

Brexit: contingency planning
questions for Lloyd's managing agents





Checklist

☐ **Cross-border business**

In respect of our own business as an insurance underwriting agent (as distinct from the business of the members of the Lloyd's syndicate(s) we manage), do we currently:

- do business in the EU/EEA (using the passporting regime applicable to insurance agents and intermediaries):
 - on an 'establishment basis' through one or more of our own EU branches; or
 - on a 'services basis'?
- have any delegated underwriting arrangements with:
 - approved coverholders or service companies in the UK who write business for our managed syndicate(s) through one or more EU/EEA branches of theirs using the passporting regime applicable to insurance agents and intermediaries; or
 - approved coverholders or service companies elsewhere in the EU/EEA who write business for our managed syndicate(s) through one or more UK branches of theirs using the passporting regime applicable to insurance agents and intermediaries?

☐ **Staff**

Are any of our staff in Europe/the UK currently utilising the free movement of persons regime?

☐ **Data**

Do we process personal data in the UK and the EU/EEA?

☐ **Existing key commercial contracts**

(distribution, outsourcing, IP licensing, IT and financing agreements, standard terms and conditions)

Apart from the impact of a non-continuation of passporting rights for the UK, are any of our existing key commercial contracts likely to be affected by Brexit?

☐ **Future key commercial contracts/arrangements**

How might Brexit affect key commercial contracts/arrangements that we enter into over the next two years?

☐ **Intellectual property**

Do we protect our brand both in the UK and elsewhere in the EU by means of European Union trade marks (i.e. the current single unitary trade mark registration system covering the whole of the EU)?

☐ **Market volatility**

What impact would market volatility have on our business?

☐ **Ratings**

Could Brexit result in a downgrade of any of the financial strength ratings for the Lloyd's market or any financial strength ratings in respect of our individual managed syndicate(s)? If so, what contractual consequences might there be? What impact could Brexit have on the credit ratings of our counterparties and our risk exposures to them?

☐ **Joint venture arrangements**

Will any existing European joint venture arrangements we may have be impacted by Brexit?

☐ **Products**

Will we need to make any alterations to our product wordings in connection with Brexit?

☐ **Prudential regulation and reporting**

What Brexit-related issues may arise for us in this area?

☐ **Communications**

What (if any) Brexit-related communications strategy should we have?

☐ **Transfers of underwriting portfolios**

Are we anticipating any transfer of underwriting portfolios (whether intra-group or to or from a third party) that would involve the members of our managed syndicate(s) as transferor or transferee?

☐ **Outwards insurance policies: unexpected Brexit-related liabilities**

Might unexpected potential liabilities arise if as a result of Brexit our managed syndicate(s) fail to meet any of its/their obligations under the insurance policies we have written on their behalf?

☐ **Opportunities**

Will Brexit create additional business opportunities?



Brexit: contingency planning questions for Lloyd's managing agents

If the UK votes to leave the EU in the referendum that is being held on 23 June 2016 to decide whether Britain should remain in or leave the European Union, contingency planning by UK and EU/EEA insurers and insurance agents/intermediaries to address the risks that Brexit poses to their businesses will become a reality. This document – which contemplates the scenario of the UK having voted to leave and is drafted accordingly – contains a list of some key questions that Lloyd's managing agents should be asking as they progress their plans to identify and address these risks. It does not address the position of underwriting members of The Society of Lloyd's since Lloyd's has said that it is preparing contingency plans centrally that will allow business to continue to be written on both a cross-border and a branch basis (we assume that those plans will relate only to underwriting members of the Society and not extend to managing agents).

Key

approved coverholder: a company or partnership approved by Lloyd's to act as an approved coverholder in accordance with the Intermediaries Byelaw (No. 3 of 2007)

cEU: the continuing European Union (after the UK leaves)

EEA: the European Economic Area

EU: the European Union

managing agent: a company established in the UK that is authorised by the Prudential Regulation Authority and the Financial Conduct Authority and permitted by the Lloyd's Franchise Board to manage a Lloyd's syndicate and carry on underwriting and other functions for members of Lloyd's

service company: an approved coverholder that is associated with a managing agent and will be authorised by that managing agent to enter into contracts of insurance in accordance with the terms of a 'service company agreement'

UK insurance intermediary: a company established in the UK, whose business is that of an insurance agent/intermediary, that is authorised by the Financial Conduct Authority (and, in the case of a managing agent, by the Prudential Regulation Authority)



