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# FSMA 2023 SECONDARY COMPETITIVENESS AND GROWTH OBJECTIVE: A STEP BACK OR A STEP FORWARD?

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***Abstract***: The Financial Services and Markets Act (FSMA) 2023 sparked considerable debates for the imposition of a Secondary International Competitiveness and Growth Objective (SICGO) on the UK's financial regulators. This article challenges the criticisms of SICGO by first highlighting its implications as (1) a secondary objective, and less noticeably, (2) the qualification for SICGO to be aligned with international standards. To take this further, we compare SICGO horizontally with the competitiveness 'have regard' of the abolished Financial Services Authority, and vertically to similar mandates in Singapore and other countries. From this, we formulate recommendations to (A) better communicate SICGO's limitations externally, and (B) align the organisational and accountability structure to execute SICGO internally. Fundamentally, this paper not only seeks to provide a one-off evaluation of SICGO but also demonstrate fresh methodologies for future regulatory studies by interacting with adjacent fields of research while being firmly anchored in legal analysis.

## A. INTRODUCTION

The United Kingdom financial industry's new "era of major regulatory change"[1] came through the Financial Services and Markets Act (FSMA) 2023 which amended the previous FSMA 2000. Amidst the current macroeconomic issues and need for a redirection post-Brexit,[2] the FSMA 2023 introduced wide-ranging reforms to revoke retained EU law,[3] reallocate regulatory powers,[4] update digital asset regulations and so forth.[5]

Among the most hotly debated reforms is the Secondary Competitiveness and Growth Objective (SICGO) imposed on the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). In brief, SICGO requires both regulators to facilitate the UK's competitiveness and medium to long-term growth. Although SICGO was welcomed as a

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[1] 'The Financial Services and Markets Act 2023 Ushers in an Era of Major Regulatory Change in the UK | Davis Polk' (20 July 2023) <https://www.davispolk.com/insights/client-update/financial-services-and-markets-act-2023-ushers-era-major-regulatory-change> accessed 26 March 2024.

[2] PwC, 'The Good, the Bad, and the Optimistic: PwC UK Economic Predictions for 2024' <https://www.pwc.co.uk/press-room/press-releases/pwc-uk-economic-predictions-2024.html> accessed 25 April 2024.

[3] Financial Services and Markets Act 2023, ch 1 <https://www.legislation.gov.uk/ukpga/2023/29/contents> accessed 25 April 2024.

[4] FSMA (n 3) ch 2.

[5] FSMA (n 3) s 69.

solution for UK's declining competitiveness,[6] both regulators warned that such a secondary objective could detrimentally deviate regulatory attention away from their primary objectives.[7] Sceptics from the financial press also pushed back against the perceived revival of such an objective which resembles the previous Financial Services Authority (FSA)'s competitiveness mandate that allegedly encouraged "light-touch" regulation, leading to the 2007-2009 Global Financial Crisis (GFC).[8]

Aside from discussions in the financial press,[9] regulatory forums,[10] and even law firms,[11] SICGO has yet to catch much academic attention as a newly passed legislation. The few academic writings were mainly for public consultations on selected matters like regulatory reporting,[12] digital developments,[13] or regulator-commissioned research.[14] Even the most comprehensive and well-cited inquiry by Eilís Ferran pre-dated the final enactment of the Act and is more concerned about whether SICGO should even be imposed[15] rather than the objective's development post-enactment.

With SICGO now crystallised in the FSMA 2023, a detailed study is needed to clarify its meaning and implications before well-founded evaluations can be made. Firstly, SICGO's "competitiveness" mandate is not to be confused with a "competition" mandate. As clarified by the financial press, international competitiveness refers to the attractiveness *of* the financial sector to attract businesses internationally whereas competition refers to the rivalry between businesses to win consumers *within* the financial sector.[16] That aside, SICGO is still interpreted

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[6] Philip Aldrick and Tom Rees, 'UK Loses Competitiveness with Confidence Down, Faces £560 Billion Investment Gap - Bloomberg' <https://www.bloomberg.com/news/articles/2023-06-19/uk-loses-competitiveness-and-faces-560-billion-investment-gap> accessed 26 march 2024.

[7] For example, Victoria Saporta, 'The regulatory foundations of international competitiveness and growth' (Bank of England, 27 February 2023) <https://www.bankofengland.co.uk/speech/2023/february/victoria-saporta-speech-on-financial-regulation-and-competitiveness-and-growth> accessed 8 January 2024; Andrew Bailey, 'The Future of Financial Conduct Regulation' (*FCA*, 18 April 2019) <https://www.fca.org.uk/news/speeches/future-financial-conduct-regulation> accessed 25 April 2024.

[8] John Kay, 'Why Competitiveness Should Not Become a Goal for the FCA' *Financial Times* (1 June 2022) accessed 26 March 2024.

[9] ibid.

[10] Saporta (n 7).

[11] For example, DavisPolk (n 1).

[12] Jonathan Chan, 'Submission to UK Government on FCA and PRA Reporting Requirements in the Financial Services and Markets Bill' [2023] SSRN Electronic Journal <https://www.ssrn.com/abstract=4498845> accessed 8 January 2024.

[13] Carsten Maple and others, 'The AI Revolution: Opportunities and Challenges for the Finance Sector' accessed 25 April 2024.

[14] Paolo Siciliani and others, 'Paper 2: The Links between Prudential Regulation, Competitiveness and Growth' accessed 26 March 2024.

[15] Eilís Ferran, 'International Competitiveness and Financial Regulators' Mandates: Coming Around Again in the UK' (2023) 9 Journal of Financial Regulation 30. It weighs up the case for reform in ch III against the worrying consequences in ch VII.

[16] Kay (n 8).

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differently by different parties, warranting a more extensive review of its legal and practical implications to reconcile such divergence. Moreover, criticisms of SICGO's "unwelcome return"[17] for bringing back shadows of the past financial crisis pay little attention to analyse SICGO's similarities and differences to the FSA's previous competitiveness mandate. While economic and political evaluations of SICGO are beyond the scope of this paper, we believe that our focus on the positive question – what *are* the legal and practical implications of SICGO? – would contribute to further normative discussions on what *should* be done with SICGO.

### ***Theoretical Framework***

To stay clear-minded in this multidisciplinary discourse, we strive to balance the need for "overlaying [lenses to] illuminate the complex connections and interplays"[18] while upholding the underappreciated potential of a legal anchor. Hence, our methodological approach starts by understanding SICGO's ***internal*** legal construct and then its ***external*** implications to avoid being seclusively doctrinal or dismissively instrumental. In Section B, we dissect SICGO to understand its content, construct, and internal safeguards. Then, to bridge the ***internal*** and the ***external*** analysis in the remaining sections, we introduce expressive and institutional perspectives in analysing SICGO by comparing it to established cases *horizontally* back in UK's history and *vertically* to current practices in other countries. Specifically, in Section C, we discuss the key legal and practical differences between SICGO and the FSA's competitiveness mandate. With the inevitable regulatory oscillation highlighted, SICGO is commendable for providing a balancing framework for competing objectives conducive to a more stable equilibrium. Then, in Section D, our cross-jurisdictional benchmarking against the Monetary Authority of Singapore (MAS) according to international standards established by the Bank for International Settlements (BIS) shows that similar statutory constructs can have different implications institutionally. Taken together, we seek to demonstrate that when understood correctly, SICGO is not a step back into history but a step forward in line with other countries.

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[17] Helen Thomas, 'Pursuit of "Competitive" Regulation Makes Unwelcome Return in UK' *Financial Times* (12 November 2021) <https://www.ft.com/content/96517774-a6cc-4e30-a1a4-b82f612c1df3> accessed 26 March 2024.

[18] Ibolya Losoncz, 'Methodological Approaches and Considerations in Regulatory Research' in Peter Drahos (ed), *Regulatory Theory* (ANU Press 2017) 77 <https://www.jstor.org/stable/j.ctt1q1crtm.12> accessed 26 March 2024.

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## B. SICGO & THE STATUTORY SAFEGUARDS

Before judging the Secondary International Competitiveness and Growth Objective (SICGO), we must first understand what this statutory objective entail. Section 25 of the FSMA 2023 provides that the FCA and PRA are required to:

> "facilitat[e], subject to aligning with relevant international standards (a) the international competitiveness of the economy of the United Kingdom […], and (b) its growth in the medium to long term."

Even if some regulators contend that regulatory objectives "mean what they mean",[19] SICGO has been interpreted differently by the pro-business government,[20] risk-averse regulators,[21] legalistic academics,[22] and media-influenced public.[23] Prima facie, this can be attributed to the "many-faceted" nature of statutory interpretation[24] ranging from the literal approach's strict adherence to statutory wording, the mischief rule's problem-solving appeal, and the purposive approach's contextual considerations. That said, these interpretative approaches presume certain constitutional contexts where judicial interpretation occurs.[25] This is not the case for SICGO since the FCA and PRA are statutorily immune from most judicial reviews and are directly accountable to the parliament instead.[26] Therefore, we argue that when there is "a host of countervailing forces, lurking like an iceberg below the surface",[27] SICGO should be interpreted in accordance with the underlying power structures and accountability mechanisms. This helps to navigate differing conceptions of SICGO by various parties who all

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[19] Legal Services Board, 'Regulatory objectives'. <https://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf> accessed 7 January 2023.

[20] See Treasury's expectations for a "step change" approach in 'Questions for Written Answer for 8 June 2023 - House of Lords Business - UK Parliament' vol 630, cols 1577 <https://lordsbusiness.parliament.uk/businessPaperDate=2023-06-08&sectionId=50>.

[21] See FCA and PRA's efforts to limit SICGO's scope discussed in ch 1.

[22] See Ferran's analysis in (n 15) as compared to expressive law theories discussed in ch 2.

[23] See evocative news titles by Kay (n 8), Thomas (n 17).

[24] Jeffrey Barnes, Jacinta Dharmananda and Eamonn Moran, *Modern Statutory Interpretation: Framework, Principles and Practice* (Cambridge University Press 2023) ch 1.

[25] ibid ch 3.

[26] FCA, 'Reporting to Treasury and Parliament' (*FCA*, 23 March 2016) <https://www.fca.org.uk/about/how-we-operate/reporting-treasury-parliament> accessed 25 April 2024; 'Governance and Funding' (19 December 2024) <https://www.bankofengland.co.uk/about/governance-and-funding> accessed 17 Feb 2024.

[27] RA Samek, 'A case for social law reform' (1977) 55 Canadian Bar review 409.

