BREXIT

IMPLICATIONS FOR INSURANCE BUYERS
FREQUENTLY ASKED QUESTIONS

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SECTION ONE

OVERVIEW

The United Kingdom (UK) formally left the European Union (EU) on 31 January 2020 and entered into a transition period as agreed as part of the Withdrawal Agreement between the UK and the EU. The transition period is due to end on 31st December 2020. During the transition period it will be “business as usual,” as this period is intended to provide the UK and the EU with time to negotiate the details of the future relationship, ready for implementation at the end of 2020.

Over the last few years as we have progressed with our preparations for Brexit we have received a number of questions from our clients on the implications of Brexit for insurance buyers, and for the insurance market more broadly. We have set out below the answers to the questions raised based on the information available to date. We will be monitoring the progress of the negotiations between the UK and EU during the transition period, and the impact of the outcomes of those negotiations for insurance buyers, and will update our frequently asked questions (FAQs) when further information is available.

SECTION TWO

GENERAL

1. If my global policy is written by UK-domiciled (re)insurers, will it still be enforceable post Brexit and can UK insurers still pay claims into the EEA?

The default position post-Brexit and following the end of the transition period is that the UK will be treated as a third country by European Economic Area (EEA) member states. Similarly, the UK will treat EEA member states and EEA firms in the same way as it treats other third country states and firms.

A number of UK insurers have undertaken Part VII transfers under the 2000 Financial Services and Markets Act so that they can continue to settle claims in the EEA post-Brexit and the end of the transition period. Part VII of the Act sets out the statutory mechanism allowing (re)insurers to transfer portfolios of (re)insurance business from one entity to another, subject to court approval. Where such EEA liabilities are transferred from a UK entity to an EEA licensed entity, all future EEA liabilities arising in relation to existing contracts of (re)insurance, for example payment of claims, will be performed by the EEA licensed entity. You can read more about Part VII transfers in our previous briefing

In addition, a number of EEA Member States previously considered introducing “emergency” Brexit legislation allowing for the run-off of existing contracts, under which a UK domiciled insurer would be able to pay a claim to an EEA policyholder without obtaining an EEA authorisation. However, such legislation was intended to apply in the event of a “no-deal, no-transition” Brexit. As the UK left the EU under the terms of the Withdrawal Agreement, whether UK based insurers can now run-off existing contracts, and legally pay claims to EEA-based policyholders, will depend on the precise terms of any such legislation in place in each EEA Member State.

2. After Brexit, will a UK insurer still be able to issue a single policy covering both the UK and the EU?

The principal impact of Brexit on insurance markets is that UK insurers will lose the passporting rights that they currently hold. Passporting rights allow UK insurers to carry on business in another EEA state either through a branch established in that state (Freedom of Establishment basis) or on a Freedom of Services (FoS) basis. Under FoS, business services can be provided across national borders within the EEA on the basis of a single authorisation obtained in the UK. For insurance contracts, this means that a single policy can be underwritten in any one EEA Member State covering exposures in multiple EEA jurisdictions.

UK insurers would only be able to issue EEA-wide policies after Brexit and after the end of the transitional period) if any future trade agreement between the EU and the UK were to allow for it, perhaps through mutual recognition of regulatory regimes or the reintroduction of passporting rights.

As things currently stand, in the absence of mutual recognition, and without access to EEA insurance markets for UK insurers (unless they obtain an authorisation in the relevant EEA state(s)), separate policies will have to be issued to cover UK risks and EEA risks, with the EEA policy being issued by an EEA insurer. Alternatively, a single policy could be issued and be dual stamped by an EEA insurer in respect of the EEA risk and by a UK insurer in respect of the UK risk. This approach has been adopted by Lloyd’s of London on risks covering both EEA and non-EEA exposures, where the Lloyd’s of London syndicate stamp is used to evidence the capacity for the non-EEA exposures, and the new Lloyd’s Brussel’s stamp is used to evidence the capacity for the EEA exposures.