☐ Cross-border business

In respect of our own business as an insurance underwriting agent (as distinct from the business of the members of the Lloyd's syndicate(s) we manage), do we currently:

- do business in the EU/EEA (using the passporting regime applicable to insurance agents and intermediaries):
 - on an 'establishment basis' through one or more of our own EU branches; or
 - on a 'services basis'?
- have any delegated underwriting arrangements with:
 - approved coverholders or service companies in the UK who write business for our managed syndicate(s) through one or more EU/EEA branches of theirs using the passporting regime applicable to insurance agents and intermediaries; or
 - approved coverholders or service companies elsewhere in the EU/EEA who write business for our managed syndicate(s) through one or more UK branches of theirs using the passporting regime applicable to insurance agents and intermediaries?

It will be some time before the basis on which, following Brexit, UK insurers and UK insurance intermediaries will be able to do business in the cEU/EEA (and cEU/EEA insurers and cEU/EEA insurance intermediaries will be able to do business in the UK) becomes known, since the position on this issue will depend on the negotiations that will take place (over a period of perhaps as few as two years but quite possibly as many as five or more) between the UK and the EU concerning their future relationship.

It is possible (albeit perhaps unlikely) that a future regime could effectively retain the 'insurance single passport' as between the UK and the cEU/EEA, such that UK insurers and UK insurance intermediaries, and cEU/EEA insurers and cEU/EEA insurance intermediaries, would be able to continue to maintain branches and provide services in the other's territory on the basis of their 'home' authorisation.

Another possibility is a 'grandfathering' arrangement, under which cross-border trading arrangements that were in place on or before the date of the arrangement could continue to be operated for a period of time after that date. (An arrangement of this nature might be used if, for example, an 'Article 50¹ agreement' for the UK's withdrawal from the EU were entered into before a separate agreement between the UK and the cEU providing for their future relationship).

Possible actions

- Pending clarity on these issues, consider on a cEU/EEA country-by-country basis the local licensing requirements that would apply in order for you and/or your approved coverholders or service companies to continue doing business in the countries concerned if the future relationship between the UK and the cEU does not provide for the continuation of insurance agent/intermediary passporting rights.

Managing agents

- Currently, it appears to be the case (from the UK Financial Services Register) that no managing agent maintains a branch elsewhere in the EU/EEA



- There are however eleven examples of managing agents with ‘outwards services passporting’ registrations in respect of other EU/EEA countries. We understand that at least some of these registrations relate to the operations of service companies that are appointed representatives of managing agents (and therefore not authorised persons themselves) and that they were made on the basis that (i) although ‘outwards services passporting’ registrations in respect of the activities of managing agents themselves are not necessary in view of (in simple terms) the ‘services passporting’ procedures undertaken by Lloyd’s on behalf of all Lloyd’s members in relation to all 30 of the non-UK EU/EEA member states (ii) under the guidance at SUP 13.4.2A, where an appointed representative appointed by a firm to carry on insurance mediation activity on its behalf provides cross border services in another EEA state under the Insurance Mediation Directive, the notice of intention to provide cross border services should be given by the firm on behalf of the appointed representative.
- If you maintain any such ‘outwards services passporting’ registrations, the post-Brexit position in respect of the appointed representative service company in connection with whose activities those registrations were made will need to be carefully reviewed. (A more detailed commentary on this point is beyond the scope of this document.)

Service companies

- If you currently own (or have within your corporate group) a UK service company that is an authorised person (rather than an appointed representative) and that has branches in other EU/EEA countries through which it writes business for your managed syndicate(s), then in order for you to continue to have such business written on the ground in those countries it might be necessary:
 - for the service company to obtain local authorisations for those branches; or
 - for you to establish (or arrange to have established within your corporate group):
 - a single subsidiary in the cEU (as a locally-registered insurance agent/intermediary and a service company) that could passport elsewhere within the cEU/EEA as may be required; or
 - possibly, a separate subsidiary (as a locally-registered insurance agent/intermediary and a service company) in each relevant country; or

