

Chapter 6

Relevant persons and successors in default

6.3 When is a relevant person in default?

- 6.3.1** **R** A *relevant person* is *in default* if:
- (1) (except in relation to an *ICD claim*) the *FSCS* has determined it to be *in default* under ■ COMP 6.3.2 R, ■ COMP 6.3.3 R or ■ COMP 6.3.4 R; or
 - (2) (in relation to an *ICD claim*):
 - (a) the *FCA* has determined it to be *in default* under ■ COMP 6.3.2 R; or
 - (b) a judicial authority has made a ruling that had the effect of suspending the ability of *eligible claimants* to bring *claims* against the *participant firm*, if that is earlier than (a); and
- if a *relevant person* is *in default* in relation to an *ICD claim* it shall be deemed to be *in default* in relation to any other type of *protected claim*.
- 6.3.1A** **G** [Note: article 2(2) of the *Investor Compensation Directive*]
- 6.3.2** **R** The *FSCS* (or, where ■ COMP 6.3.1 R(2)(a) applies, the *FCA*) may determine a *relevant person* 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.
- 6.3.3** **R** The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and the *relevant person* 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;
 - (2) a determination by the *FCA* or the *PRA* that the *relevant person* appears unable to meet *claims* against it and has no early prospect of being able to do so;
 - (3) the appointment of a liquidator or administrator, or provisional liquidator or interim manager;

		<div><div>(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;</div><div>(5) the approval of a company voluntary arrangement, a partnership voluntary arrangement, or of an individual voluntary arrangement;</div><div>(6) a moratorium under Part A1 of the Insolvency Act 1986 being in force.</div></div>
6.3.4	R	<div><div>The FSCS may determine a <i>relevant person</i> to be <i>in default</i> if it is satisfied that a <i>protected claim</i> exists (other than an <i>ICD claim</i>), and:</div><div><div>(1) the FSCS is satisfied that the <i>relevant person</i> 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</div><div>(2) there appears to the FSCS to be no evidence that the <i>relevant person</i> will be able to meet <i>claims</i> made against it.</div></div></div>
6.3.4A	G	<div><div>For the avoidance of doubt, ■ COMP 6.3.3R and ■ COMP 6.3.4R do not limit ■ COMP 6.3.2R.</div></div>
6.3.5	R	<div><div>[deleted]</div></div>
6.3.6	R	<div><div>[deleted]</div></div>
6.3.7	R	<div><div>[deleted]</div></div>
		<div><div>Claims arising under COMP 3.2.4 R</div><div></div></div>
6.3.8	R	<div><div>For the purposes of ■ COMP 6.3 a claim made by a <i>firm</i> under ■ COMP 3.2.4 R is to be treated as if it were a <i>protected claim</i> against the <i>relevant person</i>.</div></div>
		<div><div>Scheme manager's power to require information</div><div></div></div>
6.3.9	R	<div><div>For the purposes of sections 219(1A)(b) , (d) and (f) of the Act (Scheme manager's power to require information) whether a <i>relevant person</i> is unable or likely to be unable to satisfy <i>claims</i> shall be determined by reference to whether it is <i>in default</i>.</div></div>