

INSURANCE BULLETIN



Welcome to HFW's Insurance Bulletin, which is a summary of the key insurance and reinsurance regulatory announcements, market developments, court cases and legislative changes of the week.

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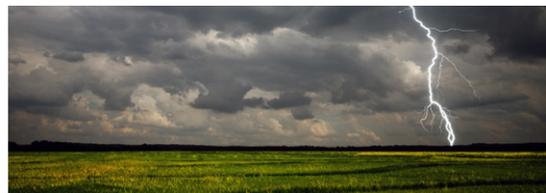
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hfw 1. Regulation and legislation

UK: PRA publishes first Annual Competition Report

The PRA has published its first Annual Competition Report. The report explains how the PRA has interpreted the competition objective which it was given following the split of the FSA into the PRA and the FCA in April 2013. This was the first time that the UK prudential regulator of banks and insurers had been given a competition objective, so it is interesting to see how the PRA has dealt with this responsibility.

The report states how the competition objective, which is the secondary objective of the PRA, relates to the PRA's primary objectives of promoting the safety and soundness of PRA-authorized persons and insurance policyholder protection. The report also explains the steps which the PRA has taken to implement the competition objective and to embed this into PRA policy and the PRA's supervisory decision-making. It is worth noting that, as the PRA's competition objective is a secondary objective, the PRA is not seeking to supervise competition at the level of individual firms. Instead, the PRA's competition objective is limited to assessing how the PRA's general policies impact competition in the market.

The second half of the report contains examples of how the PRA is delivering against its competition objective and thereby facilitating effective competition in the sectors which it regulates. The examples include the PRA's work in facilitating market entry, applying the principle of 'proportionality' internationally and domestically, considering competition issues in structural reform, implementing

macroprudential policy, and the PRA's review on internal ratings based models.

The foreword to the report by Andrew Bailey, Deputy Governor, Prudential Regulation and Chief Executive of the PRA, states that the competition objective is "a welcome complement to the PRA's primary objectives [and] has played an important role in influencing [the PRA's] work...and will continue to do so." It will be interesting to see whether the PRA's approach to competition changes over time, as it gains more experience and confidence in analysing competition issues.

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Europe: EIOPA opens consultation on draft technical advice to European Commission on IDD delegated acts

On 4 July 2016, the European Insurance and Occupational Pensions Authority (EIOPA) published its consultation paper (CP) on technical advice on possible delegated acts concerning The Insurance Distribution Directive (IDD)¹. Comments are requested by 3 October 2016.

Under the IDD, which must be implemented by Member States from 23 February 2018, EIOPA is responsible for preparing draft regulatory and implementing technical standards.

The CP deals with technical advice on the following areas:

- Product oversight and governance.
- Conflicts of interest.
- Inducements.
- Assessment of suitability and appropriateness and reporting.

Product oversight and governance

Article 25 of the IDD requires manufacturers of any insurance product for customers to maintain, operate and review their product approval process for each product.

Product oversight and governance requirements are seen as having a key role in enhancing consumer protection and reducing the potential for mis-selling.

Technical advice on a delegated act on this element will be based on EIOPA's Preparatory Guidelines² on product oversight and governance as well any new policy proposals developed by EIOPA.

Conflicts of interest

In respect of conflicts of interest, the IDD imposes new requirements for sellers of insurance products³. EIOPA's draft technical advice will look at a seller's organisational and administrative arrangements concerning conflicts of interests. These arrangements are expected to be designed to identify, prevent, manage and disclose conflicts of interest that arise in the course of carrying out any insurance distribution activities.

1 https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-16-006_Consultation_Paper_on_IDD_delegated_acts.pdf

2 <https://eiopa.europa.eu/Pages/Guidelines/Preparatory-Guidelines-on-product-oversight-and-governance-arrangements-by-insurance-undertakings-and-insurance-distributor.aspx>

3 Articles 27 and 28 of Directive (EU) 2016/97



Inducements

The term “inducement” is not explicitly defined in the IDD, although clarification is given by reference to payment of any fee or commission (including non-monetary benefits) in connection with the distribution of an insurance based investment product (IBIP) or an ancillary service to or by any third party⁴.

EIOPA's approach is expected to specify the criteria for assessing whether inducements paid or received by an insurance firm or intermediary have a detrimental impact on the quality of the service to the customer.

Assessment of suitability and appropriateness and reporting

In relation to advice on IBIPs, Article 30 of the IDD requires firms and intermediaries to ensure advice to the customer is suitable for that customer, taking into account their risk tolerance and ability to bear losses.

EIOPA's draft technical advice sets out a criteria for determining if a personal recommendation has been given on a reasonable basis. For example, assessment on whether the customer has the necessary knowledge and experience in the investment field connected to the specific type of product or service will have to be made by insurance distributors.

After the consultation closes on 3 October, the draft technical advice is expected to be submitted to the European Commission by 1 February 2017.

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hfw 2. Market developments

China: Three insurance mutuals approved

The Chinese insurance regulator has, for the first time, approved the establishment of three mutual insurance associations: Zhonghui Property Mutual; Huiyou Construction Property Mutual; and Xinmei Life Mutual.

The establishment of mutual insurers was only permitted following the Chinese government's introduction of new regulations in February 2015. The minimum start-up capital requirements for mutual insurance company licences are determined by the type of mutual.

For general mutual insurers, the minimum capital is CNY100million (approximately US\$15 million), with a minimum of 500 members. For professional and regional mutual insurers, the minimum capital and minimum number of members is CNY10million (approximately US\$1.5 million) and 100 respectively.

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hfw 3. HFW publications and events

HFW Partner Richard Neylon and Associate Will Reddie present at BMS's annual BankServe seminar

On Wednesday 6 July, HFW Partner Richard Neylon and Associate Will Reddie presented at BMS's annual BankServe seminar in London, which was attended by BMS clients from around Europe. Richard spoke about the legal and practical aspects of responding to hijacking and kidnapping incidents off the East and West coasts of Africa. Will discussed the Insurance Act 2015 and the changes it will make to the current law when it comes into force in August.

HFW Partner Pierre-Olivier Leblanc attends Annual Congress for Administrative and Financial Directors and Legal Directors

On Thursday 7 July, HFW Partner Pierre-Olivier Leblanc attended the Annual Congress for Administrative and Financial Directors and Legal Directors in Paris. Recent reform of French contract law, and proposed reform of professional secrecy for French in-house lawyers were discussed. (French Courts do not regard communications between in-house lawyers and officers and directors of a company as protected by professional secrecy, even when obtaining legal opinions.)

Preparing for Brexit: seven things that (re)insurance businesses can do now

June's vote to leave the EU has set the UK on course for Brexit. It is not yet known exactly when the final exit will take place (although

4 Article 29(2) of the Directive (EU) 2016/97



two years' notice is required) and it is far from clear which EU treaties and legislation will continue to apply in the UK or the extent to which UK businesses will be able to continue operating in the EU.

Despite this uncertainty, businesses operating in the insurance sector would be wise to start making plans now. Here we look at seven factors to consider in advance of the UK's formal withdrawal becoming effective.

To read the briefing in full please visit: <http://www.hfw.com/Preparing-for-Brexit-seven-things-that-re-insurance-businesses-can-do-now-July-2016>

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