

Regulatory Requirements for Firms in the Temporary Permissions Regime

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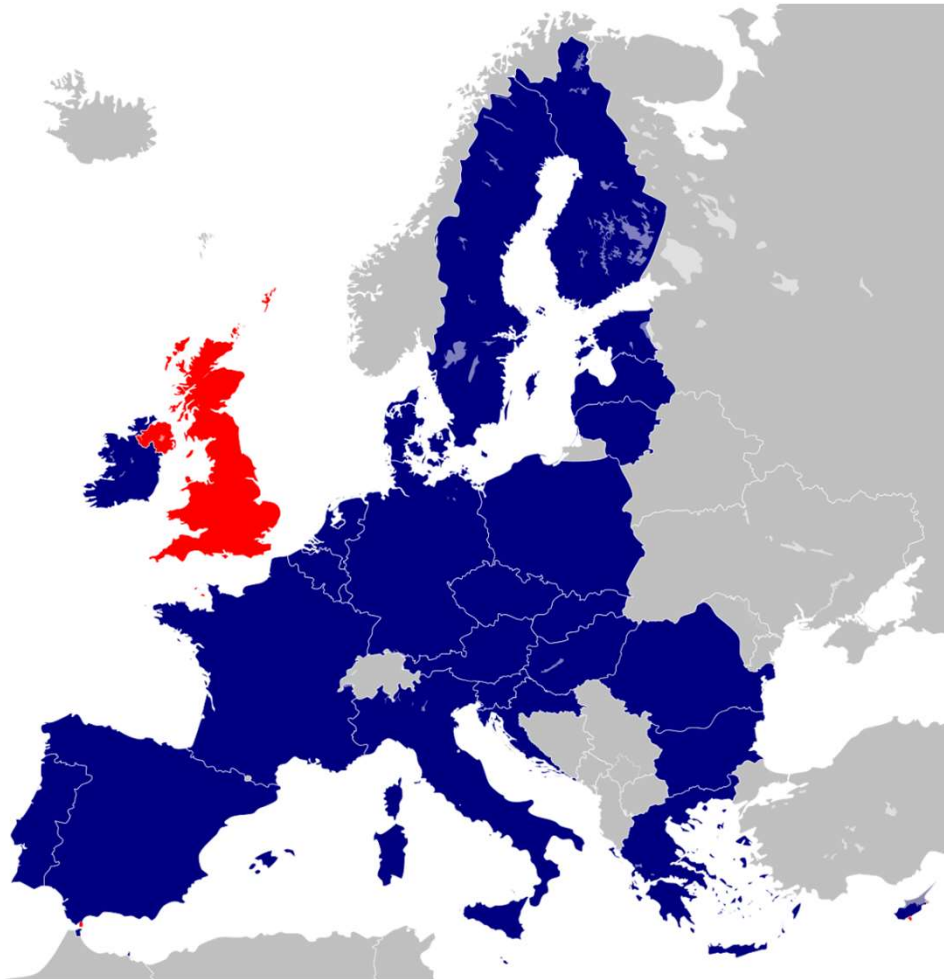
- 1 What is the Temporary Permissions Regime (TPR)?
- 2 Requirements which apply to all Insurance Brokers & MGA's
- 3 Requirements which apply to Cross-border MGAs and Brokers
- 4 Requirements which apply to MGA's and Brokers with a UK Branch

- 5 Requirements which apply to all Insurers
- 6 Requirements which apply to Cross-border Insurers
- 7 Requirements which apply to Insurers with a UK Branch
- 8 Questions

Appendices:

1. FCA Threshold Conditions
2. FCA Principles for Business
3. PRA Threshold Conditions
4. PRA Fundamental Principles
5. PRA Timetable

Introduction: The New EU



2021-



1

What is the Temporary Permissions Regime (TPR)?



TPR enables EEA firms that were previously passporting into the UK either through Freedom of Establishment or Freedom of Services to continue to operate in the UK, until they become fully authorised.

