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Corporate Insurance Newsletter December 2019

UK

Queen's speech: financial services legislation

The Queen opened Parliament on 19 December 2019. The background briefing notes to the Queen's speech make reference to a new Financial Services Bill, similar to the one that was previously announced in the October 2019 Queen's speech. The stated purpose of the legislation is "to ensure that the UK maintains its world-leading regulatory standards and remains open to international markets after we leave the EU".
The main elements of the legislation are:

- delivering the government's commitment for long-term market access between the UK and Gibraltar for financial services firms;
- simplifying the process which allows overseas investment funds to be sold in the UK to maintain the UK's position as a centre of asset management and provide more choice to UK consumers, in line with commitments made during the UK's preparations for leaving the EU;
- enable the UK to implement the Basel standards to strengthen the regulation of global banks, in line with previous G20 commitments.

"The government will set out further measures to ensure the UK maintains its world leading regulatory standards and remains open to international markets after we leave the EU in due course."
The government has also announced that it will introduce a Registration of Overseas Entities Bill, which is intended to combat money laundering and achieve greater transparency in the UK property market.

Climate change: Joint PRA and FPC discussion paper on financial implications

On 18 December 2019, the Prudential Regulation Authority (PRA) and the Financial Policy Committee (FPC) jointly published a discussion paper which sets out its proposed framework for the 2021 biennial exploratory scenario (BES) exercise. The aim of the BES is to test the resilience of the current business models of the largest banks and insurers, and the UK financial system, to the physical and transition risks associated with different possible climate scenarios. The exercise will provide a comprehensive assessment of the financial system's exposure to climate-related risks and, therefore, the scale of adjustment that will need to be undertaken in the coming decades for the system to remain resilient.

Responses are invited by 18 March 2020. The final BES framework will be published in the second half of 2020, when the PRA and FPC anticipate launching the BES exercise. The results of the exercise will be published in 2021.

SMCR: extension to FCA solo-regulated firms

The extension of the senior managers and certification regime to 47,000 FCA solo-regulated firms took effect on 9 December 2019. The FCA reminds firms that, by 9 December 2020, solo-regulated firms still need to ensure:

- all relevant staff are trained on the Conduct Rules and how they apply to their roles;
- all staff in certified roles are fit and proper to perform that role and are issued with a certificate; and
- they submit data to the FCA for the directory of key people working in financial services.

This will take time so firms should start preparing now. The FCA has also published various forms and other materials related to the extended regime.

PRA publishes CP30/19 on outsourcing and third party risk management

The PRA published on 5 December 2019, a consultation paper, CP30/19, which sets out its proposals for modernising the regulatory framework on outsourcing and third-party risk management.

The proposals in CP30/19 pursue the following objectives:

- complement the policy proposals on operational resilience in CP29/19 "Operational resilience: impact tolerances for important business services";
- facilitate greater resilience and adoption of the cloud and other new technologies as set out in the Bank of England's response to the Future of Finance report;
- implement the EBA Outsourcing Guidelines. The draft supervisory statement (SS) being consulted on clarifies how the PRA expects banks to approach the EBA Outsourcing Guidelines in the context of its requirements and expectations; and

- take into account the draft EIOPA Guidelines on Outsourcing to Cloud Service Providers and EBA Guidelines on ICT and Security Risk Management.

The consultation closes on 3 April 2020. The PRA proposes to publish its final policy on the proposals in the second half of 2020 with implementation of most the proposals shortly after. However, certain proposals, which derive from the EBA Outsourcing Guidelines or (if adopted in the current form) the draft EIOPA Cloud Guidelines would be subject to longer implementation periods. In particular, those relating to:

- the register of outsourcing arrangements; and
- the revision by:
    - banks of outsourcing arrangements entered into before 30 September 2019; and
    - insurers of cloud outsourcing arrangements entered into before 1 July 2020;

to bring them into compliance with the EBA Outsourcing Guidelines and EIOPA Cloud Guidelines respectively.

