

HMT PUBLISHES SOLVENCY II SI GUIDANCE

On 9th October 2018 HM Treasury ("HMT") published [guidance on the amendments to be made by the Solvency II and Insurance \(Amendments\) \(EU Exit\) Regulations 2018](#) (the "**Solvency II SI**") to retained EU law relating to the implementation of the Solvency II legislation in the UK. The Solvency II SI will be made under powers granted under the EU (Withdrawal) Act.

The Solvency II SI aims to ensure that the UK's Solvency II regime continues to operate effectively once the UK is outside of the EU by recognising that certain changes to UK legislation will be necessary. These are explained in the guidance. The majority of the changes made in the Solvency II SI will not take effect on 29 March 2019 if the UK enters an implementation period.

It is noteworthy that HMT did not publish the Solvency II SI itself. This is probably because legal and policy implications are not easily determined without a detailed assessment of the Solvency II SI, which is a lengthy piece of legislation.

A summary of the key points in the guidance:

- **Regulation of Cross-Border EEA Groups:** The UK Solvency II regime will be amended so that EU27 countries will be treated as third countries. This means that EEA groups with UK insurance subsidiaries will also be subject to group supervision by the PRA (in the absence of any equivalence assessments) as well as group supervision by an EU supervisor for EEA entities i.e. two group supervisors applying Solvency II group requirements to each group they are responsible for.
- **Equivalence:** When the UK leaves the EU, the UK will no longer fall under the jurisdiction of the European Commission. HMT will take on the European Commission's function of making equivalence decisions for third country regimes, while the PRA will take on the role that EIOPA currently has for providing technical assessments of third country regimes. Where the Commission has already taken equivalence decisions for third countries, these will be incorporated into UK law by the EU (Withdrawal) Act however there is no assurance that future Commission equivalence decisions will be adopted in full by HMT, as the PRA may not reach the same view as EIOPA. For impacted groups, this means consideration and compliance with two sets of equivalence decisions (i.e. one EU and one UK) after Brexit.
- **Risk weights for EU assets:** Solvency II provides preferential risk-charges for certain assets and exposures that originate from within the EEA. Once the UK has left the EU, UK exposures will not be classified as EEA exposures and it is assumed they will become subject to the general third country requirements rather than the preferential treatment for EEA exposures. Similarly, the UK's domesticated versions of EU regulation will require the UK to treat EEA exposures as exposures from any other country, thus removing any preferential risk-charges for those exposures. This approach will undoubtedly impact on the current and future investment strategy of some firms.
- **Transfer of functions:** To ensure that the UK's standalone Solvency II regime will work effectively, certain key functions (for example, EIOPA's function to produce technical information on the 'risk free rate' and correlation parameters and EIOPA's responsibility for declaring an 'exceptional adverse situation') will need to be transferred to appropriate UK bodies. There is therefore a risk post-Brexit that the EU and UK bodies may reach a different view when determining a key function.

- **Information sharing and cooperation:** Obligations under Solvency II to cooperate and share information with EEA authorities will be removed from UK legislation. Instead, UK authorities will be required to comply with the existing domestic framework provisions for cooperation and information sharing with regulators in other countries. This means that the UK will rely on MoUs and FSMA information sharing requirements to maintain supervisory cooperation with EU and EEA authorities.
- **Binding Technical Standards:** Under the EU system of financial regulation, the Commission is responsible for developing legislation, except for Binding Technical Standards (BTS) which are developed and drafted by the EU Supervisory Agencies (ESAs). Across financial services regulation, the HMT is transferring responsibility for all BTS to UK regulators. As the majority of Solvency II BTS have already been adopted, we do not expect any immediate difficulties with this approach.
- **Relevant Rulebook and BTS changes:** The PRA will update its Rulebook and Solvency II BTS to reflect the changes introduced through the Solvency II SI, and to address any deficiencies as a result of the UK leaving the EU. The PRA has confirmed its intention to consult on these changes in the Autumn.

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