- for you to acquire (or arrange to have acquired within your corporate group):
 - an existing cEU insurance agent/intermediary that could become a service company and passport elsewhere within the cEU/EEA as may be required; or
 - in each relevant country, a separate existing cEU insurance agent/intermediary that could become a service company
- In the unlikely scenario that you currently own (or have within your corporate group) a service company in another EU/EEA country that has a branch in the UK through which it writes business for your managed syndicate(s), then in order for you to continue to have such business written on the ground in the UK it might be necessary:
 - for the service company to obtain UK authorisation for the branch; or
 - for you to establish (or arrange to have established within your corporate group) a UK service company; or
 - possibly, for you to acquire (or arrange to have acquired within your corporate group) an existing UK approved coverholder (or other UK insurance agent/intermediary) that could become a UK service company

Other approved coverholders

- If any approved coverholder of yours in the UK currently maintains branches in other EU/EEA countries through which it writes business for your managed syndicate(s), then in order for the coverholder concerned to continue to write such business on the ground in those countries it might need:
 - to obtain local authorisations for those branches; or
 - to establish (or arrange to have established within its corporate group):
 - a single company in the cEU (as a registered insurance agent/intermediary and an approved coverholder) that could passport elsewhere within the cEU/EEA as may be required; or possibly
 - a separate company (as a locally-registered insurance agent/intermediary and an approved coverholder) in each relevant country



- If any approved coverholder of yours in another EU/EEA country currently maintains a branch in the UK through which it writes business for your managed syndicate(s), then in order for the coverholder concerned (or, indirectly, its owners) to continue to write such business on the ground in the UK it (or they) might need:
 - to obtain UK authorisation for the branch; or
 - to establish a company in the UK as a UK-authorised insurance agent/intermediary and an approved coverholder
- Assess the viability of such options and any others and make plans accordingly – including, as may be applicable, identifying any changes to the strategy/ business plan(s) for your managed syndicate(s) and appropriate mechanisms through which to exit business undertaken through services companies or other approved coverholders in or involving certain countries
- Plan for execution of any restructuring plans well within the two year (or any extended) ‘Article 50 period’² due to the length of time it will take to obtain any relevant regulatory approvals
- If any approved coverholder of yours in another EU/EEA country currently maintains a branch in the UK through which it writes business for your managed syndicate(s), then in order for the coverholder concerned (or, indirectly, its owners) to continue to write such business on the ground in the UK it (or they) might need:
 - to obtain UK authorisation for the branch; or
 - to establish a company in the UK as a UK-authorised insurance agent/intermediary and an approved coverholder
- Assess the viability of such options and any others and make plans accordingly – including, as may be applicable, identifying any changes to the strategy/ business plan(s) for your managed syndicate(s) and appropriate mechanisms through which to exit business undertaken through services companies or other approved coverholders in or involving certain countries
- Plan for execution of any restructuring plans well within the two year (or any extended) ‘Article 50 period’² due to the length of time it will take to obtain any relevant regulatory approvals

² Pursuant to the terms of Article 50 TEU, the UK will automatically leave the EU two years after giving notice of intention to withdraw from the EU unless, by the end of that period, an agreement on the terms of the withdrawal has been concluded or the other 27 member states have unanimously agreed to an extension of the period to negotiate the withdrawal

☐ Staff

Are any of our staff in Europe/the UK currently utilising the free movement of persons regime?

Action

If so, identify the members of staff concerned and consider:

- How any changes to the work permit system and other employment laws might affect, post-Brexit, the ability of staff who are UK citizens to work in the cEU/EEA, or of cEU/ EEA citizens to work in the UK, or result in increased employment costs; and
- How any structural changes to secure ongoing access to markets might affect the location of senior management and other staff

Note also that employers will need to keep abreast of any post-Brexit changes in UK employment law. In particular, the more onerous and less popular regulations may be repealed. These could include the collective consultation requirements (collective redundancy, TUPE and consultation under the Information and Consultation Regulations) and the Working Time Regulations, allowing employers to set working hours that may be more suited to their business.



☐ Data

Do we process personal data in the UK and the EU/EEA?

Currently, the UK has in place the Data Protection Act 1998, which is the UK's implementation of the 1995 European Data Protection Directive. The Data Protection Act 1998 is due to be replaced in its entirety by the new EU General Data Protection Regulation, which will come into direct force in all EEA countries in May 2018 and will create much stricter rules around how personal data is processed in the context of the EEA.

Following the referendum (in the event of a vote to leave), the current Data Protection Act 1998 will continue to apply until the UK amends its legal framework to take account of Brexit. This may result in dual UK/EEA regulation of data processing, depending upon the form Brexit takes.

