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UK

PRA publishes PS4/18 and SS2/18: International insurers: the PRA's approach to branch authorisation and supervision

On 28 March 2018, the PRA published a policy statement, PS4/18, which provides feedback on responses to its December 2017 consultation paper, CP30/17, on the PRA's approach to international insurers branch authorisation and supervision.

A related new Supervisory Statement (SS) SS2/18 is included as a link in the appendix to the policy statement. This introduces new factors to be considered alongside the PRA's current requirements for third-country branch authorisation. SS44/15 "Solvency II: third-country insurance and reinsurance branches" remains unchanged. In particular, SS2/18 sets out the PRA's expectations on when a subsidiary would be more appropriate than a branch for a third-country insurer wishing to carry out insurance business in the UK. The PRA made one material change to the supervisory statement following the consultation, to increase the Financial Services Compensation Scheme-protected liabilities threshold from £200 million to £500 million.

The new approach comes into effect from 29 March 2018. For EEA firms currently branching into the UK under passporting arrangements and intending to apply for PRA authorisation in order to continue operating in the UK after the UK's withdrawal from the EU, this approach would be relevant to authorisations for this purpose.

PRA publishes Dear CEO letter on firms' preparations for Brexit

On 28 March 2018, the PRA published a Dear CEO letter from its CEO and Bank of England Deputy Governor, Prudential Regulation, Sam Woods, on firms' preparations for Brexit. Among other things, Mr Woods says that in light of the agreement between the UK and EU27 on a transition (or implementation) period and the UK Government's commitment to providing for a temporary permission regime as a backstop:

- firms may plan on the assumption that PRA authorisation will only be needed by the end of the transition period. Firms should consider how best to make use of the additional time provided by the transition period in their planning;
- the PRA will continue to work closely with firms and will provide guidance on the timing of their applications in the light of firms' individual circumstances, in the context of any relevant developments in the political process, and with a view to making the process run as smoothly as possible.

FCA publishes statement and speech on its approach following agreement on transition period

On 28 March 2018, the FCA published a statement on Brexit issues following the political agreement on a transition (or implementation) period. A related speech by the FCA's Chief Executive, Andrew Bailey, has also been published.

The FCA welcomes the agreement on the transition period, which is intended to operate from 29 March 2019 until the end of December 2020, during which time EU law would remain applicable in the UK, in accordance with the withdrawal agreement. The FCA says that firms and funds would continue to benefit from passporting between the UK and EEA during the transition period. Obligations derived from EU law would continue to apply and firms must continue with implementation plans for EU legislation that is still to come into effect before the end of December 2020. Consumer rights and protections derived from EU law would also continue to apply.

The FCA says that in light of the agreement on the terms of a transition period and the UK Government's commitment to providing for a temporary permission regime as a backstop, firms and funds currently benefiting from an EU passport need not apply for authorisation at this stage. UK firms and funds passporting into the EEA should discuss with their relevant EU regulator the implications of a transitional period for their contingency planning.

On 9 March 2018, the FCA announced the launch of a survey of EEA inbound firms that passport into the UK. The survey is intended to help inform the FCA and to identify firms for which a temporary permission may be relevant. It includes questions covering contact details, the directives under which firms are passporting in to the UK and firms' intentions around accessing the UK market following the UK's withdrawal from the EU.

BIBA and WBN agree new arrangement to help members with their clients post Brexit

On 21 March 2018, the British Insurance Brokers' Association (BIBA) announced that it has reached an agreement with the Worldwide Broker Network (WBN) which will facilitate the introduction of BIBA member firms to WBN member firms based in the EU in order to enable them to continue to work with EU based clients. BIBA launched the arrangement to its members on 21 March 2018.

BIBA surveyed its members in 2017 to ask what concerns they had about the UK's impending exit from the EU. It says that one of the most common and worrying was the issue around continuing to help EU clients with renewals, claims handling and placement post Brexit. As soon as BIBA had the results of the survey it began looking for a solution and says that working with WBN was the obvious choice. WBN has at least one member operating in each EU country all of whom are subject to checks on their regulatory status.

FCA publishes correspondence with the ABI about impact of Brexit on customer communications

On 14 March 2018, the FCA published an exchange of letters between itself and the Association of British Insurers (ABI) about the UK's withdrawal from the EU and what this means for insurers' customer communications.

The Director General of the ABI, Huw Evans, wrote to the Chief Executive Officer of the FCA, Andrew Bailey, on 12 March 2018, asking for the FCA's views on the appropriate approach that ABI members should take when communicating with their customers where new insurance contracts and renewals over the next months will still be in force after the Article 50 period ends.

