

UK

- **SM&CR to be extended to insurers from 10 December 2018**
- **FCA publishes statement on PRIIPs communications**
- **FCA publishes PS18/1: Insurance Distribution Directive implementation - feedback and near-final rules to CP17/33 and other IDD consultations**
- **IDD transposition: HM Treasury publishes response to consultation**
- **Government and PRA publish responses to House of Commons Treasury Select Committee report on Solvency II**
- **PRA publishes CP2/18: Changes in insurance reporting requirements**

INTERNATIONAL

- **IDD: EIOPA publishes official translations of guidelines on complex insurance- based investment products**
- **IDD: European Parliament to expedite process for adopting proposal to delay application date**

SOLVENCY II

- **EIOPA publishes report on the application of group supervision**

UK**SM&CR to be extended to insurers from 10 December 2018**

On 29 January 2018, HM Treasury [announced](#) that the senior managers and certification regime (SM&CR), first introduced for banks and building societies in 2016, will be extended to include insurance firms from 10 December 2018.

Currently, the regime applies to banks, building societies, credit unions, investment firms and UK branches of foreign banks. The Government previously legislated to extend the regime across all financial services firms. The extension into insurance is the start of this.

FCA publishes statement on PRIIPs communications

On 24 January 2018, the Financial Conduct Authority (FCA) published a [statement](#) in relation to concerns raised about the performance scenarios in the key information document (KID) required by the Regulation on KIDs for packaged retail and insurance-based investment products (PRIIPs), which has applied from 3 January 2018.

Since then, PRIIP manufacturers have been required to prepare and publish a stand-alone, standardised document, a KID, for each of their PRIIPs. Firms that advise a retail investor on a PRIIP, or sell a PRIIP to a retail investor, must also provide the retail investor with a KID in good time before the transaction is concluded.

The KID details risks, performance scenarios, costs and other pre-contractual information in a standardised way. The KID is required to be accurate, fair, clear and not misleading. How information in the KID should be calculated is set out in the PRIIPs regulatory technical standards (RTSs).

The FCA says that it understands some firms are concerned that, for a minority of PRIIPs, the performance scenario information required in the KID may appear too optimistic and so has the potential to mislead consumers. There may be a number of reasons for this: the strong past performance of certain markets, the way the calculations in the RTSs must be carried out, or calculation errors.

Where a PRIIP manufacturer is concerned that performance scenarios in their KID are too optimistic, such that they may mislead investors, the FCA is comfortable with them providing explanatory materials to put the calculation in context and to set out their concerns for investors to consider.

Where firms selling or advising on PRIIPs have concerns that the performance scenarios in a particular KID may mislead their clients, they should consider how to address this, for example, by providing additional explanation as part of their communications with clients.

FCA publishes PS18/1: Insurance Distribution Directive implementation - feedback and near-final rules to CP17/33 and other IDD consultations

On 19 January 2018, the FCA published a policy statement, [PS18/1](#), its third policy statement setting out near-final rules for the implementation of the Insurance Distribution Directive (IDD).

The policy statement responds to the feedback the FCA received to [CP17/33](#) (its third IDD consultation paper, which was published in September 2017), as well as feedback on certain matters deferred from [CP17/23](#) (the second IDD consultation paper, published in July 2017), and feedback to the IDD-related aspects of two Quarterly Consultation Papers ([CP17/32](#), published in September 2017 and [CP17/39](#), published in December 2017). It summarises:

- the FCA's approach to the IDD delegated acts (see chapter 2);
- changes to the FCA's requirements related to the distribution of insurance-based investment products and wider life insurance business: inducements (see chapter 3), suitability and appropriateness (see chapter 4) and information and product disclosure (see chapter 5);
- changes to the FCA's rules to implement requirements in the IDD that apply to life and non-investment insurance business, including: conflicts of interest (see chapter 6), product oversight and governance (see chapter 7), Perimeter Guidance (see chapter 8) and regulatory processes (see chapter 9);
- additional changes to the Handbook (see chapter 10);
- feedback to quarterly consultations CP17/32 and CP17/39 (see chapter 11).

On 20 December 2017, the European Commission proposed delaying the application date of the IDD to 1 October 2018. The European Parliament and the Council of the European Union will need to agree on the new application date before the delay is formally adopted and published in the Official Journal of the European Union. Under this proposal, firms would have until 1 October 2018 to implement the new IDD requirements.

The FCA intends to publish final rules once HM Treasury's legislation is in force. Firms affected by these rules will need to ensure compliance by the application date specified in these final rules, depending on the outcome of the proposed delay.

IDD transposition: HM Treasury publishes response to consultation

On 15 January 2018, HM Treasury published its [response](#) to its February 2017 [consultation paper](#) consultation on transposition of the Insurance Distribution Directive (IDD) in the UK. A [revised draft](#) of the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 has also been published. The [webpage](#) on the consultation outcome says that the Order will be laid before Parliament in due course and come into force on 23 February 2018.

