BCLP. Client Intelligent

Insights

PLANNING FOR A POST-BREXIT WORLD: SPOTLIGHT ON INSURANCE

Feb 03, 2020

Financial services firms have spent a small fortune in planning for a post-Brexit world. Now that the UK has left the EU and we are in an implementation period due to end on 31 December 2020, this article looks at what forms those Brexit plans have taken, focusing on the insurance sector.

Movers and cliff edges

Financial services firms have spent billions of pounds preparing to move thousands of jobs and an estimated £1 trillion of assets from the UK to other EU financial centres. Dublin, Frankfurt, Paris and Luxembourg have all been winners. In some cases, this has meant undoing work carried out in the recent past to create a UK hub for servicing EU customers – a structure no longer workable with the loss of passporting rights.

While the risk of an initial cliff- edge departure has gone, with a transition period likely to last until December 2020, the future trading relationship between the EU and UK remains unclear. This potentially moves the cliff edge along a few months, should that trading relationship not be agreed by the end of the year. Given the amount already spent on planning, it is likely that firms will proceed with their contingency plans, to the extend not already completed, albeit in a slightly more leisurely fashion.

Part VII transfers

For insurance businesses, because the UK Part VII transfer process (under the Financial Services and Markets Act 2000) takes some 18 months, many insurers felt they could not wait for clarity on any deal with the EU before transferring EU business into Europe. Insurers such as Aviva, Hiscox, Royal & Sun Alliance, AIG and QBE all transferred their EU business from their UK carrier to new group entities established in countries such as Ireland, Luxembourg and Belgium before the original Brexit deadline of March 2019.

Alternative plans

Other insurers have decided not to transfer legacy business, on the basis that it would be absurd for EU regulators to object to them paying claims - not that absurdity is always an impediment to a regulatory decision. While a number of EU countries have introduced transitional measures, these allow continued claims payment for a relatively short period of time. Once these transitional periods end, the position, in the absence of any trade deal between the EU and UK, is unclear. As things currently stand, UK insurers will not be able to use Part VII FSMA to move business to Europe after Brexit (transitional Part VIIs have to be started before Brexit and completed within two years). The process of relocating to Europe used by European Companies, which was used by XL Insurance, Chubb and Ace to relocate to France, will not be available, because it is set out in an EU regulation which on Brexit will automatically cease to be UK law; and the cross border merger procedure allowing UK companies to merge into EU ones may also be a casualty of Brexit.

Third country branches

For new businesses, some insurers have maintained their ability to underwrite EU risks from the UK by obtaining branch authorisation for their new EU entities. This is Lloyd's of London's solution, where underwriters in Lime Street have authority to bind risks for Lloyd's Belgium. Certain company market insurers are taking a similar approach. In the case of policies covering both EU and UK risks, this can present significant operational and systems issues in ensuring the risk is on the correct paper, and that premium and premium taxes are correctly allocated. EU insurers with existing UK business who do not want to become authorised in the UK can take advantage of the financial services contracts regime, which allows them to run off existing policies for 15 years. Insurers like Allianz, with a significant presence in the UK and who will continue active underwriting here, have entered the temporary permissions regime, which gives them deemed authorisation pending approval of their application for approval as a third country undertaking.

Conclusion

Brexit planning has involved the UK financial services industry in an enormous amount of expense and effort. Much of the planning has had to be carried out in a vacuum, in the face of a decree from EIOPA and UK regulators to devise contingency plans, combined with an almost complete absence of timely and constructive guidance on the likely future landscape. While the uncertainty around the time of the UK's departure and any transitional period has now been resolved, there is still a huge uncertainty about the UK's future relationship with the EU. This is not the end of the Brexit drama – it is more the end of the beginning.

This article was first published for BCLP's Emerging Themes in Financial Regulation 2020 event, which launched an extensive collection of articles around developing themes in supervision, governance, financial crime and investigations, and digital financial services. Visit our Emerging Themes archive for more.

MEET THE TEAM

Gerry Quirk

London

geraldine.quirk@bclplaw.com
+44 (0) 20 3400 3243

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.