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In this week's Insurance Bulletin:

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1. REGULATION AND LEGISLATION

UK: Brexit – no deal, no risk? No chance!

The FCA has published a speech given by Nausicaa Delfas, Executive Director of International at the FCA, in which she warns that, while the FCA has worked to anticipate and resolve potential problems arising out of Brexit, a no-deal Brexit still carries risks.

The key risks which have been identified are:

1. To complete the transfer of EU-based activities to EU-incorporated entities, UK firms are in some cases dependent on their clients agreeing to transfer their contracts to these entities.
2. There may be operational risks if businesses, assets and contracts need to be migrated to EU entities in a short period.
3. The EU has not enacted a Europe-wide equivalent to the UK's temporary permissions regime. Accordingly, some UK firms may face issues if they attempt to service European contracts following a hard Brexit.
4. Where the EU has not deemed the UK to be equivalent, there may be overlapping obligations in the EU and the UK, potentially resulting in market disruption.

Ms Delfas ended her speech by restating that the FCA has been working hard to ensure a smooth transition following Brexit, but that disruption and volatility cannot be ruled out. We remain hopeful that MPs will pull together to protect the interests of the UK. However, if we do suffer a hard Brexit on 12 April, the FCA must be hoping it will not be inundated by firms needing help with these issues when the consequences bite.

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UK: Temporary Permissions Regime – extension to notification window

The PRA and the FCA have confirmed that the window for EEA firms which have passported into the UK to notify their intention to use the temporary permissions regime has been extended to the end of 11 April 2019.

The temporary permissions regime will come into force if there is a hard Brexit. Any EEA firms which currently passport into the UK and have notified the PRA/FCA that they wish to use the regime will be treated as if they were authorised in the UK. This treatment will last for up to three years, during which time the firms will be required to obtain authorisation in the UK.

In light of the continuing uncertainty over Brexit, it is wise for EEA firms which have passported into the UK to notify their intention to use the temporary permission regime.

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EU: InsurTech – regulating a digital transformation

The European Insurance and Occupational Pensions Authority (EIOPA) has published a report on best practices on licensing requirements, peer-to-peer (P2P) insurance and the principles of proportionality in an InsurTech context[1].

In summary, the report found that the EU InsurTech market is at an early stage but evolving rapidly. As a result, EIOPA envisages that the supervision and regulation of such an emerging market requires a balancing act between enhancing financial innovation and ensuring a well-functioning consumer protection framework and financial stability.

EIOPA concludes that there is no immediate need for further regulatory steps on licensing of InsurTech activities involving the carrying out of a regulated activity. However, EIOPA emphasises that national competent authorities

(NCAs) should, where appropriate, adapt their internal processes and know-how to facilitate supervisory engagement with technology-driven businesses. EIOPA's report encourages NCAs to cooperate and exchange information to avoid diverging supervisory practices, particularly in relation to InsurTech developments that have crossborder/cross-sectoral coverage.

In order to keep up with the constantly evolving nature of InsurTech and to prepare for emerging risks, the report also recommends that NCAs should monitor developments closely through further engagement and the exchange of experiences with each other and EIOPA. Such collaboration will generally involve considering the use of new technologies and processes, specific examples of which can be found in the report.

The report also identifies outsourcing, developments in licensing InsurTech companies and the potential growth of the P2P insurance market as additional areas warranting greater scrutiny and regular monitoring[2].

It remains to be seen how EIOPA and the EU NCAs will address further supervision of this evolving area in practice, particularly in light of an increased focus on the area of financial innovation brought about by the European Commission's Fintech Action Plan[3] and the InsurTech Task Force's Mandate[4]. We will continue to monitor this area closely.

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Footnotes

1. The EIOPA's *Report on Best Practices on Licencing Requirements, Peer-to-Peer Insurance and the Principle of Proportionality in an Insurtech Context* can be accessed at: https://eiopa.europa.eu/Publications/EIOPA%20Best%20practices%20on%20licencing%20March%202019.pdf
2. P2P is a risk sharing network where a group of individuals, selected by each other, pool their premiums together to insure against a risk.
3. FinTech Action Plan: For a more competitive and innovative European financial sector, European Commission, March 2018, https://ec.europa.eu/info/sites/info/files/180308-action-plan-fintech_en.pdf
4. (EIOPA-BoS-17/258) https://eiopa.europa.eu/Pages/Working%20Groups/InsurTech-Task-Force.aspx

2. MARKET DEVELOPMENTS

The Future of Cyber Insurance

The cyber market remains immature and many would say relatively untested at present. It is widely thought that cyber represents the hottest topic with the greatest potential for development in the insurance and reinsurance sector for 2019 and indeed, the years to come. Of course, with growth come challenges - the lack of experience in the area of cyber loss means the sector may find the development of a product to suit the needs of customers a testing task, especially given the embryonic nature of risks associated with cyber.

Failings associated with cyber policies were brought to the attention of the insurance sector earlier this year when Mactavish suggested that defects in the policies could be used to deny paying claims, such as limitations on system interruption, as well as exclusions for software in development. However, some regard this as scaremongering.

Consequently, it is very likely that a level of uncertainty about what is covered and the circumstances in which policies will respond will continue to surround cyber insurance products in the future. However, the London market could seek to seize an opportunity here with its ability to offer specialised and bespoke cover. Developing the right products to meet customers' needs will be challenging, but likewise a clear understanding of the risks faced will be critical.

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