3. How do I determine the location of a risk to understand the extent of my EEA exposure?

The factors that determine the location of the risk vary depending on the nature of the risk, for example:

Property. The location of immovable property, such as buildings or other infrastructure, is usually the territory in which the property is situated. In most territories, the risk location for movable property is where the property is normally situated. However, for regulatory purposes, EEA member states view the risk location of movable property as the territory in which the insured is habitually resident or established.

Vehicles. For aircraft, ships, and motor vehicles, the risk location may be determined by where the vehicle is located, or where it is registered, or where the insured is resident or established.

General liability and financial loss. For liability classes, the risk location is the territory in which the insured is resident or established. The territory in which an insured peril or event occurs to trigger a claim usually does not, by itself, create a risk location.

Reinsurance. If the contract is reinsurance, the risk location is determined by the location of the reinsured(s) and not the location of the original insured(s).

Global/multi-national programmes: For all classes, policyholders will need to continue to insure assets and liabilities for EEA risks on the basis outlined in 1) and 2) above. FoS policies issued by UK insurers for EEA risks or, subject to the Temporary Permissions Regime (TPR – see question 5 below), from EEA insurers for UK risks will no longer be permitted; your insurer will need to have made arrangements to provide coverage for a multi-territory programme through an EEA-based entity – this could be through a dual-stamp approach. Local compulsory insurances will continue as a requirement; the basis of broker service to support arrangement and delivery of those insurances may require some changes to be made and Marsh or your insurer will supply details.

SECTION THREE

INSURANCE CONTRACTS

4. What steps can I take to ensure that my policy continues to provide cover following Brexit?

Marsh has a range of options that seek to ensure that our clients' global policies issued after Brexit are enforceable, including, among others: writing clients' global programmes out of London as now, but with separate UK and EEA stamps; placing a local EEA policy, tied to the master policy; placing separate standalone EEA policies; and fronting arrangements with EEA insurers.

5. What about policies written prior to Brexit and payment of claims?

A. Insurers operating in the UK

Many insurers that currently operate across the EEA from the UK have established subsidiaries in other EEA states. Once these EEA subsidiaries are operational, insurers can apply to the UK Court for approval of a transfer under Part VII of the Financial Services and Markets Act 2000 which establishes a statutory mechanism allowing insurers (and reinsurers) to transfer portfolios of insurance business from one entity to another, subject to court approval. Using this mechanism, EEA risks written by the UK entity are transferred to the newly established EEA entity, thereby enabling the continuation of that business, including the payment of claims, once passporting rights have been lost. Other UK insurers have used the same mechanism to transfer their EEA business into an existing EEA subsidiary in their group, again to mitigate the loss of passporting rights. You can read more about Part VII transfers in our previous briefing.

B. EEA insurers

Many EEA insurers have also relied, pre-Brexit, on passporting rights to establish a UK branch or to provide services into the UK from the EEA without obtaining a UK authorisation. Those EEA insurers will continue to benefit from passporting rights during the transition period post-Brexit which will enable those EEA insurers to continue their UK business, including the payment of claims. However, as passporting rights will cease on 31st December 2020 when the transition period is currently set to expire, EEA insurers relying on those passporting rights will need to obtain UK authorisation to continue carrying out their business in the UK.

To assist EEA insurers seeking such authorisation, the UK government has introduced the Temporary Permissions Regime (TPR), which will take effect from the end of the transition period. The TPR will allow EEA insurers to continue operating in the UK for a period whilst they apply for authorisation from the UK regulators. Under the TPR, an EEA insurer that is currently authorized to carry on regulated activities in the UK in reliance upon passporting rights can obtain deemed permission to carry on those activities for a maximum of three years from the end of the transition period, with the possibility of a further extension of the TPR by HM Treasury of increments of twelve months.

One option for EEA insurers wishing to mitigate the future loss of passporting rights has been to convert an existing inbound passporting branch to a "third country" branch in time for Brexit and the end of the transition period Post-Brexit the UK expects to treat all EEA states as "third countries" for regulatory purposes. This means that, in order to obtain "third country" branch status, EEA insurers will need to obtain authorisation from the UK regulators. Those EEA insurers that have not yet obtained a full authorisation but have entered the TPR will be given the time they need to apply for that authorisation.

