



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

##### *Winding up by the court*

#### **367 Winding-up petitions.**

- (1) The [<sup>F1</sup>FCA] may present a petition to the court for the winding up of a body which—
- (a) is, or has been, an authorised person [<sup>F2</sup>or recognised investment exchange];
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

[<sup>F3</sup>(1A) The PRA may present a petition to the court for the winding up of a body which is a PRA-regulated person.]

- (2) In [<sup>F4</sup>subsections (1) and (1A)] “body” includes any partnership.
- (3) On such a petition, the court may wind up the body if—
- [<sup>F5</sup>(za) in the case of an insurance undertaking or reinsurance undertaking, the PRA has cancelled the body’s Part 4A permission pursuant to section 55J(7C);]
  - (a) the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or
  - (b) the court is of the opinion that it is just and equitable that it should be wound up.
- (4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.
- (5) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.

*Status: Point in time view as at 07/03/2016.*

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- (6) Subsection (7) applies if a petition is presented under subsection (1) [<sup>F6</sup>or (1A)] for the winding up of a partnership—
- (a) on the ground mentioned in subsection (3)(b); or
  - (b) in Scotland, on a ground mentioned in subsection (3)(a) or (b).
- (7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

#### Textual Amendments

- F1** Word in s. 367(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 14(2)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F2** Words in s. 367(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 14(2)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F3** S. 367(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 14(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F4** Words in s. 367(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 14(4)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F5** S. 367(3)(za) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), **Sch. 1 para. 13**
- F6** Words in s. 367(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 14(5)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Modifications etc. (not altering text)

- C1** S. 367 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), **regs. 1, 6**  
S. 367 amended (1.12.2001) by [S.I. 2001/2657](#), **arts. 1(1), 12** (which was revoked (8.10.2001) by [S.I. 2001/3083](#), **arts. 1(2), 23**); [S.I. 2001/3538](#), **art. 2(1)**  
S. 367 amended (1.12.2001) by [S.I. 2001/3083](#), **arts. 1(2), 12**; [S.I. 2001/3538](#), **art. 2(1)**
- C2** S. 367 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), **reg. 6**
- C3** S. 367 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), **regs. 1(2)(c), 95, Sch. 5 para. 6** (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), Sch. 2 para 155(6)(f) (with Sch. 2 para. 156))
- C4** S. 367 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), **regs. 1(2)(b), 62, Sch. 3 para. 7** (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 196(5)(g)**)
- C5** S. 367(3)(a) modified (1.12.2001) by [S.I. 2001/3650](#), **arts. 1(a), 15**
- C6** S. 367(5) modified (1.12.2001) by [S.I. 2001/3650](#), **arts. 1(a), 14**

### 368 Winding-up petitions: EEA and Treaty firms.

- [<sup>F7</sup>(1)] [<sup>F8</sup>A regulator] may not present a petition to the court under section 367 for the winding up of—
- (a) an EEA firm which qualifies for authorisation under Schedule 3, or
  - (b) a Treaty firm which qualifies for authorisation under Schedule 4,
- unless it [<sup>F9</sup>or the other regulator] has been asked to do so by the home state regulator of the firm concerned.

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- [<sup>F10</sup>(2) If a regulator receives from the home state regulator of a body falling within subsection (1)(a) or (b) a request to present a petition to the court under section 367 for the winding up of the body, it must—
- (a) notify the other regulator of the request, and
  - (b) provide the other regulator with such information relating to the request as it thinks fit.]

#### Textual Amendments

- F7** S. 368 renumbered as s. 368(1) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 15\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F8** Words in s. 368(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 15\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F9** Words in s. 368(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 15\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F10** S. 368(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 15\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Modifications etc. (not altering text)

- C7** S. 368 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 6](#) (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), Sch. 2 para. 155(6)(f) (with Sch. 2 para. 156))
- C8** S. 368 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, [Sch. 3 para. 7](#) (with reg. 3) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 196\(5\)\(g\)](#))

### 369 Insurers: service of petition etc. on [<sup>F11</sup>FCA and PRA].

- (1) If a person other than [<sup>F12</sup>a regulator] presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition [<sup>F13</sup>on the appropriate regulator].
  - (2) If a person other than [<sup>F14</sup>a regulator] applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application [<sup>F15</sup>on the appropriate regulator].
- [<sup>F16</sup>(3) "The appropriate regulator" means—
- (a) in relation to a PRA-authorised person, the FCA and the PRA, and
  - (b) in any other case, the FCA.
- (4) If either regulator—
- (a) presents a petition for the winding up of a PRA-authorised person with permission to effect or carry out contracts of insurance, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of a PRA-authorised person with permission to effect or carry out contracts of insurance,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.]

