Summary

The UK’s exit from the EU raises significant issues about the correct balance of primary versus delegated powers within the UK’s legislative framework. The ABI welcomes the opportunity to provide a short written submission highlighting our thoughts.

The coalition government created a robust new regulatory structure for financial services. Whilst the conduct and prudential regulators are still developing, the professionalism and expertise of those leading both institutions is acknowledged across financial services. The ‘Great Repeal Bill’ brings the prospect of considerable further delegation of powers to these bodies.

We do not object to this in principle and it is hard to see any other way in which the volume of regulation can be managed. However how this is achieved matters. It is particularly important that agencies, such as regulators, given a parliamentary mandate are appropriately checked in the exercise of the powers available to them; and that the overall legislative framework is adjusted in the right way to ensure sufficient flexibility for these institutions to make the UK as competitive and attractive as a place to do business as possible.

As we contemplate the future of the UK and the potential transfer of legislative competency, there is also an important judgement needed about the required structure and available resource within the UK parliament to adequately scrutinise the relevant legislation. Whilst a level of legislative oversight that is set at too high a level would be ineffective, equally a level of control that is too granular would prevent the relevant agencies from being able to react dynamically.

The delegation of powers

A balanced approach

1. The logical consequence of the UK’s exit from the EU is that it will need to develop and own bespoke regulatory regimes across all areas of the economy.

2. The envisaged ‘Great Repeal Bill’ whilst seeking to effectively cut and paste the existing EU legislative framework into UK law can only do so much.

3. At the same time, legislative and political reality is likely to lead to a greater delegation of powers to government agencies and bodies such as regulators who operate under a mandate from Parliament.

4. In due course, interest groups and policy makers will seek to tailor the legislative framework more specifically to the needs of the UK’s economy and UK society.

5. Firms operating in financial services should be particularly alert to this given that there has been such a significant amount of financial services designed and scrutinised at European level.

6. The UK is the largest insurance market in Europe and a significant UK sector. It contributes over £12bn in taxes and employs over 300,000 people. It is right that the UK
government and parliament have a degree of control over the regulatory regimes under which it operates—although in order to maximise trade it will be in the interest of both the UK and EU to have a broadly common supervisory and capital regulatory framework.

7. Following the UK's exit from the EU and the return of greater prudential regulatory powers to the UK financial services regulators, it will be important to ensure there is appropriate political oversight and accountability whilst still respecting their status as independent regulators.

8. The balance needs to be struck between enabling a well-organised and expert regulator to carry out its duties and ensuring that the competitiveness within sectors of UK financial service is not inappropriately held back.

9. For instance, the UK insurance sector played a constructive role in the development of Solvency II, through consultation and quantitative studies. It is important that there is a similar open and consultative approach to the development of the UK prudential regulatory regime, involving industry, regulator, parliament and government.

10. Solvency II currently acts as a partial constraint on the PRA (for example, by requiring it to justify the use and magnitude of capital add-ons on firms, and to set out a clear course of action that firms can take to remove them). Following Brexit, there should be similar constraints built into primary legislation.

Seizing opportunity

11. It is imperative that changes made to Solvency II and any replacement UK prudential regulatory regime should be supportive of UK competitiveness, to ensure the UK retains insurance business and enhances its global position in the insurance sector following Brexit.

12. In the short-term, pre-Brexit, the PRA should have a new and explicit remit for UK competitiveness as part of its objectives, in both European and the global context, when interpreting and applying Solvency. Longer-term, post-Brexit, this needs to be implemented into the future UK prudential regulatory regime and in primary legislation. It is important that this is balanced with the PRA’s objective of financial stability and policyholder protection.

13. Finally, following Brexit, a long-term mechanism should be established for regulatory dialogue and cooperation between the PRA and the EU’s regulatory authorities. This recognises the interconnected nature of insurance and reinsurance supervision, driven by the global transfer of risk and capital. Similar arrangements already exist between the PRA and other non-EEA jurisdictions, including the US. One of the key cross-border activities is the provision of reinsurance between the UK and EEA countries. The ongoing ability to provide reinsurance will be important, without the imposition of additional constraints, to both UK and EEA insurers.
Adequate scrutiny

14. If we consider the extent of line by line legislative scrutiny expected of institutions such as the European parliament’s Economic Committee in examining and developing complex and EU wide legislation such as MIFID, IDD and Solvency II, the UK Parliament by contrast is arguably not currently resourced or structured to perform a complementary role.

15. As the UK takes ownership of increasing numbers of technical laws the UK parliament and its legislators will be required to increase their own technical expertise to ensure that the UK economy is not hampered by inadequate drafting of legislation.

About the ABI

The Association of British Insurers is the leading trade association for insurers and providers of long term savings. Our 250 members include most household names and specialist providers who contribute £12bn in taxes and manage investments of £1.6trillion.

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