

Brexit: First measures (including a TPR) published in Spain in preparation for a hard Brexit

On 02 March 2019, Spanish Royal Decree-law 5/2019 of 01 March 2019 was published, providing a temporary permissions regime (TPR) in the event that the UK leaves the European Union without a deal (a Hard Brexit).

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Sector Focus	Asset Management and Investment Funds Financial Institutions
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Introduction

On 02 March 2019, Royal Decree-law 5/2019 of 01 March 2019, regarding Brexit contingency measures (RD-law 5/2019) was published in the Spanish Official Gazette - *Boletín Oficial del Estado* (BOE).

Among other measures, RD-law 5/2019 provides a temporary permissions regime (**TPR**) which will enter into force upon the UK's withdrawal from the European Union (EU), at which point the EU Treaties will cease to apply to the UK.

The final stage of the legislative process is for RD-law 5/2019 to be ratified during March.

Chapter IV of the RD-law 5/2019 covers 'Economic Activities' and includes four sections, the first being dedicated to financial services.

Summary of the provisions of the TPR

The Spanish TPR for UK entities providing financial services in Spain can be summarised as follows:

Continuity of contracts

The continuity of contracts validly concluded by UK financial entities (including MiFID investment firms, credit institutions and insurance companies) pre-Brexit will be ensured under RD-law 5/2019.

Contracts for provision of financial services (including banking, securities and insurance services) under which a UK authorised entity provides services in Spain and which were entered into pre-Brexit will remain valid. The obligations of the parties under such contracts will remain applicable and enforceable.

Licensing requirements

From the date of a Hard Brexit, UK authorised entities would be subject to the relevant Spanish legislation and regime in respect of third country firms, without prejudice to the continuity of contracts entered into before that date as outlined above.

Subject to the nine month TPR explained below, UK entities would have to obtain a new authorisation:

- to renew existing contracts
- to amend existing contracts where changes imply provision of new services in Spain or have an impact on the main obligations of the parties
- to sign new contracts, or
- when the activities linked to the management of the contracts trigger licensing requirements.

Temporary permission

For those contracts which do trigger a licencing requirement, firms which are duly authorised by the relevant UK authority before Brexit will be recognised as such for a period of nine months post Brexit.

The main aims of the Spanish TPR are:

- to carry out an orderly and smooth termination or assignment of contracts to a duly authorised entity in accordance with the contracts, and
- to request authorisation in Spain following any of the foreseen methods included in the applicable Spanish legislation, including setting up a subsidiary. In such a case, the temporary validity would be effective from the date on which authorisation is requested or from the date of entry into force of the RD-law 5/2019, if the authorisation was requested before. Should the request of authorisation be rejected in accordance with the relevant legislation, the temporary validity will end.

Additional requirements of the CNMV, Bank of Spain and DGSFP

In Spain there are three supervisory authorities:

- the *Banco de España* (Bank of Spain) authorises and supervises entities providing banking services)
- the *Comisión Nacional del Mercado de Valores* (Spanish Securities Market Commission or CNMV) authorises and supervises entities providing investment services), and
- the *Dirección General de Seguros y Fondos de Pensiones* (Directorate-General of Insurance and Pension Funds or DGSFP) authorises and supervises entities providing insurance services).

Financial entities will be subject to the same regulatory regime as applicable before Brexit. The Bank of Spain, CNMV and DGSFP will have supervisory powers and may request UK entities to provide documentation and/or information or request certain steps to be taken, if needed.

Penalties

If an entity fails to comply with requirements imposed by the relevant supervisory authority, the applicable TPR could cease to apply. In that event, the Bank of Spain, CNMV or DGSFP, as appropriate, will inform the UK entity that an activity which triggers licensing requirement in Spain is being carried and, accordingly, Spanish penalties or sanctions may be triggered (which can lead to the imposition of very serious sanctions).

Sectorial measures

The Bank of Spain, CNMV and DGSFP will adopt measures, as necessary, to ensure the legal certainty and safeguard the interests of financial services clients who could be affected by Brexit. It is likely that further provisions will be published, providing more sector-specific detail on the application and scope of the RD-law 5/2019.

What happens next?

Under the Spanish legislative process, royal decree-laws are enacted in cases of extraordinary and urgent need and need only be ratified by the Congress of Deputies in Spain.

Since general elections are due to be held in Spain on 28 April 2019, the Spanish Parliament (ie, the Congress of Deputies and the Senate) will be dissolved on 04 March 2019.

As a result, the Permanent Deputation will be responsible for deciding whether the RD-law 5/2019 should be ratified or not. Ratification should take place within the next 30 days - if it is not ratified within that time period, the RD-law 5/2019 would lose its validity.

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