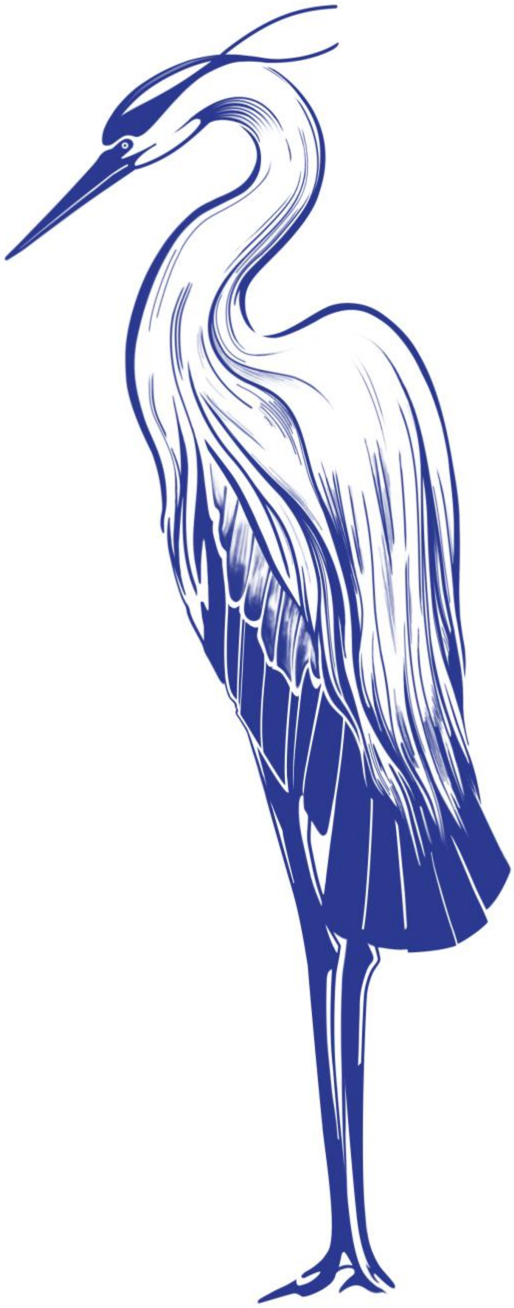

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BREXIT UPDATE: SPAIN & POLAND- NO DEAL MEASURES

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Following the recent developments in the British Parliament, which for three times resoundingly rejected the withdrawal deal agreed back in November by the UK Prime Minister and the EU negotiation team, continuing uncertainty results over the UK departure from the EU.

Despite the recent request submitted by the UK Prime Minister asking for an extension of the two years negotiation period granted by article 50 of the Lisbon treaty, it is still not clear if, and for how long, such an extension will be granted. Furthermore, even if a decision on an extension is reached, if the deadlock persists on a long term solution, the ongoing uncertainty could just roll over to the next deadline.

Therefore, our examination of the EU countries measures in case of an exit of the UK from the EU without a deal ("**a no deal Brexit**") still holds its relevance, as these measures are directed to avoid negative consequences and disruptions for citizens, business, and financial markets. In this newsletter will be focused on Spain and Poland.

SPAIN PREPARES FOR NO DEAL BREXIT

On 02 March 2019 the Real Decreto- ley 5/2019, Royal Decree- law n. 5/2019 (the "**RDL**") came into force in Spain in order to deal with with a number of Brexit related issues, from citizen rights to financial markets issues. In particular, Article 19 of the RDL focuses on contingency measures in the area of financial services.

The estimated day the RDL will enter into force will be the day the UK leaves the EU with a no deal Brexit, 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.

Continuity of contracts

As already seen in many Brexit related provisions, either coming from EU institutions, the UK or other EU member states, Article 19.1 of the RDL sets out a general contract-continuity principle in the case of a no deal Brexit. The fundamental provision is that contracts providing for banking, securities, insurance or other financial services entered into in Spain by UK regulated entities (either through a Spanish branch or on a purely cross-border basis) before Brexit will remain in force following the day after a no deal Brexit Day (i.e. the day after the UK leaves the EU without a deal). It is worth noting that the issue of UK regulated entities in Spain is particularly relevant as they include entities operating in Gibraltar, which are numerous and active in the gaming and financial sector.

New authorisation required in order to continue operating in the Spanish market

Notwithstanding the principle of continuity of contracts, Article 19.2 of the RDL provides that in the case of a no-deal Brexit, UK regulated entities will be subject to the relevant third-country authorisation regime and so, accordingly, they must obtain a new license under such regime in order to:

- renew existing contracts;
- amend existing contracts in a way which entails the provision of new services in Spain or affects essential obligations of the parties;
- provide services linked to existing contracts, and these services require authorization per se; or
- enter into new contracts altogether.

