Top 10 Brexit planning issues for insurers

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Introduction

There is no doubt that a Brexit from the EU, when (and if) it comes, will have important ramifications for the global insurance industry.

Following the leave vote in the UK referendum on continued EU membership in June, our current UK government has very recently stated that 'Brexit means Brexit'. However, there are significant uncertainties about nearly all aspects of this: what further parliamentary ratification may be required; timing of a Brexit (Article 50 of the 2007 Lisbon Treaty provides a timescale but that will be affected by the date of the notice to invoke Article 50, and any extension, or commutation, of that period); and no-one currently knows what insurance law and regulation will look like at the date of formal exit.

Uncertainty about fundamental business matters is rarely an advantageous factor for those tasked with setting a medium to long term business strategy, but perhaps in this case it will, at least with hindsight, provide (re)insurance sector companies, many of whom have struggled with the lengthy low interest rate environment, with an opportunity to stop and think more closely about what is important to each of them as businesses and actively engage in lobbying and restructuring, to best position themselves for the future.

The Brexit vote has focussed those senior insurance industry executives with a strategic and financial remit to revisit key areas of strategy namely:

- Ease of doing business across the EEA
- Cost/profitability of doing business across the EEA
- The future for the growth and development of the business, across the EEA and globally

Impacting on each of these are our top 10 forward planning issues – ones we believe will impact on nearly all (re)insurance entities as they consider the future and prepare contingency plans.

Planning: the top 10 issues

1 Passporting

One very important issue for most insurance entities will be the potential change, or even loss, of 'passporting' rights which may be applicable to products and services traded within the EEA.

Passporting rights allow a UK authorised firm to set up a base (through an 'establishment' or 'branch' passport) or run permitted activities (through a 'services' passport) in another EEA state. Similarly, a firm authorised in another EEA state can offer certain products and services in the UK with a relevant passport. Similar rights apply to Switzerland (under bilateral treaties with the EU) and Gibraltar (under the Gibraltar Order). Passporting is a Brexit issue as the concept was introduced under the Single Market Directives and the requirements, in relation EU trading out of and into the UK, are set out in the Financial Services and Markets Act 2000 ('FSMA'), the Prudential Regulation Authority Rulebook and the Financial Conduct Authority Handbook.

Passporting rights are by no means simple: for example, a different passport may be needed in order to give advice on different products, and domestic authority in the relevant EEA state may be required for business run outside the passport's remit.

It is also fair to say that a true single market in financial services has yet to be achieved. As the EU often allows member countries to derogate from EU rules in certain circumstances, and as EU laws will not, in any event, govern all aspects of a particular trading relationship, a UK supplier will still have to comply with many aspect of the local law of the country in which they are trading. This will often add significant complication and cost, to the extent that in certain cases, it will just not be worthwhile.

Notwithstanding these issues, the London market, as well as Lloyd's and the general insurance market, do make extensive use of passporting, as do many non-UK insurance companies from the U.S., Asia and elsewhere who use the UK as their European headquarters. If passporting rights for UK authorised entities are lost, (re)insurers could be forced to restructure, and that could well involve not inconsiderable operating, regulatory and tax costs as insurers adapt. It is therefore vital that insurers start now to consider the best location for their bases in the future and test their group structures against the possibility that there will be no passporting rights for (re)insurers or intermediaries.

What then are the options to be considered by an (re)insurer in order to maintain the authorisation to continue to do business in EEA states?

For a Lloyd's syndicate, there is a unique position. Currently, EU directives recognise Lloyd's as a single entity for insurance and reinsurance purposes, allowing syndicates to enjoy passporting within the EU under the Lloyd's collective authorisation. We think it likely that Lloyd's will seek market wide licencing in lieu of its current passport. And, independent of EU passporting, Lloyd's insurers and reinsurers are, under the Lloyd's umbrella, licensed and authorised to trade in over 80 countries and may still underwrite, even where no licence or authorisation may exist and where they would do so on a non-admitted basis, in over 200 countries worldwide.

