Baker McKenzie’s Global Financial Services Regulatory Guide
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Introduction

The financial services industry is undergoing sweeping changes driven by regulatory developments and continued consolidation in the sector. The lines between traditionally discrete business areas have become less clear.

Our new Global Financial Services Regulatory Guide provides a comprehensive summary of regulations applicable to banks and other financial services companies around the world.

It covers 41 jurisdictions and brings together the collective knowledge and experience of more than 700 banking and finance lawyers in Baker McKenzie’s global network.

Contact details for each country can be found at the end of the relevant chapter.

Arun Srivastava  
Global Financial Services Regulatory Chair  
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Argentina

1. Who regulates banking and financial services in Argentina?

The Argentine Central Bank (Banco Central de la República Argentina or ACB) is the governmental agency in charge of the regulation of financial entities in Argentina, and therefore of authorizing their registration, as stated in Article 7 of the Financial Entities Law No. 21,526 (FEL). The ACB exercises control and system monitoring through the Superintendence of Financial and Exchange Entities (SEFyC).

The ACB’s main duties include:

(i) the regulation of the financial system;

(ii) the enactment of financial regulations;

(iii) the flow of funds and regulation of interest rates; and

(iv) the authorization regarding the registration of foreign banks.

In accordance with the principle of equal treatment between both national and foreign capital, Argentine law sets no restrictions on the nationality of the investors who wish to participate in the local financial system nor on the operations that the entities in which they participate can perform.

In addition, the Argentine capital market is regulated by the Argentine Securities Commission (Comisión Nacional de Valores or ASC), which is the entity in charge of regulation of public offerings, brokers and stock exchanges. In addition, the Capital Market Law No. 26,831 regulates public and private offerings in Argentina.
2. What are the main sources of regulatory laws in Argentina?

The legal framework regarding financial entities’ regulations in Argentina is mainly given by the following laws:

- FEL No. 21,526 – The objective of this law is to regulate the establishment and operation of entities providing financial services, whether private or public, state or mixed in nature. The FEL regulates financial institutions’ organization, authorization and operational requirements, obligations, and permitted and prohibited activities. It also establishes penalties in connection with violations of the FEL, which include warnings, fines, disqualifications and revocation of the license to operate as a financial entity.

- ACB’s Charter Law No. 24,144 – This law provides for the general organization of the ACB, its functions, rights and duties. The law aims to promote monetary and financial stability, employment and economic development with social equity to the extent possible within the policy framework established by the national government.

- ACB’s implementing regulations – The ACB issues several resolutions to further regulate and implement the financial system in Argentina. They relate to all aspects of banking and financial activities, aimed to facilitate the understanding and monitoring of regulations.

- Capital Market Law No. 26,831 – This regulates public and private offerings in Argentina and establishes the ASC as the regulatory authority for the public market.

- ASC’s implementing regulations – The ASC is the official body responsible for the promotion, supervision and control of stock markets. The main purpose of the ASC is safeguarding investors’ and shareholders’ interests.
3. **What types of activities require a license in Argentina?**

Any banking or financial intermediation and/or solicitation of funds activities performed in Argentina require registration and licensing with the ACB. However, registration and licensing do not apply if the banking activities are performed entirely from outside Argentina. In addition, it is important to note that the FEL distinguishes among different types of financial entities, which include among others, commercial banks, investment banks, mortgages banks and financial entities.

On the other hand, and in connection with capital markets, any public offering of securities shall be subject to the supervision and prior authorization of the ASC.

From a corporate standpoint, there is a distinction between isolated activities and others performed on a regular basis. Any corporation performing activities on a regular basis in Argentina will need to establish local presence (either through a local subsidiary or branch). When corporations perform isolated acts, no registration is required.

4. **How do Argentina’s licensing requirements apply to cross-border business into Argentina?**

As previously explained, registration and licensing do not apply if the banking activities are performed entirely from outside Argentina, provided certain guidelines are followed.

On the other hand, any financial intermediation performed in Argentina shall be subject to the registration and licensing requirements provided by the ACB. As stated in Article 13 of the FEL, any foreign financial entity willing to promote its banking services and products in Argentina must first request for the ACB’s authorization. Once the authorization is granted, the entity will be allowed to give advice, analyze and manage financings and guarantees, as well as carry on any other business of the foreign entity.
The representative may not perform specific banking activities, including any actions that directly or indirectly enable the representative to intermediate or raise funds in the local market.

5. What are the requirements to obtain authorization in Argentina?

In order to become authorized, an applicant must satisfy the requirements stated by the ACB.

In considering the application for authorization, the ACB shall evaluate the appropriateness of the initiative, the characteristics of the project, the general and specific conditions of the market, and the applicant’s background, responsibility and experience in financial activities.

Requirements can vary depending on the particular regulated activities that the applicant intends to carry on. Broadly, however, the following conditions will need to be satisfied:

(a) **Guarantee of Performance** - All directors of a financial entity, that may be subject to financial penalties under Article 41 of the FEL, shall provide a Guarantee of Performance.

(b) **Legal Address** - The financial institution to be set up must constitute a legal address in the city of Buenos Aires. This address will allow the ACB to litigate in the courts of the city, by extending the jurisdiction, except in the case of bankruptcy or credit verifications.

(c) **Shareholdings Report** - Current and future shareholders must file their participation on any other companies (financial or not) in which they have holdings exceeding 5 percent of the corporate capital.

For the regulatory requirements regarding the process for obtaining authorization, please refer to our answer under the succeeding section.
6. What is the process for becoming authorized in Argentina?

To obtain authorization, an applicant must go through a formal process, which involves the completion of required application forms and the submission of supporting information. The particular forms that must be completed for submission to the regulator will depend on the nature of the regulated activities being conducted and the type of financial entity to be registered (e.g., commercial bank, investment bank, financial entity).

The request for authorization must be signed by all founding partners and a special domicile must be established in the city of Buenos Aires for the application procedure with the Superintendent of Financial and Exchange Institutions. Also, the amount of ARS51,000 must be paid for the evaluation of the application.

The application form must include, among others, the following information/documentation:

- Name
- Type of institution
- Address
- Amount of capital contributed by each shareholder
- If any shareholder is a legal entity, the following additional information are required:
  - A certified copy of the bylaws
  - A copy of the balance sheet and information regarding creditors and debtors
  - A list of members of the board of directors with personal information regarding each of them
o A list of shareholders

- A draft of the bylaws or constitutional documents of the institution

- Background information on the shareholder’s responsibility and experience in financial activities; also, an affidavit signed by all shareholders stating that they do not fall within the scope of the inabilities established by article 10 of the FEL

- A certificate of judicial records for each shareholder

- A description of the administrative organization of the institution

- A proposed budget

- A description of the building where the institution will be established and whether it will be rented, bought or built by the institution

- Minimum capital – The minimum capital required is determined by the jurisdiction where the main activity of the entity is located, with declining levels of basic requirement for areas with less relative supply of financial services and the type of entity in question. Thus, the minimum capital requirement for banks is fixed between ARS15 million and ARS26 million. For other financial entities, the minimum capital required shall vary depending on the type.
7. What financial services “passporting” arrangements does Argentina have with other jurisdictions?

Argentina has no financial services “passporting” arrangements with any other jurisdiction.

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Australia

1. Who regulates banking and financial services in Australia?

Australia has three key regulators with responsibility for the authorization and supervision of banks, insurers and other financial institutions. These are the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investment Commission (ASIC) and the Reserve Bank of Australia (RBA). The allocation of responsibilities between APRA, ASIC and the RBA is as follows:

(a) APRA develops and enforces prudential regulation of Authorised Deposit-taking Institutions (ADIs), general insurance companies and superannuation funds in order to ensure the stability, safety, efficiency, competition and contestability of the financial system.

(b) ASIC is the corporate, markets and financial services regulator, responsible for promoting market integrity and consumer protection. As part of its responsibilities, ASIC oversees disclosure and market conduct of Australian companies, licenses providers of financial products and services, supervises real-time trading, and enforces laws against misconduct on Australian markets.

(c) The RBA is Australia’s central bank and has a long-standing responsibility for the overall stability of the financial system, monetary policy and payment systems.

The broad framework for the regulation of banking and financial services is determined by the Australian government. As an executive arm of government, the Federal Treasury also plays a role in regulating banking and financial services in Australia by contributing to economic policy. For example, the Federal Treasury advises the government on the stability of the financial system, policy processes,
corporate practices and the safeguarding of public interest in matters such as consumer protection and foreign investment.

In addition, the Australian Competition and Consumer Commission (ACCC) is responsible for competition policy and consumer protection, with a mandate that extends across the entire economy, including the banking and financial services sector.

2. What are the main sources of regulatory laws in Australia?

The Corporations Act 2001 (Cth) (the Corporations Act) serves as the main framework law in Australia for the regulation of corporations and financial services providers. ASIC is responsible for the administration of the Corporations Act.

Other key pieces of legislation include the Banking Act 1959 (Cth) (the Banking Act), Banking Regulations 1966 (Cth), Reserve Bank Act 1959 (Cth), Australian Prudential Regulation Authority Act 1998 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), Financial Services Reform Act 2001 (Cth), Financial Sector (Shareholdings) Act 1998 (Cth), and state fair trading and consumer protection acts.

In addition to legislation, both ASIC and APRA issue regulatory and policy statements, as well as information sheets that provide guidance to regulated entities on how legislation applies and should be interpreted. In particular, ASIC focuses on the Corporations Act and gives frequent updates to provide practical guidance on its expectations and policy objectives with respect to compliance with the law.

3. What types of activities require a license in Australia?

There is an important distinction under Australian law between services that constitute the provision of banking services and services that constitute the provision of financial services. While there is often
a degree of overlap in the services that regulated entities provide, the distinction is relevant for determining the nature and scope of any licenses or authorizations that may be required.

Banking business

Any entity that wishes to carry on a “banking business” within Australia is required to be authorized by APRA as an ADI.

As defined in s 5(1) of the Banking Act, “banking business” means both the taking of money on deposit (other than as part-payment for identified goods or services) and the making of advances of money or other financial activities prescribed by regulations. Both elements, or at least the intention to provide both elements, are necessary to establish a “banking business.”

The Banking Regulations 1966 (Cth) expanded the definition of “banking business” to include, in certain circumstances, the provision of a purchased payment facility and the activities of credit card acquiring and issuing.

Other banking activities include the acceptance and discounting of local bills of exchange, and foreign exchange dealings both in bills of exchange and in other financial instruments - though the lending of funds is typically characterized as a bank’s principal business.

