THE INSURANCE SECTOR
PLANNING FOR BREXIT
UK
WHAT WILL BREXIT MEAN?

On 29 March, the UK government served notice under Article 50 of the Lisbon Treaty of the UK’s intention to leave the EU, thereby giving effect to the wish of the majority of the UK electorate as expressed in the June 2016 referendum. Brexit now seems unavoidable, but what Brexit means in practice for the insurance industry, and even when Brexit will happen, remain unclear.

Service of Article 50 notice has started the clock on a two-year negotiating period, after which EU treaties will cease to apply to the UK unless another deal has been concluded or the European Council has agreed an extension.

The UK could, therefore, be outside the EU from March 2019. Thereafter, there can be no confidence that any Brexit deal will allow reciprocal insurance market access to continue. In fact, Prime Minister Theresa May has made it clear that she is proposing the UK leave the EU single market, and seek to agree a free trade deal instead. That could mean an end to the current system of passporting, and a “hard” Brexit for the insurance sector may be inevitable.

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WHAT WILL A HARD BREXIT MEAN FOR INSURERS?

The UK’s current membership of the EU single market means an insurer incorporated in any European Economic Area (“EEA”) state which has been authorised by its home state regulator can exercise EU treaty rights to provide insurance services and establish branches in any other EEA state.

These “passport” rights currently allow UK insurers to underwrite risks and provide insurance services in EEA jurisdictions, and EEA insurers to conduct insurance business in the UK.

A “hard” Brexit, with the UK leaving the EU single market for insurance, will mean that UK insurance companies will no longer be able to use their UK licences to do business from their branches in the continuing EEA states, and (depending on local law) will no longer be able to travel to those states to do insurance business, underwrite local risks, or even pay claims on policies entered into pre-Brexit.

Similarly EEA insurers will no longer be able to use a licence from their home state regulator to operate from UK branches, or to effect or carry out insurance business in the UK.

“What will Brexit mean for insurers?”

THE INSURANCE SECTOR — PLANNING FOR BREXIT: UK

“...EEA insurers will no longer be able to use a licence from their home state regulator to operate from UK branches, or to effect or carry out insurance business in the UK.”
This example timeline illustrates the key processes for a UK insurer implementing Brexit plans, and the timing issues they present. The two year negotiation period means UK and EEA insurers’ Brexit contingency plans must cater for a possible “hard” Brexit with no continuation of passporting rights taking effect in March 2019, and no transitional period. Practically this leaves very little time for affected insurers to decide on and implement their contingency plans, as it can take up to 12 months to get authorised as an insurer in an EEA state and a UK Part VII portfolio transfer usually takes between 12 and 18 months. Portfolio transfer processes in other EEA states also take time. Regulatory and procedural timescales mean insurers must finalise and implement their Brexit plans soon. Timescales for regulatory processes may be extended as UK and European regulators whose engagement will be required may be dealing with a great many other insurers implementing their own Brexit plans, whilst also seeking to maintain regulatory business as usual.

**UK “PART VII” PORTFOLIO TRANSFER**

(This timeline assumes the insurer concerned has already decided on its Brexit plans and commenced dialogue with regulators. The insurance portfolio transfer process may vary from jurisdiction to jurisdiction)

1. **INITIAL ENGAGEMENT WITH REGULATORS**
   - Develop proposals and key documents with the FCA and PRA
2. **MEETING WITH REGULATORS & INDEPENDENT EXPERT APPROVAL**
   - Finalise scheme document
   - Register consultation period (3 months)
   - Policyholder notification
3. **DIRECTIONS HEARING**
   - 4 – 6 months
   - (possibly longer depending on number of applicants and on Court date)
4. **SANCTION HEARING**
   - 4 – 6 months
   - (may vary depending on regulator availability)
5. **23 JUNE 2016**
   - UK VOTED TO LEAVE THE EU
6. **MARCH 2017**
   - Dutch elections
   - Article 50 triggered
7. **APRIL/MAY 2017**
   - French elections
8. **22 OCTOBER 2017**
   - German elections
9. **MARCH/APRIL 2018**
   - Application considered by regulator
   - Prepare to capitalise NewCo
   - Finalise operational steps
10. **JUNE 2018**
    - Communication with policyholders and interested parties

