

Brexit and the FCA: Act now to protect your UK / EEA business operations

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For inbound EEA financial services firms and funds and outbound UK firms, the Brexit transitional period will close on 31 December 2020. This means the EEA's passporting regime will no longer be available for either inbound EEA firms wanting to carry on regulated business and marketing in the UK or outbound UK firms wishing to do the equivalent in EEA member states.

In the absence of a trade agreement with the EU, the FCA is doing what it can to keep the UK open for inbound EEA business but you must take immediate action, if you have not done so already. Here is what you need to know:

Inbound EEA firms

Temporary Permissions Regime

From 1 January 2021, inbound EEA firms and funds carrying on regulated activities in the UK will need to update their authorisation arrangements if they want to continue to do so.

In order to ensure such business continuity and reduce disruption, the UK has provided a Temporary Permissions Regime ('TPR') for inbound EEA firms, and the Temporary Marketing Permission Regime ('TMPR') for EEA funds marketing in the UK.

However, inbound EEA firms must submit a notification to the FCA to register for the TPR and EEA funds for the TMPR by no later than 30 December if they want to carry on their existing activities in the UK into 2021.

The TPR and the TMPR thereafter provides a grace period during which time inbound EEA firms and EEA funds should assess their existing business models and operating requirements and whether they should apply for full FCA authorisation.

Notifications can be made via the FCA's Connect system. The FCA guide for preparing and submitting TPR notifications for inbound EEA firms is available [here](#), and the equivalent for EEA funds submitting TMPR notifications is available [here](#).

Financial Services Contracts Regime

For inbound EEA firms that do not apply in time for the TPR, they will be able to continue to service any existing UK contracts and wind down their activities under the Financial Services Contracts regime ('FSCR').

Inbound EEA firms will enter into the FSCR automatically if they carry on regulated activities to perform their existing contracts and they do not to notify the FCA that they want to use the TPR.

However, inbound EEA firms in the FSCR will not be able to write any new UK business in 2021 and they will be limited to only those regulated activities in 2021 which are necessary for the performance of any pre-existing contracts.

Any inbound EEA firms using the FSCR must run down their pre-existing business as soon as possible. Currently there is a time limited FSCR backstop of 15 years for insurance contracts and 5 years for all other contracts.

Any inbound EEA firms using the FSCR must maintain their home EEA state authorisation and they must notify the FCA if their home EEA state authorisation is cancelled or varied.

The FSCR does not apply to managers and depositaries of UK authorised funds, and funds wishing to market in the UK. They must submit their respective notifications to the FCA by 30 December 2020.

Outbound UK firms

There is no universal EEA equivalent of the UK's TPR, TMR and FSCR for outbound UK firms providing such services and / or marketing in EEA states. This means that you will need to consider how local rules will apply to your business model for each of the EEA Member State(s) that you are operating in.

We are here to help

It is important to act now in order to ensure you are taking the appropriate action for your business.

If you have any questions or concerns about how Brexit may impact your business dealings in and out of the UK / EEA, our financial services regulatory team are here to help.

Authors

Harvey Knight

PARTNER | LONDON

Litigation

 +44 20 7597 6199

 harvey.knight@withersworldwide.com

Richard Brown

ASSOCIATE | LONDON

Corporate

 +44 20 7597 6111

 richard.brown@withersworldwide.com