Financial Services

Any person or entity that is carrying on a “financial services business in Australia” is required to hold an Australian Financial Services Licence (AFSL), which covers the provision of those financial services, unless a relevant exemption applies. ASIC is the body responsible for issuing AFSLs and supervising the conduct of AFSL-holders.

“Financial services” is defined in the Corporations Act and includes providing financial product advice, dealing in a financial product, making a market for a financial product, operating a registered
managed investment scheme (i.e., collective investment vehicles), providing a custodial or depository service, and providing traditional trustee company services. “Financial product” is also defined within the Corporations Act as a facility through which a person makes a financial investment, manages financial risk or makes non-cash payments. Specific examples of things that will be deemed to be financial products for the purposes of the Corporations Act include securities, interests in a managed investment scheme, derivatives, debentures, bonds, foreign exchange contracts and margin lending facilities.

4. How do Australia’s licensing requirements apply to cross-border business into Australia?

Connection to Australia

Generally speaking, Australian licensing requirements (with respect to both banking and financial services) will be triggered by an overseas entity conducting regulated activities with a sufficient connection to Australia, such that it will be taken to be “carrying on a business” in Australia. Whether an entity is “carrying on a business in Australia” depends on the factual circumstances of each case. However, an entity will generally be deemed to carry on a business in Australia if it provides services with system, repetition and continuity. Key indicia of carrying on a business include having a place of business in Australia, establishing or using a share transfer office or share registration office in Australia, and administering, managing, or otherwise dealing with, property situated in Australia.

In addition, and with respect to financial services regulation, the Corporations Act provides that an entity will be deemed to be carrying on a financial services business in Australia where that entity engages in conduct that is intended to induce, or is likely to induce, people in Australia to use the financial services provided by the entity. This is referred to as “Inducing Conduct”, and entities who engage in Inducing Conduct will be required to hold an AFSL covering the provision of such services (unless an exemption applies), despite the
fact that the entity may not otherwise be strictly “carrying on a
business in Australia.”

The two main regulators adopt the following approaches with respect
to foreign entities providing services into Australia:

Banking Business

APRA will authorize branches of foreign banks to carry on banking
business in Australian as “foreign ADIs.” Foreign ADIs are subject to
a condition specifically restricting the acceptance of retail deposits
from their Australian branches, as well as other limitations and
restrictions. Foreign ADIs can however, accept deposits and other
funds in any amount from incorporated entities, non-residents and
their employees.

Foreign banks operating as branches (and authorized as foreign ADIs)
in Australia remain subject to the supervision of their own central
bank, although APRA can still impose conditions or restrictions on
such entities with respect to their Australian activities.

Financial Services

Generally, the financial services regulatory regime will apply equally
to Australian entities and foreign-registered entities. However, there
are two key exemptions that foreign financial services providers often
rely upon to exempt them from the requirement to hold an AFSL:

Limited Connection Exemption

ASIC has granted class order relief from the requirement to hold an
AFSL to persons who provide financial services with a “limited
connection” to Australia (the Limited Connection Exemption). The
following conditions must be satisfied in order to rely upon this
exemption:

(a) the entity may provide financial services in Australia to
wholesale clients only (i.e., it cannot deal with retail clients);
(b) the entity would not be taken to be carrying on a financial services business in Australia but for engaging in Inducing Conduct; and

(c) the entity does not already hold an AFSL authorizing the provision of the relevant financial services.

The Limited Connection Exemption is often used by entities who undertake only a limited amount of activities in Australia, and otherwise would not be taken to be conducting a business in Australia (but for engaging in Inducing Conduct). Strict parameters must be observed by any entity wishing to rely upon this exemption, to ensure that they do not inadvertently engage in activities that extend beyond Inducing Conduct, such that they no longer have a “limited connection” to Australia.

Passporting Exemption

ASIC has issued a number of class orders (known collectively as the “foreign financial service provider” or “passporting” class orders), which operate to relieve a foreign entity from the Australian financial services licensing requirements where that foreign entity is regulated by a specified foreign regulator (the Passporting Exemption). (For further details, see Section 7.)

5. What are the requirements to obtain authorization in Australia?

ADI Authorization

An applicant for authorization from APRA must complete a formal process involving the completion of required application forms and the submission of supporting information to APRA. Locally incorporated ADIs and foreign ADIs will be required to submit different types of supporting information. APRA will only authorize applicants with the requisite capacity and commitment to conduct banking business with integrity, prudence and competence on a continuing basis.
The following is the minimum requirement that an applicant will need to meet for ADI authorization:

- **Capital** - Although no set amount of capital is required for an ADI, applicants seeking to operate as “banks” must have a minimum of AUD50 million in Tier 1 capital. Applicants must satisfy APRA that they are able to comply with APRA’s capital adequacy requirements from the commencement of their banking operations, and these requirements will depend on the applicant’s own circumstances.

- **Ownership** - Applicants must satisfy the requirements specified in the *Financial Sector (Shareholdings) Act 1998* (Cth) (*FSSA*) regarding the ownership of ADIs. All substantial shareholders of an applicant are required to demonstrate to APRA that they are ‘fit and proper’ in the sense of being well-established and financially sound entities of standing and substance.

- **Governance** - Applicants must satisfy various prudential standards and requirements with respect to the composition and functioning of the board.

- **Risk management and internal controls systems** - Applicants must satisfy APRA that their proposed (or existing) risk management and internal control systems are adequate and appropriate for monitoring and limiting risk exposures in relation to domestic and, where relevant, offshore operations from the commencement of the ADI’s banking operations. Foreign bank applicants must also demonstrate that its arrangements for reporting to the parent foreign bank or head office are adequate.

- **Compliance** - Applicants must satisfy APRA that their compliance processes and systems are adequate and appropriate for ensuring compliance with APRA’s prudential
standards and other Australian regulatory and legal requirements.

- **Information and accounting systems** - Applicants must satisfy APRA that their information and accounting systems are adequate for maintaining up-to-date records of all transactions and commitments undertaken by an ADI, so as to keep management continuously and accurately informed of the ADI’s condition and the risks to which it is exposed.

- **External and internal audit arrangements** - Applicants must demonstrate to APRA that adequate arrangements have been established with external and internal auditors in accordance with the requirements set out in the relevant prudential standards.

- **Supervision by home supervisor** - Foreign applicants must have received consent from their home supervisor for the establishment of a banking operation in Australia. Only applicants that are authorized banks in their home country will be granted authority to operate foreign ADIs. Foreign bank applicants must satisfy APRA that they are subject to adequate prudential supervision in their home country.

**AFSL**

An applicant for an AFSL must satisfy the conditions and requirements set out in the Corporations Act, as well as ASIC regulatory guidance materials. The key requirements for an AFSL are as follows:

- **Good fame and character** - If the applicant is a natural person, ASIC must be satisfied that there is no reason to believe that the applicant is not of good fame and character. If the applicant is not a single natural person, ASIC must be satisfied that there is no reason to believe that any of the
applicant’s responsible officers, partners and/or trustees are not of good fame or character.

- **Competency** - The applicant must demonstrate its organizational competence for the financial services and products that the business is proposing to provide. Responsible managers must also have the necessary knowledge and skills to carry out their roles.

- **Compliance and conflicts management arrangements** - The applicant must demonstrate that adequate compliance measures are in place to meet relevant obligations.

- **Adequacy of resources** - The applicant must demonstrate that they have sufficient financial, human and technological resources to carry on the business that is being proposed.

- **Adequate risk management systems** - The applicant must demonstrate adequate risk management systems, tailored to the applicant’s financial services business.

- **Dispute resolution** - If it has applied to provide financial services to retail clients, the applicant must demonstrate that it has an adequate dispute resolution systems in place.

- **Compensation and insurance arrangements** - If it has applied to provide financial services to retail clients, the applicant will need to have arrangements in place for compensating those clients for loss they suffer if the applicant breaches their obligations under the Corporations Act.

- **Research and benefits** - If the applicant is seeking to provide financial services to retail clients, the applicant will need to demonstrate how it conducts product research and its approved or recommended product list.
• **Other requirements** - The applicant must demonstrate its ability to meet other obligations as an AFS Licensee if ASIC grants the license.

6. **What is the process for becoming authorized in Australia?**

**ADI Authorization**

The overall ADI licensing process can take anywhere from three months to 12 months.

The particular forms that must be completed for submission to APRA will depend on the nature of the regulated activities that are proposed. However, the general process for ADI authorization is as follows:

• **Initial consultation** - APRA will consult with the applicant to discuss the applicant’s proposed business plan. This discussion will seek to identify any matters that might adversely impact on the proposal, and allow the parties an opportunity to agree on the format and content of any formal application.

• **Submission** - The applicant will need to prepare a detailed submission to APRA, which covers the required criteria as well as other issues requested by APRA. Draft copies of the submission will often be lodged before the final version, to allow APRA to comment or ask further questions.

• **APRA’s review of the application** - This will include meetings with senior officers and other responsible persons of the applicant, as well as on-site prudential reviews.

**AFSL**

An application to obtain an AFSL can take anywhere from three months to six months. However, this will vary depending on the
quality of information provided and on ASIC’s analysis of the applicant’s business and its proposed market.

To apply for an AFSL, the applicant must compile and submit an application consisting of an application form and several supporting core proof documents. There are four core proof documents, as follows:

- **A5 Business Description** - This is a description of the applicant’s proposed business, including the financial services and products to be provided, how income will be generated and projected business growth.

- **B1 Organisational Competence** - This is a description of the organizational competency of the applicant and includes information on the skills, qualifications and experience of each Responsible Manager that has been nominated by the applicant.

- **B5 Financial Statements and Financial Resources** - This is a description of the financial position and creditworthiness of the applicant.

- **People Proofs for each responsible manager** - This is a compilation of relevant supporting materials and documentary evidence of a Responsible Manager’s skills, qualifications and experience, and includes a Statement of Personal Information, qualification certificates, bankruptcy checks, national criminal history checks and two business references.

7. **What financial services “passporting” arrangements does Australia have with other jurisdictions?**

As set out above, some foreign financial service providers are able to rely upon the Passporting Exemption. ASIC has specified regulators from Germany, Hong Kong, Singapore, UK and USA for the purposes of the Passporting Exemption.
The Passporting Exemption will exempt a foreign financial services provider from the requirement to hold an AFSL if the provider:

(a) is incorporated in a relevant specified foreign jurisdiction;

(b) holds the requisite license from the relevant specified overseas regulator;

(c) has a license or authorization that allows them to carry out the specific activities it intends to perform in Australia;

(d) operates as a primary business in the provision of financial services; and

(e) provides financial services in Australia to wholesale clients only.

