



Passporting – Frequently Asked Questions

General

Is a passport notification required?

If there is a cross-border element to the activities carried on, or to be carried on in the future, by the firm, it needs to make a notification to its home state regulator that it wishes to passport, either by way of provision of cross-border services or by way of establishment of a branch and/or agents.

A firm should seek its own legal advice if it is unsure whether a cross-border element exists.

I am a UK-authorized firm wishing to passport out of the United Kingdom, which regulator should I submit my notification to?

The PRA is the lead regulator in respect of all single market directives for dual-regulated firms. The PRA will be responsible for assessing these notifications in consultation with the FCA. These notifications should be submitted using the forms in the PRA Rulebook. Information on the PRA notification process can be found at

<http://www.bankofengland.co.uk/pru/Pages/authorisations/passporting/notifying.aspx>.

Please note that as of 20 July 2015 firms can no longer submit passport applications via ONA as they had done before.

FCA-only regulated firms should send all outward passport notifications to the FCA. For further information please see the FCA website www.fca.org.uk.

I am an EEA firm wishing to passport into the United Kingdom, which regulator will deal with my application?

The PRA will be the lead regulator if the firm is passporting into the United Kingdom under the Capital Requirements Directive and the Solvency II Directive. The firm's EEA home state supervisor will liaise with the PRA, and the PRA will consult the FCA, about the notification.

For an inward passport a firm should contact their home state regulator for guidance. The home state regulator will advise on their process. It will then notify the relevant host state regulator of the firm's intention to exercise its right to passport into another EEA state.

Notifications should be emailed direct to the PRA: hard copies will also be accepted.

If a firm is passporting in under other single market directives, the FCA will be the lead regulator.

What is an EEA firm and a Treaty firm?

An EEA firm or a Treaty firm has its head office in an EEA state other than the United Kingdom. EEA firms and Treaty firms are entitled to exercise both the right of establishment and the right to provide services under the Treaty. An EEA firm has the right to passport under a single market directive as long as these activities are included in its home state authorisations. A Treaty firm carries on the activities for which the right to carry on those activities does not fall within the scope of a single market directive.



Which countries can I passport into?

There are 30 (not including the United Kingdom) EEA states with passporting rights: Austria, Belgium, Bulgaria, Croatia, Cyprus*, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

***Cyprus** - although the whole of Cyprus became part of the EU in May 2004, EU legislation only applies to the Republic of Cyprus (the Southern part of the island) and so passporting rights only exist to this extent.

Channel Islands & Isle of Man - the single market directives do not apply in these territories, even though they are Crown dependencies. This means that firms based in these territories are treated in the same way as firms based in a non-EEA state and do not have passporting rights under the FSMA single market directives.

Similarly, UK firms do not have passporting rights in relation to the Channel Islands and the Isle of Man. As such, UK firms will have to apply directly to the relevant financial regulators in each territory for permission to conduct business there. The PRA and the FCA have no formal involvement in this process (although firms should keep the PRA and the FCA informed of their activities).

Gibraltar - Gibraltar has a different status to the Channel Islands and Isle of Man and the single market directives apply to it in full. However, passporting rights apply only between EEA states therefore passporting rights do not apply between Gibraltar and the United Kingdom. As such, the United Kingdom and Gibraltar have agreed special arrangements under the Gibraltar Order.

Firms must submit a notice of intention to the PRA which will, in turn, notify the Gibraltar regulators.

Switzerland - Switzerland is not an EEA state therefore there are no passporting rights under any of the single market directives. That said EEA general insurers do have the right to set up an establishment in Switzerland (and vice versa) under the provisions of special bilateral treaties between the European Union and Switzerland. However, it is important to note that this is not a passport right – a Swiss general insurer will still need to obtain Part IV permission to set up a branch in the United Kingdom (although such a branch would not need an additional permission for insurance mediation).

When applying for a passport to undertake cross-border services (ie services from offices in the United Kingdom to overseas clients) should firms apply for 'all states' or only the states where they intend to do business?

This will be up to each individual firm to decide and a firm should consider its particular business model, including how it obtains its clients and whether there is a real intention to conduct business in a particular EEA state(s).

Firms should be aware that they are likely to receive various requests for information from host state regulators in the EEA state(s) that they will need to deal with. They may also be charged a fee by the host state regulators.



Scope

How do I know whether an establishment or cross-border services passport is needed?

The firm would need to apply for an establishment passport if it intends to hold a physical presence within the host state.

If the services are provided on a temporary basis (by remote means such as through the internet) and the recipient moves to another EEA state to receive the services, then this suggests a cross-border services arrangement and so a cross-border services passport is required.