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seek to leverage their influence to define SICGO in line with their interest. By filtering these negotiations through the legal allocation of power embedded in the constitution or by statute, we can uncover SICGO's ultimate 'legal' interpretation based on who gets the determinitive say. This section would not only inform the discussion on expressive law in Section C and institutional analysis in Section D but also answer the Parliamentary Industry and Regulators Committee's general inquiry on whether regulators have been "given a clear job to do".[28]

For a detailed analysis, we dissect SICGO into (1) the ***content*** question of ***what*** SIGCO requires the regulators to achieve, and (2) the ***construct*** question of ***how*** the regulators should relate to it. We then interpret each component with inputs from relevant parties as determined by their statutory powers to influence SICGO. On this, we note that despite the criticisms,[29] SICGO's phrasing has not been changed since its initial bill.[30] Thus, with a literal approach, we presume that SICGO's final form, including its wide construction and ambiguities, is intended by Parliament.[31] Similar to delegated legislation however,[32] the breadth of a statute's scope does not automatically give the regulators an absolute authority to determine what SICGO means. For one, the regulators are statutorily obliged to report "the action taken"[33] and "how any rules and guidance […] advance"[34] SICGO within 12[35] and 14[36] months of FSMA 2023's enactment. Furthermore, the regulators are also obliged to take into account the Treasury's recommendations[37] and the public's opinions.[38] Hence, relevant inputs would be proportionally considered.

[28] Industry and Regulators Committee, 'New Inquiry Launched into Independence and Accountability of UK Regulators - Committees - UK Parliament' question 1 <https://committees.parliament.uk/committee/517/industry-and-regulators-committee/news/197954/new-inquiry-launched-into-independence-and-accountability-of-uk-regulators/> accessed 7 January 2023.
[29] Ferran (n 15) ch VII.
[30] 'Financial Services and Markets Act 2023 - Parliamentary Bills - UK Parliament' cl 24 <https://bills.parliament.uk/bills/3326> accessed 25 April 2024.
[31] Richard Calnan, *Principles of Contractual Interpretation* (Second edition, Oxford University Press 2017), principle 6: ambiguous words will be interpretated according to what parties "most likely" intended.
[32] Barnes, Dharmananda and Moran (n 24) ch 43.
[33] FSMA (n 3) s 26(2)(a).
[34] FSMA (n 3) s 26(2)(b).
[35] FSMA (n 3) s 26(3).
[36] FSMA (n 3) s 26(4).
[37] FSMA (n 3) s 28.
[38] FSMA (n 3) s 13.

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***The Content***

a) "International Competitiveness"

For the FCA, this is interpreted as "a measure of how attractive the UK is for businesses, consumers and investors" [39] which is comparable to PRA's views of "win[ning] business around the world".[40] However, this focus on competing with other economies is considerably broad even if the financial sector within the regulatory scope can have a significant impact on the economy as a whole.[41] To narrow down their focus, both regulators sought to limit their obligations to factors within their control.[42] That said, this depends on complicated empirical studies and economic theories to define the relationship between regulatory efforts and international competitiveness, as Victoria Saporta, PRA Executive Director for Prudential Policy rightly pointed out.[43] Even the World Economic Forum's Global Competitiveness Index is based on a "set of institutions, policies, and factors" that influence a country's productivity,[44] showing the breadth of "international competitiveness" as a concept.

b) "Growth in Medium to Long Term"

For the PRA, "growth" refers to economic growth[45] typically measured by the Gross Domestic Product (GDP).[46] Although it is obvious to both PRA[47] and FCA[48] that medium to long-term growth does not include short-term growth, it is not clear what constitutes each type of growth.

[39] FCA, Secondary international competitiveness and growth objective (2023) <https://www.fca.org.uk/publication/corporate/secondary-international-competitiveness-growth-objective-statement.pdf> accessed 25 April 2024.

[40] Saporta (n 7).

[41] ibid.

[42] FCA (n 39) 6; Saporta (n 7).

[43] Bank of England, 'The Prudential Regulation Authority's approach to policy' (DP4/22) <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/discussion-paper/2022/dp422.pdf> accessed 8 January 2024 13 para 1.2.

[44] 'Glossary | DataBank' <https://databank.worldbank.org/metadataglossary/africa-development-indicators/series/GCI.INDEX.XQ#:~:text=Competitiveness%20as%20the%20set%20of,of%20productivity%20of%20a%20country.&text=Long%20definition-,The%20Global%20Competitiveness%20Index%20(GCI)%2C%20a%20highly%20comprehensive%20index,macroeconomic%20foundations%20of%20national%20competitiveness.> .

[45] Bank of England (n 43) 27, para 3.20.

[46] ibid. 22.

[47] ibid.

[48] FCA (n 34).

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Even if medium to long-term growth generally needs to be "sustainable",[49] sustainable growth is still considerably broad since it can be sustainable for the people and planet, or sustainable in terms of the momentum of growth. Even if the former plausible given the rising emphasis on Economic, Social and Governance (ESG),[50] growth in this context is likely to refer to the latter. This is because "sustainable" growth here is distinguished from Section 21 FSMA 2023's "sustainability" provisions for "environment",[51] "social",[52] "corruption and bribery",[53] and "governance"[54] matters. Furthermore, this interpretation is in line with government policies to achieve "strong, sustainable and balanced ***economic*** growth [emphasis added]".[55]

***The Construct***

a) "Objective"

Contrary to suggestions that regulatory objectives are merely "symbolic"[56] or "a technical, semantic change",[57] Ferran argued that these objectives are rather "pervasive" in framing the strategy, execution, and functions of the regulators.[58] In fact, HM Treasury stated in the House of Lords that the Government "expect there will be a step change in the regulators' approach"[59] consistent with FCA's recognitions that SICGO is an "important change"[60] and PRA's expectation of "extra responsibilities".[61] This is true given the additional reporting requirements under Section 26 FSMA 2023. Furthermore, a call for proposal was launched by HM Treasury to establish key metrics for SICGO. Even though both regulators agreed on the range of metrics to surround operational efficiency, international competitiveness, regulatory

[49] FCA (n 34); Bank of England (n 43).
[50] Natalie Runyon, 'Six Predictions for ESG in 2024: The Year ESG Emerged from Fad to Essential Business' (*Thomson Reuters Institute*, 3 January 2024) <https://www.thomsonreuters.com/en-us/posts/esg/esg-predictions-2024/> accessed 27 August 2024.
[51] s 416B(2)(a), FSMA.
[52] s 416B(2)(b), FSMA.
[53] s 416B(2)(c), FSMA.
[54] s 416B(2)(d), FSMA.
[55] HM Treasury, 'Recommendations for the Prudential Regulation Committee' < https://assets.publishing.service.gov.uk/media/6392159fd3bf7f1bc9ae73f4/CX_Letter_to_andrew_Bailey_0812_WITH_COVER.pdf> accessed 8 January 2024.
[56] Ferran (n 15) 48.
[57] Kay (n 8).
[58] Ferran (n 15) ch VI.
[59] 'Questions for Written Answer for 8 June 2023 - House of Lords Business - UK Parliament' vol 630, cols 1577 <https://lordsbusiness.parliament.uk/businessPaperDate=2023-06-08&sectionId=50>.
[60] FCA (n 39) 2.
[61] Bank of England (n 43) 4.

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burden, policy and implementation, and digital innovation,[62] different detailed metrics were adopted by each regulator based on the difference in their existing remit.[63] Former Deputy Governor of the Bank of England, Paul Tucker pointed out that the benchmark for whether an objective is "too vague" depends on whether it is "monitorable".[64] Hence, establishing detailed metrics is important to transform these broad objectives[65] into measurable components.

### *SICGO's Statutory Safeguards*

Concerns were raised that the breadth of SICGO's content and the general pervasiveness of regulatory objectives would cause a "regulatory backsliding" with pressures to deregulate.[66] Nonetheless, the statutory construct of SICGO itself contains 2 safeguards against such risks.

a) Safeguard 1: The "Secondary" Nature

SICGO's "secondary" nature deserves some attention given the debates about its relationship to the PRA's primary stability objective,[67] and FCA's market functioning objectives.[68] On one hand, Lord Eatwell, Baroness Kramer, and critics of SICGO pointed out the inverse relationship between competitiveness and regulatory prudence given that competitiveness incentivises risk-taking.[69] On the other, proponents join Viscount Trenchard in highlighting the need for "proportionate regulation" as the current regime has become "too cumbersome".[70] These opposing viewpoints correspond with the diverging empirical evidence collated by the Organization for Economic Cooperation and Development (OECD) where complex regulation may be a "regulatory burden" stifling economic growth but quality-enhancing regulation may

[62] HM Treasury, 'Financial_Services_Regulation_-_Measuring_Success_-_Response_to_the_Call_for_Proposals.Pdf' para 3.1 <https://assets.publishing.service.gov.uk/media/6571e6ae049516000d49be45/Financial_Services_Regulation_-_Measuring_Success_-_Response_to_the_Call_for_Proposals.pdf> accessed 3 April 2024.
[63] ibid para 3.2.
[64] Paul MW Tucker, Unelected Power: The Quest for Legitimacy in Central Banking and the Regulatory State (Princeton university press 2018) 347.
[65] Ferran (n 15).
[66] Pension Insurance Corporation plc, 'Response to "Call for written evidence: Financial Services and Markets Bill"' https://bills.parliament.uk/publications/48339/documents/2411 accessed 8 January 2024.
[67] FSMA (n 3) s 1B(2).
[68] FSMA (n 3) s 2B(2).
[69] 'Questions for Written Answer for 8 June 2023 - House of Lords Business - UK Parliament' vol 830, cols 1584 <https://lordsbusiness.parliament.uk/businessPaperDate=2023-06-08&sectionId=50>.
[70] ibid cols 1580.

bring positive impacts to the economy.[71] As such, regulation is not necessarily bad and the competitiveness objective is not necessarily deregulatory.

To reach a compromise, SICGO is designated to be "secondary" as the "caveat" for it to be acceptable.[72] This is in line with the regulators' supporting, rather than leading role to "facilitate" instead of "promote" growth as Conservative members of the parliament initially suggest,[73] or to "drive"[74] growth like the British Business Bank. In fact, the regulatory language of "facilitating" is also used in OECD regulatory research as an alternative to traditional "command and control" regulation.[75] This is not merely a linguistic distinction because it is substantiated by Section 25(1) of FSMA 2023, stating that SICGO is only to be advanced "so far as reasonably possible" to qualify its substantive scope. Thus, the regulators are right to conclude that the Act "recognises [their] limited policy choices".[76]

Despite SICGO's subordinated position, it has arguably widened the PRA and FCA's hierarchy of objectives into what we see as a *Pyramid* (*Figure 1*) and a *Diamond* (*Figure 2*) respectively. To assess if the regulators have been "given a clear job to do",[77] the following analysis explores if a broadened hierarchy dilutes the regulators' focus despite commitments under the "twin-peak" regulatory model to maintain a single apex objective for each regulator.[78]

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[71] David Parker and Colin Kirkpatrick (2012).
[72] 'Questions for Written Answer for 8 June 2023 - House of Lords Business - UK Parliament' vol 830, cols 1580 <https://lordsbusiness.parliament.uk/businessPaperDate=2023-06-08&sectionId=50>.
[73] Ferran (n 15) 32.
[74] 'Governance | British Business Bank' <https://www.british-business-bank.co.uk/about/governance> accessed 8 January 2024.
[75] OECD, 'Alternatives to Traditional Regulation' (2009) <https://www.oecd.org/gov/regulatory-policy/42245468.pdf> accessed 13 April 2024.
[76] Saporta (n 7).
[77] Industry and Regulators Committee (n 28).
[78] House of Commons, 'Financial Regulation: A Preliminary Consideration of the Government's Proposals - Treasury' <https://publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/430/43004.htm> accessed 25 April 2024.

