

BREXIT planning/contract continuity

This Circular is to advise the steps being taken by Gard to continue business and provide services to UK based assureds following the UK's withdrawal from the European Union on 29 March 2019 (BREXIT).

Currently, Assuranceforeningen Gard -gjensidig- and Gard Marine & Energy Insurance (Europe) AS, as Norwegian insurance companies and regulated by their home state regulator, the Norwegian FSA, exercise so called *passporting rights* granted to EEA insurers under EU law to carry out cross border services and establish branches in another EEA State, without the need to be authorised in that other State by the local regulator. This allows Gard to sell directly into the UK market without the need for an assured to seek out and approach Gard in Norway. Those passporting rights into the UK will cease as the UK leaves the EU unless some agreement is reached between the UK and EU permitting such rights to continue whether in the short term or indefinitely. In the absence of passporting rights, it will be necessary for an EEA insurer selling and providing services into the UK, to be authorised by the UK regulators.

In March 2018, Assuranceforeningen Gard -gjensidig- and Gard Marine & Energy Insurance (Europe) AS submitted applications to the UK regulators, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) for local authorisation. Those applications are currently being processed and we shall update Members as and when there are any developments.

Although there have been discussions between the UK and the EU in respect of a transition/implementation period and there is an outline agreement for an implementation period following the UK withdrawal from the EU allowing passporting to continue until December 2020, no firm agreement is currently in place and is, in any event, dependent on the final terms of the overall Withdrawal agreement between the UK and EU.

In the meantime, the UK Treasury has drafted legislation to cover a scenario whereby no agreement has been reached between the UK and EU. The draft legislation provides for a Temporary Permissions Regime (TPR) of up to three years, allowing incoming EEA firms to operate under existing passporting rights provided that those passporting rights were being exercised at the time of the BREXIT and the incoming firm has notified the UK regulators that they intend to continue to exercise those rights. An application to the UK regulators for local authorisation will act as sufficient notice. The TPR will be a unilateral and UK *inward* scheme.

Contract continuity

Members may be alerted, either by the trade press or through their advisers, to the issue of *contract continuity* following BREXIT and the need for a contract continuation clause in the insurance policy.

This is an issue which may be relevant to UK insurers in order to provide for the continuation and performance of insurance contracts with EEA domiciled assureds, i.e. *outward* insurance business from the UK to the EEA. As explained above, Assuranceforeningen Gard -gjensidig- and Gard Marine & Energy Insurance (Europe) AS are Norwegian based firms and therefore EEA *inward* insurers to the UK and continuation of business with UK insureds (existing or prospective) upon BREXIT will be facilitated either by

- i) Local authorisation
- ii) TPR
- iii) Dealing with Gard in Norway

Business with Gard P. & I. (Bermuda) Ltd and Gard Marine & Energy Ltd is not affected by the above.

Any questions or comments can be directed to [Stig Garmann Tønnesen](#) in Arendal or [Helenka Leary](#) in our London office.

Yours faithfully,

GARD AS



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