Brexit – Implications for the ILS market

28 June 2016

On 23 June 2016, the UK took the historic decision to leave the European Union. In general, from an Irish perspective, it was an unexpected and regrettable outcome for our closest neighbour and our most important trading partner.

While the impact of Brexit is expected to be profound on the Irish economy, the departure of the UK from the EU will bring opportunities for Ireland in some contexts, particularly for the Irish financial services industry. As a niche part of this industry, we expect the advent of Brexit will not have a significant impact on the insurance linked securities (ILS) sector and will, if anything, assist in consolidating Ireland's position as the jurisdiction of choice in Europe for ILS transactions.

This client advisory considers potential issues for ILS transactions structured through Irish domiciled special purpose vehicles and highlights the opportunity for Ireland as an ILS domicile following Brexit.

The macro impact on ILS transactions

One of the main attractions for investors in the ILS market is the uncorrelated nature of the asset class. The current market turmoil has no impact on the performance of catastrophe bonds and for this reason the marketability of ILS products should remain largely unaffected by Brexit.

Potential regulatory impact on ILS transactions structured via Irish SPVs

The regulatory impact of Brexit on the vast majority of ILS transactions structured via Irish special purpose vehicles should be very limited for the following reasons:

- Ireland will remain a member of the EU;
- Most ILS transactions are governed by the laws of the state of New York, rather than English law;
- The vast majority of active European ILS sponsors are still located within the EU (primarily France, Germany and Italy);
- While custodian services in European ILS transactions are typically provided by London-based custodians we do not expect the departure of the UK from the EU to have any impact from a regulatory perspective on the provision of those services from London to Irish-based ILS issuers; and
- Some ILS sponsors based outside of the European Union (the United States, Switzerland) have established Irish SPVs for their ILS transactions – Brexit clearly has no impact on these sponsors and such transactions will continue unaffected.

Solvency II

As an EU member state Ireland has implemented Solvency II fully and does not have to rely on a "Solvency II equivalent" regime as is the case for some non-EU jurisdictions. The departure of the UK from the EU does not impact Ireland's position in this respect.

Walkers have recently advised on the first post-solvency II regulated standalone catastrophe bond transaction in Europe. The approval process via the Central Bank of Ireland (CBI) ran smoothly and in accordance with the planned timeline of the transaction and we expect this will also be the case for the future ILS transactions which require the approval of the CBI.

Following the implementation of Solvency II we frequently receive enquiries on the potential for establishing regulated shelf programme ILS issuers in Ireland. In this context the CBI has confirmed that it is open to receive applications for such structures and we do not expect Brexit will have any impact in this context.

Indeed, overall, we would expect the approval process for both standalone and shelf programme ILS issuers will be unaffected by the outcome of Brexit.

Listing on the Irish stock exchange

Several ILS issuers have chosen to list on the Global Exchange Market or the Main Securities Market of the Irish Stock Exchange. Given Ireland's commitment to remain a member of the EU, we anticipate that "business as usual" will apply to all existing issuers who have listed their securities on the Irish Stock Exchange. Indeed we expect some issuers to migrate their listing from the London Stock Exchange to the Irish Stock Exchange where they have listed in London for purposes of availing of EU wide passporting[1].

Ireland as the domicile of choice for ILS issuers

The outcome of the Brexit referenfum should have no impact on Ireland as the dominant jurisdiction for ILS transactions in Europe. In recent years a number of new jurisdictions have emerged as alternative locations for ILS issuers. Some of these jurisdictions are Crown Dependencies of the UK or British Overseas Territories which up to the time of the referendum claimed membership of the EU. The decision of the UK to depart from the EU means that Ireland remains the only common law, native English speaking jurisdiction within the EU and, as such, is well placed to retain its position as the domicile of choice for ILS transactions.

Ireland is also the only jurisdiction of the EU whose regulator (the CBI) has experience in the review, approval and ongoing regulation of ILS special purpose reinsurance vehicles including in respect of post-Solvency II transactions.

It would appear therefore that the ideal regulatory environment exists for the ILS industry to continue to grow in Ireland notwithstanding the market fallout generally arising from Brexit.

1 This is not likely to be relevant to ILS issuers who have traditionally sought to list their securities on the Bermuda Stock Exchange or the Irish Stock Exchange.

Key Contacts

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This advisory is part of a series of client advisories on the potential impact of Brexit prepared for clients of Walkers' office in Ireland. The full series may be found in the Brexit section of our website.