



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

##### *Other exchanges and clearing houses*

#### **170 Certain overseas exchanges and clearing houses.**

- [<sup>F1</sup>(1) The Secretary of State and the Treasury may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or overseas clearing house which—
- (a) is not a recognised investment exchange or recognised clearing house, but
  - (b) is approved by the Treasury in accordance with such requirements as may be so specified,
- as it applies in relation to contracts connected with a recognised investment exchange or recognised clearing house.]
- (2) The [<sup>F2</sup>Treasury] shall not approve an overseas investment exchange or clearing house unless [<sup>F3</sup>they are] satisfied—
- (a) that the rules and practices of the body, together with the law of the country in which the body's head office is situated, provide adequate procedures for dealing with the default of persons party to contracts connected with the body, and
  - (b) that it is otherwise appropriate to approve the body.
- (3) The reference in subsection (2)(a) to default is to a person being unable to meet his obligations.
- (4) The regulations may apply in relation to the approval of a body under this section such of the provisions of the [<sup>F4</sup>Financial Services and Markets Act 2000] as the Secretary of State considers appropriate.

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- (5) The Secretary of State may make regulations which, in relation to a body which is so approved—
- (a) apply such of the provisions of the [<sup>F4</sup>Financial Services and Markets Act 2000] as the Secretary of State considers appropriate, and
  - (b) provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient;
- and different provision may be made with respect to different bodies or descriptions of body.
- (6) Where the regulations apply any provisions of the [<sup>F4</sup>Financial Services and Markets Act 2000], they may provide that those provisions apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.

#### Textual Amendments

- F1** S. 170(1) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), 2(**11**)
- F2** Word in s. 170(2) substituted (1.12.2001) by [S.I. 2001/3649](#), arts. 1, 84(3)(a)
- F3** Words in s. 170(2) substituted (1.12.2001) by [S.I. 2001/3649](#), arts. 1, 84(3)(b)
- F4** Words in s. 170(4)(5)(a)(6) substituted (1.12.2001) by [S.I. 2001/3649](#), arts. 1, 84(4)

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

- C1** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315](#), art. 4, [Sch. 2 para. 7](#) (with art. 6).

#### Commencement Information

- II** S. 170 partly in force; s. 170 not in force at Royal Assent see s. 215(1)(2); s. 170 in force for certain purposes at 25.3.1991 by [S.I. 1991/488](#), art. 2(2).

### [<sup>F5</sup>170A.] [<sup>F6</sup>Third] country central counterparties

- (1) In this section and section 170B—
- (a) “assets” has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;
  - <sup>F7</sup>(b) .....
  - <sup>F8</sup>(c) .....
  - (d) “overseas competent authority” means a competent authority responsible for the authorisation or supervision of clearing houses or central counterparties in a country or territory other than the United Kingdom;
  - (e) “relevant provisions” means any provisions of the default rules of [<sup>F9</sup>a] third country central counterparty which—
    - (i) provide for the transfer of the positions or assets of a defaulting clearing member;
    - (ii) are not necessary for the purposes of complying with the minimum requirements of Articles 48(5) and (6) of the EMIR Level 1 Regulation; and

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- (iii) may be relevant to a question falling to be determined in accordance with the law of a part of the United Kingdom;
  - (f) “relevant requirements” means the requirements specified in paragraph 34(2) (portability of accounts: default rules going beyond requirements of EMIR) of Part 6 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges [<sup>F10</sup>, Clearing Houses and Central Securities Depositories]) Regulations 2001;
  - (g) “UK clearing member” means a clearing member to which the law of a part of the United Kingdom will apply for the purposes of an insolvent reorganisation or winding up<sup>F11</sup>, and
  - (h) “UK client” means a client—
    - (i) which offers indirect clearing services, and
    - (ii) to which the law of a part of the United Kingdom will apply for the purposes of an insolvent re-organisation or winding up.]
- (2) This Part applies to transactions cleared through <sup>F12</sup>... a third country central counterparty by a UK clearing member [<sup>F13</sup>or a UK client] as it applies to transactions cleared through a recognised central counterparty, but subject to the modifications in subsections (3) to (5).
- (3) For section 157 there is to be substituted—

