

**BANKING AND FINANCE AND CAPITAL MARKETS**

Brexit: Portugal – Temporary Permission Regime

Decree-Law 106/2020 of 23 December (the “**TPR Law**”), which was published on 23 December, sets out a Temporary Permissions Regime (the “**Portuguese TPR**”) for UK entities that provide financial services in Portugal under the freedom to provide services or freedom of establishment as provided for in the applicable EU legislation (the “**EU Passport**”). It allows that certain operations to continue to be performed after the end of the transition period provided in the EU-UK Withdrawal Agreement (the “**Brexit Effective Date**”).

The Portuguese TPR will start to apply from 1 January 2021 if, on that date, no agreement is reached between the EU and the UK, or no equivalence decision is adopted that regulates the matters covered by the Portuguese TPR. The Portuguese TPR will cease to apply from 31 December 2021 (subject to certain exceptions).

Below is a summary of the main highlights of the Portuguese TPR.

Banking, payment and e-money services

The Portuguese TPR provides that, after the end of the transition period provided in the EU-UK Withdrawal Agreement, credit institutions, payment service providers and e-money institutions, with their registered office in the UK and which act in Portugal under an EU Passport, can only execute contracts or carry out new transactions in Portugal with respect to deposit-taking, lending and payment or e-money services, if they are authorised to do so by the Bank of Portugal.

However, the Portuguese TPR provides that, after the Brexit Effective Date, these entities may do what is necessary to perform and comply with contracts relating to the above services and operations that are executed up to the Brexit Effective Date. This includes services ancillary or instrumental to the main existing contracts executed with a client resident in Portugal and which do not constitute new transactions or contracts.

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UK entities that intend to benefit from the Portuguese TPR concerning operations for which authorisation by the Bank of Portugal is required must submit a notification in the form set out in Annex V of the TPR Law to the Bank of Portugal within **3 months** after the Brexit Effective Date and will be subject to Portuguese law regarding those services and operations in Portugal.

Investment services

The Portuguese TPR provides that UK credit institutions and investment firms authorised to provide investment services and ancillary services under an EU passport into Portugal, may continue to provide such services after the Brexit Effective Date, subject to the following:

- Up to **3 months** after the Brexit Effective Date, a notification pursuant to Annex I of the TPR Law must be submitted to the Portuguese Securities Market Commission (the “CMVM”), stating, inter alia, whether such entities intend to: (i) terminate ongoing agreements; or (ii) request authorisation to continue to operate in Portugal.
- If the UK entity intends to request authorisation to continue to operate in Portugal, it must submit an authorisation request to the appropriate Portuguese authority within 6 months of the Brexit Effective Date.

UK entities that do not submit a notification or an authorisation request as set out above may only continue to perform and comply with transactions which are necessary to terminate ongoing agreements and must end their operations in Portugal by 31 December 2021.

UK entities will be subject to Portuguese law in respect of their operations in Portugal and must communicate to the CMVM any termination or cancellation of their UK licence.

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Collective investment undertakings: UCITS and AIF

Managing companies and AIFMs authorised in the UK to provide services on collective investment undertakings operating in Portugal under the EU Passport may continue to provide these services after 31 December 2020, provided that:

- Up to **3 months** after the Brexit Effective Date, they notify the CMVM of their intention to: (i) terminate ongoing agreements; or (ii) request authorisation to continue to operate in Portugal.
- An authorisation request is submitted to the CMVM within **6 months** of the Brexit Effective Date.

UK entities that do not submit a notification or an authorisation request as set out above may only continue to perform and comply with transactions which are necessary to terminate ongoing agreements and must end their operations in Portugal by 31 December 2021.

If collective investment undertakings based in the UK are being marketed in Portugal on the Brexit Effective Date, it will be possible to continue to market them in Portugal after that date, provided the managing entity files a notification with the CMVM in accordance with Annex III of the TPR Law.

Noteholders' common representatives

An entity authorised to provide services of investor representation in the UK is authorised to continue to act as the noteholders' common representative in Portugal up to the maturity of the issue or of the issue programme, provided that:

- The issue or issue programme has a determined maturity on the date of entry into force of the TPR Law; and
- The appointment took place prior to the end of the Brexit Effective Date.

The above permission ceases to apply in the event of an extension of the maturity of the issue or issue programme.

Insurance agreements

Insurance agreements entered into by insurance companies based in the UK, under an authorisation to perform insurance operations in Portugal, prior to the Brexit Effective Date, that cover risks located in Portugal or in relation to which Portugal is the Member State of the commitment, will remain in force until the termination date provided in the relevant agreement.

These insurance agreements may not be extended and can only be amended to benefit the insurance policyholder or when the amendment results from the application of mandatory legal provisions.

Information on the agreements covered by the Portuguese TPR as described above must be provided to the Portuguese Insurance Supervisory Authority (**ASF**) within **2 months** of the end of the transition period provided in the EU-UK Withdrawal Agreement and this notification must be renewed by 31 March of each year. The ASF may require any information it deems necessary regarding these insurance agreements. ■