

2006 No. 3107

INSOLVENCY

COMPANIES

**The Banks (Former Authorised Institutions) (Insolvency) Order
2006**

<i>Made</i> - - - -	<i>20th November 2006</i>
<i>Laid before Parliament</i>	<i>23rd November 2006</i>
<i>Coming into force</i> - -	<i>15th December 2006</i>

The Secretary of State has consulted the Financial Services Authority in accordance with section 422(1) of the Insolvency Act 1986(a).

The Secretary of State, in exercise of the powers conferred upon him by section 422 of that Act, with the concurrence of the Treasury makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Banks (Former Authorised Institutions) (Insolvency) Order 2006 and shall come into force on 15th December 2006 (“the commencement date”).

(2) In this Order, “the 1986 Act” means the Insolvency Act 1986.

Revocation of the Banks (Administration Proceedings) Order 1989

2.—(1) Subject to paragraph (2), the Banks (Administration Proceedings) Order 1989(b) (“the 1989 Order”) is revoked.

(2) The 1989 Order shall continue in effect for the purposes of any proceedings begun before the commencement date under the first Group of Parts of the 1986 Act in relation to a former authorised institution within the meaning of Article 1A of that Order.

(a) 1986 c.45. Section 422 of the Insolvency Act 1986 was amended by paragraph 35 of Schedule 17 to the Enterprise Act 2002 (c.40).
(b) S.I. 1989/1276 amended by S.I. 1998/1129, S.I. 2001/3469 and S.I. 2002/1555.

Modification of first Group of Parts of the Insolvency Act 1986 in their application to companies that are former authorised institutions

3.—(1) This article applies to a person of the kind mentioned in section 422(1) of the 1986 Act that is a company within the meaning of section 735(1) of the Companies Act 1985(a).

(2) The first Group of Parts of the 1986 Act shall apply in relation to a person to which this article applies with the modifications set out in the Schedule to this Order.

Jim Fitzpatrick
Parliamentary Under Secretary of State for Employment Relations
Department of Trade and Industry

7th November 2006

We concur

Kevin Brennan
Dave Watts
Two of the Lords Commissioners of Her Majesty's Treasury

20th November 2006

SCHEDULE

Article 3

**MODIFICATIONS OF PART 2 OF THE INSOLVENCY ACT IN ITS
APPLICATION TO COMPANIES THAT ARE FORMER
AUTHORISED INSTITUTIONS**

1. References to a numbered paragraph in this Schedule are references to the paragraph so numbered in Schedule B1 to the Insolvency Act 1986(b).

2. In their application to a person falling within article 3(1), section 8 of, and Schedule B1 to, the 1986 Act shall apply subject to the modifications set out below.

3. Paragraph 9 shall apply with the omission of sub-paragraph (1).

4. For paragraph 12(1) there is substituted—

“12.—(1) An application to the court for an administration order in respect of a company (“an administration application”) may be made only by—

- (a) the company,
- (b) the directors of the company,

(a) 1985 c.6.

(b) Section 8 of the Insolvency Act 1986 was substituted by section 248(1) of the Enterprise Act 2002 (c.40) and Schedule B1 was inserted into the 1986 Act by section 248(2).

- (c) one or more creditors of the company,
- (d) the Financial Services Authority,
- (e) the designated officer for a magistrates' court in exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (c.43) (fine imposed on company), or
- (f) a combination of persons listed in paragraphs (a) to (e).

(1A) Where an administration application is made to which the Financial Services Authority is not a party, the applicant shall, as soon as is reasonably practicable after the making of the application give notice of the making of the application to the Financial Services Authority.”.

5. For paragraph 22 there is substituted—

“**22.**—(1) Subject as set out in this paragraph—

- (a) a company may appoint an administrator; and
- (b) the directors of a company may appoint an administrator .

(2) An administrator may not be appointed under this paragraph without the consent in writing of the Financial Services Authority.

(3) The written consent under paragraph (2) must be filed in court—

- (a) at the same time that any notice of intention to appoint under paragraph 26 is filed in court pursuant to paragraph 27; or
- (b) where no such notice of intention to appoint is required to be given, at the same time that notice of appointment is filed under paragraph 29.”.

6. After paragraph 91 there is inserted—

“**91A.** Where the administrator was appointed by administration order, the court may replace the administrator on an application under this paragraph made by the Financial Services Authority.

91B. Where the administrator was appointed otherwise than by administration order any replacement administrator may only be appointed with the consent of the Financial Services Authority.”.

7. After paragraph 116 there is inserted—

“*Miscellaneous - Powers of the Financial Services Authority*

117.—(1) In this paragraph “the Authority” means the Financial Services Authority.

(2) The Authority is entitled to be heard at the hearing of an administration application or at any other court hearing in relation to the company pursuant to any provision of Schedule B1.

(3) Any notice or other document required to be sent to a creditor of the company must also be sent to the Authority.

(4) The Authority may apply to the court under paragraph 74 and in such a case paragraphs 74(1)(a) and 74(1)(b) shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words “harm the interests of some or all members or creditors”.

(5) A person appointed for the purpose by the Authority is entitled—

- (a) to attend any meeting of creditors of the company summoned under this Act;
- (b) to attend any meeting of a committee established under paragraph 57; and
- (c) to make representations as to any matter for decision at such a meeting.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the modified application of Part II of, and Schedule B1 to, the Insolvency Act 1986 (c.45) to any company within the meaning of section 735(1) of the Companies Act 1985 (c.6) that—

- (a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c.37) or 1987 (c.22), but
- (b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (c.8) to accept deposits.

The Schedule to the Order sets out modifications of Schedule B1 in its application to such companies. Broadly speaking these confer rights on the Financial Services Authority to participate in administration proceedings that are commenced as a result of the application of this Order. The Order is made as a consequence of the amendments made to Part II of the Insolvency Act 1986 by the Enterprise Act 2002 (c.40) and revokes the Banks (Administration Proceedings) Order 1989 (S.I.1989/1276) subject to savings (see article 2).

No regulatory impact assessment has been prepared in relation to this Order. A regulatory impact assessment was prepared in relation to the Enterprise Act 2002 and copies of this are available from The Policy Unit, The Insolvency Service, 21 Bloomsbury Street, London WC1B 3QW.

£3.00

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