

The Insurance Legal Risk Horizon Spotter

Our Horizon Spotter outlines the key legal and regulatory developments (as at 31 December 2021) which could have a significant impact on insurance businesses in the next few years.

You can contact your usual Hogan Lovells contact about any of these developments or the Hogan Lovells contacts listed below. We are happy to work with you to discuss the possible actions you could take to deal with any issues or opportunities these developments present and/or provide training to you and your team.

UK Topics	Next steps	Hogan Lovells Contact
Duty of care/ Consumer Duty (UK)		
<p>Since 2018, the FCA has been considering the introduction of a new duty of care (i.e. a duty on firms to exercise skill and care in the provision of financial services to customers). In May 2021, the FCA published a consultation paper with proposals for a new Consumer Duty (CP21/13). This has been followed up by CP21/36 – A new Consumer Duty – which contains feedback to CP21/13 and further consultation. Firms will need to consider the new requirements and rules in the context of their own business operations and put in place plans for the implementation of the rules. For details and analysis see our series of articles on Engage.</p>	<p>The consultation closes on 15 February 2022. The FCA plans to publish a policy statement with final rules by 31 July 2022. There will be an implementation period of 9 months until 30 April 2023.</p>	<p>Lydia Savill Counsel, London +44 (0) 20 7296 5931 lydia.savill@hoganlovells.com</p>
Operational Resilience (UK)		
<p>Following an extended consultation period in response to the COVID-19 pandemic, in March 2021 the PRA, FCA and Bank of England published their final rules and guidance on operational resilience.</p>	<p>Insurers have until 31 March 2022 to implement the new requirements. These include mapping important business services and setting impact tolerances for these and initiating a programme of scenario testing.</p>	<p>Clare Douglas Counsel, London +44 (0) 20 7296 5954 clare.douglas@hoganlovells.com</p>

<p><u>Operational Resilience Incident Reporting</u> The PRA will consult in H1 2022 on policy proposals to set out what information should be submitted by insurers when operational incidents occur.</p> <p><u>Outsourcing and third party risk management</u> The PRA will consult on proposals for an online portal to contain information on firms' outsourcing and third party arrangements.</p> <p>The updated rules on the supervision of outsourcing, taking into account the adoption of the cloud and other technologies, will come into effect on 31 March 2022.</p>	<p>Firms will then have until 31 March 2025 to demonstrate that they can keep within their impact tolerances for each important business service.</p> <p>The consultation paper is planned for H1 2022.</p>	
Financial Resilience (UK)		
<p>Insurance stress test 2022 ("IST") The PRA's Dear CEO letter of 4 August 2021 sets out the scope and time frame for the IST. For life insurers the test will primarily focus on economic stresses. For general insurers the IST will focus on natural catastrophe perils and cyber underwriting risk. The PRA will publish aggregate results to enable the PRA and other stakeholders to assess the resilience of the sector to systemic shocks. The IST exercise will also help the PRA identify any changes needed to their approach to testing in light of the Solvency II review.</p>	<p>The IST will be launched in mid-May 2022, Firm submissions will be due by mid-September 2022 and feedback to industry is due in December 2022.</p>	<p>Kirsten Barber Senior Knowledge Lawyer, London +44 (0) 20 7296 2775 kirsten.barber@hoganlovells.com</p>

