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Hard brexit contingency. Legislative measures in Spain for insurance.

On 1 March 2019, Spain approved Royal Decree-Law 5/2019, which adopts contingency measures for the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without reaching the agreement provided for in Article 50 of the Treaty on European Union.

This royal decree-law incorporates a series of temporary measures aimed at counteracting, as far as possible, the undesirable effects derived from a 'hard Brexit', in those essential areas of state competence to favour a proper transition to the new situation derived from the consideration of the United Kingdom as a 'third country', and with the objective of conferring legal certainty and preserving the interests of citizens and economic operators under the protection of the right to free movement of services.

Chapter IV deals with the regime relating to ***Economic activities*** in four separate sections.

Article 19, in the ***first section*** of **Chapter V** of the regulation, deals with **the impact of Brexit** on **financial services, establishing a series of contingency measures to ensure the continuity of financial services contracts provided in Spain by financial institutions established in the United Kingdom or in Gibraltar.** With the aim of protecting Spanish customers, a legal mechanism is established for British entities to meet their obligations, thereby reinforcing legal certainty regarding the validity of contracts.

This article is intended for financial institutions in the United Kingdom and Gibraltar currently operating in Spain and contains the following provisions:

- As a general rule, **contracts for the provision of financial services in Spain rendered by entities established in the United Kingdom prior to the date on which the United Kingdom withdraws from the Union** shall remain in force after such withdrawal, retaining their effects. The sole purpose of this provision is to establish a fact already stated by the European Commission.

- **After the United Kingdom withdraws from the EU,** these entities will have to adapt to third country regimes. At this point, the rule distinguishes between 'contracts subject to authorisation' and 'contracts not subject to authorisation', enabling a temporary regime, which will only apply to contracts subject to authorisation.

  Thus, financial institutions established in the United Kingdom which, once the withdrawal is confirmed, lose their European passport, will fall under the regime applicable to third countries and will have to obtain a new authorisation from the competent United Kingdom authority in order to be able to carry out the following activities in Spain in relation to the management of these contracts:

  - Renewal and introduction of modifications involving the provision of new services in Spain.
  - Renewal and introduction of modifications affecting essential obligations of the parties.
  - Carrying out of activities derived from the management of contracts in any of the aforementioned cases.
  - Conclusion of new contracts.

This authorisation will be a ***provisional authorisation,*** **for a period of nine months from the date of withdrawal of the United Kingdom**. This temporary regime will be applicable in the event that authorisation is required to enable the relocation or orderly termination of contracts. **Activities linked to the management of contracts that do not require authorisation** may continue to be carried out without the need for the temporary regime described above. Competent Spanish authorities will supervise this activity and may take all necessary measures to ensure legal certainty and safeguard the interests of users of financial services.

In order to benefit from the temporary regime, British or Gibraltar entities should contact the competent Spanish authority, Dirección General de Seguros y Fondos de Pensiones (DGSFP), for insurance and reinsurance companies, pension funds and insurance distributors.

The transitional period shall end, irrespective of the date of application, nine months after the date of effective withdrawal of the United Kingdom.

Can new financial services be contracted with British entities? The loss of the EU passport implies that UK financial institutions, in order to continue their activity in the EU market, will have to apply for authorisation, either for setting up a Spanish subsidiary or for operating as a branch from a third country. The rules for the provision of services by a third country entity substantially differ from the regime for EU companies.