

Solvency II delayed to 1 January 2014 – implications for UK firms

The FSA finally recognise the delay to Solvency II

The Solvency II framework directive of 2009, as adopted, provided for implementation by 31st October 2012. It had been made clear some time ago that implementation would be delayed to coincide with the calendar year/insurers' financial year end i.e. 1 January 2013. Until October 2011 the FSA had refused to recognise any further delay in the implementation date, despite the clear signs that the EU would not be able to achieve the 2013 date.

On 4th October 2011, the FSA finally acknowledged the inevitable and issued a revised timetable for UK insurers and reinsurers (firms). They are now planning on the assumption that the (earliest) date for Solvency II to be switched on for firms will be 1st January 2014 (although they are assuming a bifurcation on implementation, so that EIOPA and national rules would still need to in place by 1st January 2013).

The FSA has revised its timetable for applications and approval by both internal model firms and by standard formula firms. Internal model firms that are in the pre-applications process will be able to make formal applications from 30 March 2012 to mid 2013; i.e. an extra year has been added. Standard formula firms can apply from 1st January 2013 for the approvals that they require for 2014. The FSA will also consult in due course on the completion of the transposition process (in time for 1 January 2013).

Uncertainties about regulation in 2013

The delay to 2014 leaves some uncertainty about regulation during 2013 (when we expect that the FSA will have ceased to operate and supervision will have been taken over by the new Prudential Regulatory Authority). Some firms would prefer to switch to full Solvency II for 2013 as originally planned and therefore opt out of the current UK regime one year early. It appears this will not be possible and that firms will continue to be regulated under the existing regime during 2013.

However, firms will not be able to escape Solvency II during the run up to 1st January 2014. Firms' progress towards Solvency II compliance will be monitored; both firms and supervisors will be completing the necessary approval processes (e.g. internal models, ancillary own funds etc)¹. In addition, there are various proposals under discussion as to the extent and form of reporting by UK firms during 2013 on Solvency II indicators and compliance.

The EU legislative process

The uncertainty about the postponement arises as a result of the failure to agree and adopt the Omnibus II Directive. Some European regulators have still not recognised the 2014 date because the final EU legislation is not agreed or adopted. The proposed Omnibus II Directive amends Solvency II to bring it in line with the Lisbon Treaty and to reflect the revised EU financial services supervisory framework. The proposed directive is still going through the complex EU legislative process.

The Commission originally proposed an implementation date of 1 January 2013 but with transitional measures, including provisions for the Commission to defer the implementation of significant features of Solvency II such as governance, supervisory reporting and public disclosure. By contrast, the Council preferred to defer implementation of Solvency II until 1 January 2014 (with national transposition by 31 March 2013 and internal model applications from 1st June 2013). The European Parliament's Economic and Monetary Affairs Committee's report also suggests deferring Solvency II implementation until 1 January 2014. It is anticipated that the Omnibus II Directive will be formally adopted in September 2012, with the rescheduled vote of the European Parliament on the final version of the Omnibus Directive, which was due to take place in July of this year, now taking place on the 10 September. Trialogue discussions between the European Commission, Council and Parliament are expected to continue as planned. In April 2012 the FSA issued a statement to the effect that their assumptions about implementation remain and firms should continue to proceed on that basis.

¹ <http://www.fsa.gov.uk/Pages/About/What/International/solvency/policy/index.shtml>