
STATUTORY INSTRUMENTS

2010 No. 2993

**The Financial Markets and Insolvency
(Settlement Finality and Financial Collateral
Arrangements) (Amendment) Regulations 2010**

Amendment of the Financial Collateral Arrangements (No. 2) Regulations 2003

4.—(1) The Financial Collateral Arrangements (No. 2) Regulations 2003⁽¹⁾ are amended as follows.

(2) In regulation 3—

(a) renumber the existing provision as paragraph (1);

(b) in paragraph (1)—

(i) insert in the appropriate place—

““credit claims” means pecuniary claims which arise out of an agreement whereby a credit institution, as defined in Article 4(1) of Directive [2006/48/EC](#) of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions (recast), including the institutions listed in Article 2 of that Directive, grants credit in the form of a loan⁽²⁾”;

(ii) in the definition of “financial collateral”, for “cash or financial instruments” substitute “cash, financial instruments or credit claims”;

(iii) in the definition of “reorganisation measures”, in sub-paragraphs (c) and (d), after “Scottish partnership,” on each occasion it occurs, insert “a protected trust deed within the meaning of”;

(iv) in the definitions of “security financial collateral arrangement” and “security interest”—

(aa) for “equivalent financial collateral” substitute “financial collateral of the same or greater value”,

(bb) after “excess financial collateral” insert “or to collect the proceeds of credit claims until further notice”;

(v) for the definition of “winding up proceedings” substitute—

““winding-up proceedings” means—

(a) winding up by the court or voluntary winding up within the meaning of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989;

(b) sequestration of a Scottish partnership under the Bankruptcy (Scotland) Act 1985⁽³⁾;

(c) bank insolvency within the meaning of the Banking Act 2009.”;

⁽¹⁾ [S.I. 2003/3226](#). These Regulations have been amended by [S.I. 2009/2462](#).

⁽²⁾ OJ No L 177, 30.6.2006, p1 – 200.

⁽³⁾ [1985 c. 66](#).

- (c) after paragraph (1), insert—
- “(2) For the purposes of these Regulations “possession” of financial collateral in the form of cash or financial instruments includes the case where financial collateral has been credited to an account in the name of the collateral-taker or a person acting on his behalf (whether or not the collateral-taker, or person acting on his behalf, has credited the financial collateral to an account in the name of the collateral-provider on his, or that person’s, books) provided that any rights the collateral-provider may have in relation to that financial collateral are limited to the right to substitute financial collateral of the same or greater value or to withdraw excess financial collateral.”
- (3) In regulation 4—
- (a) in paragraph (4), insert at the end “or, in Scotland, to relation to any charge created or arising under a financial collateral arrangement”;
- (b) in paragraph (5), omit “security” both times it occurs.
- (4) In regulation 5, omit “security” both times it occurs.
- (5) In regulation 6A(4), insert at the end, “or, in Scotland, to any charge created or arising under a financial collateral arrangement.”
- (6) In regulation 8—
- (a) in paragraph (1)(a), omit “and”;
- (b) after paragraph (1)(a), insert—
- “(aa) paragraph 65(2) (distribution);”;
- (c) at the end of paragraph (1)(b), insert “and”;
- (d) after paragraph (1)(b), insert—
- “(c) paragraph 99(3) and (4) (administrator’s remuneration, expenses and liabilities).”
- (e) in paragraph (3)—
- (i) at the end of sub-paragraph (b), insert “and”;
- (ii) after sub-paragraph (b), insert—
- “(c) section 19(4) and 19(5) (administrator’s remuneration, expenses and liabilities).”
- (7) In regulation 9—
- (a) at the end of paragraph (1)(a), omit “and”;
- (b) after paragraph (1)(b), insert—
- “(c) Article 31(4) and (5) (administrator’s remuneration, expenses and liabilities); and
- (d) Paragraphs 44(2), 45 (restriction on enforcement of security), 66(2) (distribution), 71, 72 (power of administrator to deal with charged property), 100(3) and (4) (administrator’s remuneration, expenses and liabilities) of Schedule B1 to the Order(5).”.
- (8) In regulation 10—
- (a) after paragraph (2), insert—

(4) Regulation 6A was inserted by [S.I. 2009/2462](#).

(5) Schedule B1 was inserted by [S.I. 2005/1455 \(N.I. 10\)](#).

