

LEGAL ALERT

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On the verge of Brexit – International banks conducting banking activity in Poland

As of 1 April 2017 China Construction Bank (Europe) S.A. with its registered seat in Luxembourg has commenced its operations in Poland through a branch. This is the third branch office of a Chinese-owned bank which provides banking services in Poland. Each of these branches has been set up by a European subsidiary of a Chinese bank, based on the European Union's freedom of establishment and single European passport principles.

In total, as at the date of this article, 28 entities perform banking operations in Poland through their branch offices, which are organisational units of EEA banks and operate under the relevant authorisations granted to those banks.

At the same time, for the last few years no bank from outside the EEA has established its direct branch in Poland.

What rules apply for conducting banking activity in Poland?

EEA banks may operate in Poland either through a branch office or within the framework of their cross-border activity. Non-EEA banks may pursue banking activity in Poland only through a branch office, which is defined under Polish law as "a branch of a foreign bank".

International banks may also set up their representative offices in Poland. However, the activities of representative offices in Poland must be limited to advertising and promotion.

Polish law provides different rules for establishment of a Polish branch of an EEA bank and for setting up of a branch of a foreign bank (i.e. a bank seated in a non-EEA member state).

Branch office of a foreign bank

When a "foreign bank" wishes to open a branch in Poland it has to apply for and receive authorisation from the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*, hereafter the "PFSA"). The PFSA should issue the decision concerning authorization to establish a branch of the foreign bank within no more than three months from the receipt of the application or its completion. In justified cases the PFSA may extend this deadline up to six months.

In the authorisation, the PFSA specifies, in particular, the registered office of the branch, the financial services for which authorisation is granted, and the minimum amount of funds required for the activity of the branch. Draft by-laws of the branch must also be approved by the PFSA.

A branch of a foreign bank is obliged to:

- use the name of the foreign bank in the language of the country where its registered office is located together with a denomination of the bank's legal form translated into the Polish language and the words "oddział w Polsce" (branch in Poland) added,
- keep separate accounts in the Polish language, in accordance with the regulations applicable for domestic banks,
- operate in accordance with the approved internal regulations, and
- keep all documents relating to its operations at the registered office of the branch.

A branch of a foreign bank operates in Poland under the supervision of the PFSA.

As a rule, Polish branches of foreign banks are subject to Polish law provisions. Following on from that, legal commentators and academics say that generally, the branches are generally subject to the same requirements as domestic banks as set out by the provisions of Polish law. This relates, in particular, to notional capital and liquidity requirements (in relation to the operation of a Polish branch), provisions regulating the outsourcing of banking activities or banking secrecy regulations.

Branch office of an EEA bank

As opposed to a “foreign bank”, an EEA bank may commence its business in Poland through a branch office, based on the European Union’s freedom of establishment and single European passport principles (i.e. without any additional license) no earlier than two months after the PFSA has received certain information from the relevant supervisory authority in the home Member State.

Generally, the activity of an EEA bank’s branch in Poland is subject to the supervision of the relevant supervisory authority in its home Member State (with limited powers granted to the PFSA).

Subsidiary

In addition, an international institution may commence its banking operations in Poland by establishment of a domestic (Polish) bank, whose shares are owned by such an entity seated abroad. What is also important, conducting a banking activity in Poland through a branch does not preclude simultaneously carrying out banking activities through a subsidiary.

Such a Polish bank would take advantage of a European passport and be able to expand its branches easily in the EEA zone.

A Polish bank may be established in the form of a joint-stock company with the initial share capital of at least EUR 5 million. Further requirements relating to, among other things, composition of the management and supervisory boards, also apply. PFSA authorization is needed for both the establishment of a bank and starting its operating activity.

On the verge of Brexit, when major banks are preparing to shift their operation away from London, a question arises whether any London-based bank will consider setting-up its subsidiary in Poland to serve, if not as a base for its banking activity in the whole EU, at least for its activity in Central and Eastern Europe?

If you have any queries regarding the content of this briefing or any legal query on conducting banking activity in Poland (also in the post-Brexit scenarios), our team of legal experts will be happy to assist you.



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