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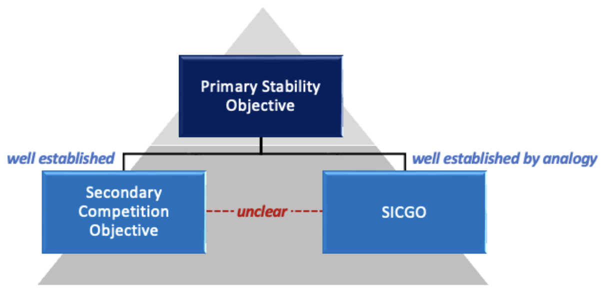


*Figure 1: PRA Regulatory Objectives*[79]

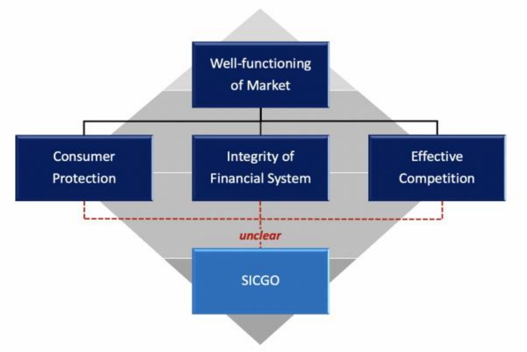


*Figure 2: FCA Regulatory Objectives*[80]

For the PRA (*Figure 1*), there is already an existing relationship between the Primary Objective of maintaining safety and soundness and the Secondary Competition Objective (not SICGO's Competitiveness Objective) established under Section 50(1) of the Financial Services (Banking Reform) Act 2013. After 9 years of establishment, it is relatively settled that the Competition Objective is subordinated to their Primary Objective. This means that in law, the PRA is not required to act in conflict with the Primary Objective when advancing the Secondary Objective; and in practice, synergies between these two objectives have been found in most cases.[81] Even though it is still uncertain as to what extent SICGO would naturally align with the Primary Stability Objective in practice,[82] the PRA is nevertheless clear that secondary objectives in general are only "engaged when [they] pursue [their] primary objectives."[83] This is because the PRA can conveniently interpret SICGO analogously to their existing Competition Objective which SICGO "sits alongside" with.[84]

The more important but less widely discussed area of uncertainty for the PRA is the relationship between the two secondary objectives. Although "connections" have been observed between the two secondary objectives, we agree with Saporta that one should not be

[79] 'Financial Services and Markets Act 2000' pt 1A ch 1(1B) <https://www.legislation.gov.uk/ukpga/2000/8/contents> (as amended).
[80] FSMA (n 79) pt 1A ch 2(2B) (as amended).
[81] Bank of England, 'Prudential Regulation Authority Annual Report 2022/23' (6 July 2023) <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/july/pra-annual-report-2022-23> accessed 8 January 2024.
[82] Siciliani (n 14) 11-17.
[83] Bank of England (n 43) para 3.12.
[84] Bank of England, 'Our Secondary Objectives' <https://www.bankofengland.co.uk/prudential-regulation/secondary-competition-objective> accessed 7 January 2024.

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"too simplistic" about this analysis.[85] Subtle differences between the opinions of senior PRA regulators can already be observed. For example, to PRA CEO Sam Woods, there may be a ***causal*** relationship whereby working to promote competition would also increase productivity and lead to growth;[86] whereas for Saporta, it is only "broadly" the case that Competition regulation would ***correlate*** to SICGO.[87] This is consistent with Paul Tucker's observation that it is more difficult to balance objectives in the same rank,[88] calling for the link between SICGO and the Competition Objective to be clarified.

For the FCA (*Figure 2*), SICGO's "secondary" status creates a new tier in the hierarchy. Before this, the FCA had a "strategic" objective to ensure the well-functioning of markets[89] and 3 "operational" objectives of consumer protection, protecting the integrity of financial systems, and promoting effective competition.[90] From the labels of these objectives, it is not immediately obvious where a "secondary" objective would sit since the FCA's "strategic" objective is not perfectly comparable to the PRA's "primary" objective. Even if the FCA's "strategic" objective sits at the apex of the FCA's mandate hierarchy, it mainly serves as a frame for distinct operational objectives to be "compatible" with.[91] It was only after the introduction of SICGO that the FCA began adopting the language of "primary objective**s** [plural emphasised]"[92] which includes its 3 operational objectives and its apex strategic objective. This is a correct interpretation because SICGO applies to the regulators "when discharging its general **functions** [emphasis added]"[93] which in FCA's case, refers to its "operational" objectives.[94]

Like the PRA, the FCA is also clear that SICGO "only applies when advancing [the FCA's] existing objectives".[95] Although the FCA conveyed that a "strong focus" should be maintained on their 3 existing *operational objectives (OO),* it is unclear how this would relate

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85 Saporta (n 7).
86 Woods, Sam, Growth and Competitiveness − Speech by Sam Woods' (27 October 2022) <https://www.bankofengland.co.uk/speech/2022/october/sam-woods-speech-at-mansion-house> accessed 8 January 2024.
87 Saporta (n 7).
88 Tucker (n 64).
89 FSMA (n 79) cl 1B(2).
90 FSMA (n 79) cl 1B(3).
91 FSMA (n 79) cl 1B(1).
92 FCA (n 39) 2.
93 FSMA (n 3) s 25(2).
94 FSMA (n 3) s 1B(3).
95 FSMA (n 3) s 2.

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to the 7 key drivers for competitiveness[96] which the FCA newly established. Firstly, the most obviously connected relationship is between the "effective competition" driver and the existing *competition OO* since both refer to enforcing competition law alongside the Competition and Markets Authority (CMA).[97] Connectedly, "encouraging innovation" is both a factor to "have regard" for the *competition OO*[98] and a separate driver for competitiveness,[99] showing how "competition is central to […] all [of the FCA's] work".[100] Secondly, the *consumer protection OO* and *integrity OO* vaguely connect to drivers such as "trust and reputation" and "market stability", seeking to protect consumer confidence among other market participants like investors.[101] Lastly, there are 3 competitiveness drivers relating to the FCA's general rule-making role namely "operational efficiency", "proportionate regulation" and "international markets".[102] The first two are premised on changing the FCA's internal organisation to improve efficiency while the last seeks to attract international firms with leading regulatory standards. Although the 7 new competitiveness drivers can, to some extent, be traced to the FCA's existing OOs, this brief analysis shows that such relationships are not entirely clear. This explains the FCA's current stance to adopt a "common framework for future use"[103] even if overlaps exist. While this framework enables the FCA to be flexible in adapting to market developments, essential clarity is compromised. This is particularly since the FCA already has more objectives and more tiers in the regulatory hierarchy to navigate as compared to the PRA.

b) Safeguard 2: "Aligning with international standards"

Interestingly and much less noticeably, SICGO is qualified by an obligation to "alig[n] with international standards"[104] which the UK regulators, despite their "post-Brexit regulatory freedom",[105] are "subject[ed] to".[106] For both regulators, the "international standards" concerned are those established by recognised international standard-setting bodies such as:

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[96] FSMA (n 3) s 5.
[97] FSMA (n 3) s 1E.
[98] FSMA (n 3) s 1E(2)(e).
[99] FCA (n 39) 5.
[100] FCA, 'Promoting competition' (22 March 2016) <https://www.fca.org.uk/about/what-we-do/promoting-competition> accessed 7 April 2024.
[101] ibid.
[102] ibid.
[103] FCA (n 39) 6.
[104] FSMA (n 3) s 25(3).
[105] Ferran (n 5) ch II.
[106] FSMA (n 3) s 25(3).

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1. International Organisation of Securities Commissions (IOSCO)[107]
2. Bank for International Settlements (BIS)[108]
3. Basel Committee on Banking Supervision (BCBS)[109]
4. International Association of Insurance Supervisors (IAIS)[110]
5. International Monetary Fund (IMF)[111]

Importantly, the regulators are subjected to internationally agreed *standards* as opposed to specific rules set by other national regulators. This means that the regulatory competition SICGO instilled is not inherently contradictory to the alignment with international standards. Moreover, such alignments even facilitate the "international dimension"[112] of business, reducing the burden of international firms to navigate diverging regulations across various jurisdictions.[113]

Although the "alignment"[114] requirement seemingly creates a parallel relationship between UK regulation and international standards, the degree of subordination has still been increased. For the PRA at least, the degree of alignment is measured by the degree of "compliance" with international standards monitored by the international bodies mentioned.[115] Although this reduces absolute regulatory autonomy, this alignment requirement can serve as a safeguard to prevent regulatory backsliding. For example, in the FCA's discussion of "proportionate regulation",[116] the need to "dra[w] on any relevant international standards"[117] was specifically considered. With this statutory qualification, regulators are not obliged to deviate unreasonably from established international standards while facilitating UK's

[107] Highlighted by the FCA (n 39).
[108] ibid.
[109] Highlighted by the PRA, see Note 4 in Bank of England, *The Prudential Regulation Approach to Policy* (PRA CP 27/23, 2023) <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/december/pra-approach-to-policy-consultation-paper> accessed 8 January 2024.
[110] ibid.
[111] ibid.
[112] ibid para 2.15.
[113] FCA (n 34) 5.
[114] FSMA (n 3) s 25(3).
[115] Bank of England (n 43) 22, para 3.4; and see example on 53.
[116] FCA (n 39) 5.
[117] FCA (n 39) 4.

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competitiveness. The benefit of this is seen in the IMF's Financial Sector Assessment Program (FSAP) Saporta mentioned[118] which will be discussed in Section D.

