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The International Comparative Legal Guide to:

Insurance & Reinsurance 2018

7th Edition

A practical cross-border insight into insurance and reinsurance law

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Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

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Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
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Country Question and Answer Chapters:

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Insurance & Reinsurance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of insurance and reinsurance.

It is divided into two main sections:

Six general chapters. These are designed to provide readers with an overview of key issues affecting insurance and reinsurance work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in insurance and reinsurance laws and regulations in 41 jurisdictions.

All chapters are written by leading insurance and reinsurance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jon Turnbull and Michelle Radom of Clyde & Co LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Brexit Relocations: The Story So Far

Matheson

Darren Maher

Following the UK's decision to leave the EU and the subsequent triggering of Article 50, there has been continued speculation that Dublin could benefit from Brexit-related financial services companies' relocations and others in the insurance industry.

Brexit Relocations

In the immediate aftermath of Brexit, relocating to Ireland seemed likely to attract more than others and was identified early on as a 'natural location of choice' based on its stability within Europe, its proximity to the UK, its internationally respected regulatory environment and its established international financial services industry. Despite initial concerns, it would seem that the availability of office space, schools and infrastructure to accommodate for any additional demand as a result of Brexit is no longer a concern, as the Irish government has indicated that there is considerable scope to cater for this additional demand due to Brexit and substantial commercial and residential development has been under way for over 18 months.

To cater for any potential increase in authorisation applications as a result of Brexit, the Central Bank of Ireland (the "**Central Bank**") announced in early 2017 that it was increasing staffing levels, reallocating resources to its authorisation teams and outsourcing review of applications to legal and audit firms. The Central Bank also committed to meeting the statutory requirement of processing all fully completed insurance applications within six months.

In the first half of this year, in order to secure continued access to the EU/EEA single market passporting regime post-Brexit, many companies across banking, insurance, investment firms, investment funds and financial market infrastructures began to action their Brexit-related strategies on location by arranging an initial meeting with several regulators based in various jurisdictions, including the Central Bank, to discuss authorisation.

Over time, what emerged, however, was that a number of other cities across Europe such as Brussels, Paris, Frankfurt and Luxembourg were competing directly with Dublin for this Brexit-related relocation activity.

It was observed that the success of the initial meeting between the potential applicant and the 'short-listed' local regulator significantly influenced its decision of where to base its EU operations post-Brexit. These initial meetings, after all, allowed both sides to clarify each other's expectations, discuss the proposed business plan and confirm if they could work together on a long-term basis.

The message from the market following such meetings with the Central Bank was that a potential applicant would not be authorised unless it demonstrates compliance with all legal and regulatory requirements. In particular, the Central Bank requires any potential applicant to demonstrate 'substance' as sound supervision demands appropriate location of management and key functions. The Central Bank expects firms to demonstrate how operations will be based in Ireland; with key business decisions being made here – not a mere brass plate.

The Central Bank's focus on the issue of substance is further evidence when considering the permitted levels of reinsurance, which we understand was a deal-breaker for some potential Brexit relocators. That being said, an insurer is permitted under the Solvency II regime to outsource many of its functions to a third party, provided that a written outsourcing agreement is put in place and the insurer maintains proper oversight and supervision of the outsource service provider.

In addition, in an effort to remain flexible, the Central Bank does not impose a minimum headcount of staff on Day 1 or otherwise, and while it is difficult to predict the number of staff/roles that the Central Bank may require, this will to a large extent depend on the nature, scale and complexity of the proposed business over a period of time. This is often a matter of negotiation with the Central Bank.

The CBI Process

Having worked on a number of applications, ranging from applicants with operations already established in Ireland adopting traditional insurance models, to first-time entrants or applicants adopting a new innovative structure, based on our experience, the Central Bank has the requisite capacity and resources to deal with the high volume of applications which are being processed in a timely and efficient manner. As a general comment, as part of an application for authorisation, the Central Bank reviews both the proposed corporate governance structures and the individuals who are to be appointed to key roles within the applicant to ensure that the applicant has the necessary people, skills, processes and structures to successfully manage its insurance business.