Mr Bailey replied to Mr Evans on 13 March 2018. Among other things, he said that:

- with regard to **inbound passporting firms**: in the event that HM Treasury brings forward contingent legislation on temporary permission, the FCA would expect firms solely regulated in the UK by the FCA to notify the FCA before exit day of their desire to benefit from the regime. This notification would not require the submission of an application for authorisation before exit day;
- with regard to **changes to how cover for customers travelling in the UK may operate in the future**: firms need to consider what impact withdrawal from the EU may have on their own customers and the operation of contracts they offer. In relation to withdrawal from the EU, firms will need to keep under review what, if anything, needs to be brought to customers' attention when buying or renewing a policy. Where changes to how policies operate are dependent on the final legal agreement reached by the UK and EU, firms may wish to provide this information in good time, once it is available. Where the information is not currently available firms may wish to do this separately to new business and renewal communications. When reviewing firms' communications to customers in the future, the FCA will take into account the situation that exists at the time the statement is made, including any uncertainty over the final agreement between the UK and EU;
- with regard to **outboard passporting firms**: firms should continue to make appropriate arrangements to service their clients in the EU and engage with their local EU regulatory authority for guidance.

UK guarantees Gibraltar financial services firms' access to UK markets as now until 2020

On 8 March 2018, the Department for Exiting the European Union published a statement giving the information that the UK will guarantee Gibraltar financial services firms' access to UK markets as now until 2020. Ahead of this, the UK Government will work closely with the Government of Gibraltar to design a replacement framework to last beyond 2020. This will be based on shared, high standards of regulation, and enforcement of this regulation, and underpinned by modern arrangements for information-sharing, transparency and regulatory co-operation.

Financial services and Brexit: speech by the Chancellor of the Exchequer

On 7 March 2018, the Chancellor of the Exchequer, Philip Hammond, gave a speech on financial services and Brexit.

Among other things, Mr Hammond challenged claims that financial services cannot be part of a free-trade agreement (FTA) after Brexit and described some of the components of such a partnership. He also said that the principle of mutual recognition and reciprocal regulatory equivalence, provided it is objectively assessed, with proper governance structures, dispute resolution mechanisms, and sensible notice periods to market participants could provide an effective basis for a partnership.

The UK and the EU would need to maintain a structured regulatory dialogue to discuss new rules proposed by either side, to ensure they deliver equivalent regulatory outcomes agreeing mutually acceptable rule-changes where possible. An objective process would be needed to ensure these rules provide sufficiently equivalent regulatory outcomes. The way in which they are enforced should also be assessed. The process should draw on international standards where they exist, or on additional principles for equivalence where the UK and EU have more developed rules.

Mr Hammond also said that although the UK would cease to be a part of the EU's supervisory agencies, there is no reason why it could not maintain a very close working relationship, for instance, through proactive and extensive information exchange authorised by the data-sharing agreements within the overarching FTA. It could cover market abuse, transaction reporting, and stability monitoring, as well as prudential concerns about individual firms and it could involve a version of the existing college structures, covering both day-to-day supervision and resolution in crisis.

Mr Hammond said that in certain circumstances the UK may not choose to maintain equivalent outcomes with the EU and it would have to address how this future partnership would work in such circumstances with clear institutional processes. The UK needs to ensure that any consequences were reasonable and proportionate, applied in a predictable way and delivered through an independent arbitration mechanism that has the confidence of both parties. .

The management of gone-away customers in the life and pensions market: ABI framework

On 7 March 2018, the Association of British Insurers (ABI) published a framework designed to help firms operating in the life and long-term savings market to better identify, trace, verify and manage those customers with whom they have lost contact ("gone-aways"), to assist them in re-engaging with such customers in a timely manner.

The framework sets out 11 principles for providers to consider when making their own judgements on how best to manage and prevent gone-away customers, and prevent more customers becoming gone-away. The principles, which are supported by illustrative examples of activities and practices that may assist with this, include:

- creating a dedicated role or team within organisations, focused on re-engaging with gone-away customers;

- using credit reference, electoral roll and/or Department for Work and Pensions data, where available, to aid with locating gone-away customers;
- using the services of an external tracing agency to screen customers to check whether they have moved without informing their provider.

The ABI says the framework will help firms ensure that they use the most effective techniques for reuniting customers with their pension savings before funds can move into the Dormant Assets Scheme, as proposed by the Government in February 2018.

In order to ensure that the framework remains up to date, the ABI intends to review it in April 2019.

Insurance Europe publishes position paper on consequences of Brexit on existing contracts

On 5 March 2018, Insurance Europe published an updated version of its position paper on the consequences of Brexit on existing insurance contracts.

