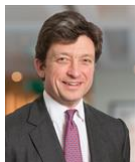


Impact of Brexit on UK and European insurance businesses

March 2017

Some members of our global insurance team



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What should you do now?

- UK will be outside the EEA
- Will transitional arrangements be agreed early in negotiations?
- Get ready to implement plans
- Check position with regulators

What restructuring options are available?

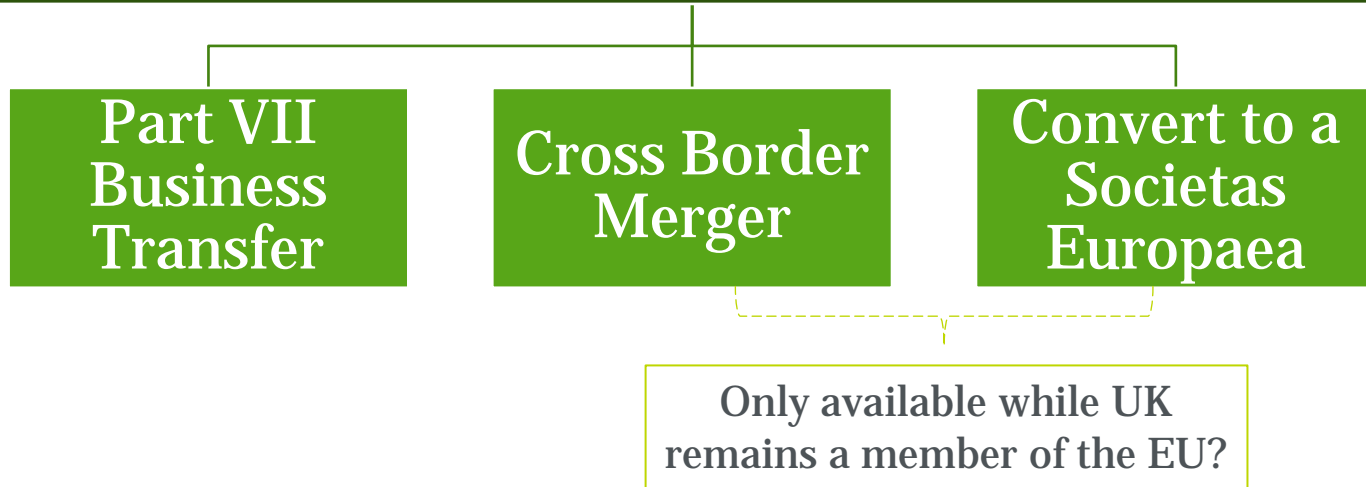
- For UK insurers
 - UK insurer and EEA insurer with passporting rights
 - EEA insurer with passporting rights with UK branch authorised to conduct insurance business in the UK
 - Convert to a Societas Europaea?
- For EEA insurers
 - Obtain authorisation to conduct insurance business in the UK (either for a branch or a newly established company)
 - Sell businesses

Issues to consider for restructuring

- Capital impacts (separate companies in EEA and the UK v single EEA company with UK branch)
- Is it better to have a separate UK company to mitigate the "double green light effect" (ie needing UK regulators and EEA regulators to approve material changes to the business)?
- Need to obtain authorisation to conduct insurance business for NewCo/SE (and passporting rights)
- Jurisdictions in which to locate NewCo/SE
- Waivers, reliefs, capital add-ons and internal model
- Approved Persons
- "Brass plaque" often not permitted
- Ability to outsource between the UK and the EEA

How would a restructuring be achieved?

Main Options for a restructuring of a UK Business



Equivalence: why it matters

- Group supervision
- Reinsurance supervision
- Group internal model
- No equivalence for insurance mediation
- EU member state's discretion likely to grant authorisation to branches of third country firms
- Equivalent but not identical: Bermuda

The EU/US Covered Agreement

- Grant of US equivalence for reduction in collateral requirements
- EU local presence requirements
- US group subject to Solvency II worldwide group solvency requirements
- NAIC letter of 15 March

Brexit and sanctions policy

- What will change?
 - Likely to leave Single Market and Customs Union
 - Unclear if bespoke deal or transitional arrangements will cover sanctions
 - UK will be outside EU Common Foreign and Security Policy
 - New UK sanctions legislation needed
 - Enhanced role for OFSI, Export Control Organisation and English courts
- No forum for UK and EU to collaborate on sanctions policy
- Importance of alignment and consequences of possible divergence
- Knock-on impacts on intelligence sharing?

Effect of Brexit on UK sanctions arrangements

- What will not change?
 - UK will retain membership of UN Security Council
 - Need for rapid adoption/transposition in UK to prevent "asset flight"
 - Iran nuclear deal will remain in place
 - UK to remain part of Wassenaar Arrangement, Missile Technology Control Regime and Nuclear Suppliers Group regimes – goods subject to trade controls not affected but method of adoption may be
 - UK domestic sanctions programmes
 - UK approach towards sanctions as a foreign policy tool?

Business planning

- Consider impacts on policy and procedures; separate compliance map for EU and UK companies/personnel; map coverholders / (re)insurance arrangements crossing EU and UK borders – enables identification of areas of divergence risk; consider wordings and control processes
- Maintain close interface with regulators including OFSI
- Monitor developments in negotiations

Brexit – The political options

No Brexit



GDPR



Free movement of data

EEA



GDPR



Free movement of data

EFTA



Follow GDPR



Seek adequacy

Going solo



GDPR



Free movement of data

GDPR

'light'



Seek adequacy

Stay put

put



Adequacy unlikely

Seeking adequacy

- EFTA Member (like Switzerland)...
- ... or at least GDPR 'light'
- Challenge: surveillance regime
- Timeframe: 3 years+



A tall order

What can we expect?



