

**BRITISH INSURANCE LAW ASSOCIATION**

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**BREXIT AND INSURANCE:  
FRAMEWORKS PRE- AND POST- BREXIT**

Julian Burling

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# CURRENT FRAMEWORK: SINGLE EUROPEAN PASSPORT

- “taking up the business of” (re)insurance to be subject to authorisation by home state of head office (S II art 14.1)
- Authorisation to be valid for entire [EEA] (S II art 15.1), covering –
  - Right of establishment of agencies or branches
  - Freedom to provide services
- Insurance Distribution Directive (wef 23.2.18)

# UK Government intentions: framework agreement

## ■ Lancaster House speech 17.1.17:

“4 freedoms”, subjection to EU rules without representation, and jurisdiction of CJEU are disincentive to membership of single market.

“Instead we seek the greatest possible access to it through a new, comprehensive, bold and ambitious free trade agreement.”

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# Default options for UK insurers post-Brexit

- (1) Establishment of subsidiary in EEA member state, with passporting rights
- (2) Third-country branches
- (3) Credit for reinsurance if UK regime recognised as “equivalent”
- Feasibility of these may depend on UK retaining “equivalence” to Solvency II, as amended from time to time

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# Establishment of subsidiary

- Supervision by authority in home member state, with EEA passport
- Solo supervision of subsidiary + group supervision requirements applicable to entire group
- Where group HQ in non-EEA state with “equivalent” regime, group supervision by non-EEA state will apply
- SCR and own funds to be calculated solo and for whole group. “Equivalent” local capital rules may be applied for non-EEA entities, but not group ORSA and SFCR
- No “letterboxing”

# Third country branches

- State by state application in host states
- No obligation on supervisors to authorise
- Local maintenance of accounts/records, minimum assets and deposit, u/t to calculate/cover SCR
- No cross-border services rights
- Article 167 “advantages” where authorisation in more than one EEA state. Must be granted jointly. Precarious
- Article 171. EU agreements with TCs. Route to TC passport? Untried. Cf AIMF TC funds passport.

# Reinsurance

- EEA member state insurers can get solvency credit for reinsurance with non-EEA reinsurer subject to solvency requirements “equivalent” to S II
- Otherwise collateral might be required

# Other considerations

- Payment of claims after Brexit on pre-Brexit passported policies
- Portfolio transfers (FSMA Part VII)
- Reorganisation and winding-up measures



# Continuing application of Solvency II

- HoC Treasury Committee Inquiry
- PRA view
- EU Commission reviews

# Further reading

- Burling, J. “The potential effect of Brexit on insurance regulation in the UK” in Marano, P. and M. Siri (eds.) 2017. *Insurance Regulation in the European Union - Solvency II and Beyond*. Springer. (Forthcoming)