Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 6

SPECIAL ADMINISTRATION FOR OPERATORS OF CERTAIN INFRASTRUCTURE SYSTEMS

Introductory

111 Financial market [F1and cash] infrastructure administration

This Part—

(a) provides for a procedure to be known as FMI administration, F2...

(b) restricts the powers of persons other than the Bank of England in relation to the insolvency of infrastructure companies, **[**F3and

(c) confers power on the Bank of England to participate in proceedings under Part 26A of the Companies Act 2006 (arrangements and reconstructions: companies in financial difficulty).**]**

Textual Amendments

F1 Words in s. 111 heading inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 3**

F2 Word in s. 111 omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 49(2)(a)** (with ss. 2(2), 5(2))

F3 S. 111(c) and word inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 49(2)(b)** (with ss. 2(2), 5(2))

Commencement Information

I1 S. 111 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

Status: *This version of this part contains provisions that are prospective.*
Changes to legislation: *Financial Services (Banking Reform) Act 2013, PART 6 is up to date with all changes known to be in force on or before 21 September 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. (See end of Document for details) View outstanding changes*

112 Interpretation: infrastructure companies

(1) In this Part "infrastructure company" has the meaning given by this section.

(2) "Infrastructure company" means a company which is—

(a) the operator of a recognised [F4]... payment system, other than an operator excluded by subsection (3),

[[F5](aa) a recognised DSA service provider,**]**

[[F6](b) a recognised CSD [F7]..., [F8]...**]**

[[F9](ba) a person recognised for the purposes of Part 5A of the Banking Act 2009 (wholesale cash distribution) as having systemic significance, or**]**

(c) a company designated by the Treasury under subsection (4).

(3) But a company is not an infrastructure company if it is a recognised central counterparty, as defined by section 285 of FSMA 2000.

(4) The Treasury may by order designate a company for the purposes of subsection (2)(c) if—

(a) the company provides services to a person falling within subsection **[**[F10](2)(a), (b) or (ba)**]**, and

(b) the Treasury are satisfied that an interruption in the provision of those services would have a serious adverse effect on the effective operation of the recognised [F11]... payment system or securities settlement system in question **[**[F12]or, in the case of a person falling within subsection (2)(ba), a relevant function**]**.

(5) An order under subsection (4) must specify the recognised [F13]... payment system or securities settlement system in connection with which the company is designated.

(6) Before designating a company under subsection (4), the Treasury must consult—

(a) the company to be designated,

(b) the person within subsection **[**[F14](2)(a), (b) or (ba)**]** to whom the company provides services,

(c) the Bank of England,

(d) if the company is a PRA-authorised person, the PRA and the FCA, and

(e) if the company is an authorised person other than a PRA-authorised person, the FCA.

[[F15](7) In subsection (4)(b), "relevant function" means a function performed by the person in relation to wholesale cash distribution.**]**

Textual Amendments

F4 Word in s. 112(2)(a) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 41**

F5 S. 112(2)(aa) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(a), **Sch. 6 para. 45**

F6 S. 112(2)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(3)** (with regs. 7(3)(b)(4), 9(1))

F7 Words in s. 112(2)(b) omitted (27.3.2019) by virtue of The Uncertificated Securities (Amendment and EU Exit) Regulations 2019 (S.I. 2019/679), regs. 1(2), **3(3)** (with regs. 10-12)

F8 Word in s. 112(2)(b) omitted (29.8.2023) by virtue of Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 4(2)**

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F9 S. 112(2)(ba) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 4(2)**

F10 Words in s. 112(4)(a) substituted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 4(3)(a)**

F11 Word in s. 112(4)(b) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 41**

F12 Words in s. 112(4)(b) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 4(3)(b)**

F13 Word in s. 112(5) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 41**

F14 Words in s. 112(6)(b) substituted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 4(4)**

F15 S. 112(7) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 4(5)**

Commencement Information

I2 S. 112 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(a)**

113 Interpretation: other expressions

(1) In this Part—

"company" means a company registered under the Companies Act 2006;

