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K&L Gates Brexit European Advisory Group

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Impact of Brexit on Policyholders Buying Insurance in the UK Market

Following the UK referendum vote on 23 June to leave the European Union, businesses and individuals around the world are closely monitoring the emerging political, business and economic situation.

It is not yet known precisely how this will impact on policyholders in terms of their insurance cover. There have been some reassuring words from the insurance market, notably BIBA (British Insurance Brokers Association), which has said it will work with the Government to ensure the best interests of insurance brokers and their customers are fully represented during the exit negotiations following the result of the EU referendum.

Impact on the UK Insurance Market

There is almost certainly going to be some impact on the insurance market as a result of Brexit that will lead to increased costs for insurers and which, in turn, are likely to be passed on to the policyholder through their insurance and premiums.

The longer term consequences of an exit from the EU for the insurance world may include:

- future legal and regulatory changes affecting the risks underwritten and/or the conduct of insurance business; and
- decisions about whether existing business and corporate structures need to be adapted in order to maintain access to relevant markets.

If the right to passport into EU countries is withdrawn, UK insurers may need to consider restructuring their business to facilitate access to EU markets, although the insurance sector as a whole is probably less reliant on EU passporting than other financial services. It remains to be seen to what extent this will impact policyholders other than in the form of increased premium.

Claims settlement could ultimately be impacted, although recent legislative changes mean that insurers of English law policies may soon be under an obligation to settle claims within a reasonable time, failing which damages may be payable for any losses suffered as a result. Please [click here](#) to read our alert on damages for late payment of insurance claims.

Whilst Lloyd's made no secret of their preference to remain in the EU, Inga Beale, Chief Executive said on 28 June: "*Lloyd's and the London insurance market will adapt to the new environment we will be operating in once the UK has officially left the EU... many people have asked whether London can expect to maintain its position as the global heart of specialist insurance and reinsurance. I strongly believe it can.*"

Captives

Policyholders with captive arrangements may be more directly impacted by the Brexit vote. Trade negotiations will need to consider the status, operation and access of captives, either domiciled in EU jurisdictions writing insurance in the UK, or vice versa.

There are many questions the captive market will look to have answered, but those most pressing are likely to include the status of Gibraltar as a captive domicile, and whether EU captives keep automatic passporting rights.

Future legislative changes

UK insurers will have to abide by their existing obligations under English law, including those derived from EU legislation, until such time as any changes are made. The position is the same for policyholders with insurance policies governed by English law.

In the short term, this means that insurers and policyholders will need to continue preparations to deal with the changes being introduced by the Insurance Act 2015 which comes into force next month, on 12 August 2016.

As mentioned in our earlier alert, the Insurance Act 2015 aims to address the perceived imbalance under English law in favour of insurers, but there are certain changes which impose additional obligations on insureds, specifically in terms of pre-contract disclosure, a pro-active approach is needed for insureds to avoid falling foul of the new requirements. Further information is available in our [previous alert](#).

Dispute resolution

Any agreement for coverage disputes to be resolved by litigation in the English courts will continue to be respected both within the UK and the EU. Policyholders with policies providing for any disputes with insurers to be resolved in the English courts should be unaffected in the short term.

Going forward, the ability of policyholders to require an EU insurer to litigate in the English courts, and to enforce an English court judgment against an EU insurer, may be impacted by the UK's departure from the EU depending on what arrangements are put in place. This is something that UK policyholders buying insurance in EU markets will need to keep in mind.

Policyholders may wish to consider arbitration as an alternative method of dispute resolution bearing in mind that arbitration awards are recognised and enforceable in many more jurisdictions than English court judgments. However, there are both advantages and disadvantages to the arbitration process from the policyholders' perspective. Policyholders need to consider very carefully which method of dispute resolution is likely to serve them best.

For further details about the Insurance Act 2015 or for Brexit guidance please contact Sarah Turpin on 020 7360 8285 (sarah.turpin@klgates.com) or Frank Thompson on 020 7360 8183 (frank.thompson@klgates.com).

For those wishing to keep abreast of developments relating to the UK's exit from the EU, K&L Gates will be hosting a series of Brexit Q&A Conference Calls where we will be providing answers to the multi-disciplinary challenges faced by our clients dealing with the legal implications of Brexit negotiations.

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