

Horizon scanner

Insurance update



RISK RATING

Potential impact



Development

Insurance Linked Securities

The FCA previously published two consultation papers (CPs) proposing changes to its rules and setting out its authorisation and supervisory approach in relation to insurance special purpose vehicles (ISPVs). The Policy Statement (PS) published by the FCA on 20 November 2017 sets out:

- its response to the feedback received to CP16/343 and a near-final 'FCA Statement – authorising and supervising insurance special purpose vehicles' (see Chapter 2)
- its response to the feedback received to CP17/34 and the near-final rules that incorporate the new regulated activity of insurance risk transformation into the FCA Handbook (see Chapter 3)

The Risk Transformation Regulations 2017 (RTR) have now come into force, so the FCA have finalised its rules.

Insurance Distribution Directive

The directive amends and replaces the Insurance Mediation Directive (IMD) and seeks to regulate the way insurance products are sold, as well as setting out the information that should be given to consumers before they buy an insurance contract. The directive also imposes certain conduct of business and transparency rules on distributors and unlike the IMD extends to insurance and reinsurance undertakings. The directive further seeks to clarify the rules and procedures for cross-border business, and contains rules for the supervision and sanctioning of insurance distributors to the extent they breach the terms of the directive.

In doing so it aims to enhance consumer protection when buying insurance (including general insurance, life insurance and insurance-based investment products) and to support competition between insurance distributors by creating a level playing field.

What's next

Given the RTR have now come into force and the FCA have published its final rules, Insurers seeking to use Insurance Special Purpose Vehicles (ISPVs) as part of their risk mitigation strategy should ensure consider both as they now need to be complied with.

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Impact date

13 December 2017

1 October 2018



Short term impact



Medium term impact



Long term impact



Development	What's next	Impact date
<p>Insurance Distribution Directive - Policy Statement 18/1</p> <p>The FCA has published a Policy Statement which responds to feedback the FCA received to the IDD Consultation Papers and outlines near final rules to comply with the IDD. The FCA has stated these are unlikely to change.</p> <p>The PS summarises:</p> <ul style="list-style-type: none"> – the approach to IDD delegated acts – changes to requirements related to the distribution of insurance-based investment products (IBIPs) and wider life insurance business – changes to rules to implement requirements in the IDD that apply to life and non-investment insurance business – additional changes to the FCA Handbook – feedback to previous consultations 	<p>Insurers need to ensure they comply with the near final rules covered by this policy statement and those set out in PS17/21 and PS17/27 by 01 October 2018.</p> <p>The FCA has stated the near final rules are unlikely to change. The FCA intends to publish final rules once the Treasury's legislation detailing how the IDD will be transposed into UK law is in force</p>	<p>1 October 2018</p>
<p>IPID Implementing Regulation</p> <p>The European Commission has adopted an implementing regulation relating to the proposed Insurance Product Information Document, which will be introduced under the IDD.</p> <p>This sets out a standard presentation format for the insurance product information document (IPID), which must be provided to customers under the IDD.</p>	<p>FCA Policy Statements PS17/27 and PS18/1 incorporate the requirements of this regulation. Insurers should ensure that effective processes are in place to ensure compliance with the regulation ahead of the IDD implementation deadline, which has been pushed back to 01 October 2018.</p>	<p>1 October 2018</p>
<p>PoG Implementing Regulation</p> <p>The EU Commission has adopted an implementing regulation relating to the proposed product oversight and governance requirements for insurance undertakings and insurance distributors.</p> <p>On 21 September 2017, the EU Commission adopted an implementing regulation (c(2017)6218 final) which sets out requirements mainly addressed to manufacturers of insurance products which will require them to maintain, operate and review a product oversight and governance policy to ensure that all products marketed are appropriate for their target market at all times. Insurance distributors must ensure they have all the information needed to sell the product in line with the manufactured product oversight and governance policy set out by the manufacturer.</p>	<p>FCA Policy Statements PS17/27 and PS18/1 incorporate the requirements of this regulation. Insurers should ensure effective processes are in place to ensure compliance with the regulations ahead of the IDD implementation date, now expected to be 1 October 2018 and ensure that distribution arrangements are clear regarding who the manufacturer is and who has the primary compliance responsibility.</p>	<p>1 October 2018</p>