Action

- Keep a watching brief on how matters develop as regards the UK's and EU's data protection regimes
- Different rules may apply to how you process data in the UK and the rest of the cEU/EEA following Brexit
- In particular, data transfers between the UK and the cEU/EEA may be more difficult following Brexit, whether that be intra-group or third party data transfers

☐ Existing key commercial contracts

(distribution, outsourcing, IP licensing, IT and financing agreements, standard terms and conditions)

Apart from the impact of a non-continuation of passporting rights for the UK, are any of our existing key commercial contracts likely to be affected by Brexit?

Action

Provisions that deal with a number of matters should be reviewed to assess how Brexit might affect the rights and obligations imposed by the provisions and whether amendments may be necessary or desirable (if they are possible), including those regarding:

- Territorial scope (with respect to distribution obligations and non-competition clauses, for example);
- References to European laws, legal concepts (for example, a company's "centre of main interests" in relation to insolvency proceedings), matters driven by EU legislation (such as a lender's capital adequacy costs under an increased costs clause) or UK laws implemented pursuant to EU Directives (for example, in the context of security documents, the Financial Collateral Arrangements Regulations 2003);
- Regulatory reporting and compliance with other regulatory obligations;
- Compliance with applicable laws (and meeting the cost of such compliance);
- Data protection;
- Financial condition;
- Termination (including any material adverse change clauses);
- Force majeure;
- Law and jurisdiction

In addition there is the question of whether any existing contract is so dependent on European legal provisions or concepts that it might become wholly or partly impossible to perform.



☐ Future key commercial contracts/arrangements

How might Brexit affect key commercial contracts/arrangements that we enter into over the next two years³?

Action

Key commercial contracts/arrangements entered into within the two year (or any extended) 'Article 50 period' will need to be drawn up taking into account the possibility that an 'Article 50 agreement' for the UK's withdrawal from the EU may be entered into before a separate agreement between the UK and the cEU providing for their future relationship.

In addition, consider how Brexit may impact the drafting of the provisions listed in the 'Existing key commercial contracts' section above.

☐ Intellectual property

Do we protect our brand both in the UK and elsewhere in the EU by means of European Union trade marks (i.e. the current single unitary trade mark registration system covering the whole of the EU)?

Action

If so, consider whether separate UK trade mark registrations will be needed following Brexit in order to secure continued protection for your brands in the UK.

³ Or any extended 'Article 50 period' as referred to in footnote 2 above



☐ Market volatility

What impact would market volatility have on our business?

Action

Consider:

- The extent to which volatility in the foreign exchange, equity and loan markets would affect the liquidity, investments and solvency positions of your managed syndicate(s) (as well as any applicable financial strength ratings – as to which, see the 'Ratings' section below); and
- How those possible effects might be mitigated

☐ Ratings

Could Brexit result in a downgrade of any of the financial strength ratings for the Lloyd's market or any financial strength ratings in respect of our individual managed syndicate(s)? If so, what contractual consequences might there be?

What impact could Brexit have on the credit ratings of our counterparties and our risk exposures to them?

Action

Review all relevant contracts to determine whether a downgrade of any such rating would trigger adverse consequences (e.g. default under a loan agreement or letter of credit facility) and, if it would (or might), consider what mitigating steps you may be able to take/ alternative arrangements you may be able to make.

Identify options for mitigating any increased counterparty risk you may perceive (including assessing the possibility of termination of any contracts that may present an unacceptable risk).



☐ Joint venture arrangements

Will any existing European joint venture arrangements we may have be impacted by Brexit?

Action

Where applicable, review your joint venture contracts to determine what impact Brexit may have on the arrangements and identify any issues that may make necessary or desirable any amendments to the relevant contracts/arrangements.

(See also the 'Existing key commercial contracts' section above)

☐ Products

Will we need to make any alterations to our product wordings in connection with Brexit?

Action

Alterations to product wordings may be needed.

How extensive these might need to be will depend on the product, the nature of the future relationship between the UK and the cEU and the extent of associated changes to English law in the years ahead. Among the provisions that may need to be altered are any relating to territorial scope (e.g. a definition of the EU) and, possibly, jurisdiction clauses.



☐ Prudential regulation and reporting

What Brexit-related issues may arise for us in this area?

It must be highly likely that, following Brexit, the UK will maintain a Solvency II-based system (Solvency II itself being heavily based on the UK's previous risk-based regime). If this is the case, it is likely that the UK system will be assessed by the CEU as "equivalent" for the purposes of Solvency II (i.e. as regards the treatment of reinsurance, the calculation of group solvency and group supervision).