For non-Lloyd's insurance or reinsurance companies, each situation will be different and there are five main legal options:

- To use or establish a group subsidiary in an EEA country other than the UK (with its own regulatory capital) through which to operate any passporting rights
- To use or establish (as a third country insurer or reinsurer) an EEA branch which would need to obtain local authorisation
- Provide services into the EEA via a third country insurer
- Redomicile, for instance under the European Company/Societates Europapaeae regime
- Consider a merger or acquisition to achieve one of the above (see 2. below).

Pure reinsurers may be in a slightly more beneficial position as the strict Solvency II rules applying to those wishing to trade in the EEA through a branch of a third country insurer (as those domiciled in the UK are likely to be) do not apply to pure reinsurers.

Obviously the optimal decisions for a particular company or group will be very specific to that company or group's legal and financial structure and Simmons & Simmons is well placed to advise clients accordingly.

What is evident is that replacing, or compensating for, lost passporting rights for those wanting to continue doing business in the EEA will entail having a clear and decisive view of strategy, good legal and financial advice, and sound preparation. No mean feat when the new ground rules have not been formulated but, even now, we can help clients look sensibly at the available options in the light of current and anticipated future business needs in order to be prepared, and able to move forward quickly to secure what is required.

2 Mergers and acquisitions

Mergers and acquisitions have proceeded apace in recent years as low interest rates have bitten into (re)insurer returns, but we anticipate that Brexit will result in a spate of new mergers and acquisitions both as a means of addressing a potential loss of passporting rights and achieving further diversification, especially in terms of geographical reach.

Clearly, all the usual due diligence associated with a merger or acquisition must be carried out but Brexit will bring some additional important considerations:

- How will a merger or acquisition affect the group's domicile and process for authorisation for doing business in EEA states, considering the different jurisdictional approaches to regulated business
- The impact on the group's tax and Solvency II governance position, and currency hedging strategy
- Brexit due diligence issues including understanding the specific effect of contract provisions in a Brexit scenario, including but not limited to Material Adverse Change clauses, termination triggers and illegality provisions, both in the M&A agreements and in the parties' existing key commercial contracts (including, for instance, outsourcing, distribution, IP licensing, financing agreements and IT agreements)
- The evaluation of EU cross-border merger mechanisms and the insurance business transfer mechanism under Part VII of the FSMA to achieve EU wide recognition of a merger and/or an insurance business transfer
- Any impact on the location of senior management and the very significant issue of the domicile of the group supervisor
- The extent and consequential impact of required capitalisation under the Solvency Capital Requirement ('SCR') and Minimum Capital Requirement ('MCR')
- Any consequential impact on internal model approvals.

3 Transfers of business

Transfers of business under Part VII of the FSMA ('Part VII transfers') have, to date, been used for many different purposes by insurers and reinsurers.

For example, (re)insurance business transfers have become a well-established route to divesting a (re)insurer of a non-core business so as to bring finality to the original insurer. They may also be used to achieve cost savings and capital releases (particularly important in the light of Solvency II requirements), in advance of a scheme of arrangement, or linked to a merger or acquisition, or for restructuring overseas businesses. It is a process which does not require the agreement of policyholders or a voting process, although it does require an application to, and sanction from, the court where an Independent Expert and the domestic regulator must provide an opinion on the likely effects of the proposed transfer for policyholders. In the UK, the PRA and FCA have specific responsibilities in relation to any proposed insurance business transfer, where appropriate in consultation with EEA regulators and/or other foreign regulators.

Currently, a corollary of passporting rights ensures that such a transfer is mutually recognised as between the UK and other EEA states. However, such automatic mutual recognition of insurance business transfers sanctioned by the UK or EEA courts may be lost if there is no continuation of the passporting rights. It could then become necessary, in order to achieve an insurance business transfer, to make multiple applications to different EEA state courts or regulators, which would inevitably make the process very much more complex - maybe even impossible.

