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STATUTORY INSTRUMENTS

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**2016 No. 1239**

**The Bank Recovery and Resolution Order 2016**

**PART 5**

Amendments of secondary legislation

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

- 41.**—(1) The Bank Recovery and Resolution (No. 2) Order 2014 <sup>M1</sup> is amended as follows.
- (2) In article 107 (interpretation of Chapter 1),—
- (a) at the end of the definition of “measure for early intervention”, omit “and”;
  - (b) at the end of the definition of “relevant institution”, insert—  
“, and  
“temporary manager” means a temporary manager appointed by the appropriate regulator under section 71C <sup>M2</sup> of FSMA.”.
- (3) In article 108, at the end insert “ or the appointment of a temporary manager ”.
- (4) In article 110 (application and interpretation of Chapter 2) after the definition of “non-UK group entity”, insert—  
“temporary manager” means—
- (a) in relation to a UK group entity, a temporary manager appointed by the appropriate regulator under section 71C of FSMA;
  - (b) in relation to a non-UK group entity, a temporary administrator appointed by a competent authority under measures implementing Article 29 of the recovery and resolution directive.”.
- (5) In article 111 (procedure for early intervention in respect of a UK group entity)—
- (a) in paragraph (1), after “early intervention” insert “ or appoint a temporary manager ”;
  - (b) in paragraph (3)—
    - (i) after “early intervention” insert “ or appoint a temporary manager ”;
    - (ii) in subparagraph (b) for “measure” substitute “ proposal ”;
  - (c) in paragraphs (4) and (6), after “early intervention” insert “ or to appoint a temporary manager ”.
- (6) In article 112 (procedure for early intervention in respect of a non-UK group entity)—
- (a) in paragraph (1) after “early intervention” insert “ or to appoint a temporary manager ”;
  - (b) in paragraph (2) for “measure” substitute “ proposal ”.
- (7) In article 113 (joint decisions about early intervention)—
- (a) after paragraph (1) insert—

- “(1A) Where two or more competent authorities decide to appoint a temporary manager, the appropriate regulator must endeavour to reach a decision jointly with the relevant competent authorities on whether it is more appropriate to appoint the same temporary manager for all the entities concerned.”;
- (b) in paragraph (2)(a) after “early intervention” both times it appears, insert “ or to appoint a temporary manager ”.
- (8) In article 114 (references to EBA), for paragraph (7) substitute—
- “(7) In this article, “referable measure means—
- (a) a measure for early intervention which is also—
- (i) a measure of the kind specified in sub-paragraph (a) of Article 27.1 of the recovery and resolution directive relating to information included in a recovery plan or group recovery plan by virtue of points (4), (10), (11) and (19) of Section A of the Annex to that directive (information to be included in recovery plans); or
- (ii) a measure of the kind specified in sub-paragraph (e) or (g) of Article 27.1 of that directive, or
- (b) the appointment of a temporary manager.”.
- (9) In article 115 (requesting the assistance of EBA), after “113(1)” insert “ or (1A) ”.
- (10) In article 116 (application and interpretation of Chapter 3), after “early intervention” insert “, “temporary manager” ”.
- (11) In article 117 (procedure for early intervention in respect of a UK group entity)—
- (a) in paragraphs (1), (3) and (5), after “early intervention” insert “ or appoint a temporary manager ”;
- (b) in paragraph (4) and (6), after “early intervention” insert “ or to appoint a temporary manager ”;
- (c) in paragraph (3)(b) for “measure” both times it appears, substitute “ proposal ”.
- (12) In article 118 (joint decisions about early intervention)—
- (a) after paragraph (1) insert—
- “(1A) Where the appropriate regulator and one or more other competent authorities decide to appoint a temporary manager, the appropriate regulator must endeavour to reach a decision jointly with those authorities on whether it is more appropriate to appoint the same temporary manager for all the entities concerned.”;
- (b) in paragraph (2) at the end insert “ or to appoint a temporary manager ”.
- (13) In article 120 (requesting the assistance of EBA), after “118(1)” insert “ or (1A) ”.
- (14) In articles 123(4), 126(6), 135(4) and 142(4) (determination of minimum requirement)—
- (a) for “A liability must be excluded” substitute “ An eligible liability must be excluded ”; and
- (b) for “own funds or eligible liabilities” substitute “ own funds and eligible liabilities ”.
- (15) In article 217(2) (shadow directorship)—
- (a) at the end of sub-paragraph (a), omit “and”;
- (b) after sub-paragraph (b) insert—
- “(c) a resolution administrator appointed under section 62B of the Banking Act 2009<sup>M3</sup>; and
- (d) a temporary manager appointed under section 71C of the Financial Services and Markets Act 2000.”.

(16) After article 220, insert—

**“Modified application of the Companies Act 2006 (shareholders' rights)**

**220A.**—(1) The provisions of the Companies Act 2006 concerning the rights of shareholders to call general meetings and to amend the articles of association of the company apply to traded companies to which Part 1 of the Banking Act 2009 applies with the following modifications.

(2) “Traded company” has the meaning given in section 360C of the Companies Act 2006.

(3) Section 21 (amendment of articles) has effect as if, after subsection (3) there were inserted—

“(4) A traded company (within the meaning of section 360C) to which Part 1 of the Banking Act 2009 applies may also amend its articles in accordance with section 307B.”

(4) Section 307A (notice required of general meeting: certain meetings of traded companies), has effect as if, at the beginning of subsection (1), there were inserted “Subject to section 307B,”.

(5) Part 13 (resolutions and meetings) has effect as if after section 307A there were inserted—

**“307B Notice required of general meeting: traded companies meeting the conditions for early intervention**

(1) Where the conditions in subsections (2) and (3) are satisfied, the members of a traded company to which Part 1 of the Banking Act 2009 applies may, by a resolution passed at a general meeting by a majority of two-thirds of those voting in person or by proxy—

- (a) require the company to call a general meeting to pass a resolution to increase the company's share capital, provided that the meeting is to be called by notice of at least 10 days;
- (b) amend the company's articles of association to permit a general meeting to be called to consider a proposal to increase the company's share capital by notice of at least 10 days.

(2) The condition in this subsection is satisfied if—

- (a) the company has infringed, or is likely in the near future to infringe—
  - (i) a relevant requirement within the meaning of section 204A of the Financial Services and Markets Act 2000; or
  - (ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments<sup>M4</sup>; or
- (b) the conditions for appointment of a temporary manager under section 71C(1) of the Financial Services and Markets Act 2000 (temporary manager) are met in relation to the company.

(3) The condition in this subsection is satisfied if an increase in the share capital of the company is necessary to prevent the conditions in section 7 of the Banking Act 2009 for the exercise of the stabilisation powers provided for in Part 1 of that Act being met in relation to the company.””

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**Changes to legislation:** There are currently no known outstanding effects for the The Bank Recovery and Resolution Order 2016, Section 41. (See end of Document for details)

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**Marginal Citations**

- M1** [S.I. 2014/3348](#).
- M2** [Section 71C](#) is inserted into the Financial Services and Markets Act 2000 by article 31 of this Order.
- M3** [Section 62B](#) was inserted by [S.I. 2014/3329](#).
- M4** OJ L173, 12.4.2014, p.84.

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