

SCHEDULES

SCHEDULE 7

Section 121

FINANCIAL MARKET INFRASTRUCTURE TRANSFER SCHEMES

Application of Schedule

- 1 This Schedule applies where—
- (a) the court has made an FMI administration order in relation to a company (“the old company”), and
 - (b) it is proposed that a transfer within section 115(5) be made to another company (“the new company”).

Interpretation of Schedule

- 2 In this Schedule—
- “FMI transfer scheme” has the meaning given by paragraph 4(1);
 - “the new company” and “the old company” are to be read in accordance with paragraph 1;
 - “third party”, in relation to an FMI transfer scheme or a modification of such a scheme, means a person other than the old company or the new company.

FMI administrator to act on behalf of old company

- 3 It is for the FMI administrator, while the FMI administration order is in force, to act on behalf of the old company in the doing of anything that it is authorised or required to do by or under this Schedule.

Making of FMI transfer schemes

- 4 (1) The old company may—
- (a) with the consent of the new company, and
 - (b) for the purpose of giving effect to the proposed transfer,
- make a scheme under this Schedule for the transfer of property, rights and liabilities from the old company to the new company (an “FMI transfer scheme”).
- (2) Such a scheme may be made only at a time when the FMI administration order is in force in relation to the old company.
- (3) An FMI transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
- (a) by specifying or describing them in particular,
 - (b) by identifying them generally by reference to, or to a specified part of, the undertaking of the old company, or
 - (c) by specifying the manner in which they are to be determined.

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- (4) An FMI transfer scheme is to take effect in accordance with paragraph 7 at the time appointed by the court.
- (5) But the court must not appoint a time for a scheme to take effect unless that scheme has been approved by the Bank of England.
- (6) The Bank of England may modify an FMI transfer scheme before approving it, but only modifications to which both the old company and the new company have consented may be made.
- (7) In deciding whether to approve an FMI transfer scheme, the Bank of England must have regard, in particular, to—
 - (a) the public interest, and
 - (b) any effect that the scheme is likely to have on the interests of third parties.
- (8) Before approving an FMI transfer scheme, the Bank of England must consult the Treasury.
- (9) The old company and the new company each have a duty to provide the Bank of England with all information and other assistance that the Bank may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

Provision that may be made by a scheme

- 5 (1) An FMI transfer scheme may contain provision—
 - (a) for the creation, in favour of the old company or the new company, of an interest or right in or in relation to property transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to the new company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old company;
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old company and the new company;
 - (d) in connection with any provision made under this sub-paragraph, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates.
- (2) The property, rights and liabilities of the old company that may be transferred in accordance with an FMI transfer scheme include—
 - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old company;
 - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
 - (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
 - (d) property situated anywhere in the United Kingdom or elsewhere;
 - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom;
 - (f) rights and liabilities under an enactment, EU instrument or subordinate legislation.

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- (3) The transfers to which effect may be given by an FMI transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
- (a) no such requirement to obtain a person’s consent or concurrence,
 - (b) no such liability in respect of a contravention of any other requirement, and
 - (c) no such interference with any interest or right,
- as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (4).
- (4) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the old company is entitled, or subject, to anything to which the transfer relates.
- (5) Sub-paragraph (6) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an FMI transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
 - (b) to treat an interest or right as modified or terminated.
- (6) That entitlement—
- (a) is not enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme, and
 - (b) is then enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.
- (7) Sub-paragraphs (3) to (6) have effect where shares in a subsidiary of the old company are transferred—
- (a) as if the reference in sub-paragraph (4) to the terms on which the old company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect, and
 - (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (6) to the transfer of the interest or right included a reference to the transfer of the shares.
- (8) Sub-paragraphs (3) and (4) apply to the creation of an interest or right by an FMI transfer scheme as they apply to the transfer of an interest or right.

