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EBA's draft regulatory technical standards elaborate on requirements for EU branches of non-EU banks under CRD VI

Directive 2024/1619 (CRD VI) will (among other things) establish a new and more prescriptive EU regulatory regime for EU branches of non-EU banks. New harmonised licencing, authorisation, capital, liquidity, booking, and internal governance and risk management requirements will apply from 11 January 2027. New reporting requirements will apply from 11 January 2026.

In July 2025, the EBA launched three consultations on the specifics around the new ongoing requirements for such branches, which CRD VI refers to as 'third-country branches' (TCBs for the purposes of this note). In previous iterations of the Capital Requirements Directive, there was little detail concerning the accounting arrangements or required booking models for TCBs. This topic has in recent years come into increasing supervisory focus in the EU via initiatives such as the ECB's 'booking model' project, where global financial institutions who book transactions involving EU counterparties or with EU connections were assessed. We are now presented with specific requirements addressing how TCB should account for particular transactions, assets and liabilities.

This note follows on from our briefing on the new requirements under CRD VI for EU branches of non-EU banks and examines the EBA's proposals in relation to: i) draft regulatory technical standards (RTS) on how TCBs should manage their booking arrangements (the "booking RTS"); and (ii) draft guidelines on the types of "other financial instruments" – beyond cash and government securities – that TCBs may use to meet capital endowment requirements (the "endowment guidelines").

The EBA also published draft RTS on cooperation mechanisms and the conditions for the functioning of supervisory colleges, which we do not consider in this note.

NEW BOOKING ARRANGEMENT REQUIREMENTS

The EBA highlights the importance of the booking arrangements to the whole TCB prudential framework; forming the basis of the classification of TCBs and consequently the intensity of the supervisory regime applicable to the TCB.

Article 48h of the Directive 2013/36 (CRD), as amended by CRD VI, requires TCBs to:

1. maintain a registry book to track and keep a comprehensive and precise record of all the assets and liabilities booked or originated by the TCBs in the Member State and to manage those assets and liabilities autonomously within the TCBs;

2. develop and regularly review and update a policy on booking arrangements for the management of the registry book referred to in 1, above. The policy must be documented and approved by the relevant governing body of the head undertaking and must provide a clear rationale for the booking arrangements and set out how those arrangements align with the TCB's business strategy; and

3. provide to the competent authority an independent written and reasoned opinion—with the findings and conclusions—on the implementation of and ongoing compliance with the requirements laid down in Article 48h of the CRD.

The requirements relate to both assets and liabilities booked or originated by the TCB as well as off-balance sheet items—The rationale being to ensure that the prudential framework is applied to the totality of operations carried out by the TCB and ensure a "more accurate representation of the risk and complexity associated with the activities of TCBs". The draft booking RTS therefore seeks to establish the process and methodology that TCBs should apply to identify transactions and activities and record all relevant assets and liabilities, including off-balance sheet items. They specify the minimum data to be recorded and associated risk information to be kept.

The draft RTS contains four articles:

Article 1: The definition of the accounting framework used by TCBs

The "accounting framework" is a central concept throughout the RTS which shapes the scope of the booking arrangement requirements. It is defined as the framework used by the TCB for reporting purposes, in accordance with Article 48k(1) of the CRD.

The booking arrangement requirements assume that TCBs are not subject to accounting requirements separate from their parent undertaking. However, the EBA acknowledges that some TCBs are required to prepare financial statements in accordance with the applicable national law of the Member State in which they operate. The reporting requirements in Article 48k of CRD also require TCBs to use international accounting standards or the applicable generally accepted accounting principles in the Member State, for reporting purposes. As such, whichever framework the TCB uses (or intends to use, to the extent not currently applicable) for reporting purposes, should also be used to scope the booking arrangement requirements.

Article 2: The methodology for identification and keeping a track record of assets, liabilities and off-balance sheet items

To determine the scope of these obligations, a TCB has to understand the scope of the central concepts: assets and liabilities; off-balance sheet items; and what is booked versus originated. The RTS seek to clarify and harmonise the interpretation of each of these concepts, leveraging terms used under the accounting framework relevant to the TCB.

The concepts of assets and liabilities assume a transaction that creates rights or obligations and follow the accounting concepts of "recognition" and "de-recognition".