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Austria

1. Who regulates banking and financial services in Austria?

In Austria, banking and other financial services are regulated by the Austrian Financial Market Authority (Finanzmarktaufsichtsbehörde or FMA), in cooperation with the Austrian National Bank (Oesterreichische Nationalbank or OeNB).

The FMA is responsible for the authorization and supervision of banks, providers of insurance services and other financial institutions. In this regard, the FMA performs both solvency supervision as well as market and conduct supervision. With respect to the latter, the FMA is also in charge of dealing with market participants performing banking, insurance or financial services transactions without the respective authorization. In addition, if provided for in the respective regulatory laws, the FMA may also directly pass applicable regulations (Verordnungen). Further, the FMA regularly issues rules and guidelines (Rundschreiben). These rules and guidelines do not, as such, constitute legal acts; however, they set out FMA’s legal position on particular regulatory matters and are, thus, to be observed by the supervised institutions.

The OeNB is responsible for the macro-supervision of the banking and financial services industries in Austria. As such, the OeNB in particular monitors and analyzes the Austrian financial market and is consulted by the FMA in many of the latter’s proceedings. In particular, on-site inspections at financial service providers are carried out by the OeNB jointly with the FMA, and mostly upon request of the FMA. Generally, the FMA and the OeNB are strongly interlinked with a number of shared competences.

Further, the supervisory authorities of the European Union (i.e., the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pension Schemes Authority) play an important role in the supervision process,
especially as they are responsible for issuing guidelines, recommendations and technical standards in relation to EU legislation.

In addition, pursuant to the Single Supervisory Mechanism (SSM) introduced by Council Regulation (EU) No 1024/2013, the European Central Bank (ECB) is responsible for monitoring the financial stability of banks in the Eurozone (including Austria). Under the SSM, the ECB – in cooperation with the respective national supervisory authorities – directly supervises (groups of) credit institutions in the Eurozone that are deemed to be relevant to the functioning of the Eurozone banking system (so-called significant institutions). For Austria, eight Austrian banks qualify as significant institutions. A list of all significant institutions can be obtained from the European Commission’s website. Less significant credit institutions continue to be subject to supervision by the FMA and will only be indirectly supervised by the ECB. In this respect, common procedures applying to significant as well as to less significant credit institutions are set up for matters relating to licensing of and qualifying holdings in credit institutions.

2. What are the main sources of regulatory laws in Austria?

The main sources of regulatory laws in Austria are listed in the following:

- The provision of banking services is regulated by the Austrian Banking Act (Bankwesengesetz or BWG; implementing, inter alia, CRD IV).

- The activities of insurance companies are regulated by the Austrian Insurance Supervision Act (Versicherungsaufsichtsgesetz or VAG; implementing, inter alia, the Solvency II Directive).

- The provision of investment services is regulated by the Austrian Securities Supervision Act
(Wertpapieraufsichtsgesetz or WAG; implementing the MiFID Directive).

- The provision of payment services is regulated by the Austrian Payment Services Act (Zahlungsdienstleistungsgesetz or ZaDiG; implementing the Payment Services Directive).

- The issuance of e-money is regulated by the Austrian E-Money Act (E-Geldgesetz 2010 or E-GeldG; implementing the E-Money Directive).

- The public offering of securities and other investments is regulated by the Austrian Capital Market Act (Kapitalmarktgesetz or KMG; implementing the EU Prospectus Directive).

- The establishment, management and distribution of Undertakings for Investments in Transferable Securities (UCITS) is regulated by the Austrian Investment Fund Act (Investmentfondsgesetz or InvFG; implementing the UCITS Directives).

- The management of alternative investment funds (AIF), including the distribution of AIF in Austria, is regulated by the Austrian Alternative Investment Fund Manager Act (Alternative Investmentfonds Manager-Gesetz or AIFMG; implementing the Alternative Investment Fund Managers Directive).

As in other EU member states, the majority of the applicable regulatory laws in Austria is derived from EU directives and regulations.
3. What types of activities require a license in Austria?

The provision of financial services on a commercial basis in Austria generally constitutes a regulated business activity and, thus, is subject to Austrian licensing requirements. In particular, regulated financial services include the following:

(a) Banking services – The provision of banking services is subject to licensing requirements under the BWG. Banking services, inter alia, include:

- the acceptance of funds from other parties for the purpose of administration or as deposits (deposit business);
- the provision of non-cash payment transactions, clearing services and current-account services for other parties (current account business);
- lending (irrespective of whether loans are provided to consumers or entrepreneurs);
- the safeguarding and administration of securities for other parties (custody business);
- the issuance and administration of payment instruments;
- the trading in securities or other investments for one’s own account or on behalf of others;
- the issuance of guarantees or the assumption of other forms of liability for third parties (guarantee business);
- factoring; and
the mediation of certain banking services, including the deposit and the lending business; whereas for the mediation of the lending business, a trade license as commercial asset advisor may also suffice.

(b) Investment services – The provision of investment services is subject to licensing requirements under the WAG. Investment services, inter alia, include:

- the provision of investment advice in relation to financial instruments;
- individual portfolio management; and
- the receipt and transmission of orders relating to one or more financial instruments.

(c) Insurance services – The provision of insurance services (life or other insurance) requires a license under the VAG, and the provision of insurance mediation activities requires a trade license as insurance intermediary under the Austrian Trade Code (Gewerbeordnung).

(d) E-Money – The issuance of electronic money by means of a pre-paid electronic payment product based on either a card or an account requires a license under the E-GeldG.

(e) Payment services – The provision of payment services, including, inter alia, the operation of payment accounts and the execution of payment transactions, money remittance, payment card issuance and acquiring card transactions requires a license under the ZaDiG.

(f) Collective portfolio management – The management of UCITS requires a license under the InvFG, whereas the management of AIF requires a license under the AIFMG.
(g) Investment advice – The provision of investment advice either falls within the scope of the WAG (if in relation to financial instruments) (see item (b) above) or within the scope of the Austrian Trade Code (Gewerbeordnung) (requiring a trade license as commercial asset advisor).

4. How do Austria’s licensing requirements apply to cross-border business into Austria?

Austrian licensing requirements are triggered if a regulated service is rendered in or cross-border into Austria. The (financial) service provider will, therefore, need to consider whether it needs to comply with local Austrian licensing obligations (and/or local marketing rules, as applicable) prior to rendering and/or offering its services to Austrian domiciled customers.

The Austrian law itself does not specify which criteria has to be fulfilled for services to actually qualify as services rendered in or cross-border into Austria. The FMA has not published an official guidance in this regard, either. Following the Austrian Supreme Court, the actual assessment of whether banking or other financial services are being rendered in or cross-border into Austria always has to take place on a case-by-case basis. Therefore, such assessment will greatly depend on the pre-contractual circumstances and the actual performance of the contractual relationship.

Generally speaking, Austrian regulatory laws and regulations can be triggered whenever a financial service provider domiciled outside Austria actively solicits and/or provides services to customers located in Austria. Consequently, no Austrian licensing requirements apply if:

- the services themselves are not carried out in Austria (as for instance, the respective accounts/deposits are maintained outside Austria); and
- the foreign entity does not carry out any active solicitation in Austria and the business relationship was, thus, established
outside of Austria or solely upon the customer’s unsolicited request (reverse solicitation). In this respect, note that a reverse solicitation is always subject to the precondition that the request by the customer has not been solicited in any manner by prior marketing activities of the offeror targeting the Austrian market.

In addition, it is recommended that the underlying agreement with the customer be signed by both parties outside of Austria.

Marketing and communication activities will be crucial in determining whether financial services are rendered in or cross-border into Austria. If a firm repeatedly and commercially addresses Austrian domiciled customers, such actions may be sufficient to trigger Austrian licensing requirements.

5. What are the requirements to obtain authorization in Austria?

Generally, an Austrian license may only be obtained by an Austrian company (this means that in the case of foreign financial services providers, an Austrian subsidiary needs to be established). Under some laws including the BWG, a license may also be granted to a branch of a foreign financial services provider. Note that EEA financial institutions may also passport their home-country license into Austria (see Passporting).

The type of Austrian license required depends on the type of activities envisaged. In particular, a bank requires a license under the BWG, an investment firm under the WAG, a payment institution under the ZaDiG, an e-money institution under the E-GeldG, an alternative investment fund manager under the AIFMG, a UCITS management company under the InvFG, and an insurance company under the VAG.

Further, it has to be noted that a particular license may also cover the authorization to carry on activities regulated by other supervisory laws (e.g., an Austrian bank does not require a separate license under the
WAG for providing investment services (MiFID services); however, it will, of course, also have to observe the respective provisions of the WAG when rendering investment services).

The licensing process itself will also depend on the license/activity in question. For instance, in order to obtain a banking license under the BWG, the following conditions must, among others, be satisfied:

- **Location of offices** - The place of establishment and head office of the bank must be located in Austria.

- **Management** – An Austrian bank must have at least two directors. The center of at least one of the director’s vital interests must lie in Austria, and at least one director must have a command of the German language. In addition, the directors must meet the fit & proper criteria of the BWG, must allocate sufficient time to their duties as directors, and may not have a main occupation outside the financial services sector. Further, the statute of the institution must rule out individual power of representation for the entire business operation.

- **Shareholders** – The persons who hold qualifying holdings in the credit institution must meet the requirements stipulated in the interest of sound and prudent management of the credit institution, and no facts shall be known that would raise doubts as to the personal reliability of those persons.

- **Appropriate resources** - The applicant must have adequate (financial) resources in place allowing it to carry on the relevant regulated activities. In this regard, under the BWG, the initial capital of the institution must amount to as least EUR5 million and must be at the management’s free disposal in Austria, without any encumbrances. Further, the capital requirements stipulated in the Capital Requirements Regulation (Regulation (EU) No 575/2013, CRR) have to be complied with.
• Appropriate organization – The institution must be adequately organized (with regard to monitoring, controlling and limiting business risks and operational risks in banking) and staffed (e.g., directors with the required professional qualifications and experience) (see Management above).

• Legal form – The institution must be incorporated in the form of either a stock corporation, a limited liability company, a cooperative (Genossenschaft) or a savings bank.

• Appropriate statute – The statute of the institution may not contain any clause that may jeopardize the proper execution of banking transactions or the security of assets the institution is entrusted with.