To join, firms only needed to make a simple application and would be admitted and able to carry on the same activities as they already had permission for and were carrying out before Brexit (i.e. maintain the status)

Once firms joined the TPR, they became temporarily authorised in the UK and are subject to the same treatment by the FCA and/or PRA as if they were fully authorised firms and are therefore subject to the regulators supervision and rule making powers.

These powers give the regulators the right to impose requirements and to vary or revoke permissions of TPR firms.



1

What is the Temporary Permissions Regime (TPR)?



Broadly speaking, firms in the TPR will have to comply with the same UK regulatory requirements as they did when they passported into the UK pre-31 December 2020.

In some instances, firms in the TPR will be subject to different or additional regulatory requirements. Such as different requirements for safeguarding client money or status disclosures.

Which regulatory requirements firms have to comply with will vary dependent on whether the firm is an insurance broker or MGA (FCA solo regulated firms) or an insurer (PRA & FCA Dual Regulated firms) and whether the firm is providing services via a branch in the UK or on a cross-border basis.



2

Requirements which apply to all Insurance Brokers & MGA's



Some UK FCA requirements will apply to all Insurance Brokers & MGA's in the TPR, regardless of whether they continue to provide services on the basis of Freedom of Establishment and/or Services.

FCA's Threshold Conditions apply. Firms do not have to meet the Threshold conditions to enter the TPR, but once in the regime, firms will need to comply with these conditions.

FCA's 11 Principles of Business apply. These set out the regulatory obligations and high level standard that TPR firms must adhere to.

3

Requirements which apply to Cross-border MGAs and Brokers



The FCA rules that applied to MGAs and Brokers passporting via cross-border services into the UK pre-31 December 2020, will continue to apply.

Parts of the FCA handbook will apply, for instance SYSC 9 Record Keeping & SYSC 18 Whistleblowing.

The majority of ICOBS will not apply and firms will not need to make a Retail Mediation Activity Return (RMAR).

New Status Disclosures will have to be stated in documentation provided to UK retail customers.

No new CASS rules have been implemented for cross-border firms.

SM&CR does not apply for cross border firms whilst in the TPR.



4

Requirements which apply to MGA's and Brokers with a UK Branch



The FCA rules which applied to EEA Branches passporting into the UK prior to firms entering the TPR, will continue to apply.

In the FCA handbook some of the requirements set out in SYSC, ICOBS, FIT & SUP will apply.

Firms will need to meet the FCA regulatory reporting requirements, which will involve completing a Retail Mediation Activities Return (RMAR)

MGA's or Brokers that hold Client Money will need to comply with a set out of rules set out in the Client Asset sourcebook (CASS) 14.

New Status Disclosures will have to be stated in documentation provided to UK retail customers



4

Requirements which apply to MGA's and Brokers with a UK Branch



The Senior Managers & Certification Regime (SM&CR) will also apply.

Firms will be required to appoint a EEA Branch Senior Manager (SMF-21) and a Statement of Responsibilities will need to be drafted. A Duty of Responsibility and Fit and Proper requirements will apply to each SMF.

The Certification Regime may apply to other staff at the branch, if your firms considers certain individuals to be in scope of this regime.

Conduct Rules will apply to SMFs, Certified Staff and most other staff at the Branch.

5

Requirements which apply to all Insurers



Insurers in the TPR will have to comply with both FCA & PRA regulatory requirements.

PRA and FCA Threshold Conditions apply. Firms are required to notify the regulator, if they fail to satisfy one of these conditions.

FCA's 11 Principles of Business and the PRA's Fundamental Rules apply. If an Insurer was to breach these, enforcement action by the regulator may be taken.

The PRA does release Policy statements, however they are less active in issuing guidance than the FCA.



6

Requirements which apply to Cross-border Insurers



The rules in the FCA handbook that apply to cross-border insurers, include SYSC 9 Record Keeping and SYSC 18 Whistleblowing and if you provide motor insurance, ICOBS 8.2 Motor vehicle liability.

Sections of the PRA rulebook also apply, which include, Auditors, Change in Control & Close Links, Fees, General Provisions, Information Gathering, Notification and Use of Skilled Persons.

