Brexit Round-Up

"Brexit presents an opportunity"
Graydon Bennett

It is difficult to avoid discussions of the UK's impending withdrawal from the EU, and this article must be prefaced with an apology to all readers who feel that they have read more than enough about Brexit over the last 2 years since the results of the referendum were announced. Here we take a different tack, and look at the potential impact of Brexit on insurance companies in countries outside the UK.

Just to clarify, unless specified otherwise, the terms 'insurance' and 'insurer' include reinsurance and reinsurer, respectively.

Rather than trying to make any grand predictions about the terms of the final withdrawal agreement, or whether there will be any transitional arrangements, we consider the current regulatory landscape and highlight some significant changes potentially looming on the horizon.

The Crown Dependencies

While the Crown Dependencies currently enjoy some benefits as a consequence of the UK's membership of the EU, they have never been part of the EU in their own right. Moreover, they are not subject to UK or EU insurance regulations, notably the Solvency II Directive.

Back in 2015 Guernsey developed its own risk-based solvency regime for insurance companies which, from a quantitative perspective, bears some resemblance to Solvency II. However, at the time of publication, Guernsey has elected not to petition the European Commission for recognition of Solvency II equivalence.

Jersey retains a simpler solvency regime; we are not aware of any intention to pursue Solvency II equivalence in Jersey.

The Isle of Man appears to be pursuing a different approach, as it implements a revised insurance solvency regime and makes significant updates to its corporate governance codes for insurers. Indeed, the Isle of Man appears to be seeking closer alignment with EU regulations and has indicated its intention to petition for Solvency II equivalence in the future.

Malta

Malta already enjoys all the rights and privileges of a full member state of the EU, including the application of Solvency II. A key benefit of Solvency II is the passporting rights granted to EU insurance companies. Passporting allows an insurer licenced in one EU member state to write business in any other member state, without the need for authorisation from each separate local regulator.

For Maltese insurers writing policies into the UK under existing passporting rights, Brexit presents an opportunity to review their business plan and risk assessments in anticipation of the potential loss of passporting rights into the UK. Possible solutions for affected insurers include redomiciliation or the establishment of a branch in the UK, or another British jurisdiction such as Gibraltar.

The Bank of England has indicated that EU insurers will retain passporting rights into the UK during the transitional period from March 2019. At the date of publication, no similar assurance has been provided by the European Commission for UK insurers passporting into the EU. However with aspects of the Brexit proposals currently being challenged and tweaked so frequently, this may well change.

Gibraltar

As a British Overseas Territory, Gibraltar will follow the UK when the latter leaves the EU. A number of insurance companies domiciled in Gibraltar currently make use of passporting rights to write business into other EU member states. Therefore, Gibraltar effectively faces the converse of the Maltese problem.

In the absence of any guarantee of transitional arrangements from the European Commission, there is the risk that Gibraltar insurers will not be able to honour policies written in the EU after Brexit.

As with Malta, a redomiciliation may be necessary to maintain an insurer's business strategy. Malta, along with Ireland and Luxembourg, are strong contenders to welcome Gibraltar insurers. For logistical and operational reasons, redomiciliation across the Spanish border may also be worthy of consideration. While subject to Spanish regulations and tax laws, Gibraltar companies moving across the border should notice less operational impact, particularly with respect to local staff.

Conclusions

The final terms of the UK's withdrawal from the EU are far from settled and it remains to be seen whether the European Commission will extend passporting rights to UK insurers during any transition or implementation period. While the main repercussions of Brexit will be felt by the UK and EU member states, third countries will not be immune from the indirect impacts. Despite Brexit fatigue, insurers would be prudent to keep one eye on the debate for a little while longer at least and plan their strategies to deal with a range of outcomes of the negotiations.

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