• Effective supervision – The FMA must be in a position to supervise the institution. This means that no impediments arising from the applicant’s close relation to other natural or legal persons or the applicability of third country regulations shall prevent the FMA from carrying out its monitoring duties.

Note that many of the above requirements, in particular regarding minimum capital requirements, organizational structure or the applicant’s management and shareholder(s), also apply in a similar way to the respective licenses under the WAG, ZaDiG, E-GeldG, AIFMG, InvFG and VAG.

Sanctions

Note that whoever conducts regulated services without the necessary authorization commits an administrative offense, unless the act constitutes a criminal offense punishable by the courts (i.e., fraud). For instance, whoever carries on the deposit business or the lending business without the necessary authorization may be punished with a monetary fine of up to EUR5 million or up to twice the amount of the benefit derived from the breach (where that breach can be
The unauthorized conduct of other banking businesses or the unauthorized provision of insurance or investment services, for instance, may be punished with a monetary fine of up to EUR100,000.

In addition, whoever conducts a regulated financial business without the necessary authorization may not be entitled to any compensation connected with such business, such as, in particular, interest and commissions. Agreements to the contrary as well as sureties and guarantees relating to such transaction would be without legal effect.

6. What is the process for becoming authorized in Austria?

In order to obtain an Austrian license, an applicant must submit to the FMA an application form together with the required documentation. The FMA will then review the application and determine whether additional information need to be presented and/or whether the license can be granted. Austrian laws generally do not stipulate a certain minimum/maximum assessment period for license applications. In practice, the process for obtaining a banking license, for instance, takes at least one year.

The forms to be completed and the documentation to be provided also depend on the type of license to be obtained and the nature of the regulated activities to be conducted, respectively. For example, when applying for a banking license, extensive information and documentation on the applicant (i.e., the Austrian company or branch), its ownership structure and the intended banking business has to be submitted to the FMA. Moreover, the following information, among others, have to be provided:

- Core details - Information on head office and legal form, statute of the institution and share capital
- Owners/Shareholders - Information on major owners/shareholders
• Management - Names and qualifications of the members of management

• Business plan - Detailed business plan, including strategy, organization and risk management; further, the business plan has to include the budget and, if applicable, a forecast on the amount of deposits guaranteed under the deposit guarantee scheme for the first three years

• Agents - in the case of money remittance transactions undertaken by foreign agents, the identity and address and/or seat (head office) of such agents

Note that certain additional information requirements (e.g., the company’s last three financial statements) apply if the banking license shall be granted to a domestic branch of a foreign company.

7. What financial services “passporting” arrangements does Austria have with other jurisdictions?

An institution authorized to perform financial services in Austria under an Austrian license may carry on business in other states within the European Economic Area by means of passporting. Passporting enables the institution in question to provide cross-border services as well as to establish a physical branch. For this purpose, the institution needs to submit a notification together with certain required documentation to the FMA, which will then pass it on to the regulatory authority of the respective host member state.

Likewise, foreign EEA financial institutions may passport their home-country license into Austria by filing a notification with their home-country regulator. These institutions may, therefore, be authorized to render their services in Austria through an Austrian branch (under the freedom of establishment) or cross-border into Austria (under the freedom of services) without being required to obtain an Austrian license.
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1. Who regulates banking and financial services in Azerbaijan?

The Chamber of Control over Financial Markets (CCFM) is a public legal entity that regulates and supervises participants of the securities market, investment funds, insurance and credit organizations (i.e., banks, non-banking credit organizations and postal operators), and payment systems. The CCFM is entitled to adopt legal acts regulating the financial markets, issue and revoke licenses, and carry out inspections of said participants.

As the main banking supervisory authority, the CCFM establishes minimum charter capital, net worth and other prudential requirements for market participants. It also issues regulations on professional qualifications for senior management and accounting personnel of commercial banks, including branches of foreign banks.

The Central Bank of Azerbaijan (CBA) is a public legal entity that operates as the central banking authority and establishes and implements state monetary and currency policy. The CBA used to regulate and supervise the banking sector, but these powers have recently been transferred to the CCFM.

2. What are the main sources of regulatory laws in Azerbaijan?

Banking in Azerbaijan is regulated by the law On Banks,¹ the law On the Central Bank of the Republic of Azerbaijan,² the Charter of the

Chamber of Control over the Financial Markets\(^3\) and normative acts of the CBA and of the CCFM.

Both banks and non-bank credit organizations are classified as credit organizations. However, whilst banks are allowed to conduct all types of banking operations, under the law *On Non-Bank Credit Organizations*,\(^4\) non-bank credit organizations may only conduct certain types of banking operations, such as extending loans, selling and purchasing debt obligations (factoring, forfeiting), financial leasing and issuing guarantees and are expressly prohibited from accepting deposits.

The securities market in Azerbaijan is regulated primarily by the provisions of the *Civil Code*, the new law *On Securities Market*\(^5\) and regulations adopted by the CCFM.

The legal basis for the Azerbaijani insurance system was first established by the law *On Insurance*\(^6\) dated 5 January 1993, subsequently replaced by another law of the same name\(^7\) dated 25 June 1999. The introduction of a new chapter dedicated to insurance, Chapter 50, into the *Civil Code*\(^8\), and the adoption of a new law, *On Insurance Activity*, effective 16 March 2008\(^9\) (the “Insurance Law”), superseded most of the previous insurance laws. Currently insurance

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in Azerbaijan (except for social insurance) is regulated primarily by these legal acts. In addition to this core legislation, various insurance-related issues, including compulsory insurance, are regulated by separate laws and regulations.

3. What types of activities require a license in Azerbaijan?

The following activities require a license:

- Banking - This is relevant to entities wishing to operate as a bank. The banking license entails many activities, including the right to accept deposits/savings, extend credits, and process payments via opening and operating banks accounts.

- Non-bank credit activity - This license entitles a non-bank credit institution to extend loans without the other usual banking rights, such as acceptance of deposits.

- Insurance and reinsurance - Usual insurance and reinsurance activities are covered.

- Stock exchange - In order to operate a stock exchange, an operator must receive this license, which will entitle the holder to act as an open market for the sale and purchase of securities.

- Investment company activity - This includes activities such as investment advice, portfolio management, placement and underwriting securities, and the usual brokerage activities.

- Clearing activity - This involves providing post-trade clearing services on investment securities.
4. **How do Azerbaijan’s licensing requirements apply to cross-border business into Azerbaijan?**

Unlike major jurisdictions, Azerbaijani law is largely silent on the cross-border aspects of doing licensed business in Azerbaijan. In the absence of such guidance, if such licensed activities are underwritten and concluded outside Azerbaijan (e.g., opening overseas bank accounts for Azerbaijani nationals) without any substantial in-country activity (including marketing activities), then it may be possible to avoid the Azerbaijani licensing requirements.

5. **What are the requirements to obtain authorization in Azerbaijan?**

Different requirements apply to various types of financial services. However, the main common requirements can be summarized as follows:

- Minimum charter and total capital requirement
- Qualification requirements for key personnel
- Possession of requisite premises and infrastructure to operate
- Incorporation in the form of a joint-stock company
- Possession of requisite corporate governance structure, including public disclosure

6. **What is the process for becoming authorized in Azerbaijan?**

The process for authorization would depend on the type of financial services.
For banks, the process can be summarized as follows:

- There is a preliminary application before the incorporation stage, where the shareholders of a bank provide basic information about the prospective bank and its likely shareholders.

- The CCFM shall then consider the preliminary application within 90-180 days.

- After obtaining preliminary approval from the CCFM, the shareholders of the prospective bank shall within 180 days: incorporate the bank; transfer the requisite minimum amount of the charter capital; and establish requisite procedures, IT and security infrastructure for operations.

- The then newly incorporated bank shall submit a final application to the CCFM along with further documents, such as the constitutional documents of the bank and the bank’s policies and procedures.

- The CCFM shall review the final application and issue a banking license within 30 days.

A similar process is applicable to insurance companies, investment companies, stock exchanges and clearing companies. Among other things, the following common documents should be submitted with the application for all these entities:

- Certified copies of the constitutional documents

- Information about the shareholders of the entity

- A business plan for the next three years

- Information about the proposed directors and senior managers
7. What financial services “passporting” arrangements does Azerbaijan have with other jurisdictions?

Azerbaijan does not currently have any passporting arrangements for foreign funds or securities.

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1. Who regulates banking and financial services in Belgium?

Following the financial crisis, the Belgian government abandoned the Banking Finance and Insurance Commission (BFIC) as the single integrated financial regulator and replaced it using a “twin peaks” approach. Since 1 April 2011, the supervision model is organized with two autonomous supervisors, namely the National Bank of Belgium (NBB) and the Financial Services and Markets Authority (FSMA), each of which has specific objectives.

(a) The NBB is responsible for the oversight of individual financial institutions, i.e., microprudential supervision, and for macroprudential supervision, which relates to the proper functioning of the financial system as a whole. The NBB thus ensures the financial soundness of financial institutions under its control, through requirements concerning solvency, liquidity and profitability of these institutions. The NBB also exercises oversight of payment systems and securities settlement systems, overseeing their proper functioning and ensuring their efficiency and solidity.

(b) The FSMA is responsible for supervising the financial markets and listed companies, authorizing and supervising certain categories of financial institutions, the ‘social supervision’ of supplementary pensions, as well as supervising the unlawful offering of products and financial services. Its field of action has expanded to the relatively newer area of monitoring compliance with the rules of conduct to which financial intermediaries are subject in order to guarantee the loyal, fair and professional treatment of their clients. The Belgian government has also tasked the FSMA with contributing to the financial education of savers and investors.
The European Union’s Supervisory Authorities (the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pension Schemes Authority) play an important role in issuing technical standards and in some limited respects have powers of supervision over Belgian firms.

The European Central Bank (ECB) has recently become the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM). Belgium is in the Eurozone and so Belgian banks are within the scope of the SSM and subject to supervision by the ECB. Different supervisory powers apply depending on whether the bank is significant or less significant.

2. What are the main sources of regulatory laws in Belgium?

Much of the relevant law in Belgium is derived from European Union directives and regulations. In many respects, therefore, Belgian domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives have been implemented across Europe can vary. In other words, Belgium and other European jurisdictions have introduced domestic laws that exceed European level requirements. Directives also contain obligations and discretions at a member state level and Belgium also has various domestic rules.

The EU rules have been implemented in various divergent laws, such as the Financial Supervisory Act, the Money Laundering Act, the Credit Institutions Act, the Investment Firms Act, the Securities Act, the Collective Investment Undertakings Act, the Financial Intermediaries Act, the Insurance Act, the Insurance Undertakings Act, the Reinsurance Act, and the Act on Financial Planning, as well as in various royal decrees.