New Status Disclosures will have to be stated in documentation provided to UK retail customers.

Part of the SM&CR does apply. Insurers will be required to appoint a Head of Overseas Branch allocated that individual Prescribed Responsibilities and draft a Statement of Responsibilities. The Certification Regime and Conduct rules will apply.

7

Requirements which apply to Insurers with a UK Branch



Insurers in the TPR with a branch in the UK are required to comply with the FCA rules which applied to EEA branches pre-31 December 2020.

The PRA rules that apply to Third Country Branches will now also apply to Insurers in the TPR with a UK branch, subject to transitional relief.

Firms must appoint an auditor, and comply with the Solvency Capital Requirement and Minimum Capital Requirement for third country branches.

New Status Disclosures will have to be stated in documentation provided to UK retail customers



7

Requirements which apply to Insurers with a UK Branch



The PRA and FCA's Senior Managers & Certification Regime (SM&CR) will apply.

Firms will be required to appoint Head of Overseas Branch, Money Laundering Reporting Officer and EEA Branch Senior Manager. A Statement of Responsibilities will need to be drafted, with Prescribed Responsibilities allocated.

A Responsibilities Map will need to be drafted, with a Duty of Responsibility and Fit & Proper requirements applying to each SMF.

The Certification Regime may apply to other staff at the branch, if your firms considers certain individuals to be in scope of this regime.

Conduct Rules will apply to SMFs, Certified Staff and most other staff at the Branch.



8



Questions?





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Appendix 1: FCA Threshold Conditions



Effective supervision

Firms must be capable of being effectively supervised by the FCA.

Financial Resources

Firms must maintain the minimal capital required and the professional indemnity cover required.

Appropriate non-financial resources

Firm's non-financial resources must be appropriate in relation to the regulated activities they seek to carry on, having regard to the FCA's operational objectives.

Suitability

The firm must be fit and proper. The firm's management must have adequate skills and experience to act with integrity (fitness and propriety). The firm must have appropriate policies and procedures in place and appropriately manage conflicts of interest.

Business model

The firm's strategy for doing business must be suitable for a person carrying on the regulated activities it undertakes or seeks to carry on so that it does not pose a risk to the FCA's objectives.



Appendix 2: FCA Principles for Business



1. Integrity	A firm must conduct its business with integrity.
2. Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
3. Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4. Financial prudence	A firm must maintain adequate financial resources.
5. Market conduct	A firm must observe proper standards of market conduct.
6. Customers' interests	A firm must pay due regard to the interest of its customers and treat them fairly.
7. Communications with clients	A firm pay due regards to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
8. Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers between a customer and another client.
9. Customers: relationship of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.
10. Clients 'assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
11. Relations with regulators	A firm must deal with its regulators in an open and co-operative way, and must disclose to the FCA appropriately anything relating to the firm of which the FCA would reasonably expect notice.



Appendix 3: PRA Threshold Conditions



Legal Status	Insurers must be a body corporate.
Prudential conduct of business	The firm must conduct its business in a prudent manner, which includes having appropriate financial and non-financial resources. For most insurers this means compliance with Solvency II capital requirements. The non-financial resources must be appropriate for the business model including nature and scale of the business and its structure.
Suitability	The firm must satisfy the PRA that it is “fit and proper” with regard to all circumstances to conduct regulated activity. The firms management must have adequate skills and experience and manage the business which must be managed in a sound and prudent manner and with effective financial crime controls.
Effective Supervision	The firm must be capable of being effectively supervised by the PRA



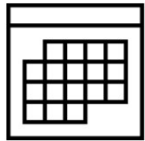
Appendix 4: PRA Fundamental Principles



1. A firm must conduct its business with integrity.
2. A firm must conduct its business with due skill, care and diligence.
3. A firm must act in a prudent manner.
4. A firm must at all times maintain adequate financial resources.
5. A firm must have effective risk strategies and risk management systems.
6. A firm must organise and control its affairs responsibly and effectively.
7. A firm must deal with its regulators in an open and co-operative way, and must disclose to the PRA appropriately anything relating to the firm of which the PRA would reasonably expect notice.
8. Fundamental Rule 8- A firm must prepare resolution so, if the need arises, it can be resolved in an orderly manner with a minimum disruption of critical services.



