

SPAIN ISSUES ITS TRANSITIONAL REGIME IN CASE OF A HARD BREXIT

In line with similar communications made by other EU Member States, on 1 March 2019, the Council of Ministers of Spain approved Royal Decree Law no. 5/2019 which includes contingency rules to minimise the effects of the United Kingdom (UK) possibly exiting the EU without an agreement under the terms of article 50 of the European Union Treaty (the “**Brexit Contingency Plan**”).

The rules of the Brexit Contingency Plan will apply to different sectors, including, in particular, citizenship, labour and social security rights, as well as economic activities, land transport and certain public or financial services agreements.

As far as the impact on financial services is concerned, the Brexit Contingency Plan foresees the following rules¹ in the event of a “hard brexit”:

1. Contracts for the provision of banking, securities, insurance or other financial services signed prior to the date of departure of the UK from the EU, in which an entity which is authorised or registered by the competent authority of the UK or Gibraltar, with registered office in these locations, provides services in Spain will remain in force after the exit.
2. As from the effective date of departure of the UK from the EU, such entities will be subject to the regime provided in the sectorial legislation for entities from third countries. Without prejudice to maintaining the validity of the contracts executed previously, new authorisation should be obtained: (i) to renew said contracts; (ii) to make modifications that involve the provision of new services in Spain or that affect essential obligations of the parties; (iii) in cases in which the activities linked to the management of contracts requires authorisation, as well as (iv) to enter into new agreements.
3. The authorisation of registration initially granted by the competent UK authority to the entities listed in point 1 above shall remain provisionally valid for a period of 9 (nine) months following the UK’s departure from the EU, in relation to the management of contracts entered into prior to such exit which require authorisation, with the aim of allowing these entities to:

¹ See article 19 of Royal Decree Law no. 5/2019.

- a. Terminate the contract or assign it to a duly authorised entity in accordance with the contractual clauses.
 - b. Request authorisation in Spain under any of the regimes provided for in current legislation, including the possibility of creating a subsidiary.
4. During the transitional period, financial institutions will continue to be subject to the legal regime applicable to them prior to the UK's departure from the EU. Accordingly, the Bank of Spain, the Spanish Stock Exchange Commission (CNMV) and the General Directorate of Insurance and Pension Funds (DGSFP) shall maintain the corresponding supervisory powers in relation to the activities of those entities in Spain and, in particular, may require such entities to provide any documentation or information or carry out any actions that are necessary in the context of such transitional regime.

In the event that the potential requirements are not complied with in a satisfactory manner within the period granted for these purposes, the relevant Spanish supervisory authorities may suspend and refuse to apply the transitional regime provided for in section 3 in relation to said defaulting entity.

For the full text of the Brexit Contingency Plan, see:

<https://www.boe.es/boe/dias/2019/03/02/pdfs/BOE-A-2019-2976.pdf>

The information contained in this Briefing is of a general nature and does not constitute legal advice. This document was drafted on 4 March 2019 and Pérez-Llorca does not undertake any commitment or assume any duty to update or review its content.

For further information, please contact:

Paula de Biase
Head of Financial Services Practice
pdebiase@perezllorca.com
+ 34 91 423 67 37