<p>Recovery and resolution</p> <p>HM Treasury are proposing to announce the introduction of a resolution regime for insurers aligned with internationally agreed standards and best practice. The PRA are working with HMT on the proposals. The European Commission has published its proposals for a new Directive on recovery and resolution for insurers (see below).</p> <p>On 20 May 2021, HM Treasury published a consultation paper on amendments to the insolvency arrangements for insurers. The proposals are to enable the UK authorities better manage insurer distress in an orderly manner.</p>	<p>Further details will be announced ‘in due course’.</p> <p>The consultation closed on 13 August 2021 and HM Treasury’s response is awaited.</p>	
<p>Climate change/ESG/sustainability (UK)</p>		
<p>PRA</p> <p>In April 2021, the PRA published a supervisory statement (SS3/19) on enhancing firms’ approaches to managing climate-related financial risks. A Dear CEO letter published in July 2020 built on the PRA’s expectations in SS3/19 and set out steps for implementation. This was highlighted by the PRA as a priority in 2021 (Dear CEO letter – December 2020).</p> <p>2021 Climate Biennial Exploratory Scenario ("CBES")</p> <p>The exercise was carried out in June 2021 to test the resilience of current business models of the largest insurers, banks and the financial system to climate change risks.</p> <p>FCA</p> <p>On 17 December 2021, the FCA published its policy statement (PS21/24) on enhancing climate-related disclosures by asset managers, life insurers and FCA regulated pension providers. This sets out final rules</p>	<p>By the end of 2021, firms were expected to have fully embedded their approaches to managing climate-related financial risks and be able to demonstrate that the PRA’s expectations have been implemented.</p> <p>The results will be published in May 2022. In January 2022, the Bank of England will announce a decision on running a second round of the exercise to explore interactions between banks and insurers.</p> <p>Implementation will be phased: The new rules will apply from 1 January 2022 for large asset managers and owners, who will be required to report by 30 June 2023. Effective from 1 January 2023 for all other in-</p>	<p>Jonathan Russell Partner, London +44 (0) 20 7296 5812 Jonathan.russell@hoganlovells.com</p> <p>Lydia Savill Counsel, London +44 (0) 20 7296 5931 lydia.savill@hoganlovells.com</p>

<p>for the climate-related financial disclosure regime which will be contained in the new ESG sourcebook. The new rules and guidance on a firm’s approach to environmental, social and governance matters include a requirement on firms to provide an annual compliance report at both entity and product level.</p> <p>In November 2021, the FCA published ‘A strategy for positive change: our ESG priorities’ which sets out its ESG strategy and key actions during 2022 to support the financial services industry transition to a net zero economy and support HM Treasury and the PRA.</p>	<p>scope asset managers and owners who must report by 30 June 2024.</p> <p>Key actions include:</p> <ul style="list-style-type: none"> • In Q2 2022, the FCA will begin stakeholder engagement to develop a policy approach to ESG governance, remuneration, incentives and training/certification in regulated firms. • Following the receipt of feedback on its discussion paper on sustainability disclosure requirements and investment product labels (DP21/4) the FCA will publish a consultation paper in Q2 2022. • Building on the Government’s announcement that it will require financial institutions to publish transition plans setting out how they will decarbonise, the FCA will engage with stakeholders in H2 2022 to help promote well-designed, well-governed, credible and effective transition plans. • Together with the PRA, the FCA has engaged with stakeholders in a discussion about diversity and inclusion in the financial services sector (DP21/2). A consultation paper is due in H1 2022 and a policy statement is due in H2 2022. 	
<p>General insurance pricing practices ("GIPP") (UK)</p>		
<p>The FCA published its final report on its market study on GIPP in September 2020 (see our article on Engage for details) together with a consultation paper</p>	<p>The rules on pricing, auto-renewal and reporting came into effect on 1 January 2022. A transitional provision for the rules on pricing and auto-renewal disclosure</p>	<p>Clare Douglas Counsel, London +44 (0) 20 7296 5954</p>

<p>(CP20/19). The FCA's proposals aim to improve competition and deliver fair value to customers. In May 2021, the FCA published a policy statement on Handbook changes (PS21/5). Another policy statement was published in August 2021 (PS21/11) with certain revisions and clarifications. The new measures will have a significant impact on insurers' business models.</p>	<p>will give firms until 17 January for implementation, subject to benefits being backdated to 1 January. The rules on systems and controls (SYSC), retail premium finance rules (ICOB 6A.5) and product governance came into effect on 1 October 2021. The FCA will use firms' reporting data to monitor the progress of implementation, track market changes and identify firms that continue to engage in price walking. In January 2022, the FCA intends to send out a survey to all general insurance and premium finance providers to enable firms to provide their first annual attestation. Firms subject to the rules must provide their attestation by 31 March 2022.</p>	<p>clare.douglas@hoganlovells.com</p>
<p>Appointed Representatives Regime (UK)</p>		
<p>On 3 December 2021, the FCA published a consultation paper on improving the Appointed Representatives (ARs) regime (CP21/34). The FSA's proposals focus on new requirements for principals to provide additional and more timely information on ARs and how they are overseen and to clarify and strengthen the responsibilities and expectations of principals.</p> <p>In collaboration with the FCA, HM Treasury published on the same day a Call for Evidence on the AR regime. This is a wide ranging information gathering exercise to inform the government about the current scope and operation of the regime and potential for future reform.</p>	<p>The consultations closes on 3 March 2022. The FCA expects to publish a policy statements and final rules in H1 2022.</p> <p>The Call for Evidence also closes on 3 March 2022.</p>	<p>Clare Douglas Counsel, London +44 (0) 20 7296 5954 clare.douglas@hoganlovells.com</p>
<p>Open Finance (UK)</p>		
<p>The FCA is leading the debate on 'open finance' as a means to give consumers and businesses more control over a wider range of their financial data. This</p>	<p>Following a call for input in 2019, in April 2021 the FCA published its feedback statement on Open Finance. The FCA has recommended that a legislative</p>	<p>Clare Douglas Counsel, London +44 (0) 20 7296 5954</p>

