Comhairle Contae Fhine Gall
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Economic Operators Insurances - Guidance on the impact of Brexit on UK based insurers

Introduction

This document outlines the impact Brexit has on the insurance cover provided by UK insurers in the Republic of Ireland.

Key Points

As result of Brexit,

- any insurance policies which are renewed on or after 01 January 2021 with a UK domiciled Insurer will not be permitted in the ROI. This may result in a failure of such policies to pay claims.
- any insurance policies which were in force prior to 01 January 2021 with a UK domiciled Insurer will remain valid (solely for the purposes of paying claims) for a period of 15 years.

For Economic Operators which are primarily based in the Republic of Ireland, most if not all UK based insurers will have moved such insurances to an EEA authorised entity within their group at this stage. However, the location of where their insurer is based will be reviewed out of caution.

For Northern Ireland or UK based Economic Operators, greater vigilance will be required, particularly where the start date of cover is on or after on 01 January 2021.

Procurement

It should go without saying that that insurances provided by Economic Operators must be authorised for this jurisdiction. However, given that current scenario with Brexit, the Contracting Authority explicitly state this both in any tender documentation as well as, where permitted, within the insurance requirements of the contract.

Central Bank of Ireland (CBI) Register

The CBI maintain an up to date list of all non-life Insurers regulated by the CBI as well as a list of non-life insurers authorised to operate on a Freedom of Services basis. It is recorded under the section called “Register of Life and Non-Life Insurance Undertakings”. Follow link here

Checking of insurances

In the event that insurance details are submitted from what appear to be from a UK domiciled insurer with cover dates on or after 01 January 2021, the Contracting Authority may:

1. Check the CBI Register that the insurer is authorised to write this business in the Republic of Ireland.
2. If the insurer cannot be found on the register, then the Contracting Authority may seek:
    a. written confirmation from the vendors insurers that they have the appropriate authorisation for this jurisdiction
    b. clarification from the vendors insurers as to why they are not listed by the CBI as an authorised insurer.

Appendix - Further Information

Freedom of Services

Under Freedom of Services agreements, authorised EEA[1] insurers are permitted to write insurance in other EEA states. In the context of Ireland, it was not unusual for Irish entities to have their insurances arranged through UK domiciled insurers. Indeed, for vendors based in Northern Ireland, this was the norm.

Following the conclusion of negotiations on a Withdrawal Agreement, the UK left the EU on 31 January 2020. However, EU rules and regulations continue to apply to the UK until the end of the transition period on 31 December 2020. This includes rules permitting authorised UK Insurers to continue exercising a "passporting" right to carry on writing insurance in other EEA Member States.

However, these Insurers shall not be allowed to write new business or renewals with cover start dates on or after 01 January 2021. It should be noted that this will apply irrespective of whether or not a deal is agreed in the current trade negotiations as freedom of services for Insurers does not form part of the current discussions.

The 15 Year Run-Off Period

On 9 September 2020, the Government published new legislation[2], as part of its preparations for the end of the transition period. Part 10 of the proposed legislation allows Insurers that are authorised in the UK and which had previously passported into Ireland to continue to operate in Ireland for specific and limited purposes. This is for a 15-year period from 01 January 2021 and is subject to the fulfilment of certain conditions.

The "specific and limited purposes" referred to above effectively means dealing with the handling of claims. This is to allow UK Insurers to fulfil its contractual obligations to its Irish customers following the end of the transition period on 31 December 2020.

However, as mentioned above such Insurers will not be authorised to write new business or renewal any policies from 01 January 2021.

[1] The European Economic Area (EEA) includes EU countries and also Iceland, Liechtenstein, and Norway

[2] the General Scheme of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020 (the "General Scheme")