

UK and European Insurance Regulatory Developments, Q1 2018

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In this client update we highlight some recent insurance regulatory developments, including recent fintech and insurtech developments.

The PRAs Response to the Treasury Committee's Inquiry into Solvency II

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& Plimpton**

On 27 February 2018, the Prudential Regulation Authority (the "PRA") published its [final response](#) to the House of Commons Treasury Select Committee's (the "Committee") [report](#) on the findings from an inquiry into Solvency II and its impact on the UK insurance market.

The PRA responded to the specific policy recommendations and issues that were raised during the Committee's inquiry. In particular, the PRA stated that it is reviewing its approach to a "dynamic" volatility adjustment discussed in the Committee's recommendations and the implementation of surplus fund rules. Against a backdrop of Brexit negotiations and regulatory alignment, the PRA is likely to feel constrained from deviating from European-wide policies.

The PRA is considering reviewing the proportionality of its policy of requiring an external audit of the solvency and financial condition report and may consult on any proposals in the first half of 2018.

The PRA plans to provide a further update in due course.

Brexit Developments

On 5 February 2018, Andrew Bailey, Chief Executive of the Financial Conduct Authority (the "FCA"), gave a [speech](#) at the 'Future of the City' dinner. Among the various issues that Mr. Bailey raised, the following were of particular interest to the insurance industry:

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- **Contract continuity:** contracts between UK and EU parties could cease to be serviceable where the services provided are regulated and require authorisation or use of a 'passport'.
 - **Data:** approximately three-quarters of cross-border data flows involving the UK are with EU Member States. If the UK did leave the EU without regulatory arrangements in place, holding and sharing such data may breach national law.
 - **Trade arrangements:** the European Commission (the "Commission") proposed a provision for financial services in the Transatlantic Trade and Investment Partnership. This kind of provision could be included in a trade agreement between the EU and the UK without the loss of regulatory autonomy.

In addition, on 28 March 2018, the FCA published a [statement](#) confirming that, in light of the UK Government's agreement with the European Union on a Brexit implementation period, firms with an EU passport would not need to apply for authorisation into the UK at this stage. UK firms passporting into the EEA should discuss contingency planning with their relevant regulator. For further information on the Brexit withdrawal agreement see this [update](#).

Fintech/Insurtech Developments

On 15 March 2018, the Joint Committee of the European Supervisory Authorities ("ESAs") published its [final report](#) on the use of big data by financial institutions, which recommended the following good practices:

- **Robust big data processes:** periodic monitoring of the functioning of big data procedures and methodologies.
- **Consumer protection:** periodic assessment as to whether big data products are aligned with consumers' interests, adherence with the General Data Protection Regulation and maintaining a balance between automated decision-making tools and human interventions.
- **Disclosure:** transparency on the use of big data and contributing to the promotion of public awareness on the use of big data.

On 15 February 2018, the International Association of Insurance Supervisors ("IAIS") published a draft application [paper](#) (29 January 2018) on the use of digital technology in inclusive insurance. This paper describes how digital technology is used and sets out the

implications of such use for business models, regulators and supervisors, as well as guidance on designing and implementing regulations and supervisory practices.

The Commission published a [fintech action plan](#) on 8 March 2018, which contains measures to encourage fintech and ensure the integrity of the EU financial system.

European Commission Report on Supervision of Group Insurance and Reinsurance Undertakings

On 5 April 2018, the Commission published a [report](#) on the supervision of group insurance and reinsurance undertakings. This acknowledged the difficulties in defining a group (particularly in relation to non-EEA structures) and the scope of any supervision.

Under Solvency II, individual insurance and reinsurance undertakings may use group internal models for solvency capital requirement (“SCR”) calculations, subject to supervisory approval. However, the report notes that the European Insurance and Occupational Pensions Authority (“EIOPA”) does not generally receive the application materials for such approval, which EIOPA believes has hampered its ability to promote convergence. The Commission noted that action has already been taken on this issue given the urgency of the matter.

Council of EU Delays Adoption of the Insurance Distribution Directive

On 9 March 2018, the Council of the EU [delayed](#) the application of the Insurance [Distribution Directive](#), which aims to improve consumer protections for insurance products, to 1 October 2018. The deadline for Member States to transpose the new rules into national law was extended to 1 July 2018.

Extension of the Senior Managers and Certification Regime

On 29 January 2018, the Treasury [announced](#) that from 10 December 2018 the senior managers and certification regime (“SM&CR”) will apply to insurers, reinsurers and managing agents. The full SM&CR will apply to Solvency II insurers and insurers outside the scope of Solvency II with an asset value of at least £25 million.

The biggest change is that a firm’s staff, except those performing administrative duties, will be directly accountable to the regulators for their conduct. From 10 December 2019,

insurers will have to assess annually the fitness and propriety of each individual performing certification functions.

The FCA and PRA launched consultations in July 2017. Both released further consultation papers that proposed transitional arrangements and timelines for implementing the new regime. The FCA and PRA are expected to publish their respective policy statements and final rules this summer.

The PRA's 2018/19 Business Plan

On 9 April 2018, the PRA published its 2018/19 [business plan](#), which sets out its strategy and budget for 2018/19.

A key goal is to have in place robust prudential standards to make up the UK regulatory regime. The PRA intends to consult on various Solvency II issues and launched a [consultation](#) (CP9/18) on the modelling of volatility adjustments, in particular asking for comments on allowing firms to apply a dynamic volatility adjustment when calculating their SCR. Comments can be made on the consultation until 11 July 2018.

Another key goal is to ensure that firms are adequately capitalised for the risks that they are running or planning to take; the PRA will continue to be involved in the development of the Insurance Capital Standard by the IAIS.

Lastly, the business plan indicates that the PRA intends to ensure that insurers have credible plans to recover from stress events and that the PRA has a resolution strategy to manage a firm's failure, proportionate to its size and systemic importance.

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Please do not hesitate to contact us with any questions.

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