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Regulatory Blog

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EBA published final Guidelines on the Capital Endowment of Third Country Branches in the EU

Further work on harmonized third country branch (TCB) regulation

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The European Banking Authority (EBA) continues its work on the harmonized third country branch (TCB) regulation in the EU by publishing the final **Guidelines on instruments available for third country branches for unrestricted and immediate use to cover risks or losses**. The Guidelines define the types of instruments that may be used by TCB's to cover the capital endowment requirement as well as providing safeguards to ensure that the capital endowment is maintained at all times. The final Guidelines are based on the EBA's consultation paper on the same subject published in 2025 and the mandate enshrined in Article 48e (4) of CRD6.

Background

Third country banks can make use of branches to provide financial services in the European Union without establishing a licensed and regulated subsidiary. Regulation and supervision of these third country branches is heterogenous within the EU with some countries subjecting them to the same regulation as licensed credit institutions and more lenient approaches in other countries. As part of the EU's banking package, the revised Capital Requirements Directive (CRD6) sets out to harmonize the treatment by providing a comprehensive set of rules for the regulation and supervision of TCBs. Most of these rules are set to enter into force on January 11th, 2027.

The EBA is mandated to provide a number of level-2 and 3-texts (RTS, ITS, Guidelines) specifying the rules in greater detail. In particular, the EBA has published a consultation for an **ITS on TCB reporting requirements** that is set to be finalized in the near future, a final draft RTS on **TCB's Booking Arrangements** as well as Guidelines on TCB's **authorization**. In addition, the **EBA's SREP Guideline** has been adapted to explicitly take into account TCBs. In a previous **blog post**, we already explained a number of these new requirements.

TCB Capital Endowment

CRD6 requires that third country banks must access EU markets either via fully licensed subsidiaries or third country branches to provide core banking services to clients in the European Union (Article 21c CRD6). The regulation and supervision of TCBs is harmonized at the same time (Articles 47 to 48r CRD6). One underlying principle of the regulatory framework for TCBs is to identify the assets and liabilities booked or originated by the third-country branch in any Member State, assuming those assets and liabilities are managed autonomously within the third-country branch. This is evident from the RTS on booking arrangements and consequently also requires TCBs to maintain a capital endowment sufficient to cover the risks of the TCBs' activities, i.e. that shall be available for use in the case of resolution of the TCB and for the purposes of the winding-up of the TCB in accordance with national law (Art. 48e CRD).

The CRD6 specifies the following as instruments eligible for the capital endowment:

1. Cash and cash assimilated instruments
2. Debt securities issued by central governments or central banks of EU member states
3. Any other instrument available for unrestricted and immediate use to cover risks or losses as soon

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as they occur

The EBA's Guidelines specify in more detail the last one of these types of instruments, based on issuer and credit risk SA risk weight (e.g. debt securities guaranteed by EU central governments, debt securities issued or guaranteed by MDBs, regional governments or public sector entities that would receive a 0% risk weight). The GL further require that these instruments must be listed on a recognized exchange and must not be issued by a related entity. In addition, operational requirements are established, providing additional details on the escrow account in which the instruments are to be held, the interplay between the capital endowment and the liquidity requirements established by CRD6 and the governance framework required to ensure compliance with the capital endowment requirement.

Compared to the draft Guidelines published in 2025, the consultation resulted in one minor clarification on the currency in which certain instruments need to be denominated. Apart from that, most of the feedback received by the EBA concerns more general questions on the TCB framework that lie outside of the EBA's mandate.

Impact on TCBs

The impact of the final Guidelines very much depends on the regulatory framework in place for TCBs prior to the entry into force of the CRD6 in the different EU Member States. In particularly TCBs located in more lenient jurisdictions will need to adapt by setting up an escrow account, implementing the operational requirements set by the EBA, and ensure that adequate instruments to cover the capital endowment are available at all times, thus driving up the cost of maintaining the TCB. Hence, the Guidelines become another piece of the puzzle third country banks will need to consider when deliberating their legal entity setup in the European Union. In particular, the size of the capital endowment, which is based on total liabilities rather than risk weighted assets, will need to be compared to the equity required to fund a licensed subsidiary. Third country banks with a presence in multiple EU member states might be better off establishing such a subsidiary rather than relying on a network of TCBs.

If you are interested in the TCB regime established by CRD6 and its impact on EU market access, we are more than happy to exchange views. Please do feel free to reach out to us.

Get ongoing updates on the topic via regulatory horizon scanning in our research application, PwC Plus. Read more in our "**Services and Offerings**" section.

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Schlagwörter

Bankenaufsicht (Europäische und Internationale Organisationen), Capital Requirements Directive (CRD VI), Risk Management Banking, Single Supervisory Mechanism (SSM)

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