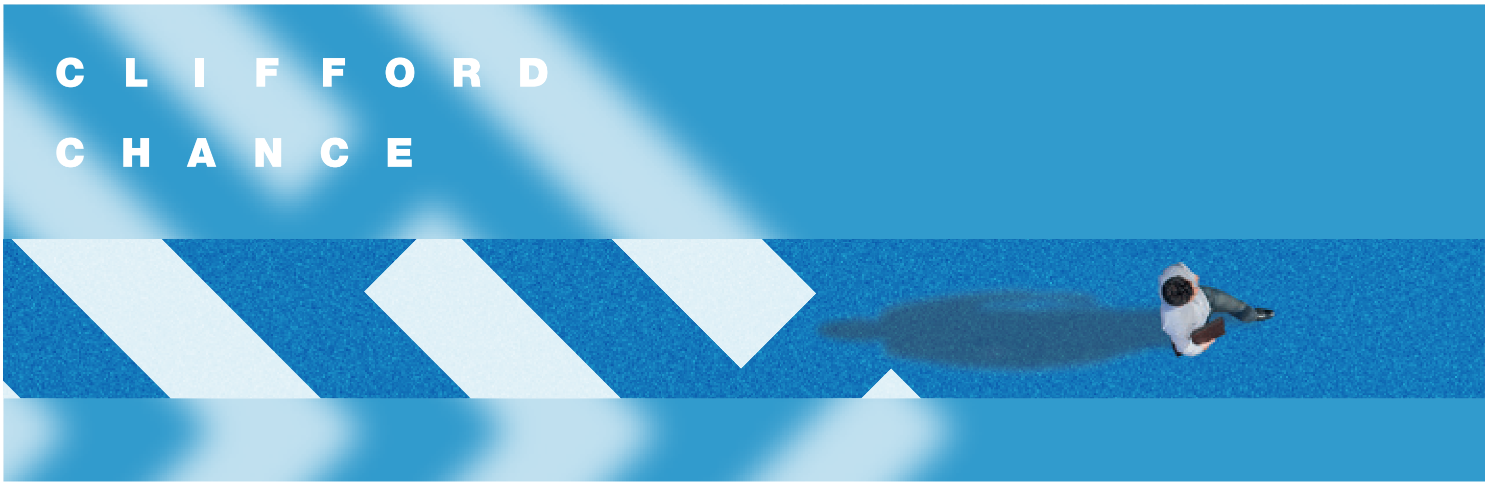

ARE INSURERS READY FOR BREXIT?

The UK left the EU on 31 January 2020 with an 11-month transition period to agree on a free trade agreement (**FTA**). By passing up the opportunity to extend the 30 June deadline, the government has kept the UK on course to leave the transition period at the end of the year. Although the UK may want to step up the pace of negotiations with the EU on a FTA, the Coronavirus pandemic has potentially disordered the government's economic and political calculations. A no-deal outcome, which once seemed very unlikely, now seems entirely plausible.

Many insurers are prepared for a "No-deal Brexit" and the subsequent loss of passporting rights, with a number having completed Brexit-related reorganisations over the past few years. Several UK insurers have already established EU subsidiaries to continue operating in the EEA, whilst others have formed fronting relationships with local carriers. EEA insurers have considered their options, including operating in the UK as a third country branch or as UK subsidiaries.

With a 'No-deal' Brexit increasingly on the horizon, EU insurers should look at whether their contingency planning still holds in the current political and legal environment and, where applicable, those seeking to continue operations in the UK should consider the temporary legal measures still available. For example, EEA insurers who wish to participate in the Temporary Permissions regime (**TPR**) can still do so but now need to submit an application for permission under Part 4A of FSMA (or for variation of an existing 'top-up' permission) before 31 December 2020 as the deadline to notify the PRA to use TPR has passed. As compiling a Part 4A application is an extensive and time-consuming exercise, any such application must be treated as a priority to make the deadline. Insurers not in the TPR and who wish to wind down their UK regulated activities in an orderly manner can use the Financial Services Contracts Regime (**FSCR**) to run-off, closeout or transfer obligations arising from contracts that exceed the limit of the regime (15 years for insurance contracts).

Whilst the UK took the above unilateral measures, the position on contract continuity in the EU remains somewhat fragmented, despite EIOPA's non-binding recommendations designed to minimise negative impacts on policyholders and to ensure continuity of service after Brexit. Some national governments and regulators, for example, Spain, Italy and Germany, announced contract continuity measures at the time of the Withdrawal Agreement negotiations and have not yet revisited these since the Withdrawal Agreement was entered into. Other jurisdictions, such as France, have recently announced emergency powers in the light of the pandemic and which could be used to rectify areas of legal and regulatory deficiencies in the event of a 'no-deal'. Despite the increasing prospect of 'no-deal', and even if the EU countries re-enact their previous Brexit legislation, continuity measures differ widely in scope, duration, and nature across the EU. Insurers are therefore encouraged to identify jurisdictions with impacted policyholders and request local counsel to confirm the current position on contract continuity.

The prospect of the UK being granted Solvency II equivalence also looks uncertain. Michel Barnier, the EU's chief negotiator, stated last week that that UK had not, at that time, completed the European Commission's equivalence questionnaires. The publication of an updated EU "Notice to Insurance Stakeholders" shortly followed, where the EU asked for stakeholders to be "ready for a scenario where there is no equivalence". Therefore, insurers should also be assessing the impact of non-equivalency around reinsurance, group solvency and group supervision if applicable.

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