***Where does this leave us?***

Prima facie, the broad content of "international competitiveness" and "growth" plus the pervasive construct of an objective seem to impose an extensive role on the regulators, demanding significant changes from them. However, the statute itself also established SICGO's limits with (1) its secondary status and (2) the obligation to maintain international alignment. Despite the significance of such safeguards, it is still important to clarify how the new secondary objective would interact with the existing objectives in a broadened regulatory hierarchy to avoid diluting the regulators' focus. This is especially for the FCA given the new types of relationships and the additional tier of hierarchy created by SICGO.

## C. LESSONS FROM FSA'S HISTORY

With the interpretation of SICGO above, we proceed to question if SICGO is a step back to reintroduce excessive risk in the financial industry. Before the Global Financial Crisis (GFC), the Financial Services Authority (FSA) which precedes the FCA and PRA was given the mandate to "have regard" for the "international character" and "competitive position" of the UK as per FSMA 2000.[119] Given the apparent similarities in the language between SICFO and this mandate, concerns have been raised by senior regulators,[120] academics,[121] and the financial press[122] about reintroducing a competitiveness mandate that "didn't end well, for anyone", as FCA Ex-Chief Executive Andrew Bailey puts it.[123] However, this critique is premised on the fact that SICGO is indeed a "revival"[124] of FSA's mandate without any material improvements.

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[118] Sapota, Victoria, 'Competitiveness and growth: continuing the conversation' (Bank of England, 19 September 2023) <https://www.bankofengland.co.uk/speech/2023/september/victoria-saporta-speech-at-prudential-regulation-authority> accessed 25 April 2024.

[119] FSMA (n 79) ss 2(3)(e).

[120] Bailey, Andrew, 'The future of financial conduct regulation' (Bloomberg London, 23 April 2019) <https://www.fca.org.uk/news/speeches/future-financial-conduct-regulation> accessed 25 April 2024.

[121] Ferran (n 15).

[122] Thomas (n 17).

[123] Bailey (n 120).

[124] Thomas (n 17).

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To evaluate this premise, we compare SICGO's construct as a secondary objective as expounded in Section B against the FSA's competitiveness mandate which is constructed as a *have regard*. Given the theoretical ambiguities of a *have regard,* we supplement the limited legalistic analysis with a perspective based on expressive theories of law. Expressive theories posit that legislations do not only have legal implications but also practical implications on compliance given the normative stance which are endorsed and communicated.[125] This is highly relevant in uncovering the practical impacts of competitiveness given the regulators' public-facing role. [126] Although such analysis can be indicative of the reasons for the GFC, we should be reminded that the causes of the GFC are complex; thus, as Ferran puts it, it is "implausible to load so much blame" on a single legal mandate.[127] Hence, we do not over-ambitiously seek to prove that the competitiveness mandate led to the GFC, but merely seek to point out that such mandates were leveraged to influence regulatory decision-making. Since statutory changes are presumably deliberate,[128] analysing legislative evolutions distils out important legal and expressive improvements to make SICGO clearer and better defined in FSMA 2023 than the FSA's *have regard*.

***Competitiveness "have regard" in Theory***

Although the content of FSA's competitiveness mandate is largely similar to SICGO, it is constructed as a *have regard* instead of an objective. However, the precise legal status of *have regards* is unclear. As Paul Tucker questioned, "are they subordinate objectives, nonbinding constraints, or what?"[129] This points out the ambiguity of *have regards* as to its (1) statutory standing in the hierarchy of objectives and (2) legal weight of the extent to which it is binding. For reference, it was decided in *BTI 2014 LLC v Sequana SA*[130] that a *have regard* imposed on directors required them to take certain factors into consideration[131] and *Harris and another v Environment Agency*[132] decided that a statutory body's scope to depart from their *have regard*

[125] Cass R Sunstein, 'On the Expressive Function of Law' (1996) 144 University of Pennsylvania Law Review 2021.
[126] See FCA (n 26).
[127] Thomas (n 17).
[128] Barnes, Dharmananda and Moran (n 24) ch 21.
[129] Tucker (n 64).
[130] 'BTI 2014 LLC (Appellant) v Sequana SA and Others (Respondents) - UK Supreme Court' <https://www.supremecourt.uk/cases/uksc-2019-0046>.
[131] ibid para 66.
[132] Harris v The Environment Agency [2022] EWHC 2264.

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is very narrow. However, there is no direct case law for the FSA's regulatory mandates which makes it unclear how the FSA's competitiveness *have regard* would legally relate its 4 equally ranked *objectives*,[133] 4 *general functions*,[134] and 6 other *have regards*[135] (*Figure 3*).

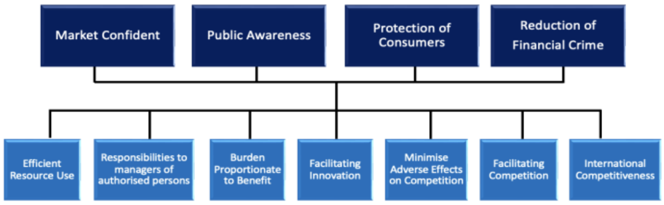


*Figure 3: FSA's Regulatory Objective*[136]

Despite the ambiguities, HM Treasury at least clarified that a statutory objective requires "more proactive approach" than a *have regard* when the PRA's competition (not competitiveness) mandate was reformulated as a secondary objective.[137] Analogously then, an objective, albeit a secondary one like SICGO or the Secondary Competition Objective bears more weight than a *have regard*.

***The Failed Attempt to Strengthen the "Have Regard" in 2000***

Recommendations have initially been made by Lord Kingsland in the House of Lords to make the competitiveness *have regard* "infect every decision the FSA takes"[138] by strengthening it to:

> "In discharging its general functions the Authority must so far as is reasonably possible, act in a way which **does not unnecessarily impair** the competitive position of the United Kingdom. [emphasis added]"[139]

While *have regards* can be easily disregarded if they are deemed to be irrelevant,[140] this amendment effectively prevents regulators from hindering the country's competitiveness;

[133] FSMA (n 79) s 2(2).
[134] FSMA (n 79) s 2(4).
[135] FSMA (n 79) s 2(3).
[136] FSMA (n 79) s 2.
[137] HM Treasury, 'Financial Services (Banking Reform) Bill' (October 2013) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/245766/HoL_Policy_Brief_-_PRA_Competition_Objective.pdf> accessed 26 March 2024.
[138] 'Financial Services and Markets Bill (Hansard, 16 March 2000)' cols 1797 <https://api.parliament.uk/historic-hansard/lords/2000/mar/16/financial-services-and-markets-bill-1> accessed 26 March 2024.
[139] ibid.
[140] ibid.

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thereby making it more like a mandatory objective than a procedural *have regard*. Lord Borrie, former Director General of the Office of Fair Trading, noticed that this effectively "lifted" the *have regard* to a position "beyond the four statutory objectives".[141] Although Lord Borrie's arguments were criticized by other members of the House of Lords to be "reckless",[142] he is partially right because the burden of proof is reversed. The regulator will need to show that fulfilling their primary objective "does not unnecessarily impair" competitiveness instead of merely considering it while discharging their primary functions. Thus, unlike the positively worded SICGO (to "facilitate"[143] competitiveness), such negatively worded amendment ("does ***not*** unnecessarily impair [emphasis added]")[144] imposes an explicit limitation on the FSA's other functions. Even if SICGO is sometimes seen to compromise PRA and FCA's primary objective, it does not shift the burden of proof in the way this amendment does for FSA.

Ultimately however, Lord Kingsland's amendment was not accepted, and FSA's competitiveness mandate legally remained a *have regard*. On one hand, an ambiguous *have regard* is accommodative of the otherwise conflicting demands to keep regulators accountable for UK's competitiveness while not compromising their regulatory freedom. This is analogous to the use of ambiguous language to achieve consensus in other contexts such as diplomacy[145] and financial decision-making.[146] On the other, these ambiguous agreements may be "false consensus"[147] that does little to solve the underlying conflicts. This leads to the exaggeration of *have regards* beyond their legal weight. Even a House of Commons report considered competitiveness to be "one of the ***statutory duties*** of the FSA [emphasis added]"[148] even though it is merely a "have regard" and not technically a full-fledged "dut[y]".[149] Therefore, it is evident that the technical status of a *have regard* is not clearly defined; thus, making it vulnerable to stretched interpretations.

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141 ibid cols 1798.
142 ibid.
143 FSMA (n 3) s 25.
144 HL Deb 16 March 2000, cols 1797.
145 Drazen Peher 'Use of Ambiguities in Peace Agreements - Diplo Resource' (3 August 2001) 170 <https://www.diplomacy.edu/resource/use-of-ambiguities-in-peace-agreements/> accessed 26 March 2024.
146 Sina Borgsen and Martin Weber, 'False Consensus and the Role of Ambiguity in Predictions of Others' Risk Preferences' (2008) <https://madoc.bib.uni-mannheim.de/2283/1/SSRN_id1212322.pdf> accessed 13 April 2024.
147 ibid 25.
148 House of Commons, 'The Financial Services Authority: looking back, looking forward' (2007) 18 <https://researchbriefings.files.parliament.uk/documents/SN03787/SN03787.pdf> accessed 25 April 2024.
149 ibid.

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***Competitiveness "have regard" in Practice***

Although the FSA's *have regard* was not successfully strengthened, the mere presence of a competitiveness *have regard* still legitimises the expectation that competitiveness is an important regulatory consideration.[150] This can be shown by analysing the expressive effects of the law that are unfortunately neglected. Even if expressive studies are conducted, they tend to focus on moral and ethical issues which are perceived to be more controversial than financial ones.[151] That said, the expressive function of a policy should not be foreign to the financial industry. For example, the signaling effects of Central Banks' interest rate policies are well-studied by academics,[152] industry, [153] and the IMF.[154] Given that FCA and PRA's accountabilities are more democratic than legal,[155] an expressive perspective is essential in studying the practical effects of a competitiveness mandate. To address doubts that expressive claims rely on slippery empirical causal chains,[156] we propose an alternative methodology inspired by common legal analysis. Just as how judges' reasoning can be analysed through court judgements, we propose that analogously, the industry's leverage on the competitiveness mandate to justify their demands towards the regulators can be ascertained through their documented statements.

