

Framework for a Free Trade Agreement with non-EU markets



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Introduction

The Association of British Insurers (ABI) is the leading trade association for insurers and providers of long term savings. Our 250 members include most household names and specialist providers who contribute £12 billion in taxes to the UK economy and manage investments of £1.6 trillion.

Insurance helps individuals and businesses protect themselves against the everyday risks they face, enabling people to own homes, travel overseas, provide for a financially secure future and run businesses. Insurance underpins a healthy and prosperous society, enabling businesses and individuals to thrive, safe in the knowledge that problems can be handled and risks carefully managed. It plays an essential part in the UK's economic strength and employs around 315,000 people, two thirds of whom are based outside of the London in 145 locations across the UK.

British insurers have long been global investors and so have an interest in increasing market access in a number of jurisdictions. The UK insurance industry is the largest in Europe and the fourth largest in the world (after the United States, Japan and China), and is a valuable export for the UK economy. The UK is an international hub for insurance and has a highly developed speciality insurance sector. In 2015, the insurance and pensions sector was the fifth largest trade in services exported, and had the second largest trade in service surplus of £12.8 billion.¹ The UK market is very developed with a high insurance penetration (10% of GDP).² Insurance and pensions make up 6% of all UK service exports and so we believe that the UK is now presented with an opportunity to further support this UK export going forward.

Free Trade Agreement framework

As the UK prepares to leave the EU and the UK Government begins to consider what will need to be included in future trade agreements, the ABI has prepared a framework for a Free Trade Agreement (FTA) with specific elements which UK insurers would like to see included in agreements with non-EU markets. Therefore, if such a framework could be agreed within an FTA, it would be extremely valuable given the binding nature of such agreements, which in turn offers stability and certainty in regulation in foreign jurisdictions.

The ABI's framework has been based on our 2003 Model Schedule for insurance, which was originally drafted in preparation for negotiations on services within the Doha Round of multilateral trade negotiations at the World Trade Organisation. The ABI's framework for an FTA offers a reference tool for which elements of market access and increased liberalisation of trade in services would be desired specifically by UK insurers, and also takes into account digital developments. We have not addressed issues that the UK Government would need to consider for the wider UK economy.

¹ Office for National Statistics; Pink Book 2016.

² Insurance penetration is the premiums as a percentage of GDP. It measures the level of development in the insurance sector of an economy.

The ABI's framework for an FTA is intended to be adapted and amended depending on the country with which the UK is negotiating an agreement. Some of the commitments included may be more appropriate for certain jurisdictions, while others may not, for example Article 3(F) concerning data transfers. Other commitments, such as Article 3 (D) 2c concerning minimum requirements for foreign ownership, could be more ambitious with certain jurisdictions by amending the commitment to remove the foreign ownership limit entirely.

In particular, it is helpful if there are no foreign restrictions on ownership, as it would allow UK insurers, and in turn the UK economy, to reap the maximum benefit when entering a foreign market. The majority of UK insurers operate in foreign jurisdictions through joint ventures and so foreign ownership limits can be a handicap.

Having majority owned or wholly owned subsidiaries in a foreign jurisdiction can be highly beneficial in allowing an insurer a greater weight in the company's overall governance and in Board-level decisions. This ensures that UK insurers can steer the direction of a company in the manner it sees fit. In addition, this would allow UK insurers to leverage the expertise they have gained in developed markets and address areas of the insurance market which are underserved. Similarly, it can benefit the foreign jurisdiction's domestic insurance market by encouraging greater diversity, particularly in the types of products being offered, which in turn can benefit domestic consumers.

The ABI would support further liberalisation of trade in services globally, which has shown to aid economic growth of both trading partners and equally benefit development of developing countries. Any agenda to progress liberalisation of trade in services should aim to support domestic policy objectives while encouraging further development of services regulation where needed. For developing countries, this can help to expand their service exports by strengthening their domestic services capacity, efficiency and competitiveness, which would in turn benefit all.

