

Chapter 6

Relevant persons and successors in default

6.3A When is a successor in default?

6.3A.1 R

A successor is *in default* if:

the FSCS has determined it to be *in default* under ■ COMP 6.3A.2R, ■ COMP 6.3A.3R, or ■ COMP 6.3A.4R, unless the claim is within (b); or

(in relation to an *ICD claim* against a successor that is a *MiFID investment firm*):

the FCA has determined it to be *in default* under ■ COMP 6.3A.2R; or

a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *successor*, if that is earlier than (i).

If a successor is *in default* in relation to an *ICD claim* within (1)(b) it is to be deemed to be *in default* in relation to any other type of *protected claim*.

6.3A.2 R

The FSCS (or, where ■ COMP 6.3A.1R(1)(b)(i) applies, the FCA) may determine a successor to be *in default* when it is, in the opinion of the FSCS (or the FCA):

- (1) unable to satisfy *protected claims* against it; or
- (2) likely to be unable to satisfy *protected claims* against it.

6.3A.3 R

The FSCS may determine a successor to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a successor that is a *MiFID investment firm*), and the successor is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

- (1) the passing of a resolution for a creditors' voluntary winding up; or
- (2) a determination by the FCA or the PRA that the successor appears unable to meet *claims* against it and has no early prospect of being able to do so; or
- (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager; or
- (4) the making of an order by a court of competent jurisdiction for the winding up of a company, the dissolution of a partnership, the

administration of a company or partnership, or the bankruptcy of an individual; or

- (5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or an individual voluntary arrangement; or
- (6) a moratorium under Part A1 of the Insolvency Act 1986 being in force.

6.3A.4 **R** The *FSCS* may determine that a *successor* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a *successor* that is an *MiFID investment firm*), and:

- (1) the *FSCS* is satisfied that the *successor* cannot be contacted at its last place of business and that reasonable steps have been taken to establish a forwarding or current address, but without success; and
- (2) there appears to the *FSCS* to be no evidence that the *successor* will be able to meet *claims* made against it.

6.3A.4A **G** For the avoidance of doubt, **COMP 6.3A.3R** and **COMP 6.3A.4R** do not limit **COMP 6.3A.2R**.

6.3A.5 **R** For the purposes of sections 219(1A)(b) , (d) and (f) of the *Act* (Scheme manager's power to require information) whether a *successor* is unable or likely to be unable to satisfy *claims* is to be determined by reference to whether it is *in default*.