

On the verge of Brexit – the Polish temporary permission regime for financial market operators in the event of a no-deal Brexit

As in most other EU member states, Poland has taken steps to limit the potential negative effects of a hard Brexit by implementing relevant transitional measures for various financial institutions having their registered seat in the United Kingdom in the event that the UK leaves the EU without a deal.

On 15 March 2019, the Polish Parliament adopted the Act on the rules of conducting business for certain financial market operators from the United Kingdom of Great Britain and Northern Ireland and Gibraltar in connection with their withdrawal from the European Union (the “**Act**”). The Act was signed by the President of Poland on 29 March 2019.

The Act covers the activities of various financial market operators, including: banks, investment firms, payment institutions, and e-money institutions with their seats in the UK, and currently operating on the basis of the European Union’s freedom of establishment and single European passport principles. The Act’s aim is to allow these financial institutions to continue operations in Poland for a limited period (depending on the entity, either 24 or 12 months) while they seek permanent authorisation or recognition from the Polish regulator. However, some financial activities of financial institutions, such as distribution of investment fund units or insurance intermediary services, are not covered by the new law.

The Act is envisioned to come into force on the date of the UK’s withdrawal from the European Union, in the event that such a withdrawal occurs without an agreement being concluded pursuant to Article 50, paragraph 2, second sentence of the Treaty on European Union (the “**Effective Date**”).

Banks with a registered office in the UK

According to the Act, a foreign bank with its registered seat in the UK may continue performing credit agreements concluded before the Effective Date until:

- (a) the termination date of such agreements,
- (b) the transfer of the loan portfolio resulting from these agreements to a domestic bank, a branch of a foreign bank, or a credit institution authorized to carry out activities consisting of granting loans in the territory of the Republic of Poland,
- (c) the date of such bank receiving the required permit to conduct activity on the territory of the Republic of Poland in the form of a branch of a foreign bank, or
- (d) the date on which a domestic bank¹ is established in the form of a joint-stock company in accordance with the applicable provisions of the Polish banking law,

but, in any case, for no longer than **24 months** from the Effective Date.

After the Effective Date, a UK bank may not conclude any new credit agreements, prolong the existing agreements, increase the amount committed under the existing agreements, or amend the existing agreements in a manner which would increase such a bank’s risk

Payment institutions and e-money institutions with a registered office in the UK

The Act allows either a payment institution or an e-money institution with its registered seat in the UK to continue its operations in Poland to the extent that such activities are necessary to

¹ Although it is not clearly stated in the Act, in our view, this provision relates to the situation in which a domestic bank is to take over the credit agreements of such UK bank.

execute single payment transactions, framework agreements, or e-money issuance contracts concluded before the Effective Date, and only until:

- (a) the termination date of such agreements, or
- (b) the date of such entity receiving the required authorisations allowing it to provide payment services or to issue and redeem electronic money (as applicable) within the territory of the Republic of Poland,

but, in any case, for no longer than **12 months** from the Effective Date.

Investments firms with a registered office in the UK

Under the Act, an investment firm with its registered seat in the UK may continue performing contracts with respect to activities constituting brokerage activity which were concluded before the Effective Date, until:

- (a) the termination date of such agreements, or
- (b) the date of obtaining the permit required under Polish law for a non-EU entity to undertake such activity within the territory of the Republic of Poland,

but, in any case, for no longer than **12 months** from the Effective Date.

However, UK investment firms may not conclude any new contracts for the provision of brokerage services or prolong existing contracts during such period.

A UK investment firm which was a member of, or participant in, a regulated market or alternative trading system operating on the territory of Poland, or which had direct electronic access to such trading systems for financial instruments, before the Effective Date may continue its activity in this area up until the date of receiving the relevant permits required under Polish law for non-EU entities to carry on such activities, however, in no case for longer than **12 months** from the Effective Date.

Supervision over the UK based entities

The Act provides that the Polish Financial Supervision Authority will supervise the UK entities operating in Poland under the Act for the duration of the interim period in line with the rules applicable to an entity seated in another EU Member State.

If you have any queries regarding the content of this briefing, or any questions concerning the conduct of business by financial institutions in Poland (including in respect of other implications of a hard Brexit or the implications of other Brexit scenarios), we will be happy to assist you.



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