

INSURANCE DAY



LEGAL SERVICES

Reinsurance directive, Solvency II and tax top considerations in redomiciling

Liz Booth

THE INSURANCE industry never stands still, but things are particularly fluid at the moment, with some of the largest insurers relocating their countries of domicile and many others understood to be considering doing so.

There are several drivers for this, including regulatory changes, regulatory arbitrage, political concerns, moving closer to markets and tax. The main driver, however, seems to be regulatory change.

For example, across Europe the Reinsurance Directive gives European Union (EU) reinsurers freedom to write business throughout the EU and abolishes some old rules requiring them to post collateral. This gives reinsurers an incentive to move within "fortress Europe".

Solvency II is another example of this. The extent to which EU regulators will recognise the regimes of third countries, such as Switzerland and Bermuda, is a question which remains wide

open. We know of various "foreign" insurers which are considering strategies in readiness for the different possible outcomes.

Taxation is also one factor for companies considering redomiciling.

A decision to redomicile is a major one, and needs careful consideration by the insurer's board. Typically, there will be more than one company involved and redomiciling will be carried out as part of a review of the insurer's corporate structures generally. The insurer needs to consider a range of possible permutations of possible corporate structures, to decide which one works best from legal, tax, and operational perspectives. Its advisers need to be able to explain the merits of each jurisdiction in its own right; and how the various possible options would tie in with the insurer's business operations, such as the ability to write business in other jurisdictions, its employment arrangements and tax.

Philip Woolfson, an advocat (Paris and Brussels) with Steptoe & Johnson LLP, believes: "The insurance industry has been

highly regulated for many years and so needs support from those who monitor, anticipate, understand, interpret and apply legislation and regulation – the lawyers."

In the context of re-domiciliation, lawyers help companies to:

- select the jurisdiction to which the company wants to redomicile;
- select the legal basis for the re-domiciliation; and
- once the legal basis has been decided in outline, organise the transaction.

Woolfson says: "Certainly, the EU insurance directives have harmonised rules across Europe, so, for example, cross-border portfolio transfers can and do take place. Likewise, EU company law directives help re-domiciliation.

"Nevertheless, local requirements must always be checked so as to ensure compliance with local legal forms such as: form of the transaction; protection of creditors, policyholders, minority shareholders etc; publication and registration requirements; and filings, etc."



The Reinsurance Directive gives EU reinsurers freedom to write business throughout the union but to what extent the EU will recognise regimes of third countries such as Switzerland is unknown

This article first appeared in *Insurance Day* and can also be found at www.IDnewscentre.com