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Financial Services and Markets Act 2023, PART 1. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 13

#### INSURERS IN FINANCIAL DIFFICULTIES: ENFORCEMENT OF CONTRACTS

##### PART 1

###### NEW SCHEDULE 19C TO FSMA 2000

- 1 (1) Part 24 of FSMA 2000 (insolvency) is amended as follows.
- (2) After section 377J (further provision about write-down orders), inserted by Part 1 of Schedule 12 to this Act, insert—

**“377K Insurers in financial difficulties: enforcement of contracts**

Schedule 19C makes provision about the enforcement of certain contracts to which an insurer is a party while the insurer is in financial difficulties (within the meaning given by the Schedule).”

- (3) After Schedule 19B (further provision about write-down orders), inserted by Part 3 of Schedule 12 to this Act, insert—

“SCHEDULE  
19C

Section 377K

#### INSURERS IN FINANCIAL DIFFICULTIES: ENFORCEMENT OF CONTRACTS

##### PART 1

###### INTRODUCTORY

###### Application of this Schedule

- 1 This Schedule applies in relation to an insurer while the insurer is in financial difficulties.

###### “Financial difficulties”

- 2 (1) An insurer is in “financial difficulties” for the purposes of this Schedule if—
- (a) Part 1 of Schedule 19B (write-down orders: restrictions on enforcement) has effect in relation to the insurer (see paragraph 1(1) and (2) of that Schedule);

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- (b) the insurer is in administration, within the meaning of Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order, or awaiting administration;
  - (c) a petition for the winding up of the insurer has been presented and has not been withdrawn or determined.
- (2) For the purposes of sub-paragraph (1)(b), an insurer is awaiting administration while an application for an administration order in respect of the insurer has been made to the court and—
- (a) the application has not yet been granted or dismissed, or
  - (b) the application has been granted but the administration order has not yet taken effect.
- (3) For the purposes of this Schedule, an insurer “enters into financial difficulties”—
- (a) in a case to which sub-paragraph (1)(a) applies, on the date on which Part 1 of Schedule 19B first has effect in relation to the insurer;
  - (b) in a case to which sub-paragraph (1)(b) applies, on the date on which the application for the administration order is made to the court;
  - (c) in a case to which sub-paragraph (1)(c) applies, on the date on which the winding-up petition is presented.

## PART 2

### POLICYHOLDER SURRENDER RIGHTS

#### **Restriction on policyholder surrender rights**

- 3 (1) Where this Schedule applies in relation to an insurer, the total value of a policyholder’s rights under a relevant contract of insurance which the policyholder may surrender in a relevant period must not exceed the surrender limit for that period.
- (2) For these purposes—
- “relevant contract of insurance” means a contract of long-term insurance which is not a contract in respect of which the following conditions are met—
- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
  - (b) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium;
  - (c) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with either of the above conditions;
- “relevant period” means—
- (a) the period of 12 months beginning with the date on which the insurer entered into financial difficulties, and

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- (b) each subsequent period of 12 months;  
“surrender limit”, in relation to a relevant contract of insurance and relevant period, is an amount equal to 5% of the total surrender value of the contract on the day on which the relevant period began.

### Switching rights

- 4 (1) This paragraph applies where the value of a right under a relevant contract of insurance is wholly or partly determined by reference to property of any description.
- (2) The reference in paragraph 3(1) to the surrender of rights by a policyholder includes the exercise by the policyholder of a contractual right to change the property by reference to which the value of a right is (wholly or partly) determined.

### Consent to exceed surrender limit

- 5 (1) Paragraph 3(1) does not apply if, or to the extent that, consent for the surrender of an amount that would exceed the surrender limit for the relevant period has been given by—
  - (a) the court,
  - (b) a relevant office-holder, or
  - (c) where there is no relevant office-holder, the insurer.
- (2) For these purposes, “relevant office-holder” means—
  - (a) a provisional liquidator of the insurer;
  - (b) an administrator of the insurer;
  - (c) a person appointed to act as the manager of a write-down order that has effect in relation to the insurer.
- (3) The court, a relevant office-holder or the insurer (as the case may be) may give consent under sub-paragraph (1) only if satisfied that not doing so would cause the policyholder hardship.
- (4) Where a provisional liquidator of an insurer has been appointed, the manager of a write-down order that has effect in relation to the insurer must obtain the consent of the provisional liquidator before giving consent under sub-paragraph (1).
- (5) As soon as reasonably practicable after giving consent under sub-paragraph (1), a relevant office-holder or the insurer must notify the PRA.

