

UK insurance brokers trade some £7.8bn annually in European revenues, which means that the UK holds the number one position in the European insurance market (1).

Meanwhile, a number of commentators believe it is more likely than not that the UK will leave the EU without any alternative arrangements in place – or that transitional arrangements will only be agreed at the last minute. Therefore, insurance intermediaries with business in Europe are making plans of their own to cope with changes to the regulatory landscape in 2019. This article focuses on access to European markets, after Brexit.

Current rights

An insurance intermediary with headquarters in the UK, and authorised and regulated by the Financial Conduct Authority of the UK, has the right to provide services as an intermediary across the single market, this being the term commonly used to describe the internal market created by the EU treaties and extended to Norway, Iceland and Liechtenstein by the European Economic Area (“EEA”) agreement.

Such intermediaries are entitled, under the EU’s passporting arrangements, to register with the regulatory authorities of other member states and then provide their services in those member states.

This is pursuant to a single licence granted by, and subject to the exclusive prudential supervision of, the intermediary’s home member state. Member states recognise the equivalence of the supervisory regimes of all other member states. The member state where the intermediary is providing services may also apply a regime to the incoming EEA firm.

The supply of services can be on the basis of having a permanent establishment in the other member state, or simply providing services there. There is also a right of free movement of staff from a broker’s offices in one member state to another.

Meanwhile, the insurance products of an insurer in one member state can be taken up by an insured in another member state on a tariff-free basis - albeit that this is not the same as saying that there are no barriers to insurance between member states, insurance being regulated at member state level.

These are very considerable freedoms. In the context of insurance broking, anything more than passing on the names and addresses of potential insureds to an authorised intermediary could require authorisation in a particular Member State.

Nearly 3,000 UK intermediaries take advantage of EEA passporting. Nearly 6,000 EEA-based insurance intermediaries are passported to trade in the UK (2).

What will happen when the UK leaves the EU?

The UK has activated the process of resigning its membership of the single market. This will (amongst other matters) end the right of free movement of services and people between the UK and the other members of the EEA.

The UK government has given notice of its intention to negotiate the greatest possible access to the single market by means of a free trade agreement, which may contain elements of the current arrangements. Little detail has been provided as yet but presumably the government will seek to retain passporting in some form, at least during a transitional period. However, the terms on which UK intermediaries will be able to provide their services in the EU remain to be negotiated. Without an agreement, member states will not formally recognise that the UK's supervisory regime is equivalent to EEA supervisory regimes.

Reach of the EU into the world of insurance

The UK's departure from the single market will not just affect access. In the course of presiding over the single market, the institutions of the EU have issued directives and regulations over a wide range of activity, including the capitalisation, solvency and management of insurance companies, the distribution of insurance, motor insurance, competition law, data protection, measures to protect against financial crime and accounting and compliance generally. The UK will in principle be able to go its own way in such areas.

A list appears below of European Directives, laws, regulations and other legal issues that need to be considered on exiting the single market, that affect the insurance broking sector and its customers (3).

In the area of direct insurance, local law often states that a local risk can only be written by an EEA-authorized insurer or with the benefit of an EEA passport. In the absence of a new trade agreement, brokers may have to find new markets to place risks for their clients and the pattern of business may change accordingly.

In terms of group companies with subsidiaries both in the single market and outside it, there may be a need for internal reorganisation. For example, a group outsourcing contract, managed from the UK, may diverge from EU law on data privacy.

The way forward

Focusing on the issue of access, in the event that no transitional arrangements are made, the main options for a UK-headquartered broker wishing to continue doing business in the EEA, or for an EEA-headquartered broker wishing to continue doing business in the UK, are as follows:

- Apply on a bilateral basis in the country in question for a licence or authorisation to continue business in that jurisdiction.
- Establish or acquire an authorised intermediary in one or other of the remaining member states and rely on that entity's passporting rights.