Given these concerns, any (re)insurer considering an insurance business transfer as part of their forward planning would be well advised not to delay taking action to ensure that such a transfer can be made under the current mutual recognition provisions.

4 Future regulation

We do not anticipate that Brexit would result in an overall reduction in insurance regulation in the UK. As Pollyanna Deane commented in her recent article for PLC (see Appendix) much of the recent EU financial services regulation derives from or is consistent with PRA initiatives. This includes Solvency II, and as the UK is likely to want to benefit UK headquartered groups and UK reinsurers of EU risks, the UK will no doubt want to achieve 'equivalence' under Solvency II. Equivalence tests under Solvency II may be applied to the following:

- Under Article 172 of the Solvency II Directive to reinsurance provided by a non-EEA reinsurer located in a jurisdiction whose solvency regime is assessed to be 'equivalent' for the purposes of this Article
- Under Article 227, for a group wishing to apply local rules in capital calculations under the deduction and aggregation method: an application for 'equivalence' for this purpose may or may not be granted
- Under Article 260, if a group headquartered in a non-EEA jurisdiction is assessed as having a system of group supervision 'equivalent' to that under Solvency II, EEA supervisors must rely on supervision of that group by the national supervisor in that jurisdiction.

Unlike the position under some other EU financial services directives, 'equivalence' under these Solvency II provisions would not allow UK insurers to retain the same access as currently to the EEA market. Notwithstanding this, there is a gain for UK insurers, in particular relating to the capitalisation of group reinsurers, from a finding of 'equivalence' under these heads and it seems very likely that the UK will seek, and achieve, this assessment.

It also seems very likely that new EU regulation, such as the Insurance Distribution Directive ('IDD'), which came into force in February 2016, will become part of UK law. The IDD updates the 2002 Insurance Mediation Directive (IMD), which set out a framework for regulating EU insurance brokers, agents and other intermediaries. Member states have two years to transpose the IDD into national laws and regulations, i.e. before 23 February 2018 on which date it will repeal the IMD. It is likely that the UK will still be a member of the EU then and will also, without further agreement, be bound to do so.

Like the IMD, the IDD is a 'minimum harmonising' directive and member states will be able to add extra requirements to it when implementing it. That said, the IDD is intended to significantly raise the minimum standards of the IMD. On cross-border trade in particular, the introductory wording to the IDD acknowledges that the European insurance market remains very fragmented despite the existing single 'passport' systems for insurers and intermediaries.

For commentary on the important prospective changes to data protection regulation, see 8. below.

5 Financial reporting

The Brexit vote, even before the UK actually leaves the EU, may well have a significant impact on financial reporting for UK companies and for those trading with them.

In the short term, there will be no change in how companies report under the UK or EU financial reporting regime. The UK regulatory framework continues to apply, as do existing EU laws and regulations, and the UK will need to continue to work toward implementing new EU requirements, such as the Non-Financial Reporting Directive, which is required to be incorporated into UK law by December 2016.

There will, though, be immediate implications for what is reported by companies. In light of Brexit, the Financial Reporting Council (FRC) has highlighted some important matters for directors to consider when preparing their half-yearly and annual financial reports, including:

- The need to provide a clear disclosure of a company's business model as part of the strategic report, including a description of the main markets in which the company operates and its value chain. This disclosure should allow an assessment of any exposure to the company as a result of the Brexit vote.
- The need to consider the nature and extent of risks and uncertainties arising from the result of the Brexit vote, and the potential impact on the future performance and position of the business. The company board should explain steps they are and will be taking to manage or mitigate those risks.
- The need to consider whether the Brexit vote, and its effect on market volatility, gives rise to solvency, liquidity or other risks that may threaten the long-term viability of the business. This assessment should include any currency or financial market related risk.

- The need to consider whether the going concern basis of accounting is appropriate and whether disclosures of material uncertainties are needed, particularly when there is a material risk of breach of covenants.

