

SCHEDULE 1

Regulation 29

Modifications to the law of insolvency

Interpretation

1. In this Schedule, a reference to backing assets is a reference to the backing assets of an authorised bank, other than backing assets that have been returned to the bank or an appointed insolvency practitioner under regulation 11(2)(b) or 23(3)(b).

PART 1

Modifications to primary legislation

Modifications to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989

2. The provisions of the Insolvency Act 1986(1) and the Insolvency (Northern Ireland) Order 1989(2) apply in relation to an authorised bank—

- (a) with any reference to “property” or “asset” modified so that it does not include a reference to the bank’s backing assets; and
- (b) with the modifications specified in the following table;

but sub-paragraph (a) does not apply to the reference to “assets” in section 123(2) of the Insolvency Act 1986 or article 103(2) of the Insolvency (Northern Ireland) Order 1989.

| <i>Provision of Insolvency Act 1986</i> | <i>Provision of Insolvency (Northern Ireland) Order 1989</i> | <i>Subject</i> | <i>Modification</i> |
|---|--|---|---|
| Section 4 | Article 17 | Company Voluntary Proposal Decisions meetings | A meeting may not approve any proposal or modification which affects— <ul style="list-style-type: none"> - (a) the rights of the noteholders under regulations 9(1)(b) and 22; (b) the rights of the Bank of England in relation to the backing assets; or (c) the backing assets. |
| – | Article 52 | Receivers and managers General powers | A receiver may do anything necessary or expedient for the purpose of ensuring that an authorised bank complies with the directions referred to in regulation 23(1). |
| Section 55 | – | Receivers (Scotland) Powers | A receiver may do anything necessary or expedient for the purpose of ensuring that an authorised bank complies with the directions referred to in regulation 23(1). |

(1) 1986 c.45.

(2) S.I. 1989/2405 (N.I. 19).

Status: This is the original version (as it was originally made).

| <i>Provision of Insolvency Act 1986</i> | <i>Provision of Insolvency (Northern Ireland) Order 1989</i> | <i>Subject</i> | <i>Modification</i> |
|---|--|---|--|
| Section 126 | Article 106 | Liquidation – power to stay or restrain proceedings against company | This section and article do not prevent the Bank of England from bringing or continuing any action or proceedings under or by virtue of these Regulations in relation to the backing assets. |
| Section 128 | Article 108 | Liquidation – avoidance of attachments | This section and article do not apply to anything done by the Bank of England in relation to the backing assets. |
| Section 130(2) and (3) | Article 110(2) and (3) | Liquidation – Consequences of Winding-up order | These subsections and paragraphs do not apply to any action or proceedings brought by the Bank of England under or by virtue of these Regulations in relation to the backing assets. |
| Section 143 | Article 121 | Liquidation – General Functions | A liquidator must also ensure that an authorised bank complies with the directions referred to in regulation 23(1). |
| Section 144 | – | Liquidation – custody of company’s property | The reference in this section to “things in action” does not include a reference to an account designated by the Bank of England for the purposes of regulation 6(2)(c). |
| Section 165 | Article 140 | Liquidators – Voluntary winding up | A liquidator— (a) must also ensure that an authorised bank complies with the directions referred to in regulation 23(1); and (b) may do anything necessary or expedient to ensure such compliance. |
| Sections 167 | Article 142 | Liquidators – Winding up by the court | A liquidator— (a) must also ensure that an authorised bank complies with the directions referred to in regulation 23(1); and (b) may do anything necessary or expedient to ensure such compliance. |
| Section 436 | Article 2 | Expressions used generally | The definition of “property” shall be modified in accordance with paragraph 2(a) of this Schedule. |
| Part 3 of Schedule A1(3) | Part 3 of Schedule A1(4) | Company Voluntary Arrangements – Effects of Moratorium | Nothing in Part 3 shall prevent the Bank of England from— (a) taking any step; or |

(3) Schedule A1 was inserted by section 1 of, and paragraphs 1 and 4 of Schedule 1 to, the [Insolvency Act 2000 \(c. 39\)](#).

(4) Schedule A1 was inserted by article 3 of, and schedule 1 to, the [Insolvency \(Northern Ireland\) Order 2002 \(S.I. 2002/3152 \(N.I. 6\)\)](#).

| <i>Provision of Insolvency Act 1986</i> | <i>Provision of Insolvency (Northern Ireland) Order 1989</i> | <i>Subject</i> | <i>Modification</i> |
|---|--|--|---|
| | | | (b) bringing or continuing an action or proceedings brought under or by virtue of these Regulations; against an authorised bank in relation to its backing assets. |
| Paragraph 43 of Schedule B1(5) | Paragraph 44 of Schedule B1(6) | Administration – Moratorium on other legal process | Nothing in this paragraph shall prevent the Bank of England from— (a) taking any step; or (b) bringing or continuing an action or proceedings brought under or by virtue of these Regulations; against an authorised bank in relation to its backing assets. |
| Paragraph 59 of Schedule B1 | Paragraph 60 of Schedule B1 | Administration – General powers of administrators | An administrator may do anything necessary or expedient for the purpose of ensuring that an authorised bank complies with the directions referred to in regulation 23(1). |
| Paragraphs 67 and 68 of Schedule B1 | Paragraphs 68 and 69 of Schedule B1 | Administration – General duties of administrators | An administrator must ensure that an authorised bank complies with the directions referred to in regulation 23(1). |

Modifications to the Companies Act 2006

3.—(1) Section 899 of the Companies Act 2006(7) (Court sanction for compromise or arrangement) applies in relation to an authorised bank with the modifications specified in paragraph (2).