Short term impact



Medium term impact



Long term impact



Development

FCA seeks to widen access to the Financial Ombudsman Service (FOS) for small businesses

The FCA has published CP18/3 setting out its proposals to widen access to FOS for SMEs by changing the definition of eligible complainant to include small businesses and allowing guarantors of corporate loans to refer complaints to FOS. Small businesses will be defined by reference to 3 specific criteria. The changes to the compulsory jurisdiction will also apply to the voluntary jurisdiction to minimise confusion and increase access for SMEs whose complaints fall outside the compulsory jurisdiction. Disputes above the proposed eligibility threshold, those involving dissolved business or businesses subject to insolvency proceedings and disputes where redress sought would exceed the Ombudsman's binding award limit of £150,000, will remain outside of the scope of the consultation.

FCA Market Study into Wholesale Insurance Brokers

On November 8, 2017, the UK Financial Conduct Authority (FCA) launched a market study to assess how competition is working in the wholesale insurance broker sector, and to assess how brokers influence competition in the underwriting sector. The FCA has stated that the purpose of the study is to "ensure that the sector is working well, and fosters innovation and competition in the interests of its diverse range of clients." The FCA believes that effective competition contributes to ensuring London remains an international centre for insurance.

The Terms of Reference of the FCA's market study describe the wholesale insurance sector as one which caters to large, complex or specialist risks that usually require an element of bespoke pricing and coverage, and risks that are often placed with Lloyd's syndicates and London insurance market companies. The study will address three main topics (and cover both direct insurance and reinsurance):

1. Market power – do individual broker firms possess market power and if so is this harming competition?
2. Conflicts of interest – what conflicts exist in the sector and what is their effect on competition and firm conduct?
3. Broker conduct – to what extent does this affect competition in the broker sector? Could some actions risk excluding firms from the underwriting sector?

What's next

Responses are due by 22 April 2018 with a policy statement expected to be published in the Summer of 2018. Insurers should consider the impact this would have on their business and monitor the progress of the consultation.

Responses to the issues covered by the study were to be provided by January 19, 2018, and it is anticipated that an interim report will be published in Autumn 2018. This interim report is likely to include preliminary conclusions and may identify potential solutions to address concerns raised which could include enforcement actions or a referral to the UK Competition and Markets Authority.

This study, coupled with the European Commission's recent investigation into the aviation insurance industry, reflects the increased focus and scrutiny being placed on the insurance broker sector.

Impact date

1 December 18

Q3 2018



Short term impact



Medium term impact



Long term impact



Development

Insurers start moving towards the SMCR: latest developments PS1/18

The PRA has published a policy statement PS1/18 (February 2018) providing feedback to consultation issued in June 2017 on proposed amendments to the senior insurance managers regime (SIMR) and a proposal to strengthen governance through requiring insurers to take steps to encourage board diversity.

The aim behind the amendments is to bring the SIMR more closely into line with the senior managers regime as the PRA moves to a more integrated regime.

The SIMR originally put in place a streamlined version of the senior managers and certification regime (SMCR) but it had always been the intention to amend that regime to incorporate the other aspects of the SMCR that had not previously been included. There has been separate consultation on extending the SMCR regime to insurers.

PS1/18 statement is an initial step in this process pending final PRA/FCA policy statements in summer 2018.