"operator", in relation to a recognised [F16]... payment system, is to be read in accordance with section 183 of the Banking Act 2009;

[[F17]"recognised CSD" has the meaning given by section 285 of FSMA 2000;**]**

[[F18]"recognised DSA service provider" means a DSA service provider, as defined by section 182(5A) of the Banking Act 2009, in respect of which a recognition order under section 184A of that Act is in force;**]**

"recognised [F19]... payment system" means **[**[F20]a**]** payment system, as defined by section 182 of the Banking Act 2009, in respect of which a recognition order under section 184 of that Act is in force;

"the relevant system" means—

(a) in relation to an infrastructure company falling within subsection (2)(a) of section 112, the recognised [F21]... payment system,

(b) in relation to an infrastructure company falling within subsection (2)(b) of that section, the securities settlement system,

(ba) **[**[F22]in relation to an infrastructure company falling within subsection (2)(ba) of that section, any system used by the company to facilitate or control wholesale cash distribution,**]**

(c) in relation to a company designated under subsection (4) of that section, the recognised [F21]... payment system or securities settlement system falling within paragraph (b) of that subsection;

"securities settlement system" means a computer-based system, and procedures, which enable title to units of a security to be evidenced and transferred without a written instrument, and which facilitate supplementary and incidental matters.

[[F23]"wholesale cash distribution" and "wholesale cash distribution activities" have the meanings given by section 206E of the Banking Act 2009.**]**

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(2) Expressions used in the definition of "securities settlement system" in subsection (1) are to be read in accordance with section 783 of the Companies Act 2006.

Textual Amendments

F16 Word in s. 113(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(a)**

F17 Words in s. 113(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(4)** (with regs. 7(3)(b)(4), 9(1))

F18 Words in s. 113(1) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(a), **Sch. 6 para. 46**

F19 Word in s. 113(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(b)(i)**

F20 Word in s. 113(1) substituted (27.6.2017) by Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(b)(ii)**

F21 Word in s. 113(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 42(c)**

F22 Words in s. 113(1) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 5(a)**

F23 Words in s. 113(1) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 5(b)**

Commencement Information

I3 S. 113 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

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.

Commencement Information

I4 S. 114 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

115 Objective of FMI administration

(1) Where an FMI administrator is appointed in relation to the operator of a recognised [F24]... payment system **[**[F25], or a recognised DSA service provider,**]**[F26]..., the objective of the FMI administration is—

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(a) to ensure that the system **[**[F27]or provider**]** is and continues to be maintained and operated as an efficient and effective system **[**[F27]or provider**]**,

[F28](b) . . . . . , 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 [F29]....

[[F30](1A) Where an FMI administrator is appointed in relation to a recognised CSD [F31]..., 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) 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.**]**

[[F32](1B) Where an FMI administrator is appointed in relation to a company that is a person recognised for the purposes of Part 5A of the Banking Act 2009, the objective of the FMI administration is—

(a) to ensure that the functions performed by the person in relation to wholesale cash distribution are and continue to be performed efficiently and effectively, 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 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 **[**[F33](1A)(b)**]** are such activities as the Bank of England may from time to time direct, which must be—

(a) regulated activities falling within section **[**[F34]285(3D)**]** 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—

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(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.

Textual Amendments

F24 Word in s. 115(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 43**

F25 Words in s. 115(1) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(a), **Sch. 6 para. 47(2)**

F26 Words in s. 115(1) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(a)(i)** (with regs. 7(3)(b)(4), 9(1))

F27 Words in s. 115(1)(a) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(a), **Sch. 6 para. 47(3)**

F28 S. 115(1)(b) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(a)(ii)** (with regs. 7(3)(b)(4), 9(1))

F29 Words in s. 115(1)(c) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(a)(iii)** (with regs. 7(3)(b)(4), 9(1))

F30 S. 115(1A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(b)** (with regs. 7(3)(b)(4), 9(1))

F31 Words in s. 115(1A) omitted (27.3.2019) by virtue of The Uncertificated Securities (Amendment and EU Exit) Regulations 2019 (S.I. 2019/679), regs. 1(2), **3(4)** (with regs. 10-12)

F32 S. 115(1B) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 6**

F33 Word in s. 115(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(c)(i)** (with regs. 7(3)(b)(4), 9(1))

F34 Word in s. 115(3)(a) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 16(5)(c)(ii)** (with regs. 7(3)(b)(4), 9(1))

Commencement Information

I5 S. 115 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

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.

