LLOYD'S

Market Bulletin

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Title	Post-Brexit transition period: update on Lloyd's underwriters' trading rights
Purpose	To provide an update on Lloyd's underwriters' trading rights in the EEA as we near the end of the Brexit transition period
Type	Event
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Related Links	Market Bulletin Y5166 – Brexit: risks to be bound to binding authorities until 31 December 2018 Market Bulletin Y5301 – Brexit: changes to Lloyd's underwriters' reinsurance trading rights in the EEA

This is to provide a summary of Lloyd's underwriters' trading rights in the European Union (EU) and European Economic Area (EEA), as well as useful clarifications, as we near the end of the Brexit transition period on 31 December 2020.

This communication relates to Lloyd's underwriters only. For guidance on the trading rights of Lloyd's Insurance Company S.A., Lloyd's subsidiary insurance and reinsurance company incorporated in Belgium (Lloyd's Europe), please visit Lloydseurope.com.

Lloyd's underwriters – insurance in the EEA

As per Market Bulletin Y5166, from 1 January 2019, all EEA insurance placements (including MAT insurance placements) should be made with Lloyd's Europe and not with Lloyd's underwriters.

Lloyd's underwriters will cease to have trading rights in the EEA for insurance business from 1 January 2021. As a result, Lloyd's underwriters' EEA Crystal reports will be updated to reflect the new regulatory position and the impact on Lloyd's underwriters' trading rights.

Lloyd's underwriters – reinsurance in the EEA

Market Bulletin Y5301 issued in July 2020 confirms that Lloyd's underwriters will continue to be able to write cross-border EEA reinsurance business post-transition period, except with respect to German cedants. For some territories, cross-border reinsurance business can only be written on a reverse solicitation basis (please refer to Market Bulletin Y5301 and the Authorisation sections of each EEA territory on Crystal for more information).

Intermediaries

In February 2019, the European Insurance and Occupational Pensions Authority (EIOPA) issued Recommendations for the insurance sector in light of the UK withdrawing from the EU. As a result of EIOPA's interpretation of the Insurance Distribution Directive (IDD), intermediaries and entities carrying on distribution activities to EEA policyholders seeking cover for EEA risks are required to be established and registered in the EEA following the end of the transition period. More information and guidance on Recommendation 9, and the implications for Lloyd's, can be found on Lloyd's Europe's website here.

Recommendation 9 applies to both insurance and reinsurance business. Therefore, any reinsurance risks where the cedant is located in the EEA require intermediaries (ie coverholders or brokers) to be EEA authorised in order to write such cross-border EEA reinsurance risks with Lloyd's underwriters.

UK intermediaries

UK intermediaries that presently rely on passporting rights to transact business in the EEA will lose those passporting rights from the end of 2020. They will therefore no longer be able to carry on activities that would require authorisation in the relevant EEA country under IDD.

Example scenario: UK authorised coverholder wishing to provide cross-border reinsurance cover, with Lloyd's underwriters, for a risk where the cedant is located in Luxembourg. The UK coverholder would not be able to bind the reinsurance. In some circumstances, the coverholder may be able to establish a branch in the EEA with the necessary authorisations.

Non-EEA intermediaries

Non-EEA intermediaries will need to consider whether they have the ability to offer cover for EEA reinsurance business with Lloyd's underwriters.

Example scenario: Lloyd's broker in Singapore with no EEA branch or EEA authorisation wishing to provide cross-border reinsurance cover, with Lloyd's underwriters, for a risk where the cedant is located in Italy. The Lloyd's broker would not be able to offer cover for the reinsurance with Lloyd's underwriters. In some circumstances, the broker may be able to establish a branch in the EEA with the necessary authorisations.

EEA intermediaries

EEA intermediaries wishing to offer cover for EEA or non-EEA cross-border business with Lloyd's underwriters will need to consider whether they have the appropriate UK authorisations.

Example scenario: Lloyd's broker in Italy, with no UK branch or UK authorisation, wishing to offer cross-border cover with Lloyd's underwriters, for a risk where the cedant is located in Israel. In addition to ensuring it has the appropriate EEA and Israeli authorisations, the Lloyd's broker would need to ensure it is UK authorised/has a UK branch in order to conduct such business. The broker would need to consider making applications under the Temporary Permissions Regime (TPR). More information on the TPR can be found on the FCA and PRA websites. In some circumstances, brokers may be able to rely on the overseas person exemption, in which case UK FCA authorisation may not be required.

Insurance business transfer (Part VII) process

The High Court agreed that the Part VII scheme effective date is 30 December 2020. This means that from this date, all transferring EEA policies caught by the scheme and related assets and liabilities will transfer to Lloyd's Europe. Any claims or proceedings against the Members, in connection with these EEA policies, shall be continued by or against Lloyd's Insurance Company S.A. (Lloyd's Europe).

The proposed transfer will not change the terms and conditions of any policy, except that Lloyd's Europe will become the insurer and Data Controller in respect of EEA policies. More information on the Part VII transfer can be found on Lloyds.com.

