



All approved

Run off arrangements for UK insurance contracts confirmed

On 20 February 2019, proposed withdrawal legislation passed the first stage in the legislative process. The draft legislation includes helpful measures to address the position of existing insurance contracts in the event of a hard Brexit. The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019 (the “**Bill**”) is to be enacted in the event of a no deal Brexit, where the United Kingdom withdraws from the European Union on Friday 29 March 2019.

Part 8 of the Bill provides for a temporary three year run off regime which will allow certain UK and Gibraltar insurers and brokers to continue to service existing insurance contracts with Irish policyholders in the event of a no deal Brexit. The Bill if enacted will amend the European Union (Insurance and Reinsurance) Regulations 2015¹ (the “2015 Regulations”) and the European Union (Insurance Distribution Regulations 2018² (the “2018 Regulations”).

Insurance and Reinsurance

The Bill proposes to amend the 2015 Regulations to allow a person who has satisfied certain conditions to carry on administration of its existing insurance portfolio in order to terminate its activity in the State.

For a person to avail of this run off regime the person must have been, immediately before the withdrawal date, an authorised insurance undertaking under the law of the United Kingdom or Gibraltar and have an established branch in Ireland or have pursued business in Ireland on a freedom to provide services basis. It is clear that on the withdrawal date the insurer must have ceased to conduct new insurance business to avail of the run off regime.

The run off regime will last until the earlier of the date the Central Bank of Ireland (the “Central Bank”) issues a withdrawal notification to the person or three years from the withdrawal date. A withdrawal notification could be issued in situations where the Central Bank is satisfied:

1. new insurance business is carried out after the withdrawal date; or
2. the insurance company has completed the administration of its existing portfolio; or
3. the insurance company has failed to make sufficient progress towards permanently ceasing to carry on insurance business in Ireland within the three year run off period; or
4. the insurance company has failed to comply with the general good requirements³.

¹ SI No 485 of 2015

² SI No 229 of 2018

³ The Bill provides that ‘general good requirements’ shall mean the conditions under which, in the interest of the general good, insurance business shall be carried on in the State, as published by EIOPA and the Bank from time to time.

Insurance Distribution

The Bill proposes to amend the 2018 Regulations to cease any new insurance distribution business from companies registered in the United Kingdom or Gibraltar. Those currently carrying on insurance distribution business in Ireland will be able to administer existing insurance contracts in Ireland for the same up to three year period from the withdrawal date.

The Central Bank shall issue a withdrawal notification in situations where:

1. new insurance distribution has been carried out after the withdrawal date; or
2. the administration of existing insurance distribution business has ceased in Ireland; or
3. the company has failed to make sufficient progress to cease insurance distribution business within the 3 year run off period; or
4. the company has failed to comply with the general good rules⁴.

Legislative Steps

It is intended that the Bill will be at the final stage in the Dáil on the week of 4 March and before the Seanad on the week of 11 March. It is envisaged that President Michael D Higgins will sign the Bill into law on Friday 29 March, the deadline for the UK to leave the EU, in circumstances of a no deal Brexit.

Conclusion

The Bill provides welcome certainty to insurers and insurance brokers who are grappling with the issue of the completion and run off of existing business written in Ireland by UK and Gibraltar insurers, in the event of a no deal Brexit. It also may provide some additional time for brokers and customers to source alternative insurance providers on similar commercial terms.

Further clarity is needed in several areas such as:

- what precise activities / business can be undertaken during the run off period;
- what (if any) reporting the Central Bank will require during the three year run off regime; and
- what form the notification to the Central Bank should take, in respect of entities wishing to avail of the run off regime, noting that there is a 3 month deadline to make such an application from the date of Part 8 of the Bill coming into operation, or such other time as may be appointed in accordance with the Bill.

For further information please contact:



Peter Fahy

Partner

Head of Pensions

T: +353 1 6644206

M: +353 86 2339011

peterfahy@eversheds-sutherland.ie



Deborah Hutton

Partner

Asset management & Regulation

T: +353 1 6644273

M: +353 861849114

deborahhutton@eversheds-sutherland.ie

⁴ Regulation 5(1) of the 2018 Regulations provides that the Bank shall publish on its website the national legal provisions (in these Regulations referred as the "general good rules") concerning consumer protection which govern the carrying on of insurance and reinsurance distribution in the State.

Disclaimer

The information is for guidance purposes only and should not be regarded as a substitute for taking legal advice. Please refer to the full terms and conditions on our website.

Data protection and privacy statement

Your information will be held by Eversheds Sutherland. For details on how we use your personal information, please see our Data Protection and Privacy Policy.

[eversheds-sutherland.ie](https://www.eversheds-sutherland.ie)