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### PART 3

#### TERMINATION ETC OF RELEVANT CONTRACTS

##### Relevant contracts

- 6 (1) For the purposes of this Part of this Schedule, a contract to which an insurer is a party is a “relevant contract” if it is—
- (a) a contract for the supply of goods or services to the insurer,
  - (b) a financial contract, or
  - (c) a reinsurance contract under which contracts of insurance the insurer carries out as principal are reinsured.
- (2) “Financial contract” means—
- (a) a contract for the provision of financial services consisting of—
    - (i) lending (including the factoring and financing of commercial transactions),
    - (ii) financial leasing, or
    - (iii) providing guarantees or commitments;
  - (b) a securities contract, including—
    - (i) a contract for the purchase, sale or loan of a security or group or index of securities;
    - (ii) an option on a security or group or index of securities;
    - (iii) a repurchase or reverse repurchase transaction on any such security, group or index;
  - (c) a commodities contract, including—
    - (i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - (ii) an option on a commodity or group or index of commodities;
    - (iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;
  - (d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - (e) a swap agreement, including—
    - (i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
    - (ii) a total return, credit spread or credit swap;
    - (iii) any agreement or transaction similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets.

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- (3) But a master agreement for any contract or agreement referred to in sub-paragraph (2) is not a relevant contract for the purposes of this Part of this Schedule.
- (4) For the purposes of sub-paragraph (2), “commodities” includes—
- (a) units recognised for compliance with the requirements of [EU Directive 2003/87/EC](#) establishing a scheme for greenhouse gas emission allowance trading,
  - (b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and
  - (c) renewables obligation certificates issued—
    - (i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or
    - (ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#)) and pursuant to an order made under Articles 52 to 55F of that Order.

#### **Restriction on termination etc**

- 7 (1) Where this Schedule applies in relation to an insurer, a provision of a relevant contract, entered into by the insurer before the insurer first enters into financial difficulties, ceases to have effect if, and to the extent that, under the provision—
- (a) the contract would terminate, a supply would cease, or any other thing would occur, because the insurer is in financial difficulties, or
  - (b) another party to the contract would be entitled to terminate the contract, cease a supply, or do any other thing, because the insurer is in financial difficulties.
- (2) Where—
- (a) under a provision of a relevant contract, another party to the contract is entitled to terminate the contract, cease a supply, or do any other thing because of an event occurring before the insurer was in financial difficulties, and
  - (b) the entitlement arises before the insurer was in financial difficulties,
- the entitlement may not be exercised while the insurer is in financial difficulties.
- (3) A supplier of goods or services to an insurer must not—
- (a) make it a condition of a supply of goods or services, while the insurer is in financial difficulties, that any outstanding charges in respect of a supply made to the insurer before the insurer is in financial difficulties are paid, or
  - (b) do anything which has that effect.

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### **Consent to terminate relevant contracts**

- 8 (1) Sub-paragraph (2) applies where—
- (a) a provision of a relevant contract ceases to have effect under paragraph 7(1), or
  - (b) an entitlement under a provision of a relevant contract is not exercisable under paragraph 7(2).
- (2) A party to the contract (other than the insurer) may terminate the contract, or do another thing in relation to the contract, if consent to terminate the contract or do that other thing (as the case may be) has been given by—
- (a) the court,
  - (b) a relevant office holder, or
  - (c) where there is no relevant office-holder, the insurer.
- (3) For these purposes, “relevant office-holder” means an administrator or provisional liquidator of the insurer (but does not include a person appointed to act as the manager of a write-down order that has effect in relation to the insurer).
- (4) The court, a relevant office-holder or the insurer (as the case may be) may give consent under sub-paragraph (2) only if satisfied that not doing so would cause hardship to any person.
- (5) As soon as reasonably practicable after giving consent under sub-paragraph (2), a relevant office-holder or the insurer must notify the PRA.

## **PART 4**

### EXCLUSIONS AND DISAPPLICATION OF THIS SCHEDULE

#### **Exclusions**

- 9 (1) Nothing in this Schedule affects the operation of—
- (a) Part 7 of the Companies Act 1989 (financial markets and insolvency);
  - (b) the Financial Markets and Insolvency Regulations 1996 ([S.I. 1996/1469](#));
  - (c) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 ([S.I. 1999/2979](#));
  - (d) the Financial Collateral Arrangements (No.2) Regulations 2003 ([S.I. 2003/3226](#)).
- (2) Nothing in this Schedule affects any protected arrangements within the meaning of section 48P of the Banking Act 2009.

