
STATUTORY INSTRUMENTS

2014 No. 3348

The Bank Recovery and Resolution (No. 2) Order 2014

PART 17

Modified application of company law to banks etc in resolution

Interpretation of Part

216.—(1) In this Part—

“the use of resolution tools, powers and mechanisms” means—

- (a) the exercise by the Bank or the Treasury of a stabilisation power (within the meaning given in section 1(4) of the Banking Act 2009);
- (b) the making by the Bank of a mandatory reduction instrument (within the meaning given in section 6B of that Act⁽¹⁾); or
- (c) the application by the Treasury of the public equity support tool described in Article 57 of the recovery and resolution directive; and

“UK-registered company” has the meaning given in section 1158 of the Companies Act 2006⁽²⁾ (meaning of UK-registered company).

(2) For the purposes of article 219 “the use of resolution tools, powers and mechanisms” includes the application by an authority in another EEA State of—

- (a) any of the resolution tools referred to in Article 37.3 of the recovery and resolution directive;
- (b) the public equity support tool described in Article 57 of that directive; and
- (c) the temporary public ownership tool referred to in Article 58 of that directive.

(3) For the purposes of this Part a company is a company under resolution if it is a UK-registered company which is subject to the use of resolution tools, powers and mechanisms.

(4) But such a company is not a company under resolution if—

- (a) it has ceased to be subject to the exercise of a stabilisation power or the application of the public equity support tool; and
- (b) the results which are to be achieved by an instrument made in respect of the company under Part 1 of the Banking Act 2009 have been achieved.

Shadow directorship

217.—(1) A relevant person is not to be treated, in relation to a company under resolution, as—

- (a) a shadow director for the purposes of the enactments specified in paragraph (3);

(1) Section 6B was inserted by [S.I. 2014/3329](#).

(2) [2006 c. 46](#).

- (b) a person who discharges managerial responsibilities for the purposes of those enactments (unless that person has been appointed as a director); or
 - (c) a director by virtue of paragraph (b) of the definition of “director” given in section 417(1) of FSMA (a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act).
- (2) “Relevant persons” are—
- (a) the Bank; and
 - (b) persons who are employed by, or act on behalf of, the Bank.
- (3) The specified enactments are—
- (a) the Companies Act 2006;
 - (b) the Insolvency Act 1986(3);
 - (c) the Company Directors Disqualification Act 1986(4); and
 - (d) FSMA.

Modified application of legislation on cross-border mergers

218.—(1) This article applies for the purpose of ensuring that Directive [2005/56/EC](#) of the European Parliament and of the Council of 26th October 2005 on cross border mergers of limited liability companies(5) does not apply in relation to a company under resolution.

(2) The Companies (Cross-Border Mergers) Regulations 2007(6) have effect as if after regulation 3 there were inserted—

“Application to company subject to special resolution

3A. These Regulations do not apply in relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014.”.

(3) The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(7) have effect as if, in regulation 46 (cross-border merger)—

- (a) in paragraph (1) for “following modifications” there were substituted “the modifications set out in paragraph (2)”;
- (b) after paragraph (1) there were inserted—

“(1A) These Regulations do not apply in relation to a LLP which, if it were a UK-registered company (within the meaning given in section 1158 of the Companies 2006), would be a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014.”.

Modified application of the Companies Act 2006 (disapplication of Article 5.1 of the Takeovers Directive)

219.—(1) This article applies for the purpose of ensuring that Article 5.1 of Directive [2004/25/EC](#) of the European Parliament and of the Council of 21st April 2004 on takeover bids(8) does not

(3) [1986 c. 45.](#)

(4) [1986 c. 46.](#)

(5) OJ No. L 310, 25.11.2005, p. 1.

(6) [S.I. 2007/2974.](#) There are amendments, but none is relevant.

(7) [S.I. 2009/1804.](#) There are amendments, but none is relevant.

(8) OJ No. L 142, 30.4.2004, p. 12.

apply in relation to any change in interests in shares or any other transaction which is, in either case, effected by the use of resolution tools, powers and mechanisms.

(2) Part 28 of the Companies Act 2006 (Takeovers etc) has effect as if, in section 943 (rules), after subsection (1) there were inserted—

“(1A) Rules giving effect to Article 5.1 of the Takeovers Directive must provide that they do not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014).”.

Modified application of the Companies Act 2006 (disapplication of other directives)

220.—(1) This article applies for the purposes set out in paragraphs (2) and (3).

(2) The first purpose is to ensure that—

- (a) the Shareholders’ Rights Directive,
- (b) the Mergers Directive,
- (c) in the Safeguards Directive—
 - (i) Article 10,
 - (ii) Article 19.1,
 - (iii) paragraphs 1 to 3 of Article 29.1,
 - (iv) the first sub-paragraph of Article 31.2,
 - (v) Articles 33 to 36, and
 - (vi) Articles 40 to 42,

do not apply in relation to a company under resolution.

(3) The second purpose is to ensure that provisions in the Companies Act 2006 made—

- (a) in relation to companies to which the Safeguards Directive does not apply, and
- (b) for purposes equivalent to the purposes of any provision of that directive referred to in paragraph (2)(c),

do not apply in relation to such a company which is a company under resolution.

(4) For the purposes of this article the Companies Act 2006 applies with the modifications set out in Schedule 4 and with any other necessary modification.

(5) For the second purpose the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008⁽⁹⁾ applies as if in Schedule 2 (transitional provisions and savings) after paragraph 43 (power of directors to allot shares etc: private company with only one class of shares (s. 550)) there were inserted—

“**43A.** Paragraph 43 does not apply in relation to an existing company or a transitional company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014.”.

(6) In this article—

“the Shareholders’ Rights Directive” means Directive [2007/36/EC](#) of the European Parliament and of the Council of 11th July 2007 on the exercise of certain rights of shareholders in listed companies⁽¹⁰⁾;

⁽⁹⁾ [S.I. 2008/2860](#). There are amendments, but none is relevant.

⁽¹⁰⁾ OJ No. L 184, 14.7.2007, p. 17-24.

“the Mergers Directive” means Directive 2011/35/EU of the European Parliament and of the Council of 5th April 2011 concerning mergers of public limited liability companies⁽¹¹⁾; and
“the Safeguards Directive” means Directive 2012/30/EU of the European Parliament and of the Council of 25th October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent⁽¹²⁾.

⁽¹¹⁾ OJ No. L 110, 29.4.2011, p. 1-11.

⁽¹²⁾ OJ No. L 315, 14.11.2012, p. 74-97.