

C L I F F O R D
C H A N C E

INSURER RESOLUTION
HOW DO THE NEW UK AND EU REGIMES COMPARE?
FEBRUARY 2023

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INTRODUCTION

Both the UK and EU have proposed new resolution regimes for failing (re)insurers based on:

- the Key Attributes of Effective Resolution Regimes for Financial Institutions published by the Financial Stability Board;
- the Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups published by the International Association of Insurance Supervisors; and
- their existing regimes for the resolution of banks.

As a result, both the UK and EU proposals have much in common, albeit with some key differences, including:

- the scope of application in relation to holding companies and other group companies;
- the scope of application of additional recovery and resolution planning requirements (over and above existing requirements under Solvency II);
- the treatment of solvent run-off as a separate resolution tool;
- requirements to include bail-in and stay recognition clauses in contracts governed by the law of a non-UK or non-EU country;
- resolution financing arrangements.

The following tables provide a high-level comparison of:

- the proposed UK Insurer Resolution Regime (IRR);
- the proposed EU Insurance Recovery and Resolution Directive (IRR);
- the UK Banking Act 2009; and
- the EU Bank Recovery and Resolution Directive (BRRD).

TIMING AND RESOLUTION AUTHORITIES

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Timing				
Adopted	In consultation (comments close 20 April 2023)	Legislative proposal (22 September 2021)	✓	✓ (amending proposal expected Q1 2023)
In effect	Not stated	18 months after OJ publication (Council proposes 24 months)	✓	✓
Resolution authorities				
Resolution authority	Bank of England	National insurance resolution authority (structurally separated from other functions)	Bank of England	Single Resolution Board/national bank resolution authority (structurally separated from other functions)
Group resolution authority and resolution colleges for EU groups	N/A	✓ (Council proposes mechanisms for cooperation with banking authorities)	N/A	✓ (Council proposes mechanisms for cooperation with insurance authorities)

SCOPE

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Regulated entities	UK (re)insurers subject to UK Solvency II (excludes Lloyd's of London, Lloyd's market participants and friendly societies).	EU (re)insurers subject to Solvency II.	UK banks and investment firms subject to UK Capital Requirements Regulation.	EU credit institutions and investment firms subject to €750k capital requirement.
Holding companies of covered regulated entities	All UK holding companies.	EU insurance holding companies and mixed insurance holding companies.	All UK holding companies (but special rules apply to mixed-activity holding companies).	All EU holding companies (but special rules apply to mixed-activity holding companies).
'Financial institutions' that are members of regulated entity's group	✓	✗ (Council proposes to include some service companies)	✓	✓
Other group companies	✓.	✗ (see above)	✓ (subject to some exclusions)	✗
Local branches of foreign/non-EU institutions	✓	✓	✓	✓

PLANNING AND EARLY INTERVENTION

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Recovery and resolution planning				
Planning requirements and resolvability assessments for all in-scope entities and groups (beyond Solvency II requirements)	Expected that will only apply to limited number of firms	Requires target levels of market coverage (Council proposes to reduce levels) with exemptions for smaller and non-complex entities and groups	✓	✓
Resolution authority powers to address impediments to resolvability	✓	✓	✓	✓
Pre-resolution and early intervention powers				
Resolution authority power to restrict distributions	x	x	x	✓
Regulation of intragroup financial support arrangements	x	x	✓	✓
Additional early intervention powers for supervisory authorities (beyond existing powers)	x	✓	✓	✓

RESOLUTION OBJECTIVES AND CONDITIONS

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Resolution objectives				
Objectives to protect policyholders/depositors, financial stability, continuity of critical functions and public funds	✓ (and avoid interference with protected property rights)	✓	✓ (and avoid interference with protected property rights)	✓
Conditions for resolution				
Failing or likely to fail	✓	✓	✓	✓
No reasonable prospect of alternative plan	✓	✓	✓	✓
Resolution necessary in the public interest to advance resolution objectives	✓	✓	✓	✓
Winding up or alternative action would not achieve resolution objectives to same extent	✓	✓	✓	✓
Alternative conditions for holding companies and other group companies	Not specified	✓	✓	✓

RESOLUTION TOOLS AND POWERS

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Resolution tools				
Solvent run-off	x*	✓†	N/A	N/A
Transfer to commercial purchaser	✓	✓	✓	✓
Transfer to bridge entity	✓	✓ (but restriction on new business – Council proposes to relax this)	✓	✓
Bail-in	✓‡	✓	✓	✓
Temporary public ownership	✓	National discretion	✓	Government financial support option
Ancillary resolution powers				
Balance sheet management vehicle	✓	✓	✓	✓
Specialised insolvency regime	✓	National discretion	✓	National discretion

*The PRA can place UK insurers in solvent run-off using existing powers. †Council proposes that insurers in solvent run-off must initially meet the minimum capital requirement and must comply with certain other requirements under Solvency II. ‡The UK courts have existing powers to write-down contracts of an insurer which are to be enhanced under the Financial Services and Markets Bill.

