

Appendix 1

PRA RULEBOOK: CRR FIRMS AND NON-AUTHORISED PERSONS: STAY IN RESOLUTION INSTRUMENT 2015

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (the PRA’s general rules);
 - (2) section 137T (general supplementary powers); and
 - (3) section 192JB (rules requiring parent undertakings to facilitate resolution).
- B. The PRA exercises the following powers in the Act to make those terms in the Glossary that are used in this instrument in rules applicable to qualifying parent undertakings:
- (1) section 192JB (rules requiring parent undertakings to facilitate resolution); and
 - (2) section 137T (general supplementary powers).
- C. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- D. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay in Resolution Instrument 2015

- E. The PRA makes the rules in the Annex to this instrument.

Commencement

- F. This instrument comes into force on 1 June 2016.

Citation

- G. This instrument may be cited as the PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay in Resolution Instrument 2015.

By order of the Board of the Prudential Regulation Authority

12 November 2015

Annex

In this Annex, the text is all new and is not underlined.

Part

STAY IN RESOLUTION

Chapter content

- 1. APPLICATION AND DEFINITIONS**
- 2. STAY IN RESOLUTION**
- 3. TRANSITIONAL PROVISIONS**

Links

1 APPLICATION AND DEFINITIONS

1.1 This Part applies to a *BRRD undertaking* which is:

- (1) a *CRR firm*;
- (2) a *financial holding company* whose registered office or, if the *financial holding company* does not have a registered office, whose head office is in the *United Kingdom*; or
- (3) a *mixed financial holding company* whose registered office or, if the *mixed financial holding company* does not have a registered office, whose head office is in the *United Kingdom*.

1.2 A *BRRD undertaking* that is a *parent undertaking* must ensure that a *subsidiary* which meets the condition in 1.3 complies with the requirements of this Part as if it were a *BRRD undertaking* subject to those requirements.

1.3 The condition in 1.2 is that the *subsidiary* is:

- (1) a *credit institution*;
- (2) an *investment firm* or an *undertaking* which would be an *investment firm* if it had its head office in an *EEA State*; or
- (3) a *financial institution*; and

is not a *BRRD undertaking* which falls within 1.1.

1.4 In this Part, the following definitions shall apply:

crisis management measure

has the meaning given in section 48Z(1) of the Banking Act 2009.

crisis prevention measure

has the meaning given in section 48Z(1) of the Banking Act 2009.

excluded person

means:

- (a) a person who has been declared to be, or who is an operator of, a designated system under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,
- (b) a person who has been designated by an *EEA State* as a system under Article 2(a) of the Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems or an operator of such a system,
- (c) an exchange, other trading facility, payment system, settlement system or other financial market utility or infrastructure established in a *third country* not within (a) or (b),

- (d) a *central counterparty*,
- (e) a *central bank*, or
- (f) a central government (including any agency or branch of a central government).

financial arrangement

means the following contracts and agreements:

- (a) financial contracts as defined in point 100 (a) to (d) of Article 2(1) of the *BRRD*;
- (b) a derivative as defined in Article 2(5) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories; and
- (c) a master agreement in so far as it relates to:
 - (i) any of the contracts or agreements referred to in points (a) and (b); or
 - (ii) a contract for the sale, purchase or delivery of the currency of the *UK* or any other country, territory or monetary union.

group

has the meaning given in section 48Z(1) of the Banking Act 2009.

recognised third-country resolution action

has the meaning given in section 48Z(1) of the Banking Act 2009.

security interest

has the meaning given in section 70B(7) of the Banking Act 2009.

Special Resolution Regime

means the provisions of Part I of the Banking Act 2009 and any measure taken under that Part.

termination right

means the following rights and provisions:

- (a) a 'termination right' as defined in section 70C(10) of the Banking Act 2009; and
- (b) a 'default event provision' as defined in Section 48Z(1) of the Banking Act 2009 that would apply as a consequence of:
 - (i) a *crisis prevention measure*, *crisis management measure* or *recognised third-country resolution action* or
 - (ii) the occurrence of any event directly linked to the application of such a measure or action.

third-country law financial arrangement

means a *financial arrangement* which:

- (a) is governed by the law of a *third country*, and

- (b) contains a *termination right* or a *security interest*, the exercise or enforcement of which could be suspended or prevented or the application of which would be disregarded under the *Special Resolution Regime* if the *financial arrangement* were governed by the laws of any part of the *United Kingdom*.

transferable securities

has the meaning given in point (44) of Article 41(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

- 1.5 For the purposes of this Part, any reference to securities in point 100 (a) to (d) of Article 2(1) of the *BRRD* has the same meaning as *transferable securities*.
- 1.6 Unless otherwise defined, any italicised expression used in this Part and in the *CRR* has the same meaning as in the *CRR*.

2 STAY IN RESOLUTION

- 2.1 Subject to 2.2, a *BRRD undertaking* must not create a new obligation or materially amend an existing obligation under a *third-country law financial arrangement* unless the *third-country law financial arrangement* is solely with an *excluded person*.

- 2.2 A *BRRD undertaking* may create a new obligation or materially amend an existing obligation under a *third-country law financial arrangement* where each counterparty to the *third-country law financial arrangement*, other than a counterparty which is an *excluded person*, agrees in an enforceable manner that if:

- (1) a *crisis prevention measure*;
- (2) *crisis management measure*; or
- (3) *recognised third-country resolution action*

is taken in relation to the *BRRD undertaking* or any member of the same *group* as the *BRRD undertaking*, it shall be entitled to exercise *termination rights* under, or rights to enforce a *security interest* in connection with, the *third-country law financial arrangement* to the extent that it would be entitled to do so under the *Special Resolution Regime* if the *third-country law financial arrangement* were governed by the laws of any part of the *United Kingdom*.

- 2.3 For the purpose of 2.2, section 48Z of the Banking Act 2009 is to be disregarded to the extent that it relates to a *crisis prevention measure* other than the making of a mandatory reduction instrument by the Bank of England under section 6B of the Banking Act 2009.

3 TRANSITIONAL PROVISIONS

- 3.1 From 1 June 2016 this Part applies in relation to a *third-country law financial arrangement* under 2.1 where a direct or indirect counterparty is:
- (1) a *credit institution*;
- (2) an *investment firm*; or

(3) an *undertaking* which would be an *investment firm* if it had its head office in an *EEA State*.

3.2 From 1 January 2017 this Part applies in relation to all *third-country law financial arrangements* under 2.1 other than those to which the sole counterparty is an *excluded person*.

Term	Definition source
<i>central bank</i>	Article 4(1)(46) <i>CRR</i>
<i>central counterparty</i>	Article 4(1)(34) <i>CRR</i>
<i>credit institution</i>	Article 4(1)(1) <i>CRR</i>
<i>financial institution</i>	Article 4(1)(26) <i>CRR</i>
<i>financial holding company</i>	Article 4(1)(20) <i>CRR</i>
<i>investment firm</i>	Article 4(1)(2) <i>CRR</i>
<i>mixed financial holding company</i>	Article 4(1)(21) <i>CRR</i>
<i>parent undertaking</i>	Article 4(1)(15) <i>CRR</i>
<i>subsidiary</i>	Article 4(1)(16) <i>CRR</i>