(2) The court may not sanction any composition between an authorised bank and its creditors, or any arrangement of an authorised bank's affairs, if the composition or arrangement would affect—

- (a) the rights of the noteholders under regulations 9(1)(b) and 22;
- (b) the rights of the Bank of England in relation to the backing assets; or
- (c) the backing assets.

Modifications to the Banking Act 2009

4. The provisions of the Act specified in the following table apply in relation to an authorised bank with the modifications specified in the table.

(5) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the [Enterprise Act 2002 \(c. 45\)](#).

(6) Schedule B1 was inserted by article 3(2) of, and Schedule 1 to, the [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#).

(7) [2006 c.46](#).

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

| <i>Provision</i> | <i>Subject</i> | <i>Modification</i> |
|------------------|---|---|
| Section 103 | Bank insolvency – General Powers, duties and effect | <p>(1) A bank liquidator—</p> <p>(a) must also ensure that an authorised bank complies with the directions referred to in regulation 23(1);</p> <p>(b) may do anything necessary or expedient to ensure such compliance;</p> <p>(c) may only exercise the powers conferred by this section in relation to the backing assets for the purpose of securing such compliance.</p> <p>(2) The provisions of the Insolvency Act 1986 specified in this section apply subject to the additional modifications to those provisions specified in paragraph 2 of this Schedule.</p> |
| Section 104 | Bank insolvency – Additional general powers | The reference to “property” does not include a reference to the backing assets. |
| Section 134 | Northern Ireland | Where a provision of the Insolvency (Northern Ireland) Order 1989 is an equivalent enactment for the purposes of this section, then that provision shall apply subject to the additional modifications to the Insolvency (Northern Ireland) Order 1989 specified in paragraph 2 of this Schedule. |
| Section 145 | Bank administration – General powers, duties and effect | <p>(1) A bank administrator—</p> <p>(a) must ensure that the insolvent bank complies with the directions referred to in regulation 23(1);</p> <p>(b) may do anything necessary or expedient to ensure such compliance;</p> <p>(c) may only exercise the powers conferred by this section in relation to the backing assets for the purpose of securing such compliance.</p> <p>(2) The provisions of the Insolvency Act 1986 specified in this section apply subject to the additional modifications to those provisions specified in paragraph 2 of this Schedule.</p> |
| Section 167 | Northern Ireland | Where a provision of the Insolvency (Northern Ireland) Order 1989 is an equivalent enactment for the purposes of this section, then that provision shall apply subject to the additional modifications to the Insolvency (Northern Ireland) Order 1989 specified in paragraph 2 of this Schedule. |

PART 2

Modifications to secondary legislation

Modifications to the Insolvency (Scotland) Rules 1986

5. The provisions of the Insolvency (Scotland) Rules 1986⁽⁸⁾ apply in relation to an authorised bank with any reference to “asset”, “property”, “estate”, “sum” or “fund” modified so that it does not include a reference to the backing assets.

Modifications to the Insolvency Rules (Northern Ireland) 1991

6. The provisions of the Insolvency Rules (Northern Ireland) 1991⁽⁹⁾ apply in relation to an authorised bank with any reference to “insolvent estate”, “property” or “asset” modified so that it does not include a reference to the backing assets.

Modifications to the Bank Administration Rules (Northern Ireland) 2009

7. The provisions of the Bank Administration Rules (Northern Ireland) 2009⁽¹⁰⁾ apply in relation to an authorised bank—

- (a) with any reference to “insolvent estate”, “property” or “asset” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1991 Rules” modified so that it is a reference to the Insolvency Rules (Northern Ireland) 1991 as modified by paragraph 6 of this Schedule.

Modifications to the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009

8. The provisions of the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009⁽¹¹⁾ apply in relation to an authorised bank—

- (a) with any reference to “insolvent estate”, “property” or “asset” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1991 Rules” modified so that it is a reference to the Insolvency Rules (Northern Ireland) 1991 as modified by paragraph 6 of this Schedule.

Modifications to the Bank Administration (Scotland) Rules 2009

9. The provisions of the Bank Administration (Scotland) Rules 2009⁽¹²⁾ apply in relation an authorised bank—

- (a) with any reference to “asset”, “property” or “fund” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1986 Rules” modified so that it is a reference to the Insolvency (Scotland) Rules 1986 as modified by paragraph 5 of this Schedule.

⁽⁸⁾ S.I. 1986/1915.

⁽⁹⁾ S.R. 1991 No. 364, amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No.261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No. 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355).

⁽¹⁰⁾ S.R. 2009/63.

⁽¹¹⁾ S.R. 2009/122.

⁽¹²⁾ S.I. 2009/350.

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

Modifications to the Bank Insolvency (Scotland) Rules 2009

10. The provisions of the Bank Insolvency (Scotland) Rules 2009**(13)** apply in relation to an authorised bank—

- (a) with any reference to “asset”, “property”, “sum” or “fund” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1986 Rules” modified so that it is a reference to the Insolvency (Scotland) Rules 1986 as modified by paragraph 5 of this Schedule.

(13) S.I. 2009/351.