Applying this method, our brief expressive study reveals that much weight has been placed on the FSA's competitiveness *have regard*. For instance, in 2003 before the GFC, the Chairman of the FSA's Financial Services Practitioner Panel which the FSA has the duty to consult[157] stressed that "international competitiveness (more than on most occasions) will need to be uppermost in the FSA's mind".[158] The statutory mandate was directly relied on by the

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[150] 2/28/2025 6:12:00 PM Richard H McAdams, 'Expressive Claims about Law', The Expressive Powers of Law (Harvard University Press 2015) 16.
[151] Wibren van der Burg, 'The Expressive and Communicative Functions of Law, Especially with Regard to Moral Issues'(2000) Kluwer Academic Publishers < https://core.ac.uk/download/pdf/43318482.pdf> accessed 25 April 2024.
[152] See for example, Stephen Hansen, Michael McMahon and Matthew Tong, 'The Long-Run Information Effect of Central Bank Communication' (2019) 108 Journal of Monetary Economics 185.28/02/2025 18:12:00
[153] Ehrmann and Fratzscher, 'Explaining Monetary Policy in Press Conferences' (2009) 5 International Journal of Central Banking 42.
[154] Marco Casiraghi and Leonardo Pio Perez, 'Central Bank Communications' (2022) <https://www.imf.org/-/media/Files/Publications/Miscellaneous/English/2022/mcm-technical-assistance-handbook/central-bank-communications.ashx> accessed 25 April 2024.
[155] See FCA (n 26).
[156] See McAdams (n 150).
[157] FSMA (n 79) pt I s 8.
[158] Speech - Donald Brydon at the FSA Annual Open Meeting 2003' (FSA, 1 January 2003) <https://www.fca-pp.org.uk/speech-donald-brydon-fsa-annual-open-meeting-2003> accessed 17 Feb 2024.

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Chairman as a basis to emphasize the FSA's "non-zero failure approach" and warn against the FSA's attempt to tighten their regulatory approach as with the "comply or explain" regime.[159] This general sentiment is reflected more specifically in FSA's consultation for EU's Markets in Financial Instruments Directive (MiFID) in regulating the dealer market. A joint response by 3 industrial groups[160] emphasised with strong language that the "competitiveness of UK financial markets would be damaged" if stringent rules are imposed that are "clearly not […] consistent with FSA's legislative principle of good regulation to maintain the international competitiveness of UK".[161] Therefore, it is not just full-fledged objectives that can be leveraged,[162] ambiguous *have regards* can be pervasive too. This is akin to how judges are more likely to project their interpretation of the statute with a contextual interpretative approach the wordings are vague.[163] Therefore, relying on ambiguities to achieve consensus is not the most stable solution in law and in practice.

***Competitiveness in the Inevitable Regulatory Cycle***

Although socio-economic sentiments can influence the interpretation of regulatory mandates *within* a reasonable reading of the statute, significant events such as the GFC can lead to a *direct* legislative change of the statute. In the overhaul of financial regulation post-GFC, HM Treasury identified that the competitiveness is "one of the reasons for regulatory failure" leading up to the GFC.[164] Thus, when the FCA and PRA were created to succeed the FSA's market conduct and prudential functions respectively, competitiveness was not given as a mandate to either.[165] Such risk aversion was shared by regulated firms which adopted a more centralised, prominent, and independent risk management post-GFC.[166]

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[159] ibid.
[160] ICMA, 'MiFID: FSA Discussion Paper on Best Execution (DP 06/3): Response from BMA / ICMA/ ISDA: Summary' (2006) <https://www.icmagroup.org/assets/documents/ICMA%20ISDA%20and%20TBMA%20joint%20response%20to%20FSA%20Discussion%20Paper%20on%20Best%20Execution%20(DP%20063)%20.pdf> accessed 25 April 2024.
[161] ibid.
[162] Ferran (n 15) ch VI.
[163] Calnan (n 31).
[164] HM Treasury, 'A new approach to financial regulation' (July 2010) para 3.9; reiterated in 'Financial Services Future Regulatory Framework Review' (October 2020) CP 305 para 2.45.
[165] ibid para 4.11.
[166] Michael Power, Simon Ashby and Tommaso Palermo, 'Risk Culture in Financial Organisations' (2013) <https://www.lse.ac.uk/accounting/assets/CARR/documents/Risk-Culture-in-Financial-Organisations/Final-Risk-Culture-Report.pdf> accessed 25 April 2024.

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In political economy, such oscillating regulatory cycles are well observed.[167] Generally, regulatory approaches tighten after a crash, while deregulatory demands become more prevalent during economic downturns.[168] This is exactly the case for the competitiveness mandate which was abolished by the Financial Services Act 2012 after the GFC before making its comeback in FSMA 2023 in the form of SICGO. Notably, demands for a competitiveness mandate have already been raised in the 2013/14 Parliamentary Report just one year after its abolishment.[169] Although the final reintroduction of competitiveness in FSMA 2023 was surrounded by competitiveness concerns post-Brexit,[170] the earlier 2013/14 report was already critical of UK's anti-competitive instinct and its detriment to the broader economy. Reasons for pre-Brexit competitiveness concerns include passporting issues due to EU's free movement rules where financial institutions can access the UK market while being in more lenient EU countries.[171]

Although the revival of the competitiveness mandate led to the criticism that "[b]ad ideas don't die. They merely hibernate",[172] the demand for such mandates seem to be inevitable especially since it was reintroduced by the same political party that abolished it.[173] This is because as an international financial center, the UK would either significantly benefit or be significantly disrupted by the financial industry.[174] Even Ferran who is highly critical of competitiveness mandates acknowledged that the momentum for its comeback has become unstoppable.[175] Thus, attention should be refocused on establishing a balancing framework for the inevitable oscillation between risk-averse regulation and competitiveness-centered regulation. Given that reorienting resources to a new objective is costly,[176] a balance should be struck so regulators would not have to undergo costly re-organisation again and again.[177] In

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[167]Pooya Almasi, Jihad C Dagher and Carlo Prato, 'Regulatory Cycles: A Political Economy Model' (2022) SSRN Electronic Journal <https://www.ssrn.com/abstract=3136027> accessed 25 April 2024.
[168] ibid.
[169] Parliamentary Commission on Banking Standards, *Changing banking for good* (2013, HL 27-II, HC 175-II) 172.
[170] ibid.
[171] ibid 177.
[172] Thomas (n 17).
[173] Both Acts were initiated by and passed under the Conservative Government; see Financial Services HC Bill [2012-23] 101 and An Act to make provision about the regulation of financial services and markets; and for connected purposes HC Bill, [2022-23] 29.
[174] Siciliani (n 14) 4.
[175] Ferran (n 15) ch VII.
[176] ibid.
[177]Andreas Kokkinis, 'Written evident from Dr Andreas Kokkinis' (2023) <https://committees.parliament.uk/writtenevidence/126803/pdf/> accessed 25 April 2024.

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this search for an equilibrium, a well-structured and well-balanced legal architecture would be key to the question.

***In Search of a Clear Balance Amidst the Regulatory Oscillation***

The question then is if the SICGO has achieved the much-needed balance. We answer that SICGO has improved from the previous competitiveness *have regard* in terms of clarity of its (1) status, and (2) performance measure.

Firstly, even if there are diverging views as to whether SICGO is stronger[178] or weaker[179] than FSA's competitiveness *have regard*, the subordination of competitiveness to the regulators' primary objectives is very clear. Based on our theoretical analysis above, Ferran is right to argue that a "full-blown objective" is stronger than a *have regard*.[180] However, suggestions that SICGO was reintroduced in "weakened form" in the financial press[181] is an interesting indication of the stronger emphasis given by popular sentiments on SICGO's "secondary" status instead of its technical legal weight. This is also because the difference between an objective and a *have regard* was not clear to begin with. This led Kokkinis to conclude that vague *have regards* should be abandoned altogether and replaced with less ambiguous mandates.[182] We argue that this has been achieved by SICGO's use of simpler language — "primary" and "secondary" — to indicate its status clearly in the regulatory hierarchy, impacting public perception even if it has not technically been "weakened". Instead of shying away from industry pressure, SICGO tackled the demand for competitiveness head-on without compromising the priority of stability and market regulation in the regulatory hierarchy.

Secondly, SICGO's construct as an "objective" with positive executory and reporting duties meant that more efforts would be made to define SICGO concretely. This is seen in HM Treasury's call for proposal for key performance metrics before the Act was even passed.[183]

[178] Ferran (n 15).
[179] Thomas (n 17).
[180] Ferran (n 15) ch VI.
[181] Thomas (n 17).
[182] Kokkinis (n 177) 5.
[183] HM Treasury, 'Financial Services Regulation: Measuring Success' (December 2023) < https://assets.publishing.service.gov.uk/media/6571e6ae049516000d49be45/Financial_Services_Regulation_-_Measuring_Success_-_Response_to_the_Call_for_Proposals.pdf> accessed 3 April 2024.

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Such efforts are not merely a political coincidence; they are rooted in the regulators' statutory reporting requirements under Section 26 FSMA 2023 as explicitly stated in the consultation.[184] In the Hansard, it can be observed that HM Treasury's emphasis that "increased responsibilities must be balanced with clear accountability"[185] was formulated after taking feedback from members of the House of Lords[186] who favors "proven accountability measures".[187]

While these metrics help clarify SICGO, fair concerns have been raised in the House of Lords that these additional accountabilities could "overegg the competitiveness objective"[188] and distract the regulators from their primary duties. Even if most metrics focus on operational efficiency (45% for FCA[189] and 47% for PRA[190]), a significant number of metrics to decrease regulatory burden still remain (25% for FCA[191] and 29% for PRA[192]). Although the quantity of metrics is not conclusive, it nevertheless indicates the key areas of emphasis. More specifically, some metrics such as the "industry satisfaction rate" on the proportionality of regulation, and the "Cost-Benefit Analysis" provide a "leverage"[193] for deregulatory demands as for the FSA. Thus, we agree with Ferran's call to include the regulators' accountability for their primary objectives in regulatory reporting[194] and concur with Chan on the importance of contextualising seemingly "objective" metrics.[195] That said, we should still acknowledge that efforts to specify[196] and report[197] on the performance metrics enabled significantly more transparency for public debate and parliamentary scrutiny. It should also encourage the regulators to think about their mandates carefully, enabling opportunities to ensure that SICGO is executed in line with parliament's intent.

Thus, SICGO's legal and expressive differences prevent it from following FSA's concerning footsteps with a legally vague and practically overemphasised competitiveness

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184 ibid para 1.4.
185 HL Deb 8 June 2023, vol 830, cols 1577.
186 ibid, cols 1579, Conservative Lord Forsyth of Drumlean.
187 ibid, cols 1584, Labour Lord Livermore.
188 ibid, Labour Lord Eatwell at cols 1579.
189 9th metric in Metrics for the FCAin HM Treasury (n 183)14-16.
190 ibid 8th metric in Metrics for the PRA 17-18.
191 ibid 5th metric in Metrics for PRA 17-18.
192 ibid.
193 Ferran (n 15) ch VIII.
194 ibid.
195 Chan (n 12).
196 HM Treasury (n 183).
197 FSMA (n 3) s 26.

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*have regard*. These differences should be emphasised in regulatory communications and respected in actual decision-making to assure critics that SICGO is not reviving the regulatory risks leading to the GFC.

