

Review of the Special Administration Regime for Investment Banks (the SAR review)

CALL FOR EVIDENCE

The Banking Act 2009 requires a review of the Investment Bank Special Administration Regulations 2011¹ by 7 February 2013. The review must be carried out by a person with expertise in the law of insolvency or financial services and he or she must report to the Treasury on how far the regulations achieve their objectives and whether they should continue to have effect. The Treasury must lay the report before Parliament.

I have been asked to take forward the SAR review and shall be reporting to Treasury ministers next month. In order to help me do so, I would be grateful for the views of interested parties on the SAR and its effectiveness to date in addressing its stated purpose and statutory objectives (set out in the appendix below).

I am keen that the review is broad in scope and also picks up the concerns that stakeholders have with what the SAR does *not* address, as well as any unintended consequences that the SAR may have created. I should also like to take account of any relevant changes in market practice or regulation since the SAR came into effect.

It is likely that the review may recommend further work to explore the issues raised in more depth. So this **first phase** will address the core questions in the Terms of Reference: how far the regulations are achieving their objectives, and whether the regulations should continue to have effect. It will identify any perceived shortcomings of the SAR, including any failure to meet its objectives, and set out a work programme for the second phase that will consider what changes to law or practice, if any, would better deliver the objectives of the SAR. The **second phase** will deliver the work programme.

During the first phase I propose to develop the scope for the broader second phase of the review. I would therefore welcome views generally, and in particular on:

- any perceived shortcomings of the SAR;
- suggestions for areas of further work;
- suggestions for changes to law or practice which would better deliver the objectives of the SAR;
- how investment bank clients and counterparties currently perceive dealing with firms in London, compared to those in other financial centres; and
- the impact of market and regulatory changes (including those not yet implemented) on the SAR and its objectives.

I am particularly interested to hear as soon as possible from anyone who considers that the SAR should not continue to have effect.

¹ S.I. 2011/245

This call for evidence is deliberately broad and open-ended. The second phase of the review will focus more on the detail of the issues raised, and there will be another opportunity to pass on your views at that time.

Submissions are welcome in response to this initial call for evidence by **10 January 2013**. Please send your submissions to **sarreview@hmtreasury.gsi.gov.uk**.

I would be particularly happy if respondents wished to make submissions in stages, perhaps letting me know of a high level concern at an early stage to help inform my thinking, whilst following up with a more considered response by the deadline above.

My review needs to be evidence based so far as possible and so I would request that any views expressed should be backed up by reasoning or suitable justification.

I would welcome more informal contact and can be reached on 07703 230 139 or at pb@peterbloxham.com.

Peter Bloxham

Call for Evidence: Appendix

Purpose of the SAR

1. The SAR was developed to increase the confidence of market participants in the effectiveness of the UK's insolvency regime as it applies to investment banks. The statutory objectives of the SAR are:
 - a. identifying, protecting, and facilitating the return of, client assets;
 - b. protecting creditors' rights;
 - c. ensuring certainty for investment banks, creditors, clients, liquidators and administrators;
 - d. minimising the disruption of business and markets; and
 - e. maximising the efficiency and effectiveness of the financial services industry in the United Kingdom.
2. The SAR translates these in practice into three special administration objectives which administrators have a duty to follow:
 - a. To ensure the return of client money or assets as soon as is reasonably practicable;
 - b. To ensure timely engagement with market infrastructure bodies; and
 - c. To rescue the investment bank as a going concern or wind it up in the best interests of creditors.
3. The SAR was developed in response to the slow return of client assets in the Lehman administration. Three firms have been placed in special administration since the regulations came into force: MF Global, Worldspreads and Pritchard Stockbrokers. All are currently ongoing.
4. The regulations came into force on 8 February 2011.