6. What happens if an EEA insurer failed to notify the UK regulator of its intention to rely upon the Temporary Permissions Regime (TPR)?

On 31 January 2020, the PRA posted an update on its website on how the TPR would apply once the implementation period comes to an end. The update noted that if a firm had not taken the necessary steps to enter the TPR, it could still do so by submitting an application for permission under Part 4A of the 2000 Financial Services and Markets Act (FSMA) before the end of the transition period.

Where a firm fails to submit the necessary application under Part 4A of FSMA, or fails to secure an authorisation, it may still be possible for EEA insurers to rely on the Financial Services Contracts Regime (FSCR) to enable them to comply with existing contractual obligations. The FSCR will serve as a back-stop to the TPR by allowing EEA passporting firms that do not enter the TPR to service their pre-existing contracts for a limited period of time at the end of the transition period. This ability to run-off existing contracts will only apply to UK contracts entered into prior to Brexit. Activities carried on in the UK by EEA insurers relying on the FSCR will also be limited to those which are necessary to perform existing contractual obligations. They will not be able to write new UK business.

The FSCR will be time limited depending on the type of regulated activity being performed and as currently drafted it will apply for a maximum of 15 years for insurance contracts, although the Treasury can extend this period, if necessary. Firms in the FSCR will have to keep authorisation in their home state and must notify the UK regulators if their authorisation is cancelled or varied.

7. What is Marsh's view on the Chairman of Lloyd's Statement on the Payment of Valid Claims in the event of a 'no-deal' Brexit?

On 9 October, 2018 the Chairman of Lloyd's issued a statement on the commitment made by Lloyd's to pay valid claims following the UK's departure from the EU without a transition (or implementation) period. The statement read as follows:

> ***"Hard Brexit: Commitment to pay valid claims***
>
> *I am writing to confirm that we plan to transfer all European Economic Area (EEA) business to Lloyd's Brussels before the end of 2020 via a Part VII transfer.*
>
> *In the event that the UK leaves the European Union before then with no transition or implementation period, Lloyd's underwriters will continue to honour their contractual commitments including the payment of valid claims.*
>
> *Lloyd's expects that this will have the support of all European regulators as it goes to the heart of treating customers fairly. In the event that it does not, Lloyd's will direct its underwriters, or take such other steps, to ensure that contractual commitments are met in full whilst the transfer is being completed.*
>
> *Lloyd's approach has the full support of the UK's Financial Conduct Authority.*
>
> *Lloyd's Brussels is authorised to write all EEA business from 1 January 2019.*
>
> *Lloyd's will arrange a meeting with you in due course to provide guidance on the transfer process and next steps and answer any questions you may have."*

Marsh believes that this was a positive statement for our clients as it reflected Lloyd's intent to ensure that our clients' claims will be settled, in the event that the UK left the EU prior to the completion of Lloyd's Part VII process without a transition period.

As part of the on-going discussions between Marsh and Lloyd's on Lloyd's Brexit preparations and their impact on our clients (re)insurance programmes, Lloyd's has explained the complexity of its Part VII transfer. The Lloyd's Part VII process involves splitting EEA business from non-EEA business written over the last 25 years by Lloyd's members across numerous syndicates managed by multiple managing agents through brokers and coverholders worldwide. Lloyd's believes its Part VII process will be completed before the end of 2020, a timetable which enables Lloyd's to work with market participants to address those complexities in a way which ensures the transfer puts the interests of policyholders first.

At the time the Chairman of Lloyd's statement was made, Lloyd's was mindful that its Part VII transfer process would not be concluded prior to the UK's departure from the EU, which is why Lloyd's issued its statement on payment of claims. To provide further comfort, Lloyd's also wrote to all EEA regulators informing them of the statement and its intent to pay valid claims in such circumstances. As the Lloyd's Part VII process is up and running, and in circumstances where Lloyd's has the support of the UK's FCA and has written to the EEA regulators, Lloyd's considered that it would be inconceivable that an insurance regulator would seek to impede Lloyd's underwriters from meeting their contractual commitments for such a time limited period. In particular, because by doing so it would be contrary to the interests of policyholders that a regulator seeks to protect.

