STATUTORY INSTRUMENTS

2016 No. 1032

BANKS AND BANKING

The Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016

Made - - - -	*26th October 2016*
Coming into force - -	*1st December 2016*

The Treasury, in exercise of the powers conferred by sections 142B(2), 142D(2), 142E, 142F and 428(3) of the Financial Services and Markets Act 2000(**1**) and being of the opinion—

(a) in connection with the exercise of the power conferred by section 142B(2), that the regulated activity of accepting deposits should be a core activity when carried out in the specified circumstances;

(b) in connection with the exercise of the power conferred by section 142D(2), that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services; and

(c) in connection with the exercise of the power conferred by section 142E, that the making of this Order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services;

make the following Order.

A draft of this Order has been laid before Parliament and approved by resolution of each House of Parliament in accordance with section 142Z of the Financial Services and Markets Act 2000.

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016.

(2) This Order comes into force on 1st December 2016.

(**1**) 2000 c.8; sections 142A to 142Z1 were inserted into the Act by section 4 of the Financial Services (Banking Reform) Act 2013 (c.33).

Amendments to the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014

2.—(1) The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014(**2**) is amended as follows.

(2) In article 1—

(a) after the definition of "deposit" insert—

""EEA account" has the meaning given in article 2(3)(b);

"EEA account holder" means the holder of an EEA account;";

(b) omit the following definitions—

(i) "qualifying organisation declaration"; and

(ii) "qualifying group member declaration";

(c) after the definition of "registered society" insert—

""relevant financial year" in relation to an organisation means—

(a) the last completed financial year for which accounting records are available, or

(b) where the organisation has existed for less than one financial year, its first financial year;";

(d) in the definition of "UK deposit-taker" for "an institution" substitute "a body corporate incorporated in the United Kingdom".

(3) For article 3 substitute—

"**Meaning of qualifying organisation**

3.—(1) An organisation is a qualifying organisation in relation to a UK deposit-taker if that deposit-taker, having made reasonable inquiries, determines that the organisation meets the relevant qualifying condition for the relevant financial year.

(2) The relevant qualifying condition is set out—

(a) in the case of a body corporate(**3**) or a partnership, in article 4;

(b) in the case of an organisation which is not a body corporate or a partnership, in article 5.

(3) Upon making a determination in accordance with paragraph (1), a UK deposit-taker must give notice to the organisation in writing—

(a) informing the organisation that the UK deposit-taker has made that determination;

(b) stating the reasons why the UK deposit-taker made that determination; and

(c) notifying the organisation that it has fourteen days from the date upon which the notice is given in which to submit representations to the UK deposit-taker if the organisation considers that the UK deposit-taker's determination was based on a mistake of fact.".

(4) In article 4(3) for sub-paragraph (b) substitute—

"(b) where the UK deposit-taker—

(**2**) S.I. 2014/1960.

(**3**) "Body corporate" is defined in section 417(1) of the Financial Services and Markets Act 2000. There are amendments to that section, but none are relevant to this Order.

(i) makes a determination as to whether the organisation meets the qualifying condition during the organisation's first financial year; and

(ii) at the time the determination is made, the organisation has not yet prepared a balance sheet;

the aggregate of the amounts which would be shown as assets in a balance sheet prepared not more than six weeks before the date upon which that determination is made.".

(5) Omit articles 6 and 7.

(6) For article 8 substitute—

"**Meaning of qualifying group member**

8.—(1) An organisation is a qualifying group member in relation to a UK deposit-taker if that deposit-taker determines that the organisation is a member of the same group(**4**) as a qualifying organisation.

(2) Upon making a determination that an organisation is a qualifying group member, a UK deposit-taker must give notice to the organisation in writing—

(a) informing the organisation that the UK deposit-taker has reached that determination;

(b) specifying the identity of the relevant qualifying organisation; and

(c) notifying the organisation that it has fourteen days from the date upon which the notice is given in which to submit representations to the UK deposit-taker if the organisation considers that the UK deposit-taker's determination was based on a mistake of fact.

(3) A notice given pursuant to paragraph (2) may be given at the same time as a notice given pursuant to article 3(3).".

(7) In article 14(1)—

(a) in sub-paragraph (a) for "an account" substitute "an EEA account for the purpose of making one or more deposits";

(b) in sub-paragraph (b)—

(i) insert "EEA" at the beginning; and

(ii) after "individuals" insert "who use the account for the purpose of making one or more deposits".

Amendments to the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

3.—(1) The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014(**5**) is amended as follows.

(2) In article 1—

(a) after the definition of "capital market arrangement" insert—

""charity" has the meaning given in section 1 of the Charities Act 2011(**6**), section 1 of the Charities Act (Northern Ireland) 2008(**7**) or section 106 of the Charities and Trustee Investment (Scotland) Act 2005(**8**);

(**4**) "Group" is defined in section 421 of the Financial Services and Markets Act 2000. Section 421 was amended by S.I. 2008/948.
(**5**) S.I. 2014/2080.
(**6**) 2011 c.25.
(**7**) 2008 c.12 (N.I).
(**8**) 2005 asp 10.

