

SAR review

Terms of reference (two phase approach)

1. The review must consider, in particular, (a) how far the regulations are achieving their objectives (specified in section 233(3) of the Banking Act 2009), and (b) whether the regulations should continue to have effect.
2. In addition, the review must consider what other changes to law or practice, if any, would better deliver the objectives of the SAR.
3. In so doing the review must, as a priority, assess what practical and non-legislative measures could be implemented to deliver the objectives of the SAR more effectively.
4. In assessing what legislative changes could achieve in delivering the objectives of the SAR, full account must be taken of the impact of any such changes on the UK's insolvency regime.
5. The review should take account of the consensus reached in the creation of the SAR, building on the earlier public consultation on the SAR.
6. The review must be delivered in co-ordination with the FSA's review of its own Client Assets Rulebook and engage fully with that review. The review should consider the SAR's interactions with the FSA regulatory regime (CASS, Prudential etc) and FSCS compensation regime, and set out clear recommendations to ensure that there is a robust and holistic framework. The review should draw on the FSA's findings and industry consultations and seek to establish an agreed set of recommendations.
7. The review must engage fully with stakeholders, including, but not limited to, the FSA, the Bank of England, the Insolvency Service, insolvency practitioners, the Financial Services Compensation Scheme, and investment firms and their clients. There is no expectation that the review will undertake a formal public consultation.

Scope

8. The review must assess the impact that the SAR has had on individual clients, creditors, other stakeholders and the wider market. In so doing the review will analyse the impact of the SAR in dealing with the insolvencies of MF Global, Worldspreads and Pritchards. It will evaluate what benefits have been derived from the new legislation, benchmarked against the difficulties experienced during the administration of Lehman in the UK. The assessment must take account of the legal cases arising from these insolvencies.
9. The review should consider whether the scope of the SAR is appropriately defined and whether it captures the right population of firms.

10. The government is consulting on a Special Resolution Regime for non-banks, including investment firms. The review should maintain the distinction between the proposed SRR and the SAR. The review should nevertheless be aware of and take into account the findings of the SRR consultation, and should consider whether any elements of the SRR should be replicated within the SAR.
11. Comparisons may be made to the equivalent processes in other countries, for example the US. The assessment will include how effective the regulations have been in minimising any disruption to business arising from an insolvency, and in maintaining the UK as a global centre for financial services.
12. Examples of the type of measure that the review could consider include, but are not limited to:
 - a. Co-ordinating with the FSA over changes to the FSA's CASS rulebook;
 - b. Limiting the liability of insolvency practitioners dealing with the insolvency of investment firms;
 - c. Applying client preference over general creditors in the insolvency of investment firms;
 - d. Creating an industry-funded compensation scheme for investors, offering additional protection to investors beyond that received from the Financial Services Compensation Scheme;
 - e. Enabling the transfer of business from an investment firm facing insolvency.
13. The review should clearly articulate what the SAR is designed to achieve, in the light of any changes suggested to improve it.

Two phase approach

14. The review will be split into two phases.
15. **The 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.
16. It will identify the perceived shortcomings of the SAR, including any failure to meet its objectives, and set out an initial work programme for the second phase that will consider what other changes to law or practice, if any, would better deliver the objectives of the SAR.
17. The first phase will focus in particular on paragraph 1 of the Terms of Reference. It will focus on paragraphs 2 and 3 in developing the work programme for the second phase. It will take into account paragraphs 4-13 in its planning.
18. **The second phase** will deliver the work programme, in accordance with the Terms of Reference set out above.
19. The Terms of Reference apply in full to the second phase.