

LEGAL ALERT

NO-DEAL BREXIT: TEMPORARY PERMISSIONS REGIME FOR FINANCIAL SERVICES IN PORTUGAL

On September 30th, [Decree-Law no. 147/2019](#) was published (DL 147/2019), which approved certain contingency measures to be applied in the event that the United Kingdom (UK) leaves the European Union without a deal regarding financial services (No-Deal Brexit).

DL 147/2019 establishes a temporary permissions regime (TPR) in relation to investment, banking and insurance services provided by entities with registered offices and authorised in the UK in case of a No-Deal Brexit, allowing them to continue to operate in Portugal under certain conditions and providing greater legal certainty regarding the validity of existing agreements, as well as regulating certain social security aspects.

Investment Services

Under DL 147/2019, UK credit institutions and investment firms that are authorised to provide investment services and/or perform investment activities in Portugal, as well as ancillary services, will continue to be able to do so – with the relevant restrictions provided below – if the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*/CMVM) receives the following elements:

- (i) Before the date of a No-Deal Brexit, a notification from the UK competent authority (*e.g.*, FCA), in case of investment firms, or from the Bank of Portugal, in case of a credit institution, regarding the provision of such services in Portugal; and
- (ii) Within three months after the date of a No-Deal Brexit, a form attached to DL 147/2019 together with a declaration from the credit institution or investment

firm stating its intention to either (a) terminate the existing agreements in Portugal, or (b) seek authorisation to continue to operate in Portugal.

An identical procedure applies to UK credit institutions, investment firms or management companies that wish to continue to provide management services, as well as ancillary services, in Portugal in relation to investment funds.

If the relevant UK entity chooses to request authorisation to continue to operate in Portugal such request **must be submitted to the competent regulator within 6 months after the date of a No-Deal Brexit**. Furthermore, DL 147/2019 clarifies that until the submission of such request to the competent regulator, **in relation to non-professional investors the aforementioned UK entities can only perform the necessary activities to terminate the existing agreements**.

Furthermore, UK investment funds may continue to be marketed in Portugal subject to CMVM receiving the following elements:

- (i) Before the date of a No-Deal Brexit, a notification from the UK competent authority (*e.g.*, FCA) regarding the marketing of such funds in Portugal; and
- (ii) Within three months after the date of a No-Deal Brexit, a form attached to DL 147/2019, containing information in respect of such investment funds.

Banking Services

Under the TPR, all agreements regarding the reception of deposits or other repayable funds, credit operations, payment services and e-money issuance entered into by UK credit institutions, payment institutions and e-money institutions in Portugal before the date of a No-Deal Brexit under the freedom of establishment or freedom to provide services, shall remain valid and fully enforceable. The same shall apply to the provision of ancillary services to those provided under the main agreement entered into with customers resident in Portugal to the extent these are not new services or agreements.

In order to benefit from this TPR, UK entities must notify the Bank of Portugal within three months after the entry into force of DL 147/2019. After 31 December 2020, the regime for third-country entities shall apply to any UK entities providing the aforementioned banking services in Portugal.

Finally, all investment, management and banking services provided, and activities carried out, in Portugal under the TPR must comply with Portuguese law, and the CMVM or the Bank of Portugal, as applicable, will supervise the compliance with the limitations provided under the TPR and may request further information from UK entities for such purpose.

Insurance Services

Insurance agreements covering risks located in Portugal or in relation to which Portugal is the member State of the commitment entered into by insurance companies with registered offices in the UK under an authorisation to provide insurance services in Portugal before the date of a No-Deal Brexit shall remain valid and fully enforceable **but can no longer be extended**.

DL 147/2019 enters into force on the date of a No-Deal Brexit and expires on 31 December 2020.

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