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GLOBAL INSURANCE INDUSTRY

YEAR IN REVIEW

2019

EXCERPT

UK/Brexit

Brexit

The UK has now left the EU and has entered into the implementation period provided for in the withdrawal agreement negotiated between UK and the EU, which means that relations between the UK and the EU will largely remain unchanged until December 31, 2020. After this date the implementation period ends and the terms of a future relationship, if agreed, will instead govern the relations between the UK and the EU. During 2019, the UK government and financial markets regulators were largely concerned with contingency planning for the possibility of the UK failing to conclude a trade agreement with the EU before exit day, i.e., a no-deal Brexit. One of the ways this would have impacted EEA insurance firms operating in the UK would have been the loss of their permission to use the "passporting" system, which enables insurance firms regulated in one EEA state to provide cross-border and branch services in the rest of the EEA (including the UK) on the basis of their home state authorizations. A no-deal Brexit in that sense remains a possibility if the UK and EU fail to agree the terms of their future relationship before the end of the implementation period on December 31, 2020.

EU INSURANCE FIRMS OPERATING IN THE UK AND THE TEMPORARY PERMISSIONS REGIME

Further to their no-deal Brexit planning, the UK government and financial regulators have sought to ensure that EEA insurance (and other financial services) firms currently operating in the UK could continue to do so in the event of a no-deal Brexit. This was addressed by the UK government's announcement of a temporary permissions regime ("**TPR**"), which will enable EEA insurance firms to continue to operate in the UK for a three year transitional period after a no-deal Brexit, in which time they can seek direct UK authorization. The TPR will now take effect from January 1, 2021, if no alternative arrangements are agreed before that date.

UK INSURANCE FIRMS OPERATING IN THE EU

The EU has not offered the same hospitality to UK insurance firms relying on passporting to operate in the EEA. Upon a no-deal Brexit, such firms will instead need to comply with local laws to continue to operate, including, where applicable, by obtaining authorization in the relevant EEA states or transferring business to affiliates authorized in the EEA. Many UK firms have been progressing these alternatives in order to be ready for a no-deal Brexit. Where the authorization approach is taken, it may also be possible for the EEA entity to outsource certain activities from that entity back to the

UK, although the various European Supervisory Authorities have urged local regulators in their assessment of applications for authorization to be vigilant against the establishment of "empty shell" subsidiaries (i.e., those without substance) established purely to gain access to the Single Market. It may also be possible for certain services to be provided without the need for local authorization where "reverse solicitation" laws can be relied upon. Under certain circumstances reverse solicitation allows a firm to market and provide financial services to a client where approached by the client on its own initiative. However, the value of this approach will be limited given the requirement for a client to have initiated contact, as well as the varying interpretation across Member States of what constitutes reverse solicitation.

Disclosure Regulation

The Disclosure Regulation is one part of the European Commission's package of reforms relating to sustainable finance. It was published on December 9, 2019, entered into force on December 29, 2019, and its main provisions will apply from March 10, 2021. The Disclosure Regulation contains transparency rules relating to financial products for financial market participants, such as insurance undertakings that offer insurance-based investment products ("**IBIPs**"), and financial advisers, including insurance intermediaries or insurance undertakings that provide insurance advice relating to IBIPs. The Disclosure Regulation requires that relevant firms disclose, for example, in pre-contractual documents, the manner in which sustainability risks are integrated into their insurance advice; and, on their website, information on their remuneration policies on how they integrate sustainability risk. Other various pre-contractual documents, such as marketing documents, annual reports will also need to be amended to comply with the Disclosure Regulation.

FCA's Evaluation of its Packaged Retail and Insurance-based Investment Products ("**PRIIPs**") Review

Since January 2018, the European PRIIPs Regulation has required firms, such as insurance companies or firms providing services in relation to insurance-based investments, to produce, publish and provide investors with a standardized key information document ("**KID**") for PRIIPs, for example insurance contracts used for investment purposes, including unit-linked or with-profit policies. The purpose of the KID is to help investors make better and fully-informed decisions by being able to compare key features, risks and rewards. The FCA published its Feedback Statement in February 2019 following the publication of its Call for Input in July 2018, where the FCA sought input from firms and consumers about their initial experiences of the PRIIPs regime. Responses the FCA received included concerns in relation to uncertainty about scope and unintended effects of compliance with PRIIPs requirements. Since then, there have been developments at an EU level and the European Supervisory Authorities ("**ESAs**") have consulted on a targeted review of PRIIPs, focusing in particular on performance scenarios. The ESAs also published a Supervisory Statement together with their Final Report, providing a further warning in the KID that the performance scenarios are only an indication of some of the possible outcomes that are based on recent returns. The ESAs' consultation closed to responses in January 2020. In the meantime, the FCA has stated that it will continue to work with firms and trade associations on what it can do to resolve the issues identified in its Feedback Statement such as performance scenarios and the scope of the PRIIPs regime. It added that it was going to work closely with the ESAs and the European Commission through 2019, subject to the nature of the UK's relationship with the EU. The FCA will also consider the extent to which domestic interpretive guidance could mitigate its concerns in relation to key issues raised in its Feedback Statement.

Wholesale Insurance Broker Market Study

On February 20, 2019, the FCA published its final report for its Wholesale Insurance Broker Market Study. The study was launched in November 2017 to assess how effectively competition was working within the sector. In reaching its findings, the FCA analyzed data including feedback to questions, responses to data requests, independently commissioned client research and undertook discussions with firms and stakeholders. At the end of its analysis, the FCA concluded that it could not find evidence of significant levels of harm to competition that would have warranted the introduction of intrusive remedies. However while the market study was closed, the FCA did identify areas warranting further action, including conflicts of interest, information firms disclose to clients and certain contractual agreements between brokers and insurers. While the FCA stated these issues could be addressed within its usual supervisory processes, it acknowledged that the market is dynamic and therefore broker business models and the effectiveness of competition would be subject to its continued monitoring.

UK Developments Relating to Retail General Insurance and Pension Schemes

The FCA has been evolving its thinking in relation to general insurance and pension pricing and value for money. It undertook a number of initiatives in 2019 relating, among other things, to charge disclosure, excessive pricing and the cost and value of distribution chains. It has also undertaken initiatives relating to advice in the pensions market, in particular advice relating to the transfer of defined benefit pensions. The outcome of these initiatives remains uncertain but could significantly change the way retail insurance is sold in the UK and the way independent financial advisers operate. It may also have a wider impact in Europe, because its thinking addresses themes in EU legislation, in particular the Insurance Distribution Directive.

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