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### Textual Amendments

- F11** Words in s. 369 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F12** Words in s. 369(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F13** Words in s. 369(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F14** Words in s. 369(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F15** Words in s. 369(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(3\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F16** S. 369(3)(4) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

### [<sup>F17</sup>369A Reclaim funds: service of petition etc on [<sup>F18</sup>FCA and PRA]

- (1) If a person [<sup>F19</sup>other than a regulator] presents a petition for the winding up of an authorised reclaim fund, the petitioner must serve a copy of the petition [<sup>F20</sup>on the appropriate regulator].
  - (2) If a person [<sup>F21</sup>other than a regulator] applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund, the applicant must serve a copy of the application [<sup>F22</sup>on the appropriate regulator].
  - (3) In this section “authorised reclaim fund” means a reclaim fund within the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008 that is authorised for the purposes of this Act.
- [ “The appropriate regulator” means—
- <sup>F23</sup>(4) (a) in relation to an authorised reclaim fund that is a PRA-authorised person, the FCA and the PRA, and
- (b) in relation to any other authorised reclaim fund, the FCA.
- (5) If either regulator—
- (a) presents a petition for the winding up of an authorised reclaim fund that is a PRA-authorised person, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund that is a PRA-authorised person,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.]]

### Textual Amendments

- F17** S. 369A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\), ss. 15, 31\(1\), Sch. 2 para. 7](#); [S.I. 2009/490, art. 2](#) (with [art. 3](#))
- F18** Words in s. 369A heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 17\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F19** Words in s. 369A(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 17\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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- F20** Words in s. 369A(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 17\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F21** Words in s. 369A(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 17\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F22** Words in s. 369A(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 17\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F23** S. 369A(4)(5) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 17\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

### [<sup>F24</sup>370 Liquidator's duty to report to FCA and PRA

- (1) If—
- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and
  - (b) it appears to the liquidator that the company or body is carrying on, or has 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 liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.
- (2) Subsection (1) does not apply where—
- (a) a body is being wound up on a petition presented by a regulator, and
  - (b) the regulator's petition depended on a contravention by the body of the general prohibition.]

#### Textual Amendments

- F24** S. 370 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 18](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Modifications etc. (not altering text)

- C9** S. 370 modified (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\), regs. 1, 17\(14\)](#) (with reg. 24)

### 371 [<sup>F25</sup>Powers of FCA and PRA] to participate in proceedings.

- (1) This section applies if a person <sup>F26</sup>... presents a petition for the winding up of a body which—
- (a) is, or has been, an authorised person [<sup>F27</sup>or recognised investment exchange];
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The [<sup>F28</sup>appropriate regulator] is entitled to be heard—
- (a) at the hearing of the petition; and
  - (b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).

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- (3) Any notice or other document required to be sent to a creditor of the body must also be sent to the [F28 appropriate regulator].
- (4) A person appointed for the purpose by the [F28 appropriate regulator] is entitled—
- to attend any meeting of creditors of the body;
  - to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;
  - to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and
  - to make representations as to any matter for decision at such a meeting.
- (5) If, during the course of the winding up of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the [F28 appropriate regulator] may apply to the court under [F29 section 896 or 899 of the Companies Act 2006].
- [F30(6) "The appropriate regulator" means—
- for the purposes of subsections (2), (3) and (5)—
    - where the body is a PRA-regulated person, each of the FCA and the PRA, and
    - in any other case, the FCA;
  - for the purposes of subsection (4)—
    - where the body is a PRA-regulated person, the FCA or the PRA, and
    - in any other case, the FCA.
- (7) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.]

#### Textual Amendments

- F25** Words in s. 371 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 19\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F26** Words in s. 371(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 19\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F27** Words in s. 371(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 19\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F28** Words in s. 371(2)-(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 19\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F29** Words in s. 371(5) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\), Sch. 1 para. 211\(4\)](#) (with arts. 6, 11, 12)
- F30** S. 371(6)(7) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 19\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Modifications etc. (not altering text)

- C10** S. 371 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, regs. 1, 6](#)
- C11** S. 371 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\), reg. 6](#)

**Status:**

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Financial Services and Markets Act 2000, Cross Heading: Winding up by the court is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.