Publication of PRA CP29/19 and FCA CP19/32 on operational resilience

On 5 December 2019, the Bank of England (BoE), the PRA and the FCA published a shared policy summary and coordinated consultation papers, PRA CP29/19 and FCA CP19/32, on new requirements to strengthen operational resilience in the financial services sector. The papers follow a previous shared discussion paper.

Building the operational resilience of firms and financial market infrastructures (FMIs) is a shared priority for the three supervisory authorities. The coordinated consultations build on the concepts set out in the discussion paper, taking into consideration the responses the regulators received.

The PRA consultation paper, CP29/19, sets out proposals designed to improve the operational resilience of firms and protect the wider financial sector and UK economy from the impact of operational disruptions.

Under the proposals, firms and FMIs would be expected to:

- identify their important business services that if disrupted could cause harm to consumers or market integrity, threaten the viability of firms or cause instability in the financial system;
- set impact tolerances for each important business service, which quantify their maximum tolerable level of disruption;
- identify and document the people, processes, technology, facilities and information that support their important business services; and
- take actions to be able to remain within their impact tolerances through a range of severe but plausible disruption scenarios.

The PRA proposes that boards and senior management are actively involved in the oversight of the firm's operational resilience work, for example, by approving the important business services identified for their firm and the impact tolerances set for each of their firm's important business services.

In the FCA consultation, the FCA states that its proposals are not intended to conflict with or supersede existing requirements to manage operational risk or business continuity planning, but rather aim to set new requirements that enhance operational resilience. The FCA is not proposing changes to the rules and guidance on outsourcing or third-party service provision.

The consultation period ends on 3 April 2020 with the intention that the proposals are implemented in the second half of 2021.

During 2020, the PRA plans to consider the regulatory reporting requirements for operational resilience, including whether new quantitative information should be submitted by firms and what information should be submitted when operational incidents occur.

ABI updates guide on good practice for unit-linked funds

The Association of British Insurers (ABI) published on 4 December 2019, an updated, fourth edition of its guide to good practice for unit-linked funds. It establishes guidelines that the ABI believes all firms operating unit-linked funds in which their unit-linked policies invest should aspire to follow, taking into account their financial and other circumstances. The FCA supports this initiative.

The ABI consulted with the FCA in developing the guidelines, but the guide does not constitute FCA guidance. In the event of conflict between the guide and the FCA Handbook, the FCA Handbook text prevails.

Potential duty of care in financial services: FCA publishes update

The FCA has updated the webpage on its April 2019 feedback statement on a new duty of care and potential alternative approaches (FS19/2). The webpage now states that the FCA will publish a paper in early 2020 seeking detailed views on specific options for change. The FCA had previously indicated that it planned to publish a further paper on the topic in 2019.

IDD general good requirements: FCA table

The FCA has published on its website a table setting out certain FCA Handbook rules which apply to an incoming firm exercising a passport right under the Insurance Distribution Directive (IDD) and are considered to be "general good" provisions. Publication of national legal provisions protecting the general good is required under Article 11 of the IDD.

On the webpage, the FCA includes guidance on how the table should be used, warning that the notes on the application of the Handbook for incoming EEA firms are not a substitute for the detailed application provisions in the Handbook. Firms should also look at SUP 13A Annex 1, "Application of the Handbook to Incoming EEA Firms", to understand the application of FCA rules. Incoming firms which are undertaking additional activities in the UK under a different sectoral directive passport, or for which the firm would require additional Part 4A permission, may be subject to additional FCA requirements. Firms should look at SUP 13 Annex 1 in relation to the application of the rules to these other activities.

INTERNATIONAL

G-SII identification process: IAIS reports on 2019

On 13 December 2019, the International Association of Insurance Supervisors (IAIS) published a report on the 2019 identification process of global systemically important insurers (G-SIIs).

PEPP Regulation: EIOPA approach to technical advice

The European Insurance and Occupational Pensions Authority (EIOPA) is consulting on proposed approaches and considerations for its technical advice and standards under the Regulation on a pan-European personal pension product (PEPP Regulation).
Among other things, the paper considers:

- PEPP information documents;
- the cost cap for the Basic PEPP;
- risk mitigation techniques; and
- EIOPA's product intervention powers.