Any other activity relating to the servicing of existing contracts will not require a new license.

However, whilst it seems clear that no new regulated services may be provided in Spain following a no-deal Brexit, what is less clear is the distinction between activities linked to the servicing of the existing contracts which require authorisation, and any other service that does not. This is generating some uncertainty in the regime at the moment, and is something the Spanish legislator will eventually clarify.

Nine-month temporary validity of the existing licenses

Article 19.3 of the RDL provides that notwithstanding the need to obtain a new licence in the events set out above, the existing licence of the UK entities will remain in force in relation to the activities linked to the servicing of existing contracts which require authorisation for a period of nine months (which can be extended by the Government) following Brexit Day in order to:

(a) enable an orderly termination of existing contracts or an assignment thereof to a duly authorised Spanish branch; and

(b) 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 licence 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 RDL.

This means that UK entities in Spain will in fact have up to nine months following Brexit Day to request new authorisation and up to nine additional months of temporary validity of the existing licence, pending a decision on the new authorisation application, starting from either of the dates listed in point b) above.

However, this is no excuse for UK entities based in Spain to wait and see what happens as the authorisation process with respect to a third-country entity could be time-consuming.

In this regard, for each activity there are different options available for third-country authorisations: for example, banks could set up a third country branch, apply for a cross-border licence or set-up a subsidiary, while 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, it has to be considered that UK entities in Spain will not be allowed to enter into new contracts thereafter, until (and if) a new third-country authorisation is granted to them.

Moreover, the temporary validity of the existing licence will lapse if the application for a new licence is rejected.

Continued application of pre-Brexit regime

Article 19.4 of the RDL provides that during the nine-month temporary validity of the existing licenses, UK entities in Spain 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 licence, which will, following a notice to the interested entity, open up the possibility of imposing sanctions on the that entity for breach of licensing requirements.

NEXT STEPS

Article 19.5 of the 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 is key that a firms next steps should also be to follow up on how the Bank of Spain, the Stock Market Commission and the Directorate General of Insurance and Pension Funds interpret Article 19 of the RDL.

POLAND PREPARES FOR NO DEAL BREXIT

Although the Polish Financial Supervision Authority ("**KNF**") announced on 29 January 2019 that there would be no transition period for UK entities in case of a no-deal Brexit, this decision has been recently reversed.

Similar to the measures implemented in Spain and in other EU countries, the Polish Government passed a law on 15 March 2019 entitled "Law on the rules on doing business by some of the financial market entities with respect to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without concluding an agreement referred to in the Article 50 section 2 of the Treaty on European Union" ("**Polish Brexit Bill"**).

The Polish Brexit Bill provides limited relief measures for UK entities conducting cross-border banking, payment and other financial services in case of a no-deal Brexit.

Regime for UK banks

While the bill does not deal with all types of banking services, it allows UK-incorporated banks to be treated as EU credit institutions and to continue to hold and perform their portfolio of credit agreements concluded pre-Brexit on the basis of an EU cross-border passport or via Polish branches for a maximum period of 24 months from the date of a no deal Brexit, unless their activity is legalised by establishing a Polish subsidiary bank or a branch of a non-EEA bank pursuant to Polish law.

However, as we have seen with similar legislation in other EU countries, the big limitation is that in the interim period UK banks will not be permitted to conclude new credit agreements or to make amendments to existing credit agreements, meaning an increased level of risk for such entities (including, in particular, risks relating to the inability to extend repayment dates or increase the amount of funds made available to customers).

Regime for electronic money institutions

Similarly, UK payment and electronic money institutions which were authorised to conduct payment services or issue electronic money in Poland on a cross-border basis, or through their branches, will be permitted to continue to conduct their activity within the scope of their pre-Brexit licence to the extent necessary to carry out payment transactions, framework agreements or agreements for the issuance of electronic money concluded pre-Brexit, but not for longer than 12 months from the date of a no deal Brexit.

The KNF will be authorised to exercise supervision measurers in relation to such cross-border activity on the same basis as it would be with respect to EU credit institutions or EU payment and electronic money institutions.

NEXT STEPS

The next steps for UK entities operating in Poland and conducting regulated financial services there, that wish to continue to do so following a no deal Brexit, is to notify the KNF of such intention within one month of the date of a no deal Brexit.

For more information, and any guidance or advice on the impact on Brexit on your commercial contracts, Cleveland & Co, your External in-house counsel, are here to help.

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WHY WE'RE DIFFERENT

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