To provide further comfort Lloyd's has explained to Marsh that if circumstances did arise, where a regulator sought to intervene in payments due to be made by Lloyd's underwriters pursuant to its statement, Lloyd's would take steps to ensure that the contractual commitments are met in full, where such steps might involve the payment of claims monies for collection in the UK or through the establishment of a non-insurance payment scheme.

Marsh has continued to engage with Lloyd's on the progress of its Part VII transfer, and understands that Lloyd's is still working towards the conclusion of its Part VII transfer by the end of 2020, and in advance of the expiration of the transition period, which is currently due to expire on 31st December 2020.

8. Do I need to have a contract continuity clause in my insurance contract?

Prior to Brexit insurers had the ability to carry out business across the EEA on a freedom of services (FoS, as described above) or freedom of establishment basis relying on a single home country licence also known as passporting rights. At the time contract continuity clauses were introduced into the market there was still a possibility that the UK could leave the EU without any suitable transition arrangements or an agreement in place allowing UK insurers to perform cross-border business into the EEA. Contract continuity clauses were designed to enable the transfer of a UK insurer's participation in a policy covering EEA risks, where Brexit prevented that UK insurer from fulfilling its contractual obligations, to an alternative, contingent EEA based insurer which would be authorised to fulfil such obligations (or vice versa).

As the UK has now left the EU and entered the transition period during which such passporting rights will be retained, the question arises as to whether such contract continuity clauses are still necessary and the answer will depend upon each insurer's Brexit strategy.

A. **New and renewal business -** Marsh did not see frequent use of such contract continuity clauses in the run up to Brexit Marsh believes this was because where an insurer had set up an EEA entity authorised to perform contractual obligations in respect of EEA risks, that EEA insurer deployed its capacity at the time the risk was placed on a dual stamp basis, rather than act as contingent capacity to be triggered at the point in time where the UK insurer could no longer meet its contractual obligations post Brexit. As insurers have now implemented their Brexit solutions there should no longer be a need for a contract continuity clause and the UK and EEA insurers will provide capacity for the UK and EEA exposures as appropriate. There may, however, be circumstances where an EEA insurer does not have the ability to cover UK risks and Marsh will discuss with you the various options for such a scenario.

B. **Endorsing existing contracts –** When determining whether or not an existing contract needs to be endorsed with a contract continuity clause it is necessary to consider the relevant insurer's Brexit planning including whether or not an insurer has undertaken a Part VII transfer and/or the existence of any EU Brexit legislation which would permit a UK insurer to run-off existing contracts in the event of a “no-deal” Brexit.

i. Part VII Transfers

If a UK insurer already has (or is establishing) a licensed entity in the EEA it can transfer its past EEA liabilities to the existing (or newly created) EEA licensed entity under a Part VII transfer under the 2000 Financial Services and Markets Act. This Act sets out the statutory mechanism allowing (re)insurers to transfer portfolios of (re)insurance by business from one entity to another, subject to court approval. Where such EEA liabilities are transferred from a UK entity to an EEA licensed entity, all future obligations arising in relation to existing contracts of (re)insurance, for example payment of claims, will be performed by the EEA licensed entity to provide contract continuity. It is not necessary to endorse contracts which are transferred to an EEA entity as part of the Part VII transfer process.

ii. (The Temporary Permissions Regime (TPR) and Financial Services Contracts Regime (FSCR)

For EEA insurers wishing to continue operating in the UK post Brexit and the loss of passporting rights, the UK Government has introduced legislation to implement the TPR and FSCR. The TPR will allow EEA insurers, who have notified the UK regulators of their intention to rely on the TPR, to continue operating in the UK whilst they apply for “third country” branch status. The FSCR may also be available to insurers who have not entered the TPR as it enables some (but not all) EEA insurers to continue to service pre-existing contracts for a limited period of time from the end of the transition period. For more information on the TPR and FSCR please see questions 5 and 6 above.

iii. European Legislation

On 19 February, 2019 the European Insurance and Occupational Pensions Authority (EIOPA) issued recommendations for the insurance sector in light of the UK’s intended withdrawal from the EU (the “Recommendations”). The general objective of the Recommendations is “to foster convergence and consistent supervisory approaches in the treatment of UK insurance undertakings and distributors across Member States by setting out guidance on the application of the existing legal framework considering arrangements between EU and non-EU counterparties”. The Recommendations were addressed to EU Member States competent authorities.