Boards will need to consider whether some assets, financial or non-financial, may be, or become, impaired; whether contracts previously considered to be long term might be cancelled; the potential impact on profitability of non-recoverable VAT for companies which currently incur and recover a substantial amount of input VAT in other EU countries; and, where applicable, the effect of no longer receiving a grant or subsidy from the EU.

In the longer term, the requirements for how companies report is more uncertain. It is possible that, after Brexit, either the UK or the EU will in time move away from wholesale adoption of IFRS standards. However, the UK has long been a strong supporter of unmodified IFRS adoption, and for the EU too, mandatory adoption of IFRS has had positive benefits. As a major global financial centre, we believe the UK is very likely to continue to adhere to internationally recognised standards. The equivalence rules on financial reporting in the Prospective Directive and the Transparency Directive (as amended) will also make this critical for any UK company wishing to list on an EU regulated market.

6 Impact for capital markets participation and Insurance Linked Securities

The Brexit vote has, to date, resulted in a fall in the pound, and an expectation that the UK government will need to keep interest rates lower and for longer.

In the opinion of some experts, pensions may be facing up to 50% more in longevity related liability costs as a result of the likelihood of a yet further extended period of low yields on UK gilts, as longevity risk and interest rates are highly correlated. As a result of this, demand will grow for longevity risk transfer instruments, such as longevity swaps, buy-ins and longevity reinsurance.

The cost of reinsurance capacity to back longevity risk transfer transactions remains competitive and there is reasonable capacity, making it likely that more defined benefit schemes will look to de-risk. This is no longer relevant just to large pension funds either, with smaller funds able to access longevity swaps thanks to more efficient structuring and cheaper reinsurance capital. The reinsurance market has provided the majority of the longevity swaps that have come to market, but there has been less appetite for this among global reinsurers of late, and if a significant amount of capacity is required, the capital markets are likely to start providing more capacity.

Other capital markets structures in the insurance market are less likely to be generally affected in our view, but consideration should be given to situation specific issues which may apply in relation to the issues above and to the Dispute Resolution issues below for any prospective transactions.

7 Dispute resolution

The consequences of the UK leaving the EU will turn on the agreement reached as to the future of the UK/EU relationship. Possible outcomes include: agreement to parallel systems with the EU member states, retaining the current status quo; adoption of the Norwegian Model (Norway as a signatory to the Lugano Convention has similar enforcement regimes to those in the EU); or adoption of the WTO Model where parties would rely solely on rights and obligations under World Trade Organisation rules.

In relation to dispute resolution, there may be an impact in four areas:

- Choice of governing law
  - Two EU Regulations set out the rules that the English courts currently apply to determine which law applies to obligations between parties. The Rome I Regulation covers contractual obligations and the Rome II Regulation covers non-contractual obligations. Under these Regulations, in most situations involving commercial parties which tend to involve a written contract with a governing law clause, the obligations are normally governed by the law chosen by the parties.

- The Rome I and II Regulations may cease to apply in the UK. If so, a choice of English law to govern contractual obligations should still be recognised by courts in the UK and will still be recognised by EU member states. A choice of English law to govern non-contractual obligations would continue to be upheld by the courts of EU member states. However, the position under English law in relation to non-contractual obligations could be less clear as, before the Rome II Regulation regime came into effect, parties did not have an express right to choose which law applied to non-contractual obligations arising between them. It will therefore be necessary to consider carefully any non-contractual obligations that exist.

