
STATUTORY INSTRUMENTS

1999 No. 2979

**The Financial Markets and Insolvency
(Settlement Finality) Regulations 1999**

PART III

**TRANSFER ORDERS EFFECTED THROUGH A
DESIGNATED SYSTEM AND COLLATERAL SECURITY**

General

Transfer order entered into designated system following insolvency

20.—(1) This Part does not apply in relation to any transfer order given by a participant which is entered into a designated system after—

- (a) a court has made an order of a type referred to in regulation 22 in respect of that participant, or
- (b) that participant has passed a creditors' voluntary winding-up resolution, or
- (c) a trust deed granted by that participant has become a protected trust deed,

unless the conditions mentioned in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are that—

- (a) the transfer order is carried out on the same day that the event specified in paragraph (1)(a), (b) or (c) occurs, and
- (b) the settlement agent, the central counterparty or the clearing house can show that it did not have notice of that event at the time of settlement of the transfer order.

(3) For the purposes of paragraph (2)(b), the relevant settlement agent, central counterparty or clearing house shall be taken to have notice of an event specified in paragraph (1)(a), (b) or (c) if it deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

Disapplication of certain provisions of Part VII

21.—(1) The provisions of the Companies Act 1989 mentioned in paragraph (2) do not apply in relation to—

- (a) a market contract which is also a transfer order effected through a designated system; or
- (b) a market charge which is also a collateral security charge.

(2) The provisions referred to in paragraph (1) are as follows—

- (a) section 163(4) to (6) (net sum payable on completion of default proceedings);
- (b) section 164(4) to (6) (disclaimer of property, rescission of contracts, &c); and
- (c) section 175(5) and (6) (administration orders, &c).

Notification of insolvency order or passing of resolution for creditors' voluntary winding up

22.—(1) Upon the making of an order for bankruptcy, sequestration, administration or winding up in respect of a participant in a designated system, the court shall forthwith notify both the system and the designating authority that such an order has been made.

(2) Following receipt of—

- (a) such notification from the court, or
- (b) notification from a participant of the passing of a creditors' voluntary winding-up resolution or of a trust deed becoming a protected trust deed, pursuant to paragraph 5(4) of the Schedule,

the designating authority shall forthwith inform the Treasury of the notification.

Applicable law relating to securities held as collateral security

23. Where—

- (a) securities (including rights in securities) are provided as collateral security to a participant or a central bank (including any nominee, agent or third party acting on behalf of the participant or the central bank), and
- (b) a register, account or centralised deposit system located in an EEA State legally records the entitlement of that person to the collateral security,

the rights of that person as a holder of collateral security in relation to those securities shall be governed by the law of the EEA State or, where appropriate, the law of the part of the EEA State, where the register, account, or centralised deposit system is located.

Applicable law where insolvency proceedings are brought

24. Where insolvency proceedings are brought in any jurisdiction against a person who participates, or has participated, in a system designated for the purposes of the Settlement Finality Directive, any question relating to the rights and obligations arising from, or in connection with, that participation and falling to be determined by a court in England and Wales or in Scotland shall (subject to regulation 23) be determined in accordance with the law governing that system.

Insolvency proceedings in other jurisdictions

25.—(1) The references to insolvency law in section 426 of the Insolvency Act 1986 (co-operation between courts exercising jurisdiction in relation to insolvency) include, in relation to a part of the United Kingdom, this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to this Part.

(2) A court shall not, in pursuance of that section or any other enactment or rule of law, recognise or give effect to—

- (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
- (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,

in so far as the making of the order or the doing of the act would be prohibited in the case of a court in England and Wales or Scotland or a relevant office-holder by this Part.

(3) Paragraph (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the Civil Jurisdiction and Judgments Act 1982(1).

(1) 1982 c. 27.

Systems designated in other EEA States, Northern Ireland and Gibraltar

26.—(1) Where an equivalent overseas order or equivalent overseas security is subject to the insolvency law of England and Wales or Scotland, this Part shall apply—

- (a) in relation to the equivalent overseas order as it applies in relation to a transfer order; and
- (b) in relation to the equivalent overseas security as it applies in relation to collateral security in connection with a designated system.

(2) In paragraph (1)—

- (a) “equivalent overseas order” means an order having the like effect as a transfer order which is effected through a system designated for the purposes of the Settlement Finality Directive in another EEA State, Northern Ireland or Gibraltar; and
- (b) “equivalent overseas security” means any realisable assets provided under a charge or a repurchase or similar agreement, or otherwise (including money provided under a charge) for the purpose of securing rights and obligations potentially arising in connection with such a system.