



Questions and answers on Brexit

1 What is the scope of Article 13 of the RDL? What types of entities does it affect?

CNMV's reply

Article 13 of the RDL refers to contracts for the provision of banking, securities, insurance or other financial services, pursuant to which an entity provides services in Spain while domiciled in the United Kingdom and authorised or registered by the competent authority of the United Kingdom, and which were concluded prior to 1 January 2021.

Consequently, in view of the CNMV's competences in the area of authorisation of new entities, the following will be understood to fall within the scope of Article 13 of the RDL: Investment Firms, CISMVs and closed-ended CISMVs of the United Kingdom (hereinafter, the Entities) providing investment services in Spain either under the freedom to provide services regime or by means of an establishment (understood as such, branches and tied agents domiciled in Spain).

2 How does Brexit affect the marketing in Spain of UCITS domiciled in the UK and AIFs domiciled in or with management companies in the UK from 31 December?

CNMV's reply

UCITS or AIFs which have not regularised their situation as at 31 December 2020 will be subject to ex officio de-registration by the CNMV.

3 What is meant by authorisation or registration initially granted by the competent British authority?

CNMV's reply

Article 13(3) of the RDL provides that the authorisation or registration initially granted by the competent British authority to the entities referred to in question 1 will remain valid provisionally, until 30 June 2021, in order to carry out the necessary activities for an orderly termination or transfer of the contracts concluded prior to 1 January 2021 to firms duly authorised to provide financial services in Spain, under the contractual terms and conditions envisaged.

Article 13 of the RDL will be understood to refer to the entities stated in question 1 authorised by the competent UK authority which are using the so-called "European passport" to provide the services in Spain, i.e. for which said authority has, prior to the effective withdrawal of the UK, sent to the CNMV the notification laid down in Article 341 (freedom to provide investment services and activities) or Article 352 (establishment of a branch or use of a tied agent) of Directive 2014/65/EU; in Article 17 (establishment of a branch) or Article 18 (freedom to provide services) of Directive 2009/65/EU; or in Article 33 (management under the freedom to provide services or through the establishment of a branch) of Directive 2011/61/EU.

4 What regimes would allow entities to continue operating in Spain?

CNMV's reply

Entities may continue to operate in Spain, subject to prior authorisation, either indirectly, by setting up a subsidiary investment firm, in accordance with the provisions of Chapter II of Title V of the Recast Text of the Spanish Securities Market Act (hereinafter, SMA) relating to investment firms, or under the regime of third States, regulated in Section 2 of Chapter III of Title V of the SMA (Articles 171 and 173) and in Section 2 of Chapter V of Title I of Spanish Royal Decree 217/2008 of 15 February (Articles 28 ter and 29 bis, ter and quater).

In the case of third States, entities must request the relevant authorisation depending on whether the provision of investment services in Spain is carried out through the establishment of a branch or under the freedom to provide services regime. Another option is to be authorised in any of the ways provided for in European legislation by the authorities of another EU Member State and to notify this circumstance to the Spanish authorities in accordance with the European passporting system.

It is important to highlight that the third-State regime requires, in any event, the establishment of a branch where a company from a third State intends to provide investment and ancillary services in Spain to retail and professional clients under Article 206 of the SMA. The CNMV may also require, on the basis of the volume of activity, the complexity of the products or services or for reasons of general interest, a third-country entity to establish a branch even if it intends to trade only with eligible counterparties and professional clients per se (as provided in Article 205 of the SMA). The CNMV considers that the normal scenario will be the requirement to establish a branch.

5 What will be the limitations on the collective portfolio management activity (CISs and venture capital firms) of Entities in Spain?

CNMV's reply

Entities that intend to carry on collective portfolio management activities or provide any other investment service permitted by prevailing legislation will be subject to the regime established for third-State entities.

However, in order to facilitate their adaptation to the new regulatory framework, they will also be subject to the transitional regime. This transitional regime, however, will not cover the conclusion of new contracts, the renewal of contracts entered into prior to 1 January 2021 or the incorporation of amendments into contracts executed before 1 January 2021, which entail the provision of new services in Spain or that affect the essential obligations of the parties, or in those cases where the activities linked to the management of the contracts require authorisation.

6 What systems are in place in Spain for collective portfolio management companies?

CNMV's reply

In the event that it is decided to request authorisation to carry on the activity of management companies in Spain, the Entities may do so in three ways:

- By setting up a management company. In the event that the management company carries on the activities of a CISMIC, this will be done in accordance with the provisions of Title IV, Chapter II of Spanish Law 35/2003, of 4 November, on Collective Investment Schemes. However, in the case of activities reserved for closed-ended CISMICs, this will be in accordance with Title II, Chapter I of Spanish Law 22/2014, of 12 November, regulating venture capital firms, other closed-ended collective investment schemes and closed-ended collective investment scheme management companies, amending Spanish Law 35/2003, of 4 November, on Collective Investment Schemes.
- Providing free provision of services with or without a branch. To do so, entities must apply for the authorisation provided for in Article 56(1) of Spanish Law 35/2003, of 4 November, on Collective Investment Schemes, implemented by Article 125 of Spanish Royal Decree 1082/2012, of 13 July, approving the Regulation implementing Spanish Law 35/2003, of 4 November, on Collective Investment Schemes.
- Another option is to be authorised in any of the ways provided for in European legislation by the authorities of another EU Member State and to notify this circumstance to the Spanish authorities in accordance with the European passporting system.