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### **Disapplication of this Schedule by the court**

- 10 (1) The court may order that this Schedule, or a specified provision of this Schedule—
- (a) does not apply (insofar as it would otherwise) in relation to one or more contracts to which the insurer is a party, or
  - (b) applies with specified modifications in relation to one or more such contracts.
- (2) An order under this paragraph—
- (a) must specify the contracts to which it applies;
  - (b) may specify all of the contracts to which the insurer is a party (and to which one or more provisions of this Schedule would otherwise apply).
- (3) For the purposes of an order under this paragraph—
- “contract” includes a contract of insurance;
  - “specified” means specified or described in the order.
- (4) The court may make an order under this paragraph only if satisfied that one or more of the following grounds is made out—
- (a) not making the order would be likely to cause hardship to any person (other than the insurer);
  - (b) where the insurer is in financial difficulties by virtue of paragraph 2(1)(a) (write-down order), making the order is reasonably likely to lead to a better outcome for the insurer’s policyholders and other creditors (taken as a whole) than not making the order;
  - (c) where the insurer is in financial difficulties by virtue of paragraph 2(1)(b) (administration), making the order is reasonably likely to promote the purpose of administration.
- (5) The “purpose of administration” means—
- (a) where the insurer is in, or is awaiting, administration under Part 2 of the 1986 Act (as modified, in relation to insurers, by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 (S.I. 2010/3023)), an objective specified in paragraph 3 or 3A of Schedule B1 to the 1986 Act;
  - (b) where the insurer is in, or is awaiting, administration under Part 3 of the 1989 Order (as modified, in relation to insurers, by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) (Northern Ireland) Order 2007 (S.I. 2007/846)), an objective specified in paragraph 4 of Schedule B1 to the 1989 Order.

### **Procedure**

- 11 (1) An order under paragraph 10 may be made on the court’s own motion or on an application by—

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- (a) where the insurer is in financial difficulties by virtue of paragraph 2(1)(a) (write-down order), a person mentioned in paragraph 1(4) of Schedule 19B;
  - (b) where the insurer is in financial difficulties by virtue of paragraph 2(1)(b) (administration), a person mentioned in sub-paragraph (2);
  - (c) where the insurer is in financial difficulties by virtue of paragraph 2(1)(c) (winding up), a person entitled to petition for the winding up of the insurer;
  - (d) a provisional liquidator of the insurer;
  - (e) the FCA.
- (2) For the purposes of sub-paragraph (1)(b), the persons are—
- (a) where an administrator has been appointed, the administrator;
  - (b) where the insurer is in, or is awaiting, administration under Part 2 of the 1986 Act, a person mentioned in paragraph 12(1) of Schedule B1 to that Act;
  - (c) where the insurer is in, or is awaiting, administration under Part 3 of the 1989 Order, a person mentioned in paragraph 13(1) of Schedule B1 to that Order.
- (3) Before making an application for an order under paragraph 10—
- (a) a person other than a person mentioned in sub-paragraph (4) must obtain the consent of the PRA;
  - (b) a person mentioned in sub-paragraph (4) must consult the PRA.
- (4) The persons mentioned in this sub-paragraph are—
- (a) the FCA;
  - (b) an administrator of the insurer;
  - (c) a provisional liquidator of the insurer;
  - (d) a person appointed to act as the manager of the write-down order by virtue of which the insurer is in financial difficulties for the purposes of this Schedule.
- (5) Consent under sub-paragraph (3)(a)—
- (a) must be in writing, and
  - (b) must be filed with the court with the relevant application.
- (6) The PRA must consult the FCA before giving or refusing consent under sub-paragraph (3)(a).

## PART 5

### POWERS TO AMEND THIS SCHEDULE

- 12 The Treasury may by regulations amend this Schedule so as to—
- (a) vary or omit any of paragraphs (a), (b) and (c) of paragraph 2(1);
  - (b) change the percentage figure specified in the definition of “surrender limit” in paragraph 3(2);
  - (c) amend paragraph 6 (meaning of “relevant contract”);



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- (d) amend paragraph 9 (exclusions from the operation of this Schedule).”

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**Commencement Information**

**I1** Sch. 13 para. 1 in force at 29.8.2023, see s. 86(2)(e)

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