- Choice of jurisdiction
  - Choice of jurisdiction is currently governed by the Recast Brussels Regulation, which gives party autonomy to the choice of jurisdiction, with the exception of arbitration, insolvency, insurance, consumer, and employment matters. It does also provide for the courts to decline jurisdiction in favour of non-member state courts in certain circumstances. The UK may decide to continue with this regime and/or sign:
    - the 2007 Lugano convention which operates in a similar recognition and enforcement regime, but between EU member states and EFTA member states
    - The Hague Convention on Choice of Court Agreements 2005 ('Hague Convention'), which is applied to jurisdiction and enforcement where the parties have agreed an exclusive jurisdiction clause.
- Service of proceedings
  - In the absence of any agreement for reciprocal service, or the UK becoming a signatory in its own right to the Lugano Convention, it is likely to be necessary for claimants to apply for permission to serve English court proceedings within the EU. A provision in contracts for an agent for service of process clause would therefore be useful.
- Enforcement of judgments.
  - It is, in our view, likely that there will be efforts to agree to continue the reciprocal enforcement and recognition of judgments, but in the absence of this, enforcement of judgments between UK/member states will no longer be automatic. The party seeking to enforce will need to sue on the judgment. The English courts would then be likely to revert to the previous common law position and require determination of the substance of the dispute. Similarly, member states are likely to require a re-determination of the case, or may interpret enforceability of a judgment under their national laws, which will most likely lead to uncertainty and inconsistency. Therefore, where there is existing litigation, parties may wish to obtain a judgment as soon as possible to take advantage of the automatic recognition and enforcement mechanism currently applicable under the Recast Brussels Regulation.

8 Data protection

It is also important to remember when planning that the UK continues to be bound by any existing EU legislation, including any that is due to come into force prior to the UK's exit.

The EU General Data Protection Regulations are due to come into effect on 25 May 2018: these will update the data protection landscape proscribed in the UK over many years by the Data Protection Act 1995. The UK may also be committed to implementing the Network and Information Security Directive, possibly by early 2018: and a new directive for the police and criminal justice sector must be passed into EU Member State law by 6th May 2018.

Therefore data protection law will almost certainly be reflective of EU laws for the foreseeable future. Furthermore, even when the UK leaves the EU, any UK (or indeed worldwide) organisation which processes the personal data of any EU citizen in connection with their offer of goods or services or any monitoring activities, or which has a group company or staff operating in the EU, that organisation will have to comply with the General Data Protection Regulations. We also consider it unlikely that the UK will want to opt out of the Network and Information Security Directive requirements, given obvious benefits associated with a common approach to the worldwide threats to cybersecurity.

9 Insurance law reform: winners and losers

Some UK insurers are facing significant increases to the cost of outsourced claims handling if the UK were forced to align its VAT position to the recent European Court of Justice ruling in Minister Finansow v BRE Ubezpieczenia Sp, but the Brexit vote could mean implementation is delayed.

Gender-neutral pricing on insurance products which took effect in December 2012 under the EU Gender Directive could also be reviewed as a result of the Brexit vote. These provisions prevent insurance companies from taking gender into account when underwriting financial products like car insurance and life insurance, even though, for example, men have been seen traditionally as riskier than women for car insurance purposes.

Those insurers awaiting the end of the right to cash compensation for minor whiplash injuries promised in the Autumn Statement 2015 are concerned that there may be further delay in relevant legislation or that, indeed, this may now be sidelined completely. There are also concerns that the recommendations of the Insurance Task Force in early 2016, on tackling fraudulent insurance claims and nuisance calls, may be sidelined too.

10 Making the future

The insurance and reinsurance markets are renowned for their adaptability, long term foresight and ability to innovate. All of those skills will be much needed in the months and years ahead as the consequences of the EU referendum vote roll out.

In the short term it is vital that the (re)insurance markets come together to agree on their 'asks' from politicians on what Brexit should look like from a (re)insurance perspective. This business is an important one for the UK's economy and in relation to London's status as a major global financial centre, and the market's representatives must, in our view, insist on significant involvement in the process and terms of exiting the EU.

In the medium to long term, and whilst there may well be significant negative implications, (re)insurers and intermediaries should embrace this opportunity to re-evaluate the strengths and weaknesses in their business plans, to focus on adapting their core business to a new European framework and look for the commercial opportunities beyond, which may not have been fully exploited to date. We are confident that with a positive and constructive outlook, and trusted advisors, the (re)insurance sectors in the UK will very much continue to flourish and grow.

POLLYANNA DEANE'S INSURANCE COLUMN: BREXIT VOTE JUNE 2016

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In her second insurance column for June 2016, Pollyanna considers the impact of the UK vote to leave the EU on insurers and their UK businesses.

