



# Banking Act 2009

## 2009 CHAPTER 1

### PART 7

#### MISCELLANEOUS

##### *Investment banks*

#### **232 Definition**

- (1) In this group of sections “investment bank” means an institution which satisfies the following conditions.
- (2) Condition 1 is that the institution has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of—
  - (a) safeguarding and administering investments,
  - (b) dealing in investments as principal, or
  - (c) dealing in investments as agent.
- (3) Condition 2 is that the institution holds client assets.
- (4) In this group of sections “client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust and whether or not the undertaking has been complied with).
- (5) Condition 3 is that the institution is incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) The Treasury may by order—
  - (a) provide that a specified class of institution, which has a permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, is to be treated as an investment bank for the purpose of this group of sections;
  - (b) provide that a specified class of institution is not to be treated as an investment bank for the purpose of this group of sections;

---

*Status: This is the original version (as it was originally enacted).*

---

- (c) provide that assets of a specified kind, or held in specified circumstances, are to be or not to be treated as client assets for the purpose of this group of sections;
- (d) amend a provision of this section in consequence of provision under paragraph (a), (b) or (c).

### **233 Insolvency regulations**

- (1) The Treasury may by regulations (“investment bank insolvency regulations”)—
  - (a) modify the law of insolvency in its application to investment banks;
  - (b) establish a new procedure for investment banks where—
    - (i) they are unable, or are likely to become unable, to pay their debts (within the meaning of section 93(4)), or
    - (ii) their winding up would be fair (within the meaning of section 93(8)).
- (2) Investment bank insolvency regulations may, in particular—
  - (a) apply or replicate (with or without modifications) or make provision similar to provision made by or under the Insolvency Act 1986 or Part 2 or 3 of this Act;
  - (b) establish a new procedure either (i) to operate for investment banks in place of liquidation or administration (under the Insolvency Act 1986), or (ii) to operate alongside liquidation or administration in respect of a particular part of the business or affairs of investment banks.
- (3) In making investment bank insolvency regulations the Treasury shall have regard to the desirability of—
  - (a) identifying, protecting, and facilitating the return of, client assets,
  - (b) protecting creditors' rights,
  - (c) ensuring certainty for investment banks, creditors, clients, liquidators and administrators,
  - (d) minimising the disruption of business and markets, and
  - (e) maximising the efficiency and effectiveness of the financial services industry in the United Kingdom.
- (4) A reference to returning client assets includes a reference to—
  - (a) transferring assets to another institution, and
  - (b) returning or transferring assets equivalent to those which an institution undertook to hold for clients.

### **234 Regulations: details**

- (1) Investment bank insolvency regulations may provide for a procedure to be instituted—
  - (a) by a court, or
  - (b) by the action of one or more specified classes of person.
- (2) Investment bank insolvency regulations may—
  - (a) confer functions on persons appointed in accordance with the regulations (which may, in particular, (i) be similar to the functions of a liquidator or administrator under the Insolvency Act 1986, or (ii) involve acting as a trustee of client assets), and
  - (b) specify objectives to be pursued by a person appointed in accordance with the regulations.

- (3) Investment bank insolvency regulations may make the application of a provision depend—
  - (a) on whether an investment bank is, or is likely to become, unable to pay its debts,
  - (b) on whether the winding up of an investment bank would be fair, or
  - (c) partly on those and partly on other considerations.
- (4) Investment bank insolvency regulations may make provision about the relationship between a procedure established by the regulations and—
  - (a) liquidation or administration under the Insolvency Act 1986,
  - (b) bank insolvency or bank administration under Part 2 or 3 of this Act, and
  - (c) provision made by or under any other enactment in connection with insolvency.
- (5) Regulations by virtue of subsection (4) may, in particular—
  - (a) include provision for temporary or permanent moratoria;
  - (b) amend an enactment.
- (6) Investment bank insolvency regulations may include provision—
  - (a) establishing a mechanism for determining which assets are client assets (subject to section 232);
  - (b) establishing a mechanism for determining that assets are to be, or not to be, treated as client assets (subject to section 232);
  - (c) about the treatment of client assets;
  - (d) about the treatment of unsettled transactions (and related collateral);
  - (e) for the transfer to another financial institution of assets or transactions;
  - (f) for the creation or enforcement of rights (including rights that take preference over creditors' rights) in respect of client assets or other assets;
  - (g) indemnifying a person who is exercising or purporting to exercise functions under or by virtue of the regulations;
  - (h) for recovery of assets transferred in error.
- (7) Provision may be included under subsection (6)(f) only to the extent that the Treasury think it necessary having regard to the desirability of protecting both—
  - (a) client assets, and
  - (b) creditors' rights.
- (8) Investment bank insolvency regulations may confer functions on—
  - (a) a court or tribunal,
  - (b) the Financial Services Authority,
  - (c) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000),
  - (d) the scheme manager of that Scheme, and
  - (e) any other specified person.
- (9) Investment bank insolvency regulations may include provision about institutions that are or were group undertakings (within the meaning of section 1161(5) of the Companies Act 2006) of an investment bank.
- (10) Investment bank insolvency regulations may replicate or apply, with or without modifications, a power to make procedural rules.

- (11) Investment bank insolvency regulations may include provision for assigning or apportioning responsibility for the cost of the application of a procedure established or modified by the regulations.

### **235 Regulations: procedure**

- (1) Investment bank insolvency regulations shall be made by statutory instrument.
- (2) Investment bank insolvency regulations may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) The Treasury must consult before laying draft investment bank insolvency regulations before Parliament.
- (4) If the power to make investment bank insolvency regulations has not been exercised before the end of the period of 2 years beginning with the date on which this Act is passed, it lapses.
- (5) An order under section 232(6)—
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### **236 Review**

- (1) The Treasury shall arrange for a review of the effect of any investment bank insolvency regulations.
- (2) The review must be completed during the period of 2 years beginning with the date on which the regulations come into force.
- (3) The Treasury shall appoint one or more persons to conduct the review; and a person appointed must have expertise in connection with the law of insolvency or financial services.
- (4) The review must consider, in particular—
  - (a) how far the regulations are achieving the objectives specified in section 233(3), and
  - (b) whether the regulations should continue to have effect.
- (5) The review must result in a report to the Treasury.
- (6) The Treasury shall lay a copy of the report before Parliament.
- (7) If a review recommends further reviews—
  - (a) the Treasury may arrange for the further reviews, and
  - (b) subsections (3) to (6) (and this subsection) shall apply to them.