



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 6

SPECIAL ADMINISTRATION FOR OPERATORS OF CERTAIN INFRASTRUCTURE SYSTEMS

FMI administration orders

114 FMI administration orders

- (1) In this Part “FMI administration order” means an order which—
 - (a) is made by the court in relation to an infrastructure company, and
 - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) A person appointed as mentioned in subsection (1)(b) is referred to in this Part as an FMI administrator.
- (3) The FMI administrator of a company must manage its affairs, business and property, and exercise and perform the FMI administrator’s functions, so as to achieve the objective in section 115.

115 Objective of FMI administration

- (1) Where an FMI administrator is appointed in relation to the operator of a recognised inter-bank payment system or a securities settlement system, the objective of the FMI administration is—
 - (a) to ensure that the system is and continues to be maintained and operated as an efficient and effective system,
 - (b) where the operator of the system is also a clearing house falling within section 285(1)(b)(ii) of FSMA 2000 (recognised clearing house that is not

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- a recognised central counterparty), to ensure that the protected activities continue to be carried on, and
- (c) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose or those purposes.
- (2) Where an FMI administrator is appointed in relation to a company designated under subsection (4) of section 112, the objective of the FMI administration is—
- (a) to ensure that services falling within that subsection continue to be provided, and
- (b) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose.
- (3) The protected activities referred to in subsection (1)(b) are such activities as the Bank of England may from time to time direct, which must be—
- (a) regulated activities falling within section 285(3)(a) or (b) of FSMA 2000, or
- (b) related activities which are necessary for the efficient carrying on of any of those regulated activities.
- (4) The specified means are—
- (a) the rescue as a going concern of the company subject to the FMI administration order, and
- (b) transfers falling within subsection (5).
- (5) A transfer falls within this subsection if it is a transfer as a going concern—
- (a) to another company, or
- (b) as respects different parts of the undertaking of the company subject to the FMI administration order, to two or more different companies,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the FMI administration.
- (6) The means by which transfers falling within subsection (5) may be effected include, in particular—
- (a) a transfer of the undertaking of the company subject to the FMI administration order, or of part of its undertaking, to a wholly-owned subsidiary of that company, and
- (b) the transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (7) The objective of the FMI administration may be achieved by transfers falling within subsection (5) only to the extent that—
- (a) the rescue as a going concern of the company subject to the FMI administration order is not reasonably practicable or is not reasonably practicable without such transfers,
- (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers, or
- (c) such transfers would produce a result for the company’s creditors as a whole that is better than the result that would be produced without them.

116 Application for FMI administration order

- (1) An application for an FMI administration order may be made to the court by the Bank of England.
- (2) An application must nominate a person to be appointed as the FMI administrator.
- (3) The infrastructure company must be given notice of an application, in accordance with rules under section 411 of the 1986 Act (as applied in relation to FMI administration).

117 Powers of court

- (1) The court may make an FMI administration order in relation to an infrastructure company if satisfied—
 - (a) that the company is unable to pay its debts,
 - (b) that the company is likely to be unable to pay its debts, or
 - (c) that, on a petition presented by the Secretary of State under section 124A of the 1986 Act (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the FMI administration) to wind up the company.
- (2) The court may not make an FMI administration order on the ground set out in subsection (1)(c) unless the Secretary of State has certified to the court that the case is one in which the Secretary of State considers (disregarding the objective of the FMI administration) that it would be appropriate to petition under section 124A of the 1986 Act.
- (3) On an application for an FMI administration order, the court may—
 - (a) grant the application;
 - (b) dismiss the application;
 - (c) adjourn the application (generally or to a specified date);
 - (d) make an interim order;
 - (e) treat the application as a winding-up petition and make any order which the court could make under section 125 of the 1986 Act;
 - (f) make any other order which the court thinks appropriate.
- (4) An interim order under subsection (3)(d) may, in particular—
 - (a) restrict the exercise of a power of the company or of its directors;
 - (b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company.
- (5) For the purposes of this section a company is unable to pay its debts if it is treated as being so unable under section 123 of the 1986 Act (definition of inability to pay debts).

118 FMI administrators

- (1) The FMI administrator of a company—
 - (a) is an officer of the court, and
 - (b) in exercising and performing powers and duties in relation to the company, is the company's agent.

