



UPDATE: THE PRA'S REGULATORY APPROACH TO INSURERS' PREPARATIONS FOR BREXIT

On 28 March 2018, the Bank of England (“**BoE**”) issued a press release on its regulatory approach to Brexit. In the press release, the BoE published a number of documents including a policy statement setting out the Prudential Regulation Authority’s (“**PRA**”) revised approach to the authorisation and supervision of international insurers (**PS4/18**), together with a related “Dear CEO” letter on firms’ preparations for Brexit. This note examines the impact of the publications on insurers’ Brexit planning.

International insurers

- The PRA sets out the final text of its supervisory statement (**SS2/18**) following its consultation “International insurers: the Prudential Regulation Authority’s approach to branch authorisation and supervision” (**CP30/17**). In the consultation, the PRA proposed the circumstances a branch of an international insurer could be authorised in the UK in its own right and in which the supervisory approach for that branch. For an analysis on the CP30/17 proposals, please refer to our briefing: [PRA consult on approach to insurance branch authorisation after Brexit, 9 February 2018](#).
- The new approach as set out in SS2/18 came into effect from 29 March 2018. The statement is particularly relevant for EEA firms currently branching into the UK under passporting arrangements and intending to apply for PRA authorisation in order to continue operating in the UK after the UK leaves the EU.
- In general, the PRA has acted on the industry feedback, therefore we expect insurers to respond positively to the final approach taken in SS2/18. We outline below the key policy proposals consulted in CP30/17 which we raised with the PRA in our response to the consultation and the PRA’s response as set out in [PS4/18](#)
 - The PRA initially proposed that insurers with more than £200 million of FSCS-protected liabilities should apply for authorisation as a UK subsidiary rather than conducting business through a branch. In our response to the PRA, we set out our view that this threshold was far too low a bar, particularly when compared to banks who had a (generally speaking) equivalent limit for £500 million. We also highlighted that the £200 million limit, if implemented, would disadvantage a number of insurance groups which would have to subsidise (with capital and costs implications) when their competitors, who would have no materially different impact on PRA objectives, could operate through a branch. In PS4/18, the PRA acts on this feedback and has increased the FSCS-protected liabilities threshold from £200 million to £500 million. This is the material change to the draft statement and will be a welcomed one.

Key points

- The PRA has released a supervisory statement for establishing a third country branch, with guidance on/when a subsidiary application should instead be submitted.
- The PRA expects that insurers with more than £500 million of FSCS protected-liabilities should conduct business in the UK through a UK subsidiary rather than a branch. The raising of the limit to £500 from the £200 million figure will mean that more branch applications (rather than subsidiary applications) will be accepted.
- Guidance issued in the form of a “Dear CEO” letter confirms that EU firms’ passporting in should plan on the assumption that PRA authorisation will only be needed by the end of the transition period.
- The position for UK firms’ passporting out remains uncertain.

- The PRA did not define 'FSCS-protected liabilities' in CP30/17. This omission meant that insurers could not accurately determine whether they would exceed the proposed £200 million threshold. We raised this point both with the PRA Policy Team and in our response to the PRA. Our internal analysis suggested that PRA intended 'FSCS-protected liabilities' to mean an estimate of the aggregate amount of protected claims of eligible claimants, calculated gross of reinsurance – a position helpfully confirmed by the PRA in PS4/18.
- The PRA proposed additional factors (such as the insurer's market share in a niche market and the level of connectivity to other stakeholders within the industry) to assess a third-country branch's potential impact against the PRA's objectives and the risk to financial stability. The PRA has retained the additional factors in SS2/18. Our view remains that certain of these factors should not be particularly relevant to the assessment – particularly those factors relating to niche or non-substitutable products. It remains to be seen therefore how this is operated in practice.

“Dear CEO” letter

- In the [“Dear CEO” letter](#), Sam Woods states that, in the light of the agreement on the transition period and the government's commitment for a 'temporary permissions' regime, EU firms' passporting in should plan on the assumption that PRA authorisation will only be needed by the end of the transition period. Although this guidance appears straightforward, there are a few issues that insurers should be aware of:
 - The Withdrawal Agreement (see our briefing [Insurance Brexit Update: Transition, Temporary Permissions and Contract Continuity – 28 March 2018](#)) which contains a transition period of 21 months (until 31 December 2020) has not yet been ratified.
 - Although much mention has been made of the 'temporary permissions' regime, there are no publicly available details as to how it will work in practice. Nevertheless, the letter encourages, that in light of this guidance, firms should consider how best to make use of the additional time provided by the transition period in their planning.
 - The reliance on the transitional period and reference to the 'temporary permissions' regime is only relevant to incoming firms. The position for firms' passporting out of the UK remains uncertain. It is hoped that, following its previous [Opinion on contract continuity](#), the European Insurance and Occupational Pensions Authority (**EIOPA**), in coordination with EU insurance regulators, will provide similar guidance to the PRA which will provide similar levels of certainty for outbound insurers.
- The letter also confirms that the PRA will continue to work closely with firms and will provide guidance on the timing of their applications in the light of their individual circumstances, in the context of any relevant developments in the political process, and with a view to making the process run as smoothly as possible.

CONTACTS



Katherine Coates
Partner

T: +44 20 7006 1203
E: katherine.coates@
cliffordchance.com



Alex Erasmus
Partner

T: +44 20 7006 1344
E: alex.erasmus@
cliffordchance.com



Hilary Evenett
Partner

T: +44 20 7006 1424
E: hilary.evenett@
cliffordchance.com



Ashley Prebble
Partner

T: +44 20 7006 3058
E: ashley.prebble@
cliffordchance.com



Narind Singh
Partner

T: +44 20 7006 4481
E: narind.singh@
cliffordchance.com



Amera Dooley
Senior PSL

T: +44 20 7006 6402
E: amera.dooley@
cliffordchance.com

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Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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