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BREXIT CONSIDERATIONS
INSURANCE AND REINSURANCE

What are the implications for (re) insurers and intermediaries which have passported into or out of the UK?

Although the UK will need to give the EU two years' notice that it is leaving the EU if the "Leave" campaign succeeds in June, (re)insurers and intermediaries which have passported into or out of the UK should already be thinking about the potential impact of a Brexit and how they can deal with the consequences, just as Lloyd's has been doing.

The first issue to consider is what the UK's relationship with the EU would look like following a Brexit. The Government has published a paper[1] on the models that the UK could adopt should it leave the EU. The paper outlines three possible types of relationship:

1. The "Norway model" – although the UK would no longer be in the EU, it would remain in the European Economic Area (the EEA). This is the model outside the EU which would be most integrated with the Single Market.
2. A negotiated bilateral agreement – this could involve an advanced bilateral relationship between the UK and the EU, similar to the relationship that Switzerland has with the EU, or could simply be based on a free trade agreement, similar to South Korea's relationship.
3. World Trade Organization (WTO) only membership – if the UK had not agreed a new relationship with the EU by the time it left, the UK's common membership of the WTO would be the basis for trade with the EU, this is the same as Brazil's method of trading with the EU.

The second consideration for members of the insurance sector is the effect on operations on the other side of the UK-EU divide. UK (re)insurers and intermediaries need to consider the impact on their European operations, with European (re)insurers and intermediaries needing to consider their UK operations. One of the main concerns will be whether the current passporting regime will remain, or whether separate approval will be needed to carry on business in the UK (for European entities) or the EU (for UK entities).

1. The Government paper analyses passporting rights and suggests that passporting rights could be maintained only if the "Norway model" was adopted, as passports are available only to firms authorised in EU and EEA states. However, the Norway model would not satisfy the objectives of the Brexit proponents, since the UK would need to maintain open borders with the EU, contribute to the EU budget and accept EU legislative sovereignty.
2. If the UK entered a bilateral relationship with the EU, we anticipate that UK (re)insurers and intermediaries would lose the right to passport throughout the EU, and vice versa, although they might have a right of establishment in the EU if the treaty that was signed gave UK financial services providers the right to create an establishment in an EU country, and vice versa. This relationship would mirror the current agreement with Switzerland, under which EEA insurers have the right of establishment in Switzerland, and vice versa but do not have passporting rights, so need to obtain formal approval from the Swiss regulator. The granting of the right for UK (re)insurers and intermediaries to create an establishment in the EU would probably be contingent on UK insurance regulatory requirements remaining compatible with the equivalent EU requirements. At least initially, this should not be a problem, as EU member states have only recently implemented Solvency II, and the Insurance Distribution Directive is due to be implemented by February 2018, before a Brexit could take effect.
3. If the UK relied on its membership of the WTO as the basis for trade with the EU, UK (re)insurers and intermediaries would be unlikely to have even a right of establishment in the EU and European (re)insurers and intermediaries would be unlikely to have a right of establishment in the UK. However, some states which are signatories to the WTO's General Agreements on Trade in Services permit certain types of insurance and/or reinsurance to be sold on a cross-border services basis.

Although Brexit may not come to pass, it is prudent to consider at an early stage how a Brexit could affect operations, and the measures that could be taken to minimise the disruption. There are various options that UK (re)insurers and intermediaries could pursue, such as redomesticating to an EEA state or establishing a subsidiary

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf

in an EEA state. EEA (re)insurers and intermediaries would need to consider seeking UK authorisation for a branch or to establish a subsidary in the UK. None of the options could be completed overnight, and in some cases years of planning may be required, e.g. if the redomestication is pursued under the European Company/*Societas Europaea* regime.

We may still be over two years away from the UK severing ties with Europe but it is definitely not too early to start planning for the upheaval that this would bring.

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