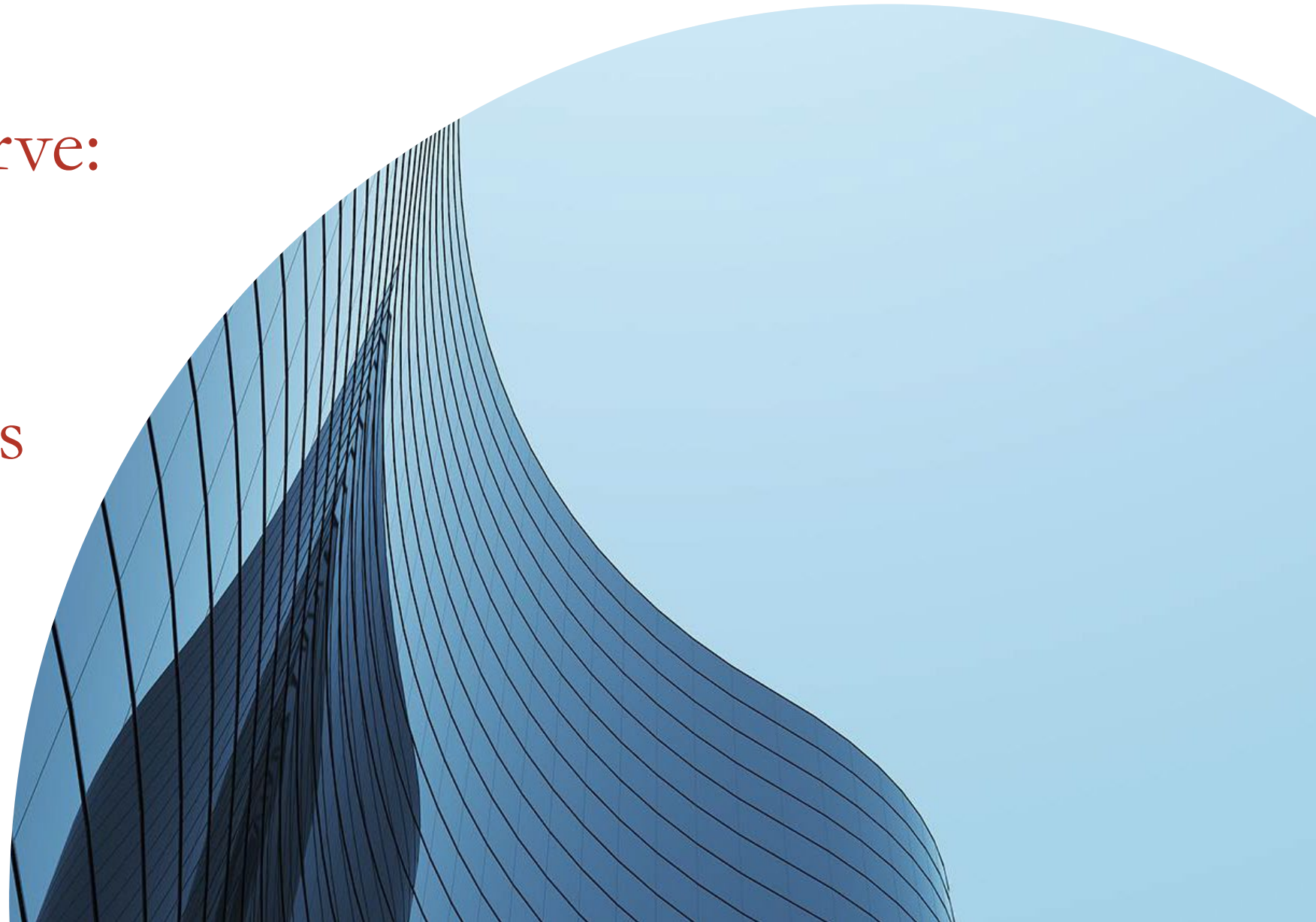


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Ahead of the Curve:
The insolvency
framework for
distressed insurers

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Ahead of the Curve: The insolvency framework for distressed insurers

Today's Ahead of the Curve topics

01 But first, the news...

02 Previous insolvency framework for distressed insurers

03 Expanded insolvency tools – Financial Services and Markets Act 2023

04 Proposals for new Insurers Resolution Regime (IRR)



The building blocks of cryptoasset regulation



Fiat-backed stablecoins



– BoE discussion paper on the regulatory regime for systemic payment systems using stablecoins and related service providers



– FCA Discussion paper on regulating fiat-backed stablecoins



– PRA Dear CEO letter on innovations in the use by deposit takers of deposits, e-money and regulated stablecoins



Financial promotion and APP fraud remain a focus



Financial Promotion Regulatory Framework

- FCA application window for permission to approve financial promotions opened
- Draft Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023
 - High net worth individuals and sophisticated investors exemption
- FCA guidance on compliance with new cryptoasset financial promotion rules



APP fraud

- FCA multi-firm review on anti-fraud controls and complaint handling



Capital requirements and other consultations



1

BoE and HMT consulting on implementation of the new bank levy

2

PRA statement on the recalculation of the Transitional Measure on Technical Provisions as at year-end 2023

3

Draft Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023

4

PRA policy statement on removing NPE capital deduction requirement

5

Draft Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023

CCP and clearing related updates

Two new SIs on CCP recovery framework

Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Calculation of Maximum Amounts for Cash Calls and Use of Specified Funds) Regulations 2023

The Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Deferment of Provisions in Resolution Instruments) Regulations 2023

New equivalence determination

Central Counterparties (Equivalence) (Singapore) (Monetary Authority of Singapore) Regulations 2023

Pension fund clearing exemption

HMT call for evidence on pension fund clearing exemption

Scrutiny and review of the SRF

PSR generally applicable requirements review framework

- how the PSR will identify when it should review generally applicable requirements
- the methods it may use
- how stakeholders can request a review or respond to its relevant consultations
- how the PSR would prioritise a review.