I am an appointed representative appointed by a firm to carry on insurance mediation activity. Do I have a right to establish a branch?

Yes. The firm, on behalf of the appointed representative, may establish a branch in another EEA state under the Insurance Mediation Directive. The notification should be sent to the appropriate UK regulator by the firm on behalf of the appointed representative.

I am a tied agent appointed by a MiFID investment firm to carry on investment services and activities. Do I have a right to establish a branch?

No. A tied agent does not have the right to establish a branch in another EEA state. The MiFID investment firm is able to appoint a tied agent to do business in another EEA state and where it does so the tied agent will benefit from its passport.

If an EEA MiFID firm seeks to use a tied agent established in the United Kingdom it will be treated as if it were seeking to establish a branch.

I am a UK pure reinsurer, do I have an automatic EEA right to carry on reinsurance business into another EEA state?

Yes you do by way of establishing a branch or by providing cross-border services. No additional requirements need to be met before a firm can commence business in the EEA state.

However under Section 3 of Part III of the general protocol, home state regulators have agreed to inform host state regulators if a pure reinsurer for which the home state is responsible for carries on business through a branch in the host state. A UK firm passporting reinsurance business under the Solvency II Directive should notify the PRA of certain information relating to the branch.

Do I need a top-up permission?

If a person established in the EEA does not have an EEA right and/or does not have, or does not wish to, exercise a treaty right to carry on a particular regulated activity in the United Kingdom it must seek a Part 4A permission from the appropriate UK regulator (PRA or FCA) to do so. This is known as a top-up permission.

This situation might arise if the activity is outside the scope of the Single Market Directive or where the activity is included in the scope of the Directive but not covered by the firm's home state authorisation. For guidance on a Part 4A permission please see <http://www.bankofengland.co.uk/pru/Pages/authorisations/newfirm/default.aspx>.



I am a UK firm wishing to do business in Gibraltar. Do I have passporting rights?

Yes. The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 provides for UK firms to be treated as having the same EEA rights to establish a branch or provide cross border services into Gibraltar under any of the single market directives. A firm authorised in Gibraltar under the order is also treated as an EEA firm and has rights to passport into other EEA states. Firms must comply with the notification procedures in order to exercise their right to passport.

Process

Are there any FSMA single market directives under which UK firms can automatically conduct business without the need to notify the UK regulator or do firms need to notify them in all instances?

No, all UK firms must notify either the PRA (if dual-regulated) or the FCA (if FCA-only regulated) if they wish to conduct business within another EEA state under any of the single market directives.

Can I submit a notification for more than one EEA state?

Yes. If a UK firm wishes to establish branches in or provide cross-border services into more than one EEA state a single notification process may be provided but the relevant information for each EEA state should be clearly identified.

I am a firm wishing to passport under the Capital Requirements Directive. How do I do this?

Credit institutions wishing to notify the PRA of an intention to undertake cross-border services should complete the services passport notification form in Annex V to Commission Implementing Regulation (EU) No 926/2014. This form requires credit institutions to provide details of the hosts states in which they intend to carry out their activities.

If a UK firm has an establishment in an EEA state, does that establishment have to make a separate notification to do business on a cross-border basis into other EEA states? And what if the establishment does business back into the United Kingdom?

An establishment of a UK firm in another EEA state can provide services into countries for which the head office has already made a services passport notification. The head office would have to make a further notification if it wished the establishment to provide services into countries for which it had not already made a notification. If the establishment does business on a cross-border basis back into the United Kingdom, no passport notification is required.

The firm cannot make a passport notification to the PRA in respect of activities being carried on solely in the United Kingdom. Passporting notifications can only be made in respect of activities that are intended to be carried on within the territory of another EEA state.



I am a UK firm with a Part 4A permission to carry on both long-term and general insurance business. I have a passport under the Solvency II Directive but wish to extend my general insurance business to include long-term insurance business. Should I submit a new notification?

Yes. Where a UK firm with a Part 4A permission to carry on both long-term and general insurance business and is passporting under one of the insurance directives and wishes to extend its general insurance business to include long-term insurance business (or vice versa) it should complete a new notice of intention and not a change in details for an existing passport.

I am a dual-regulated firm passporting into an EEA state. Will the PRA liaise with the FCA regarding a change to my passport details?

Where the PRA is the appropriate UK regulator, it will consult the FCA before deciding whether to give consent to a change (or proposed change) or a new notification.

I have an existing EEA passport and a change in details has been brought to my attention, what should I do?

When a change arise outside of the control of the firm, the firm should notify the appropriate UK regulator and the host state regulator stating the details of the change as soon as is reasonable practicable.

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