The general objective of the Recommendations is that, in their treatment of cross-border business of UK insurance undertakings, “competent authorities should aim to minimise the detriment to policyholders and beneficiaries, based on the applicable EU and national laws”. In addition, in accordance with Recommendation 2, competent authorities should apply a legal framework or mechanism to facilitate the orderly run-off of business which becomes unauthorised. In line with this recommendation, a number of EEA Member States passed legislation, or indicated an intention to pass legislation, allowing for the run-off of existing insurance contracts, which would include payment of claims, by UK insurers without their first needing to obtain an EEA authorisation. However, the EIOPA guidance was issued at a time where it was still possible for the UK to have left the EU without a deal and most (if not all) of the run-off regimes that were put in place were only intended to come into force if the UK left the EU on a "no deal, no transition" basis. Consequently, where such legislation is in place it is important to understand the precise terms of the legislation, first because the scope and duration of any measures put in place can differ significantly as between Member States. Further, now that the UK has left the EU and is currently within a transition period, the legislation may no longer apply at all.

9. How will Brexit affect the governing law and jurisdiction of the contract?

The choice of law to govern an insurance contract will not be impacted by Brexit. EU courts will continue to apply the Rome I Regulation, which states that "a contract shall be governed by the law chosen by the parties." Under the European Union (Withdrawal) Act 2018, the Rome I Regulation will form part of UK domestic law after the UK leaves the EU unless the government legislates otherwise. Even if the UK makes changes to how it applies Rome I, British courts are likely to uphold to contracting parties' choice of law.

Choice of law and jurisdiction are entirely separate points from the domicile of an insurer. If a UK insurer re-domiciles to an EU member state in order to be able to continue to service EEA risks, there is no reason why the choice of law and jurisdiction for policies underwritten by that insurer should change. Marsh is seeking to encourage insurers to maintain the same policy wording (including choice of law and jurisdiction) to avoid unwanted or unpredictable changes to policy holders' coverage.

Judgments obtained in English proceedings which were started during or before the transition period will continue to be enforceable in the EU. The post-transition period jurisdictional and enforcement landscape is less clear and will depend among other things on what the terms of any future relationship between the UK and EU. Although there are well developed procedures for enforcing foreign judgments in the UK and EU member states, it may become more costly and time-consuming to enforce an English judgment in the EU than it currently is (and vice versa). If the aim of a jurisdiction clause is to provide a judgment that will be simpler and cheaper to enforce throughout the EU, there are a number of options to consider including a non-exclusive jurisdiction clause or an arbitration clause.

For further detail, please refer to:

- HSF −Jurisdiction and enforcement after Brexit transition – latest developments re UK's accession to Hague and Lugano Conventions
- Article published – Exclusive English jurisdiction agreements agreed before no-deal Brexit may not come within Hague Choice of Court Convention

10. What limits will I need in my UK and EU-27 FoS policy?

There is no reason why the current limits (covering the EEA including UK) will necessarily need to be amended. Of course, the limits required for the UK and EEA policies may vary depending on the circumstances of each insurance buyer.

11. Can the wording of the UK policy be the same as the EU-27 FoS policy?

Yes. Clients may choose to buy separate policies for EEA and non-EEA exposures, but there is no obligation to do so. As far as possible, differences between UK and EA-27 FoS policies should be kept to a minimum, and there should be as much continuity as possible between current arrangements and post-Brexit arrangements.

SECTION FOUR

INSURERS

12. Which insurers are Brexit ready?

Many insurers have now concluded their Brexit preparations. Marsh has been monitoring such preparations in order to minimize our clients' exposure even in the case of a "no-deal" Brexit. Please get in touch with your usual Marsh contact if you have any concerns about the insurers on your programme.