## D. AN INTERNATIONAL PERSPECTIVE & SPOTLIGHT ON SINGAPORE'S STORY

Given that SICGO is subjected to "align[ment] with relevant international standards",[198] a comparison to similar competitiveness mandates for other regulators is worthwhile to inspire the FCA and PRA's path forward. According to the Bank for International Settlements (BIS)'s cross-jurisdictional study of 27 countries, at least 4 other countries have statutory mandates to develop their financial sector into an international financial centre, while 3 others have similar non-statutory ones.[199] In particular, the competitiveness mandates in Australia, Singapore, Hong Kong and Japan have been cited by the 2020 UK Listing Review to justify demands for SICGO.[200] Although detailed references have not been provided by the Listing Review, it should refer to the following:

1. The **Australian Prudential Regulation Authority**'s purpose to take "contestability" into balance under Section 8 of the Australian Prudential Regulation Authority Act 1998;
2. The **Monetary Authority of Singapore**'s object to "grow Singapore as an internationally competitive financial centre" under Section 4(1) of the Monetary Authority of Singapore Act 1970;
3. The **Hong Kong Monetary Authority**'s function to "maintain Hong Kong's status as an international financial centre" as directed by the Financial Secretary under Section 5A of the Exchange Fund (Amendment) Ordinary 1992;
4. Japan's **Financial Services Agency** 2007 "Plan for Strengthening the Competitiveness of Japan's Financial and Capital Markets".[201]

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[198] FSMA (n 3) s 25.

[199] Sasin Kirakul, Jeffery Yong and Raihan Zamil, 'The universe of supervisory mandates – total eclipse of the core?' (2021) 30 FSI Insights <https://www.bis.org/fsi/publ/insights30.pdf> accessed 25 April 2024.

[200] HM Treasury, 'UK Listing Review' (Policy paper 2021) <https://www.gov.uk/government/publications/uk-listingreview#:~:text=The%20UK%20Listings%20Review%2C%20chaired,a%20leading%20global%20financial%20centre.> accessed 25 April 2024.

[201] FSA, 'Plan for Strengthening the Competitiveness of Japan's Financial and Capital Markets' (21 December 2007) <https://www.fsa.go.jp/en/news/2007/20071221/01.pdf> accessed 25 April 2024.

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Despite their linguistic similarities, institutional and socio-economic differences across various jurisdictions meant that similar-sounding mandates could have significantly different implications. While space constraints preclude a detailed discussion of all relevant jurisdictions, we seek to focus on Singapore for 3 key reasons: Firstly, Singapore had to foster or enable internationally competitive financial institutions for their economic survival after separating from the Federation of Malaya in 1965.[202] Although UK's withdrawal from the EU is different from forming a nation-state, Singapore's separation from the Federation of Malaya's common market which they depended on bears some resemblance to the UK's current experience.[203] Secondly, after decades of stringent regulation to establish their credentials as an emerging financial centre,[204] MAS was pressured by businesspeople to relax their regulatory approach to remain competitive against Hong Kong.[205] It was only until the 1990s that Singapore started to intentionally "break [their] old mold"[206] of financial regulation, as founding Prime Minister, Lee Kuan Yew indicated. Thirdly, from a benchmarking perspective, the idea of transforming UK into "Singapore-on-Thames"[207] with more business-friendly regulatory and tax regimes warrants a deeper analysis of the viability of such aspirations. Thus, this section is not only a retrospective evaluation of the UK Listing Review's justification for a competitiveness mandate based on its existence in other countries; this review also illuminates tested approaches in other countries for UK to consider.

To frame our comparative study, we adopt the conflict mitigation approach expounded by BIS as our benchmarking framework (*Figure 4*). This focuses our analysis on comparing how statutory framework and institutional arrangements are used by MAS and the UK regulators respectively to balance their conflicting regulatory objectives.

[202] Ravi Menon, 'An Economic History of Singapore: 1965-2065' (Singapore Economic Review Conference, 5 August 2015) <https://www.mas.gov.sg/news/speeches/2015/an-economic-history-of-singapore> accessed 25 March 2024.

[203] Kuan Yew Lee, From Third World to First: The Singapore Story: 1965 - 2000 (1. ed, HarperCollins 2000) 49.

[204] ibid 79.

[205] ibid 78.

[206] ibid 81.

[207] Merry Phillips, 'Brexit: Could "Singapore-On-Thames" Become Reality?' Per Incuriam Digital <https://www.culs.org.uk/per-incuriam/brexit-could-singapore-on-thames-become-reality> accessed 9 March 2024.

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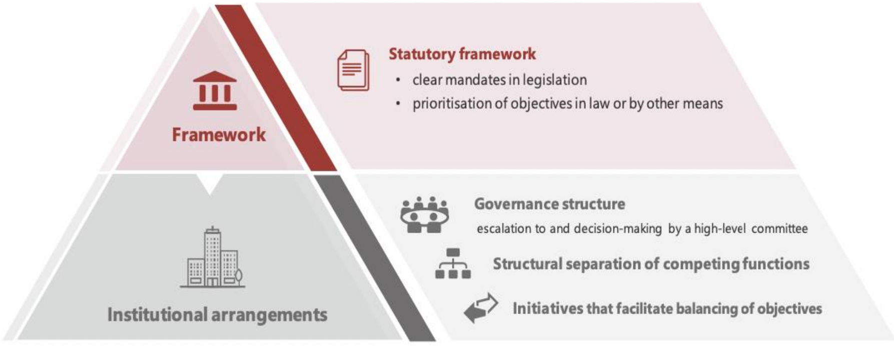


*Figure 4: BIS's Conflict Mitigation Approach*[208]

***Statutory Framework***

Despite the importance of clear prioritisation as discussed in the earlier sections, BIS found in Figure 5 that less than 33% of jurisdictions surveyed had some form of prioritisation even if the regulators have more than 5 mandates.[209]

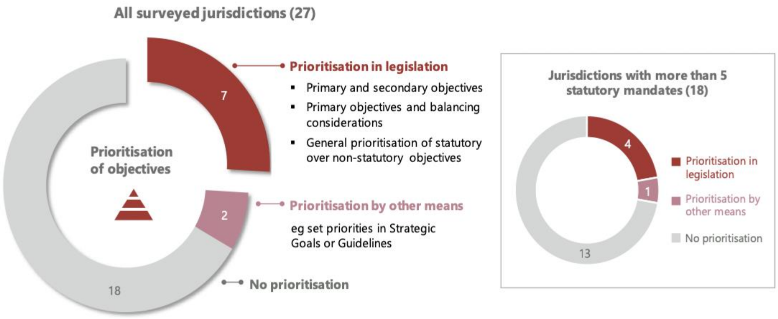


Figure 5: Prioritisation of Objectives[210]

That said, both UK and Singapore have prioritisation through legislation. In Singapore, Section 4 of the Monetary Authority of Singapore Act 1970 established the MAS's "objects" to (a) maintain price stability, (b) foster a reputable and stable financial centre, (c) manage the foreign reserves prudently, and (d) grow Singapore as an internationally competitive financial centre. Notably, it was not until the Monetary Authority of Singapore (Amendment) Act 2017 that established the prioritisation[211] that the safety and soundness objective under Section 4(1)(b) is to "pervai[l] over" the development objective under Section 4(1)(d). This followed

[208] Kirakul, Yong and Zamil (n 199) 18.
[209] ibid 19.
[210] ibid.
[211] Monetary Authority of Singapore Act 1970 (Singapore) s 4(1A).

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from the IMF's recommendation to tackle the potential risk of MAS's mandate conflict stipulated in Singapore's 2013 Financial Sector Assessment Programme (FSAP).[212] Interestingly, MAS is very vocal in their media communications[213] and competitiveness metrics[214] about this legislative amendment which earnt praises from IMF for being "among the best globally"[215] in balancing innovation and stability. This shows that international recognition of well-balanced regulation can enhance the competitiveness of a country's financial sector. Thus, the inputs of international bodies are not only an important incentive for regulators to focus on their stability mandate but also a way for stability to be compatible with competitiveness.

Similarly, the UK's 2022 FSAP Assessment also warned against the rising emphasis on competitiveness.[216] This was observed by the IMF from the Chancellor's 2015 Remit Letter requiring the Bank of England to consider the government's competitiveness initiatives, and the Financial Services Act 2021 requiring the FCA and PRA to *have regard* to the effects of regulation on the "relative standing"[217] of the UK. Although the FSAP findings are not binding on the regulators and less so on sovereign parliament, the assessment itself is mandatory for both Singapore and UK every five years as "systemically important" financial centres under Article IV of the Fund's Articles Assessment.[218] Although FSAP includes a voluntary developmental review by the World Bank, the stability review that IMF focuses on to mitigate financial crisis explains their cautious stance towards competitiveness mandates for both Singapore and UK. Moreover, the BIS report echoed the FSAP findings by showing that the lack of clear prioritisation is a common challenge across 66.7% of countries surveyed.[219] Crucially, the FCA and PRA "especially welcomed"[220] the FSAP's recommendation to retain

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[212] IMF, 'Singapore: Financial System Stability Assessment' (I Country Report 2013) 13/325 para 49.
[213] Monetary Authority of Singapore, 'IMF Reaffirms Singapore's Financial Sector Oversight as "Among the Best Globally" (16 July 2019) < https://www.mas.gov.sg/news/media-releases/2019/imf-reaffirms-singapore-financial-sector-oversight-as-among-the-best-globally#:~:text=Singapore%2C%2016%20July%202019%E2%80%A6,%E2%80%9Camong%20the%20best%20globally%E2%80%9D.> accessed 25 March 2024.
[214] MAS, 'Singapore Competitiveness Factsheet 2020 (2020) 4 <https://www.mas.gov.sg/-/media/MAS/Why-SG/Singapore-Competitiveness-Factsheet> accessed 25 March 2024.
[215] ibid.
[216] Letter from Mark Carney to Rt Hon George Osborn (11 August 2015).
[217] FCA, s 143G(1)(b), PRA FSA, s 144C(1)(b).
[218] IMF, 'Mandatory Financial Stability Assessments under the FSAP' Jurisdictions with Mandatory Assessments-S47 (15 September 2022) <https://www.imf.org/en/Publications/fssa/mandatory-financial-stability-assessments-under-the-fsap> accessed 9 March 2024.
[219] Kirakul, Yong and Zamil (n 199) para 48.
[220] IMF, 'United Kingdom: Financial System Stability Assessment' (Country Report 2022) 22/57 para 84.

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financial stability as the primary objective. Therefore, in line with our theoretical analysis in Section B, international standards like the FSAP are crucial and authoritative safeguards for regulators to rely on when defending their primary objectives.