**LICENCING OF A NEW EEA INSURANCE COMPANY (“NEWCO”)**

(The licensing process for an insurance company may vary from jurisdiction to jurisdiction)
UK INSURERS WHO WANT TO MAINTAIN ACCESS TO THE EUROPEAN MARKET AND EEA INSURERS LOOKING TO MAINTAIN ACCESS TO THE UK WILL NEED TO CONSIDER THE FOLLOWING WHEN DECIDING HOW TO REORGANISE THEIR OPERATIONS TO ENSURE A COMPLIANT STRUCTURE POST A “HARD” BREXIT:

**BUSINESS REVIEW AND PLANNING**
- Analyse the impact of a hard Brexit on policyholders, services and products
- Identify regulated activities which will require licences post-Brexit
- Identify countries where the insurer will require such licences and whether branches will need to be set up
- Consider whether insurance portfolios will need to be transferred and what processes will be involved
- Put in place a phased contingency plan with a clear point of no return deadline
- Identify regulators to be engaged
- Establish an internal Brexit committee with representatives from relevant stakeholders

**EEA MULTI-STATE REVIEW TO IDENTIFY THE OPTIMAL EEA STATE TO LOCATE A NEW EUROPEAN HUB**
- Regulatory issues: including the sophistication, resources and market perception of the regulator, approach to internal models, and local mind and management requirements
- Practical business issues: including whether business is conducted in English and whether filings can be made in English, local service providers, cost and availability of office space and transport links

**EMPLOYMENT**
- Audit the current workforce and secondments in terms of work permit requirements
- Consider the relocation of staff to other EU countries subject to EU work permit requirements
- Develop an employee communication programme
- Consider consultation with any European and/or local works councils
- Consider employee notifications and relocation packages
- Local employment regulatory requirements

**REGULATORY**
- Solvency II, group supervision and group solvency
- Engagement with relevant regulators
- Existing UK legislation derived from EU directives which may be repealed or revised post Brexit – and which could affect your business and operations
- Regulated activities and required licences

**TAX**
- Capital gains and exit charges on intra-group restructuring
- Tax relief for cross-border mergers under the EU Merger Directive Merger Reliefs
- Transfer pricing on cross-border intra-group transactions
- Withholding tax costs and the EU Parent Subsidiary Directive and Interest and Royalties Directive
- VAT exemption for insurance and insurance intermediary activities
- Insurance premium tax and EU rules determining location of risk

**DATA TRANSFER AND SECRECY**
- Required infrastructure
- Impact of General Data Protection Regulation (GDPR) and privacy requirements for data transfer
- Local secrecy/privacy/data protection rules
- Impact on existing and future contractual arrangements with suppliers and clients and with other group entities
- Restrictions on the use of the cloud and location of data

**RESTRUCTURING OPTIONS**
- Insurance business transfers
- Run-off: insurers with smaller portfolios of affected business may consider putting the relevant account into run-off and transferring the portfolio to a third party
- A cross-border merger or SE merger
- Redomiciling an existing SE company
- Licensing a new risk carrier in the UK or in an EEA country
- Select partner insurer(s) in relevant jurisdictions to provide direct cover post-Brexit, which the affected insurer may be able to reinsure

“Restructuring options may need to be decided on and implemented quickly. Currently, insurance business transfers, SE mergers, and redomiciliations are recognised across the EEA because they depend on EU rights and legal processes which may not be available after Brexit.”
YOUR DLA PIPER BREXIT TEAM

OUR TEAM HAS SIGNIFICANT EXPERIENCE IN ADVISING ON STRATEGIC BREXIT CONTINGENCY PLANNING. WE ARE WELL PLACED TO WORK WITH YOU TO DEVELOP YOUR STRATEGY AND PLANS.

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