Both the NBB and the FSMA issue circulars and communications that apply to the firms that they regulate. These rules and guidance are
primarily applicable to Belgian-regulated or -supervised firms but are also relevant in certain respects to non-Belgian firms.

3. What types of activities require a license in Belgium?

Belgium regulates a broad range of activities. These include, among others, the offering of the following:

- Banking services, and the intermediation in relation to such services – Banking services (and other services that can be provided by banks) are any of the following services that are provided to a third party:
  - Acceptance of deposits and other repayable funds
  - Lending, including *inter alia* consumer credit, mortgage credit, factoring with or without recourse, and financing of commercial transactions (including forfeiting)
  - Leasing
  - Payment services
  - Issuing and administering of means of payment other than payment services (e.g., travelers’ cheques and bankers’ drafts)
  - Guarantees and commitments
  - Trading for own account or for account of customers in: (i) money market instruments; (ii) foreign exchange; (iii) financial futures and options; (iv) swaps and similar financing instruments; and (v) securities
- Participation in share issues and the provision of services related to such issues
- Advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the acquisition of undertakings
- Intermediation in the interbank market
- Portfolio management or advice
- Safekeeping and administration of securities
- Rental of safes
- Issuance of electronic money

- Investment services, and the intermediation for the offering of such services – Investment services are any of the following services or activities in relation to financial instruments:
  - Reception and transmission of orders in relation to one or more financial instruments, including bringing together two or more investors in a way that results in a possible transaction between these investors
  - Execution of orders on behalf of clients
  - Dealing on own account
  - Portfolio management
  - Investment advice
  - Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis
- Placing of financial instruments without a firm commitment basis
- Operation of multilateral trading facilities

Money exchange services – These services are spot foreign currency buying or selling transactions in the form of cash or cheques, or through the use of a credit or charge card.

Payment services, and the intermediation for the offering of such services – Payment services are any of the following services:

- Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account
- Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account
- Execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider (execution of direct debits, payment transactions through a payment instrument and credit transfers, including permanent payment orders)
- Execution of payment transactions where the funds are covered by a credit line for a payment service user (execution of direct debits, payment transactions through a payment instrument and credit transfers, including permanent payment orders)
- Issuing and/or acquiring of payment instruments
- Money remittance
Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services

- Issuance of electronic money – Electronic money is a prepaid electronic payment product, which can be card- or account-based.

- Mortgage credits, and the intermediation for the offering of such services – This covers mortgage credits used to finance the acquisition or the keeping of immovable rights in rem.

- Consumer credits, and the intermediation for the offering of such services

- Insurance services, and the intermediation for the offering of such services – Regulated insurance mediation activities consist of advising on insurance contracts; offering, proposing or carrying out preparatory work to the conclusion of insurance contracts; concluding such contracts; or assisting in the management and performance of such contracts.

- Reinsurance activities – These activities consist of accepting risks ceded by an insurance undertaking or by another reinsurance undertaking.

- Occupational retirement schemes – Institutions for occupational retirement provision providing retirement benefits in the context of an occupational activity are regulated.
4. How do Belgium’s licensing requirements apply to cross-border business into Belgium?

Financial services generally require a license if offered in Belgium (either directly or on a cross-border basis). To what extent the provision and marketing of financial services to Belgian clients triggers the applicability of Belgian law should be analyzed on a case-by-case basis.

According to the Belgian regulators, financial services are being offered “in Belgium” if:

(i) the financial services are delivered / carried on in Belgium; or

(ii) the financial institution actively solicits orders from customers in Belgium by means of remote sales and marketing techniques or advertising.

The Belgian regulators hold the view that financial services are offered in Belgium, not only when the actual service takes place on Belgian territory, but also if the foreign financial institution solicits orders from Belgian customers in Belgium by means of remote sales techniques (e.g., cold calling or email), advertising or visits of relationship managers soliciting “services” or “orders.”

Performing financial services on Belgian territory on a purely cross-border basis will thus trigger licensing requirements, regardless of whether it is carried out from locations outside the Belgian territory, except for the following cases:

(i) Provision of financial services to existing Belgian clients, who were not actively solicited for such financial services in the past, under the following conditions:

   (a) The performance of the financial services to existing Belgian clients takes place outside of Belgium (without prior active solicitation in Belgium). In particular, any execution of account-opening
documents or agreements or any amendments thereof should take place outside of Belgium. Practically, the Belgian clients would have to come to the financial service provider without being solicited to sign such documents.

(b) No documents other than periodic account statements are sent from the financial institution to Belgian clients.

(c) If meetings do take place in Belgium or phone calls are made to clients in Belgium, such meetings and phone calls should be limited to the general strategy of the account (maintenance of an existing relationship established without active solicitation) and in no case relate to specific investment decisions that may be made in relation to the account or selling or offering of new financial services.

(ii) Marketing efforts with respect to financial services not targeting Belgian residents

(iii) Notoriety marketing, i.e., general and non-specific advertisements

(iv) Acceptance of unsolicited calls from new Belgian clients and acceptance to service such clients (so-called “passive servicing” or “reverse solicitation”) – This would require the relationship with the customer to be established outside Belgium and all account opening documents be executed outside Belgium. Belgian residents may also be approached outside of Belgium without triggering licensing requirements.

(v) Accepting deposits from consumers and/or corporate customers under the private placement exemption – To the extent the custody of cash by a foreign financial institution qualifies as the receipt of deposits from Belgian residents,
deposits or other repayable funds are only deemed received from the public, triggering licensing or registration requirements, in the following circumstances:

(a) When advertisements (defined very broadly) are used to announce or recommend the receipt of deposits and other repayable funds and these advertisements are directed to more than 50 persons in Belgium

(b) When intermediaries are used

(c) When more than 50 persons are contacted in Belgium by the company trying to receive deposits

(vi) Provision of brokerage and investment advisory services to “permitted investors” in Belgium (light-touch notification procedure to be complied with)

Please note that a different regime exists for the offering of insurances in Belgium, since the Belgian regulators generally rule that a non-Belgian insurance company will be considered to exercise insurance activities in Belgium as soon as it enters into an insurance contract with a Belgian resident, regardless of whether it actively or passively solicited orders for the subscription of insurance agreements in Belgium. Accordingly, non-EEA insurance undertakings cannot enter into insurance agreements with Belgian residents who are not expatriates without being duly licensed under Belgian law.

Even if financial services can be provided in Belgium, the applicability of Belgian product regulations should be assessed separately. The public offering of investment instruments (such as stocks, bonds and options) or of foreign public open-end and closed-end investment funds (including UCITs and AIFs) may trigger a registration and/or prospectus requirement, unless a private placement exemption is available. Furthermore, persons issuing or disseminating investment research are subject to regulations and must comply with certain information obligations. Also, the granting of payment
services, consumer and mortgage credit is regulated. Moreover, in case the financial institution would be deemed to provide regulated financial services in Belgium, it might have to comply with applicable conduct of business rules.

5. What are the requirements to obtain authorization in Belgium?

In order to become authorized, an applicant must submit before the relevant regulator certain registration and regulatory requirements.

These requirements can vary depending on the particular regulated activities that the applicant intends to carry on. Broadly, however, the following conditions will need to be satisfied:

(a) **Legal form** - The applicant should be established in a specific legal form, usually in the form of a commercial company, with the exception of the private limited liability company founded by a single person.

(b) **Location of offices** - For Belgian incorporated companies, the head office must be located in Belgium.

(c) **Initial capital** - Applicants must possess a certain initial capital, which must be fully paid up.

(d) **Adequacy of the shareholder structure** - The shareholders have to be adequate in order to guarantee a sound and prudent management of the institution.

(e) **Professional and appropriate management** - Management should be made up by natural persons only and has to permanently dispose of the necessary professional trustworthiness and appropriate expertise.

(f) **Organization** - The applicant should dispose of a management structure, administrative and accounting procedures, and
internal control systems that are appropriate to the activities proposed.

(g) **Specific conditions governing the pursuit of the business of credit institutions and investment firms** - These specific requirements relate to changes in the capital structure, general operating requirements, product requirements, conduct of business rules, special transactions, regulatory standards and obligations, periodic disclosure and accounting rules, recovery plans and the structure of the pursued activities.

(h) **Minimum capital requirements** - The own funds of the applicant may never fall below the set initial capital amount.

6. **What is the process for becoming authorized in Belgium?**

To obtain authorization, an applicant must go through a formal process, which involves the completion of required application forms and the submission of supporting information.

In relation to timing, in most cases the regulator will have six months from receipt of a completed application in which to determine whether or not to approve the application. Where an application is deemed incomplete, the application must be resolved within 12 months.

The particular forms that must be completed for submission to the regulator will depend on the nature of the regulated activities to be conducted.

Requests for authorization must be accompanied by an administrative file complying with the conditions laid down by the relevant regulator. In particular, a program of operations must be included in the administrative file, setting out, *inter alia*, the type and the volume of the business envisaged, the structural organization of the institution, and any close links the institution has with other persons. Applicants must provide all necessary information for the assessment of their request.
Individuals performing certain functions, such as: (i) members of the board of directors of the regulated business; (ii) specified senior managers; and (iii) specified “customer facing” persons may be required to secure individual approval or registration with the relevant regulator. They will need to submit forms providing information about themselves that will enable the regulator to assess their fitness and propriety to perform their roles. An effect of individual registration is that the individual concerned could be subject to personal disciplinary proceedings if he is party to a breach of the FSMA and NBB rules.

7. What financial services “passporting” arrangements does Belgium have with other jurisdictions?

Once authorized in Belgium, a Belgian firm can passport its authorization into other European Economic Area member states. This passport is, however, only available to firms established in Belgium and will not be available to Belgian branches of third country firms. Passporting permits the provision of cross-border services and also the establishment of a physical branch location within the European Economic Area.

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1. Who regulates banking and financial services in Brazil?

The Brazilian Financial System consists of the National Monetary Council (CMN), the Central Bank of Brazil (the “Central Bank”), the National Bank for Economic and Social Development (BNDES), the public and private financial institutions, and payment institutions. Insurance is also regulated but is not considered within the Brazilian Financial System.

Financial services is a broader concept that includes banking and finance activities as well as the capital markets. More recently, payment services have been regulated and are carried by payment institutions, which may require a license from the Central Bank, depending on its size, role and/or systemic importance.