- UK going solo but GDPR 'light'
- Adequacy will be challenging
- No UK Privacy Shield
- Need for adequacy mechanism
 - Model contracts with EU-based exporters
 - BCR for transfers within corporate group
 - UK processors' code of conduct or certification

Insurer Restructuring and Insolvency

- Insurers Winding-Up Directive 2001 (IWD) and the Insurers (Reorganisation And Winding-Up) Regulations 2004 (IRWR),
- "EEA Insurer" restructuring or insolvency will take place in the insurer's home state
 - IWD was implemented in the insurer's home state under the IRWR
 - We expect the IRWR will be included in the Great Repeal Bill and so unaffected by the repeal of the ECA
 - UK member of EEA:
 - the IWR and the IRWR apply to EEA states as well as EU Member States so no change
 - UK does not join the EEA:
 - IRWR would continue to apply as a matter of English law so UK would have to give effect to and recognize any reorganization or winding-up measures affecting an EEA Insurers and which were applied to any branch of an EEA Insurer, any of its property or other assets and any of its debts or liabilities
 - similar action by the UK authorities in relation to a UK insurer would not be recognised or given effect to in the same way by EU Member States.
- Credit Institutions Winding-up Directive and the Credit Institutions (Reorganisation and Winding up) Regulations 2004
 - The position and outcome in relation to credit institutions will be the same as that for insurers, summarized above

Cross-border recognition and assistance

- Council Regulation (EC) 1346/2000 on insolvency proceedings (the European Insolvency Regulation)
 - Amended in 2014 (the Recast EIR), applicable to insolvencies commenced after June 2017
 - Provides the foundation for cross-border insolvency recognition across the EU
 - Does not attempt to harmonise national insolvency laws
- Brexit effect:
 - The courts in EU Member States will not have to recognise proceedings started in the UK as main proceedings
 - recognition would depend upon local recognition rules, leading to a patchwork of different (and not necessarily consistent) decisions on the same issue
 - The concept of main and secondary proceedings will disappear
 - open to courts in other jurisdictions to bring conflicting proceedings leading to delay and increased costs as conflicts are resolved.
 - Where insolvency practitioners are appointed in different jurisdictions we may see a return to the use of insolvency protocols

Cross-border recognition and assistance (2)

- Cross Border Insolvency Regulations 2006 (CBR):
 - implement the UNCITRAL Model Law and do not require the UK to be a member of the EU to be effective
 - an insolvency practitioner appointed under foreign main or foreign secondary proceedings can apply for recognition and assistance by the UK Courts
 - to date, in the EU only Greece, Poland, Romania and Slovenia have implemented the Model Law
- Brexit impact:
 - insolvency practitioners appointed in EU Member States can apply to the UK courts for recognition and assistance under the CBR, but if the EIR falls away UK IPs will have to rely on local recognition laws
 - Will this make English insolvency processes less popular?

Schemes of Arrangement

- Very popular restructuring tool for overseas companies, including those coming from the EU. Will that be affected by Brexit?
 - The extent to which the European Judgments Regulation (EU 1215/2012) (EJR) applies to English schemes of arrangement remains a matter of debate

Competition - Overview

- Where is the law today?
 - Close harmonisation
 - Close cooperation
 - European Commission
 - Competition and Markets Authority
 - FCA
 - Other national competition authorities
- Big changes on day 1 and after?
 - Need to implement "great repeal" changes
 - No other strong drivers of change
 - Likely duplicative enforcement?
 - Resource challenges for the UK authorities

Competition – Antitrust

- Where is the law today?
 - Near-total harmonisation
 - EU cases brought into UK law
 - European Competition Network and case allocation
- Big changes on day 1 and after?
 - How will read-across work? (eg block exemptions)
 - Minimal practical changes (eg what is permitted in distribution, information exchanges)
 - Questions for UK enforcement and resource prioritisation
 - Will UK look at different sectors/practices to the Commission, or look at them differently? (eg price comparison tools v pricing algorithms)
 - Will it take "me too" cases where Commission is already investigating?

Competition – Merger control

- Where is the law today?
 - Different systems in Brussels and London but ...
 - "One stop shop" principle
 - Mechanisms to move transactions to the "right" regulator
- Big changes on day 1 and after?
 - One stop shop almost certain to go
 - Possible duplicative review
 - Possible lack of comfort from EU clearances
 - Possible inconsistencies
 - UK industrial strategy impact?

Why Hogan Lovells?

- **Thinking Ahead:** Hogan Lovells led early thinking on Brexit and has a dedicated Constitutional Change Taskforce
- **Sector and Product Understanding:** Insurance industry specialists, with regulatory insights and relationships
- **International Trade Agreements:** We have a market-leading international trade practice led by Lourdes Catrain in Brussels and Beth Peters in Washington, DC
- **Integrated European Teams and Global Network:** many responses to Brexit will involve reviewing operational structures in place across the UK/EU border
- **Engaging to Succeed:** Actively engaging in shaping the negotiations, we are the only law firm top-ranked for both Administrative & Public Law and for Parliamentary & Public Affairs by Chambers UK 2016

The logo for Hogan Lovells, featuring the name "Hogan Lovells" in a white serif font on a solid blue rectangular background.

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