will have significant operational and cost implications for insurers. See our article : Why will Open Finance change the Insurance Landscape in the UK - on Engage for full analysis.	framework will be needed for Open Finance to develop fully with a phased implementation. The FCA is expected to set out next steps 'in the coming months'.	clare.douglas@hoganlovells.com
Insurance Premium Tax ("IPT") (UK)		
Following a call for evidence by HMRC in June 2019, HMRC published in November 2020 a consultation paper setting out proposals to improve the administration of IPT and prevent certain types of IPT avoidance and evasion. The consultation does not consider the rates of IPT or exemptions. A summary of responses was published on 30 November 2021.	The government will engage with stakeholders to consider the design of a Code of Conduct for the brokerage industry in which they would commit to reporting unregistered insurers to HMRC.	Adam Parry Counsel Knowledge Lawyer +44 (0) 20 7296 5365 adam.parry@hoganlovells.com
Reform of Insurance Contract Law (UK)		
The Law Commissions have revisited proposals on 'insurable interest'. In 2016, the Law Commissions consulted on a draft Bill, and on 20 June 2018 they published an updated draft Bill. The focus of the Bill is now on life and 'life-related' insurance only. The draft Bill broadens the test for 'economic loss' and includes a non-exhaustive list of cases in which insurable interest will exist.	The consultation period was extended to 31 October 2018 and the Law Commissions are now analysing responses with a view to publishing a report with final recommendations "in due course". There have been no new developments.	Clare Douglas Counsel, London +44 (0) 20 7296 5954 clare.douglas@hoganlovells.com
Dormant asset scheme ("DAS") (UK)		
The DAS is led by industry and backed by government with the aim of uniting assets with people, and if not possible then to enable the assets to be used for social and environmental initiatives. In 2020, the government consulted on expanding the scheme to include the assets from the life insurance and pensions sectors.	In May 2021, the government introduced the Dormant Assets Bill. The Bill has been sent to the Public Bills Committee for review. The Committee is due to report by 13 January 2022 .	Kirsten Barber Senior Knowledge Lawyer, London +44 (0) 20 7296 2775 kirsten.barber@hoganlovells.com

