

# Flash

## Banking and Finance

### Brexit Contingency Measures – Update

Following our flash dated of 30 September 2019 on the contingency measures on the financial sector in the case of Brexit (available in this [link](#)), the Decree-Law nr. 147/2019 of 30 September (the **Contingency Act**) was further complemented with a FAQ document made available on 30 January 2020 by the Portuguese securities regulator (the **CMVM**) in its official website (available in this [link](#)), and the Regulation 1/2020 enacted by the Portuguese banking regulator (**Bank of Portugal**) (available in this [link](#)).

We analyse below the Contingency Act, as further complemented by the documentation enacted by the regulators.

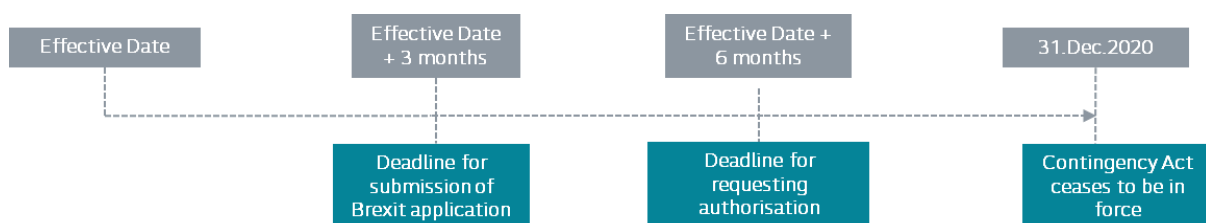
Further to the withdrawal of the United Kingdom from the European Union that occurred on 31 January (11.00 p.m. GMT), the Contingency Act will only enter into force to the extent that an agreement is not reached between the EU and the UK during the implementation period commonly referred as the *transition*” (such date, if occurring, the “**Effective Date**”).

#### A. Investment Services

The Contingency Act is limited to the investment service providers (credit institutions, investment firms) and entities managing collective undertaking schemes operating in Portugal under the EU’s freedom to provide services (“FPS”) rules until Effective Date.

Those entities must submit to CMVM a post Brexit application according to the model set out in a schedule of the Contingency Act, essentially informing the regulator on whether following Effective Date they wish to cease to operate in Portugal, or to obtain the required license in order to continue to operate in Portugal.

The Brexit application must be submitted within 3 months as from Effective Date, and to the extent that the institution wishes to obtain the license, the relevant application shall be submitted within 6 months as from Brexit.





The Contingency Act sets out the following alternatives for purposes of the said application:

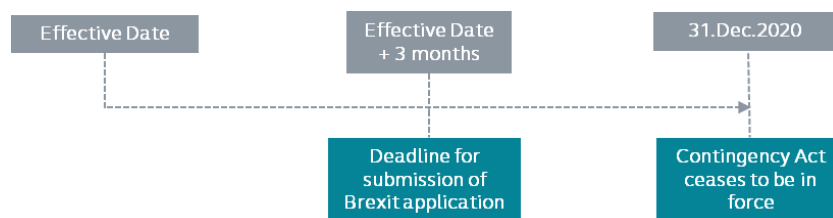
- Creation of a branch in Portugal by the UK incorporated financial institution;
- Freedom to provide services through an institution incorporated in another EU member state;
- Creation of a branch in Portugal by a financial institution incorporated in another EU member state.

Should the investment services provider decide to apply for the license to continue to operate in Portugal, according to the Contingency Act as complemented by the CMVM guidelines it will benefit of the Contingency Act until 31 December 2020.

Until the submission of a request for authorisation to continue to provide investment services, the investment service provider will only be entitled to carry out actions required to terminate such existing agreements with retail clients (hence this limitation does not apply to contracts with professional clients).

## B. Banking Services

UK Credit and payment institutions must send a notification to Bank of Portugal until 3 months following the Effective Date, declaring their future intention of (i) continuing to render services after the Contingency Act ceasing to be in force, or (ii) closing their operation in Portugal.



The credit or payment institution shall describe the type and number of agreements in force with clients until Effective Date, and in case option (ii) is elected, it must choose one of the following alternatives for purposes of the said application:

- Creation of a branch in Portugal by the UK incorporated financial institution;
- Freedom to provide services through an institution incorporated in another EU member state;
- Creation of a branch in Portugal by an institution incorporated in another EU member state.

The model notification is available in Bank of Portugal Regulation 1/2020.

Provided that the institutions send the notification within the applicable deadline and regardless of the alternative chosen, their existing contracts entered in connection with the deposit taking, lending, payment services, e-money and ancillary services thereto under the right of establishment and or the freedom to provide services shall continue in force until 31 December 2020.

However credit and payment institutions (even if they choose option (ii) are not permitted under the Contingency Act to enter into new agreements as from Effective Date until they obtain the authorisation as a 3<sup>rd</sup> country service provider, except for services having an “*ancillary or instrumental nature in relation to a pre-existing main agreement*”, and which do not constitute a new operation or new agreement.

There is no deadline to apply for a full licence in order to continue to benefit from the TPR until 31 December 2020, but in case the Effective Date is expected to occur as a result of no agreement being reached between UK and EU, the UK credit and payment institutions may wish to submit a full licence application as soon as possible in order to ensure that the licence is obtained in good time before 31 December 2020.