

SCHEDULE 2A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER:
SUPPLEMENTARY PROVISIONS

Capital market arrangement

For the 1.–(1) purposes of section 72B an arrangement is a capital market arrangement if—

- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or

it involves a (aa) grant of security to—

- (i) a party to the arrangement who issues a capital market investment, or
(ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or

it involves a (ab) grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or

- (b) at least one party guarantees the performance of obligations of another party, or
(c) at least one party provides security in respect of the performance of obligations of another party, or
(d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/ 544) (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

- (a) a reference to holding as trustee includes a reference to holding as nominee or agent,
(b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
(c) a person holds a capital market investment if he has a legal or beneficial interest in it, and
(d) the reference to the provision of finance includes the provision of an indemnity.

(3) In section 72B(1) and this paragraph 'party' to an arrangement includes a party to an agreement which—

- (a) forms part of the arrangement,
(b) provides for the raising of finance as part of the arrangement, or
(c) is necessary for the purposes of implementing the arrangement.

Capital market investment

For the 2.–(1) purposes of section 72B an investment is a capital market investment if it—

- (a) is within article 77 or 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (debt instruments), and
(b) is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

'rated' means rated for the purposes of investment by an internationally recognised rating agency,

'listed' means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and

'traded' means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

'recognised investment exchange' has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and

'foreign market' has the same meaning as 'relevant market' in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (SI 2001/1335) (foreign markets).

An investment 3.–(1) is also a capital market investment for the purposes of section 72B if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
- (b) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,
- (c) a person to whom article 49(2) of that order applies (high net worth company, etc.),
- (d) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and
- (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) In sub-paragraph (1)—

'bond' shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544), and includes any instrument falling within article 77A of that Order, and

'commercial paper' has the meaning given by article 9(3) of that order.

(3) For the purposes of sub-paragraph (1)—

- (a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—
 - (i) in article 19(5)(b), ignore the words after 'exempt person',
 - (ii) in article 19(5)(c)(i), for the words from 'the controlled activity' to the end substitute 'a controlled activity', and
 - (iii) in article 19(5)(e) ignore the words from 'where the communication' to the end, and
- (b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).

'Agreement'

For the purposes 4. of sections 72B and 72E and this Schedule 'agreement' includes an agreement or undertaking effected by—

- (a) contract,
- (b) deed, or

- (c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction.

Debt

The debt of at least £50 million referred to in section 72B(1)(a) or 72E(2)(a)—

- (a) may be incurred at any time during the life of the capital market arrangement or financed project, and
- (b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

Step-in rights

For the purposes of sections 72C to 72E a project has 'step-in rights' if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
- (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

Project company

For the purposes of sections 72C to 72E a company is a 'project company' of a project if—

- (a) it holds property for the purpose of the project,
- (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
- (c) it is one of a number of companies which together carry out the project,
- (d) it has the purpose of supplying finance to enable the project to be carried out, or
- (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a 'project company' of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
- (b) it also performs a function which is not—
- (i) within sub-paragraph (1)(a) to (d),
- (ii) related to a function within sub-paragraph (1)(a) to (d), or
- (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

'Resources'

In section 72C 8. 'resources' includes—

- (a) funds (including payment for the provision of services or facilities),
- (b) assets,
- (c) professional skill,
- (d) the grant of a concession or franchise, and
- (e) any other commercial resource.

'Public body'

In section 72C 9.–(1) 'public body' means—

- (a) a body which exercises public functions,
 - (b) a body specified for the purposes of this paragraph by the Secretary of State, and
 - (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.
- (2) A specification under sub-paragraph (1) may be—
- (a) general, or
 - (b) for the purpose of the application of section 72C to a specified case.

Regulated business

For the 10.–(1) purposes of section 72D a business is regulated if it is carried on—

- (b) in reliance on a licence under section 7 or 7A of the Gas Act 1986 (c. 44) (transport and supply of gas),
- (c) in reliance on a licence granted by virtue of section 41C of that Act (power to prescribe additional licensable activity),
- (d) in reliance on a licence under section 6 of the Electricity Act 1989 (c. 29) (supply of electricity),
- (e) by a water undertaker,
- (f) by a sewerage undertaker,
- (g) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),
- (h) by the Post Office company within the meaning given by section 62 of that Act (transfer of property),
- (i) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding),
- (j) in reliance on a licence under section 8 of the Railways Act 1993 (c. 43) (railway services),
- (k) in reliance on a licence exemption under section 7 of that Act (subject to sub-paragraph (2) below),
- (l) by the operator of a system of transport which is deemed to be a railway for a purpose of Part I of that Act by virtue of section 81(2) of that Act (tramways, etc.),
- (m) by the operator of a vehicle carried on flanged wheels along a system within paragraph (l), or
- (n) in reliance on a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose.

(2) Sub-paragraph (1)(k) does not apply to the operator of a railway asset on a railway unless on some part of the railway there is a permitted line speed exceeding 40 kilometres per hour.

(2A) For the purposes of section 72D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service.

(2B) In sub-paragraph (1)(n), an 'EEA State' means a member State, Norway, Iceland or Liechtenstein.

[By the *Communications Act 2003*, sch. 17, para. 1(1) (so far as relevant), in the *Insolvency Act 1986*:

'public electronic communications network' and 'public electronic communications service' each has the same meaning as in Chapter 1 of

Part 2 of this Act [i.e. the Communications Act 2003.]

'Person'

A reference to a 11. person in this Schedule includes a reference to a partnership or another unincorporated group of persons.

NOTES ON TEXT

Enterprise Act 2002, s. 250(2) and sch. 18. **Sch. 2A, para. 1:** 2003/1468. **Sch. 2A, para. 2:** 2010/86, sch., para. 2(a). **Sch. 2A, para. 3:** 2010/86, sch., para. 2(b). **Sch. 2A, para. 10:** Communications Act 2003, sch. 17, para. 82(1) and (4), and sch. 19; 2005/3050, sch. 1, para. 2.