Where to set up, cost and requirements

In deciding on where and how to gain access to the single market again, every firm will have its own priorities in terms of opportunities, business fit, cost and convenience. Three of the continuing member

states, Cyprus, Ireland and Malta, have English as a main language and a common law background for business. A link to a table of information on these three jurisdictions is [attached](#) (4). Features of specific interest are as follows.

Cyprus – An important EU hub for various financial services, popular because of its reliable common law heritage, English speaking workforce, skilled services industry and lower overhead costs than those associated with most European financial centres.

Cyprus has a flat rate of tax of 12.5%. Specific features of the registration process include that it is necessary to obtain approval to register the name of the company before the process of registration can proceed. In addition, it is necessary to establish a physical office in Cyprus with at least two senior officers resident in Cyprus to manage the business. Further, much of the application would be conducted in the Greek language.

Thereafter, renewal fees equivalent to the relatively modest original application fees are payable every three years. The Regulator has a specific approach in relation to outsourcing. Capital adequacy requirements for intermediaries registered as insurance brokers are 4% of annual collected premiums, subject to a minimum of €19,000.

Ireland – The headline rate of corporation tax is 12.5% here also. Based on recent comments of the Director of Insurance Supervision, it is likely in the case of newly incorporated subsidiaries of UK insurance firms that are looking to relocate EEA business into Ireland that at the outset the Central Bank, as Regulator, will as an interim measure accept existing internal models operated by such firms. This is on the basis that the Irish Regulator, through its participation in supervisory colleges for UK insurance firms, will be aware of the risk methodologies operated by such firms.

Malta – Considered to be an attractive location in the EU for establishment of a number of types of insurance entity. The jurisdiction is reputed to be low cost with an efficient regulatory environment that accelerates the set-up of new businesses. The MFSA is required to respond to applications within a prescribed timeframe. There is also said to be a ready availability of insurance management services with the local workforce skilled in accounting, audit, investment management and legal services.

The standard rate of corporation tax is 35%, although there are ways of reducing this to an effective rate of 5%.

Gap analysis

In the UK, regulation is extensive, but also subtle, in that it is generally outcomes-based and dependent on assessment of the risks faced. Treating clients fairly, working with third parties on the basis of written agreements, looking after client money, capital requirements, complaints, data protection, compliance with money laundering rules, claims handling, record-keeping, business continuity and the collection of insurance premium tax are all areas subject to regulation.

The best way to ensure compliance with the letter and spirit of the host member state's compliance regime is likely to be to employ a local consultant to look at the UK operation and identify gaps and differences in regulatory approach. Alternatively, a local consultant can be appointed to oversee local regulatory compliance.

Summary

We trust the above provides food for thought for those who need to retain access to EEA markets and who are considering how best to do so. We would be very pleased to discuss issues arising in particular cases in more detail.

Notes

- (1) Insurance Times, May 2017
- (2) BIBA press release, March 2017
- (3) prepared by BIBA as part of its Manifesto for 2017 - EU Exit
- (4) For the information on these jurisdictions we are most grateful for information provided by the following:

Ireland – [Mary-Claire Coakley, DFMG Solicitors, Dublin](#)

Malta – [Penny Hudson FCI, Head of Compliance, Artex International](#)

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SCHEDULE

List of European directives, laws, regulations and other legal issues that need to be considered on EU exit that affect the insurance broking sector and its customers.

Conduct and Product Distribution	Prudential	Compliance
1. Insurance Distribution Directive	7. Solvency II Directive	12. AML/Financial Crime/Anti-Terrorism
2. PRIIPs Regulation	8. Macro-Prudential Review	13. General Data Protection Regulation
3. MIFID II and MFIR	9. Accounting – EU is likely to adopt the changes to IFRS 4 & 9	14. Company Law, Insolvency
4. Motor Insurance Directive in relation to VNUK	10. EU Competition Law	15. VAT on Financial Services
5. E-Commerce Directive/Distance Marketing/Unfair Practices and other Distribution Rules	11. Gender Discrimination	16. EU/Non-EU Payments Framework
6. Contract Law		

