

AILO ADVISORY

Providing AILO Members with an update on topical issues

BREXIT BEDLAM!

The only thing anyone knows about the impact of Brexit is – we know nothing! Listening to the Steptoe sponsored webinar the other day, whilst excellent in covering the known issues of the EU passport, Solvency II, the Lisbon Treaty et al, we were still left with a large knowledge gap. Whilst Greenland left in 1985 before the modern EU was created, no country has ever exited the 28 Member States (“MS”) and clearly, other than Article 50 and its relatively short description of the method of exiting, the main impact is the worry stemming from the fear of the unknown.

For AILO Members transacting cross-border business with EU MS other than the UK, there appears to be no impact at all – for the moment. Ditto with those Members transacting international business around the world – for the moment.

The Members who will be affected are those who operate from the UK and those who sell into the UK. The bigger picture is that the UK is a huge insurance and reinsurance centre; just think of Lloyds. It transacts more insurance business internationally with the rest of the world than with continental Europe. That said, we have signed up to Solvency II and this is unlikely to change. Why should it? The PRA and FCA have led the charge in implementing S II and the UK is arguably ahead of most EU countries. What will go is the single European passport to operate under Freedom of Establishment or Freedom of Services, so unless some form of reciprocal arrangement can be negotiated, the so-called Single Market will disappear. Does it actually exist, I hear you ask! Application to a host Regulator will be possible, but each Company would need to meet local rules and perhaps a branch basis (although, Sweden permits trading on a services basis).

The webinar discussed 4 possible approaches in the future:

- EEA/Norway option. Still involves the 4 ‘Freedoms’, including unhindered movement of people so not an option for a Brexit-accepting UK Government
- The Swiss model. Country by country arrangements in very specific sectors. The timetable to agreement is in the hands of the EU and there are many complex barriers, so patience would be required over many years.
- WTO (World Trade Organisation) status. Very basic and Services are not well covered.
- Equivalence, leading to passporting. Bound to be very difficult. But for Luxembourg and Irish companies wanting to trade into the UK, this may well be possible as the UK is unlikely to put any additional barriers in place.

Members will be aware that Bermuda and Switzerland have applied for, and nearly finalised, ‘equivalence’ under SII. This would permit them to apply to trade with MS. It would appear entirely logical for the UK to apply for equivalence, and get it, but how long would that take? Once Article 50 is triggered everything else is up to 3rd country negotiations with the remaining 27 MS. From the Press, it appears the decision by the UK voting public has “frightened off” many Eurosceptic people in Europe, so it is currently unlikely that there will be other MS holding referendums in the near future – the UK is on its own.

Brexit also affects UK based distributors, fund groups and other financial operators, whether transacting domestic or foreign business. Will the safe option be UK2UK business? Can the Isle of Man Members continue to operate and will this lead to a resurgence in the fortunes of the Crown Dependencies for life insurers? Brexit will also affect UK-based TPA companies and the application of MiFID and IDD. How – no one is quite sure! Other issues will be travel and health insurance for UK citizens in Europe and vice versa. Policy conditions may require a review to ensure that there are no unintended consequences of Brexit! There seems to be some concerns regarding QROPS, but as that business is UK centric, and it’s unlikely that the liability to taxation locally will be an issue, we will have to wait to see what develops.

In due course there will be a requirement for a legal review of all EU Directives and Regulations which have effect in UK laws - and so affecting the whole of the UK, including Northern Ireland and Scotland. This is a massive task and it’s anyone’s guess where financial services, and insurance in particular, will be scheduled (although banking is bound to have a priority). Repealing the European Communities Act 1972, although mooted, would not seem to be a possible option as that would abolish application of all Directives and Regulations with nothing in their place!

The UK remains a full MS until it exits. That could be a minimum of two years, or however long it takes. Negotiations with anyone else cannot start until we are ex-EU. Bartering with the 27 MS currently appears to be off limits. Clearly the UK has lost its Commissioner and, consequently, has lost any influence.

It’s a whole new world for some! AILO can only monitor developments with the slant of the cross-border life industry at the forefront of our minds.