In the unlikely event of the UK system diverging from Solvency II, or of the UK maintaining a Solvency II-based system but not obtaining a grant of full equivalence for that system from the CEU, Europe-wide groups headquartered in the UK might become subject to 'double supervision' under both the UK regime and Solvency II.

Action

Have regard to the possibilities of:

- Additional information being required by Lloyd's/PRA/FCA; and
- Increased demands on Lloyd's/PRA/FCA themselves impacting on their speed of response to requests for approvals (e.g. to changes in control) and rule waivers/modifications

☐ Communications

What (if any) Brexit-related communications strategy should we have?

Action

Depending on the nature of the business of your managed syndicate(s), consider the development of an appropriate communications strategy for all or any of the following:

- Policyholders (to mitigate the risk of policy surrenders or non-renewals);
- Agents/distributors;
- Reinsurers;
- Any other key business counterparties



☐ Transfers of underwriting portfolios

Are we anticipating any transfer of underwriting portfolios (whether intra-group or to or from a third party) that would involve the members of our managed syndicate(s) as transferor or transferee?

A likely consequence of a non-continuation of passporting rights for the UK would be the loss of automatic mutual recognition (as between the UK and the cEU/EEA) of insurance business transfers sanctioned by UK or cEU/EEA courts or regulators, potentially making the process of reorganising books of insurance business located in Lloyd's syndicates or insurance companies and their branches in the UK and the cEU/EEA considerably more complex (through a need for multiple applications to courts or regulators) or perhaps, in some cases, impossible.

Action

Review any such project to determine whether it is envisaged that an insurance business transfer sanctioned by UK or EU/EEA courts or regulators should be utilised in order to transfer the book of business concerned.

If this is the case, consider accelerating the project in order for it to be completed before Brexit occurs.

☐ Outwards insurance policies: unexpected Brexit-related liabilities

Might unexpected potential liabilities arise if as a result of Brexit our managed syndicate(s) fail to meet any of its/their obligations under the insurance policies we have written on their behalf?

Action

Consider on a product-line-by-product-line basis whether there is scope for any such unexpected potential liabilities to arise.

If any such potential liabilities are identified:

- Consider the extent to which recovery may be made in respect of them under syndicate reinsurances;
- Consider making changes to the scope of cover provided under the products concerned

(See also the 'Products' section above)



☐ Opportunities

Will Brexit create additional business opportunities?

Action

Each line/unit of syndicate business should keep in mind any potential opportunities for new/amended products or relationships with distributors/reinsurers that Brexit may create.



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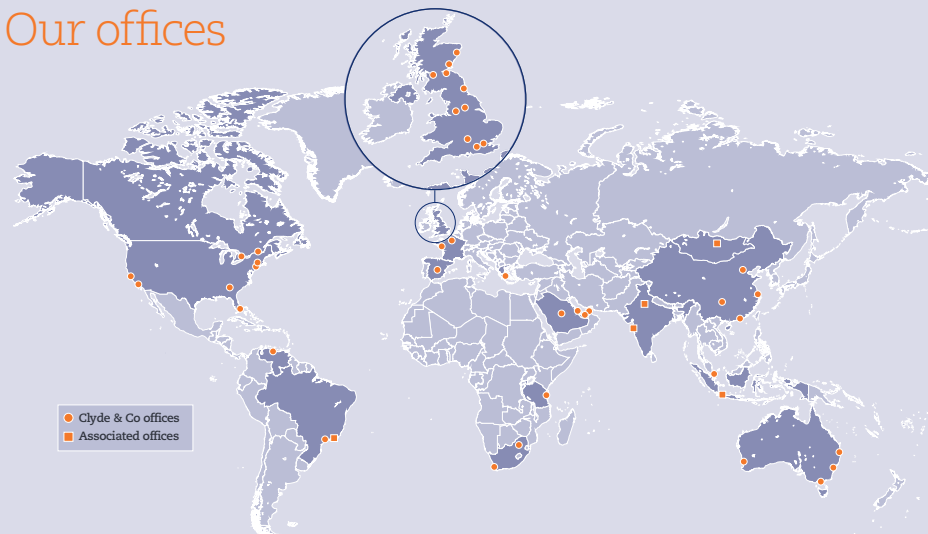
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