“(2A) Sections 40 (or in Scotland, sections 59, 60(1)(e)) and 175 of the Insolvency Act 1986 (preferential debts) shall not apply to any debt which is secured by a charge created or otherwise arising under a financial collateral arrangement.

(2B) Section 176ZA of the Insolvency Act 1986 (expenses of winding up)⁽⁶⁾ shall not apply in relation to any claim to any property which is subject to a disposition or created or otherwise arising under a financial collateral arrangement.”;

- (b) in paragraph (4), for “being wound up” substitute “subject to winding-up proceedings”; and
 - (c) in paragraph (6) after “floating charge”, insert “(including that section as applied or modified by any enactment made under the Banking Act 2009)”.
- (9) In regulation 11—
- (a) after paragraph (1), insert—

“(1A) Article 50 of that Order (payment of debts out of assets subject to floating charge) shall not apply (if it would otherwise do so), to any charge created or otherwise arising under a financial collateral arrangement.”;
 - (b) after paragraph (2), insert—

“(2A) Articles 149 of that Order (preferential debts) and 150ZA (expenses of winding up)⁽⁷⁾ shall not apply (if they would otherwise do so) to any charge created or otherwise arising under a financial collateral arrangement.”.
- (10) In regulation 12—
- (a) in paragraph (2)(b), after “winding-up of” insert “or, in Scotland, a petition for winding-up proceedings in relation to”;
 - (b) in paragraph (3)—
 - (i) in paragraph (a), after “winding-up order” insert “or, in the case of a Scottish partnership, the award of sequestration”, and
 - (ii) in paragraph (b) after “otherwise”, insert “or, in the case of a Scottish partnership, when a protected trust deed is entered into”;
 - (c) in paragraph (4) after “set-off” insert “, or in Scotland, any rule of law with the same or similar effect to the effect of these Rules”.
- (11) In regulation 13(3)—
- (a) in paragraph (a) after “winding-up order” insert “or, in the case of a Scottish partnership, the award of sequestration”; and
 - (b) in paragraph (b) after “otherwise” insert “or, in the case of a Scottish partnership, the date of registration of a protected trust deed”.
- (12) In regulation 15—
- (a) after “goes into liquidation” insert “or administration”;
 - (b) for “section 49(3) of the Bankruptcy (Scotland) Act 1985 as applied by rule 4.16(1)(c) of those rules (claims in foreign currency)” substitute “the provisions of the Bankruptcy (Scotland) Act 1985 referred to in those rules and such rules and provisions as applied by rule 2.41 of the Insolvency (Scotland) Rules 1986”.
- (13) After regulation 15, insert—

⁽⁶⁾ Section 176ZA was inserted by the Companies Act 2006 (c.46), section 1282.

⁽⁷⁾ Article 150ZA was inserted by the Companies Act 2006, section 1282.

“Insolvency proceedings in other jurisdictions

15A.—(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 of these Regulations 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 by this Part in the case of a court in England and Wales or Scotland, the High Court in Northern Ireland or a relevant office holder.

(3) Paragraph (2) does not affect the recognition of a judgment required to be recognised or enforced under or by virtue of the Civil Jurisdiction and Judgments Act 1982⁽⁸⁾ or Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽⁹⁾, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁰⁾.

(14) In regulation 16—

(a) after paragraph (3), insert—

“(3A) In Scotland, paragraphs (1) and (3) apply to title transfer financial collateral arrangements as they apply to security financial collateral arrangements.”;

(b) at the end insert—

“(5) This regulation does not apply in relation to credit claims.”.

(15) For regulation 17, substitute—

“Appropriation of financial collateral under a security financial collateral arrangement

17.—(1) Where a security interest is created or arises under a security financial collateral arrangement on terms that include a power for the collateral-taker to appropriate the financial collateral, the collateral-taker may exercise that power in accordance with the terms of the security financial collateral arrangement, without any order for foreclosure from the courts (and whether or not the remedy of foreclosure would be available).

(2) Upon the exercise by the collateral-taker of the power to appropriate the financial collateral, the equity of redemption of the collateral-provider shall be extinguished and all legal and beneficial interest of the collateral-provider in the financial collateral shall vest in the collateral taker.”.

⁽⁸⁾ 1982 c. 27.

⁽⁹⁾ OJ L 12, 16.1.2001, p1-23.

⁽¹⁰⁾ OJ L 299 16.11.2005, p62.