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IMPACT OF BREXIT ON INSURERS AND THEIR UK BUSINESSES

In *March 2016*, I wrote about Solvency II and Brexit, which at the time seemed a while away. Here's what I said:

"SOLVENCY II AND BREXIT

I've been asked about the impact of this for the insurance industry a couple of times recently, as you might expect. To my mind, the UK influence on the regime under the Solvency II Directive (2009/138/EC) has been pretty important to date and, as a result, we now have a regime that is pretty advanced, understood in large measure by the UK insurance industry and which meets wider global initiatives such as those from the International Association of Insurance Supervisors (IAIS) (largely because those initiatives were commenced with one eye on Solvency II). While the US has not embraced the all risks message, there's nothing quite this radical going on elsewhere. Accordingly, the impact of Brexit on this global drive does not seem to me likely to impact the regulatory environment enormously. Clearly I have a huge desire to say that this is all one big plot and now that actually the UK-influenced Solvency II is in place, we're going to set sail and leave everyone else to comply (cue manic laughter). A state of affairs that, no doubt, some people would love to happen. However, I don't envisage the UK regulators presiding over a minimal compliance regime and while there may be divergence in due course, I suggest that it is unlikely to be as radical as some people might hope."

So what do I think the impact of the Brexit vote will be for insurers and their UK businesses? Clearly, the broad impact on insurers will be the same as for any regulated firms in the financial services sector. These general uncertainties, which have been covered elsewhere can be set out as follows:

- **Market disruption and currency fluctuations** – leading to valuations changing for both assets and liabilities and, of course, technical provisions.

- **Eventual loss of the passport and freedoms relating to services and establishment** – this will involve considering structures and reorganising businesses to ensure that they still have access to the relevant markets, as well as potentially raising the risk of foreign direct investment moving.

- **Credit ratings** – will the impact of the Brexit be felt by UK-based insurers through changes, indeed potential downgrades, to their ratings?
- **Choice of law** – will or should this be impacted?
- **Potential regulatory change** – the implications for the PRA and FCA, and the implications of divergence from the wider European supervisors.
- **Uncertainty** (in general, but most frequently reiterated because no-one knows what is really going to happen as it hasn't been done before) and the prospects for a messy divorce.

MARKET DISRUPTION

Well we have certainly seen an initial bout of turmoil in the markets. The pound falling and indeed falls in share value for the main UK-based insurers is inevitable given the valuations and movements in underlying assets. But this is surely temporary, linked as much to the desire to trade and make money, to prove the doom mongers right. Some of the statistics being bandied about are demonstrably wrong. We wait and see, but we have all been here before, just not very often – thank goodness.

PASSPORT AND FREEDOMS

For financial services firms, this is the prize. Even though cross-border provision of financial services has not yet been truly nailed, there is no doubt that the passport has proved invaluable in developing a uniform provision of services across Europe. However, let's not forget that the single market in financial services hasn't actually happened yet and the general good rules, not to mention consumer requirements at member state level, have meant that it has been difficult to develop products that are "one-size fits all". Thus some services have not in fact been able to take advantage of the passport – and others are still subject in many respects to local requirements. So do we lose everything at this stage, or is it just the immediate concept of freedom to passport?

Secondly, one of the interesting issues is the extent to which it is not just UK insurers looking to passport out of the UK, but Continental insurers looking to passport into the UK. Far less has been heard on that – but the big multi-national insurers will surely be able to use existing UK insurers in the group while smaller players will be keen to ensure that the punitive approach currently being talked about by various member states is not adopted or simply trumped with a tit-for-tat approach from the UK government. The disruption is markedly being discussed and potentially being acted on by the US financial institutions and other foreign direct investors who may seek to leave the UK.

However, it makes no sense to assume that there will be no arrangement to provide financial services at all and/or implement accompanying punitive provisions, any more than it is reasonable to see the impact of the Brexit as Business As Usual. There will be changes ahead, but the insurance sector is simply likely to evolve a different way to do business and move round the problem. The impact of technology has already impacted the insurance industry hugely and companies may see the opportunity to replace heavy infrastructure requirements using this as a trigger to do so.

