

CITY OF LONDON LAW SOCIETY – INSURANCE LAW COMMITTEE

POTENTIAL IMPACT OF BREXIT ON THE INSURANCE INDUSTRY

Corporate/regulatory issues

1. Potential loss of passporting rights (either or both of the freedom of establishment and the freedom of services).
2. Portfolio transfers:
 - a. will a UK company still be able to undertake a transfer to/from an EEA company?
 - b. will transfers between two UK companies be recognised and enforced in EEA member states in which the risk is located (or, for long term business, is the state of the commitment)?
3. Cross-border mergers – will a UK company still be able to undertake a cross border merger with an EEA company?
4. Ability to form a Societas Europaea (SE) and to migrate an SE into or out of the UK. What will be the impact on existing UK-registered SEs?
5. Potential changes to UK laws/regulations which implement EU directives, e.g. Solvency II:
 - a. we expect the UK will, broadly speaking, maintain its current insurance regulatory regime.
 - b. in particular, we anticipate that the UK will want to maintain its equivalence under Solvency II for group supervision, group solvency and reinsurance purposes.
 - c. however, there may be some beneficial changes which do not affect the UK's equivalence under Solvency II and there may also be some gold-plating of UK rules which implement maximum harmonising Directives (e.g. Solvency II).

Disputes/claims issues

1. Choice of governing law:
 - a. will Rome I (which currently determines the law applicable to contractual obligations) continue to apply when the UK leaves the EU?
 - b. if it is agreed that Rome I will continue to apply, the ECJ will no longer be the final arbiter on how the rules should be applied, which could lead to differences in how the rules are interpreted in the UK and the EU.
2. Choice of jurisdiction – the Recast Brussels Regulation currently governs which member state's courts will have jurisdiction in a dispute. Will this continue to apply?
3. Enforcement of judgments – the Recast Brussels Regulation also provides for judgments obtained in a member state to be recognised and enforced in other member states. Again, will this continue to apply? Will we see a move to greater use of arbitration because of easier enforceability of awards in the EU?
4. Service of proceedings in cross-border disputes – will claimants have to apply to the English courts for permission to serve English court proceedings in member states?

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