

PRA RULEBOOK: SOLVENCY II FIRMS, NON-SOLVENCY II FIRMS: INSURERS IN FINANCIAL DIFFICULTIES: NOTIFICATION OF AFFECTED PERSONS INSTRUMENT 2023

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (1) section 137G (The PRA’s general rules); and
 - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: Solvency II Firms, Non-Solvency II Firms: Insurers in Financial Difficulties: Notification of Affected Persons Instrument 2023

- D. The PRA makes the rules in the Annex.

Commencement

- E. This instrument comes into force on 19 September 2023.

Citation

- F. This instrument may be cited as the PRA Rulebook: Solvency II Firms, Non-Solvency II Firms: Insurers in Financial Difficulties: Notification of Affected Persons Instrument 2023.

By order of the Prudential Regulation Committee

5 September 2023

Annex

In this Annex, the text is all new and is not underlined.

Part

INSURERS IN FINANCIAL DIFFICULTIES: NOTIFICATION OF AFFECTED PERSONS

Chapter content

- 1. APPLICATION AND DEFINITIONS**
- 2. AFFECTED PERSONS**
- 3. SPECIFIED INFORMATION**
- 4. FORM AND MANNER OF NOTIFICATION**

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *insurer under write-down* but not to *affected market participants* or the *Society*.

1.2 In this Part, the following definitions shall apply:

affected person

has the meaning given in 2.1.

capital market investment

means an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment, as defined in paragraph 6 of Schedule ZA2 to the Insolvency Act 1986.

client money

has the meaning given in the *FCA Handbook* for the purposes of CASS 5 of the *FCA Handbook*.

financial contract

has the meaning given in paragraph 6 of Schedule 19C to *FSMA* (Relevant contracts).

financial counterparty

means any party to a *financial contract* other than the *insurer under write-down*.

relevant contract of insurance

has the meaning given in sub-paragraph 3(2) of Schedule 19C to *FSMA* (Restriction on policyholder surrender rights).

specified information

means the information specified in Chapter 3.

trade creditor

means any *person* who supplies goods or services to the *insurer under write-down* in circumstances where:

- (1) a liability in respect of such supply has been reduced pursuant to a *write-down order*,
or
- (2) the supplier is affected by paragraph 2 of Schedule 19B to *FSMA* (Moratorium on proceedings) or paragraph 7 of Schedule 19C to *FSMA* (Restrictions on termination etc).

write-down manager

has the meaning given to the term 'manager' in section 377G(1) of *FSMA* (The manager).

write-down order

has the meaning given in section 377A(1) of *FSMA* (Write-down orders).

2 AFFECTED PERSONS

2.1 For the purposes of section 377F(3) of *FSMA*, an *affected person* in relation to an *insurer under write-down* is:

- (1) every *policyholder* of the *insurer under write-down*;
- (2) every *reinsurer* of the *insurer under write-down*;
- (3) every *trade creditor* of the *insurer under write-down*;
- (4) every *financial counterparty* of the *insurer under write-down*;
- (5) every holder of a *capital market investment* issued by the *insurer under write-down* (or a trustee acting on behalf of such persons); and
- (6) every *intermediary* who has placed business with the *insurer under write-down* where that business may be affected by the write-down, or where the *intermediary* is a debtor or creditor of the *insurer under write-down* or holds *client money* in connection with such business.

3 SPECIFIED INFORMATION

3.1 For the purposes of section 377F(4)(a) of *FSMA*, the following information is specified:

- (1) the fact a *write-down order* has been made;
- (2) details of where a copy of the *write-down order* may be obtained or inspected;
- (3) an explanation of why the application for a *write-down order* was made and by whom;
- (4) an explanation of the effect of the *write-down order* and of the impact of Chapter 5A of the Policyholder Protection Part, and must in particular include a summary of:
 - (a) how the contractual and associated rights and obligations of *affected persons* are affected as a result of the *write-down order*;
 - (b) how payments will be made by the *insurer under write-down* and whether and in what quantity payments will be reduced, including after taking into account the effect of Chapter 5A of the Policyholder Protection Part;
 - (c) the rights and obligations *affected persons* have in connection with the *write-down order* and the *write-down manager*, including the right to apply to court to vary or revoke a *write-down order* or to challenge the actions of the *write-down manager*; and
 - (d) where the *insurer under write-down* carries out *relevant contracts of insurance*, the effect of Part 2 of Schedule 19C to *FSMA* (Policyholder surrender rights), including the process for applying for consent under paragraph 5 of Schedule 19C of *FSMA* (Consent to exceed surrender limit);
- (5) a summary of the effect of Part 3 of Schedule 19C to *FSMA* (Termination etc of relevant contracts), including the process for applying for consent under paragraph 8 of Schedule 19C of *FSMA* (Consent to terminate relevant contracts);
- (6) a statement that the *insurer under write-down* continues to be regulated by the *PRA* and the *FCA*;
- (7) a summary of the functions of the court, the *write-down manager* and the *insurer under write-down*, the *PRA* and the *FCA*; and
- (8) contact details for the *insurer under write-down* and the *write-down manager*, with a statement directing *affected persons* to contact those parties with queries.

4 FORM AND MANNER OF NOTIFICATION

4.1 For the purposes of section 377F(4)(b) of *FSMA*, this Chapter specifies the form and manner in which *specified information* must be given.

- 4.2 *Specified information* may be provided in different packs for different purposes, with each such pack containing only such information as is relevant to the intended recipient. This may include:
- (1) a pack intended for *policyholders* which contains only such *specified information* as is relevant to them; and
 - (2) a pack intended for other *affected persons* which contains only such *specified information* as is relevant to them.
- 4.3 *Specified information* must be given in writing in English on paper or another format available and accessible to the *affected person*, provided that:
- (1) anything which enables the *affected person* to store *specified information* addressed personally to them is accessible for future reference and for a period of time adequate for the purposes of the *specified information* and which allows the unchanged reproduction of the *specified information* stored; and
 - (2) the provision of *specified information* by means of electronic communications shall be treated as appropriate if there is evidence that the *affected person* has regular access to the internet. The provision by the *affected person* of an e-mail address is sufficient evidence.
- 4.4 An *affected person* is entitled, upon request and without charge, to receive *specified information* on paper. An *affected person* is also entitled to change the means of communication used.
- 4.5 Copies of *specified information* must also be available on a website, and:
- (1) *affected persons* must be notified of the address of the website, and the place on the website where the *specified information* may be accessed;
 - (2) the *specified information* must be up to date; and
 - (3) the *specified information* must be accessible continuously by means of that website for a period of time adequate for the purposes of the *specified information*.