We are aware that this is an ambitious proposal and would therefore recommend that a case-by-case approach to be taken by the UK Government. As the different FTAs are negotiated, the ABI would be willing to offer its views on the national specificities.

While the ABI has produced this framework for an FTA, it is important to highlight that current FTAs which the EU has secured offer little benefit in terms of increased market access for insurance. Further, a number of the commitments included in our framework can be addressed via domestic regulatory measures in a particular foreign jurisdiction, and so do not necessarily need to be addressed via bilateral or multilateral trade agreements.

Regulatory dialogues and arrangements, such as Economic and Financial Dialogues, and agreements on cooperation between regulators can often be more valuable in securing increased market access than FTAs. The ABI would therefore encourage the UK Government to continue to use existing opportunities to improve bilateral and economic ties, and address market access barriers, such as through regulatory dialogues or Ministerial visits.

The ABI would welcome the opportunity to discuss and receive feedback on our framework. Please get in touch with Seth Williams via email at seth.williams@abi.org.uk or via telephone on +44 (0)207 216 7354.

ABI framework for a Free Trade Agreement

Article 1: Scope and Definitions

1. **Branch** or a permanent establishment means a fixed site through which the business of the insurer is wholly or partly carried out within a jurisdiction. It can include an agent habitually exercising authority to do business on behalf of the company. The insurer establishing the branch remains liable for its activities.
2. **Commercial client** means a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.
3. **Cross border insurance supplier** means a person of a country that is a Party to a trade agreement and that is engaged in the business of supplying an insurance service within the territory of the Party, and that seeks to supply or supplies an insurance service through the cross-border supply of that service.
4. **Insurer** means an insurance or insurance-related services supplier who has a licence to conduct business in one of the Party's jurisdictions.
5. **Insurance** means an insurance or insurance-related services supplier and includes the following activities:
 - a) Direct insurance (including co-insurance):³
 - A. Life
 - B. Non-life
 - b) Reinsurance and retrocession;
 - c) Insurance intermediation, such as brokerage and agenda; and
 - d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
6. **Insurance intermediation** means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance

³ Health insurance can often be considered life or non-life, depending on how it has been defined in a jurisdiction.

undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation

7. **Non-admitted insurer** means an insurer not licensed to conduct insurance business in the other Party's jurisdiction.
8. **Retail consumer** means any client who is acting for purposes which are outside his trade, business or profession. A retail consumer is a client who is not a commercial client.⁴
9. **Representative office** means an office established by an insurer to conduct marketing and other non-transactional operations. This office does not require a separate legal entity and so remains liable under the insurer.
10. **Subsidiary** means a separate legal entity (usually a body corporate) where liabilities within the company cannot be claimed against another company in the group.

Article 2: Non-Admitted Insurance

1. Those who are not licensed to conduct business in the other Party's jurisdiction can write coverage for large commercial risks and reinsurance in that jurisdiction.
2. Large commercial risks include:
 - a) Casualty
 - b) Construction
 - c) Engineering
 - d) Marine
 - e) Aviation
 - f) Transport

Article 3: Market Access and National Treatment

A. Acquired Rights

1. With respect to all insurance services, future measures and schedules of commitments adopted by each Party will, at a minimum, not reduce or impair the current level of market access and national treatment available to foreign insurance services and services suppliers.

B. Market Access – cross border delivery in respect of reinsurance, marine/aviation/transport insurance, and pensions and savings products

1. Reinsurance, marine/aviation/transport insurance, pensions and savings products, and insurance services related to these types of insurance are to be bound under the cross border mode of supply without restrictions to market access. Each Party will assume identical undertakings with respect to access to marine/aviation/transport, pensions and

⁴ A firm active in 'personal lines' distributes or underwrites insurance products aimed at retail consumers. Similarly, a firm active in 'commercial lines' distributes or underwrites insurance products at commercial clients.

savings products and insurance intermediation (brokerage and agency) services related to these types of insurance by clients located abroad, without regard to whether the foreign insurance supplier is registered in the consumer country.