House of Lords Liaison Committee recommend a new scrutiny committee

- Liaison Committee report recommends the creation of a Financial Services Regulation Committee
- To scrutinise financial services regulatory consultations, and financial services regulation generally
- To complement the work of existing Lords committees, and the House of Commons Treasury Sub-Committee on Financial Services Regulations
- The report will now go to the floor of the House for approval

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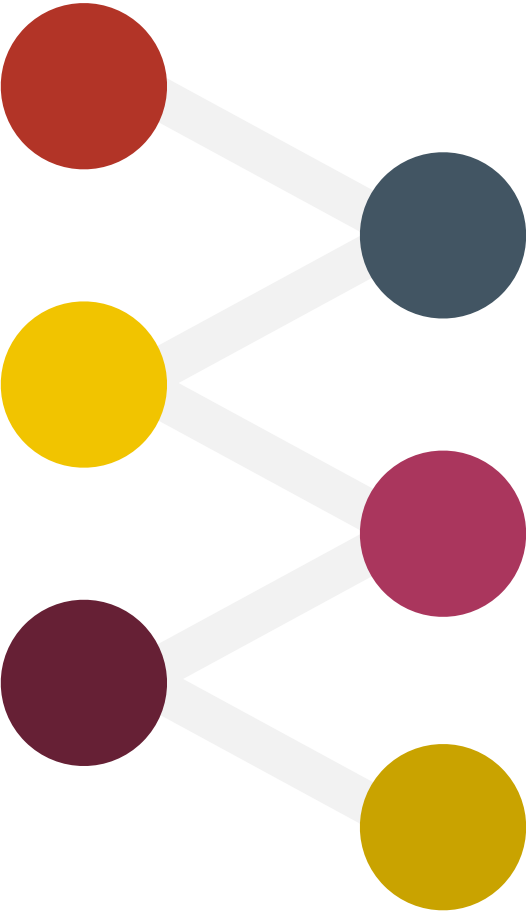


Previous insolvency framework for UK insurers

Generally speaking, applicable procedures are broadly the same as for ordinary UK companies...

Part XXIV FSMA overlay

Provisional liquidation / Administration



...with certain modifications under IWURs: e.g. amended priority of claims, composite insurers and no *ipso facto* provisions

Scheme of arrangement – “run-off” and “cut-off”

Section 377 FSMA 2000 – previous write-down power

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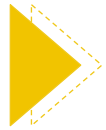
Changes under the Financial Services and Markets Act 2023



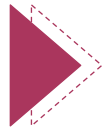
What are the key aspects of the FSMA amendments? And how do they compare to the previous law?



When did these changes come into force and who do they affect?



Are all contracts with insurers affected by the amendments? What creditor protections are there?



How do the changes affect those lending to/investing in insurance companies, derivative counterparties and reinsurance transactions?



How do the changes interact with the IRR?



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Proposed Insurer Resolution Regime



What is the timing for this? What stage are these proposals at and where have they come from?



What are the objectives of the IRR?



What are the conditions that need to be met before the IRR can be used by the authorities?



What stabilisation options are being proposed?



Will there be any safeguards for creditors and other counterparties dealing with insurance companies?

How it fits together

Five statutory resolution objectives

Objective 1: *To protect and enhance the stability of the UK financial system, including by (a) preventing contagion and (b) protecting the ability of current/future insurance policyholders to access critical functions (including continuity of services on existing policies)*

Objective 2: *To protect and enhance public confidence in the stability of the UK financial system*

Objective 3: *To protect public funds, including minimising reliance on extraordinary public financial support*

Objective 4: *To protect policyholders of the firm in resolution, including those covered by an insurance guarantee scheme*

Objective 5: *To avoid interfering with property rights in contravention of a Convention Right (HRA 1998)*

Four resolution conditions

RC1 — PRA assesses that the insurer is failing or likely to fail

+

RC2 — BoE assesses that it is not reasonably likely that action (outside of the stabilisation powers) will be taken by or in respect of the firm that will result in the first condition not being met

+

RC3 — BOE assesses that the exercise of the stabilisation powers is necessary having regard to the public interest in the advancement of one or more of the resolution objectives

+

RC4 — BoE assesses that one or more of the resolution objectives would not be met to the same extent if the stabilisation powers were not deployed

Four stabilisation options

- 01 Bail-in
- 02 Transfer to private sector purchaser
- 03 Transfer to a bridge institution
- 04 Temporary public ownership (*last resort*)

Two additional tools

Insurer Administration Procedure

Balance sheet management vehicle

Questions?

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