"CIO" means a body constituted and registered as a charitable incorporated organisation under Part 11 of the Charities Act 2011 or Part 11 of the Charities Act (Northern Ireland) 2008, or as a Scottish charitable incorporated organisation under Part 1 of the Charities and Trustee Investment (Scotland) Act 2005;";

(b) after the definition of "conduit vehicle" insert—

""core deposit" has the meaning given in article 2(2) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014;";

(c) in the definition of "global systemically important insurer" at the end insert ", and any subsidiary undertaking of any such undertaking provided that the subsidiary undertaking is also an insurance undertaking, third country insurance undertaking, reinsurance undertaking or third country reinsurance undertaking";

(d) in the definition of "liquidity risk" for "the ring-fenced body" substitute "the undertaking";

(e) in the definition of "payment exposures", in paragraph (d), omit "also";

(f) after the definition of "Regulated Activities Order 2001" insert—

""related undertaking" means any subsidiary undertaking of a parent undertaking where the parent undertaking is subject to rules made by the appropriate regulator pursuant to section 192JA of the Act, but does not include a subsidiary undertaking that is a ring-fenced body;";

(g) after the definition of "UCITS" insert—

""UK deposit-taker" means a body corporate incorporated in the United Kingdom which carries on the regulated activity of accepting deposits in relation to which it has a permission under Part 4A of the 2000 Act;".

(3) In article 3(2)—

(a) in sub-paragraph (b)—

(i) after "assets, created by," omit "or otherwise originated by,";

(ii) in paragraph (ii)—

(aa) omit "or otherwise originated";

(bb) after "any of its subsidiary undertakings" insert "(provided that the assets concerned are assets that the ring-fenced body itself could hold)";

(cc) at the end omit "or";

(iii) at the end of paragraph (iii) insert ", or"; and

(iv) after paragraph (iii) insert—

"(iv) a member of the group of companies to which the ring-fenced body ("A") belongs (other than one falling within paragraph (i), (ii) or (iii)) provided that—

(aa) the assets concerned were created no later than two years before A became a ring-fenced body,

(bb) the assets were transferred to the structured finance vehicle before A became a ring-fenced body, and

(cc) the assets concerned are assets that A itself could hold;";

(b) in sub-paragraph (f) after "the provision of services to" insert ", or in connection with the transfer of assets to,";

(c) after sub-paragraph (g) insert—

"(ga) assets, or an interest in assets, that—

(i) were created by, or comprised of claims against, a company outside the group of companies to which the ring-fenced body ("B") belongs,

(ii) were transferred to the structured finance vehicle from—

(aa) B,

(bb) a subsidiary undertaking of B, or

(cc) any other member of the group of companies to which B belongs,

(iii) were acquired by the company from which the transfer was made no later than two years before B became a ring-fenced body,

(iv) in the case of assets transferred by a company falling within paragraph (ii)(cc), were transferred to the structured finance vehicle before B became a ring-fenced body, and

(v) are assets that B itself could hold;

(gb) assets that—

(i) have at any time been transferred to the ring-fenced body pursuant to a ring-fencing transfer scheme within the meaning of section 106B(**9**) of the Act, and

(ii) are assets that the ring-fenced body itself could hold;

(gc) assets, or an interest in assets, that were—

(i) created or owned at any time by—

(aa) a company ("C") in respect of which an order has been made under the Banking (Special Provisions) Act 2008(**10**), or

(bb) a subsidiary undertaking of C ("D"), and

(ii) transferred to the structured finance vehicle from C or D pursuant to any agreement for that purpose, whether directly or through an intermediary —

(aa) at a time when all of the shares in C were owned by a nominee of the Treasury or a company wholly owned by the Treasury,

(bb) in the case of assets created or owned by D, at a time when D was a subsidiary undertaking of C,

(cc) in connection with a capital market arrangement to which the structured finance vehicle was a party, and

(dd) where the capital market arrangement referred to in sub-paragraph (cc) was established to finance, wholly or in part, the consideration payable to C or D in connection with the transfer of the relevant assets;

(gd) assets, or an interest in assets, that—

(i) have at any time been subject to any transfer effected pursuant to Part 1 of the Banking Act 2009(**11**), and

(ii) are assets that the ring-fenced body itself could hold;";

(d) in sub-paragraph (h) for "(a) to (g)" substitute "(a) to (gd)".

(**9**) Section 106B was inserted into the Financial Services and Markets Act 2000 by paragraph 5 of Schedule 1 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**10**) 2008 c.2.
(**11**) 2009 c.1.