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(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).

Commencement Information
I6 S. 116 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

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).

Commencement Information
I7 S. 117 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

118 FMI administrators

(1) The FMI administrator of a company—
  (a) is an officer of the court, and

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(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.

Commencement Information

I8 S. 118 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

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—

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"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;

(aa) **[**[F35]in the case of an infrastructure company that is a person recognised for the purposes of Part 5A of the Banking Act 2009, goods or services used by the person in connection with wholesale cash distribution activities;**]**

(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.

Textual Amendments

F35 Words in s. 119(6) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 7**

Commencement Information

I9 S. 119 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

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;

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(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 [F36]...payment system **[**[F37]or section 206M of that Act (directions) in relation to a person recognised for the purposes of Part 5A of that Act**]**.

Textual Amendments

F36 Word in s. 120(8) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 44**

F37 Words in s. 120(8) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 8**

Commencement Information

I10 S. 120 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

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.

(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).

Commencement Information

I11 S. 121(1)(3) in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), **Sch. Pt. 2**

I12 S. 121(1)(3) in force at 13.7.2018 for E.W. in so far as not already in force by S.I. 2018/848, **art. 2(b)**

I13 S. 121(2) in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

Restrictions on other insolvency procedures

122 Restriction on winding-up orders and voluntary winding up

(1) A petition by a person other than the Bank of England for a winding up order in respect of an infrastructure company may not be determined unless—
(a) the petitioner has notified the Bank of England that the petition has been presented, and

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(b) the period of 14 days beginning with the day on which the notice is received by the Bank has ended.

(2) A resolution for the voluntary winding up of an infrastructure company may not be made unless—

(a) the infrastructure company has applied to the court under this section,

(b) the company has notified the Bank of England that the application has been made, and

(c) after the end of the period of 14 days beginning with the day on which the notice is received by the Bank, the court gives permission for the resolution to be made.

Commencement Information

I14 S. 122 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

123 Restriction on making of ordinary administration orders

(1) This section applies where an ordinary administration application is made in relation to an infrastructure company by a person other than the Bank of England.

(2) The court must dismiss the application if—

(a) an FMI administration order is in force in relation to the company, or

(b) an FMI administration order has been made in relation to the company but is not yet in force.

(3) Where subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the 1986 Act (other than its power of adjournment) unless—

(a) the applicant has notified the Bank of England that the application has been made, and

(b) the period of 14 days beginning with the day on which the notice is received by the Bank has ended.

(4) On the making of an FMI administration order in relation to an infrastructure company, the court must dismiss any ordinary administration application made in relation to the company which is outstanding.

(5) "Ordinary administration application" means an application under paragraph 12 of Schedule B1 to the 1986 Act.

Commencement Information

I15 S. 123 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

124 Restriction on enforcement of security

A person may not take any step to enforce a security over property of an infrastructure company unless—

(a) notice of the intention to do so has been given to the Bank of England, and

Status: *This version of this part contains provisions that are prospective.*
Changes to legislation: *Financial Services (Banking Reform) Act 2013, PART 6 is up to date with all changes known to be in force on or before 21 September 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. (See end of Document for details) View outstanding changes*

(b) the period of 14 days beginning with the day on which the notice was received by the Bank has ended.