Review of the Solvency II regime (UK)		
<p>In October 2020, HM Treasury published a Call for Evidence as the first stage of its review of the Solvency II regime to ensure it is better tailored to support the UK insurance industry. See our Engage article for details.</p> <p>In June 2021, the PRA consulted on phase 1 of its review of reporting and disclosure requirements under Solvency II. On 17 December 2021, the PRA published its policy statement (PS29/21) which contains feedback to responses to the consultation, final rules, updated supervisory statements and an updated Statement of Policy. The new rules remove selected reporting requirements and expand the application of modification by consent to waive quarterly reporting requirements.</p>	<p>The period for responses was extended to 19 February 2021. The government's response is awaited. A PRA led consultation is expected in early 2022.</p> <p>The rules and policy changes took effect on 17 December 2021 with implementation from 31 December 2021. A consultation paper on phase 2 of the PRA's review is due in 2022. Phase 2 will be an in-depth review of the entire reporting and disclosure framework taking into account any proposals arising from HM Treasury's review.</p>	<p>Steven McEwan Partner, London +44 (0) 20 7296 2972 steven.mcewan@hoganlovells.com</p>
Future Framework for the regulation of Financial Services (UK)		
<p>On 9 November 2021, HM Treasury published for consultation its proposals for adapting the regulatory framework for financial services. The paper includes the government's response to feedback received on the previous consultation. For further details see our article on Engage.</p>	<p>The consultation closes on 9 February 2022. Many of the proposed changes will require an extensive programme of secondary legislation, which is likely to take several years.</p>	<p>Kirsten Barber Senior Knowledge Lawyer, London +44 (0) 20 7296 2775 kirsten.barber@hoganlovells.com</p>
UK-U.S. Covered Agreement (UK)		
<p>On 18 December 2018, the government and the U.S. Treasury signed a bilateral agreement on insurance/reinsurance matters replicating the EU-U.S. Covered Agreement signed in 2017. This will ensure that on the UK leaving the EU, the UK and the U.S. will continue to benefit from the arrangements under the 2017 Agreement.</p>	<p>The agreement will come into force when the UK leaves the EU and domestic processes in the U.S. have been completed (see below – on the EU/U.S. Covered Agreement).</p>	<p>Steven McEwan Partner, London +44 (0) 20 7296 2972 steven.mcewan@hoganlovells.com</p>

Motor insurance (UK)		
<p>Automated and electrical vehicles As part of its 13th Programme for Law Reform, the Law Commission is reviewing the regulatory framework for the safe deployment of automated vehicles. A second consultation on highly automated road passenger services (HARPS) has been completed and the Commission published its findings in May 2020. In December 2020, the Commission published its third and final consultation on a regulatory framework for automated vehicles.</p> <p>Motor Vehicle (Compulsory Insurance) Bill In September 2021, a private members bill was introduced in the House of Commons to amend retained EU law by removing the effect of the judgment in the <i>Vnuk</i> case (the effect of the case was to extend the requirement for compulsory motor insurance to vehicles used on private land and to vehicles not constructed for road use).</p>	<p>The consultation closed on 18 March 2021. A final report and recommendations were due in Q4 2021.</p> <p>The bill is due to have its report stage and third reading in the House of Commons on 28 January 2022 before moving to the House of Lords..</p>	<p>Lydia Savill Counsel, London +44 (20) 7296 5931 lydia.savill@hoganlovells.com</p>
Accounting standards (UK/EU/International)		
<p>The International Accounting Standards Board issued International Financial Reporting Standard 17 for insurance contracts (IFRS 17) on 17 May 2017. It replaces IFRS 4. IFRS 17 requires all insurance contracts to be accounted for in a consistent manner which will enable investors and others to better understand and compare insurers' risk exposure, profitability and financial position. The new approach to accounting will require insurers to develop new systems and processes to comply with IFRS 17. The EU adopted IFRS 17 in November 2021.</p>	<p>IFRS 17 was due to apply to annual reporting periods beginning on or after 1 January 2021 but following an amendment in June 2020 this has been deferred to 1 January 2023.</p> <p>IFRS 17 has not yet been adopted in the UK. The UK Endorsement Board has published for comment its Draft Endorsement Criteria Assessment. Responses are requested by 3 February 2022.</p>	<p>Steven McEwan Partner, London +44 (0) 20 7296 2972 steven.mcewan@hoganlovells.com</p>