157. “**Change in default rules**

- (1) [<sup>F14</sup>A] third country central counterparty in respect of which an order under section 170B(4) has been made and not revoked must give the Bank of England at least three months’ notice of any proposal to amend, revoke or add to its default rules.
  - (2) The Bank of England may, if it considers it appropriate to do so, agree a shorter period of notice.
  - (3) Where notice is given to the Bank of England under subsection (1) [<sup>F15</sup>, a] third country central counterparty must provide the Bank of England with such information, documents and reports as the Bank of England may require.
  - (4) Information, documents and reports required under subsection (3) must be provided in English and be given at such times, in such form and at such place, and verified in such a manner, as the Bank of England may direct.”.
- (4) Section 162 does not apply to <sup>F16</sup>... a third country central counterparty unless it has been notified by the Bank of England that a report under that section is required for the purposes of insolvency proceedings in any part of the United Kingdom.
- (5) In relation to [<sup>F17</sup>a] third country central counterparty, references in this Part to the “rules” or “default rules” of the central counterparty are to be taken not to include references to any relevant provisions unless—
- (a) the relevant provisions satisfy the relevant requirements; or
  - (b) the Bank of England has made an order under section 170B(4) recognising that the relevant provisions of its default rules satisfy the relevant requirements and the order has not been revoked.

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### Textual Amendments

- F5** Ss. 170A, 170B inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013](#) (S.I. 2013/504), regs. 1(2), **4(12)** (with regs. 52-58)
- F6** Word in s. 170A heading substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(a)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** S. 170A(1)(b) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(b)(i)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** S. 170A(1)(c) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(b)(i)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Word in s. 170A(1)(e) substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(b)(ii)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in s. 170A(1)(f) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017](#) (S.I. 2017/1064), regs. 1, **3(16)** (with regs. 7(4), 9(1))
- F11** S. 170A(1)(h) and word inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013](#) (S.I. 2013/1908), regs. 1(3)(c), **2(8)(a)**
- F12** Words in s. 170A(2) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(c)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in s. 170A(2) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013](#) (S.I. 2013/1908), regs. 1(3)(c), **2(8)(b)**
- F14** Word in s. 170A(3) substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(d)(i)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Word in s. 170A(3) substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(d)(ii)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in s. 170A(4) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(e)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F17** Word in s. 170A(5) substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(2)(f)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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### **170B. [F18]Third] country central counterparties: procedure**

- (1) [F19]A] third country central counterparty may apply to the Bank of England for an order recognising that the relevant provisions of its default rules satisfy the relevant requirements.
- (2) The application must be made in such manner, and must be accompanied by such information, documents and reports, as the Bank of England may direct.
- (3) Information, documents and reports required under subsection (2) must be provided in English and be given at such times, in such form and at such place, and verified in such manner, as the Bank of England may direct.
- (4) The Bank of England may make an order recognising that the relevant provisions of the default rules satisfy the relevant requirements.
- (5) The Bank of England may by order revoke an order made under subsection (4) if—
  - (a) the <sup>F20</sup>... third country central counterparty consents;
  - (b) the <sup>F21</sup>... third country central counterparty has failed to pay a fee which is owing to the Bank of England under paragraph 36 of Schedule 17A to the Financial Services and Markets Act 2000;
  - (c) the <sup>F22</sup>... third country central counterparty is failing or has failed to comply with a requirement of or imposed under section 157 (as modified by section 170A(3)); or
  - (d) it appears to the Bank of England that the relevant provisions no longer satisfy the relevant requirements.
- (6) An order made under subsection (4) or (5) must state the time and date when it is to have effect.
- (7) An order made under subsection (5) may contain such transitional provision as the Bank of England considers appropriate.
- (8) The Bank of England must—
  - (a) maintain a register of orders made under subsection (4) which are in force; and
  - (b) publish the register in such manner as it appears to the Bank of England to be appropriate.
- (9) Section 298 of the Financial Services and Markets Act 2000 applies to a refusal to make an order under subsection (4) or the making of a revocation order under subsection (5)(b), (c) or (d) as it applies to the making of a revocation order under section 297(2) of the Financial Services and Markets Act 2000, but with the following modifications—
  - (a) for “appropriate regulator” substitute “the Bank of England”;
  - (b) for “recognised body” substitute “<sup>F23</sup>... third country central counterparty”;
  - and
  - (c) in subsection (7), for “give a direction under section 296” substitute “make an order under paragraph (b), (c) or (d) of section 170B(5) of the Companies Act 1989”.
- (10) If the Bank of England refuses to make an order under subsection (4) or makes an order under subsection (5)(b), (c) or (d), the <sup>F24</sup>... third country central counterparty may refer the matter to the Upper Tribunal.