Commencement Information

I16 S. 124 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

[F38 Powers to participate in Part 26A proceedings

Textual Amendments

F38 S. 124A and cross-heading inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 49(3)** (with ss. 2(2), 5(2))

124A Powers of Bank to participate in Part 26A proceedings

(1) This section applies where Part 26A of the Companies Act 2006 ("the 2006 Act") (arrangements and reconstructions: companies in financial difficulty) applies in relation to an infrastructure company.

(2) A relevant applicant must give notice to the Bank of England of—
- (a) any application which the relevant applicant intends to make under section 901C(1) of the 2006 Act, and
- (b) any application which the relevant applicant believes a creditor or member of the company has made, or intends to make, under section 901C(1) of that Act in relation to the company.

(3) A relevant applicant may not make an application under section 901C(1) of the 2006 Act in relation to the company without the consent of the Bank of England.

(4) In this section "relevant applicant", in relation to a company, means—
- (a) the company;
- (b) if the company is being wound up, the liquidator;
- (c) if the company is in administration, the administrator.

(5) The Bank of England is entitled to be heard at any hearing of an application made under section 901C or 901F of the 2006 Act in relation to the company.

(6) Any notice or other document required to be sent to a creditor of the company must also be sent to the Bank of England.

(7) A person appointed for the purpose by the Bank of England is entitled—
- (a) to attend any meeting of creditors of the company summoned under section 901C of the 2006 Act;
- (b) to make representations as to any matter for decision at such a meeting.

(8) Sections 197, 198 and 202A of the Banking Act 2009, and sections 201 and 202 of that Act, so far as relating to those sections, apply in relation to a failure by an infrastructure company to comply with subsection (2) or (3) above as they apply in relation to a compliance failure within the meaning of Part 5 of that Act.**]**

Status: *This version of this part contains provisions that are prospective.*
Changes to legislation: *Financial Services (Banking Reform) Act 2013, PART 6 is up to date with all changes known to be in force on or before 21 September 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. (See end of Document for details) View outstanding changes*

Financial support for companies in FMI administration

125 Loans

(1) This section applies where an FMI administration order has been made in relation to an infrastructure company.

(2) The Treasury may, out of money provided by Parliament, make loans to the company for achieving the objective in section 115.

(3) A loan under this section may be made on such terms as the Treasury think fit.

(4) The Treasury must pay into the Consolidated Fund sums received by them as a result of this section.

Commencement Information
I17 S. 125 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

126 Indemnities

(1) This section applies where an FMI administration order has been made in relation to an infrastructure company.

(2) The Treasury may agree to indemnify persons in respect of one or both of the following—
  (a) liabilities incurred in connection with the exercise of powers and duties by the FMI administrator;
  (b) loss or damage sustained in that connection.

(3) The agreement may be made in whatever manner, and on whatever terms, the Treasury think fit.

(4) As soon as practicable after agreeing to indemnify persons under this section, the Treasury must lay before Parliament a statement of the agreement.

(5) If sums are paid by the Treasury in consequence of an indemnity agreed to under this section, the infrastructure company must pay the Treasury—
  (a) such amounts in or towards the repayment to them of those sums as the Treasury may direct, and
  (b) interest, at such rates as they may direct, on amounts outstanding under this subsection.

(6) Subsection (5) does not apply in the case of a sum paid by the Treasury for indemnifying a person in respect of a liability to the infrastructure company.

(7) Where a sum has been paid out by the Treasury in consequence of an indemnity agreed to under this section, the Treasury must lay a statement relating to that sum before Parliament—
  (a) as soon as practicable after the end of the financial year in which that sum is paid out, and
  (b) (except where subsection (5) does not apply in the case of the sum) as soon as practicable after the end of each subsequent relevant financial year.

Status: *This version of this part contains provisions that are prospective.*
Changes to legislation: *Financial Services (Banking Reform) Act 2013, PART 6 is up to date with all changes known to be in force on or before 21 September 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. (See end of Document for details) View outstanding changes*

(8) In relation to a sum paid out in consequence of an indemnity, a financial year is a relevant financial year for the purposes of subsection (7) unless—

(a) before the beginning of that year, the whole of that sum has been repaid to the Treasury under subsection (5), and

(b) the infrastructure company is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.

