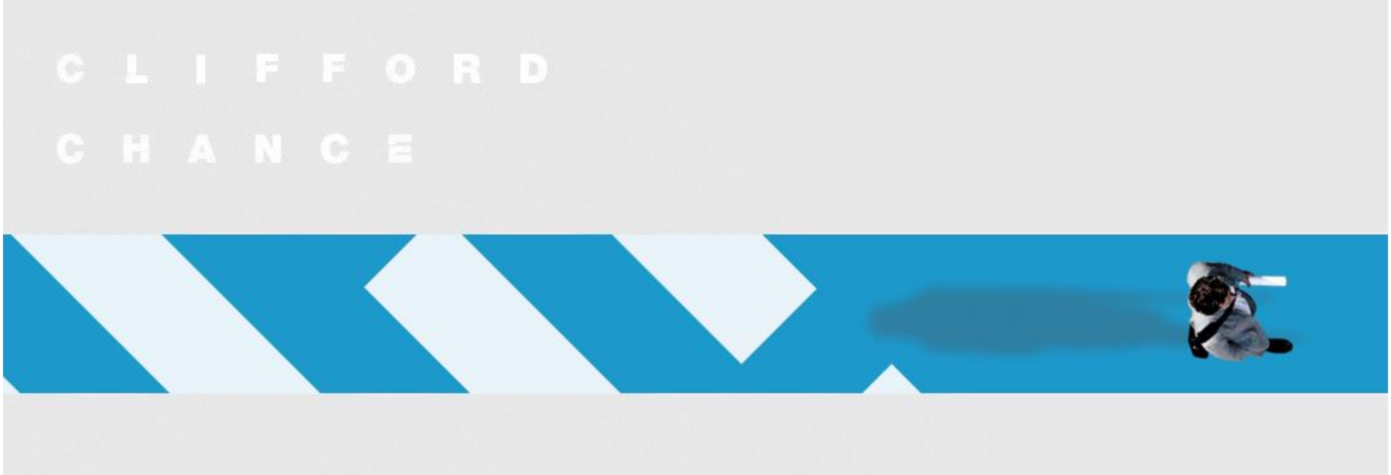

SPAIN PREPARES FOR A "NO-DEAL BREXIT"

On 30 March 2019 ("**Brexit Day**") the United Kingdom (the "**UK**") will leave the European Union (the "**EU**"), unless the UK withdraws its exit decision, or it agrees with the EU an extension of the negotiation period.

As of today, a "no-deal Brexit" remains an option. In order to prevent market disruption and negative implications for the financial markets in case of a "no-deal Brexit", the Spanish government has published a Royal Decree-Law (the "**Brexit RDL**")[1] with contingency measures aimed at preserving (i) the interests of Spanish and British citizens who exercised their right to free movement before Brexit Day and (ii) Spanish economic interests.

In order to achieve these objectives, the Brexit RDL deals fundamentally with citizenship issues and economic activities. It also provides for rules of police and judicial cooperation in relation to proceedings initiated before Brexit Date.

With regards to citizenship issues, it sets out contingency measures regarding residency, cross-border workers, access and exercise of professions and public employment, displaced workers, social security, health care and access to university.

With regards to economic activities, it sets out contingency measures aimed at protecting Spanish interests in the areas of financial services, customs, public procurement, authorisations and licenses (including driving licenses, defense and dual use material, weapons and explosives and ground transportation).

This Client Briefing focuses on contingency measures in the area of financial services (which are set out in article 19 of the Brexit RDL).

Key issues

- Contracts for the provision of banking, securities, insurance or other financial services entered into in Spain by UK regulated entities before Brexit will remain in force following a "no-deal Brexit".
- UK entities must obtain a new authorisation under the relevant third-country authorisation regime to amend existing contracts or to enter into new ones.
- Existing licences will remain in force in relation to the activities linked to the servicing of the existing contracts which require authorisation for a period of nine months in order to enable the termination or assignment of existing contracts or the application for a new third-country authorisation.
- Contracts entered into after Brexit Day are out of scope, so UK entities will not be allowed to enter into new contracts thereafter until (and if) a new third-country authorisation is obtained.
- The transitional measures will enter into force on Brexit Day, unless a withdrawal agreement between the EU and the UK enters into force before such date.

[1] *Real Decreto-ley 5/2019, de 1 de marzo, por el que se adoptan medidas de contingencia ante la retirada del Reino Unido de Gran Bretaña e Irlanda del Norte de la Unión Europea sin que se haya alcanzado el acuerdo previsto en el artículo 50 del Tratado de la Unión Europea*

1. FINANCIAL SERVICES

General contract-continuity principle

Article 19.1 of the Brexit RDL sets out a general contract-continuity principle applicable to existing contracts in the case of a "no-deal Brexit". In this regard, it provides that contracts for the provision of banking, securities, insurance or other financial services entered into in Spain by UK regulated entities[2] (both through a Spanish branch or on a purely cross-border basis) (the "**Affected Entities**") before Brexit Day (the "**Existing Contracts**") will remain in force following Brexit Day.