***Institutional Arrangements***

Although it is beyond our scope to conduct a full-scale organisational review, we aim to show that similar statutory mandates can have different practical implications when applied to different institutional arrangements. General relationships between organisational structure and organisational mandates are well documented in management science.[221] On this topic, BIS found 3 key institutional arrangements that affect the management of competing regulatory mandates.[222] These include governance structure, structural separation, and balancing initiatives which will be analysed in turn to contextualise the statutory framework.

a) Governance Structure

Despite being independent regulators, MAS and the UK regulators are structurally linked to the respective governments. The Chairperson of MAS's board is statutorily required to be recommended by the Cabinet and appointed by the President.[223] MAS is considered as an agency under the Prime Minister's Office[224] and is accountable to the Parliament through the "Minister-in-charge of MAS".[225] Hence, MAS is considered to be "independent ***within*** the government, not ***of*** it [emphasis added]".[226] While this creates a helpful alignment between the regulator and the government[227] in shaping Singapore to be a leading international financial

[221] World Customs Organization, 'Establishing Formal Structures' <https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/single-window/compendium/swcompendiumvol1partv.pdf> accessed 26 March 2024.
[222] Kirakul, Yong and Zamil (n199) 18.
[223] MAS Act 1970 (Singapore) s 7(3)(a).
[224] Prime Minister's Office Singapore, 'About Us' (7 March 2024) <https://www.pmo.gov.sg/About-Us> accessed 25 March 2024.
[225] MAS, 'Board of Directors' <https://www.mas.gov.sg/who-we-are/board-of-directors> accessed 27 August 2024.
[226] Ravi Menon, 'Monetary Authority of Singapore at Forty' (MAS 40th Anniversary Dinner, 28 November 2011) para 13 <https://www.bis.org/review/r111201c.pdf> accessed 25 March 2024.
[227] ibid.

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centre,[228] clear prioritisation of regulatory mandates through the 2017 Amendment Act is crucial to prevent an overemphasis of politically popular developmental mandates.[229]

Although Government officials do not sit on the boards of FCA and PRA,[230] HM Treasury, the Government's economic and finance ministry,[231] nevertheless have powers to make "recommendations" to regulators on the discharge of their statutory duties. Thus, the imposition of an additional competitiveness duty widened the Treasury's grounds to make recommendations as per the "consequential amendment" in Section 28(2) of FSMA 2023. Notably, this is just the first part of the Treasury's two-staged reservation of power since they can also compel the regulators to review[232] or make[233] certain rules. On one hand, this mediates the regulators' unelected powers[234] and compensates for the Government's reduced ability to influence financial policies through EU post-Brexit.[235] However, we argue that like MAS, UK regulators also require clear statutory prioritisation to legally prevail over any political interest of the Government.

That said, the main difference between the regulators is that, unlike the FCA or PRA, the MAS is a central-bank-cum-"integrated regulator".[236] This is significant because BIS found that integrated organisations which are also central banks are more likely to have broader mandates including developmental ones.[237] Thus, MAS is institutionally designed to fulfil a broader mandate than the UK regulators to begin with. For example, MAS's Industry Transformation Map seeks to develop key growth areas in the financial sector with concrete

[228] Ravi Menon (n 224) para 1.
[229] ibid para 49.
[230] FCA, 'Corporate governance of the Financial Conduct Authority' (August 2023) para.2.4 <https://www.fca.org.uk/publication/corporate/fca-corporate-governance.pdf> accessed 25 April 2024; BOE, 'Governance of the Bank of England including Matters Reserved to Court' (12 July 2022) 14 <https://www.bankofengland.co.uk/-/media/boe/files/about/people/court-of-directors/governance-of-the-bank-of-england-including-matters-reserved-to-court.pdf> accessed 25 April 2024.
[231] HM Treasury, 'What we do' <https://www.gov.uk/government/organisations/hm-treasury> accessed 9 March 2024.
[232] FSMA (n 3) s 29(2).
[233] FSMA (n 3) s 30(2).
[234] See Tucker (n 64) ch 2.
[235] Ferran (n 15) 50.
[236] MAS, 'Regulation' (11 December 2023) <https://www.mas.gov.sg/regulation> accessed 25 March 2024.
[237] Kirakul, Yong and Zamil (n 199) para 10.

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targets to achieve 4-5% growth and 3000-4000 job creation,[238] showing that MAS's development objective is a separate function altogether.[239]

Previously, the UK's FSA was more integrated like the MAS than the current twin peak FCA and PRA. The FSA's broader mandate is a reflection of its historical establishment as the amalgamation of 9 regulatory agencies.[240] The rationale in uniting these regulatory agencies into the FSA for "one-stop regulation"[241] is in itself an initiative to "enhance the standing […] of the UK's financial service industry".[242] Thus, it is unsurprising that the FSA, similar to MAS, was formed with a competitiveness mandate.[243] The UK's development from a multi-regulatory model pre-FSA,[244] to the broad mandate of FSA,[245] and then to the twin-peak model now demonstrates efforts to streamline regulatory objectives. Thus, takeaway two is that the competitiveness mandates would relate differently to PRA and FCA's streamlined hierarchy of mandates as compared to MAS and FSA's broader regulatory ambit.

b) Structural Separation

Following the above, MAS's competing functions are executed by structurally separated departments to house various mandates under the same roof. Recognising their "dual roles as supervisor and promoter",[246] MAS established in their "Objectives and Principles of Financial Supervision in Singapore" that they have dedicated officers under separate development and supervision departments (*Figure 7*).[247] For example, MAS's Financial Centre Development, Financial Markets Development, and International Department report to the Head of

[238] Tharman Shanmugarathanm, 'Prime Minister's Office (Monetary Authority of Singapore) Addendum to the President's Address' (12 April 2023) <https://www.mas.gov.sg/news/speeches/2023/pmo-mas-addendum-to-the-presidents-address> accessed 25 March 2024.
[239] MAS Act 1970 (Singapore) s 2(d).
[240] Explanatory Notes for the Financial Services and Markets Act 2000, para 8.
[241] See Chief Secretary to the Treasury at ibid cols 35.
[242] See Mr. Milburn at ibid cols 42.
[243] Lee Hsien Loong, 'Remaking Singapore's financial sector' (MAS Staff Seminar, 29 October 2002) pt V<https://www.bis.org/review/r021101c.pdf> accessed 25 March 2024.
[244] Financial regulation was spread across 9 regulatory agencies before 2000; see Explanatory Notes for the Financial Services and Markets Act 2000, cl 8.
[245] FSMA (n 79) s 2.
[246] MAS, 'Objectives and Principles of Financial Supervision in Singapore' (April 2004) <https://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Monographs%20and%20Information%20Papers/Objectives%20and%20Principles%20of%20Financial%20Supervision%20in%20Singapore.pdf> accessed 25 March 2024.
[247] ibid 3.

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Development and International Group to fulfil the development and growth objective[248] while the Banking, Capital Markets, Payments & Financial Crime supervision teams report to the Head of Financial Supervision. This segregation on at least two levels of the hierarchy reflects a higher degree of separation akin to BIS's preferred model with separated reporting lines until the highest level (*Figure 6*).[249] This means that the mandates can be independently carried out by each department, leading to the Developmental departments' independent work streams to attract business through grants, tax incentives, and talent pool instead of deregulation.

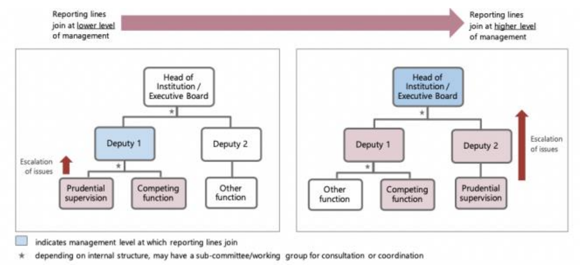


*Figure 6: Degree of separation*[250]

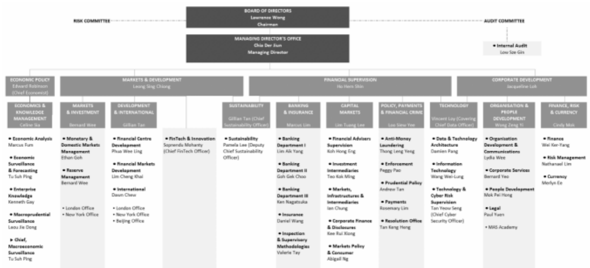

*Figure 7: MAS Organisational Structure*[251]

For now, it is unclear how SICGO would be integrated into the PRA and FCA's organisational structure. On one hand, their new role to "be proactive" and "work hard to identify"[252] opportunities for enhancing competitiveness can be an additional work stream which warrants dedicated teams or at least dedicated personnel to be exclusively in charge of competitiveness. This is seen as PRA has been hiring new staff for the "mindset change" required to meaningfully incorporate SICGO.[253] On the other, both regulators are unlikely to execute their competitiveness mandate through a department as deeply separated as MAS. This is because at present, teams are divided according to supervisory functions in the PRA (*Figure 8*) and operational functions in the FCA (*Figure 9*). Since SICGO relates to all functions as established in Section B, it is most likely intended to be integrated with the existing work

[248] MAS, 'Development and International Group' (17 October 2022) <https://www.mas.gov.sg/who-we-are/organisation-structure/development-and-international> accessed 25 March 2024.
[249] Kirakul, Yong and Zamil (n 199) para 49.
[250] ibid 24.
[251] MAS, 'Organisation Structure' (1 March 2024) <https://www.mas.gov.sg/who-we-are/Organisation-Structure> accessed 25 March 2024.
[252] Victoria Saporta, 'The PRA's future approach to policy' (City & Financial Global Event, 27 September 2022) <https://www.bis.org/review/r220927a.pdf> accessed 25 April 2024.
[253] Abbie Day, 'PRA needs staff, 'mindset change' to implement competitiveness objective' (Insurance Insider, 7 March 2023) <https://www.insuranceinsider.com/article/2bdcu4mrkmu72bl3ze1vk/london-market-section/pra-needs-staff-mindset-change-to-implement-competitiveness-objective> accessed 25 April 2024.

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streams to enhance operational efficiency and reduce regulatory burden.[254] Although integrated teams can bring benefits such as knowledge sharing,[255] our third takeaway is in line with BIS's findings[256] whereby clearly segregated organisational structures will bring clearer relationships between different mandates.