Banking activities and financial services are regulated by statutory and infra-statutory laws enacted by the Brazilian Congress and by the CMN, respectively. The CMN is an ad hoc regulatory body that is composed of the Ministry of Finance, the Ministry of Planning and the President of the Central Bank, and its main role is to issue regulations and guidelines for public policy concerning credit and currency affairs (including monetary and foreign exchange policies).

The Central Bank is responsible for the implementation and enforcement of the regulations and guidelines set forth by the CMN. The main goal of the Central Bank is to promote the stability and purchasing power of the Brazilian currency, as well as to strengthen the local monetary system and supervise the conduct of financial institutions.

The Central Bank is responsible for implementing monetary policies, as well as exercising control over foreign investments and inflow and outflow of capital in Brazil, as provided by Law No. 4,595/1964 and several other specific rules enacted by the CMN. The Central Bank is
also competent to grant licenses to financial institutions, including securities brokers.

In respect of capital markets activities, the Securities and Exchange Commission (CVM) is the regulatory agency in charge of the regulation of public offering of securities, registering listed companies, securities public trading, custody of securities, and supervision of publicly-traded companies, among others.

Pursuant to Law No. 4,595/64, only a licensed financial institution may perform banking and finance activities such as the collection, intermediation and investment of its own or third parties’ funds (whether in national or foreign currency) as well as hold custody of third parties’ financial assets.

Insurance is also a regulated activity that requires authorization by the Brazilian Private Insurance Superintendence (Susep). However, insurance is not regarded as a financial activity under Brazilian laws, but a proper area of activity, with its own set of regulations.

2. What are the main sources of regulatory laws in Brazil?

Financial services are mainly regulated by Law 4,595/64 (which sets forth the rules applicable to the banking, monetary and credit institutions, and created the CMN), Law 4,728/65 (which regulates the capital markets and established measures for its development) and Law 6,385/76 (which further regulated the capital markets and created the CVM).

There are also other several statutory laws regulating specific services, products and other banking, finance and capital markets activities. The CMN and CVM are competent to issue infra-legal regulations, and in this regard there is also a large volume of secondary and delegated infra-legal regulation (e.g., resolutions, instructions and other normative instruments).
3. What types of activities require a license in Brazil?

(A) Financial Institutions – Federal Law No. 4,595 provides that a legal entity is considered a financial institution (“Financial Institution”) when its principal or ancillary activity is the collection, intermediation or investment of financial resources for its own account or for third parties, in domestic or foreign currency, as well as the custody of assets belonging to third parties. In light of this broad definition, certain activities that are somehow related to, but do not actually constitute strict banking activities (e.g., capital markets transactions), have been considered as activities of Financial Institutions in Brazil. Therefore, the Brazilian Financial System includes banking and non-banking entities.

The entities described below play a key political and financial role in the Brazilian Financial System, and are considered Financial Institutions:

(1) Commercial Banks (Bancos Comerciais) – Typical commercial banking transactions include:

(a) granting loans;
(b) holding checking and investment accounts;
(c) receiving cash deposits;
(d) receiving and processing payments public utility and private entities bills; and
(e) collecting of drafts and other credit instruments.

(2) Investment Banks (Bancos de Investimento) – The main activities carried out by investment banks are the management of investment funds and the availability of medium- to long-term debt or equity financing. Investment banks may also
obtain authorization in dealing with foreign exchange transactions if these comply with certain legal requirements.

(3) Savings Banks (*Sociedades de Poupança ou Empréstimos*) – These banks, mostly state-owned institutions, play a similar role to that of commercial banks as they receive savings deposits from the public. *Caixa Económica Federal* (CEF), a public financial institution controlled by the Brazilian government, is currently the major savings bank in Brazil and one of the largest Brazilian Financial Institutions. Most of the loans under the Federal Housing Credit Program are granted by CEF, which also manages the funds of the National Unemployment Compensation Fund (FGTS), the Social Integration Program (PIS/PASEP), as well as domestic lotteries.

(4) Credit, Financing and Investment Companies (*Financeiras*) – Their main business consists of:

(a) financing consumer purchases of goods and services; and

(b) trading credit instruments such as promissory notes, bills of exchange, *etc*.

(5) Brokerage Firms (*Corretoras*) – Brokerage firms are able to deal in authorized securities and other negotiable instruments at the Brazilian Exchange, under Law Nos. 4,728/65 and 6,385/76. These companies may be established as corporations or limited liability companies and operate as intermediary parties in transactions between the stock exchanges and investors. As such, they may:

(a) organize, manage and participate in consortia for underwriting and managing securities offerings;

(b) purchase and resell securities; and
(c) distribute and place securities in the capital markets.

CMN Resolution No. 2,099/94, as amended, regulates the organization and operation of Corretoras, and specifies all activities that such entities may perform.

(6) Dealers (Distribuidora de Títulos de Valores Mobiliários or DTVM) – These entities are also subject to Laws No. 4,728/65 and 6,385/76. Their main business is to subscribe securities issued for resale or distribution, thus acting as intermediaries in the placement of public offerings. Their business is similar to that of Corretoras, and according to the Joint Decision of CVM and CMN No. 17/2009, issued on 2 March 2009, the DTVMs are now able to directly deal at the stock exchange. The organization and operation of such companies are set forth in CMN Resolutions No. 1,120/86, as amended, and 1,653/89. They may be organized as corporations or limited liability companies.

(7) Currency Exchange Brokerage Companies (Corretoras de Câmbio) – These institutions, regulated by CMN Resolution No. 1,770/90, as amended from time to time, perform foreign currency exchange transactions. They may be organized as corporations or limited liability companies. Other Financial Institutions may be permitted by the Central Bank to deal with foreign currency exchange transactions.

(8) National Economic Development Bank (Banco Nacional de Desenvolvimento Econômico e Social or BNDES) – BNDES is a state-owned Financial Institution controlled by the government of Brazil, which acts as an auxiliary agency to implement the federal government’s credit and development policies. Its principal activities include financing industrial, agricultural and commercial equipment; production; and projects and economic activities in general.
(9) Banks with multiple portfolios, “multiservice banks” (*Bancos Múltiplos*) – *Bancos Múltiplos* were created in accordance with the rulings of the 1988 financial system reforms and are now regulated by CMN Resolution No. 2,099/94. This resolution also incorporated the Basel Convention Rules and principles into Brazilian regulation. The main purpose of multiple banks is to enable a single financial institution to maintain different types of activities and portfolios (that is, allowing the performance of all activities pertaining to financial institutions), which in turn, significantly increases the administrative efficiency among banking conglomerates.

(10) Leasing Companies (*Sociedades de Arrendamento Mercantil*) – The main role of leasing companies is to perform financial leasing transactions.

(B) **Payment Institutions** – Brazilian payment institutions are regulated by Law No. 12,865/2013, which grants authority to the CMN and to the Central Bank to further regulate those entities. Therefore, there are some CMN resolutions and Central Bank rulings that govern and detail the requirements and procedures for an entity to do business as a payment entity (“Payment Entity”) in Brazil.

According to Central Bank’s ruling No. 3,683/2013, as amended, there are three different types of Payment Entities: (i) the issuer of electronic currency; (ii) the issuer of post-paid payment instrument; and (iii) the enroller (Credenciador). A Payment Entity may be classified under one or more of these types.

“Issuer of electronic currency” is defined as a Payment Entity that: (i) manages a prepaid payment account of an end-user; (ii) provides payment transaction based on electronic currency deposited in this account; and (iii) converts such proceeds into physical or script currency or vice-versa.
“Issuer of post-paid payment instrument” is defined as a Payment Entity that: (i) manages post-paid payment accounts of a paying end-user; and (ii) makes available payment transactions based on that account.

“Enroller” is a Payment Entity that, without managing payment accounts: (i) enrolls persons to accept payment instruments issued by Payment Entities or by financial institutions (banks) that participate in the same “payment arrangement”; and (ii) takes part in the payment transactions settlements as creditor before the issuer, pursuant to the rules set forth under the “payment arrangement.”

“Payment Arrangement” is a set of rules and procedures that govern the rendering to the general public of a given payment service, which is accepted by more than one payee, by means of direct access by the end-users, payees and payers.

(C) Investment Advisory Services and Asset Management – Investment advisory services may be rendered by duly licensed financial institutions and also by asset management companies (“Asset Management Companies”).

Asset Management Companies are not financial institutions nor payment institutions and therefore do not need authorization from the Central Bank to operate. However, if the services involve the management of portfolio of securities, the company will depend on the authorization of the CVM.

Asset Management Companies duly accredited by the CVM are allowed to manage securities portfolio for individual, entities or investment funds (i.e., mutual investment funds, securities and financial assets managed portfolios). Please note, however, that Asset Management Companies may not trade securities directly at a Stock Exchange, but only by means of a duly authorized stock brokerage firm registered
with the relevant Stock Exchange; however, they can trade fixed-income securities directly.

Certain Brazilian Asset Management Companies also discharge services and perform activities that are ancillary to asset management activities, which may require additional specific licenses from the CVM.

4. **How do Brazil’s licensing requirements apply to cross-border business into Brazil?**

According to Law No. 4,595/64, some activities are “exclusive of financial institutions” and as such, may be performed only by licensed financial institutions in Brazil. The “exclusive activities of financial institutions” encompass the collection, intermediation or allocation of their own or third parties’ funds in the local or foreign currency (which generically encompasses all banking and financial services). The custody of third parties’ values is also considered as an activity of financial institutions. Support services connected to the financial system but not associated with financial institutions may have less stringent licensing requirements.

Under local law, foreign financial institutions may conduct activities in Brazil only upon a proceeding requesting the authorization of the Central Bank, which involves an authorizing decree issued by the president of Brazil (see below).

However, cross-border business, such as cross-border loans made by foreign entities to persons domiciled in Brazil and foreign investment in Brazilian capital markets, do not depend on local licenses for the foreign parties entering into the transactions (e.g., the lending bank or the foreign investor). Such cross-border business, however, usually requires local registrations, such as the so-called registration of financial transactions (ROF) in case of cross-border loans, enrollment with the taxpayer’s registry (in case of cross-border loans and investments in the capital markets), etc.
5. What are the requirements to obtain authorization in Brazil?

The CMN is responsible for, among other things, regulating the incorporation, operation and supervision of financial institutions, pursuant to dispositions of Law No. 4,595/64. The same controls and limits may apply to foreign banks operating in Brazil as are applied by their regulatory agencies to Brazilian banks either operating in their country or desirous of operating there.