Further provision about transfers

- 6 (1) An FMI transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme.
- (2) An FMI transfer scheme may in particular make provision, in relation to a provision of the scheme—
- (a) for the new company to be treated as the same person in law as the old company;
 - (b) for agreements made, transactions effected or other things done by or in relation to the old company to be treated, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, as made, effected or done by or in relation to the new company;

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- (c) for references in an agreement, instrument or other document to the old company or to an employee or office holder with the old company to have effect, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, with such modifications as are specified in the scheme;
 - (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the old company is not to terminate any of those contracts but is to be that periods of employment with that company are to count for all purposes as periods of employment with the new company;
 - (e) for proceedings commenced by or against the old company to be continued by or against the new company.
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) An FMI transfer scheme may make provision for disputes between the old company and the new company as to the effect of the scheme to be referred to such arbitration as may be specified in or determined under the scheme.
- (5) Where a person is entitled, in consequence of an FMI transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property—
 - (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it, and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention.
- (6) Where a person is entitled, in consequence of an FMI transfer scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) is to have effect in relation to the transfer—
 - (a) as if the transfer had been effected by deed, and
 - (b) as if the words “unless specially qualified” were omitted from each of those subsections.
- (7) Where a person is entitled, in consequence of an FMI transfer scheme, to possession of a document relating in part to the title to land or other property in Northern Ireland or to the management of such land or other property—
 - (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it, and
 - (b) section 9 of the Conveyancing Act 1881 is to have effect accordingly, and on the basis that the acknowledgement does not contain an expression of contrary intention.
- (8) In this paragraph references to a transfer in accordance with an FMI transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

Effect of scheme

- 7 (1) In relation to each provision of an FMI transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
- (a) the property, interests, rights or liabilities become by virtue of this Schedule the property, interests, rights or liabilities of the transferee at the time appointed by the court for the purposes of paragraph 4(4), and
 - (b) the provisions of that scheme in relation to that property, or those interests, rights or liabilities, have effect from that time.
- (2) In this paragraph “the transferee” means—
- (a) in relation to property, rights or liabilities transferred by an FMI transfer scheme, the new company;
 - (b) in relation to interests, rights or liabilities created by such a scheme, the person in whose favour, or in relation to whom, they are created.

Subsequent modification of scheme

- 8 (1) The Bank of England may by notice to the old company and the new company modify an FMI transfer scheme after it has taken effect, but only modifications to which both the old company and the new company have consented may be made.
- (2) The notice must specify the time at which it is to take effect (the “modification time”).
- (3) Where a notice is issued under this paragraph in relation to an FMI transfer scheme, as from the modification time, the scheme is for all purposes to be treated as having taken effect, at the time appointed for the purposes of paragraph 4(4), with the modifications made by the notice.
- (4) Those modifications may make—
- (a) any provision that could have been included in the scheme when it took effect at the time appointed for the purposes of paragraph 4(4), and
 - (aa) transitional provision in connection with provision falling within paragraph (a).
- (5) In deciding whether to modify an FMI transfer scheme, the Bank of England must have regard, in particular, to—
- (a) the public interest, and
 - (b) any effect that the modification is likely to have on the interests of third parties.
- (6) Before modifying an FMI transfer scheme that has taken effect, the Bank of England must consult the Treasury.
- (7) The old company and the new company each have a duty to provide the Bank of England with all information and other assistance that the Bank may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on it by this paragraph.

Provision relating to foreign property

- 9 (1) An FMI transfer scheme may contain provision about—
- (a) the transfer of foreign property, right and liabilities, and
 - (b) the creation of foreign property, rights and liabilities.

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- (2) For this purpose property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.

Application of Schedule to transfers to subsidiaries

- 10 Where a proposed transfer falling within subsection (5) of section 115 is a transfer of the kind mentioned in subsection (6)(a) of that section, this Schedule has effect in relation to the transfer as if—
- (a) paragraph 4(1)(a) were omitted, and
 - (b) in paragraph 4(6), for the words from “both” onwards there were substituted “the old company has consented may be made”.