Applicants using traditional insurance models with existing Irish operations appear to move through the authorisation process at a faster pace than first-time entrants. However, this should not deter new entrants with a new business model from making an application, as the delay is owing to the fact that it takes longer for the Central Bank to understand the application, and the Central Bank generally welcomes applications of this kind.

Contemplating a Hard Brexit – Contingency Planning

By and large, what we are seeing in practice is companies investing heavily in firming up their Brexit-related contingency planning for how they will adequately deal with the possible effects of a 'hard' Brexit.

Almost simultaneously with the submission of a number of authorisation applications to the Central Bank and similar to the approach adopted by the PRA in the UK, the Central Bank issued letters to certain financial services firms requesting a summary of their Brexit contingency plans. These responses evaluate the options available to them post-Brexit (including a proposed cross-border transfer to Ireland under Part VII of the UK Financial Services and Markets Act 2000) and explores the level of feasibility in respect of each option. These Part VII transfers typically take 12–18 months, as they require UK court approval and so will depend on the capacity of the courts and their timetables, and are costly exercises.

Lessons Learned

In assessing any application, the Central Bank is guided by its mandate to protect consumers and safeguard financial stability rather than incidentally creating gainful employment in the Irish economy.

The Central Bank has been consistent in its approach when assessing any application, which lends itself to building and maintaining an international reputation as a well-regarded regulatory authority; which plays a pivotal role in the supervision and regulation of financial service providers in Ireland to ensure compliance with regulatory requirements. The Central Bank is highly responsive to the needs of entities operating under its supervision.

It remains to be seen if more major banks, insurers and other financial services firms will choose Ireland as their EU hub for post-Brexit relocation. The trend to date highlights that no one EU Member State is emerging as a compelling alternative to London.

The Future

In the context of Brexit relocation, while at times it is difficult to detect the signals through the noise, what we can say is that it is no longer an "all-or-nothing" game of jurisdictions pitted against each other, and is more nuanced in that each EU Member State stands to gain if the fit is right. Ireland has exceeded expectations in attracting Brexit relocators and it has much to offer the financial services sector as the industry adapts to the future.

For as long as the UK is still part of the EU, it will be possible for Irish insurers to operate on a passported basis into the UK. What the position will be following the UK's exit from the EU is, at this point, unclear and it remains to be seen whether separate authorisations will be required in the UK to deal with UK business post-Brexit.

Based on our experience, the initial meeting with the 'short-listed' regulator is of upmost importance as it sets the tone which will ultimately determine the potential applicant's optimum jurisdiction for its EU base.

Depending on the nature of Brexit, Irish insurers may face restrictions upon their ability to conduct cross-border business into the UK and *vice versa*. Longer term, the extent to which any regulatory changes are required to be introduced will depend on the outcome of the Brexit negotiations, which will become known in the months ahead.

Ireland is more exposed to Brexit than any other EU Member State and is open to investment opportunities and commercial innovations.

The levels of investment and planning being undertaken by the Irish government to prepare for any opportunities arising from Brexit should give comfort to potential relocators.

Darren Maher
Matheson
70 Sir John Rogerson's Quay
Dublin 2
Ireland

Tel: +353 1 232 2398
Email: darren.maher@matheson.com
URL: www.matheson.com

Darren Maher is a partner and Head of the Financial Institutions Group at Matheson. He has advised a wide range of leading domestic and international financial institutions on all aspects of financial services law and regulation including establishment and authorisation, development and distribution of products, compliance, corporate governance and re-organisations including cross-border mergers, schemes of arrangement, portfolio transfers and mergers and acquisitions.

Darren is a member of the firm's Brexit Advisory Group and is advising a significant number of the world's leading financial services firms on their plans to establish a regulated subsidiary in Ireland in order to maintain access to the EU single market following the United Kingdom's exit from the EU.

Matheson

Headquartered in Dublin with offices in London, New York, Palo Alto and San Francisco, more than 650 people work across Matheson's five offices, including 85 partners and tax principals and over 350 legal and tax professionals. Matheson concentrates on serving the Irish legal needs of internationally focused companies and financial institutions doing business in and from Ireland. Matheson's clients include the majority of the Fortune 100 companies and over half of the world's 50 largest banks. Matheson has worked closely with some of the world's largest tech multinationals and high-profile start-ups, advising 7 of the top 10 global technology brands.

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com