CREDIT RATINGS

I've heard some concern being reported that the Brexit becomes a trigger event for contract termination. Certainly for long-term contracts, the impact of the Brexit and the changes it is likely to wreak may need to be factored in – but most arrangements can obviously be drafted to take account of this. Maybe a review period should be built in to meet any concerns once we know better where we are going. But partly the credit ratings are going to change thanks to short term as well as long term issues, and some of the market turmoil mentioned above may be implicated.

CHOICE OF LAW

The choice of English law will, in most cases, still be appropriate and applicable. There is no confusion on choice of law with the application of Rome I or II Regulations, but they may cease to have effect. Contractual obligations will remain clearly subject to English law where chosen, although the position is less clear as to non-contractual obligations. Indeed, I would argue that the impact of leaving the EU is itself a positive move for the continued development of the common law. The advantages the common law offers can be more clearly drawn out, particularly its reputation for certainty and the divergent and interesting approaches to questions taken by common law jurisdictions can be reflected by the law here more readily.

POTENTIAL REGULATORY CHANGE

What will concern insurers most immediately is the impact on their capital – with market turmoil meaning, potentially, a reduction in investment capacity and prudential provisions. They will also be worried about any deals that are in the pipeline that did not already factor in the Brexit risk - though there was a determined push to take advantage of the immediate lower value of the pound from some quarters. But in the long term, and linked to the passport issue, is the regulatory impact. Because, while the regulations aren't going to change much in the next few months, Solvency II could, as I've already said, be seen as the UK's legacy to the rest of Europe.

What is this likely to mean? Well, I've seen commentary to the effect that the UK may have contributed as much as it could to the ongoing European project and that it was now time to leave. Many will dispute that and suggest that being in the EU would mean that the UK would continue to aim to lead and aim to formulate further ideas and reform. However, recalling the difficulty that the UK regulators had in getting changes in the draft Solvency II negotiated towards the end, and the weariness that the regulators reflected in response to questions, this might not have been so easy. We should bear in mind the major contributions that were made by the UK to Solvency II and the Insurance Distribution Directive (IDD) and, in some ways, we can see them as clearly driven by UK interests. So is it going to be the case that the UK solvency position will diverge from Continental Europe in the short to medium term?

Secondly, can we use the Solvency II "equivalence" position in our favour – given that Europe has clearly had to take the pragmatic view that the US is to be deemed "equivalent" when we all know that their regulatory regime is not that. Solvency II equivalence is only likely to get us so far and it doesn't provide the passport that is so valuable, but are we going to see access to the UK market and to that of Continental Europe constrained to such an extent that it won't be possible to do business between the two?

Well, my view is not in both cases. I know that some of the hedge funds and asset managers have called for a revision and reduction of regulation to drive increased business. Part of me would be interested to see that – the UK becoming a much bigger version of an "offshore" market. But as I've said before, the state of insurance regulation in the UK is aligned to the views of its regulators. I haven't seen swathes of the insurance industry kicking off (much) about that. Even when the insurers have criticised Solvency II, its principles have been accepted. The global acceptance of, and drive towards, appropriate regulation is likely to put paid to that idea. Furthermore, in the world of insurance mediation, the IDD can be seen as "principles-based regulation". I have to say that reading through it can in some instances seem like a reiteration of what we are used to seeing in the UK in terms of the FCA Handbook.