HM Treasury says that the Government has maintained its core position on all of the covered policy areas. Among other things, the response says that:

- the Government has decided that it is appropriate to keep the distribution of life and liability products sold as an add-on in the scope of regulation;
- the Government agrees that a premium threshold is necessary as it allows relatively low value contracts to benefit from an exemption while ensuring that the distribution of more expensive insurance contracts are subject to FCA rules;
- several legal firms commented that there are two slightly differing formulations for the definition of "insurance distribution activity" in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) and in the Financial Services and Markets Act 2000 (FSMA). The draft statutory instrument, at article 11, referenced the definition used in FSMA (paragraph 2B(5) of Schedule 6), which the legal firms said is less clear than the definition in the RAO (Article 92). The Government agrees that for the amendment to s.55V FSMA made by article 11 of the Order, the definition in article 92 RAO is more appropriate and has made that change to the statutory instrument;
- to ensure that the Government is correctly implementing IDD as intended, the reference to Article 89 of RAO has been removed from Article 33B of the statutory instrument.

Government and PRA publish responses to House of Commons Treasury Select Committee report on Solvency II

On 27 October 2017, the House of Commons Treasury Select Committee published a [report](#) on the Solvency II Directive and its impact on the UK insurance industry. On 16 January 2018, the Select Committee published HM Treasury's [response](#) to the report, together with an [interim response](#) from the Prudential Regulation Authority (PRA).

HM Treasury responded to two recommendations set out in the report. One recommendation said that HM Treasury should review the PRA's approach to its competition objective, at least for insurers, and consider giving the secondary competition objective equal primacy with the PRA's other statutory objectives, introducing primary legislation if necessary. HM Treasury believes that it would be wrong to give the PRA's secondary competition objective equal primacy with its other statutory objectives. Among other things, the response says that giving the PRA a primary competition objective would distract from its crucial role in ensuring the safety and soundness of firms. It would also create duplication with the role of the primary concurrent competition regulators active in the financial services sector, namely the Financial Conduct Authority, the Payment Systems Regulator, and the Competition and Markets Authority.

The other recommendation said that the insurance industry should be regarded as a priority sector during the Brexit negotiations. HM Treasury says that one of the Government's priorities is to ensure a smooth adjustment from the current structures to the new relationship, avoiding outcomes that impose unnecessary costs and disruption on individuals and businesses. The Government has been actively engaging with the UK regulators and with the financial services sector to understand how the UK's exit from the EU could impact financial services firms and their customers, including through the effect of withdrawal on existing contractual relationships. The Government is considering all options for mitigating risks to the continuity of outstanding cross-border financial services contracts.

In its response, **the PRA** says that it is considering the Select Committee's recommendations carefully and will provide a full progress report, as requested, before the end of March 2018. The PRA thinks

that there is a lot of common ground between it, the Select Committee and the industry about aspects of Solvency II which do not work well. The most glaring of these is the risk margin, on which the PRA is actively looking at further steps it might take. There are also many other areas (such as the matching adjustment) where the common source of concern for regulators and firms is a degree of over-specification in the Solvency II Directive. For these areas, the PRA says the question is how it can improve things while still delivering its statutory objectives and remaining within the constraints of the law. The PRA is making progress on this, and is already in the process of bringing forward policy proposals on many of the issues raised by the Select Committee. More detail on this is provided in annex 1 to the PRA's response.

The PRA also says that it is important that it has regard to the broader international context of insurance regulation when considering changes to the UK domestic rules. The PRA is actively involved in the work of the International Association of Insurance Supervisors. With regard to its competition objective, the PRA says that it is considering the areas in which it can do more to facilitate effective competition, and will provide a fuller report on this by March 2018.

PRA publishes CP2/18: Changes in insurance reporting requirements

On 11 January 2018, the PRA published a consultation paper, [CP2/18](#), which proposes a number of regulatory reporting changes designed to reduce the burden for Solvency II firms and mutuals whilst maintaining the PRA's ability to meet its statutory objectives and to supervise firms.

This consultation paper is the third and final consultation referred to in the PRA's 25 October 2017 [press release](#) which announced the launch of its series of amendments to the implementation of Solvency II. The consultation paper is relevant to all UK Solvency II firms, the Society of Lloyd's and its managing agents and mutuals.

The PRA says it has developed the proposals in the consultation paper as part of its work on adjustments to the insurance prudential framework in light of experience following the UK's implementation of Solvency II, including consideration of areas recommended for reform made by the Association of British Insurers and discussed with the House of Commons Treasury Select Committee.

The PRA proposes to:

- update the scope, content and/or format of eight of the thirteen National Specific Templates (NSTs): NS.01, NS.02, NS.05, NS.06, NS.07, NS.09, NS.10 and NS.11, found in rule 2.6 and Chapter 8 of the Reporting Part of the PRA Rulebook;
- amend the content of corresponding NST LOG files and introduce a new supervisory statement (SS) containing the LOG files;
- update SS11/15 "Solvency II: Regulatory Reporting and exemptions" for changes to quarterly reporting waivers and clarification on the timing when resuming reporting should a waiver expire or be revoked; and
- make amendments to rule 5.2 of the Change in Control Part of the PRA Rulebook to exempt mutuals from submitting annual controller reports if they do not have a controller.