The consultation ends on 2 March 2020.

FinTech developments: IAIS speech

On 10 December 2019, the IAIS has published a speech, given by Jonathan Dixon, IAIS Secretary General, giving the IAIS' perspective on Fintech developments, discussing issues, challenges and opportunities.

SOLVENCY II

Long-term guarantees measures and measures on equity risk: EIOPA publishes 2019 report

Required under Solvency II, EIOPA published on 17 December 2019, its annual report for 2019 on long-term guarantee measures and measures on equity risk. The analysis carried out by EIOPA in the annual reports on long-term guarantees measures and measures on equity risk will serve as a basis for an Opinion on the 2020 review of Solvency II.

Similar to previous years' analysis, this year's results show that most of the measures are widely used. 699 (re)insurance undertakings in 22 countries with a European market share of 75% use at least one of the following voluntary measures:

- the matching adjustment;
- the volatility adjustment;
- the transitional measures on the risk-free interest rates;
- the transitional measures on technical provisions; and
- the duration-based equity risk sub-module.

EIOPA report on asset and liability management relating to illiquid liabilities

In response to a request from the European Commission as part of the 2020 review of the Solvency II Directive, EIOPA published on 16 December 22019, a report on insurers' asset and liability management relating to the illiquidity of their liabilities.
The report provides information on:

- insurance liabilities;
- the asset management of insurers;
- long-term guarantee measures, including matching adjustment, volatility adjustment, actual yield and dynamic volatility adjustment; and
- the market valuation of insurance liabilities.

EIOPA will use the information contained in the report to develop technical advice under the 2020 review, which will include consideration of the extent to which the prudential framework acknowledges the treatment of assets that are held against liabilities that are long term and illiquid.

EIOPA consults on draft guidelines on ICT security and governance

On 12 December 2019, EIOPA published a consultation paper on proposed guidelines on information and communication technology (ICT) security and governance. The draft guidelines provide guidance to NCAs and firms on how requirements on operational risk set out in the Solvency II Directive, the Solvency II Delegated Regulation and EIOPA's guidelines on system of governance are applied in the case of ICT security and governance.
EIOPA's guidelines cover the following areas:

- governance and risk management;
- ICT operations security; and
- ICT operations management.

The consultation ends on 13 March 2020. EIOPA will consider any feedback received and will then publish a final report and submit the finalised guidelines to its Board of Supervisors for adoption. The draft guidelines state that they will apply from 1 July 2020.

EIOPA annual report on use of capital add-ons by NCAs

EIOPA has published its annual report on the use, during 2018, by NCAs of capital add-ons under the Solvency II Directive.

The objective of the capital add-on measure is ensure that the regulatory capital requirements reflect the risk profile of the undertaking or of the group. Therefore, EIOPA explains, it is important that it is used by NCAs when needed and it is also important to ensure a high degree of supervisory convergence regarding its use.

During 2018, eight NCAs set capital add-ons to 21 solo undertakings, out of 2819 (re)insurance undertakings. These include 10 non-life undertakings, eight life undertakings, two reinsurers and one composite undertaking. This compares with 2017, when six NCAs set capital add-ons for a total of 23 solo undertakings. This means that, although the number of capital add-ons is extremely low and decreased slightly from 2017 to 2018, two more NCAs made use of this tool in 2018. The report includes further analysis.

Commission Implementing Regulations on reporting and disclosure requirements

On 10 December 2019, the following Regulations were published in the OJ:

- Commission Implementing Regulation (EU) 2019/2102, which amends Implementing Regulation (EU) 2015/2452 with regard to the disclosure of information used in calculating the adjustment for the loss-absorbing capacity of deferred taxes in accordance with Article 56 of the Solvency II Directive. It enters into force on 30 December 2019 and applies from 1 January 2020; and
- Commission Implementing Regulation (EU) 2019/2103, which amends and corrects Implementing Regulation (EU) 2015/2450 laying down implementing technical standards (ITS) with regard to templates for the submission of information to supervisors in accordance with Articles 35(10) and 244(6)(3) of the Solvency II Directive. It enters into force on 30 December 2019.

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