Brexit for the insurance sector – Cross border business between the EU and the UK

INSURANCE HORIZONS

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Regulatory regimes for firms which can no longer passport rights after Brexit and communications from insurance supervisory authorities.

A guide for insurers and insurance intermediaries

This report has been prepared by DLA Piper's insurance regulatory team to provide a high level overview of communications from insurance supervisory authorities following the end of the Brexit transition period, and of regimes that have been put in place to cover cross-border insurance activity between the European Union (EU) and the United-Kingdom (UK). It is intended to help insurers and intermediaries with compliance issues that might arise.

In particular, it considers regimes that may allow UK firms to run off risks underwritten before the UK left the EU single market, and regimes the UK has implemented that allow EU insurers and intermediaries to either run off their existing business in the UK, or continue to write new business with a temporary permission, while they prepare for full UK authorisation.

DLA Piper's insurance team advises insurance sector clients on all aspects of Brexit and its implications, and can provide further information or tailored advice on any of the issues covered in this guide.

Post-Brexit authorisation issues - Brexit reorganisations and restructurings

The UK left the EU on 31 January 2020, entering into a transition period during which it remained subject to EU laws. Following the end of that period on 31 December 2020, the UK exited the EU single market, including for insurance and insurance distribution, and has become a third country as far as the EU is concerned. UK (re)insurers and intermediaries can no longer passport their UK authorisations across Europe, and European (re)insurers and intermediaries can no longer passport into the UK. Although the UK and EU have concluded a trade agreement, it contains very little on provision of financial services.

In anticipation of this position, insurance and insurance intermediary groups, in particular those using UK-authorised firms to access EU markets, have used the period since the UK's 2016 Brexit referendum to develop and implement contingency plans. For many, those plans have involved restructuring, so they can continue to serve markets compliantly across the UK and Europe after Brexit, with separately licensed entities in the UK and a continuing EU state. Such restructurings have involved the set-up of new authorised firms, UK branches, redomiciliations and portfolio transfers. DLA Piper's insurance team in the UK and across Europe has assisted many clients with such plans.

Other groups have decided to put their UK or EU businesses into run off, and many also had existing books of business in run off that licensed entities in the UK or EU may not be able to administer post-Brexit. Even those groups which have restructured so they can enter into new business through licensed entities after Brexit, may have "orphan" books which it has not been possible or practicable to transfer.

Following recommendations from the European Insurance and Occupational Pensions Authority (EIOPA), some continuing EU member states have now taken steps to introduce regimes that apply to UK insurers and intermediaries since the end of the Brexit transition period. In other EU states, there is no specific regime. The result for insurers and intermediaries from the UK is uncertainty, and a patchwork of differing provisions applying to the run off of their EU books.

At the same time, the UK has introduced regimes that allow European firms to run off their existing business in the UK, and to continue to enter into new business if their intention is to establish separately authorised UK branches.

Licensing of cross border business between member states of the EU and the UK is likely to remain a complex area with many compliance issues to be taken into consideration.

The future

The UK and the EU have issued a joint declaration indicating that they will, by March 2021, agree a Memorandum of Understanding (MoU) on a framework for cooperation between financial regulators. It is intended that the MoU will enable discussions on how to move forward with equivalence determinations.

The UK has already granted the EU full equivalence under Solvency II (and in other areas). The EU has said it will consider equivalence decisions when they are in the EU's interest, and that it needs to better understand how the UK intends to amend or alter rules going forwards. If the EU insists the UK must agree not to diverge from EU regulations as a requirement for equivalence, such decisions seem unlikely to happen soon.

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The Austrian legislator provided that insurance companies established in the UK must ensure that policyholders are informed of the effects of the withdrawal of the UK from the EU before the conclusion of any contract and during the term of the insurance contract, and that this information is updated without delay if necessary.

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To address issues that needed urgent attention in a no-deal Brexit scenario, the Belgian legislator enacted the Brexit Act of 3 April 2019 (Belgian Brexit Act).

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The Brexit plans of UK insurers have often involved putting their European business into run off before the UK left the EU single market at the end of the Brexit transition period on 31 December 2020. Many of those insurers have included all their EU policies in portfolio transfers to insurers with continuing EU licenses.

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On 31 December 2020 (the last day before the end of the Brexit transition period) the Federal Financial Supervisory Authority (BaFin) published a general ruling on conducting and settling cross-border business of UK insurance companies and pensions providers post-Brexit (General Ruling).

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On 31 December 2020, the Italian Government issued the Law Decree No. 183 (the so-called *Milleproroghe for 2021*). The Law Decree entered into force on the same date and contains provisions on various matters, including Brexit.

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The Central Bank of Ireland (CBI) and the Department of Finance have worked together to establish a Temporary Run-Off Regime (TRR) for UK and Gibraltar insurers and insurance intermediaries (including ancillary insurance intermediaries) (Firms).

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The Luxembourg Insurance Authority (*Commissariat aux Assurances*) (CAA) has not released any update since April 2020.

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Insurers and Insurance distributors in the Netherlands are supervised through a twin peak model, with supervision tasks divided between the Authority for Financial Markets (AFM) (conduct supervision) and the Dutch National Bank (DNB) (prudential supervision).

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  The Polish supervisor (KNF) has not provided any guidance, and no specific regime has been introduced concerning how UK insurers, who are no longer authorised in the EU, should run off existing policies and pay claims.

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  With the end of the Brexit transition period, insurance undertakings registered in the UK no longer benefit from the EU passporting scheme.

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  On 29 December 2020, a Royal Decree-Law was passed, which sets out measures to address the position of the United Kingdom as a third country (the Brexit Law).

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- United Kingdom - Brexit for the Insurance Sector

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  Following the end of the Brexit transition period (31 December 2020), EEA-authorised insurers and insurance intermediaries can no longer rely on passporting rights to carry out regulated insurance activities in the UK.

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