

4 December 2020

## Operational Readiness of Insurance Undertakings and Intermediaries in light of the **United Kingdom's** withdrawal from the European Union

### 1.0 General Scope

Following the MFSA's publication of the [Circular to the Industry on Brexit Readiness](#), the MFSA is issuing this Circular in order to provide further guidance to:

- (a) insurance firms established in the United Kingdom or Gibraltar, providing or seeking to provide financial services in Malta under freedom of services or freedom of establishment, and
- (b) Maltese insurance undertakings and Maltese insurance intermediaries that are providing or seeking to provide financial services in the United Kingdom under freedom of services or freedom of establishment.

The United Kingdom (hereinafter referred to as the "UK") left the European Union on 31 January 2020 with a Withdrawal Agreement. It has entered a transition period until 31 December 2020. Upon termination of such period, the UK will effectively withdraw from the European Union ceasing all passporting rights under European legislation, unless alternative arrangements are agreed to.

### 2.0 The MFSA's Expectations in view of EIOPA's Recommendations for the insurance sector in light of the UK withdrawing from the European Union for UK and Gibraltar entities Passporting in Malta

Further to the publication of the [Recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union](#) by EIOPA on the 19<sup>th</sup> February 2019, and in order to ensure an orderly withdrawal of the UK from the European Union, the MFSA has issued a letter indicating its expectations, in line with the said Recommendations. The letters were circulated to the following entities:

- (a) UK insurance undertakings which, following the UK's withdrawal from the European Union will lose their right to conduct business by way of freedom of establishment and freedom to provide services in Malta ("Doc A");
- (b) UK insurance intermediaries which, following the UK's withdrawal from the European Union will lose their right to conduct business by way of freedom of establishment and freedom to provide services in Malta ("Doc B");
- (c) Gibraltar (hereinafter referred to as "GI") insurance undertakings and intermediaries which, following the UK's withdrawal from the European Union will lose their right to conduct business by way of freedom of establishment and freedom to provide services in Malta ("Doc C");

The MFSA reiterates its expectations that all affected UK and GI insurance undertakings and intermediaries take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development and implementation of realistic contingency plans to prevent insurance activity without authorisation.

## 2.1 UK and GI insurance undertakings conducting business by way of freedom of establishment and freedom to provide services in Malta

As a consequence of the UK's withdrawal from the European Union, UK and GI insurance undertakings will no longer be allowed to conclude new insurance contracts or establish, renew, extend, increase or resume insurance cover under the existing insurance contracts in Malta, unless they are authorised for such insurance activities by the MFSA.

UK and GI insurance undertakings which would like to continue servicing cross-border business in Malta, following the UK's withdrawal from the EU, are expected to seek authorisation from the MFSA to carry out such cross-border business for instance through the establishment of a branch in accordance with Article 11 of the Insurance Business Act (Cap 403) (the "Act"). Any UK and GI insurance undertaking that intends to apply for such authorisation is required to notify the MFSA of such intention without further delay.

Where UK and GI insurance undertakings do not seek authorisation from the MFSA, or do not obtain authorisation before the UK's withdrawal from the EU, such undertakings will be permitted to carry out an orderly run-off of the business which became unauthorised.

UK and GI insurance undertakings which have not yet contacted the MFSA, will be permitted to carry out an orderly run-off of the business which will become unauthorised, by providing the MFSA by not later than 15<sup>th</sup> December 2020, with the following information:

- the classes of business of insurance, and the details of the nature of the risks or commitments to be transferred;
- the volume of gross and net technical provisions;
- an indication of the remaining term run-off or servicing of the business;
- confirmation as to whether such insurance undertaking will be carrying out the run-off or servicing of the business or whether it will be appointing an entity to do so. In case of the latter, such undertaking is expected to:
  - (a) provide the MFSA with the name and details of the entity that will be appointed to carry out the run-off or servicing of the business; and
  - (b) enter into a run-off or servicing agreement with the entity appointed to carry out such run-off or servicing.

Furthermore, in the best interest of the policyholders, as noted in the letters circulated, the MFSA expects current UK and GI insurance undertakings with cross-border business in Malta to immediately disclose to their policyholders and beneficiaries, unless they have already done so, the information as indicated in the EIOPA Opinion on disclosure of information to customers about the impact of the withdrawal of the UK from the European Union (EIOPA-BoS-18/119) of the 28 June 2018, in relation to insurance contracts concluded before the UK's withdrawal from the EU (including contracts that would already be terminated on the withdrawal date, but for which open claims exist or may be reported thereafter) in particular:

- (a) the impact and consequences of the UK's withdrawal from the EU may have on the rights and obligations regarding their insurance contracts, on the continuity of their contracts and on the provision of the undertakings' insurance services;

- (b) the relevant contingency measures taken or planned by the said undertakings. Where no such measures have been taken by the undertakings, the said policyholders and beneficiaries are to be informed of the reasons for such decision.

The said undertakings shall also provide the information outlined above to their respective distribution channels and intermediaries to enable them to inform their policyholders and beneficiaries accordingly.