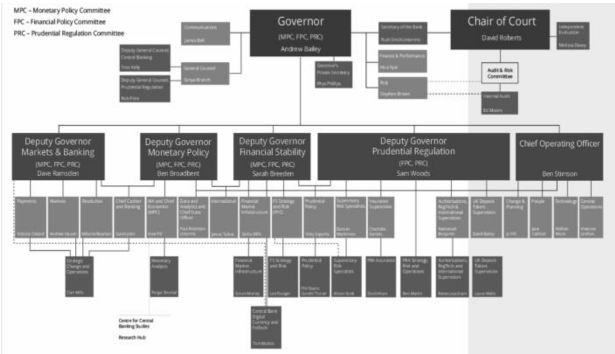


Figure 8: BOE Organisational Structure[257]

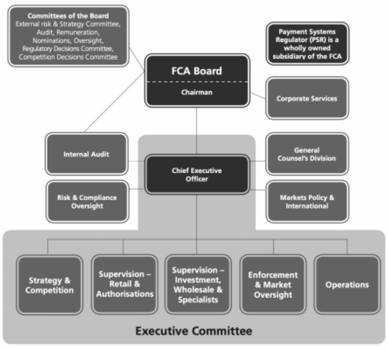


Figure 9: FCA Organisational Structure[258]

c) Balancing Initiatives

As BIS identified, competing functions can be balanced through different means.[259] However, more structurally separated organisations require more effort to bridge the separation.[260] Thus, hosting significantly conflicting roles within an organisation can lead to costly coordination problems.[261] In MAS, this is resolved in 3 ways. Firstly, MAS's senior management is accountable for both mandates which requires structurally separated work streams to be consolidated at the top of the hierarchy. Secondly, teams like the Sustainability team have double reporting lines to both the Head of Development and the Head of Financial Supervision. This is because there is a wide range of sustainability initiatives from specific Transition

[254] HM Treasury (n 183).
[255] Angels Dasí, Torben Pedersen, Paul N. Gooderham, Frank Elter, Jarle Hildrum, 'The effect of organizational separation on individuals' knowledge sharing in MNCs'(2017) vol 52 Journal of World Business 431.
[256]Kirakul, Yong and Zamil (n 199) 24-25.
[257] See Bank organogram at BOE, 'Our People' (28 December 2023) <https://www.bankofengland.co.uk/about/people> accessed 25 April 2024.
[258] FCA, "Annex C: FCA Organisational Chart". <https://www.fca.org.uk/publication/corporate/business-plan-2016-17-annex-c.pdf> accessed 9 March 2024.
[259] Kirakul, Yong and Zamil (n 199) 24-25.
[260] ibid para 63.
[261] 28/02/2025 18:12:00Nicolai J Foss and Peter G Klein, 'Rethinking Hierarchy' (MIT Sloan Management Review, 25 January 2023) <https://sloanreview.mit.edu/article/rethinking-hierarchy/> accessed 25 March 2024.

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Credits[262] and Green FinTech,[263] to broad changes to make existing regulatory and supervisory approaches more sustainable.[264] Thirdly, like regulators in other countries,[265] MAS has teams that balance both aims proportionately. This is particularly for specialist teams like FinTech & Innovation which execute their supervisory and developmental function through regulatory sandboxes[266] inspired by the UK sandbox models.[267] However, unlike the Sustainability team, the FinTech team only reports to the Head of Markets and Development. Although this would not be an issue for developmental-only initiatives such as organising FinTech festivals[268] and providing grants,[269] MAS has been scrutinised for sending "mixed signals" for integrated matters like digital assets because their active promotion was disjointed with the strict licensing process.[270] Therefore, the takeaway here is that different balancing methods are required for different initiatives, warranting more organisational research to find the optimum.

If the FCA and PRA do not intend to create as deep of a structural separation as MAS, the first two types of balancing initiatives based on reporting lines would be less relevant. This means that the third type, balancing through the application of proportionality would have to be relied on, as signalled by both FCA[271] and PRA.[272] Although UK's renowned regulatory innovation like the regulatory sandbox strikes a balance between the need for regulatory

[262] MAS, 'Transition credits' (6 December 2023) <https://www.mas.gov.sg/development/sustainable-finance/transition-credits> accessed 25 March 2024.
[263] MAS, 'Green FinTech' (27 July 2022) <https://www.mas.gov.sg/development/fintech/green-fintech> accessed 25 March 2024.
[264] MAS, 'Regulatory and Supervisory Approach' (18 October 2023) <https://www.mas.gov.sg/development/sustainable-finance/regulatory-and-supervisory-approach> accessed 25 March 2024.
[265] Kirakul, Yong and Zamil (n 199) para 60.
[266] MAS, 'Overview of Regulatory Sandbox' (11 August 2023) <https://www.mas.gov.sg/development/fintech/regulatory-sandbox> accessed 25 March 2024.
[267] Douglas Arner, Janos Barberis and Ross Puckley, 'FinTech and RegTech in a Nutshell' (2017) CFA Institute Research Foundation Briefs 28/02/2025 18:12:0016-18 <https://www.cfainstitute.org/-/media/documents/article/rf-brief/rfbr-v3-n4-1.pdf> accessed 7 April 2024.
[268] MAS, 'Singapore FinTech Festival' (24 November 2023) <https://www.mas.gov.sg/development/fintech/singapore-fintech-festival> accessed 25 March 2024.
[269] MAS, 'Grants for Innovation' (1 November 2023) <https://www.mas.gov.sg/development/fintech/grants-for-innovation> accessed 25 March 2024.
[270] Ravi Menon, 'Yes to Digital Asset Innovation, No to Cryptocurrency Speculation' (Green Shoots Seminar 29 August 2022) < https://www.mas.gov.sg/news/speeches/2022/yes-to-digital-asset-innovation-no-to-cryptocurrency-speculation> accessed 25 April 2024.
[271] FCA, 'Secondary international competitiveness and growth objective' (14 July 2023) 3 <https://www.fca.org.uk/publication/corporate/secondary-international-competitiveness-growth-objective-statement.pdf> accessed 25 April 2024.
[272] BOE, 'Prudential Regulation Authority Business Plan 2023/24' (2 May 2023) <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/may/pra-business-plan-2023-24> accessed 25 April 2024.

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intervention and the importance of developmental efforts to enable innovation,[273] it only accounts for 2 out of 20 metrics for competitiveness for the FCA.[274] Moreover, the international competitiveness metrics adopted do not directly require new regulatory initiatives and regulatory innovation but an increased emphasised on proportionality measures such as the Cost-Benefit Analysis for reducing regulatory burden.[275] This means that instead of incentivising regulators to be more innovative in reconciling contradictory but uncompromisable aims, the application of proportionality allows, and even legitimises, trade-offs to be made. Additionally, if the responsibility to make decisions for these trade-offs is cascaded through different levels of the organisation, it will be harder to track the decision-making process and extent of balance at each level.[276] Thus, the broad statutory prioritisation would have to be translated into detailed guidance or standards of procedure for the balancing decision to be made consistently on all levels.

***What have we learnt?***

From this comparative study, similar-sounding regulatory mandates, like the competitiveness mandates for MAS and the UK regulators, can have largely different implications when applied to different institutional contexts. Thus, we should be careful in justifying the imposition of the competitiveness mandate based on its adoption elsewhere but still be open to absorb the takeaways highlighted through such comparison.

## E. CONCLUSION

Before deciding whether the PRA and FCA's new Secondary International Competitiveness and Growth Objective (SICGO) is a step back or a step forward, we must first understand the nuances of its content and construct. Although "international competitiveness"[277] and "medium to long-term growth"[278] are broad concepts, SICGO's "secondary"[279] status and the duty to

[273] World Bank Group, 'Global Experiences from Regulatory Sandboxes' (2020) FinTech Note No.8 <https://documents1.worldbank.org/curated/en/912001605241080935/pdf/Global-Experiences-from-Regulatory-Sandboxes.pdf> accessed 25 April 2024.
[274] HM Treasury (n 183) 14-15.
[275] ibid 15, 18.
[276] See Tucker on precepts of delegation (n 64) ch 6.
[277] FSMA (n 3) s 25(3).
[278] ibid.
[279] FSMA(n 3) s 25(2).

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"alig[n] with relevant international standards"[280] are key statutory safeguards against regulatory backsliding. These legal subtleties are often missed by generalised fears that SICGO will repeat the FSA's history with a competitiveness mandate that led to the Global Financial Crisis. From an expressive perspective, SICGO's secondary status in the hierarchy of mandates is certainly clearer than the FSA's ambiguous and overly stretched *have regard*. Such well-defined statutory prioritisation is consistent with international standards established by the IMF and adopted by Singapore's MAS. With this foundation, SICGO is set to be a step forward in striking a balance between being robustly stringent and being business-efficient instead of leaving the conflicting needs to constant oscillation.

To move forward, practical steps that are highlighted by discussions on expressive law in Section C and organisational structure in Section D can be taken to mitigate the risks of overemphasising the competitiveness mandate. In addition to keeping both primary and secondary objectives in check,[281] communicatory efforts should be enhanced and continued. For example, SICGO's boundaries can be further clarified after accruing more economic and regulatory research on the mandate's day-to-day implementation. Organisationally, both regulators could consider having some structural separation to balance out the conflicting objectives. Even if it is unrealistic to expect the PRA and FCA to restructure their entire organisation to be as separated as MAS, dedicated working groups can at least be established to anchor the primary and secondary objectives separately and single-mindedly. To align these internal organisational realignments with external regulatory communications, these dedicated groups can be directly responsible for public reporting to increase their incentive to act accountably. Meanwhile, if proportionality were to be used in other parts of the organisation, the regulators should devise clear standards of procedure and comprehensive staff training to ensure that the balancing act is done right at all levels of the hierarchy. This is to prevent having different balances at different levels, requiring convoluted counteractive strategies that risk the overall coherence and balance.

Since this research was conducted within a year of FSMA 2023's enactment, it is in a unique position to review the final legislative form of SICGO while contributing to the developments of SICGO before it is set in stone. Hence, we adopt comparative studies as the

[280] FSMA(n 3) s 25(3).
[281] As recommended by Ferran (n 15).

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main research methodologies, both *horizontally* against the UK FSA's history and *vertically* against contemporary practices by regulators in other countries. Moving onward, UK-specific research could be done with updated data on SICGO's implementation after the publication of SICGO's reports due at the end of FSMA 2023's first[282] and second year.[283] Adopting our hypothesis from the FSA inquiry, more in-depth sociological research can be conducted for SICGO's expressive implications and the extent to which it is well understood by the relevant stakeholders. Detailed organisational research can also be conducted with access to internal documents to take stock of how SICGO is executed. Apart from these research directions flowing directly from our work, general insights on the empirical relationship between competitiveness and stability in the UK would be beneficial to analyse the trade-offs. This is because the legal focus of our research naturally directs more attention to the construct of SICGO instead of qualifying the broad content of SICGO with equally important economic reasoning. That said, we are optimistic that SICGO has benefitted from a well-constructed legal foundation. Thus, with the improvements above, SICGO can bring financial regulation in the UK a step forward to thrive in an increasingly competitive world.

[282] FSMA (n 3) s 26(3).
[283] FSMA (n 3) s 26(4).