

CNMV PUBLIC STATEMENT ON THE PROVISION OF INVESTMENT SERVICES IN SPAIN BY THIRD-STATE FIRMS WITHOUT THE ESTABLISHMENT OF A BRANCH

23 July 2021

Following the withdrawal of the United Kingdom from the European Union, several credit institutions and investment firms based in said country have expressed their interest in providing services in Spain, without the establishment of a branch, to eligible counterparties or professional clients. Article 171 of the Recast Text of the Spanish Securities Market Act (TRLMV) provides for such possibility, but it empowers the CNMV to require the existence of a branch for reasons of general interest, on the basis of the volume of activity or the complexity of the products and services¹.

Therefore, in its Activity Plan for 2021, the CNMV included the development and dissemination of criteria for the authorisation of third-country firms for the provision of investment services to eligible counterparties or professional clients in Spain, without a branch, as one of its objectives.

After analysing current legislation and pursuant to the provisions thereof, the CNMV has established, within its remit, the following cases where the establishment of a branch shall not be required:

1. If there is reciprocity in the home State, such that a Spanish credit institution or investment firm can provide investment services in such State, under terms and conditions similar to those laid down in Spanish legislation, without a permanent establishment, providing that the conditions set out in subparagraphs 2 or 3 below are also met.
2. Third-state firms may carry on investment activities and provide investment services, with or without ancillary services, without the establishment of a branch, to clients domiciled in Spain, providing that such clients:

¹ Article 171(2) TRLMV: “(...) *in view of the volume of the activity, complexity of the products or services, or reasons of general interest, the CNMV may require the third-country firm that provides or intends to provide investment services or carry on investment activities in Spain, with or without ancillary services to professional clients or to the eligible counterparties referred to in Articles 205 and 207, respectively, to establish a branch in Spain. In such case, the firm must request the relevant authorisation from the CNMV, if it is an investment firm, or from the Bank of Spain, if it is a credit institution, (...)*”

- i) have the status of eligible counterparty as defined in Article 207 TRLMV;
or
- ii) have the status of professionals per se as defined in Article 205(2) TRLMV, and the following thresholds are not exceeded.
 - a. they provide services to fewer than 20 professional clients per se; or
 - b. income from the provision of these services is under €2 million;

In the event of exceeding any of the limits above in any financial year, the IF must report such fact to the CNMV as soon as possible, and in any event, within the first three months of the following year. It must also request the relevant authorisation for the establishment of a branch in Spain, if it wishes to continue providing investment services in Spain.

- 3. Other cases where, exceptionally and in view of the specific circumstances and subject to an appropriate justification by the promoters, the CNMV considers it appropriate to grant the authorisation to provide investment services to clients without the establishment of a branch. The CNMV shall publish the criteria in those cases where the provisions contained in this subparagraph apply.

In any event, third-state investment firms operating without a branch in Spain must obtain prior authorisation from the CNMV, for which purpose they must justify compliance with the requirements under Articles 29 bis, 29 ter and 29 quater of Spanish RD 217/2008, and they shall be subject to the supervision of the CNMV.

Furthermore, third-state credit institutions authorised to operate in Spain under Article 173(3) of the Recast Text of the Spanish Securities Market Act, shall comply with the obligations set out in Article 29 quater (2) of Spanish RD 217/2008, and shall also be subject to the CNMV's supervisory, inspection and sanctioning regime, under the terms and conditions laid down in Article 233(1)(c)(2) of such RD. This is without prejudice to the supervisory, inspection and sanctioning powers which, in accordance with the provisions of Article 193(4) TRLMV, correspond to the Bank of Spain, with regard to the internal organisational requirements set out in Article 193(3).