What's next

The consultation closed on 21 February 2018 and the regulators' policy statements and final rules are expected to be published in the Summer of 2018. Insurers should continue to monitor the position, pending the publication of the final rules in Summer 2018. The extended regime will apply from 10 December 2018

Impact date

10 December 2018



Short term impact



Medium term impact



Long term impact



Development

What's next

Impact date

US-EU Covered Agreement

On January 13, 2017, the then-US Secretary of the Treasury and the then-US Trade Representative (USTR) notified Congress that they had negotiated a covered agreement with the European Union (EU). After a period of uncertainty during which it was unclear whether the incoming Trump Administration would accept the Covered Agreement as negotiated by the outgoing Obama Administration, the US Department of Treasury and USTR announced on July 14, 2017, their intent to sign the Covered Agreement, which occurred on September 22, 2017. Upon signing the Covered Agreement, the US Treasury and USTR also issued a joint policy statement on its implementation clarifying the United States' position on the interpretation of certain provisions of the agreement.

Broadly, the Covered Agreement:

1. Eliminates local US/EU requirements for reinsurers to post collateral or have a local presence (either as a requirement for the reinsurance placement or as a condition for receiving financial statement credit for the reinsurance)
2. Clarifies that an insurance or reinsurance group will be subjected to worldwide group supervision only in its "home" jurisdiction, and not in other jurisdictions where it operates
3. Sets forth practices to be encouraged for cooperation in the exchange of information among EU and US regulators

There are important conditions attached to these provisions that have practical implications for when they take effect and what insurers and reinsurers must do.

The Covered Agreement provides that it will "enter into force seven days after the date the Parties exchange written notifications certifying that they have completed their respective internal requirements and procedures, or on such other date as the Parties may agree."

With regard to the EU, the internal requirements and procedures require approval of the Covered Agreement by the European Council and the European Parliament. The European Council approved the Covered Agreement for signature on May 29, 2017. On 1 March 2018, the European Parliament gave its consent to conclusion of the agreement.

It is now for the Council to formally conclude the agreement.

The EU is required to begin applying the elimination of local presence requirements within 24 months once the agreement has taken effect or the parties have notified one another that their internal requirements and procedures for provisional application have been completed.

Q2 2020



Short term impact



Medium term impact



Long term impact



Development	What's next	Impact date
<p>The Automated and Electric Vehicles Bill</p> <p>The Automated and Electric Vehicles Bill was published on 18 October 2017. The Bill advocates a single insurer model, whereby the same insurance policy would cover accidents caused by the driver's operation of a vehicle and the automated operation of the vehicle. This model is designed to avoid confusion on the part of the victim over who it should pursue for its losses, bearing in mind that there are arguments in favour of imposing liability on the manufacturer, owner and even highway authority depending on the circumstances.</p>	<p>The Bill has now passed through the House of Commons and is currently at committee stage before the House of Lords, which has yet to be scheduled. Insurers should continue to monitor the progress of the Bill.</p>	<p>Estimate Q4 2018</p>
<p>Civil Liability Bill</p> <p>The Civil Liability Bill will introduce two major changes to the personal injury compensation system in England and Wales; the proposals for the changes to the discount rate; and the proposed changes to the system for the compensation of whiplash injuries, including the introduction of a tariff scheme.</p> <p>Under the Bill, seeking or offering to settle whiplash claims without medical evidence will also be banned.</p>	<p>The Bill was introduced to the House of Lords on 20 March 2018. The second reading (the general debate on all aspects of the bill) is scheduled for 24 April 2018. Insurers should continue to monitor the progress of the bill over the coming months.</p>	<p>Expected to come into force in April 2019</p>



Short term impact



Medium term impact



Long term impact



Contacts



Simon Brooks
Partner

T: +44 20 7919 4583
simonbrooks@eversheds-sutherland.com



Tomás Mac Gearailt
Associate

T: +44 20 7919 0754
tomasmacgearailt@eversheds-sutherland.com



Kerry Boyle
Senior Legal Consultant

T: +44 161 831 8590
kerryboyle@eversheds-sutherland.com

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