OTHER POWERS AND STAYS

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Other powers				
Power to override 'pay-as-paid' clauses in reinsurance	✓	Not specified	N/A	N/A
Powers to require resolved entity or affiliates to provide services	✓	✓	✓	✓
Power to write down capital instruments outside resolution	x	x	✓	✓
Powers to control resolved entity	✓*	✓	✓	✓
Stays of termination rights, etc.				
Override of termination rights triggered by resolution action	✓	✓	✓	✓
Pre-resolution temporary stay	x	x	x	✓
Post-resolution temporary stay	✓	✓	✓	✓
Time-limited restriction on policyholder surrender rights	✓	✓	N/A	N/A
Power to stay insolvency and legal proceedings	✓	✓	✓	✓

**Includes additional specific powers to restrict distributions to shareholders, variable pay and transfer or charging of the assets of the resolved entity.

SAFEGUARDS AND PROTECTIONS

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Safeguards				
'No creditor worse off'	✓	✓	✓	✓
Restrictions on partial property transfers	✓	✓ (Council proposes removing some protections)	✓	✓
Bail-in of insurance/depositor claims:				
Bail-in of insurance/depositor claims allowed (so far as not protected by insolvency creditor hierarchy)	✓	✓ (Council proposes some restrictions on bail-in of insurance claims)	Bail-in does not apply to insured deposits*	Bail-in does not apply to insured deposits*
If bail-in allowed, claims can be converted into capital instruments	✓	✗ (Council proposes allowing as last resort)	✓	✓

*In accordance with the resolution principle that insured deposits should be fully protected in resolution.
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SUPPORTING MEASURES

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Requirement for recognition clauses in contracts governed by foreign/non-EU law:				
Bail-in recognition	Not specified	✓	✓ (PRA rules)	✓
Resolution stay recognition (financial contracts)	Not specified	✓	✓ (PRA rules)	✓
Other measures				
Minimum requirement for own funds and eligible liabilities	x	x	✓	✓
Restrictions on retail sales of bail-inable eligible liabilities	x	x	FCA CP20/23 not yet adopted	✓
Own funds must rank below other items in creditor hierarchy	x	✓	x	✓
Industry-funded resolution financing arrangements (pre- or post-funded)	x	National discretion (Council proposes mandatory scheme)	x (but UK bank levy applies)	✓ (pre-funded scheme*)
Existing policyholder/depositor protection regime	✓	National discretion (no EU regime)	✓	✓

*Subject to some derogations (Single Resolution Fund in Banking Union Member States).
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CROSS-BORDER ISSUES

	UK IRR	EU IRRD	UK Banking Act	EU BRRD
Mechanism to recognise foreign/non-EU resolution proceedings	✓	✓	✓	✓
Powers to resolve local branches of foreign/non-EU regulated entities	✓	✓	✓	✓

Notes

- These tables assume that the UK IRR and the EU IRRD are adopted in the form proposed.
- References to the proposals of the Council of the EU are to the amendments to the EU IRRD proposed by the Council in its general approach adopted in December 2022.
- The EU IRRD would allow Member States to give resolution authorities additional tools or powers in respect of entities that meet the conditions for resolution.
- This document is not intended to be comprehensive or to provide legal advice. For more information, speak to one of the lawyers named below or your usual Clifford Chance contact.

ADDITIONAL INFORMATION

UK IRR

- HM Treasury, *Insurer Resolution Regime: Consultation* (January 2023, [here](#))
- Clifford Chance briefing, *HM Treasury consults on new UK insurer resolution regime* (February 2023, [here](#))
- PRA CP3/23 *'Dealing with insurers in financial difficulties'* (February 2023, [here](#))

EU IRRD

- Legislative proposal for a Directive on the recovery and resolution of insurance undertakings (September 2021, [here](#))
- Council general approach on IRRD (December 2022, [here](#))
- Clifford Chance briefing, *The new EU Insurance Recovery and Resolution Directive* (October 2021, [here](#))

UK Banking Act

- Banking Act 2009 ([here](#))
- Bank Recovery and Resolution (No. 2) Order 2014 ([here](#))
- HM Treasury, *Banking Act 2009: special resolution regime code of practice* (December 2020, [here](#))
- Bank of England, *The Bank of England's approach to resolution* (October 2017, [here](#))
- Bank of England, Resolution webpage ([here](#))

EU BRRD

- EU Bank Recovery and Resolution Directive ([here](#))
- EU Regulation on Single Resolution Mechanism ([here](#))
- Single Resolution Board website ([here](#))
- Clifford Chance topic guide, *Bank Recovery and Resolution Directive on the Financial Markets Toolkit* ([here](#))

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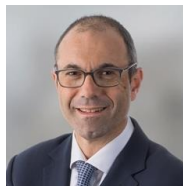
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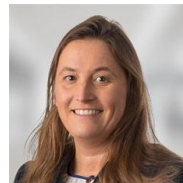
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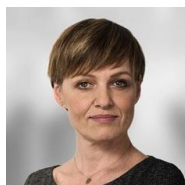
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