

European Economic Area (EEA) Qualifying Insurers

An EEA insurer wishing to do business in the UK must fully participate in the Financial Services Compensation Scheme (FSCS).

Passporting

An EEA insurer can apply to carry out business in the UK and may do so if it is within the scope of a relevant EU Single Market Directive. The exercise of this right is known as 'passporting' whereby the insurer notifies its home state regulator of its intention to passport, including which European Directive it is applying under. The home state regulator will then inform the Prudential Regulation Authority (PRA) of the insurer's intentions. The passport may be for a branch passport if they wish to establish a physical presence, or a cross border services passport if the services are provided remotely (for example, through the internet).

The PRA as a host state regulator is not responsible for matters of prudential regulation for the insurer (this is the responsibility of the home state regulator). However, the insurer is expected to meet the Financial Conduct Authority (FCA)'s conduct of business requirements (for example, in relation to mis-selling).

An EEA insurer that has been set up in the UK as a subsidiary will be fully authorised by the PRA and therefore regulated by the PRA or FCA for both prudential and conduct regulation.

Concerns about overseas qualifying insurers can be raised with FCA's contact centre: <http://www.fca.org.uk/site-info/contact>

Compensation

Once passported in the EEA insurer will automatically become a member of the FSCS.

For policies issued through a UK based insurer, for the FSCS to apply, the risk must be located in the UK, not another EEA state, the Channel Islands or Isle of Man. For professional indemnity insurance (PII), this means where the insured's business is located.

Not everyone is eligible to claim compensation from the FSCS. The FSCS criteria for compensation are complex and each case must be determined individually. The SRA does not advise on these criteria. However, in summary, claimants are eligible for FSCS compensation if:

1. the claimant is an "eligible claimant" (in the case of PII, the eligible claimant is the insured firm, not its clients);
2. the claim qualifies as a "protected claim";
3. the insurer is a "relevant person"; and
4. the relevant person is "in default".

To be entitled to make a claim against the FSCS, a firm insured by any insurer would need to be relatively small, with an annual turnover of less than £1 million. However, even then a firm could be excluded if, despite having an annual turnover below £1 million, it is either a Limited Liability Partnership with net assets in excess of £3.26 million and more than 50 employees; or it is a partnership/unincorporated association with net assets in excess of £1.4 million.

You can obtain more information about the FSCS from their website, at www.fscs.org.uk.

The FCA's Compensation rules, which form part of the FCA's Handbook, are available on its website, at <http://www.fca.org.uk/your-fca/list?ttypes=Handbook&yyear=&ssearch=>

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