13. Will underwriters based in the UK be able to take underwriting decisions for EEA-based insurers?

The specific arrangements put in place by EEA insurers will determine whether or not their UK based underwriters can continue to take underwriting decisions in respect of EEA risks. For example, and depending upon the Brexit strategy implemented by a particular insurer, UK based underwriters could deploy two separate stamps (one for EEA risks underwritten by the EEA insurer and one for non-EEA risks underwritten by the UK based entity), or a single stamp on behalf of an entity that is authorised both in the EEA and in the UK (perhaps because it has a UK branch with a UK authorisation). Please get in touch with your usual Marsh contact if you have any concerns about EU insurers on your programme and the scope of the underwriting authority of UK based underwriters.

SECTION FIVE

BROKER CLIENT SERVICE

14. How does Marsh propose to service EEA businesses post-Brexit?

The UK formally left the European Union (EU) on 31 January 2020 and entered into a transition period, which will last until 31 December 2020. During the transition period it will be "business as usual," as this period is intended to provide the UK and the EU with time to negotiate the details of its future relationship, ready for implementation at the end of 2020.

Marsh is committed to ensuring that at the end of the transition period, we can continue to provide our European Economic Area (EEA) clients with continuity of service for their risk and insurance needs. Marsh has, therefore, established two UK branches of our Irish and Belgian European entities. These new UK branches, alongside our existing European offices, will enable us to continue our existing relationships with our EEA clients after the end of the transition period, and provide our EEA clients with access to our expertise and global network.

15. How will my existing or new claims be handled in the event of a "no deal" Brexit?

In circumstances where our EEA clients have notified claims to (re)insurers prior to Brexit or new claims notifications are required on policies that incepted prior to Brexit, both these existing and new claims will continue to be handled by colleagues in Marsh Ltd, working alongside claims colleagues in either of our two UK branches of our Irish and Belgian European entities, during the transition period. At the end of the transition period all claims handling for EEA clients will need to be undertaken by our colleagues who are authorised to service our EEA clients. If you require any further information please contact your usual Marsh contact.

16. Do I need to enter into separate contracts with Marsh in the UK and Marsh in the EU-27?

Clients based in the UK or based elsewhere outside the EEA should see little change: where they need to insure EEA exposures, their current Marsh servicing team will be able to obtain EEA cover from suitably licensed insurers. Following Brexit, Marsh will service its EEA-based clients via its newly established UK branches of its Irish and Belgian European entities, or authorised Marsh broking entities in the EEA. As a consequence, EEA clients that currently contract directly with Marsh Ltd. will need to contract with the Marsh entity or entities which will be advising them. We are putting in place arrangements to streamline agreement of new contracts where these are required.

17. If so, why? Will it cost more and will I receive the same standard of service?

In order for Marsh to comply with its regulatory requirements in all of the jurisdictions in which it operates, placement and claims advice will be provided by EEA-based Marsh advisors either locally or by those colleagues within one of our UK branches of our EEA intermediaries, who will continue to be able to draw on the expertise and capacity of the London Market. There will be no impact on the quality or timeliness of the service you receive. Marsh will strive to keep any impact on cost to a minimum.

18. Can I enter into a single contract with the Marsh producing office in the country in which the main group company is located and the Marsh producing office can then engage with the various other Marsh offices in the EU-27 and the UK?

Yes. Our EEA based clients will only need to enter into a contract with one EEA Marsh office, following which colleagues in the Marsh EEA producing offices will be able to engage with colleagues in other EU/EEA and UK offices, including the UK branches of Marsh Ireland Brokers Ltd or Marsh Belgium. If you have further questions, please contact your usual Marsh relationship manager, who will be able to advise on the best way to manage your engagement with Marsh going forwards.

19. Does Marsh anticipate any change to the level or process of risk presentation (i.e. collation and analysis of risk data for presentation to insurers) post-Brexit?

For international and global clients, Marsh already gathers, analyses, and presents risk data from other parts of the world outside the EU. While this process may need to be reviewed as a result of the ultimate outcome of Brexit negotiations, Marsh does not anticipate challenges with risk presenting as a result of Brexit.