(9) The power of the Treasury to agree to indemnify persons—

(a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons, but

(b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.

(10) For the purposes of this section each of the following is a relevant person—

(a) the FMI administrator;

(b) an employee of the FMI administrator;

(c) a member or employee of a firm of which the FMI administrator is a member;

(d) a member or employee of a firm of which the FMI administrator is an employee;

(e) a member or employee of a firm of which the FMI administrator was an employee or member at a time when the order was in force;

(f) a body corporate which is the employer of the FMI administrator;

(g) an officer, employee or member of such a body corporate.

(11) For the purposes of subsection (10)—

(a) the references to the FMI administrator are to be read, where two or more persons are appointed to act as the FMI administrator, as references to any one or more of them, and

(b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which the person was a member or employee at that time.

(12) The Treasury must pay into the Consolidated Fund sums received by them as a result of subsection (5).

Commencement Information

I18 S. 126 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

Interpretation

127 Interpretation of Part

(1) In this Part—

"the 1986 Act" means the Insolvency Act 1986;

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"business", "member", "property" and "security" have the same meaning as in the 1986 Act;

"company" has the meaning given by section 113;

"the court" means—

(a) in England and Wales and Northern Ireland, the High Court;

(b) in Scotland, the Court of Session;

"FMI administration order" and "FMI administrator" are to be read in accordance with section 114;

"infrastructure company" has the meaning given by section 112;

"operator", in relation to a recognised [F39]... payment system, has the meaning given by section 113;

"recognised [F39]... payment system" has the meaning given by section 113;

"regulated activity" has the same meaning as in FSMA 2000;

"the relevant system" has the meaning given by section 113;

"securities settlement system" has the meaning given by section 113.

[[F40]"wholesale cash distribution" and "wholesale cash distribution activities" have the meanings given by section 113.**]**

(2) In this Part references to the FMI administrator of a company include a person appointed under paragraph 91 or 103 of Schedule B1 to the 1986 Act, as applied by Schedule 6 to this Act, to be the FMI administrator of a company.

(3) In this Part references to a person qualified to act as an insolvency practitioner in relation to a company are to be read in accordance with Part 13 of the 1986 Act, but as if references in that Part to a company included a company registered under the Companies Act 2006 in Northern Ireland.

Textual Amendments

F39 Word in s. 127(1) omitted (27.6.2017) by virtue of Digital Economy Act 2017 (c. 30), s. 118(2), **Sch. 9 para. 45**

F40 Words in s. 127(1) inserted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), s. 86(2)(d), **Sch. 9 para. 9**

Commencement Information

I19 S. 127 in force at 13.7.2018 for E.W. by S.I. 2018/848, **art. 2(c)**

PROSPECTIVE

Application of Part to Northern Ireland

128 Northern Ireland

(1) This section makes provision about this Part in its application to Northern Ireland.

(2) Any reference to any provision of the 1986 Act is to have effect as a reference to the corresponding provision of the Insolvency (Northern Ireland) Order 1989.

Status: *This version of this part contains provisions that are prospective.*
Changes to legislation: *Financial Services (Banking Reform) Act 2013, PART 6 is up to date with all changes known to be in force on or before 21 September 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. (See end of Document for details) View outstanding changes*

(3) Section 127(3) is to have effect as if the reference to Northern Ireland were a reference to England and Wales or Scotland.

Status:
This version of this part contains provisions that are prospective.

Changes to legislation:
Financial Services (Banking Reform) Act 2013, PART 6 is up to date with all changes known to be in force on or before 21 September 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.
View outstanding changes

Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2015/490, art. 2 by S.I. 2015/2055 art. 2
- specified provision(s) savings and transitional provisions for commencing SI 2015/490 by S.I. 2015/492 Order

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 59(7) inserted by 2024 c. 13 Sch. 29 para. 11(2)
- s. 61(6) inserted by 2024 c. 13 Sch. 29 para. 11(3)