As 31 October 2019 approaches, Matheson's Insurance Team understands that time is at a premium for all our clients.

With this in mind, we have prepared a case study highlighting what it means for our Irish- and UK-based insurance clients, summarising:

- what happens in the event that the Withdrawal Agreement is signed;
- what happens in the event of a no-deal Brexit; and
- what firms must / can do next?

Irish authorised insurer ("Irish Firm") passporting into the UK under the EU Passporting Regime

If the Withdrawal Agreement is signed

If the Withdrawal Agreement is signed, the status quo is maintained until end December 2020. EU law remains applicable in the UK and the Irish Firm can continue to passport into the UK in the normal manner.

During this time, the Irish Firm, based on the decision which will be reached between the EU and UK regarding equivalence (1) etc, can decide on the best way forward for its business.

No-Deal Brexit

In the event of a no-deal Brexit, where the UK withdraws from the EU, the UK becomes a 'third-country'.

The Irish Firm will no longer be able to avail of the EU Passporting Regime. With this in mind, the UK has implemented a Temporary Permissions Regime **("TPR")**. Pursuant to the TPR, the Irish Firm will be deemed to have permission under Part 4A of the Financial Services and Markets Act 2000, on a temporary basis. The scope of the permission will mirror the Irish Firm's current passporting permission in place pre-Brexit.

It is anticipated that the regime will apply for a maximum of three years.

During this time, the Irish Firm, based on the decision which will be reached between the EU and UK regarding equivalence etc, can decide on the best way forward for its business.

So what next?

The TPR does not apply automatically. In order to avail of the TPR, the Irish Firm must have notified the PRA using the Connect system before the 11 April 2019.

If the Irish Firm has failed to apply for the TPR it will automatically be subject to the Financial Service Contracts Regime ("FSCR"). The FSCR was introduced by the UK Government to ensure existing contractual obligations not covered by the TPR can continue to be met. The FSCR will permit the Irish Firm to service its UK contracts entered into pre-Brexit so that it can wind down / run–off this business in an orderly fashion.

Crucially – no new business can be written under the FSCR.

The FSCR will apply for a period of 15 years for insurance contracts but an extension is permissible based on a joint assessment by the FCA and the PRA.

1. Of course if Solvency II equivalence is attained, there are limits to its benefit where a 'third country' is concerned. Additionally, any equivalence decision can be rescinded by the EU.

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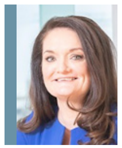

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Beyond **Brexit**

UK authorised insurer ("UK Firm") passporting into Ireland under the EU Passporting Regime

If the Withdrawal Agreement is signed

If the Withdrawal Agreement is signed, the status quo is maintained until end December 2020. EU law remains applicable in the UK and the Irish Firm can continue to passport into the UK in the normal manner.

No-Deal Brexit

In the event of a no-deal Brexit, where the UK withdraws from the EU, the UK becomes a 'third-country'.

The UK Firm will no longer be able to avail of the EU Passporting Regime.

To date, the only direction which has come from the EU in respect of a no-deal Brexit has been to ask Member States to put the necessary measures in place in the context of insurance contract continuity. On 22 February 2019, the Irish Government published the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019 ("Brexit Omnibus Bill"). Part 8 of the Brexit Omnibus Bill relates to insurance contract continuity.

Part 8, if adopted as currently drafted, would insert a Regulation 13 A into the European Union (Insurance and Reinsurance) Regulations 2015. As a result, the only provision made for the UK Firm's Irish based business is that it can administer its run-off business in Ireland for a period of three years from the date the Brexit Omnibus Bill comes into operation or such other date permitted under the terms of the Brexit Omnibus Bill "in order to terminate its activity" in Ireland. Crucially, no new business would be permitted and compliance with the general good requirements would remain.

In order to avail of this regime, the UK Firm must, not later than three months from the date the Brexit Omnibus Bill comes into operation or such other date permitted under the terms of the Brexit Omnibus Bill, notify the Central Bank of Ireland that Regulation 13 A applies to the UK Firm.

The EU has not yet provided for any form of TPR and EU27 must follow its lead.

So what next?

Part 8 is of limited benefit to the UK Firm and only addresses one element of its business and in a limited way at that[2].

If the UK Firm has not already done so, it needs to consider the options available to it to continue to write its business in Ireland. On the whole we have seen that UK firms are not waiting on the EU and have taken the matter into its own hands. This can be facilitated in a number of ways, such as:

- establishing an Irish authorised Insurer as a subsidiary (3) to access not only the Irish market but to avail of the EU passporting regime;
- establishing an EU authorised insurer elsewhere and passporting into Ireland in that way;
- entering into formal fronting arrangements with EU authorised carriers to access the Irish market; or
- establishing a branch, seeking local authorisation in Ireland for Irish business only but have no passporting rights.

2. 2.Consider the 3 year time period opted for by the Irish Government v the 15 year time period opted for by the UK Government. The limited 3 year time period means that many contracts will fall outside of the timeframe resulting in more difficulties.
3. 3.Unless the existing book of the UK firm is transferred into the new subsidiary before 31 October 2019 through a Part VII transfer, there are severe restrictions on what it can do.

Download our case study here which we hope becomes a useful tool to guide our Insurance clients through the coming weeks.