20. If an insurer is changing security as part of a Part VII transfer, will my broker notify me?

As part of the Part VII process, insurers – and not brokers – are required to notify their clients that the transfer will take place. Marsh brokers will, where possible, notify our clients if they become aware of a change of insurer – particularly if the financial rating of the new insurer is different to the original insurer.

SECTION SIX

COSTS

21. Will there be additional cost to the policyholder as a result of Brexit?

The strategies for ensuring that EU and UK risks are covered post-Brexit, and for ensuring continuity of coverage before and after Brexit, may result in an increase in administrative cost. Examples include fronting costs, and the cost of issuing additional local policies. Marsh constantly seeks to minimize any such increases in cost.

22. What are the potential tax implications of Brexit?

Following the UK's departure from the EU premium taxes will continue to apply to the portion of premiums allocated to risks in the various EU member states. For example, if a policy is issued in France and covers French risks, then insurance premium tax (IPT) will still be due on the premiums payable for those risks. While the method of payment for IPT is unlikely to change as a result of Brexit for UK risks, the UK government is likely to continue to review the rate of IPT and the method of its remittance by non-UK resident insurers.

23. How will Brexit affect captives?

As the uncertainty with regard to terms of the UK's future relationship with the EU continues, potentially affected captive managers, captive advisors and captive owners have been working together to develop contingency plans to prepare for various possible outcomes of the current discussions between the UK and the EU on our future relationship.

The key issue for captives is the loss of "passporting" rights, which will take place at the end of the transition period on 31 December 2020. "Passporting" enables EEA established captives directly writing lines of insurance to the UK to rely on a single licence obtained in their home state.

A number of solutions are available to address the loss of passporting rights. For example, it is possible for EEA captives to continue covering non-compulsory classes of business in the UK on a non-admitted basis. Further to assist EEA insurers (captives) the UK government has set up the Temporary Permissions Regime (TPR) which will take effect from the end of the transition period. The TPR would allow an EEA captive, that is currently authorised to carry on regulated activities in the UK in reliance upon passporting rights, to obtain deemed permission to carry on those activities for a maximum of three years after the end of the transition period, whilst it applied for its UK authorisation.

In practice not many EEA captives are heavily impacted by changes, since few of them write large portions of compulsory UK risk on a direct basis. Those that do are well advanced in their preparations.

In theory, UK based captives writing risks into the EEA are also affected by the loss of passporting rights, as they would not have the permissions needed to underwrite EEA risks once the implementation period comes to an end. However, Guernsey and the Isle of Man, where many 'UK captives' are based, have never been part the EEA so are relatively unaffected. Gibraltar has a few 'UK captives', but mainly specialises in UK third party motor insurance. Marsh's captives team can help these captives explore options to enable them to continue to write EEA business post the end of the transition period.

Our Captive Management teams in each domicile have explored these options with all existing client and made contingency plans, which have often been communicated to local captive regulators and the FCA to keep them appraised. Our Captive Advisory team has also evaluated various structures which could help prospective captive owners set up their captives to allow for contingencies in the most practical way. Our Captive teams offer this service to companies whose captives are managed by third parties, and who would like an independent and experienced review of the possible solutions.

In view of the uncertainty around the terms of the future relationship between the UK and EU, we would advise clients to engage with Marsh’s Captive teams to review their captive risk profiles and insurance programmes and to be aware and plan for the impact of Brexit on those risk profiles and insurance programmes. The final effects of Brexit on captive owners will become more apparent in the months to come.

SECTION SEVEN

REINSURANCE

24. How will UK reinsurance companies' solvency requirements be affected by Brexit?

Currently UK reinsurers are required to meet standards, including solvency requirements, established by the Solvency II regime, which came into force in the UK in 2016. The UK's approach to the post-Brexit regulation of insurers has been to retain Solvency II standards while making the minimum of changes that are needed to reflect the fact that the UK is no longer a member of the EU. This means that UK reinsurers' solvency requirements are unlikely to change as an immediate consequence of Brexit.

