - (c) dismiss the application.

## 98 Commencement

- (1) A bank insolvency order shall be treated as having taken effect in accordance with this section.
- (2) In the case where—

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- (a) notice has been given to the FSA under section 120 of an application for an administration order or a petition for a winding up order, and
  - (b) the FSA or the Bank of England applies for a bank insolvency order in the period of 2 weeks specified in Condition 3 in that section,
- the bank insolvency order is treated as having taken effect when the application or petition was made or presented.
- (3) In any other case, the bank insolvency order is treated as having taken effect when the application for the order was made.
  - (4) Unless the court directs otherwise on proof of fraud or mistake, proceedings taken in the bank insolvency, during the period for which it is treated as having had effect, are treated as having been taken validly.