



BREXIT – THE UK-EU DEAL ON THE FUTURE RELATIONSHIP NEEDS TO GO FURTHER THAN JUST EQUIVALENCE

After years of uncertainty, MPs have now given their final backing to the Withdrawal Agreement Bill. If approved by the House of Lords and the EU Parliament, the UK will leave the EU at 11pm on 31 January and enter a transition period until 31 December during which the UK's new relationship with the EU will be negotiated.

For insurers, however, this will not mean an end to questions over the potential impact of Brexit.

Indeed in some ways the position now becomes less clear. Many EU states announced transitional measures on contract continuity that would apply to insurers in the event of a no-deal Brexit. These measures will not apply at the end of the 2020 transition period unless those EU states amend the relevant legislation.

Insurers will need to look instead to the deal being negotiated between the UK and EU. At this stage, we only have broad indications of what such a deal might look like.

Boris Johnson has ruled out the possibility of full regulatory alignment (where the UK would agree to adopt all current and future EU laws in exchange for market access). The revised political declaration is drafted on the basis of non-regression - i.e. the UK agreeing to maintain, not lower, existing standards. Both politically and practically, we can expect the UK to require the ability to diverge from EU laws. The UK government and the outgoing Bank of England governor, Mark Carney, have stated that the UK will and should resist becoming a "rule-taker" with respect to EU financial services legislation.

From the EU's side, it is clear from the discussion slides published by the EU27 last week that the EU intends to use its standard free trade agreement toolkit on financial services for third countries in negotiating a relationship with the UK. The EU has been consistent in stating that a state cannot be half-in, half-out of the single market. The UK will accordingly be treated as a third country and negotiations with respect to insurance may follow the model set by recent EU-US or EU-Japan agreements.

The primary focus of such previous third-country agreements has been on equivalence for the purposes of Solvency II. An equivalence decision does not

require the third country to adopt the same rules, so can exist without regulatory alignment.

Under Solvency II there are three types of equivalence:

The first is reinsurance, which allows reinsurance contracts concluded with reinsurers from equivalent third countries to be treated in the same manner as contracts concluded with EU reinsurers. If the UK is found to be equivalent for these purposes, an EU cedant will be able to take UK reinsurance contracts into account when calculating its SCR under Solvency II.

The second is group supervision. A finding of equivalence for these purposes would mean that EU authorities would rely on UK regulators when considering UK groups with EU subsidiaries, and not subject such groups to dual supervision.

The third is group solvency. Where a (re)insurer is headquartered in the EU and has UK subsidiaries, an equivalence finding would allow the EU (re)insurer to apply UK rules on capital requirements to that subsidiary, rather than EU rules.

Clearly, a finding of equivalence would be helpful, but also limited. It would not deal with some of the specific issues raised by Brexit, such as transitional arrangements on market access and cross-border transfers of insurance business, contract continuity or arrangements as to servicing and run-off of existing books of business.

These issues will be familiar to insurers who have been grappling with Brexit for many years now. In an ideal scenario these will also be addressed by the UK and EU in agreeing the terms of their future relationship, but this looks increasingly unlikely.

This article first appeared in Insurance Day

CONTACTS

Eiram Sharpe
Senior Associate

T +44 20 7006 2019
E eiram.sharpe
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2020

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.