## 2.2 UK and GI insurance intermediaries conducting business by way of freedom of establishment and freedom to provide services in Malta

UK and GI intermediaries and entities providing distribution activities in Malta, which intend to continue or commence distribution activities after the UK's withdrawal from the EU in Malta, are expected to be established and registered in line with the relevant provisions of the Insurance Distribution Act (Cap. 487).

UK and GI insurance intermediaries which following the UK's withdrawal from the EU will effectively lose their right to conduct business in Malta, are also required to disclose to their policyholders and beneficiaries appropriate information with respect their plans in the case that the UK's withdrawal from the EU. This information would include, *inter alia*, any new contact details.

## 3.0 Maltese Insurance undertakings and intermediaries conducting business by way of freedom of establishment and freedom to provide services in the UK

The MFSA would like to draw the attention of Maltese insurance undertakings and Maltese insurance intermediaries to the letter published by the Financial Conduct Authority (hereinafter referred to as "FCA") on the [Final preparations for end of the transition period](#) dated, 21 October 2020. In the said letter, the FCA clarified that Maltese insurance undertakings and intermediaries that have submitted a valid notification or successfully submitted a Part 4A application without subsequent withdrawal, will automatically enter into the Temporary Permissions Regime (hereinafter referred to as "TPR"). During the TPR, such licenced entity will have a deemed Part 4A permission to carry on existing activities for up to a maximum of three years from the 31<sup>st</sup> December 2020. It is to be noted that the Her Majesty's Treasury has the discretion to extend the three year duration period by increments of twelve months as Third Country Branches with a Part 4A permission.

In the said letter, the FCA clarified that during August 2019 and June 2020 the Prudential Regulation Authority (hereinafter referred to as "PRA") sent information requests to every firm that had notified its intention to enter into the TPR but had not provided a Part 4A application asking when they intended to submit a Part 4A application. This information was requested to support PRA planning to ensure there will be sufficient resources allocated to review the large volume of Part 4A applications expected during TPR.

In light of the above, Maltese insurance undertakings and intermediaries are expected to build on their preparatory work to ensure that upon entering the TPR, they meet the regulatory requirements imposed by such regime. The PRA have thus provided useful information on EU Withdrawal on its website which is accessible [here](#)). The uploaded information summarises the UK's approach to TPR and highlights the key requirements for branches. A more limited set of rules will apply for Maltese insurance undertakings and intermediaries in the TPR without a branch in the UK (cross-border service providers)<sup>1</sup>. The PRA has also published the full requirements together with further information on the TPR on its website, including considerations for Maltese insurance undertakings and intermediaries leaving the TPR (webpage linked [here](#)). Moreover, the UK authorities have all implemented the use of temporary transitional powers, on which the bank of England, PRA and FCA have published information.

The FCA is currently consulting on its approach to the authorisation and supervision of international firms in [CP20/20](#) which will have an impact on Maltese insurance undertakings and intermediaries, and will supplement the FCA's existing Approach to Authorisation and Approach to Supervision documents<sup>2</sup>. For dual regulated firms, it will sit alongside the SS2/18. In addition, the Financial Services Contracts Regime (FSCR) will enable Maltese insurance undertakings and intermediaries with the intention to passport to wind down their UK business in an orderly fashion without entering TPR.

The PRA is currently planning its review activity based on the dates provided by TPR firms. In the said letter, the PRA emphasised that it is important that a TPR firm submits its Part 4A application during the quarter previously notified to the PRA (for example, Q3 2021). If a TPR firm anticipates that it will

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<sup>1</sup> Further details can be found here: <https://www.bankofengland.co.uk/eu-withdrawal/temporary-permissions-regime>

<sup>2</sup> Available at: <https://www.fca.org.uk/publications/corporate-documents/our-approach-authorisation>; and <https://www.fca.org.uk/publications/corporate-documents/our-approach-supervision>.

be unable to submit during the quarter previously notified, it should contact the PRA at the earliest opportunity: [PRA.TPR@bankofengland.co.uk](mailto:PRA.TPR@bankofengland.co.uk).

Finally, in the absence of a decision by the European Commission on UK data protection adequacy, the use of standard contractual clauses (hereinafter referred to as SCCs) in relevant contracts is one of the available ways that Maltese insurance undertakings and intermediaries can comply with the EU's cross-border personal data transfer laws after the expiry of the transition period. Where SCCs are in place please note the advice from the European Data Protection Board and the UK's Information Commissioner's Office, and applicable EU case law.

#### 4.0 Contacts

UK and GI entities that intend to operate in Malta are advised to contact the MFSA. On the other hand, Maltese insurance undertakings and intermediaries that would like to passport their services to the UK by submitting a new outbound passporting notification request to the MFSA, are urged to do so promptly but in any case, by not later than 10 December 2020 to allow for due processing.

Any queries or requests for clarifications in respect of the above should be sent by email on [ipsu@mfsa.mt](mailto:ipsu@mfsa.mt).