Appendix 5: PRA Timetable



Required immediately upon entering the TPR

Maintain at a place of business in the UK all records relating to the activities carried on from the branch.

Maintain a branch Scheme of Operations covering a number of prescribed topics (some are subject to transitional relief, see below).

Hold on deposit as security in the UK with a CRD credit institution assets of an amount equal to at least one quarter of the absolute floor of the MCR.

Comply with the Investments rules (some are subject to transitional relief, see below).

Comply with the Undertakings in Difficulty rules regarding procedures to identify deteriorating financial conditions and notify the PRA.

Not carry on any commercial business other than insurance business and activities directly arising from that business.

Maintain adequate worldwide financial resources, to ensure that there is no significant risk that the branch's liabilities cannot be met as they fall due.

Comply with the Senior Managers and Certification requirements that apply to third country branches.

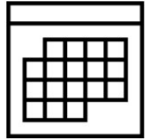
Have an individual approved by the PRA (or deemed approved by the PRA) to perform the Head of Overseas Branch function (SMF19).

Allocate the Prescribed Responsibility for "compliance with the UK regulatory system applicable to the firm".

Allocate to the holder of SMF19 the Prescribed Responsibility for managing the process of obtaining Part 4A authorisation as a third-country branch.

Pay FSCS levies in respect of new and existing policies that are protected by the FSCS.

Appendix 5: PRA Timetable



Required immediately upon entering the TPR (contd.)

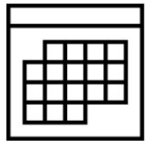
Comply with the applicable Conditions Governing Business rules (some are subject to transitional relief, see below):

- applicable General Governance Requirements (system of governance, written policies, reasonable steps to ensure continuity and regularity in the performance of activities);
- Risk Management
- Internal Control
- Internal Audit
- Actuarial Function
- Outsourcing

Notify the PRA if the branch becomes aware (or has information that reasonably suggests) that it has failed to satisfy one or more Threshold Condition, may have done so, or may do so in the foreseeable future.

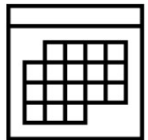
Comply with rules that would already apply to third country firms even if they did not have a UK branch (including rules in the Fundamental Rules, Auditors, Change in Control, Close Links, Fees, General Provisions, Information Gathering, Interpretation, Notifications and Use of Skilled Persons Parts of the PRA Rulebook).

Appendix 5: PRA Timetable



Required after 3 months

Include in communications with retail clients a specific status disclosure wording indicate the branch is in the TPR regime.

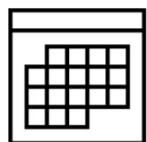


Required after 6 months

Solvency II qualitative reporting – ORSA and RSR reports in respect of branch operations (excluding information related to the branch SCR and branch MCR).



Appendix 5: PRA Timetable



Required after 15 months

Establish adequate branch Technical Provisions.

Determine and classify branch Own Funds.

Fulfil the requirements of Notification of Issuance of Own Funds Items.

Calculate a branch MCR and SCR and cover both with eligible Own Funds.

Comply with the aspects of the Conditions Governing Business rules that relate to the branch MCR, branch SCR, branch Technical Provisions or branch Own Funds.

Comply with the aspects of the Investments rules that relate to the branch MCR, branch SCR, branch Technical Provisions or branch Own Funds.

Comply with the Undertakings in Difficulty rules regarding non-compliance with SCR and submission of a recovery plan, and non-compliance with MCR and submission of a finance scheme.

Include in the branch Scheme of Operations those aspects relating to branch MCR and branch SCR, branch Technical Provisions and branch Own Funds.

Hold assets required to cover the branch SCR in the manner required.

Solvency II quantitative reporting.

Solvency II qualitative reporting information which is related to the branch SCR and branch MCR.