Assets and liabilities should be considered "booked" when activities carried out by the TCB in a Member State create rights or obligations that would give rise to the recognition of an asset or liability according to the relevant accounting framework.

The absence of territoriality leaves uncertainty here for intra-entity booked arrangements: if a TCB is given authority to contract on behalf of the head office or another branch of the parent (say, a TCB of a Canadian bank is given authority to commit its headquarters in Toronto or a London branch of its head office), is that within scope? The activities carried out by the TCB create rights and obligations which would give rise to the recognition of an asset or liability under IAS, but that asset or liability will be a claim against (or of) the headquarters and not the branch. It would seem inconsistent with the purpose of the framework to have such positions booked to the branch, and the references to "carried out" in recital 1 of the draft RTS suggests that such activities would be out of scope, but it would be helpful to have clarification to this effect.

Assets and liabilities should be regarded as "originated", rather than booked, when rights or obligations are not recognised by the relevant accounting framework because they are initially or subsequently, in full or partially, transferred to another entity.

- The concept of origination seems to be grounded in the assumption, and transfer, of rights or obligations by the branch. It therefore follows that activities which do not commit the TCB (for example marketing and other pre-contractual activities) will not result in positions being "originated". This is helpful as it would mean that TCBs whose activities fall short of the assumption of risk in the branch should not need to account for the resultant positions.
- Where a TCB does assume risk, and transfers it to another entity, the obligation would arise. It is not clear whether, where a TCB has the authority to book a transaction directly to another entity (eg an affiliate), that will amount to origination. Arguably it should not as no risk arises in the TCB at the outset: it would be helpful if this were clarified in the final form of the legislation.
- The definition refers to transfer to another entity, but not another branch within the same entity – so on its face appears not to capture intra-entity risk transfers, which would appear to remain 'booked' to the branch notwithstanding risk transfer. It is not clear whether this is deliberate or an oversight. Again, it would be helpful if the position regarding intra-entity transfers were clarified in the legislation.

TCBs are also required to keep a record of "off-balance sheet items". This concept is defined as contingent assets or liabilities and derivative instruments not recognised under the accounting framework, including the off-balance sheet items listed in Annexes I and II of the Capital Requirements Regulation (Regulation 575/2013, the CRR). The inclusion of derivative instruments not recognised seeks to ensure that all types of derivatives are recorded, for the purposes of evaluating the risks to which a TCB is exposed given that not all accounting frameworks would otherwise allow for recognition of those instruments on the balance sheet.

The scope of activities that should be recorded in the registry book extends to any transactions carried out by the TCB. This includes transactions that do not require authorisation, intragroup transactions and transactions entered into on the basis of reverse solicitation of services.

TCBS are required to have processes, systems and procedures to track, assess and keep an accurate and timely record of all assets, liabilities and off-balance sheet items which are booked or originated by the TCB, separately from its head undertaking. For some TCBs these requirements will require a significant operational uplift. IT systems may need to be upgraded to ensure that the relevant data points are captured and monitored appropriately.

For assets and liabilities booked to the TCB, the TCB is required to classify, measure and assess the value of such assets and liabilities for impairment, depreciation and amortisation in accordance with the accounting framework.

Assets and liabilities that are "originated" should be tracked and recorded until all associated risks, rewards or obligations transferred have expired, been discharged, cancelled or fulfilled and TCBs should measure those assets and liabilities at their outstanding nominal amount. It is worth noting, that the minimum information to be recorded in the registry book in relation to all assets and liabilities booked or originated includes accumulated impairment amount and amortisation type unless the phrase 'where appropriate, taking into account the nature of the instrument' would obviate this need for assets and liabilities originated, where the value isn't measured reflecting such factors.

Equally, off-balance sheet items are to be tracked and recorded until all associated risks, rewards or obligations have expired, been discharged, cancelled or fulfilled.

Article 3: The minimum content of the registry book

The RTS state that TCBs must themselves determine the content, type and level of granularity of the information to be recorded in their registry book, taking into account their size, internal organisation and the nature, scale and complexity of their activities and risks. There is a highly detailed prescribed minimum level of information required, however, with no flexibility for a TCB to derogate from any of the requirements.