2. For life and non-life reinsurance, the following additional specific commitments are to be included in the schedule:
 - a) Elimination of mandatory cessions imposed on insurance suppliers to cede all or a portion of their risks to specified insurance or reinsurance suppliers;
 - b) Elimination of any requirements that impose greater restrictions on the percentage of cessions to foreign reinsurance suppliers than to domestic reinsurance suppliers;
 - c) Elimination of right-of-first refusal privileges for domestic reinsurance suppliers;
 - d) Elimination of discriminatory requirements imposed on foreign reinsurance suppliers as they relate to collateralisation and localization of assets;
 - e) The abolition of reinsurance monopolies; and
 - f) The guarantee of freedom of form of reinsurance and freedom of reinsurance contract terms.
3. The requirement for foreign insurance suppliers to be authorised in the host Party's jurisdiction to conduct business should only apply when the client is a retail customer.⁵

C. Market Access – Commercial Clients

1. Each Party shall permit insurers from the other Party, with no permanent place of business in the host Party's jurisdiction, to provide insurance with commercial clients without the need to be licenced in the host Party's jurisdiction.

D. Market Access – Commercial Presence

1. Form of establishment
 - a) A foreign insurance supplier may establish a commercial presence by setting up a subsidiary (either wholly or partly (majority) owned), or by forming a new company, or through acquisition of an insurance supplier already established in the host country or as a branch;
 - b) In their regulatory approach to a foreign insurance supplier, each Party shall have regard for the relationship between such a supplier and its parent company when the supplier enters into the market;
 - c) Consistent with international intellectual property, business name registration and trademark law, a licensed foreign insurance supplier may provide its services using its home company name in the host country market, provided it does not infringe an already established trademark in that country as evidenced by a formal legal decision;

⁵ The intention of this is to allow the cross border delivery of these products by (re)insurers who do not need to be authorised in the home state to commercial clients and sophisticated retail investors only.

- d) Foreign insurance suppliers should not be denied a commercial presence in the form of a branch or a subsidiary on the basis of their form of legal organisation in the home market.

2. Equity shares

- a) Where commercial presence is in the form of a joint venture with a partner located in the host country, the decision to operate through a joint venture, and the percentage of equity shares assumed by the foreign partner, should be determined solely by the joint venture partners themselves;
- b) Foreign equity share restrictions will be eliminated. Where necessary, this will be achieved over a transition period terminating by a fixed date, not to exceed two years from the entry into force of this schedule of commitments;
- c) During the above transition period, any such limitations should permit the foreign partner to hold at least 51% of the equity in the company, with staged increases.

3. Compulsory Lines

Each Party will assume full commitments to market access and national treatment that cover compulsory risks, to ensure that foreign insurance suppliers can compete for insurance lines and insurance services that are required of persons and businesses that reside in each of the Party's countries.

4. Monopolies

Each Party should eliminate the provision of insurance services by state, para-statal or Government owned providers, or those that have a state provided monopoly.

5. Private participation in Pensions and Funds Management

Foreign suppliers providing pensions and funds management services will have access, on a non-discriminatory basis, to offer their services to private and/or public pension systems provided in the host Party's jurisdiction. Where pension fund services are provided through commercial presence, foreign suppliers will be afforded the choice of opportunities as provided in D.1 (a) and D.2 above. Foreign suppliers providing public and private pension funds and services may offer the range of product and investment options they find necessary to meet benefit needs consistent with national treatment requirements.

6. Cross-border supply of financial service including new financial services⁶

Each Party shall permit a cross-border financial service supplier of the other Party, on request or notification to the relevant regulator where required, to supply a financial service through any new form of delivery, including digital, or to sell a financial product that is not sold in the Party's territory where the first Party permits its own financial service suppliers to supply such a service or to sell such a product under its law in like situations.⁷

⁶ The key purpose of this is to ensure that information can be exchanged between suppliers.

