

Establishing a Polish branch of an EEA investment firm



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Introduction

So far over a thousand entities have notified their intention to provide services in Poland relying on a "European passport". Lately more and more investment firms have been considering establishing a presence in Poland. This may be achieved in the form of a subsidiary, branch or representative office. Of those, only a subsidiary and a branch, upon fulfilling certain obligations, may provide investment services. In this paper, we briefly describe the process of establishing a branch of an EEA investment firm in Poland.

If you would like to know more about the subjects covered in this publication or our services, please contact:

Grzegorz Namiotkiewicz +48 22 627 11 77

Anna Biała +48 22 627 11 77

To email one of the above, please use
firstname.lastname@cliffordchance.com

Clifford Chance, Norway House, ul. Lwowska
19, 00-660 Warsaw, Poland
www.cliffordchance.com

NOTIFICATION

An EEA investment firm wishing to establish a branch in Poland is required to notify its home state regulator and to provide it with the required information¹. The home state regulator communicates the information to the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego* – the "KNF") and informs the investment firm accordingly.

Within two months of receiving notification from the investment firm's home state regulator, the KNF will advise the investment firm of the conditions for the conduct of activities in Poland. Upon the KNF's specifying the conditions for the conduct of brokerage activities, or if the KNF does not do so within two months of receiving the relevant information from the home state regulator, the investment firm may begin performing brokerage activities through its branch in Poland.

LOCAL STAFF

One of the most surprising things for investment firms considering establishing a branch in Poland is the requirement to employ a securities broker or an investment adviser for the performance of certain brokerage activities. This requirement applies only to investment firms providing brokerage services in Poland through a branch and does not apply to those providing services in Poland on a cross-border basis. It is required that:

- at least one securities broker be employed for each of the following activities to be carried on by the branch: (i) receiving and transmitting orders to buy or sell financial instruments; (ii) carrying out orders for the account of a client; (iii) buying or selling financial instruments for the firm's own account; (iv) offering financial instruments; (v) organising alternative trading systems; or (vi) safekeeping or registering financial instruments, including keeping accounts in which financial instruments are registered and keeping cash accounts;
- two investment advisers be employed if the services to be provided by the branch include portfolio management; and

- one securities broker or one investment adviser be employed if the services to be provided by the branch include investment advice.

COMMERCIAL REGISTRATION

The branch of an investment firm should be recorded in the Business Register of the National Court Register (the "**Register**") maintained by the district court in whose jurisdiction the branch is located. To establish a branch, a written application with a number of attachments must be filed in. The application itself is submitted to the registration court on an official form, as drawn up by the Ministry of Justice. Failure to use the official form or improper completion of the form will result in the application's being rejected.

The entire application procedure, from the filing of the application until the registration of the branch, usually takes up to one month. The biggest delay in registering a branch is usually the time it takes to put in place the legalised documents with sworn translations into Polish that must be attached to the application. In practice, the process of collecting the required documents usually takes a few weeks, but this depends on the investment firm.

Upon the branch's entry in the Register, it is possible to obtain an excerpt from the Register as evidence of registration. If there is a change to any data in the Register, an application to delete the old information and register the new information must to be filed with the Register.

The branch should apply for a statistical number ("**REGON**") and for a tax identification number ("**NIP**"). If the branch is to employ employees, it should also be registered with the Social Security Office ("**ZUS**"). The application for REGON and NIP numbers and registration with the ZUS should be made together with the application for the branch to be registered in the Register. The Register forwards those applications to the appropriate institutions. The time needed for those institutions to deal with the applications (usually a few weeks) should also be taken into consideration by an investment firm planning to establish a branch in Poland.

OPERATIONS OF THE BRANCH

The organisational structure of the branch, employment, security, systems, office space and office infrastructure should be adequate for the operations to be carried out by the branch.

The operations of investment firms conducting business in Poland through a branch, in general, fall under the supervision of the competence of the supervisory

¹ According to the MiFID, these include: (i) information that the investment firm plans to open a branch within the territory of Poland; (ii) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied agents; (iii) the address in Poland from which documents may be obtained; and (iv) the names of those responsible for the management of the branch.

authorities of the investment firm's home state. The branch will be subject to supervision by the KNF as well, but only with respect to compliance with the rules of brokerage activities provided for in Polish law.

The branch will have to comply with certain Polish regulations, including those on professional conduct, anti-money laundering, insider dealing and market manipulation. In general, these are based on relevant EU Directives, but it should be taken into account how the Directives have been implemented into Polish law². Some of the local regulations (the AML Act³ is an example) are ambiguous and may cause many practical problems.

With regard to certain reporting obligations, the branch would also be required to obtain access to the so-called ESPI system. ESPI is an electronic system available through an Internet facility operated by the KNF.

CONCLUSIONS

Setting up a fully operational branch of an investment firm in Poland usually takes several months, depending on the complexity of the services to be provided through the branch. As of September 2010, only 14 investment firms from EEA countries have notified their intention to provide services in Poland through a branch⁴ and not all of them have begun operations yet. Because of the fact that a relatively small number of branches of investment firms are operating in Poland and to date the activities of the majority of them were rather limited, the market practice concerning the activity of branches of investment firms is just being formed in Poland. To this, one must add the changes of the provisions of Polish law related to, for example, the implementation of MiFID or of Directive 2005/60/EC⁵. However, bearing in mind that a representative office of an investment firm in Poland may only conduct activity in the scope of marketing and advertising, and that the creation and activity of a regulated subsidiary is a very complicated undertaking, the creation of a branch may be an interesting alternative of local presence for an investment firm.

² For example, when recording transactions as required by the AML Act, the requirements of Polish regulations on how the record of transactions should be kept and how the recorded data should be delivered to the General Inspectorate of Financial Information should be complied with.

³ Act on the Prevention of Money Laundering and Terrorist Financing dated 16 November 2010, as amended (consolidated text, J.L. 2010, No. 46, item 276).

⁴ Source: WWW.knf.gov.pl

⁵ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

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