The paper recommends that the UK and the EU agree on an appropriate transitional arrangement to bring legal certainty and more time so that there is sufficient time to re-organise businesses, set up branches and subsidiaries and transfer policies. In addition, grandfathering of certain existing (re)insurance contracts as part of the Article 50 negotiations under the citizens' rights chapter is needed.

Grandfathering would mean:

- recognition that the rights and obligations of the parties to (re)insurance contracts written lawfully under passporting continue;
- (re)insurance contracts in force at the date on which the Treaties cease to apply to the UK would continue to be in force until they expire in accordance with contractual provisions;
- legal obstacles to the ability of a party to a (re)insurance contract to enforce a right or discharge a responsibility under the contract would not apply;
- (re)insurers that have appointed a legal representative under Article 145 or 152 of the Solvency II Directive would maintain a legal representative in the country concerned, until the relevant national competent authority is satisfied that the business has been fully completed;
- regulatory responsibility for contracts should remain as it is at present, that is, prudential regulation would remain a home state responsibility and conduct regulation a host state responsibility. Supervisory liaison could be ensured by establishing an EU27/UK committee, possibly under the auspices of the European Insurance and Occupational Pensions Authority;
- special provisions would be needed for contracts between the UK and EEA Member States that are not EU members.

The position paper says that the European Council's negotiating directives mandate the European Commission to negotiate an agreement that ensures any goods placed on the market before the withdrawal date will continue to be made available after that date. Insurance Europe calls for services to be given similar consideration as soon as possible.

Theresa May Mansion House speech on Brexit

On 2 March 2018, the Prime Minister, Theresa May, gave a speech at the Mansion House in London on the UK's future economic partnership with the EU.

In the speech, among other things, Mrs May confirmed that the UK intends to agree a free trade agreement (FTA) with the EU, covering financial services. She stated that the UK and the EU should establish the ability to access each other's markets, based on the two jurisdictions maintaining the same regulatory outcomes over time, with a mechanism for determining proportionate consequences where they are not maintained. She said that there should be a collaborative, objective framework that is reciprocal, mutually agreed, and permanent and reliable for businesses.

Mrs May also said that the Chancellor of the Exchequer, Philip Hammond, would set out details of how financial services could form part of an FTA (see item above). She also said that the UK is not looking for passporting because it understands this is intrinsic to the single market of which the UK would no longer be a member. It would also require the UK to be subject to a single rule book, over which it would have no say.

FCA publishes second set of data in it general insurance value measures pilot

On 1 March 2018, the FCA published the second set of data in its general insurance value measures pilot containing data for 36 insurers (including both UK and EEA firms) for the year ending 31 August 2017. The value measures information is intended to provide consumer groups, firms and market commentators with additional indicators of value for a range of insurance products.

The pilot data covers claims frequencies, claims acceptance rates and average claim pay-outs. The products covered are home (buildings and contents) insurance, home emergency, personal accident and key cover.

The publication of value measures data was one of the remedies from the FCA's general insurance add-ons market study, which found poor value in both add-on, and some stand-alone, products. The FCA also found that consumers, firms and other organisations found it difficult to assess value due to the lack of a commonly available measure of value.

The FCA has previously said that the pilot will run for a minimum of two years, with the possibility of a third set of pilot data for the year ending 31 August 2018. It will decide later in 2018 whether to undertake a third pilot.

INTERNATIONAL

GDPR: Insurance Europe publishes template for data breach notifications

On 19 March 2018, Insurance Europe announced that it has developed a template that could help companies meet the obligation under the General Data Protection Regulation (GDPR) to notify their competent supervisory authority about personal data breaches. Further details are given on this webpage.

The GDPR will come into effect on 25 May 2018, and will oblige companies processing personal data to comply with new and more stringent data protection rules. One obligation will be for companies to notify (personal) data breaches to the competent supervisory authority.

Companies will have to submit the relevant information without undue delay and, where feasible, no later than 72 hours after having become aware of the breach. Such information includes the nature of the breach, categories and approximate number of data subjects and of personal data records concerned, likely consequences and measures taken to address and mitigate the breach.

Insurance Europe says that the suggested template could be of particular interest to small and medium-sized enterprises (SMEs) and supervisory authorities. SMEs could rely on it instead of undertaking a descriptive exercise in the midst of a data breach, for which they may not have the resources. Supervisory authorities could benefit from a standardised format allowing them to share incidents data across borders, to better detect trends and to gain insights into combatting cyber threats across Europe.

The template is set up in such a way that the information gathered can be shared without the need to be anonymised or aggregated, as it will not be possible to identify a company through the information it submitted.