International data transfers (UK)		
In June 2021, the European Commission introduced new standard contractual clauses for data transfers to destinations outside the EEA, which took effect from 27 June 2021. The former clauses can be used for new contracts only up until 27 September 2021, and must, in any event, be replaced by the new clauses no later than 27 December 2022. However, as the new clauses were introduced after the UK left the EU, they do not have any validity for transfers from the UK.	The UK Information Commissioner is currently consulting on the measures which the UK should implement to protect international data transfers. Options include an International Data Transfer Agreement, and/or Addenda to agreements published by other authorities such as the EU. Whatever decisions are ultimately taken, it is clear that the documentation governing data transfers from the EU and the UK to territories outside the EEA will be different. Transfers between the UK and the EU, however, currently do not need additional formality because both entities accept the adequacy of the other's data protection regimes.	Quentin Archer Consultant, London +44 (0) 20 7296 2720 quentin.archer@hoganlovells.com
Possible changes to data protection laws (UK)		
The UK Government has announced its intention to create new "data adequacy partnerships" with the US, Australia and the Republic of Korea. It is also looking at creating partnerships with Singapore, the Dubai International Finance Centre, Colombia, India, Brazil, Kenya and Indonesia. In addition, it plans to consult on the future of the country's data regime, with the object to make it "even more ambitious, pro-growth and innovation-friendly, while still being underpinned by secure and trustworthy privacy standards."	The detail of these proposals has not yet been published, and so it is not yet clear to what extent the UK risks falling out of step with the EU's own approach to the adequacy of data protection measures. However, the Government states that it intends to move "quickly and creatively" to achieve its objectives.	Quentin Archer Consultant, London +44 (0) 20 7296 2720 quentin.archer@hoganlovells.com

EU Topics	Next Steps	Hogan Lovells Contact
Review of the Solvency II Directive (EU)		
On 22 September 2021, the European Commission published its long awaited proposals for amending the Solvency II Directive.	The proposals are now being considered by the European Parliament and Council.	Steven McEwan Partner, London +44 (0) 20 7296 2972 steven.mcewan@hoganlovells.com

See our article on Engage for further details. The European Commission will start work on revisions to the Solvency II Delegated Regulation.		
Recovery and resolution proposals (EU)		
The prospect of a recovery and resolution regime for insurers has been on and off the regulatory agenda since 2017. Following a recommendation from EIOPA in its Opinion on Solvency II published in 2019, the European Commission published on 22 September 2021, a draft Directive establishing a harmonised framework for authorities to manage insurance failures effectively. See our article on Engage for further details.	The proposals are now being considered by the European Parliament and Council.	Kirsten Barber Senior Knowledge Lawyer, London +44 (0) 20 7296 2775 kirsten.barber@hoganlovells.com
Insurance Guarantee Schemes (EU)		
Currently, only a few member states have an insurance guarantee scheme ("IGS") in place. In 2010, the European Commission proposed to introduce a Directive to create harmonised IGSs across member states. On 13 October 2011, the European Parliament plenary session adopted an own-initiative resolution on IGSs calling on the Commission to put forward proposals for a framework Directive on IGSs. As part of its Solvency II review, EIOPA also recommended the creation of a framework for national IGSs.	Following its review of the Solvency II regime, the European Commission has decided not to propose legislation as this time due to the economic uncertainties caused by the COVID-19 pandemic and the need to focus on economic recovery. The Commission has committed to reassess the appropriateness and timing of proposals in the future.	Kirsten Barber Senior Knowledge Lawyer, London +44 (0) 20 7296 2775 kirsten.barber@hoganlovells.com
Insurance Distribution Directive (EU)		
Under the IDD, the European Commission is required to provide a report to the European Parliament and Council on the scope of the IDD (Art. 1). The Commission is also required to review and report on the practical application of the IDD (Art. 41 (2) and (3)). Both reports were due to be delivered by 23	EIOPA is also required to report on the application of the IDD – this was due to be delivered to the Commission by 23 February 2020 but was delayed and was finally published on 6 January 2022.	Victor Fornasier Partner, London +44 (0) 20 7296 5423 victor.fornasier@hoganlovells.com