British Overseas Territories

Gibraltar

Gibraltar is a self-governing British Overseas Territory. It is not a member state of the EU or the EEA. For the purposes of the EEA, it is treated as being part of the UK.

Lloyd's underwriters are currently authorised to write insurance (except motor third party liability and term life) and reinsurance business in or from Gibraltar. Post-transition period, Lloyd's has received assurances from the Government of Gibraltar that Lloyd's underwriters will continue to be able to write risks in or from Gibraltar.

The Government of Gibraltar has stated that in the event of no deal being reached between the UK and the EU, Gibraltar will pass and implement the draft Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020, preserving existing market access between the UK and Gibraltar, stating "the same laws and rules that are currently in place in Gibraltar will continue to apply immediately after 31 December 2020" in order to provide "continuity and certainty".

In the event that a deal is reached between the UK and the EU, the Government of Gibraltar has stated that "irrespective of whether or not agreements are found, the arrangements between the UK and Gibraltar with respect to market access in financial services are impervious to any future relationship with the EU." The Lloyd's Crystal report for Gibraltar can be found here.

Falkland Islands

The Falkland Islands is a self-governing British Overseas Territory and is not part of the UK, EU or EEA for the purposes of insurance regulation. Lloyd's underwriters' trading rights in this territory will therefore remain unchanged post-transition period.

British Crown Dependencies

Lloyd's underwriters' trading rights in Guernsey, Isle of Man and Jersey (which have the status of British Crown Dependencies) will remain unchanged post-transition period. These territories are not part of the UK, EU or EEA. More information on these territories can be found on Crystal.

Reinsurance equivalence

Post-transition period, Lloyd's will be deemed a 'third country reinsurer' for the purposes of Solvency II. Solvency II stipulates that if the country in which the reinsurer is established is deemed 'equivalent' (ie their solvency and prudential regime is equivalent to the EU regime), such third country reinsurers should be treated in the same way as EEA reinsurers.

The EU has not confirmed whether and, if so, when it will make an assessment of the UK's equivalence for reinsurance purposes. However, if the EU does not designate the UK as being equivalent for the purposes of reinsurance under Solvency II, Lloyd's underwriters will be able to continue to write EEA cross-border reinsurance (except for Germany). Please refer to the market resources highlighted in the section above entitled 'Lloyd's underwriters – reinsurance in the EEA'.

Impact of Brexit on credit ratings

- For recognition under Solvency II in the EU, credit ratings must be given by a Credit Rating Agency (CRA) established in the EU and registered by the European Securities and Markets Authority (ESMA). Once the UK has left the EU, the UK will be a 'third country' and UK-based CRAs will no longer be recognised for the purposes of Solvency II. However, a registered EU CRA may 'endorse' a credit rating issued by a third country CRA, if specified conditions are met.

- In the run-up to the UK leaving the EU, all the necessary conditions for endorsement were put in place, and the main CRAs with offices in the EU propose to endorse the ratings of their UK establishments as soon as the UK leaves the EU. This means that the CRA ratings of Lloyd's in London will be endorsed by EU CRAs and continue to be recognised for regulatory purposes in the EU, including under Solvency II, as at present. Please see the websites of the following CRAs for confirmation: AM Best, Fitch, S&P.

Use of reinsurance in cedant capital calculations

- Reinsurance is relevant to the calculation of a ceding insurer's Solvency Capital Requirement (SCR) under Solvency II in the standard formula risk modules for counterparty default and underwriting (life, non-life, health).

- The underwriting risk modules recognise the risk-mitigating effect of reinsurance that meets certain conditions. Reinsurance provided by a third country undertaking, whose solvency regime has not been deemed equivalent by the EU, qualifies if the undertaking providing the reinsurance has a credit rating corresponding to credit quality step 3 or better. Lloyd's external investment ratings (A+ S&P, AA- Fitch, A AM Best) mean that it qualifies for credit quality step 2: better than credit quality step 3.

- The counterparty default risk module covers contracts such as reinsurance, included within "Type 1 exposures". The methodology takes account of the reinsurance provider's credit quality, which depends on their rating by a CRA. Reinsurance providers with a credit rating are assigned a probability of default depending on the credit rating they hold, through a system of credit quality steps. The steps range from 0, the highest, to 6, the lowest. The higher the rating, the lower the probability of default and therefore the impact on the SCR.

- The continued recognition of Lloyd's CRA ratings means that undertakings which have purchased reinsurance from Lloyd's underwriters' operations outside of the EEA, in the past and going forward, do not have to amend their SCR calculations or their calculations of technical provisions.

French Overseas Territories

For Lloyd's underwriters' and Lloyd's Europe's trading rights in French Overseas Territories (French Polynesia, New Caledonia, and Wallis & Futuna), please refer to the Authorisation section in Crystal.

Claims handling in Europe

For updated information on claims handling in Europe, please visit the respective Lloyd's Europe Crystal reports (under the heading of Processing and servicing of risks > Claims) to find out more.

We will continue to update the market as and when further developments to Lloyd's underwriters' trading rights take place.

Further information

If you have any queries regarding this communication, please contact:

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