The template has three sections:

- section 1: personal details and information on the affected company (not to be shared with third parties);
- section 2: details on the data breach incident as per the indications in Article 33 of the GDPR, to be sent to the national supervisory authority, where feasible, no later than 72 hours after having become aware of the breach;
- section 3: to be completed following the 72 hour period, when more information is available on the data breach, which includes complementary data sets to gain more in-depth knowledge of the nature of the breach.

An explanatory document on the template has also been published.

EU-US bilateral agreement adopted by the Council of the European Union

On 20 March 2018, the Council of the European Union announced that it had adopted its May 2017 decision concluding an agreement with the US on insurance and reinsurance.

The agreement provides legal certainty for EU and US insurers and reinsurers in the application of regulatory frameworks. It will enable improved protection for policyholders and other consumers through co-operation between supervisors and the exchange of information.

IDD: Directive delaying the application date published in the Official Journal

On 19 March 2018, the text of Directive (EU) 2018/411 of 14 March 2018 amending the Insurance Distribution Directive (IDD) as regards the date of application of Member States' transposition measures was published in the Official Journal of the European Union.

The amending Directive delays the IDD's transposition date to 1 July 2018 and its application date to 1 October 2018. The Directive entered into force on the day of its publication in the Official Journal and it applies, with retroactive effect, from 23 February 2018.

European Commission publishes communication on financing sustainable growth action plan

On 8 March 2018, the European Commission published a communication containing its action plan on financing sustainable growth, together with a set of frequently asked questions and a factsheet.

The Commission's proposals include:

- establishing a unified EU classification system for sustainable finance;
- creating EU labels for green financial products on the basis of this EU classification system;
- clarifying the duty of asset managers and institutional investors to take sustainability into account in the investment process and enhance disclosure requirements;
- requiring insurance and investment firms to advise clients on the basis of their preferences on sustainability;
- incorporating sustainability in prudential requirements;
- enhancing transparency in corporate reporting.

The Commission is holding a high-level conference to discuss the action plan on 22 March 2018.

SOLVENCY II

EIOPA consults on amendments to ITS on reporting and disclosure

On 28 March 2018, the European Insurance and Occupational Pensions Authority (EIOPA) published a consultation paper on amendments to implementing technical standards (ITS) on reporting and disclosure relating to the Solvency II Directive.

EIOPA has also published a proposed implementing regulation which contains ITS on the templates for the submission of information to the supervisory authorities and a proposed implementing regulation which contains ITS on the procedures, formats and templates of the solvency and financial condition report, plus an impact assessment.

The aim of the consultation is to receive input from stakeholders on the proposed corrections and amendments based on the changes stemming from the European Commission's Delegated Regulation (EU) 2917/1542 on infrastructure corporates. EIOPA has also published a correction to its guidelines on reporting for financial stability purposes.

EIOPA is holding a public meeting on the consultation on 12 April 2018. Comments on the consultation paper are requested by 11 May 2018.

EIOPA publishes paper on tools with macroprudential impact

On 21 March 2018, EIOPA published a paper on Solvency II tools with macroprudential impact.

The paper is the second in a series of papers with the aim of contributing to the debate on systemic risk and macroprudential policy. The purpose of the paper is to identify, classify and provide a preliminary assessment of the tools or measures already existing within the Solvency II framework, which could mitigate any of the systemic risk sources that were identified in the first paper in the series, on systemic risk and macroprudential policy in insurance, which was published in February 2018.

EIOPA says that the tools with macroprudential impact that are identified and analysed in this latest paper are the long-term guarantees measures and measures on equity risk introduced in the Solvency II Directive. These tools are the following:

- symmetric adjustment in the equity risk module;
- volatility adjustment;
- matching adjustment;
- extension of the recovery period;
- transitional measure on technical provisions.

The paper also considers a measure allowing authorities to prohibit or restrict certain types of financial activities. This measure, which is not part of Solvency II, is included because it pursues similar objectives and also applies EU-wide.

EIOPA's preliminary assessment is that, in addition to ensuring sufficient loss absorbency capacity and reserving, the Solvency II tools identified contribute to another operational objective, that is, limiting procyclicality. The tools seek to address the risk of collective behaviour by insurers that may exacerbate market price movements, although the tools may also have limitations from a macroprudential perspective. The paper also includes a detained annex on the macroprudential impact of some of the long-term guarantees measures under stress.

EIOPA says that Solvency II has other elements with indirect macroprudential impact that should not be ignored. These instruments, which were not primarily designed as instruments to mitigate systemic risk, could nevertheless contribute to a certain extent to other operational objectives when considered at an aggregated level. The main ones are the prudent person principle, the own risk and solvency assessment and the capital add-on under specific circumstances. These tools are not analysed in this paper. They will however be taken into account when analysing potential new tools in the next paper in the series.

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