

Supervisory Statement | SS42/15

Contractual stays in financial contracts governed by third-country law

November 2015



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



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1 Introduction

1.1 This supervisory statement (SS) sets out the expectations of the Prudential Regulation Authority (PRA) on PRA-authorised firms in respect of the PRA rules on contractual stays in financial contracts governed by third-country law.

1.2 This statement is intended to be read together with the Stay in Resolution Part of the CRR Firms and Non-Authorised Persons Sectors of the PRA Rulebook.

1.3 This statement is relevant to PRA-authorised banks, building societies, PRA-designated investment firms and their qualifying parent undertakings, which for this purpose comprise UK financial holding companies and UK mixed financial holding companies (together, 'UK firms').

1.4 This statement is also relevant to credit institutions, investment firms and financial institutions that are subsidiaries of those firms listed in paragraph 1.3, regardless of the jurisdiction of establishment or incorporation of the subsidiary, to the extent that the subsidiary enters into a financial arrangement governed by third-country law which contains termination rights or security interests the exercise of which could be suspended or prevented under the Special Resolution Regime (SRR) under Part 1 of the Banking Act 2009, if the contract were governed by UK law (third-country law financial arrangement).

1.5 This statement is also relevant to counterparties of UK firms and in-scope subsidiaries with third-country law financial arrangements.

1.6 By setting out the PRA's expectations with regard to certain aspects of the rules, this statement may help to minimise the adverse effect that the failure of a PRA firm could have on financial stability and contribute towards the safety and soundness of firms.

2 Material amendment

2.1 The PRA considers the following examples to be a non-exhaustive list of non-material amendments for purposes of these rules:

- Changes that occur automatically by the terms of the contract without the need for any subsequent agreement by the parties, such as roll over or renewal of the contract; and
- Administrative changes such as changes to notification, confirmation or payment details, clarification of definitions, business day conventions, or other similar technical amendments.

3 Counterparty agreement and legal opinions

3.1 The prohibition in the rules applies unless the counterparty has agreed in an enforceable manner that its termination rights and rights to enforce a security interest will be limited in accordance with the rules.

3.2 Legal opinions are not required by the rules as a matter of course. However, the PRA expects UK firms to satisfy themselves that they (and relevant subsidiaries) are in compliance with the rules and UK firms are expected to be able to demonstrate compliance.

4 Non-Compliance/Enforcement

4.1 Breaches of the rules will be dealt with in accordance with standard PRA policy.

5 Recordkeeping

5.1 As noted in CP19/15¹, the EU Bank Recovery and Resolution Directive (BRRD)² empowers competent authorities and resolution authorities to require a firm to maintain detailed records of financial contracts. Regulatory Technical Standards (RTS) under BRRD Article 71(8) will set out a minimum set of information concerning financial contracts that a firm must be obliged to record if its resolution plan foresees that resolution action will be taken in respect of it. In light of the ongoing work in this area, the PRA does not consider it necessary to impose a separate information obligation to monitor compliance with the rules at this time, but intends to revisit the issue when the final RTS come into effect.

5.2 The PRA is not currently requiring firms to make regular reporting on their financial contracts. However, the PRA does expect firms to be able to provide information on their financial contracts (including the governing law and whether the contract contains the necessary recognition provision) and be able to demonstrate compliance with the rules. If necessary in an individual case, the PRA (or, where appropriate, the Bank of England in its capacity as resolution authority) may require the relevant firm to provide this information, for instance, as part of Part 2 of resolution planning or contingent information requests as set out in Supervisory Statement 19/13.³

1 *PRA Consultation Paper 19/15*, 'Contractual stays in financial contracts governed by third-country law', May 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp1915.aspx

2 Directive 2014/59/EU Bank Recovery and Resolution Directive: establishing a framework for the recovery and resolution of credit institutions and investment firms.

3 *PRA Supervisory Statement 19/13*, 'Resolution planning', updated in January 2015; www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss1913update.aspx