However, further to the Central Bank’s and CMN’s approvals, the license for a foreign financial institution to operate in Brazil requires the approval of the President of Brazil, who must authorize the operation of the financial institutions by means of a special decree (granted on a reciprocity or public interest basis).

From the Central Bank’s perspective, the following information must be disclosed by those foreign entities who wish to incorporate a financial institution in Brazil:

(a) Percentage of intended foreign capital participation

(b) Relevance of the undertaking for the Brazilian economy, including such with regard to its relations with that of other countries, with the reference of the type of contribution expected for the development of the National Financial System, as well as the products and services to be offered, technological developments, incentive to competition, and others

(c) Description by the legal entity domiciled abroad, as the case may be, of the transactions conceivably kept in the Brazil, including those that are performed by companies belonging to the same economic group

(d) Relevance of the endeavor in complementing the activities of the foreign entity or the economic group the latter belongs to,
supporting investment and any other transactions in the country

(e) Rating of foreign company or the economic group it belongs to, granted by specialized agencies

(f) Indication of the financial institutions, if any, directly or indirectly related by any means with the foreign institution

(g) Listing of the supervisors and authorities that control the foreign institution and the financial institutions directly or indirectly related with it by any means

(h) Other information considered relevant in defining the foreign participation envisioned and that are of interest to the Brazilian government

6. What is the process for becoming authorized in Brazil?

Before incorporating a financial institution in Brazil, the future shareholders must submit a preliminary set of documents to the Central Bank. Upon the submission, the Central Bank will schedule a meeting with the members of the applicant’s control group. Such interview may be waived by the Central Bank if it understands that the information submitted in the preliminary documents are sufficient to understand the project’s proposal; if the future partners have demonstrated necessary business and market know-how; or if the request for the authorization to operate is made by a financial institution or other institution already licensed by the Central Bank.

After the Central Bank analyses and approves the documentation and information provided, the following requirements must be met:

- Presentation to the Central Bank and publication of a statement of purposes (Declaração de Propósito) by means of a simple form that must indicate the license envisaged and
other general information regarding the financial institution to be incorporated

• Submission of a complete business plan, containing at least a five-year forecast regarding the financial market and operation plans (i.e., operational plans, business plan and operational plan)

• Submission of drafts of the entity’s acts of incorporation

• Demonstration of economic and financial capabilities, compatible with the size, nature and purposes of the project

• An absence of any restriction that may affect shareholders’ reputation

Within 180 days from the Central Bank’s approval for the compliance of all documents listed above, the entity must obtain: formalization of the incorporating the financial institution; (ii) implementation of the organizational structure; (iii) submission of a request for Central Bank’s request in order to verify the structure implemented. Upon the filling of such documents, the Central Bank will conduct an inspection of the incorporated entity to verify compliance with the implemented structure as envisaged in the approved business plan.

After the Central Bank confirms the adequacy of the organizational structure, the applicants will have 90 days to incorporate the financial institution and submit documentation regarding: (i) the amendments to the bylaws, in order to make adjustments to the capital requirements, pursuant to the business plan; (ii) appointment of entity’s directors, officers and members of the governance bodies set forth in the entity’s bylaws; and (iii) evidence of the origin/source of funds used to pay-in the capital.

Upon the completion of the conditions above, the Central Bank will issue the authorization for the financial institution to operate.
It is noteworthy to mention that the application procedure is the same for the controllers of financial institutions that are Brazilian residents or foreign investors. However, the analysis process in the case of foreign investors is slightly more extensive because, as mentioned above, after the Central Bank’s approval, the application will be submitted to the CMN and finally, for the approval of the President, who shall authorize the incorporation of the financial institution by means of a Presidential decree. Also, the Central Bank will request documents and information of the foreign applicants that intend to incorporate a financial institution in Brazil, such as its bylaws, financial statements and others.

Furthermore, in the case where the direct controller of the financial institution that is to be incorporated in Brazil is not a financial institution or individual, it must have as its exclusive purpose the investment in financial institutions and other entities licensed by the Central Bank.

7. **What financial services “passporting” arrangements does Brazil have with other jurisdictions?**

Brazil does not have any financial services “passporting” arrangements with other countries.

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Canada

1. Who regulates banking and financial services in Canada?

The federal and provincial governments share jurisdiction over various aspects of the financial services sector in Canada. While the federal government has sole jurisdiction over banks, the provinces regulate credit unions, mortgage brokers/dealers, loan and trust companies, securities dealers, mutual fund companies and distributors, credit unions and caisses populaires, and other financial services providers such as payday lenders. Both levels of government regulate insurance and trust and loan companies. The allocation of responsibilities is as follows:

(a) The Bank of Canada is Canada’s central bank. It is an independent Crown corporation with considerable autonomy to manage the country’s financial system. The Bank of Canada is responsible for monetary policy in cooperation and consultation with the Department of Finance for central banking services, bank rates, currency, foreign exchange reserves and the administration of public debt. However, the Bank of Canada does not play any part in the regulation or daily administration of commercial banks in Canada.

In Canada, banks are federally regulated by the Bank Act, and carry on business under the supervisory authority of the federal Office of the Superintendent of Financial Institutions (OSFI). Banks operating in Canada may be licensed as Schedule I (domestic Canadian banks), Schedule II (foreign bank subsidiaries in Canada) or Schedule III (foreign bank branches in Canada). A foreign bank that does not have a branch in Canada through which it conducts business may establish an approved representative office in Canada to promote services of the foreign bank in Canada and act as a liaison between the foreign bank and its customers and potential customers in Canada.
(b) The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada’s financial intelligence unit, an independent federal government agency that operates at arm’s length from law enforcement agencies. FINTRAC’s mandate is to analyze the information it collects from financial entities, intermediaries and others, to identify patterns of suspicious financial activity and to uncover associations among people and businesses linked to the patterns of suspected money laundering and terrorist financing. FINTRAC is responsible for the registration of money services businesses and their compliance with anti-money laundering and anti-terrorist financing requirements.

(c) The Financial Consumer Agency of Canada (FCAC) is an independent body established by the federal government with a mandate to protect and inform consumers of financial products and services. The FCAC also oversees payment card network operators and their commercial practices.

(d) The Canadian Payments Association (CPA) is established under the Canadian Payments Act to establish, operate, and maintain systems for the clearing and settlement of payments among member financial institutions, and it is Canada’s main financial market infrastructure for payments. The Bank of Canada and all chartered banks operating in Canada are required to be members of the CPA. Trust and loan companies, credit union centrals, federations of caisses populaires and other deposit-taking institutions, life insurance companies, as well as securities dealers and money market mutual funds that meet certain requirements are also eligible to be members. The CPA develops, implements, and updates the rules and standards that govern the clearing and settlement of payments between member financial institutions, and which facilitate the interaction of its systems with other national and international payment systems and allow for the development of new payment methods. The Payment Clearing and Settlement Act gives the Bank of Canada responsibility to
2. **What are the main sources of regulatory laws in Canada?**

Financial services law in Canada is found in both federal and provincial laws and regulations, as well as in regulatory guidance from the financial regulators. Banks are federally regulated under the Bank Act, insurance companies are both federally and provincially regulated, and most other financial services are provincially regulated. Money laundering compliance is a matter of federal jurisdiction under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. The federal Interest Act includes certain rules regarding the charging of interest.

The insurance industry in Canada is highly regulated by both federal and provincial legislation. The federal government has jurisdiction over the licensing in Canada of foreign incorporated insurance companies in Canada insuring risks, and it has paramountcy and exclusive jurisdiction over the financial stability and solvency matters relating to federally and foreign incorporated insurance companies that insure in Canada a risk. Provincial and territorial governments have jurisdiction over most other insurance matters, including the form and content of insurance contracts, business and marketing practices, agent and broker licensing, and the handling of premium money. Provincial regulation extends to all companies intending to do business in a particular province, regardless of whether they are incorporated under federal, provincial or foreign legislation.

Securities law matters are generally governed by provincial or territorial laws. There is no national securities regulator or legislation in Canada, but there are certain harmonized securities rules that have been adopted by all provinces and territories in the form of national instruments.
3. What types of activities require a license in Canada?

A broad range of banking and financial activities require licensing or registration in Canada, either at the federal or provincial level, including the following:

- Accepting deposits

- Carrying on insurance business (life, property and casualty, etc.) including acting as an insurer, underwriter, agent or broker

- Providing investment, fund management and financial advice, and engaging in investment management activities

- Trading and distributing securities and other investments, including as broker or dealer

- Dealing in, trading in, and administering mortgages, and mortgage lending, including acting as a mortgage agent, broker, administrator or lender

- Providing money services including dealing in foreign exchange; transferring funds from one individual or organization to another using an electronic funds transfer network or any other method; and cashing or selling money orders, traveller’s cheques or anything similar

- Providing payday loans as a lender or broker

- Providing credit reports

- Collecting debts on behalf of another
4. How do Canada’s licensing requirements apply to cross-border business into Canada?

Banking

Foreign banks that are not approved under the Bank Act are prohibited from undertaking any business in Canada, directly or indirectly, except in certain limited and expressly identified ways. Furthermore, any prohibited activity carried out by an agent or nominee in Canada on behalf of a foreign bank constitutes an activity of the foreign bank.

However, a foreign bank and its financial agent are not within the regulatory control of OSFI if they do not establish any physical presence in Canada and their business is not conducted in Canada. From a banking law perspective, there are generally no restrictions on residents of Canada engaging in offshore banking and becoming clients of a foreign bank that is not licensed in Canada, provided the foreign bank conducts business on an offshore basis and is not considered to be carrying on business in Canada. In order to avoid any Canadian banking regulatory compliance issues, the products and services of the foreign bank must be provided outside Canada, with no agent or representative of the foreign bank having a business presence in Canada or travelling to Canada to carry on business. Therefore, the value of utilizing an agent is limited in this context.

Generally, with respect to solicitation and marketing activities of a foreign bank in Canada, there is no law, regulation or other definitive guidance issued by OSFI or provided through jurisprudence to define precisely which activities, or combination of activities, would cause a foreign bank to be in contravention of the Bank Act in its dealings with Canadian residents. In its Ruling 2008-01, OSFI remarked that “in assessing whether a business is carried out in a jurisdiction, judicial decisions support the view that under the common law, promotional activities alone do not constitute carrying on business” and noted that the Bank Act “contains no provision that deems promotional activities to constitute the carrying on of business in Canada.” The Bank Act does, however, permit a foreign bank to
advertise within Canada in respect of its facilities outside Canada, provided the foreign bank does not carry on the business of banking in Canada.

