



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

##### *Supplementary provisions*

#### **190 Minor definitions.**

(1) In this Part—

“administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986;

<sup>F1</sup> .....

“charge” means any form of security, including a mortgage and, in Scotland, a heritable security;

<sup>F2</sup> .....

[<sup>F3</sup>“clearing member”, in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;]

[<sup>F3</sup>“client” has the meaning given by Article 2(15) of the EMIR Level 1 Regulation;]

[<sup>F4</sup>“CSD regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;]

[<sup>F3</sup>“EMIR Level 1 Regulation” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;]

[<sup>F3</sup>“EMIR Level 2 Regulation” means Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation for OTC derivatives contracts not cleared by a

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CCP [<sup>F5</sup>as amended by Commission Delegated Regulation (EU) 2017/2155 of 22 September 2017];]

[<sup>F6</sup>“the FCA” means the Financial Conduct Authority;]

[<sup>F7</sup>“indirect clearing services” has the same meaning as in the EMIR Level 2 Regulation;]

[<sup>F3</sup>“indirect client” has the meaning given by Article 1(a) of the EMIR Level 2 Regulation;]

[<sup>F8</sup>“interim trustee” has the same meaning as in the Bankruptcy (Scotland) Act 2016]

<sup>F2</sup> .....

[<sup>F4</sup>“member”, in relation to a central securities depository, means a participant of that central securities depository as defined in Article 2(1)(19) of the CSD regulation;]

[<sup>F3</sup>“member of a clearing house” includes a clearing member of a recognised central counterparty;]

[<sup>F9</sup>“MIFIR Level 2 Regulation” means Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements;]

“overseas”, in relation to an investment exchange or clearing house [<sup>F10</sup>or central securities depository] , means having its head office outside the United Kingdom;

[<sup>F3</sup>“position” has the same meaning as in the EMIR Level 1 Regulation;]

[<sup>F11</sup>“the PRA” means the Prudential Regulation Authority;]

[<sup>F4</sup>“recognised body” has the same meaning as in section 313 of the Financial Services and Markets Act 2000;]

<sup>F12</sup>[<sup>F13</sup>...“recognised central counterparty”, “recognised CSD”, “recognised clearing house”, “recognised investment exchange” [<sup>F14</sup>, “third country central counterparty”] and “third country CSD” have the same meaning as in the Financial Services and Markets Act 2000 (see section 285 of that Act);]

[<sup>F15</sup>“sequestration” means sequestration under the Bankruptcy (Scotland) Act 2016;]

<sup>F2</sup> .....

“set-off”, in relation to Scotland, includes compensation;

[<sup>F16</sup>“The Stock Exchange” means the London Stock Exchange Limited;]

[<sup>F17</sup>“UK”, in relation to an investment exchange, means having its head office in the United Kingdom.]

[<sup>F18</sup>(2) References in this Part to settlement—

- (a) mean, in relation to a market contract, the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise;
- (b) include, in relation to a clearing member client contract or a clearing member house contract, a reference to its liquidation for the purposes of Article 48 of the EMIR Level 1 Regulation.]

(3) In this Part the expressions “margin” and “cover for margin” have the same meaning.

<sup>F19</sup>(3A) .....

<sup>F20</sup>(4) .....

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- (5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

This does not apply for the purposes of a provision requiring “actual notice”.

[<sup>F21</sup>(6) References in this Part to the law of insolvency—

- (a) include references to every provision made by or under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act [<sup>F22</sup>2016]; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986;
- (b) are also to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6A) For the avoidance of doubt, references in this Part to administration, administrator, liquidator and winding up are to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6B) The enactments referred to in subsections (6)(b) and (6A) are—

- (a) article 3 of, and the Schedule to, the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009;
- (b) article 18 of, and paragraphs 1(a), (2) and (3) of Schedule 2 to, the Building Societies (Insolvency and Special Administration) Order 2009; and
- (c) regulation 27 of, and Schedule 6 to, the Investment Bank Special Administration Regulations 2011.]

(7) In relation to Scotland, references in this Part—

- (a) to sequestration include references to the administration by a judicial factor of the insolvent estate of a deceased person, and
- (b) to an interim [<sup>F23</sup>trustee or to a trustee in the sequestration of an estate] include references to a judicial factor on the insolvent estate of a deceased person, unless the context otherwise requires.

#### Textual Amendments

- F1** Words in s. 190 omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 70(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F2** Definitions of “clearing house”, “investment”, “investment exchange” and “recognised” in s. 190(1) repealed (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 89(3)
- F3** Words in s. 190(1) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **4(18)(a)** (with regs. 52-58)
- F4** Words in s. 190(1) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(25)(a)** (with regs. 7(4), 9(1))
- F5** Words in s. 190(1) added (3.1.2018) by [The Companies Act 1989 \(Financial Markets and Insolvency\) \(Amendment\) Regulations 2017 \(S.I. 2017/1247\)](#), regs. 1, **2(5)(a)**
- F6** Words in s. 190 inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 70(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F7** Words in s. 190 inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(12)(a)**

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- F8** Words in s. 190(1) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(a)(i)**
- F9** Words in s. 190(1) inserted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, **2(5)(b)**
- F10** Words in s. 190(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(25)(b)** (with regs. 7(4), 9(1))
- F11** Words in s. 190 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 70(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F12** Words in s. 190(1) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), **2(7)(a)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in s. 190(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(25)(c)** (with regs. 7(4), 9(1))
- F14** Words in s. 190(1) inserted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), **2(7)(b)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in s. 190(1) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(a)(ii)**
- F16** Definition of “The Stock Exchange” in s. 190(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 89(5)**
- F17** Words in s. 190(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(b)(ii)** (with regs. 52-58)
- F18** S. 190(2) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(c)** (with regs. 52-58)
- F19** S. 190(3A) omitted (26.8.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(12)(b)**
- F20** S. 190(4) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 89(6)**
- F21** S. 190(6)-(6B) substituted for s. 190(6) (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(e)** (with regs. 52-58)
- F22** Word in s. 190(6)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(b)**
- F23** Words in s. 190(7)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(c)**

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#### Commencement Information

- I1** S. 190 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1989, Section 190.