



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

##### *Bankruptcy*

#### 372 Petitions.

- (1) The [<sup>F1</sup>FCA] may present a petition to the court—
  - (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual; or
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual.
- [<sup>F2</sup>(1A) The PRA may present a petition to the court—
  - (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual who is a PRA-regulated person;
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual who is a PRA-regulated person.]
- (2) But [<sup>F3</sup>a petition may be presented by virtue of subsection (1) or (1A)] only on the ground that—
  - (a) the individual appears to be unable to pay a regulated activity debt; or
  - (b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.
- (3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.
- (4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—

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- (a) [<sup>F4</sup>a regulator] has served on him a demand requiring him to establish to the satisfaction of [<sup>F5</sup>that regulator] that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;
  - (b) at least three weeks have elapsed since the demand was served; and
  - (c) the demand has been neither complied with nor set aside in accordance with rules.
- (5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).
- (6) For the purposes of a petition presented in accordance with subsection (1)(b) [<sup>F6</sup>or (1A)(b)]—
- (a) [<sup>F7</sup>the regulator by which the petition is presented] is to be treated as a qualified creditor; and
  - (b) a ground mentioned in subsection (2) constitutes apparent insolvency.
- (7) “Individual” means an individual—
- (a) who is, or has been, an authorised person; or
  - (b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (8) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.
- (9) “Rules” means—
- (a) in England and Wales, rules made under section 412 of the 1986 Act;
  - (b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
  - (c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

#### Textual Amendments

- F1** Word in s. 372(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F2** S. 372(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F3** Words in s. 372(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F4** Words in s. 372(4)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(5\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F5** Words in s. 372(4)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(5\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F6** Words in s. 372(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(6\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F7** Words in s. 372(6)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(6\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

- I1** S. 372 wholly in force at 1.12.2001; s. 372 not in force at Royal Assent see s. 431(2); s. 372 in force for certain purposes at 20.7.2001 by [S.I. 2001/2632, art. 2\(1\), Sch. Pt. 1](#); s. 372 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

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### 373 Insolvency practitioner’s duty to report <sup>F8</sup>to FCA and PRA].

(1) If—

- (a) a bankruptcy order or sequestration award is in force in relation to an individual <sup>F9</sup>..., and
- (b) it appears to the insolvency practitioner that the individual is carrying on, or has <sup>F10</sup>carried on—
  - (i) a regulated activity in contravention of the general prohibition, or
  - (ii) a credit-related regulated activity in contravention of section 20,]

the insolvency practitioner must report the matter <sup>F11</sup>without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA].

<sup>F12</sup>(1A) Subsection (1) does not apply where—

- (a) the bankruptcy order or sequestration award is in force by virtue of a petition presented by a regulator, and
- (b) the regulator's petition depended on a contravention by the individual of the general prohibition.]

(2) “Bankruptcy order” means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).

(3) “Sequestration award” means an award of sequestration under section 12 of the 1985 Act.

(4) “Individual” includes an entity mentioned in section 374(1)(c).

#### Textual Amendments

- F8** Words in s. 373 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 21\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F9** Words in s. 373(1)(a) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 21\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F10** Words in s. 373(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 21\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F11** Words in s. 373(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 21\(2\)\(c\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F12** S. 373(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 21\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

### 374 <sup>F13</sup>Powers of FCA or PRA] to participate in proceedings.

(1) This section applies if a person <sup>F14</sup>... presents a petition to the court—

- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual;
- (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
- (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(2) The <sup>F15</sup>[appropriate regulator] is entitled to be heard—

- (a) at the hearing of the petition; and

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- (b) at any other hearing in relation to the individual or entity under—
- (i) Part IX of the 1986 Act;
  - (ii) Part IX of the 1989 Order; or
  - (iii) the 1985 Act.
- (3) <sup>F16</sup>In the case of a petition presented under Article 238 of the 1989 Order, a copy of the report prepared under Article 248 of that Order] must also be sent to the <sup>F15</sup>appropriate regulator].
- (4) A person appointed for the purpose by the <sup>F15</sup>appropriate regulator] is entitled—
- (a) to attend any meeting of creditors of the individual or entity;
  - (b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);
  - (c) to attend any meeting of commissioners held under paragraph 17 or 18 of Schedule 6 to the 1985 Act; and
  - (d) to make representations as to any matter for decision at such a meeting.
- (5) “Individual” means an individual who—
- (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (6) “Entity” means an entity which—
- (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- <sup>F17</sup>(7) “The appropriate regulator” means—
- (a) for the purposes of subsections (2) and (3)—
    - (i) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, and
    - (ii) in any other case, the FCA;
  - (b) for the purposes of subsection (4)—
    - (i) where the individual or entity is a PRA-regulated person, the FCA or the PRA, and
    - (ii) in any other case, the FCA.
- (8) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.]

#### Textual Amendments

- F13** Words in s. 374 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 22\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F14** Words in s. 374(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 22\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F15** Words in s. 374(2)-(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 22\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F16** Words in s. 374(3) substituted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\), reg. 1, Sch. 1 para. 13](#)

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**F17** S. 374(7)(8) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 22(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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