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## HT2018-12

### Preparing for Brexit

Intermediaries offering insurance and other financial services to UK-based customers using UK authorised providers, shouldn't face particular difficulties as a result of the withdrawal of the UK from the European Union (EU). Brexit will, however, have a considerable impact on firms that carry out business between the UK and the European Economic Area (EEA) – whether through a passport or directly under relevant legislation.

Whilst the terms of our withdrawal from the EU remain uncertain, the FCA continues to prepare for a range of scenarios, including one in which the UK leaves the EU on 29 March 2019 without a withdrawal agreement. The FCA is working with the Government and other regulators to ensure the smoothest transition possible.

The EU (Withdrawal) Act will transfer and convert existing EU law at the point of exit into UK law. The Act will also give powers to ministers to make secondary legislation to amend this legislation to ensure it functions effectively when the UK leaves the EU. As part of this, the FCA will be asked by the Treasury to amend and maintain EU binding technical standards (detailed EU rules). These rules sit underneath EU regulations and directives and provide technical detail of how those requirements must be met.

In effect, therefore, the domestic regulatory system will continue to operate along existing lines with all current EU standards in place - at least for the time being.

#### Implementation period - a possible breathing space

If the UK leaves the single market this is likely to mean the loss of passporting rights that allow financial firms trade across the Europe.

In March 2018, the UK and the EU reached agreement on the terms of a possible implementation (or transitional) period following the UK's withdrawal from the EU. This implementation period is intended to operate from 29 March 2019 until the end of December 2020. During this time, EU law would remain applicable in the UK, in accordance with the overall withdrawal agreement. Firms, funds and trading venues would continue to benefit from passporting between the UK and EEA as they do today. Obligations derived from EU law would continue to apply and firms would have time to develop plans for any changes that would be due to come into effect by the end of December 2020.

Such an implementation period would form part of a withdrawal agreement, which is still subject to negotiation. The expectation is currently that if there is an agreement, firms will be able to continue to benefit from passporting between the UK and EEA during the implementation period. If there is "no deal" the situation is far more uncertain.

#### "No-deal" scenario

The government has said that a scenario in which the UK leaves the EU without agreement (a "no deal" scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome. In a 'no deal' scenario, UK firms' position in relation to operating in Europe would be determined by the relevant member state rules. The risks arising from a no deal scenario are considerable.

In general, the UK would default to treating EEA states and EEA firms largely as it does other third countries and their firms. However, the government has confirmed that there will be instances where it would be prepared to deviate from this stance "in order to ensure that a functioning legislative regime is in place, to minimise disruption and avoid material unintended consequences for the continuity of financial services provision, to protect the existing rights of UK consumers, or to ensure financial stability." A key example of this is the government's commitment to introduce a Temporary

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Permissions Regime that will allow EEA firms currently passporting into the UK to continue operating in the UK for up to three years after exit, while they apply for full authorisation from UK regulators.

The government has also committed to legislation alongside this, if necessary, to ensure that contractual obligations (such as under insurance contracts) between EEA firms and UK-based customers that are not covered by the temporary permissions regime can continue to be met.

## **Insurance intermediaries currently operating in EEA countries**

There are serious concerns regarding EEA customers of UK firms currently operating in the EEA under passporting arrangements. In the absence of action from the EU (such as a reciprocal temporary permissions regime) customers, including UK citizens resident abroad, may lose the ability to access existing lending and deposit services and insurance contracts due to UK firms losing their rights to passport into the EEA. In other words firms may be unable to continue to service their existing products for EEA customers.

Firms need to make sure they understand the implications of Brexit and plan accordingly. Many UK financial services firms who currently passport into the EEA are taking steps to ensure that they can continue their business after exit, for example by establishing a new EU-authorized subsidiary. This would allow them to offer services after exit through their EEA subsidiary.

The Central Bank of Ireland has contacted UK registered insurance intermediaries who may be undertaking cross-border insurance mediation business in the Republic of Ireland in respect of their ongoing contingency planning. It has urged them to take the necessary measures to ensure service continuity - and such measures would most likely involve registration with the Irish authority.

## **Is your business affected?**

The FCA has set out a series of questions (it is not a full checklist) that firms might find helpful where they conduct business in the EEA or if Brexit affects their business:

- Do you currently provide any regulated products or services to customers resident in the EEA? For example, you might provide financial advice to EEA based customers. Or you might have insurance contracts either with EEA based customers or which cover risks located in the EEA which require regulatory permission in that country in order to be serviced.
- Do you have customers or counterparties based in the EEA, including UK expatriates now based in an EEA country?
- Are you marketing financial products in the EEA? This includes products marketed on a website aimed at consumers in the EEA.
- Do you have agents in the EEA or interact with any intermediary service providers in the EEA? For example, you may use an insurance intermediary to distribute products into the EEA.
- Does your firm transfer personal data between the UK and the EEA or vice versa?
- Does your firm have membership of any market infrastructure (trading venues, clearing house, settlement facility) based in the EEA?
- Are you part of a wider corporate group based in the EEA, or does your firm receive any funding from an entity in the EEA?
- Do you outsource or delegate to an EEA firm or does an EEA firm outsource or delegate to you?
- Are you party to legal contracts which refer to EU law?

If affected, the FCA suggests that firms should:

- Work out what changes they might have to make to their business or which additional regulatory permissions they may need to continue to carry it out.
- Think about any information they will need to give to customers who might be affected by their plans and how it can be provided in a way which is clear, fair and not misleading. For example, explaining clearly to customers where a change in contractual terms might affect them.
- Consider the implications of a range of possible scenarios including an implementation period.

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Firms may also want to discuss the implications of Brexit with the relevant EEA regulator in the countries in which they do business.

## What do we need to do now?

In addition to the measures suggested above, insurance brokers affected by Brexit may wish to consider:

1. Reviewing business by class and by wholesale/retail in each EU country and consider what is business critical.
2. Whether the costs of converting existing EU retail business to wholesale is a superior option to direct authorisation somewhere in the EU. If it is, examine the options for operating wholesale in respective EU countries via fronting brokers.
4. Opening discussions where necessary with local brokers and regulators.
5. Creating a project plan.
6. For key classes liaising with supporting insurers.

Naturally, firms must keep a close eye on Brexit developments – the details of a deal (or no-deal) will be crucial.

**If you would like any help or information on any other FCA regulation issues, ICS Services, e-learning or anything else we might be able to assist you with, please contact your usual ICS representative, Head Office on 01892 539600 or [admin@insurancecompliance.co.uk](mailto:admin@insurancecompliance.co.uk)**