Nevertheless, full implementation by the EEA of the Solvency II Regulations and the IDD is likely to be challenging given the role of EIOPA and the UK's relationship going forward. EIOPA in its *annual report* refers to its role in harmonising the reporting requirements under Solvency II, and setting up the infrastructure to collect, manage, process and share information. One of the advantages that Solvency II offered was this transparency. Is this now to be denied to the UK, as it may comply with the Solvency II requirements yet not see the comparisons cross-border? Much depends on the developments both in terms of the position that the EU accords the UK in the future, and also with the International Association of Insurance Supervisors (IAIS) and the wider phenomenon of risk-based supervision. I, for one, believe that the IAIS is not simply going to see the Solvency II developments as a European-only exercise and will seek to roll it out more widely. The UK market is still a large one and the developments that the UK observes are going to be of as much interest to the world-wide regulators as any other large market. My guess is that the UK regulators will be able to gain and provide insights with input from other supervisors, not just EIOPA, and that the IAIS will continue to provide a global outlook, aiming eventually to implement risk-based supervision for all – let's see.

Secondly, we have already seen the UK regulators referring to non-European regulators and their approaches (particularly to the Australians, which always slightly surprised me as they regulate a relatively small industry), which suggests they take a more far-reaching view than just looking at Europe – again reflective of the insurance industry as a whole. If the PRA and FCA don't just look at the European regulators for guidance and instead, quite rightly in a global industry, focus on global approaches, then we can be reassured that the UK industry is going to remain in the forefront of regulatory development. Finally, given the fact that EIOPA congratulates itself on delivery of the Solvency II project in its report and the timely adoption by the European Commission without substantive amendments, it should be noted that "timely" was quite possibly not the word that the insurance industry would accord to this exercise – there is still much work to do on the implementation of Solvency II and EIOPA has not necessarily been able to meet all the requests that it has been faced with, or delivered in quite the manner that we might have hoped for. There is always room for improvement and development of a more attractive regime may well be something that the UK regulators should eventually consider.

In the future, the UK may be faced with various options or positions that it occupies vis-a-vis the EU at different times. Some people have suggested an interim period of adopting the position of Norway, which in terms of EIOPA would see the UK as a Non-Voting Member. This would potentially allow us access to the information, but no influence in changes or regulatory approaches. This is certainly not ideal, but if the cross-border information-sharing may be the main or a very significant benefit of Solvency II, it would be a shame to lose access to this. Switzerland's position vis-a-vis the EU is not seen as a potential option, while Canada has a limited engagement with a trade agreement; again there are disadvantages with both of these approaches. Our main problem is that this is breaking new ground and we have no very good role model to follow – we must develop our own and, what is more, develop it to the best of our abilities. That appears to be the choice we are now facing – what kind of "Leave" do we want?

Sean McGovern (Lloyd's CRO), *talking* in February 2016, suggested that Lloyd's had considered various different options as to what might be possible but did not go into detail in the speech as to what they were. Inga Beale has commented in the Financial Times that Lloyd's contingency plan is designed to ensure it can continue to trade in its key markets. She believes that London can retain its position as the global heart of specialist insurance and reinsurance. To some extent, Lloyd's has always been in a peculiar position of its own – that Lloyd's license apparently allowing it access far and wide, though even Sean makes the point that Lloyd's has simply accepted the existence of the single market without really thinking about it that much, to date.

Reading Sean's speech, I am struck by the constant reference to "pragmatism" and ultimately, if nothing else, pragmatism is likely to guide negotiations on both sides, once all the posturing and shouting has subsided. Pragmatism with a healthy dose of optimism. We have had quite a bellyful of the doom mongers on both sides in the last few months. I am reminded of the Anglo-French project to build Concorde, which as a good West Country girl whose great great grandparents were involved in the early aviation industry, I knew was based at Filton. I was always told that the project worked because of the different approaches taken by the British and the French. The British believed that everything that could possibly go wrong would and the project would never complete, but they carried on and devised solutions for the envisaged problems. The French believed that nothing could possibly go wrong on this wonderful project. When it did, the Brits had already come up with the solutions and, of course, not every problem in fact materialised. The project was indeed completed and Concorde built. We are already facing, we have considered, and are considering the consequences of the Brexit decision – let us take a leaf out of the French book and show that in the last 43 years we have learnt something from our neighbours, rivals and friends and use the challenges we face to improve the UK insurance industry rather than determine its decline. That way, we all benefit.

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