7 What Guarantee Fund covers transactions carried out during the six-month transitional period established in the RDL?

CNMV's reply

In order to benefit from the provisions contained in the RDL regarding the transitional period, it is an essential requirement that clients be covered by an investment guarantee fund. If this coverage is not provided by British institutions, the entity providing the services must adhere to the Spanish FOGAIN (investment guarantee fund). Otherwise, the CNMV will require the immediate closure of positions and termination.

8 Access to UK and EU trading venues

CNMV's reply

The Spanish legal framework does not establish any requirement that Spanish entities must meet in order to be members of third-country markets.

With regard to the reverse situation (access to Spanish trading venues by remote third-

country members), Spanish legislation does not provide for requirements other than those established for members domiciled in the EU. The CNMV supervises compliance with the membership requirements set out in Article 69 of the SMA and in relevant market regulations.

UK firms will not be required to request a new authorisation to execute client orders or to deal on their own account to continue being participants of the Spanish securities markets, as this circumstance was already included in the authorisation initially submitted.

9 Direct Electronic Access (DEA)

CNMV's reply

Following the transitional period, the question arises as to whether British investors will be able to avail of DEA access provided by members of Spanish markets.

The CNMV considers that it will not be necessary for UK-domiciled DEA users to be an IF authorised by a member country in accordance with MiFID II in order to continue to use the services of the Spanish markets via DEA access.

With regard to the DEA access provider, under MiFID II it must have the status of IF.

10 OTC Trading

CNMV's reply

During the transitional period, entities may continue to execute with Spanish entities OTC transactions with securities that do not meet listing requirements.

With regard to OTC trading of derivatives, entities may continue executing OTC derivative transactions with counterparties with whom they had outstanding transactions or pre-existing contracts during the transitional period, in the event that the new transactions are the direct result of, they do not entail essential amendments to, or are not expressly provided for in the pre-existing contracts, as they are not considered to be new contracts.

In any event, during the transitional period and after the end thereof, any transactions carried out at the sole initiative of the European (Spanish) party will not require the counterparty located in the UK to have a licence in the EU. Hence, of course, it includes the case of two regulated firms wishing to engage in interbroker-dealers activities if the Spanish firm is the one that requests the execution of a transaction with the UK broker-dealer.

11 Are you a unitholder or shareholder in a UK investment vehicle?

CNMV's reply

If you are a unitholder or a shareholder of an investment vehicle marketed in Spain and domiciled in the United Kingdom, whether it is a collective investment scheme (UCITS) or an alternative investment fund (AIF), please note that on 31 December 2020, the CNMV de-registered all these investment vehicles on the occasion of the agreements reached due to Brexit, if these had not previously regularised their situation.

You may [consult the list of UCITS and AIFs](#) which are still registered with the CNMV's official register.

If you are affected by this decision, we recommend that you contact your firm to ascertain the scope of the measure and the impact on your investment.

12 Are you a client of an investment firm domiciled in the United Kingdom?

CNMV's reply

If you are a client of a firm domiciled in the United Kingdom that has been providing investment services in Spain, whether with a physical presence in Spanish territory (branch) or under the freedom to provide services regime from the home State, please note that due to Brexit, all these investment firms were de-registered from the CNMV's registers on 31 December 2020.

However, contracts concluded prior to this date will remain in force after said withdrawal and, consequently, the obligations of each of the parties contained therein will remain in effect.

Furthermore, until 30 June 2021, these firms may provisionally carry out the necessary activities for an orderly termination or transfer, under the contractual terms and conditions envisaged, of the contracts concluded prior to 1 January 2021 to firms duly authorised to provide financial services in Spain.

During this transitional period, it is an essential requirement that clients be covered by an investment guarantee fund. If this coverage is not provided by British institutions, the firm providing the services must adhere to the Spanish FOGAIN (investment guarantee fund). Otherwise, the CNMV will require the immediate closure of positions and termination.

From 1 January 2021, these firms will have to apply for a new authorisation to enter into new contracts, renew contracts concluded prior to 1 January 2021 or to incorporate amendments into them that involve the provision of new services in Spain or that affect the essential obligations of the parties, or in those cases where the activities

linked to the management of said contracts now require an authorisation.

Since the measures adopted could affect you as a client, we suggest that you ask the firm with which you have contracted the investment service about the consequences and the steps to be followed.