POTENTIAL INSURANCE IMPLICATIONS SHOULD THE UK VOTE TO LEAVE THE EU

On 23 June 2016, a referendum will take place on the United Kingdom's (UK) membership of the European Union (EU).

IF THE UK VOTES TO LEAVE THE EU, WHAT HAPPENS NEXT?

Article 50 of the Treaty on European Union outlines the process for a member state leaving the EU. The UK would have a two-year transitional period to negotiate the terms of an exit. All EU members would have to agree to any extension to this transition period.

If the UK votes to leave the EU, there are several options as to what might be agreed in terms of the ongoing relations between the UK and the EU. The UK Government has issued a paper on possible scenarios.[1]

IF THE UK LEAVES THE EU, WHAT MIGHT CHANGE?

While the future course of events is far from certain, below we highlight some of the potentially significant implications for the insurance market and insurance buyers to consider:

MARKET VOLATILITY

There is likely to be market turmoil in the period immediately following a vote to leave. This could involve depreciation in the GBP and Euro, with consequential stress on capital positions leading to possible credit ratings downgrades for insurers and other financial institutions.

MATERIAL CHANGE IN RISK

A "leave" vote could cause key aspects of an insurance buyer's business or planned transactions to change, resulting in a material change to the buyer's risk profile. The implications of these would need to be raised and resolved with a buyer's insurers and risk advisers.

PEOPLE ISSUES

Freedom of movement is a fundamental right in the EU and currently enables non-UK EU citizens to work freely in the UK, and UK nationals to work in other EU countries. A "leave" vote could change this, with a potential dislocation of key talent and resources.

PASSPORTING ISSUES

The right of insurers and brokers to passport (that is, to carry out business in other countries from a single country licence) into the EEA (European Economic Area) may be restricted.

As a result, insurers wishing to carry on business in other EEA states may be required to obtain licences in each member state, or form a new legal entity based in one of them. Similarly, an EU insurer may need an additional licence to carry on insurance business in the UK, or to form a new UK entity. Writing business through local branches would require local authorisation and capital being deposited to support the branch in some cases.

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[1] Alternatives to membership: possible models for the United Kingdom outside the European Union

CHANGE IN THE LEGAL AND REGULATORY ENVIRONMENT

If the UK leaves the EU, the Freedom of Service (FOS) Directive may no longer apply to the UK and access to the single market will have to be renegotiated during the transitional period.

Freedom of Service (FOS) is the right to provide business services on a cross-border basis within the EU. For insurance contracts, in particular, this means that a contract can be underwritten in an EU member country that is different from that in which the risk is located. These contracts – which are commonly used by multinational companies as a means to secure locally admitted coverage in multiple EU countries – could be affected.

In addition, the UK may no longer benefit from treaties between the EU and non-EU countries, meaning organisations could face new barriers when providing services outside of the EU.

Also, UK judgements may no longer be enforceable in the rest of the EEA.

In view of the uncertainty surrounding this issue, we advise clients to keep a close eye on future developments and be prepared to review their risk profiles and insurance programmes accordingly. We will issue further guidance as the situation develops.