

Entities from the United Kingdom or Gibraltar will have a right to continue to perform certain financial contracts concluded before Brexit and this includes:

- *loan agreements,*
- *agreements for payment or e-money services,*
- *insurance and reinsurance agreements,*
- *agreements related to investment services and activities.*

The right to continue to perform contracts will be temporary – depending on the services this will be 12 or 24 months from Brexit.

POLAND PREPARES FOR A "NO-DEAL BREXIT"

The Polish Parliament has adopted three Acts in case the United Kingdom leaves the EU without a withdrawal agreement. One of them provides for the rules of conducting activities by certain financial market entities. The Act is to enter into force on the day the UK leaves the EU without an agreement referred to in Article 50(2) of the Treaty on European Union.

Key aspects

The Act permits certain types of financial market institutions from the United Kingdom or Gibraltar, which provided services in Poland through a branch or on a cross-border basis prior to its coming into force, to continue to provide selected services. This will be possible only on the basis of contracts concluded before the Act's coming into force (ongoing contracts) and for not longer than the period of time stipulated in the Act and calculated from the date of its coming into force.

Lending: Banks from the United Kingdom or Gibraltar will be able to continue to perform credit contracts for not longer than 24 months. During this period they will not be able to conclude new credit contracts, extend ongoing contracts, increase the amounts of the funds made available to borrowers under those credit contracts or make changes to the credit contracts increasing the level of the bank's risk exposure.

Payment and electronic money services: Payment institutions and electronic money institutions from the United Kingdom or Gibraltar will be able to continue to provide services for not longer than 12 months.

Insurance: Insurance undertakings established in the United Kingdom or Gibraltar will be able to perform life insurance contracts concluded in Poland on the same terms as entities from EU Member States for not longer than 24 months. The period of time in which the performance of insurance contracts may be continued is shorter in the case of non-life insurance contracts and amounts to 12 months. In this period, insurance undertakings will not be able to conclude new insurance contracts, extend ongoing insurance contracts, provide insurance cover for new risks on the basis of concluded insurance contracts, increase the sum insured under the concluded insurance contracts

or make changes to insurance contracts increasing the level of the risk exposure of the insurance undertaking.

Reinsurance: Insurance undertakings or reinsurance undertakings based in the United Kingdom or Gibraltar will be able to conduct reinsurance activity on the same terms as entities from the EU Member States for not longer than 24 months.

Investment Services and activities: Investment firms from the United Kingdom or Gibraltar will be able to continue performing agreements relating to investment services and activities for not longer than 12 months. In this period, investment firms will not be able to conclude new agreements for the provision of investment services or the performance of investment activities, or to extend ongoing agreements.

Investment firms from the United Kingdom or Gibraltar which before the Act's coming into force were participants of a regulated market or an alternative trading system carried out in the territory of Poland or had a direct electronic access to such systems of trading in financial instruments will be able to continue to carry out activity in this regard for not longer than 12 months.

Systems: Entities from the United Kingdom or Gibraltar which are participants in payment and settlement security systems will be able to conduct activity in Poland to the extent necessary to perform agreements related to participation in the systems for not longer than 12 months.

Provided that the contracts do not expire during that temporary period, service providers from the United Kingdom or Gibraltar will need to obtain during the temporary period a licence to operate through a branch in Poland, or to establish a subsidiary in Poland, or to transfer the portfolio to an entity that does have a licence under which it may provide services in Poland.

The Act also addresses certain issues from the point of view of local entities. Pursuant to the provisions of the Banking Law, banks require the authorisation of the Polish Financial Supervision Authority for the conclusion of an outsourcing contract with a third-country entity or a contract stipulating that the outsourced activities will be performed in a third country. Pursuant to the Act, banks which, on the date of the coming into force of the Act, are parties to outsourcing contracts concluded with entities from the United Kingdom or Gibraltar or contracts which provide for the performance of the outsourced activities in their territory will be able to continue to perform those contracts for not longer than 24 months. The Act also regulates issues related to investment funds' assets invested in securities, money market instruments and derivatives traded on the markets in the United Kingdom or Gibraltar.

Supervision

Entities from the United Kingdom or Gibraltar which continue to conduct activity in Poland on the terms set out in the Act will be subject to supervision by the Polish Financial Supervision Authority as if they were from the EU (with some modifications related to insurance and reinsurance undertakings).

The Act obliges domestic entities supervised by the Polish Financial Supervision Authority and which conduct activity in the United Kingdom or Gibraltar through a branch or on a cross-border basis and which intend to continue conducting that activity to inform the Polish Financial Supervision Authority of this within one month from the date on which the Act enters into force.

Conclusions

The rights of entities from the United Kingdom or Gibraltar resulting from the Act concern contracts concluded prior to the Act's coming into force and are based on the presumption that they will be of a provisional nature. They do not apply to all types of financial services and activities which could hitherto be conducted by entities from the United Kingdom or Gibraltar based on the EU single passport concept. The provisions of the Act are formulated in a rather general manner, which may lead to ambiguity as to their interpretation (e.g. which 'life-cycle' events will be permitted).

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