



Financial Markets Law Committee (“FMLC”)

Insurance and Pensions Scoping Forum

Date: Tuesday 2 November 2021

Time: 2.00pm to 3.00pm

Virtual meeting

Attendees:

James Smethurst (Moderator)	Freshfields Bruckhaus Deringer LLP
Pollyanna Deane	Fox Williams LLP
Beth Dobson	Slaughter and May
Jennifer Donohue	Algorithm and Extremal Consulting Limited
Hilary Evenett	Clifford Chance LLP
Reid Feldman	Kramer Levin Naftalis & Frankel LLP
Jonathan Gilmour	Travers Smith LLP
David Kendall	Cooley (UK) LLP
Adam Levitt	Ashurst LLP
Thomas Lockley	Cameron McKenna Nabarro Olswang LLP
Ben Lyon	Debevoise & Plimpton LLP
Geoff Maddock	Herbert Smith Freehills LLP
Ian Mathers	
Kate McInerney	Allen & Overy LLP
Arabella Ramage	Lloyd’s Market Association
Clare Swirski	Debevoise & Plimpton LLP
Jonathan Teacher	Swiss Re Management Ltd
Venessa Parekh	FMLC Secretariat
Chhavi Sinha	FMLC Secretariat

Guest Speakers:

Lauren Honeyben	Freshfields Bruckhaus Deringer LLP
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Registered Charity Number: 1164902.

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Minutes:

1. **Introductions**

Mr Smethurst opened the meeting and welcomed attendees.

2. **2022 Forward Schedule (Venessa Parekh)**

Ms Parekh asked members to consider the forward schedule of meetings for 2022, circulated ahead of the meeting, and let the Secretariat know of any concerns by 15 November 2021.

3. **PRA Consultation: Insurance Business Transfers (Lauren Honeyben)**

Ms Honeyben provided an overview of four key changes proposed in the PRA consultation. These included changes to: (1) update the PRA's policy in view of the U.K.'s withdrawal from the E.U.; (2) the obligations of independent experts when conducting a review ahead of an insurance business transfer; (3) guidance on the expectations of friendly society transfers; and (4) the PRA's expectations of transferees in run-off. The latter point has raised concern and criticism amongst market participants. Members discussed longstanding uncertainties arising in relation to Part VII transfers of business in the UK.

They ultimately agreed that the issues arising were not necessarily those of legal uncertainty and, in any case, the deadline for responses had passed.

4. **PRA consultation: Solvency II—Definition of an insurance holding company (Geoff Maddock)**

Mr Maddock noted that, in this Consultation, the PRA was trying to align the concept of "insurance holding companies" with holding companies in the bank and asset management sector by including the concept of "ancillary service undertakings". The definition of an "insurance holding company" includes a firm whose main business is to acquire and hold participations in subsidiary undertakings that are *exclusively or mainly* now UK insurance. The first uncertainty arises around the meaning of the term "mainly", for which the PRA has provided a test wherein the definition is met if the insurance group's assets, revenues and capital requirements exceed a 50% threshold. While the PRA rulebook will be amended to include the test, it does not exist in the UK's onshored Solvency II Directive. The test also indicates a departure from EU rules.

The definition of "ancillary service undertakings" comprises a list of the company's possible principal activity (owning or managing property, providing health and care services,

managing data processing), ending with “any other similar activity”. This construction has been used in banking and asset management regulation too, but has been the subject of criticism by market participants in that context too.

Forum members discussed the practical and legal uncertainties arising in the context of this amendments to the PRA Rulebook and recommended that the FMLC submit a response.

5. Any other business

No other business was raised.