

The Banking Act

The Banking Act – the new “Special Resolution Regime” for dealing with failing banks

On 21 February 2009 the Banking Act (the “Act”) became effective as law. Also on 21 February, the statutory instruments dealing with safeguards for partial property transfers and ‘no creditor worse off’ provisions (the “Orders”) came into effect.

The initial draft bill caused major concern in the City – as originally drafted, it would have undermined legal certainty for set-off, netting and repo arrangements, and for secured and structured finance, with related implications for capital holding requirements.

The final Act and Orders go a considerable way to allaying those initial fears, providing safeguards for the integrity of set-off and netting arrangements, financial collateral arrangements, and structured finance. However, the Act does give the Treasury, Bank of England and the FSA sweeping powers to transfer securities and a bank’s property, rights and liabilities, and to amend the law.

This legal alert concentrates on the Act as it relates to the “Special Resolution Regime” for failing banks, and the Orders.

If you have any questions or require specific advice on any matter discussed in this publication, please contact Stephen Walsh, Kevin Hawken, Miles Bake or your regular contact at Mayer Brown.

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