



Brexit alert: Update for EEA firms passporting into the UK

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Once the UK falls outside the EEA, current passporting arrangements may well no longer apply, requiring insurers to find other means to secure market access. The issue also impacts EEA insurers accessing the UK market through either a UK branch or using a freedom of services (FOS) licence. Such firms will need to consider the implications for their future UK market access.

Authorisation will be required to maintain UK access

Within the UK, authorisation is required where the activities of “effecting” (relating to entering into new business) and/or “carrying out” (relating to servicing of existing business) contracts of insurance are conducted in the UK. Both activities are widely drawn: conducting unauthorised business is a criminal offence subject to fines and imprisonment. It is therefore critical that EEA insurers determine whether any of their activities will require UK authorisation post-Brexit.

Authorisation in principle

Where a subsidiary will be established rather than a branch, then the current UK authorisation process can be applied. However, for branch applications there is a challenge regarding the timeline for UK authorisation.

While the UK remains within the EEA, home state authority must be recognised and a formal UK authorisation cannot be granted. Similar to the approach adopted to internal model approvals before Solvency II went live, we expect that some form of pre-application process for branch applications will be introduced, with authorisation granted “in principle” and actual authorisation then granted at the point of the UK exit.

Authorisation process

On the basis of our discussions with UK regulators, it does not appear that there will be any significant changes to the current application process or documentation requirements, although we anticipate that formal guidance will be issued later this year.

In terms of timing, the UK has an approval deadline of six months to consider complete applications and 12 months for incomplete ones, although the regulators offer a ‘pre-application’ phase to increase the chances of the formal application being deemed complete when received. This enables applicants to submit their draft regulatory business plan and deal with feedback from the regulators without the formal approval window clock starting.

Conversion of existing UK branches

Most insurers with an established UK branch would prefer a simple process to ‘convert’ the branch into a third country insurer authorised branch post Brexit. However, there is no branch conversion process and it will be necessary to follow a formal authorisation process. This is consistent with EIOPA’s comment in its recent Opinion on supervisory convergence in light of the United Kingdom withdrawing from the European Union that “there cannot be any automatic recognition of an authorisation granted by another supervisory authority”.

Firms will be able to use their existing UK track record to support the viability and sustainability of their UK regulatory business plan. In addition, the governance and senior management requirements for branches are less onerous than for stand-alone insurers. These facts should make the authorisation process more straightforward.

The PRA will however need to understand the financial condition of the legal entity as a whole, the interaction between branch and head office and its ability to cooperate effectively with the home state supervisor.

Firms should be aware that any locally granted Solvency II permissions will not be automatically recognised by the PRA and will need to be reapplied for in the UK if relevant to the branch. In particular, firms should expect that the UK branch will need to determine its notional solvency capital requirement under the standard formula, regardless of whether the legal entity has internal model approval, until such approval is granted by the PRA in respect of the UK branch. This is again consistent with the EIOPA Opinion.

UK access via freedom of services (FOS) licences

Our experience shows that EEA insurers using FOS licences into the UK are generally less advanced in their thinking than those with a UK branch presence. This may in part reflect the fact that UK authorisation requirements are determined by whether or not insurance related activities are undertaken in the UK.

Firms that do not create an establishment or conduct any regulated activity in the UK may therefore be unaffected by Brexit. However, any regulated activity in the UK will trigger UK authorisation requirements post-Brexit. For example, if an insurer uses a UK agent that has authority to underwrite or make claims decisions, that insurer will be deemed to be carrying on a regulated activity in the UK.

It is therefore important that firms wishing to maintain UK market access ensure that there are no features of their operating model that would trigger the need for UK authorisation.

Servicing of pre-Brexit insurance contracts

Insurers may have significant business that was legally sold into the UK under current passporting arrangements that remains in force at the point of the UK's exit. Both these insurers and policyholders need certainty that the commitments under such contracts will continue to be honoured.

While the servicing obligation is set out in the terms of the insurance contracts themselves, the question arises as to whether servicing such contracts will be possible without UK authorisation.

Where the insurer has a UK branch and gains UK regulatory approval for this to continue as a branch of a third country insurer post Brexit, this will not be an issue. However any EEA insurer that has sold business into the UK under FOS licences or chooses to close its UK branch operations will need to ensure they do not inadvertently breach UK authorisation requirements.

The same issue arises for UK insurers with European insurance contracts and we understand that UK authorities and EIOPA are well aware of the issue. However it is currently unclear whether a political solution will be found. Grandfathering, transitional agreements and regulatory forbearance have all been suggested as a route forward.

A number of UK insurance groups that are establishing new European insurance companies are already considering portfolio transfers to move such insurance contracts to the 'right' side of the UK/EU27 border to remove any uncertainty regarding their servicing. However, it is currently unclear what actions European insurers (other than those seeking UK branch authorisation) are proposing.



Next steps

The PRA is encouraging EEA insurers to hold introductory meetings with them to discuss their post-Brexit contingency plans, but is not at this stage encouraging early submission of authorisation packs. These meetings should at a minimum cover an overview of current UK products and volumes of business, operating model, UK branch structure (if applicable) and interaction with head office.

Where guidance is sought on whether UK authorisation will be required, firms should discuss any activities undertaken in the UK, including those undertaken through authorised agents. Where authorisation is sought, insurers should provide the rationale for seeking this and proposed timeline.

Potential applicants should familiarise themselves with the authorisation process and documents required and establish plans for submission, taking account of the approval windows noted above.

Contacts



Sian Hill
Brexit Insurance Lead Partner
Sian.Hill@KPMG.co.uk
+44 207 311 5966



Paul Merrey
Brexit Strategy Partner
Paul.Merrey@KPMG.co.uk
+44 207 694 5276



Janine Hawes
Director, European Insurance Regulation
Janine.Hawes@KPMG.co.uk
+44 207 311 5261