Article 4: Information on risks

Article 48h of the CRD required TCBs to include in the registry book "sufficient information" on the risks stemming from the activities of the TCB and the way they are managed. The RTS provide that the type and level of granularity of information shall be "commensurate to the size and internal organisation of the TCB and the nature, scale and complexity of its activities and associated risks". Again, however, the RTS prescribe minimum qualitative and quantitative requirements for all TCBs.

Internal risk management processes will need to be reviewed, documented and potentially enhanced to meet the new requirements, noting that there will in future be a supervisory review and evaluation process (on which EBA guidelines are due in July 2026).

INSTRUMENTS ELIGIBLE TO MEET CAPITAL AND LIQUIDITY REQUIREMENTS

Article 48e of the CRD introduces a minimum capital endowment requirement for TCBs to maintain and always make available for use for the purposes of Article 96 of the Bank Recovery and Resolution Directive (Directive 2014/59/EU, the BRRD), in case of resolution of the TCB and for the purposes of the winding up of the TCB. The requirement is calculated as a percentage of the liabilities booked to the TCB, subject to a minimum nominal amount.

Article 48e(2) of the CRD sets out the forms of instruments that could be used. In addition to cash or cash assimilated instruments and debt securities issued by central governments or central banks of EU Member States, "any other instrument that is available to the TCB for unrestricted and immediate use to cover risks or losses as soon as those occur" could be used to meet the requirement. The EBA draft guidelines specify the minimum requirements for such "other instruments", recognising that Member States can apply more restrictive conditions.

The EBA guideline propose that "other instruments" for these purposes include debt securities that would receive a 0% risk weight under the standardised approach for credit risk as per the CRR and that are issued or guaranteed by central, regional or local governments or central banks, public sector entities, multilateral development banks or international organisations. This remains a narrow set of instruments. The EBA considered a second policy option of also including covered bonds but concluded that their risk profile could constitute an impediment to their easy monetisation. They also ruled out collateral from reverse repos based on their complexity and the fact that their sale in a liquidation would create a new liability and would not improve the loss absorption capacity of the capital endowment.

Article 48e(3) requires all instruments to be used to satisfy the requirements under Article 48e to be placed in an escrow account. This is designed to ring fence such instruments for use to protect local depositors or creditors of the TCB, in accordance with national law and prevent them from being withdrawn by the head office.

In addition, to further ensure that all instruments eligible to satisfy the requirements under Article 48e are available for use for the purposes of Article 96 of the BRRD in the case of resolution of the TCB and for the purposes of the winding-up of the TCB, the draft guidelines also specify minimum operational conditions. In particular, instruments must be listed on a recognised exchange and easily monetised at any time. They should not be issued by the head undertaking of the TCB, by any of its subsidiaries or by a securitisation special purpose entity (SSPE) with which the head undertaking of the TCB has "close links".

The EBA also remind firms that assets intended to meet the minimum liquidity standards prescribed by Article 48f of the CRD cannot be counted towards the capital endowment requirement and vice versa. In terms of valuation, TCBs are to determine the market value of the instruments. The EBA states that TCBs "should be able to determine the market value of the instruments on the basis of widely disseminated and easily available market prices, or, in the absence of such prices, on the basis of an easy-to-calculate formula that uses publicly available inputs and is not significantly dependent upon strong assumptions."

TCBs are required to implement arrangements, strategies, processes and mechanisms to meet their capital endowment requirement on a continuous basis and to comply with the provisions of the guidelines. This includes monitoring the geographical location of the capital endowment assets (that is the location of the issuer or of the protection provider, where relevant), their concentration risk and the consistency of their currency denomination with the distribution by currency of the liabilities of the TCB, especially of any deposits.

The requirements prescribed by the draft guidelines are set as a minimum standard and are not intended to impede the ability of national authorities to apply stricter requirements in relation to one or more TCBs. As with all aspects of the new requirements for TCBs under the CRD, monitoring local implementation and regulatory attitudes remains of paramount importance for firms preparing for implementation and compliance. Where a stricter approach is taken, this is unlikely to be identified by the requirement on competent authorities to notify the EBA whether they comply or intend to comply. This said, for those TCBs already subject to prudential requirements under the current national law of the host Member State, the new requirements may have limited effect.

QUESTIONS FOR INDUSTRY

The EBA poses a number of specific questions in the consultation papers and requests responses by October 10.

For the booking arrangements, are the concepts and their consequences clear and appropriate? The EBA is explicitly keen also to hear from firms on the proposed treatment of intragroup exposures.

