

Informative Note

BREXIT: New contingency measures in the financial services sector reflecting the United Kingdom's new status as a Third Country

12 January 2021

Regarding Royal Decree-Law 38/2020, of 29 December 2020, adopting measures to reflect the United Kingdom's new status as a third Country

On **30 December 2020**, the Spanish Official Gazette published the *Royal Decree-Law 38/2020, of 29 December 2020, adopting measures to reflect the United Kingdom's new status as a third Country*¹ (hereinafter, the "RD") which entered into force on **1 January 2021**.

The purpose of the RD is to adopt several **contingency measures** in order to deal with the consequences of the withdrawal of the United Kingdom from the European Union, following the end of the transition period foreseen in the Withdrawal Agreement, between the European Union and the United Kingdom, on 17 October 2019, which entered in force on 1 February, 2020.

Continuity of contracts

From 1 January 2021, UK firms will be considered a **3rd Country firm** when providing financial services in Spain.

Notwithstanding this, agreements entered into with Spanish investors / clients **prior to 1 January 2021** for the provision of banking, securities, insurance or other financial services by UK authorised firms, **will remain in force** and, consequently, will continue to be enforceable.

Additional temporary permission regime

The authorisation or registration initially provided to the relevant UK firms, prior to 1 January 2021, will remain provisionally in force in Spain for a **period of six (6) months** (i.e. until 30 June 2021) during which time UK firms must carry out:

- An orderly termination of the contracts; or

¹ Royal Decree-Law 38/2020, of 29 December 2020, adopting measures to adjust the United Kingdom of Great Britain and Northern Ireland to the status of third country following the end of the transition period provided for in the Withdrawal Agreement of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 31 January 2020.



- An assignment of the contracts to entities duly authorised in Spain (and or Europe) to provide the Financial Services under the agreements assigned.

With regard to UK insurance entities, the above-mentioned period extends to **31 December 2022**.

Spanish regulators must be informed by the UK entities in case the latter are interested in benefitting from the temporary regime, in order to continue servicing existing clients in Spain until June 2021.

Such firms should contact the competent Spanish authority in their field: **Bank of Spain** for credit, payment and electronic money entities; **CNMV** for investment firms, management companies and venture capital firms; **DGSFP** for insurers and reinsurers, pension fund managers and insurance intermediaries.

New licencing requirements

In addition, UK firms will need to obtain a new licence in Spain under the following scenarios:

- a) For the renewal of contracts entered into prior to 1 January 2021;
- b) For the introduction of amendments to contracts entered into prior to 1 January 2021, which entail the provision of new financial services in Spain or which affect essential obligations of the parties;
- c) where activities linked to the management of the contracts require authorisation² (e.g. *on-going recommendations to Spanish clients and/or remittance of certain information / marketing documentation that could lead into new investments under a under an investment advisory agreement / portfolio discretionary management agreement*); and
- d) For the conclusion of new contracts.

The RD establishes that activities arising from the management of contracts entered into before 1 January 2021 that are not under the scenario a) to c) mentioned before shall not trigger a new authorisation.

² This scenario should be analysed on a case by case basis.



On-going supervision from Spanish Regulators and penalty regime

The Bank of Spain, CNMV and DGSFP will have supervisory powers and may require UK to provide any documentation or information or to carry out whatever actions are necessary.

If an entity does not comply with the requirements imposed by the relevant supervisory authority, the temporary permission could cease to apply. In that event, the Bank of Spain, CNMV or DGSFP will inform the UK entity that an activity which triggers a licensing requirement in Spain is being carried out and, accordingly, Spanish penalties or sanctions may apply (which can lead to the imposition of **very serious sanctions**).

Next steps for UK firms

In light of all the above, UK firms will need to **(i)** assess whether their business in Spain may be affected by the provisions referred to above and if necessary take **appropriate measures** to obtain the corresponding authorisation to operate in Spain and therefore: **(ii)** take the relevant actions before the end of the temporary permission (30 June 2021).

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