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- (11) The Bank of England may rely on information or advice from an overseas competent authority<sup>F25</sup>... in its determination of an application under subsection (1) or the making of a revocation order under subsection (5)(d).]

#### Textual Amendments

- F5** Ss. 170A, 170B inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **4(12)** (with regs. 52-58)
- F18** Word in s. 170B heading substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(a)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Word in s. 170B(1) substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(b)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in s. 170B(5) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(c)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in s. 170B(5) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(c)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in s. 170B(5) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(c)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in s. 170B(9) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(c)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in s. 170B(10) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(c)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in s. 170B(11) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(3)(d)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### 170C. [<sup>F26</sup>Third] country CSDs

- (1) This Part applies to transactions settled through <sup>F27</sup>... a third country CSD by a UK member of the central securities depository as it applies to transactions settled through a recognised CSD, but subject to subsections (2), (3) and (4).
- (2) The definition of “authorised central securities depository services” in section 155(3D) applies to third country CSDs as if it read—

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““authorised central securities depository services” means, in relation to a third country CSD, those services which that central securities depository is authorised to provide that are equivalent to the services listed in the Annex to the CSD regulation.”.

- (3) Section 157 does not apply to <sup>F27</sup> ... a third country CSD.
- (4) Section 162 does not apply to <sup>F27</sup> ... a third country CSD unless it has been notified by the Bank of England that a report under that section is required for the purposes of insolvency proceedings in any part of the United Kingdom. Where <sup>F27</sup> ... a third country CSD has been so notified, the appropriate regulator for the purposes of section 162 shall be the Bank of England.
- (5) In this section “UK member” means a member of <sup>F27</sup> ... a third country CSD to which the law of a part of the United Kingdom will apply for the purposes of an insolvent reorganisation or winding up.

#### Textual Amendments

- F26** Word in s. 170C heading substituted (31.12.2020) by [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(4)(a)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Words in s. 170C omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(4)(b)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

<sup>F28</sup> **171** .....

#### Textual Amendments

- F28** S. 171 repealed (1.12.2001) by [S.I. 2001/3649](#), arts. 1, 75(h)

### **172 Settlement arrangements provided by the Bank of England.**

- (1) The Secretary of State may by regulations provide that this Part applies to contracts of any specified description in relation to which settlement arrangements are provided by the Bank of England, as it applies to contracts connected with [<sup>F29</sup>a recognised body].
- (2) Regulations under this section may provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.
- (3) Before making any regulations under this section, the Secretary of State [<sup>F30</sup>and the Treasury shall consult] the Bank of England.

#### Textual Amendments

- F29** Words in s. 172(1) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(18)** (with regs. 7(4), 9(1))

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**F30** Words in s. 172(3) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 13(b)** (with art. 6).

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

**C2** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, **Sch. 2 para.7** (with art. 6).

**Commencement Information**

**I2** S. 172 partly in force; s. 172 not in force at Royal Assent see s. 215(1)(2); s. 172 in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**.



**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1989, Cross Heading:  
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