There is a lot to unpack in the booking arrangements and whilst we appreciate the EBA's efforts to clarify key concepts, uncertainties remain around when assets or liabilities should be understood to have been initiated by a TCB, as discussed above.

Equally, whilst TCBs are to monitor the value of assets and liabilities booked to the TCB for impairment, depreciation and amortisation, the value of assets and liabilities originated is to be measured at their outstanding nominal amount. Whilst we understand the distinction given the different risks associated with the distinction, could it lead to an overstatement of the activities of the TCB and associated risks with an unjust impact on the classification of the TCB? We note also on this matter the requirements around record keeping, including information on the impairment and amortisation type, regardless of whether the asset or liability is booked or originated.

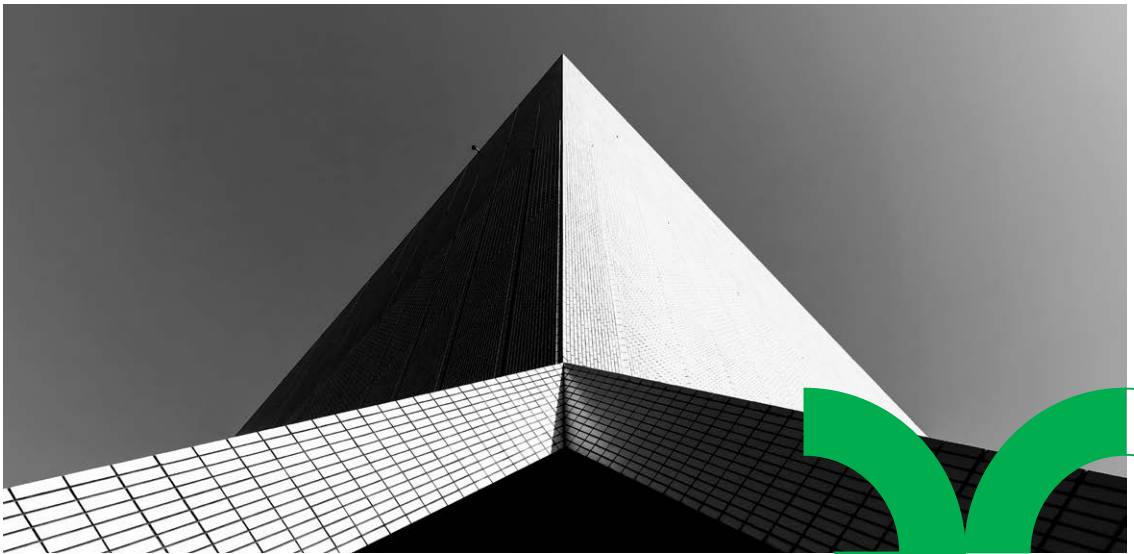
Whilst the application date of the endowment guidelines is specified to be January 11, 2027, the application date of the booking RTS is unspecified. It is not clear whether it will be in place by the time reporting is required to commence under Articles 48j and 48k from January 2026, and (if they are not) whether TCBs will be expected to "front-run" the final rules in conducting reporting.

For the capital endowment requirement, how should TCBs ascertain when instruments can be "easily monetised at any time" and whether the head undertaking of the TCB has close links with a SSPE may warrant further guidance. It remains clear that assets held for local capital and liquidity purposes will be highly unlikely to be eligible for the parent undertaking's liquid assets requirements, and questions remain about collateral effects for home state prudential regulation (for example, impact on UK banks' non-core UK large exposures and DoISub waivers). More widely, the local capital and liquidity requirements remain examples of fragmentation, which will in fact impair rather than strengthen the resilience of affected banks by trapping assets in branches to the detriment of the bank as a whole.

STILL TO COME

This isn't the full picture for TCBs. We still await implementing technical standards on the new reporting requirements, guidelines on the application of requirements around internal governance arrangements, the risk management function and remuneration policies. Additionally, all of these requirement remain subject to national transposition and Member States retain the discretion to impose additional or stricter requirements.

So, firms must prepare for implementation in the face of numerous residual uncertainties, including in areas that have an impact on operational and IT build outs, which notoriously require lengthy lead times and appropriate budget allocation. With the new reporting requirements set to apply to existing TCBs in a matter of months from now, this is an unenviable task.



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