House of Lords European Affairs Committee: UK-EU relationship in financial services inquiry – LIIBA response (RFS0001)

About LIIBA

1. London and International Insurance Brokers' Association (LIIBA) is delighted to respond to House of Lords European Affairs Committee inquiry into UK-EU relationship in financial services

2. LIIBA is the trade body for Lloyd's brokers active in London's specialty (re)insurance markets. Our members are responsible for introducing in the region of $110 billion in premium to the market on behalf of a global client base – with two thirds of that business placed on behalf of overseas clients. Our members act on behalf of sophisticated commercial businesses seeking insurance that is often only available in London given the depth of expertise concentrated here. As a whole, London insurance market contributes £39 billion annually to GDP, one quarter of the contribution of the City.

3. As these figures suggest, London insurance market is a vibrant export sector with a potential to grow significantly to further support government's trade policy objectives. Currently around 15% of business is placed on behalf of European Union (EU) clients.

Summary

4. LIIBA members that wished to continue to service business where both the policyholder and the risk are located within EU have had to create a subsidiary entity with regulatory authorisation in the Union which has a branch authorised in United Kingdom (UK). This is to meet the conflicting interpretations of where activity takes place between EU regulators and UK's Financial Conduct Authority (FCA). This has led to a transfer of some jobs and assets to EU with the potential that this process has further to go.

5. As yet we have yet to see full detail of FCA's proposed supervisory approach to these subsidiaries. As they are EU firms with no UK clients which pose little risk to FCA's objectives, this should be minimal. Early indications, however, are that this may not be the case.

6. Insurance Distribution Directive (IDD) – the EU legislation governing our sector - has no equivalence provisions. There is no mechanism therefore for EU to grant further market access rights to UK insurance brokers.

7. We believe there may be an opportunity to grow the amount of EU business that flows to London. This may primarily depend on our ability to make the case to EU that London's specialist capabilities complement EU's domestic insurance markets and can deliver even better client outcomes.

8. We have answered the specific questions you posed below.

The impact so far on the UK financial services sector of the UK's exit from the Single Market (including the extent of any movement of workforces, assets and infrastructure to the EU, and the impact of the lack of passporting).

9. LIIBA members operating in EU are subject to scrutiny under Insurance Distribution Directive (IDD) – as transposed in each nation state. This was refined by European Insurance and Occupational Pensions Authority (EIOPA) publishing "Recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union" in February 2019[1]. Recommendation 9 of this document confirmed the scope of IDD as applying only to contracts where both the policyholder and the risk was located in EU ("impacted business").

10. In these circumstances, insurance intermediaries can only provide services that fall within the definition of "insurance distribution" in IDD if they are authorised in one of the 27 EU member states – regardless of where they are physically located when delivering that service. LIIBA members that wished to continue to provide services for impacted business have therefore been required to create a subsidiary in EU that is appropriately authorised within the Union.

11. UK Financial Conduct Authority however has a different approach to identifying where a regulated activity takes place. It asserts that if an insurance intermediary is in UK and providing a service that fits within its definition of insurance distribution (currently identical to that under IDD) then it is delivering that service in UK and needs to be authorised by FCA to do so. LIIBA members have thus tended to register a branch of their new EU subsidiary in UK and apply for FCA authorisation for the EU entity – initially by registering it in FCA's Temporary Permissions Regime (TPR).

12. As a result more than 50 LIIBA members now have a new EU operation. Whilst the movement of jobs from UK to EU as a result of this has not been that sizeable, it is certainly true that work that used to take place in London is now carried out by EU personnel. Equally many of our members have made commitments to grow the EU end of their businesses. The new arrangements have undoubtedly added cost to the end to end process which is not in the best interests of EU clients.

13. The new EU entities qualify for passporting rights to deliver services across EU.

[1] eiopa-bos-19-040_recommendation_brexit_final.pdf (europa.eu)

14. There are emerging issues around which regulatory regime prevails when there is a divergence between the home state EU regulator and FCA. This is most obvious around client money rules which tend to be more detailed under FCA than most EU regulators.

15. LIIBA members are just now being asked to make full applications for FCA authorisation for their EU entities (which up until now has been granted by virtue of their registration in TPR). This is beginning to give an insight to FCA's proposed approach to supervising these firms. We would argue that, as these are EU firms with no UK clients – and the clients they do have are sophisticated corporate buyers of insurance, then they pose little if any risk to FCA's objectives and should face a minimal supervisory regime. As yet, this proportionate approach does not appear to be going to be reflected in FCA policy.

Questions related to equivalence (for example, why so few decisions have been forthcoming from the EU, the impact of the lack of equivalence on UK providers and how they have adapted, and whether equivalence is still worth pursuing for the UK).

16. There are no equivalence provision under IDD. EU cannot therefore grant any form of equivalence for insurance distribution and has no mechanism by which it could extend market access for UK insurance brokers.

Regulatory co-operation, particularly in the absence of full implementation of the Memorandum of Understanding agreed in the Joint Declaration on Financial Services.

17. As outlined above, our main concern is over FCA's approach to supervising the new EU entities LIIBA members have created. These are EU firms with no UK clients. The clients that they do have are sophisticated corporate purchasers of insurance. These firms there pose little if any risk to FCA's objectives. Furthermore they are regulated and supervised by their home state EU regulator upon whom FCA should be able to rely. However, the early indications of members who have been asked to make a full application for authorisation for its EU entity by FCA (which, to this point, has been granted by the firm being a part of TPR) is that FCA is seeking significantly more interaction and control than would be considered proportionate. This will only add cost and undermine the competitiveness of UK economy.

Opportunities for the sector post-Brexit.

18. Prior to UK's departure from EU, the proportion of London market business that emanated from an EU client was around 15%. Given the size of the bloc, there is scope for increasing the amount of business that comes to London.

19. In general, insurance business flows to London when domestic markets have been unable to provide a suitable solution. Most clients prefer to see their business placed as close to home as possible. It is only when this proves challenging that their broker will seek cover in the international markets that centre on London. London has a differing risk appetite; access to large capacity and expertise to structure insurance contracts to make them attractive to the insurers based here. This often makes it possible to purchase insurance cover in London that is not available elsewhere.

20. In markets such as US, London's reputation, built over several centuries, makes access to this excess capacity a natural route for brokers and their clients. There may be an opportunity to market London's offering more accurately to EU clients and EU governments. By emphasising that our role is as much complementary to rather than competitive with EU domestic markets, we could see an increased EU demand for insurance in London.

LIIBA
March 2022