



HM Treasury

Rules on ensuring the effective
functioning of a financial market
infrastructure special
administration regime:
response to the consultation

July 2018

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Chapter 1

Introduction

- 1.1 In 2013, following a [consultation](#), the Financial Services (Banking Reform) Act 2013 introduced a form of special administration for certain financial market infrastructure (FMI) companies operating recognised payment systems, securities settlement systems, and designated service providers to these firms (collectively, 'infrastructure companies'). That regime is the Financial Market Infrastructure Special Administration Regime (FMI SAR).
- 1.2 In November 2016, HM Treasury published a consultation document, 'Rules on ensuring the effective functioning of the financial market infrastructure special administration regime', setting out the government's proposals for the rules which will underpin the procedural aspects of the FMI SAR.
- 1.3 The consultation document set out the government's general approach to rules for FMI administration, in particular the roles of the Bank of England, creditors and other authorities. The government indicated that the FMI administration rules would be based on the Insolvency (England and Wales) Rules 2016 and only differ where necessary to meet the FMI administration objectives in order to protect and enhance financial stability; would provide for the Bank of England to play an important role in the conduct of the FMI administration; and would provide for relevant authorities to be informed of the FMI administration process.
- 1.4 Based on this general approach, the government made key proposals for the rules to:
 - specify that an application for an FMI administration order must include a witness statement made by or on behalf of the Bank of England
 - provide for notification and copies of key documents and decisions to be sent to the Financial Conduct Authority (FCA), and where relevant to the Payment Systems Regulator (PSR) and to the Prudential Regulation Authority (PRA)
 - allow the FCA, HM Treasury and, where relevant, the PRA and PSR the right to appear and make representations at a court hearing of an FMI administration application
 - allow the Bank of England to set the remuneration of the FMI administrator. This is in line with other SARs, such as the Bank Administration Procedure. Creditors can appeal to the court if they feel the FMI administrator's remuneration is excessive

- allow the Bank of England to decide if pre-administration costs can be paid to the FMI administrator

1.5 The consultation ran from 11 November 2016 to 15 January 2017, during which time the government received six written responses from industry (see Annex A for a list of the respondents) and met with a range of industry stakeholders. This document summarises the responses received to the consultation and provides an update on the forthcoming legislation.

Chapter 2

Summary of responses

- 2.1 The government received six written responses to the consultation. The consultation asked three questions, the responses to which are summarised in turn below.

Question 1) Do you agree with the proposed content of the rules covering the application for an FMI administration order?

- 2.2 Respondents unanimously agreed with the proposal for the Bank of England to play an important role in the conduct of an FMI administration, and for it to perform many of the functions that would be carried out by creditors, and/or a creditors' committee, in a normal corporate insolvency.
- 2.3 Some respondents expressed concerns that where the infrastructure company going into administration is a designated service provider, the operators of the systems to which the infrastructure company provides services would not be made aware that their service provider was being put into administration.
- 2.4 The government agrees that system operators should be made aware when their service provider is being put into administration. Changes have been made to the final rules so that where the infrastructure company is a designated service provider, the operator of the recognised payment system or securities settlement system (or, if there is more than one such system, each one) will be notified of the application for administration. Additionally, the FMI administrator will serve a notice of their appointment to the system operator(s), i.e. the operator(s) of the recognised payment system(s) or securities settlement system(s), where the infrastructure company is a designated service provider. The notice will inform the system operator(s) that the FMI administrator has been appointed and the date of the appointment.
- 2.5 One respondent proposed that access to court files by third parties should be restricted as court files can contain sensitive company information and it would not be appropriate for the firm's competitors to be able to inspect them. This respondent proposed that rule 12.39 of the Insolvency (England and Wales) Rules 2016 should be modified further, such that, other than the Bank of England, only persons with the court's permission to inspect court files would be able to do so.
- 2.6 While the government agrees that care should be taken in allowing access to court files, this proposal has not been incorporated as the modification to corporate insolvency rules made for the FMI administration process only allows for the Bank of England and the relevant UK financial regulator(s) to

access court files, in addition to those parties that would already have access under a normal corporate insolvency.

- 2.7 A few respondents proposed that the interaction between the Bank of England and stakeholders with an interest in the administration, i.e. the infrastructure company in administration and other system operators, should be more clearly defined. One respondent proposed that the Bank of England should ensure the attendance of the infrastructure company at a court hearing as a default position and proposed that there should be a minimum period (of two or three days) for the service of an FMI administration by the Bank of England. Another respondent proposed that where it is a designated service provider that is in FMI administration, the Bank of England should be required to consult with system operators in regards to next steps.
- 2.8 Some respondents proposed that other FMI companies (i.e. other than the one going into administration) with an interest in the administration should have a role in the administration process. Where it is a designated service provider that is subject to an FMI administration, one respondent proposed that the FMI administrator should also be required to consult with the system operator(s) that the designated service provider provides services to. Another respondent proposed that where the FMI administration is on a recognised payment system operator, other payment system operators should also be served notice of the FMI administration, including copies of key document and decisions, to enable the other payment system operators to determine the impacts of an FMI administration.
- 2.9 The proposals above have not been incorporated as such provisions would be inconsistent with general insolvency rules, which do not include similar provisions. Furthermore, implementing these proposals could cause undue delays in the FMI administration.

Question 2) Do you agree with the proposed application and modification of company insolvency rules?

- 2.10 Only one respondent addressed this question directly; they focused on the FMI administrator's remuneration. This respondent proposed that where it is a designated service provider that subject to an FMI administration, system operators should also be able to apply to the court for an order that the remuneration of the FMI administrator, or the expenses they incur, are excessive or inappropriate, given their interest in the outcome of an FMI administration.
- 2.11 This proposal has not been incorporated as it would be inconsistent with general insolvency rules, where only creditors or members of the company (in cases of a member's voluntary wind-up) can petition the court on the grounds that the remuneration or expenses of the administrator are excessive.

Question 3) What other company insolvency rules, if any, should be applied with modifications for the effective conduct of FMI administration?

- 2.12 There were no direct responses to this question.

Chapter 3

Next steps

- 3.1 The government has consulted with the Insolvency Rules Committee on the FMI administration rules, as required under the Insolvency Act 1986.
- 3.2 The negative statutory instrument for the FMI administration rules will shortly be laid in Parliament and will come into force 21 days after laying.

Annex A

Respondents to the consultation

A.1 The government would like to thank the following respondents for their comments:

- Bacs Payment Schemes Limited
- CHAPS Clearing Company Limited
- LINK Scheme Ltd
- Vocalink Limited
- Visa Europe
- Faster Payments Scheme Limited

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