

Changes to legislation: There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, SCHEDULE 1. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 6

RING-FENCING TRANSFER SCHEMES

1 Part 7 of FSMA 2000 (control of business transfer schemes) is amended as follows.

Commencement Information

I1 Sch. 1 para. 1 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

2 For “the authorised person concerned”, wherever occurring in Part 7 (including Schedule 12), substitute “ the transferor concerned ”.

Commencement Information

I2 Sch. 1 para. 2 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

3 (1) Section 103A (meaning of “the appropriate regulator”) is amended as follows.
(2) In subsection (1), in paragraph (a), for “a scheme” substitute “ a ring-fencing transfer scheme or a scheme (other than a ring-fencing transfer scheme) ”.
(3) At the end of subsection (2) insert—
“ (d) in the case of a ring-fencing transfer scheme, means the body to whose business the scheme relates.”

Commencement Information

I3 Sch. 1 para. 3 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

4 In section 106 (banking business transfer schemes), at the end of subsection (1)(c) insert “ or a ring-fencing transfer scheme ”.

Commencement Information

I4 Sch. 1 para. 4 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

5 After section 106A insert—

“106B Ring-fencing transfer scheme

- (1) A scheme is a ring-fencing transfer scheme if it—
- (a) is one under which the whole or part of the business carried on—
 - (i) by a UK authorised person, or
 - (ii) by a qualifying body,

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- is to be transferred to another body (“the transferee”),
 - (b) is to be made for one or more of the purposes mentioned in subsection (3), and
 - (c) is not an excluded scheme or an insurance business transfer scheme.
- (2) “Qualifying body” means a body which—
 - (a) is incorporated in the United Kingdom,
 - (b) is a member of the group of a UK authorised person, and
 - (c) is not itself an authorised person.
- (3) The purposes are—
 - (a) enabling a UK authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
 - (b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
 - (c) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the body corporate to whose business the scheme relates becoming a ring-fenced body while one or more other members of its group are not ring-fenced bodies;
 - (d) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the transferee becoming a ring-fenced body while one or more other members of the transferee's group are not ring-fenced bodies.
- (4) A scheme is an excluded scheme for the purposes of this section if—
 - (a) the body to whose business the scheme relates is a building society or credit union, or
 - (b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.
- (5) For the purposes of subsection (1)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (6) “UK authorised person” has the same meaning as in section 105.
- (7) “Building society” and “credit union” have the same meanings as in section 106.
- (8) “The ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.”

Commencement Information

I5 Sch. 1 para. 5 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

- 6 (1) Section 107 (application for order sanctioning transfer scheme) is amended as follows.
- (2) In subsection (1), for “or a reclaim fund business transfer scheme” substitute “, a reclaim fund business transfer scheme or a ring-fencing transfer scheme”.

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(3) After subsection (2) insert—

“(2A) An application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.

(2B) In deciding whether to give consent, the PRA must have regard to the scheme report prepared under section 109A in relation to the ring-fencing transfer scheme.”

Commencement Information

I6 Sch. 1 para. 6 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

7 For the heading to section 109 substitute “ Scheme reports: insurance business transfer schemes ”.

Commencement Information

I7 Sch. 1 para. 7 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

8 After section 109 insert—

“109A Scheme reports: ring-fencing transfer schemes

(1) An application under section 106B in respect of a ring-fencing transfer scheme must be accompanied by a report on the terms of the scheme (a “scheme report”).

(2) A scheme report may be made only by a person—

- (a) appearing to the PRA to have the skills necessary to enable the person to make a proper report, and
- (b) nominated or approved for the purpose by the PRA.

(3) A scheme report must be made in a form approved by the PRA.

(4) A scheme report must state—

- (a) whether persons other than the transferor concerned are likely to be adversely affected by the scheme, and
- (b) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) is relevant.

(5) The PRA must consult the FCA before—

- (a) nominating or approving a person under subsection (2)(b), or
- (b) approving a form under subsection (3).”

Commencement Information

I8 Sch. 1 para. 8 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

9 (1) Section 110 (right to participate in proceedings) is amended as follows.

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- (2) In subsection (1), after “section 107” insert “ relating to an insurance business transfer scheme, a banking business transfer scheme or a reclaim fund business transfer scheme ”.
- (3) After subsection (2) insert—
- “(3) Subsections (4) and (5) apply where an application under section 107 relates to a ring-fencing transfer scheme.
- (4) The following are also entitled to be heard—
- (a) the PRA,
 - (b) where the transferee is an authorised person, the FCA, and
 - (c) any person (“P”) (including an employee of the transferor concerned or of the transferee) who alleges that P would be adversely affected by the carrying out of the scheme.
- (5) P is not entitled to be heard by virtue of subsection (4)(c) unless before the hearing P has—
- (a) filed (in Scotland, lodged) with the court a written statement of the representations that P wishes the court to consider, and
 - (b) served copies of the statement on the PRA and the transferor concerned.”

Commencement Information

I9 Sch. 1 para. 9 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

- 10 (1) Section 111 (sanction of court for business transfer schemes) is amended as follows.
- (2) In subsection (1), for “or a reclaim fund business transfer scheme” substitute “ , a reclaim fund business transfer scheme or a ring-fencing transfer scheme ”.
- (3) In subsection (2), after paragraph (aa) insert—
- “(ab) in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);”

Commencement Information

I10 Sch. 1 para. 10 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

- 11 In section 112 (effect of order sanctioning business transfer scheme), in subsection (10), after “transfer scheme” insert “ or ring-fencing transfer scheme ”.

Commencement Information

I11 Sch. 1 para. 11 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

- 12 In section 112A (rights to terminate etc.), in subsection (1), for “or a banking business transfer scheme” substitute “ , a banking business transfer scheme or a ring-fencing transfer scheme ”.

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II2 Sch. 1 para. 12 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

13 In Schedule 12 (transfer schemes: certificates) after Part 2A insert—

“PART 2B

RING-FENCING TRANSFER SCHEMES

Appropriate certificates

- 9B (1) For the purposes of section 111(2) the appropriate certificates, in relation to a ring-fencing transfer scheme, are—
- (a) a certificate given by the PRA certifying its approval of the application,
 - (b) a certificate under paragraph 9C, and
 - (c) if sub-paragraph (2) applies, a certificate under paragraph 9D.
- (2) This sub-paragraph applies if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3.

Certificate as to financial resources

- 9C (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.
- (2) “Relevant authority” means—
- (a) if the transferee is a PRA-authorised person with a Part 4A permission or with permission under Schedule 4, the PRA;
 - (b) if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3, its home state regulator;
 - (c) if the transferee does not fall within paragraph (a) or (b) but is subject to regulation in a country or territory outside the United Kingdom, the authority responsible for the supervision of the transferee's business in the place in which the transferee has its head office;
 - (d) in any other case, the FCA.
- (3) In sub-paragraph (2), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed ring-fencing transfer scheme takes effect.

Certificate as to consent of home state regulator

- 9D A certificate under this paragraph is one given by the appropriate regulator and certifying that the home state regulator of the transferee has been notified of the proposed scheme and that—
- (a) the home state regulator has responded to the notification, or

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- (b) the period of 3 months beginning with the notification has elapsed.”

Commencement Information

I13 Sch. 1 para. 13 in force at 1.3.2014 by S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

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