

BANKING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Miscellaneous

Investment Banks

Section 232: Definition

517. This section provides that an institution is an investment bank if it fulfils three conditions: that it holds one of three specified permissions under Part 4 of the Financial Services and Markets Act 2000, that it holds client assets and that it is a UK incorporated institution. The section also defines ‘client assets’ as being assets which are being held by an institution on behalf of a client (whether or not on trust). The Treasury may, by order, bring other financial institutions into the scope of this definition, may exclude certain classes of institution from this definition and may amend what is meant by ‘client assets’.

Section 233: Insolvency regulations

518. **Section 233** provides that the Treasury may make regulations which alter existing insolvency procedures insofar as they apply to investment banks. The Treasury may modify insolvency law as it applies to investment banks, or alternatively, set up a new insolvency scheme.
519. **Subsection (3)** establishes objectives to which the Treasury must have regard in making regulations, including that the Treasury must balance the need to facilitate the return of client assets with the need to protect the rights of other creditors. The other objectives are to aim to provide certainty, to minimise disruption to business and to the markets and to maximise the effectiveness of the UK financial services industry.

Section 234: Regulations: details

520. **Section 234** establishes that the new regulations may provide for the manner in which an institution is to be placed into a new insolvency regime, the objectives of the new scheme and the role of the courts and the administrator or liquidator. The Section also provides for how the new procedures will sit with other new procedures (such as the bank insolvency procedure laid out in this Act if the institution also has a deposit-taking arm) and for the creation of rights over assets.

Section 235: Regulations: procedure

521. **Section 235** establishes the procedure under which regulations may be made and provides that both the power to make provision about the definition of “investment bank” and the regulation-making power should be subject to the affirmative procedure. The Section provides that the Treasury should consult before making regulations and the power to make regulations will cease after two years if not used.

*These notes refer to the Banking Act 2009 (c.1)
which received Royal Assent on 12 February 2009*

Section 236: Review

522. This section introduces a requirement for the Treasury to appoint a person or persons to carry out a review of any regulations made under Sections 232-235 above. The review must be carried out within two years of the regulations being made. It will consider the effectiveness of the regulations in achieving the objectives and whether the regulations should continue to have effect (or whether they should be put on statutory footing).