The consultation [webpage](#) gives links to the draft NSTs, the draft NST requirements and the draft SS on the NST LOG files, which form appendices to the consultation paper.

Comments are requested by 13 April 2018.

INTERNATIONAL

IDD: EIOPA publishes official translations of guidelines on complex insurance-based investment products

On 19 January 2018, the European Insurance and Occupational Pensions Authority (EIOPA) [announced](#) that its [guidelines](#) made under the Insurance Distribution Directive (IDD) on insurance-

based investment products (IBIPs) that incorporate a structure which makes it difficult for the customer to understand the risks involved have been translated into all official languages of the EU.

The guidelines, which were published in October 2017, aim to minimise the risks of consumer detriment arising from mis-selling of IBIPs and are developed in line with Articles 30(7) and (8) of the IDD. The guidelines include criteria to identify product features difficult for the customer to understand. They intend to set a suitable framework to allow for "execution-only" sales of products, where an assessment of the suitability or appropriateness of an IBIP for the customer does not need to be carried out by the insurance intermediary or undertaking as part of the sales process.

Competent authorities must confirm to EIOPA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions. In the absence of a response by this deadline, competent authorities will be considered as non-compliant and reported as such. The guidelines apply from the date of publication of the translated versions, that is, 19 January 2018.

IDD: European Parliament to expedite process for adopting proposal to delay application date

On 16 January 2018, the European Parliament's Committee on Economic and Monetary Affairs (ECON) published the text of a [letter](#) sent by its Chair to the Chair of the Council of the European Union's Permanent Representatives Committee on the legislative proposal to postpone the application date of the Insurance Distribution Directive (IDD) to 1 October 2018.

In the letter, which is dated 9 January 2018, ECON confirms its support for a postponement of the date of transposition of the IDD by a few months, such as to 1 July 2018. ECON also confirms its intention to steer the adoption of the proposed amending Directive in an expedited manner while respecting Parliament internal Rules of Procedure, and in order to avoid trilogue procedures. It says that it is ready to co-operate with the Council on this. ECON says that it intends to launch a procedure with a view to adopting a recommendation not to object to the adoption of the proposed Directive in order to speed up its entry into force, and trusts the Council will do the same.

SOLVENCY II

EIOPA publishes report on the application of group supervision

On 25 January 2018, EIOPA published a [report](#) to the European Commission on the application of group supervision under the Solvency II Directive.

The report, which is dated 22 December 2017, is in response to a request from the Commission for a report on the application of Title III (Supervision of insurance and reinsurance undertakings in a group) of Solvency II. The 29 issues to which the Commission asked EIOPA to pay particular attention are listed in the annex to the report.

Among other things, EIOPA finds that:

- the definition of groups within Solvency II has generally worked well. Where there are difficulties, these are usually related to the ease of access to relevant information about ownership and relationships between entities in the upper levels of a structure. Getting the information can be more difficult when supervisors need to rely on the co-operation of non-EEA supervisory authorities;
- an important limitation is consistency between the definition of a group and the scope of supervisory powers. In certain cases a group might exist, but the supervisor might not be able to take appropriate action against a holding company;
- colleges generally function well, but there is scope for colleges to develop further in the direction of collaboration and even sharing of tasks within the college. In particular, EIOPA

says that further maturity of colleges could remove the need for formal sub-group supervision in many cases. There are many areas of the implementation of Solvency II where different approaches by different national authorities are seen when the college meets;

- there is a need for greater consistency for internal models. Following approval of the first wave of internal models, EIOPA is now running consistency projects to identify and address areas of continuing inconsistency. EIOPA's limited role in the assessment and approval of cross-border internal models has sometimes hampered its work in assessing and promoting convergence;
- capital add-ons have been used by very few supervisory authorities and only one authority has used a group capital add-on. EIOPA published a more detailed analysis of capital add-ons in December 2017.

Hogan Lovells has offices in:

Alicante	Dusseldorf	London	Northern Virginia	Silicon Valley
Amsterdam	Frankfurt	Los Angeles	Paris	Singapore
Baltimore	Hamburg	Luxembourg	Perth	Sydney
Beijing	Hanoi	Madrid	Philadelphia	Tokyo
Brussels	Ho Chi Minh City	Mexico City	Prague	Ulaanbaatar
Budapest*	Hong Kong	Miami	Rio de Janeiro	Warsaw
Caracas	Houston	Milan	Riyadh*	Washington DC
Colorado Springs	Jakarta*	Moscow	Rome	Zagreb*
Denver	Jeddah*	Munich	San Francisco	
Dubai	Johannesburg	New York	São Paulo	
			Shanghai	

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

©Hogan Lovells 2016. All rights reserved.

*Associated offices