25. How will Brexit impact UK reinsurers' ability to underwrite EEA risks?

The starting point for reinsurers is that they are affected by Brexit in the same way as insurers. For example, UK reinsurers will lose passporting rights enabling them to operate in the EEA on a freedom of establishment or freedom of services basis on the basis of their single UK authorisation. Post-Brexit, therefore, UK reinsurers will be treated by EEA states in the same way as other third country reinsurers and much of the discussion above applies to reinsurers as well.

Under Solvency II, the default position is that reinsurance purchased from a third-country reinsurer may not be treated as favourably as reinsurance purchased from an EEA reinsurer, so reinsurance clients might find themselves having to hold more capital to cover the credit risk. However, full credit could still be taken post-Brexit for reinsurance taken out with a UK reinsurer if the UK is determined to be "equivalent" by the EU. Equivalence is not granted automatically and the process can take several years although an assessment of the UK's regime should be capable of being carried out considerably quicker whilst the UK's post-Brexit regime remains aligned with Solvency II. In addition, the non-binding Political Declaration that accompanied the Withdrawal Agreement provided for both the UK and the EU to carry out equivalence assessments by June 2020 and the UK Government has more recently confirmed its wish to work towards this deadline. How the equivalence regime should apply as between the EU and the UK once the implementation period comes to an end remains a matter for political debate. Of particular concern, if the UK regime diverges significantly in the future from the current, Solvency II regime, there is a risk that EU regulators may remove the UK's equivalence status.

SECTION EIGHT

DATA PROTECTION

26. Is Marsh still able to process the personal information of EU citizens after Brexit?

Yes, Marsh UK will still be able to process the personal information of individuals in the EU after Brexit. Marsh undertook a comprehensive project to implement any changes necessary to address and ensure compliance the obligations imposed by the EU General Data Protection Regulation which governs the use of personal data of individuals in the EU. Marsh also does not foresee any challenges continuing to export personal data from the UK to the EU following its departure from the EU as a result of commitments provided by the UK Government. For example, the UK Government has committed to recognise all EEA countries (including EU Member States) and Gibraltar as "adequate" to allow data flows from the UK to the EU to continue. Where there remains some uncertainty is where personal data is exported from the EU to the UK.

Given that a withdrawal agreement was reached between the UK and the EU, we are in a transition period until 1 January 2021 during which time there are no additional restrictions on the flow of data between the UK and the EU. If the European Commission does not grant the UK with an adequacy decision by 1st January 2021 or if the UK has not, by 1 January 2021, entered into a framework code of conduct or similar instrument recognised by the relevant authorities or courts as providing an adequate level of protection for personal data then restrictions on the transfers of personal data outside the EU will apply to transfers of personal data from the EU to the UK, as the UK will be treated as a third country. If at the end of the transition period the UK is treated as a third country any party in the EU transferring personal data to the UK will need to put in place appropriate safeguards in respect of such a transfer. For example, the company exporting the personal data from the EU can request Marsh UK to sign standard contractual clauses. Marsh and McLennan Companies (MMC), Marsh's parent company, has in place Binding Corporate Rules to ensure that data transfers within the MMC group are adequately covered and for intra-group data transfers from the EU to the UK, no further action is required.

SECTION NINE

MOTOR INSURANCE

27. What is the impact of Brexit on motor insurance? Will I need a Green Card to travel in Europe?

The UK formally left the European Union (EU) on 31 January 2020 and entered into a transition period, which will last until 31 December 2020. During the transition period, arrangements for driving in Europe remain the same as prior to Brexit. However, the requirements for motorists following the end of the transition period are, as yet, unknown. Unless the transition period is extended (which the UK government has indicated it does not intend to do) or any trade agreement agreed between the UK and the EU makes provisions for UK motorists, driving in Europe from 1 January 2021 may require similar arrangements as would have been the case in the event of a "no deal" Brexit — that is, obtaining a Green Card.

A Green Card is an EEA certification of insurance which provides motorists with evidence of the minimum level of compulsory motor insurance required by the law of the EEA country in which travel will take place.

For further information on the need for a Green Card please visit our website.

If you require more information or have any further questions please contact your usual Marsh representative.

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