<p>February 2021 (but have been delayed). This will give the Commission the opportunity to consider what improvements can be made to the consumer experience.</p>		
<p>Review of ePrivacy Directive (EU)</p>		
<p>The European Commission proposes to replace the current ePrivacy Directive with a new ePrivacy Regulation. The proposed Regulation is intended to ensure consistency of ePrivacy rules with the General Data Protection Regulation. This will update the scope of the Directive in the light of emerging technology, enhancing security and confidentiality of communications, and addressing inconsistent enforcement and fragmentation at national level.</p>	<p>The European Commission published its legislative proposals for a new Regulation on 10 January 2017. Its plan was originally to adopt the final Regulation by 25 May 2018, the date when the General Data Protection Regulation came into force, but this was missed. Continued delays mean that it is now very unlikely that the Regulation will be finalised before 2022. Given the two-year period for implementation, it will not enter into full force before 2024.</p>	<p>Quentin Archer Consultant, London +44 (0) 20 7296 2720 quentin.archer@hoganlovells.com</p>
<p>Proposed Anti-Discrimination Directive (EU)</p>		
<p>The Anti-Discrimination Directive (or the Equal Treatment Directive) was proposed by the European Commission in July 2008 to combat discrimination in the provision of goods and services based on religion, belief, disability, age or sexual orientation. The draft Directive allows service providers to apply different treatment when age or disability is a key factor in relation to financial services.</p>	<p>After years of very little progress, the new Commission President, Ursula von der Leyen, affirmed the importance of equality in her political guidelines, and committed to propose new anti-discrimination legislation. The proposed Directive is now on the 'priority pending proposals' on the Commission's work programme for 2022.</p>	<p>Kirsten Barber Senior Knowledge Lawyer, London +44 (0) 20 7296 2775 kirsten.barber@hoganlovells.com</p>
<p>Motor insurance: Review of the Motor Insurance Directive (EU)</p>		
<p>Between July and October 2017, the European Commission consulted on a review of the Motor Insurance Directive. On 24 May 2018, the Commission published its proposals to amend the Directive. These include changes which deal with the insolvency of an insurer, ensure mutual recognition of claims history</p>	<p>After years of negotiation, in June 2021 the EU Parliament and Council reached a provisional agreement on the revised rules. The agreement was approved by the Parliament on 21 October 2021. The new rules now need to be adopted by the Council.</p>	<p>Lydia Savill Counsel, London +44 (20) 7296 5931 lydia.savill@hoganlovells.com</p>

statements, harmonise minimum protection levels, use technology to tackle the case of uninsured drivers and cover issues arising from the <i>Vnuk</i> judgement.		
EU – US Covered Agreement (EU/US)		
<p>On 22 September 2017, the EU and the US formally signed the Covered Agreement relating to insurance/reinsurance matters, including the removal of collateral requirements in the US, and the EU agreement that US insurance regulation is equivalent for Solvency II purposes.</p> <p>By removing regulatory restrictions, the Agreement opens up access for US and EU re/insurers in each other's markets.</p>	<p>The Agreement entered into force on 4 April 2018. The next step is provisional application and working towards full implementation. The EU is required to begin removing local presence requirements within 24 months. Reinsurance collateral requirements must be fully eliminated within 5 years. In the US, the Credit for Reinsurance Model Law and Regulation, which will eliminate collateral requirements for qualified reinsurers (such as EU reinsurers), came into force on 1 January 2019 and must be adopted by individual U.S. states by 1 September 2022.</p>	<p>Steven McEwan Partner, London +44 (0) 20 7296 2972 steven.mcewan@hoganlovells.com</p>

International Topics	Next steps	Hogan Lovells Contact
Development of ComFrame (International)		
<p>The International Association of Insurance Supervisors ("IAIS") adopted the Common Framework ("ComFrame") for the supervision of Internationally Active Insurance Groups ("IAIGs") in November 2019, and members carried out implementation during 2020. The framework establishes supervisory standards and guidelines focusing on the effective group-wide supervision of IAIGs.</p>	<p>The IAIS is developing a risk-based global insurance capital standard ("ICS") which will apply to IAIGs. The ultimate aim is to develop a single ICS which achieves comparable outcomes across jurisdictions. In November 2019, the ICS v.2 was adopted by the IAIS and is being monitored for a 5 year period.</p>	<p>Charles Rix Partner, London +44 (0) 20 7296 5425 charles.rix@hoganlovells.com</p>

Regulation of G-SIIs (International)		
<p>Designated global systemically important insurers ("G-SIIs") are required to comply with enhanced supervisory measures, including enhanced capital and recovery and resolution requirements.</p> <p>Following the publication of the IAIS's Holistic Framework for Systemic Risk in the Insurance Sector in November 2019, the Financial Stability Board ("FSB") announced that it would suspend G-SII identification from the beginning of 2020.</p>	<p>In November 2022, the FSB will review the need to discontinue or re-establish an annual identification of G-SIIs.</p>	<p>Charles Rix Partner, London +44 (0) 20 7296 5425 charles.rix@hoganlovells.com</p>