POST BREXIT: WHERE NEXT FOR UK INSURERS?

Many UK-based insurance clients are considering the alternatives so they can retain their EU passporting rights and unrestricted access to the single market after the UK leaves the union, says Darren Maher of Matheson.

The City of London is the world's leading insurance centre. Many of the insurers based in London write business throughout the single market of the EU. This is a significant market, which accounts for 32 percent of the global insurance market with assets of almost €9,800 billion ($10,400 billion) invested on behalf of life and non-life insurance customers. As a result of the vote for Brexit, UK insurers may no longer be able to directly access this market.

UK authorised insurers currently access the single market by way of the financial services passport. This allows an insurance company authorised by one member state of the European Economic Area (EEA) to carry on business across all EEA member states. The continued ability of UK authorised insurers to access this market is uncertain as the UK will have to renegotiate its trading arrangements with the EU following its exit from the union.

The UK will remain a member of the EU until Article 50 is triggered, following which there will be a two-year period in which to negotiate an exit deal with the EU. It was expected that Article 50 would be invoked using the royal prerogative in March 2017, but the UK High Court has ruled that the prior approval of parliament is required to trigger Article 50. The UK government has stated that it intends to appeal this decision, which may further delay matters. Given the uncertainty in the interim, which will continue post-Brexit and throughout the two-year negotiation

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period, many of our UK insurance clients are considering alternative options in order to retain their EU passporting rights and unrestricted access to the single market.

OTHER OPTIONS

Some of the insurance clients we are speaking to are considering the establishment of an insurance subsidiary in another EEA member state, which once authorised will be entitled to write insurance business throughout the single market. Alternatively, they may opt to set up third-country branches to carry on activity in individual member states. Given the uncertain status that a third-country branch may have post-Brexit and the increased regulatory requirements which may be imposed by member states, establishing a subsidiary is currently the preferred option for many of our clients.

Ireland is an attractive jurisdiction for UK based insurers if they are considering establishing an EEA subsidiary in order to retain their EU passporting rights. Ireland is an English-speaking common law jurisdiction with geographical proximity and ease of access to the UK. The financial services industry is well established in Ireland with more than 50 percent of the world's leading financial services organisations already having a subsidiary there. Ireland also has a highly educated workforce, which means there is a local talent pool available for hire and Ireland has a well-respected financial services regulatory regime.

UK insurers considering setting up a subsidiary in Ireland will need to make an application to the Central Bank of Ireland for authorisation. The Central Bank is a well-respected European regulator. One of the key concerns for the Central Bank when considering an application for authorisation by an insurance company is whether the senior management personnel responsible for making key strategic business decisions are based in Ireland. This is referred to by the Central Bank as the 'heart and mind' of the business.

Applicants must also demonstrate that the insurance company is sufficiently resourced to carry out its business in compliance with the applicable legal and regulatory requirements. It is important to bear in mind that Irish authorised insurers are entitled to outsource activities on an intra-group or third-party basis, provided that the insurer maintains appropriate oversight and supervision of the outsource service provider.

Ultimately, until the UK exercises its right to invoke Article 50 and trigger the process of leaving the EU, the full implications of Brexit will remain unclear. The UK may negotiate a favourable deal through which it will retain access to the single market for financial services, but there is no certainty of this. UK-based insurers are, therefore, advised to consider alternative means of ensuring continued access to the single market in order to address the current uncertainty surrounding their future business plans.

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