
Banking, Finance and Capital Markets

Legal Flash | Portugal

October 4, 2019



Contents

- > **Decree-Law 147/2019, of September 30**
- > **Contingency measures in case of a no-deal Brexit**



I. Decree-Law 147/2019, of September 30

Decree Law 147/2019, of September 30 (“**Decree Law 147/2019**”), was published this week. It establishes the contingency measures that will apply should the United Kingdom (“**UK**”) leave the European Union (“**EU**”) without a deal to regulate financial services and social security.

The transitory contingency measures approved aim to avoid the interruption of the activities of credit institutions, investment companies and management companies of collective investment undertakings (*organismos de investimento coletivo*) (“**OICs**”) that have head offices in the UK and that operate in Portugal under the freedom of services (“**FoS**”) regime, which only applies to entities with head offices in the EU. This is done by authorizing their activities temporarily, but only under certain circumstances.

Pertaining to social security matters, Decree Law 147/2019 also provide some support to the measures established in Law 27-A/2019, of March 28, on recognizing the social security rights of the persons who complete insurance periods¹ in the UK before it leaves the EU.

Although it enters into force on October 5, chapters II and III of Decree Law 147/2019 will only become effective if and when there is a no-deal Brexit that involves the matters regulated under the decree law, and it will only be in force until December 31, 2020.

II. Contingency measures in case of a no-deal Brexit

Pertaining to financial services, the contingency measures approved by Decree Law 147/2019 are divided into three activity areas:

➤ **Investment services and activities**

To ensure the contractual relationships between investors and these entities are not disrupted, and to transition from the FoS regime to the regime applicable to entities located in third countries, Decree Law 147/2019 authorizes them to carry out their services in Portugal, without requiring a permanent establishment, until December 31, 2020.

However, and in general terms, the entities will only be able to carry out services under the transitional contingency regime if they meet the following requirements:

¹ To acquire the right to social security coverage under Regulation (EC) No 883/2004 of the European Parliament and of the Council of April 29, 2004, on the coordination of social security systems



- (i) Before the date of a no-deal Brexit (“**Exit Date**”), credit institutions, investment companies and management companies of OICs must be registered in the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*) (“**CMVM**”) as entities authorized to carry out their services or activities in Portugal;
- (ii) Within three months from the Exit Date, the abovementioned entities must deliver to the CMVM the information required under Decree Law 147/2019², further indicating the purpose of the transitional period³, particularly to continue carrying out their services in Portugal; and
- (iii) If the entities intend to continue carrying out their activities in Portugal, they must start the authorization procedure as entities from third countries by submitting the corresponding authorization application to the relevant authority within six months from the Exit Date.

Until the entities submit the authorization request, they are only allowed to carry out operations related to terminating ongoing agreements.

Commercialization of OICs located in the UK is allowed under the conditions established in sections (i) and (ii) above, *mutatis mutandis*.

> **Banking activity**

Under Decree Law 147/2019, if credit, payment and electronic money institutions enter into agreements, before the Exit Date and under the FoS regime, on receiving deposits and other repayable funds, credit operations, payment services and issuing electronic money subject to the supervision of the Bank of Portugal (*Banco de Portugal*) (“**BoP**”), these agreements will remain in force.⁴ However, to benefit from this measure, the entities must communicate their intention to the BoP within three months after the Exit Date.

The aforementioned entities may enter into new agreements and operations, provided they relate to (i) preexisting agreements the entities entered into with clients based in Portugal before the Exit Date, and (ii) providing services ancillary to the ones under the main agreement.

At the end of the validity period of Decree Law 147/2019, and subject to the BoP’s authorization, the legal regime applicable to third-country entities will apply to entities with head offices in the UK that have benefited from the transitional regime and intend to carry out activities in Portugal.

² The information to be delivered to CMVM is set out in the forms annexed to Decree Law 147/2019.

³ Rather than requesting to maintain its activity in Portugal, the entity may also decide to cease it. To do this, it must communicate to the CMVM its intention to terminate the ongoing agreements and the associated investments.

⁴ The validity of the preexisting main agreements includes ancillary services that do not involve new agreements or operations.



> Insurance activity

Decree Law 147/2019's establishes little regulation on insurance, merely clarifying that insurance agreements that meet the following requirements remain in force, although not subject to renewal:

- (i) They must either cover risks in Portugal or have Portugal as the Member State of the commitment;
- (ii) The insurer's head office must be in the UK; and
- (iii) The agreement must have been entered into under the authorization for the insurance activity in Portugal before the Exit Date.

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