New authorisation required to amend Existing Contracts or to enter into new ones

Article 19.2 of the Brexit RDL provides that, in the case of a "no-deal Brexit", Affected Entities will become subject to the relevant third-country authorisation regime (without prejudice to the contract-continuity principle set out in article 19.1) and that, accordingly, they must obtain a new license under the relevant third-country authorisation regime:

a) to renew Existing Contracts;

b) to amend Existing Contracts in a way which entails the provision of new services in Spain or affects essential obligations of the parties;

c) in those cases in which the activities linked to the servicing of the Existing Contracts require authorisation; or

d) to enter into new contracts.

The article further clarifies that any other activity relating to the servicing of Existing Contracts will not require the obtaining of a new license.

Whilst it is clear from the foregoing that, generally, no new regulated services may be provided in Spain following a "no-deal Brexit", it may be less straightforward to determine what activities linked to the servicing of the Existing Contracts may be deemed to be activities which require authorisation.

Nine-month temporary validity of the existing licenses

Article 19.3 of the Brexit RDL provides that notwithstanding the need to obtain a new license in the events set out in section 2.2 above, the existing licence of the Affected Entity will remain in force in relation to the activities linked to the servicing of the Existing Contracts which require authorisation (as per (c) above) for a period of nine months (which can be extended by the Government) following Brexit Day in order:

a) to enable an orderly termination of Existing Contracts or an assignment thereof to a duly authorised entity; or

b) to enable the application for a new authorisation in Spain under the relevant third-country authorisation regime (including by means of the creation of a subsidiary). In this case, the nine-month temporary validity of the existing license will start on the later of (i) the date on which the Affected Entity applies for the new authorisation and (ii) the date of entry into force of the Brexit RDL.

[2] *For the avoidance of doubt, all references in this Client Briefing to UK entities shall be deemed to encompass Gibraltar entities as well.*

The foregoing literally means that Affected Entities will in fact have up to nine months following Brexit Day to request a new authorisation and up to nine additional months of temporary validity of the existing license, pending a decision on the new authorisation application. However, Affected Entities should be cautious about this and not exhaust the available time-frame to apply for the new authorisation, given that the authorisation process with respect to a third-country entity could be time-consuming.

In this regard, it should also be analysed for each activity what kind of options are available for third-country authorisations. For example, (i) banks could set up a third country branch, apply for a cross-border license or set-up a subsidiary; while (ii) insurance companies can only set up a third country branch or a subsidiary.

Contracts entered into after Brexit Day are out of the scope of this transitional period and, therefore, Affected Entities will not be allowed to enter into new contracts thereafter, until (and if) a new third-country authorisation is granted to them.

The article further clarifies that the temporary validity of the existing license will lapse if the application for a new license is rejected.

Continued application of pre-Brexit regime

Article 19.4 of the Brexit RDL provides that during the nine-month temporary validity of the existing licenses, Affected Entities will be subject to the pre-Brexit regime.

Moreover, the relevant competent authorities may, in the exercise of their supervisory duties, require Affected Entities to provide any required documentation or information. A failure to provide such documentation or information in a timely manner may result in a loss of the temporary validity of the existing license, which will, following a notice to the Affected Entity, open up the possibility of imposing sanctions on the Affected Entity for breach of licensing requirements.

Additional measures may be taken by the competent authorities

Article 19.5 of the Brexit RDL provides that the relevant competent authorities may, within the remit of their respective powers, take additional measures in order to guarantee legal certainty and to safeguard the interests of the users of financial services that could be affected by a "no-deal Brexit". Therefore, it will also be key to follow up how the Bank of Spain, the Stock Market Commission and the Directorate General of Insurance and Pension Funds interpret Article 19.2 of the Brexit RDL.

2. SECONDARY DEVELOPING REGULATIONS

The Brexit RDL authorises the Government to promulgate as many secondary regulations as it may deem necessary for the development and execution of the provisions of the Brexit RDL.

3. ENTRY INTO FORCE

The Brexit RDL will enter into force the day when the Treaties of the EU cease to apply to the UK in accordance with the provisions of Article 50.3 of the Treaty on the Functioning of the EU, unless, prior to such date, a withdrawal agreement between the EU and the UK has entered into force in accordance with article 50.2 of the Treaty on the Functioning of the EU.

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