

Brexit and Resulting Pitfalls in Insurance Sector

As the United Kingdom lurches toward the endgame in a bitter Brexit process, new realities awaiting the insurance market are getting ever closer to playing out. Whilst the political upheaval associated with Brexit is beyond the scope of this article, the multi-billion insurance industry with financial interests closely entwined with British insurance market and Lloyds syndicates have been long taking precautions to minimize the impact of the whole ordeal.



Due to sheer size of legal and financial areas to be impacted by Brexit and and immense complexities to take into consideration, it would be practically impossible to dissect all aspects of Brexit's impact on marine insurance industry in minute detail. Regardless certain practical considerations on this matter are worth considering and underlining some practical key points may be beneficial.

Brexit's short and long term effects on marine insurance industry will be felt in all primary areas constituting the business such as claims handling, regulatory authorities involved and their practices, the principles of underwriting and insurance wordings which shall be widely adopted, but for sake of brevity and let's focus on regulatory and underwriting aspects as two vertical slices of the whole matter.

European Union's perhaps the single most important claim to fame is the single market between EU members and this applies to insurance market as well. Pre-Brexit arrangements already in place allow that insurance and reinsurance services can be freely provided between EU member states. This freedom is conferred by EU Insurance Directives and the Reinsurance Directive which has been repealed to make room for Solvency II some time ago. EU's Insurance Mediation Directive also has a role to play in realizing this freedom. In a nutshell, these regulatory texts enshrine rights that any insurer or player in EU insurance market with headquarters is automatically authorised to provide insurance services in any EU member state. This applies to whole EU in general, and altered regulations are binding for countries who are EEA entrants but not EU members.

The looming bifurcation of the once-united market following Brexit has been forcing the insurers to prepare contingencies. Pillars of these contingencies involve cross extension of operational capabilities of insurance companies between EU and UK, i.e.;



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- UK insurance companies establishing branch offices, subsidiaries, and/or other entities with legal powers and operational capabilities to do business in EU countries, and likewise,

- EU insurance companies establishing branch offices, subsidiaries, and/or other entities with legal powers and operational capabilities to do business in UK. In accordance with precautionary steps taken by insurers on both sides of the channel, the gears have already been turning for establishment of such offices, and attempts to overcome regulatory hurdles are going on.

Another question to be tackled is the servicing backlog of insurance contracts between UK and EU entities having taken effect prior Brexit but remaining in force after Brexit. Legal preparations have been underway at many EU members' regulatory chambers to bring transitional arrangements into effect to allow existing insurance contracts of UK insurers to remain valid, in effect and enforceable for variable periods. Unfortunately many EU members are still due to introduce counter measures to minimize negative implications of Brexit, agreed or otherwise. Regardless which scenario ultimately plays out, continuity of service paramount and failure in ensuring this would send jitters throughout the whole sector.

These steps are important because UK insurers will be deemed non-EU (i.e. third party) entities by EU countries, and thus must seek authorisation regardless if they enter new contracts, or service existing contracts. Even insurance policies which will have been terminated or otherwise become cancelled / expired by the time of Brexit may confer rights and/or liabilities to both insurers or assureds, thus rendering vital that regulatory frameworks are in place to enable a smooth transition.

Following Brexit there will be no overarching law to compel UK to comply with Solvency II. On the other hand, two offshoots of the now defunct FSA, the FCA and PRA acceded to Solvency II some time ago. It is also worth keeping in consideration that such authorities with legal powers have not been idle in course of preparation stages of such directives and as a matter of fact were actively involved in their creation. Despite Brexit, there is good reason to assume UK will wish to maintain economically positive and commercially viable relations in insurance markets, and thus any UK regulations in this respect post Brexit will maintain well crafted wordings to similar effects as Solvency II.

Another aspect that must be kept in perspective are the EU regulations pertaining to data safety and protection of privacy. Two cornerstone texts which must be particularly mentioned in this respect are EU Network and Information Security Directive (NISD) and EU General Data Protection Regulation (GDPR). GDPR has been brought into effect throughout EU in May 25th, 2018 to far reaching changes in various industries including insurance. Whilst NISD is a few years away from implementation in EU countries, once it's done, it will co-exist with GDPR in tandem. Primary purpose of both regulations are to bolster EU citizens' and entities' rights to privacy, but they also mandate that in some cases cyber attacks and data breaches are reported to competent legal authorities. UK's secession from EU will mean that UK will be free to reevaluate if and how these texts impact their businesses and society in general, and possibly amend these texts to curb their power. Loosening wordings and trimming scopes of such texts would obviously heighten cyber risks, possibly resulting in cyber attacks in larger numbers, with more destructive results, or both. Such developments could also possibly bring about a discussion to cyber risks in marine insurances, which currently are usually excluded, or severely limited within scope and/or limits covered.

Constituting part of financial sector, insurance business is averse to unknown risks as they are hard to objectively assess and protect against. Further aggravating such risks are the multitude of parties required to involve to ensure insurance sector will be able to escape from Brexit's path of harm. Whilst the insurance companies and insurance markets are scrambling to minimize potential jitters from Brexit, the regulatory parties' and lawmakers' willingness and full understanding of required solutions remains mixed.

