

## King's Speech: Key Implications for the Distressed Market

18 July 2024

### At a Glance

Yesterday's King's Speech outlined the new UK Government's legislative plans for the coming parliamentary session (which usually lasts for about a year). Among the 40 planned Bills, certain will be relevant to the distressed debt, restructuring and insolvency market, including reforms to:

- 1. strengthen the powers of the water regulator**, "as an immediate step", which will directly impact Thames Water;
- 2. enhance the UK's bank resolution regime** by providing the Bank of England with a more flexible toolkit to respond to the failure of small banks;
- 3. return rail operations to public ownership** as existing contracts expire or operators fail to meet their commitments (avoiding the need to pay compensation to the current operators) – this Bill is expected "swiftly"; and
- 4. strengthen audit and corporate governance**, to help minimise the impacts of corporate failures.

As the draft Bills are yet to be published and debated through Parliament, the granular details of these reforms (and their full implications) remain to be determined.

### Overview of Planned Reforms

1. Strengthening Water Regulation

In recognition of the need to improve water quality, The Water (Special Measures) Bill will strengthen Ofwat's powers, including:

- introducing new powers to impose automatic and severe fines;
- strengthening regulation to hold water executives criminally liable for regulatory breaches;
- granting Ofwat power to ban the payment of bonuses if environmental standards are not met;
- imposing a new 'code of conduct' for water companies executives, so customers can summon board members and hold executives to account; and
- requiring real-time monitoring of every sewage outlet, with data independently scrutinised by the water regulators.

Ofwat has already [announced](#) that Thames Water should fall within the scope of this new "turnaround oversight regime", citing its deep operational and financial resilience challenges.

## 2. Enhancing the Bank Resolution Regime

The Bank Resolution (Recapitalisation) Bill will reform how the Bank of England manages the failure of small banking institutions, via a new mechanism to allow the Bank of England to use funds provided by the banking sector to cover certain costs associated with resolving a failing banking institution and achieving its sale.

Specifically, it will:

- expand the statutory function of the Financial Services Compensation Scheme (**FSCS**), the body responsible for paying out depositors in a bank insolvency, requiring it to provide funds to the Bank of England upon request, to be used where necessary to support the resolution of a failing bank;
- allow the FSCS to recover the funds provided by charging levies on the banking sector (similar to the current arrangements for funding depositor pay-outs in insolvency);<sup>1</sup> and
- empower the Bank of England to require a bank in resolution to issue new shares.

This initiative is designed to enhance the UK's existing robust resolution regime for banking institutions by giving the Bank of England a more flexible toolkit to respond to small bank failures – in particular, where intervention (rather than placing the bank into insolvency) is thought to be in the public interest but there is no credible buyer.

### 3. Returning Rail Operations to Public Ownership

The Passenger Railway Services (Public Ownership) Bill will amend rail legislation so that appointing a public-sector operator is the default position (rather than merely a last resort).

Train operations of the 10 (out of 14)<sup>2</sup> rail contracts that are currently operated in the private sector will transfer to a public-sector operator as existing contracts expire or operators fail to meet their commitments, thus avoiding the need to pay compensation to the current operators. The Government intends to introduce this Bill “swiftly”.

### 4. Strengthening Audit and Corporate Governance

The Audit Reform and Corporate Governance Bill will strengthen audit and corporate governance, to help minimise the impacts of corporate failures. The Government papers specifically cite BHS and Carillion in this regard and state that “more reliable audit information will inform lending and investment decisions, ensuring that the best credit risks are supported, not the worst”.

Specifically, this Bill will:

- replace the Financial Reporting Council with a new regulator, the Audit Reporting and Governance Authority, to uphold standards and independent scrutiny of companies’ accounts, as well as accountability for company directors;
- extend “Public Interest Entity” status to the largest private companies, to ensure audits of such businesses are high quality and give early warning of financial difficulties;
- introduce powers to investigate and sanction company directors for serious failures in relation to their financial reporting and audit responsibilities; and
- introduce a regime to oversee the audit market “so quality audit is available to all companies that need it”.

This Bill will be published in draft form to allow for scrutiny before it is formally introduced into Parliament.

For further information, see the official [briefing notes accompanying the King’s Speech](#).

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1. Following consultation, the Government has decided that credit unions will not fall within the scope of this levy. ↩

2. Namely: Avanti West Coast (aka West Coast Partnership); Chiltern; CrossCountry; East Anglia (Abellio); East Midlands (Abellio); Essex Thameside; Great Western (GWR); South Western; TSGN Railway (Thameslink, Southern, Great Northern) and West Midlands. The other four Department for Transport rail contracts are already operated in the public sector, namely: London North Eastern Railway, Northern Railway, Southeastern Railway and TransPennine Railway. ↩

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## Related Services

### Practices

- Restructuring

## Suggested Reading

- 15 July 2024 Kirkland Alert New UK Listing Rules: Implications for Financially Distressed Companies
- 20 June 2024 Kirkland Alert No More Automatic Stays for Winding-Up Petitions Involving an Arbitration or Exclusive Jurisdiction Clause
- 12 June 2024 Kirkland Alert English Court Imposes >£18 Million Personal Liability on Former Directors of BHS for Breach of Directors' Duties and Wrongful Trading

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