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UK: PRA consults on the regulation of UK branches of international banks

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The UK's Prudential Regulation Authority (**PRA**) published Consultation Paper CP11/24 "International firms: Updates to SS5/21 and branch reporting" on 30 July seeking views on various matters relating to whether international banks should operate a UK branch or subsidiary, booking models, assessing whole-firm liquidity by branch returns and amendments to SS5/21.

Why should I read this?

In its Consultation Paper CP11/24 "International firms: Updates to SS5/21 and branch reporting", published 30 July 2024, the PRA:

- suggests amendments and additions to the criteria, related to levels of deposits, which the PRA will consider when determining whether an international bank should operate from a branch or a separately authorised UK subsidiary;
- clarifies its expectations of firms' booking arrangements, which will apply not only to international banks, but also to UK banks and investment firms with investment banking or sales and trading operations in multiple jurisdictions; and
- sets out changes to the Branch Return form.

Branch or subsidiary?

The PRA is proposing to amend and add to the criteria which it will consider when determining whether an international bank should operate from a branch or a separately authorised UK subsidiary, which are contained in Supervisory Statement SS5/21 "International banks: The PRA's approach to branch and subsidiary supervision". In particular, the PRA is proposing to:

- retain the existing indicative threshold that if a branch holds more than £100m of FSCS-covered deposits from retail and small company (For these purposes "small company" means a company with a turnover of up to £10.2m) customers, the PRA will consider that this suggests the branch should be subsidiarised, but clarify that the relevant level relates only to amounts under the FSCS coverage limit, and not to total balances in FSCS-eligible accounts;
- add that the PRA considers a branch should hold less than £300m total transactional and/or instant access account balances from retail and small company customers, with this amount including the sums covered by the FSCS and excess funds above the FSCS coverage limit (ie it takes into account the total balances of those accounts);
- include an acknowledgement that high net worth individuals ("**HNWI**")(For these purposes HNWIs are individuals with net assets (excluding primary residence) of £250,000 at any point

in the last financial year) have different requirements regarding access to their deposits than general retail and SME customers and will take this into account when assessing the appropriate structure for a particular international bank's UK operations (ie if there is a high proportion of HNWI depositors in a branch, the relevant indicative thresholds may be higher); and

- take account of significant demand deposits from corporate depositors which are not small companies that are likely to be dependent on the relevant branch as their sole provider of transactional banking, by engaging in dialogue with UK branches.

These proposals broadly reflect the PRA's experience of the failure Silicon Valley Bank ("**SVB**") in March 2023.

SVB UK was a separately PRA-authorised and UK-incorporated subsidiary at the time of its parent's failure, meaning that it could be dealt with separately under the UK resolution regime. However, there were a number of features of its customer and depositor base, which meant that SVB's failure could have caused significant damage to the stability of the UK financial system and which were not previously assessed by the PRA when determining whether an international bank should operate in the UK through a branch or subsidiary. Specifically, SVB's depositors were remarkably concentrated both in that many operated within the same sector (ie start-ups) and often held funds only with SVB. The criteria now proposed by the PRA for inclusion within SS5/21 seek to ensure that the PRA considers such factors when assessing the structure international banks' UK operations.

Booking models

The PRA is proposing a number of clarifications to its expectations regarding firms' booking arrangements, as expressed in SS5/21. The broad reasons for these clarifications are:

- the PRA's development of more granular principles regarding desk structures, designed to provide clarity and more detail on the PRA's expectations of prudent risk management in a number of areas;
- industry developments, particularly the increased use of split desks; and
- firm requests for further clarity regarding the PRA's booking expectations, notably on some of the terminology.

The PRA has developed these clarifications through its supervisory discussions with the larger firms in the last few years and is consulting on them now so that others can have the benefit of understanding and commenting on the PRA's thinking, and to ensure that there is a level playing field in this area.

These clarifications cover the following broad topics:

- **effective prudent risk management and control**, essentially setting out the PRA's expectations when a firm is considering changes to its centralised risk management or material changes to existing booking models;
- **split desks**, setting out additional guidance for firms that choose to operate split desks and there is extensive remote booking;
- **notification**, effectively requiring firms to notify the PRA when they plan to make material booking model changes;

- **scope of application**, clarifying that the booking model expectations apply to all PRA-authorised banks and designated investment firms that are headquartered in the UK or are part of a group based in the UK, and have investment banking or sales and trading activities in both the UK and overseas;
- **taxonomy**, setting out the characteristics firms should consider when defining its own processes and controls; and
- **front office controls**, expanding the guidance on management and controls to provide greater transparency around the PRA's expectations in this area.

Changes to the Branch Return form

The changes to the Branch Return form are primarily to enable to the PRA to collect whole-firm liquidity data, but will also enable them to track the proposed additional criteria relating to their assessments of international banks' UK structures. Under the proposals, third-country firms will be required to report whole-firm spot data in pounds sterling on a total currency basis semi-annually, based on 30 June and 31 December end of reporting periods covering:

- High Quality Liquid Assets
- LCR inflows over 30 days
- LCR outflows over 30 days
- LCR net outflows over 30 days
- Liquidity Coverage Ratio
- Available Stable Funding
- Required Stable Funding
- Net Stable Funding Ratio
- Exchange rate at reporting date (from reporting currency to pounds sterling)
- Reporting currency
- Reporting date

Next Steps

The consultation closes on **30 October 2024**. The changes to Supervisory Statement SS5/21 are expected to come into effect during Q2 2025 and the changes to branch reporting will take effect from **31 December 2025**.

How Eversheds Sutherland can help

We have deep knowledge and experience working with clients to ensure they meet regulatory expectations and requirements in relation to information security, operational continuity, resilience, outsourcing and third party risk management, and resolution and recovery.

We regularly act as an independent legal adviser (or ILA) to individuals, including senior managers and FCA approved persons, who are the subject of enforcement investigation by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), in respect of a wide range of conduct and governance issues including senior management accountability for oversight of systems and controls, governance and culture, financial crime, market abuse, benchmark manipulation and other market misconduct. We also advise senior managers, certification staff and approved persons in relation to their participation in internal investigations and witness interviews with the FCA and PRA, overseas regulators and law enforcement agencies (including the DOJ and the SFO).