⁷ The purpose of this is to future proof the agreement as far as possible, allowing for potential innovations in the way financial services is supplied.

E. Market Access – Temporary Entry of Natural Persons

1. Nationality and residency requirements on personnel should be avoided.
2. Where a foreign insurance supplier operates through a commercial presence, it may select, as its representative in the host country, any person who physically resides in the host country, irrespective of nationality; provided that the representative meets regulatory standards that identify competency to perform services in such a role, and any other provisions relating to the fitness of that individual to perform the obligations of a company representative.
3. The host Party shall provide visa and associated work permits, where required, to professional level personnel temporarily employed by the foreign insurance services supplier's home and third country offices in a timely manner for the purpose of entering the country to its host country insurance services operations.⁸

F. Market access – Data Processing

1. Each Party shall permit a foreign insurance supplier established in its territory to transfer and use data, in electronic form or hard copy, into and out of its territory, for data processing where such processing and use is necessary in the ordinary course of business of such insurance service.
2. Each Party shall adopt adequate safeguards to the protection of privacy, in particular with regard to the transfer of personal data in accordance with domestic data protection legislation and with the General Agreement on Trade in Services article XIV.⁹

G. National Treatment

1. In addition to the right to compete for all lines of insurance in a host country, foreign insurance suppliers who are licensed or established in the host country, shall have the same opportunities to compete for domestic insurance business as indigenous insurance services suppliers with respect to insurance for state-owned or state affiliated enterprises, or any enterprise where the state holds an equity share.
2. Foreign insurance suppliers will be treated no less favourably than domestic services suppliers with respect to capital, solvency, reserve, tax and other financial requirements, subject to the provisions of Paragraph 2 (a) of the Annex on Financial Services. Where less favourable treatment is imposed on the basis of Paragraph 2 (a) of the Annex, each Party will explain the basis for the different treatment accorded and, in particular, why such treatment is necessary for the protection of policyholders.

⁸ The intention of this is to ensure that insurers are able to source and employ skilled individuals, regardless of their nationality.

⁹ https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gats_02_e.htm#article14.

3. In the case of insurance intermediation, each Party will limit any conditions or limitations with respect to monetary transfers by insurance intermediaries to what is necessary to assume their legal responsibilities in the country where the service is delivered.

Article 4: Prudential Carve Outs

1. Prudential carve outs to be adopted in line with:
 - a) The protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by an insurer;
 - b) The maintenance of the safety, soundness, integrity, or financial responsibility of a financial service supplier, cross border insurance supplier or insurance supplier;
 - c) Ensuring the integrity and stability of the Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim, and where they do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding each Party's commitments or obligations under such provisions.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.
4. Without prejudice to other means of prudential regulation of cross-border trade in insurance, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.
5. A Party may, for prudential reasons, prohibit a particular financial service or activity. Such a prohibition shall not apply to all financial services or to a complete financial services sub-sector.

Article 5: State to State Dispute Settlement

1. In the case of resolving disputes concerning insurance or insurance related services, the arbitration panel overseeing the potential non-compliance would need to have at least one person with relevant expertise in insurance matters from each jurisdiction.

Article 6: Investor Protection

1. Insurers and insurance related services should enjoy investor protection no less than that fully enjoyed by any other provider under any agreement.

Article 7: Settlement of the Dispute – Withdrawal of Market Access

1. If the arbitration panel finds that there has been a breach of the Agreement by one of the Parties, market access withdrawal shall be limited to the activity, or its sub-set, where there has been a breach.
2. Market commitments in relation to a particular activity or a sub-set of it could be withdrawn, amended or made subject to conditions if the criteria for alignment of regulation governing such a sector or activity were no longer met.
3. The Arbitration Panel needs to address the provisions of existing contracts with policyholders when a decision to withdraw is made.

 ABI