- (2) The management by the FMI administrator of a company of any of its affairs, business or property must be carried out for the purpose of achieving the objective of the FMI administration as quickly and efficiently as is reasonably practicable.
- (3) The FMI administrator of a company must exercise and perform powers and duties in the way which, so far as it is consistent with the objective of the FMI administration to do so, best protects—
 - (a) the interests of the company’s creditors as a whole, and
 - (b) subject to those interests, the interests of the company’s members as a whole.

119 Continuity of supply

- (1) This section applies where, before the commencement of FMI administration, the infrastructure company had entered into arrangements with a supplier for the provision of a supply to the infrastructure company.
- (2) After the commencement of FMI administration, the supplier—
 - (a) must not terminate a supply unless—
 - (i) any charges in respect of the supply which relate to a supply given after the commencement of FMI administration remain unpaid for more than 28 days,
 - (ii) the FMI administrator consents to the termination, or
 - (iii) the supplier has the permission of the court, which may be given if the supplier can show that the continued provision of the supply would cause the supplier to suffer hardship,
 - (b) must not make it a condition of a supply that any charges in respect of the supply which relate to a supply given before the commencement of FMI administration are paid, and
 - (c) must not do anything which has the effect of making it a condition of the giving of a supply that any charges within paragraph (b) are paid.
- (3) Where, before the commencement of FMI administration, a contractual right to terminate a supply has arisen but has not been exercised, then, for the purposes of this section, the commencement of FMI administration causes that right to lapse and the supply is only to be terminated if a ground in subsection (2)(a) applies.
- (4) Any provision in a contract between the infrastructure company and the supplier that purports to terminate the agreement if any action is taken to put the infrastructure company in FMI administration is void.
- (5) Any expenses incurred by the infrastructure company on the provision of a supply after the commencement of FMI administration are to be treated as necessary disbursements in the course of the FMI administration.
- (6) In this section—
 - “commencement of FMI administration” means the making of the FMI administration order;
 - “supplier” means the person controlling the provision of a supply to the infrastructure company, and includes a company that is a group undertaking (as defined by section 1161(5) of the Companies Act 2006) in respect of the infrastructure company;
 - “supply” means a supply of any of the following—

- (a) computer hardware or software used by the infrastructure company in connection with the operation of the relevant system;
- (b) financial data;
- (c) infrastructure permitting electronic communication services;
- (d) data processing;
- (e) access to secure data networks used by the infrastructure company in connection with the operation of the relevant system;
- (f) staff.

120 Power to direct FMI administrator

- (1) If the Bank of England considers it necessary to do so for the purpose of achieving the objective of an FMI administration, the Bank may direct the FMI administrator to take, or refrain from taking, specified action.
- (2) In deciding whether to give a direction under this section, the Bank of England must have regard to the public interest in—
 - (a) the protection and enhancement of the stability of the financial system of the United Kingdom, and
 - (b) the maintenance of public confidence in that system.
- (3) A direction under this section must not be incompatible with a direction of the court that is in force under Schedule B1 to the 1986 Act.
- (4) The Bank of England must, within a reasonable time of giving the direction, give the FMI administrator a statement of its reasons for giving the direction.
- (5) A person listed in subsection (6) has immunity from liability in damages in respect of action or inaction in accordance with a direction under this section.
- (6) Those persons are—
 - (a) the FMI administrator;
 - (b) the company in FMI administration;
 - (c) the officers or staff of the company.
- (7) Immunity conferred by this section does not extend to action or inaction—
 - (a) in bad faith, or
 - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (8) This section does not limit the powers conferred on the Bank of England by section 191 of the Banking Act 2009 (directions) in relation to a recognised inter-bank payment system.

121 Conduct of administration, transfer schemes etc.

- (1) Schedule 6 (which applies the provisions of Schedule B1 to the 1986 Act about ordinary administration orders and certain other enactments to FMI administration orders) has effect.
- (2) Schedule 7 (which makes provision for transfer schemes to achieve the objective of an FMI administration) has effect.

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- (3) The power to make rules conferred by section 411(1B) of the 1986 Act (rules relating to bank administration) is to apply for the purpose of giving effect to this Part as it applies for the purposes of giving effect to Part 3 of the Banking Act 2009 (and, accordingly, as if the reference in section 411(1B) to that Part included a reference to this Part).