Insurance Temporary Run-off Regime for UK / Gibraltar authorised insurers and insurance intermediaries post Brexit.

When Part 10[1] of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (the "**Brexit Omnibus 2020 Act**") was first published in bill form, the reality of the operation of the Temporary Run-Off Regime (the "**TRR**"), which it proposed, was not fully clear. No amendments to the text of Part 10 were made during the Dail Debates and so Part 10 of the Brexit Omnibus 2020 Act, which was signed into law on 10 December 2020[2], still left some questions about the operation of the TRR.

Although a Brexit Deal was struck on 24 December 2020, the Brexit Deal, as expected, did not address such issues as passporting or equivalence in financial services. Consequently, Part 10 of the Brexit Omnibus 2020 Act has become crucially important for those United Kingdom ("**UK**") / Gibraltar ("**GI**") insurers and insurance intermediaries ("**Firms**") with Irish customers, which decided against establishing an EU authorised entity to access Ireland post Brexit.

On 1 January 2021, the Central Bank of Ireland (the "**Central Bank**") released a webpage fully dedicated to the TRR in which it clarifies how the TRR will operate, provides answers to a number of questions which have arisen since the publication of the Bill and outlines the steps that need to be taken by impacted Firms.

The Central Bank states it has worked together with the Department of Finance on the TRR explaining that "*the purpose of the TRR is to protect consumers of insurance products by ensuring that existing policies can continue to be serviced after 31 December 2020.*"

What is permitted?

Part 10 states that the TRR permits Firms to administer their existing portfolios in order to terminate their activity in the State for up to a maximum period of 15 years from 31 December 2020.

What is not permitted?

Crucially no new business can be written after 31 December 2020.

A grey area?

In the FAQ section of the webpage, the Central Bank states that:

"*policy adjustments, which establish, renew, extend, increase or resume insurance cover on an existing policy, may not be in accordance with the TRR. Immaterial and / or administrative adjustments to policies may be permissible, provided these adjustments in total, do not undermine the requirements of the TRR, which include permanently ceasing to carry on insurance business.*"

What constitutes immaterial or administrative adjustments will no doubt be the subject of much discussion in the months ahead, but permitting such adjustments is a sensible approach on the Central Bank's behalf. If in doubt, Firms should return to the principle underpinning the TRR, when seeking guidance as to whether an adjustment may be permissible.

Qualification:

In order to qualify to avail of the TRR, the following criteria must be met:

- Prior to 31 December 2020, a Firm must be authorised as an insurer, or registered as an insurance intermediary in the UK / GI and have started business in the Republic of Ireland either on a freedom of establishment or freedom to provide services basis; and
- Have, on or before, 31 December 2020 ceased to conduct new insurance contracts and/or new insurance distribution business, as appropriate, in the Republic of Ireland.

Next Steps:

(1) Firms wishing to avail of the TRR are required to notify the Central Bank **no later than three months after 31 December 2020**, by way of a specific notification form, that the TRR will be applicable to the Firm[3].

The Central Bank has explained that failure to notify the Central Bank of the application of the TRR to a Firm will not necessarily preclude a Firm from availing of the TRR, however, where notification is not received, the Central Bank can exercise its supervisory powers which includes stopping a Firm operating under the TRR.

Firms currently engaged with the Central Bank regarding an application for authorisation as an insurance undertaking or insurance intermediary are expected to notify the Central Bank if they are availing of the TRR, while the application process continues;

(2) The Central Bank requires that Firms subject to the TRR, report certain information pertaining to the Firm's business via a specific TRR Reporting Forms **no later than four months from 31 December 2020** and at least annually thereafter; and

(3) Comply with the general good requirements.

Highlights from the FAQs:

- *Withdrawal of TRR*:

  The Central Bank may withdraw the temporary authorisation or registration under the TRR

  (1) if a Firm does not continue to satisfy the conditions for the TRR; or

  (2) it is not satisfied with the progress made by the relevant person towards terminating its business within the maximum of 15 years from 31 December 2020.

  In respect of the latter, Firms should once again be aware of the purpose of the TRR and ensure that they are working towards closing out their business within the timeframe or "*regularising their position if they wish to continue to provide services to Irish policyholders after that period ends.*"

- *Applicability to Reinsurance*

  As the focus of the TRR is on the Irish policyholder, the TRR does not apply in respect of reinsurance contracts and reinsurance products.

- *Life Products and Occupational Pensions Schemes*

  The guidance provided by the Central Bank on these topics is limited and it advises impacted Firms to seek legal advice on the applicability of the TRR.

- *Regulatory and Supervisory Regime*

  The Central Bank flags that the existing supervisory approach, pursuant to the Solvency II and the IDD regimes, will continue to apply, in addition to the requirements of the TRR itself. Firms should note that the Central Bank will be in a position to impose additional conditions on Firms, where it deems it necessary.

Conclusion

The clarity provided by the Central Bank on the operation of TRR is very welcome and should result in a smooth continuation of coverage for Irish policyholders. However, as the dust settles and matters such as mid-term adjustments are requested and options are exercised under life policies, we can expect much discussion on interpretation of the TRR.

Should you require any assistance with the application of Part 10 of the Brexit Omnibus 2020 Act to your business or the specifics of the TRR, please do not hesitate to contact us at the details below or your usual Matheson contact.

1. Part 10 amends the European Union (Insurance and Reinsurance) Regulations 2015 and the European Union (Insurance Distribution) Regulations 2018
2. The Commencement Order pertaining to Part 10 was signed by the Minister for Finance on 18 December 2020 and took effect from 23.00 on 31 December 2020.
3. The Central Bank will publish a register of firms subject to the TRR on its website.

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