Although the treatment of e-commerce transactions in Canadian banking law is not entirely clear, a foreign bank that is not approved under the Bank Act should be able to offer certain financial services to residents of Canada electronically, provided that it does not carry on business in Canada, which would mean that its employees, representatives, agents and servers are located offshore.

A foreign bank that is not approved under the Bank Act cannot engage local agents to offer or provide products or services to residents of Canada. Any activity carried out by a nominee or agent of the bank in Canada is deemed to have been carried out by the foreign bank directly.

Insurance

There is some ambiguity as to what it may mean to carry on the business of insurance in Canada. Ultimately it is a fact-driven analysis to determine whether or not a foreign insurer is carrying on business in Canada or insuring in Canada. In general, the federal Insurance Companies Act has no application to foreign insurers that are neither carrying on business in Canada nor negotiating and concluding policies of insurance in Canada, directly or indirectly.

Provincial insurance law generally provides more specific restrictions on the activities of foreign insurers and their agents engaged in business with Canadians. Provincial regulation extends to all companies that do business in a particular province, regardless of whether they are incorporated under federal, provincial or foreign legislation. Specifically, provincial regulation of insurance includes the form and content of insurance contracts, business and marketing practices, agent and broker licensing and conduct, and the handling of premium money.
For example, the Ontario Insurance Act regulates the business of insurance in Ontario and requires every insurer undertaking insurance in Ontario or carrying on business in Ontario to obtain and hold a license. It is restrictive in its approach to unlicensed foreign insurers and their agents and representatives marketing to residents of Ontario. The Act requires that unlicensed insurance is to be effected outside Ontario and without any solicitation whatsoever in Ontario, directly or indirectly, on the part of the insurer or an agent or representative of the insurer.

Even without a business presence in Ontario, a foreign insurer will be deemed to be carrying on business in Ontario within the meaning of the Insurance Act if such insurer, its employees, agents or other representatives market or solicit insurance products in Ontario, issue or deliver a policy of insurance in Ontario, or collect or receive premiums in Ontario. Furthermore, a foreign insurer will be deemed to be undertaking insurance in Ontario if it maintains an action or proceeding in Ontario in respect of a contract of insurance.

Securities

Generally in Canada, entities in the business of dealing or transacting in securities are required to register in some capacity as a dealer unless an exemption from registration is available. Interpretation of Canadian securities laws takes a broad approach to the concepts of “trading,” “securities,” “advising” and “acting in furtherance of a trade,” so most activities involving securities of a company are caught in one way or another, including on a cross-border basis. Often, international dealers and/or international advisers are able to benefit from the international dealer exemption and/or international adviser exemption, which is available across Canada, provided certain eligibility criteria are met.

Other Financial Services

Other provincial financial services statutes that require licensing may apply regardless of the location of the financial services provider if the customer is located within the province. This is particularly true for consumer transactions.
5. What are the requirements to obtain authorization in Canada?

The requirements to obtain a required license or registration vary according to the particular financial service in question and the type of license or registration sought.

In general, OSFI will assess a wide range of factors including ownership and financial strength, business plan, structure, proposed activities, credit products and underwriting criteria, trading and investment strategy, information technology environment, risk management controls, internal audit practices, regulatory compliance management, and exit-strategy in the event that the financial institution is unable to execute its business plan.

6. What is the process for becoming authorized in Canada?

The incorporation of a bank or federally regulated trust and loan company involves a three-phase process:

(a) Phase 1 (Pre-Application) – This involves initial discussions with OSFI, submission of preliminary information, (ownership and financial strength, business plan, credit products and underwriting criteria, trading and investment strategy, information technology environment, etc.), business plan discussion with OSFI, and receipt of a letter from OSFI outlining its expectations regarding material risks or concerns and additional information requirements.

(b) Phase 2 (Letters Patent) – This involves submission of notice of intention to apply for Letters Patent (to inform the public) in a form approved by OSFI setting out the name, geographical location/jurisdiction of applicant, proposed name of institution, and brief description of proposed activities; submission of formal application including information about ownership and financial strength, including capitalization,
business plan, management, risk management, board of directors and committees, internal audit, regulatory compliance management, information technology, and other requirements such as proposed name, by-laws, non-refundable service charge, etc. The institution comes into existence on the date provided in the Letters Patent when issued.

(c) **Phase 3 (Order)** – The institution may only commence business once an Order providing for the same is issued by the Superintendent. Once Letters Patent have been issued, and before an Order is made by the Superintendent, OSFI must be satisfied that the institution has the necessary systems, management structure, control processes and regulatory compliance systems in place. The Order may impose conditions or limitations on the business to address supervisory or regulatory concerns.

A similar approval process exists for a foreign bank intending to operate in Canada as a branch (full service or lending), consisting of a pre-notice period, a post-notice period and an order permitting a foreign bank to establish a branch in Canada. In the case of a full-service branch, the foreign bank will generally not be permitted to accept “retail” deposits, defined for this purpose as amounts less than CAD150,000, and it is generally required to maintain assets on deposit with a Canadian financial institution approved by the Superintendent equal to at least five per cent of branch liabilities or CAD5 million, whichever is greater.

Some restrictions can be objective and set by the Superintendent as stipulations in return for a license. The application process for banking approval is heavily dependent on the intended purpose of the bank, the proposed structure, the benefit provided to the industry and the overall viability of the proposal.
7. What financial services “passporting” arrangements does Canada have with other jurisdictions?

Canada has no financial services “passporting” arrangements with any other jurisdiction. However international securities dealers and advisers may be able to deal with certain Canadian-permitted clients as long as certain eligibility criteria are met and filing and fee payments are made.

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Chile

1. Who regulates banking and financial services in Chile?

The Superintendency of Banks and Financial Institutions (SBIF) exercises direct oversight over banking and financial institutions in Chile.

Further, the Central Bank of Chile issues regulations regarding financial services in Chile.

2. What are the main sources of regulatory laws in Chile?

The law in Chile covering financial services is broadly contained in the following laws:

(a) The General Banking Act dated 19 December 1997 (Decree with force of Law No. 3) (the “Banking Act”)

(b) SBIF Updated Compilation of Regulations (Recopilacion Actualizada de Normas)

(c) The Chilean Central Bank Compendium of Financial Regulations

(d) The Money Lending Act (Law N°18,010)

In addition, depending on the type of financial services offered and the type of clients, financial services could be subject to the Consumer Protection Law (Law No. 19,496) and the Data Privacy Law (Law No. 19,628).
3. **What types of activities require a license in Chile?**

Core banking activity can only be carried out by banking institutions that have been duly authorized by the SBIF. Core banking consists of receiving in a customary manner money or funds from the general public (e.g., saving accounts, current accounts, certificate of deposit) (the “Deposit Taking Activities”). The reason is that such activity seriously affects the confidence in and stability of the financial system.

4. **How do Chile’s licensing requirements apply to cross-border business into Chile?**

The Banking Act does not forbid foreign banks not licensed in Chile to grant loans in a low-key manner to specific clients, provided that such banks do not engage in receiving in customary manner money or funds from the general public.

In order to perform promotional and marketing activities, foreign banks must establish representative offices. Pursuant to Article 33 of the Banking Act, foreign banks require the prior authorization of the Superintendence to establish representative offices in Chile. Such authorization allows representative offices to act as business agents for their main offices in order to market and promote their banking services. However, the representative offices do not have the right to perform activities reserved to banks licensed in Chile.

5. **What are the requirements to obtain authorization in Chile?**

Generally, in order become authorized, an applicant must provide the SBIF with:

- a prospectus (*prospecto*);
- a business development plan for the first three years of operation;
• a guarantee in an amount equal to 10 percent of the bank’s projected capital.

In addition to this, the minimum paid-up capital of the bank must not be less than UF 800,000 (approximately USD29,555,544) At the time of establishment of the bank, at least 50 percent of the capital should be paid up. There is no term for the payment of the remainder. However, while the bank has not reached this minimum capital, its effective net worth shall be equal to or greater than 12 percent of its risk weighted assets. Such percentage may be reduced to 10 percent when the bank’s shareholder’s equity reaches UF 600,000 (approximately USD22,166,658.01).

Capital requirements must be satisfied in Chile by the local branch or subsidiary. In addition, the banking regulations contain requirements in connection with the ratio between assets and shareholders’ equity of banks; liquidity and cash and technical reserves.

The new bank’s founding shareholders must also comply with certain solvency and integrity requirements, as follows:

• Solvency – Maintain permanently a consolidated equity equivalent to the bank’s projected capital.

• Integrity – In broad terms, a shareholder must not have committed crimes, wrongdoings or questionable conducts that may endanger the stability of the bank and/or the safety of the depositors.

6. What is the process for becoming authorized in Chile?

An applicant for authorization as a bank must basically complete three steps:

(a) File documents required for the granting of a provisional authorization (“Provisional Authorization”), which enables
the foreign bank to carry out all dealings leading to the authorization of existence within a term of 10 months.

(b) File documents for the granting of the definitive authorization and the legal incorporation/establishment of the bank (“Definitive Authorization”).

(c) Finally, complete the process to obtain the SBIF’s verification of the minimum paid-up capital and compliance with the operational and regulatory requirements for the start up of the business (“Start Up Authorization”).

7. What financial services “passporting” arrangements does Chile have with other jurisdictions?

Chile does not currently have any passporting arrangements for foreign funds or securities.

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People’s Republic of China

1. Who regulates banking and financial services in the PRC?

In the past, the supervision over the banking, securities and insurance industries was all carried out by the central bank of China, that is, the People’s Bank of China (PBOC). With the establishment of the China Securities Regulatory Commission (CSRC) in 1992, the China Insurance Regulatory Commission (CIRC) in 1998 and the China Banking Regulatory Commission (CBRC) in 2003, the regulatory and supervisory functions of the three industries have been officially taken over from PBOC and assumed by these respective authorities. In 2004, the CSRC, CIRC and CBRC entered into the Memorandum of the Three Financial Supervisory Commissions concerning the Division of and Cooperative Supervision over the Financial Industry, which clarified the division of the regulatory and supervisory functions of the three industries.

China has a legal system of civil law based largely on the continental model, which mainly includes: (a) laws at the State level; (b) regulations published by the State Council; (c) local regulations; and (d) rules published by the governmental agencies.

In general, with few exceptions, foreign investors are required to obtain appropriate approvals from competent Chinese regulators for them to set up business presence or carry on business or marketing activities in China.

China has three regulators with responsibility for the authorization and supervision of banks, insurers, securities firms and other financial institutions. The allocation of responsibilities between the CBRC, CIRC and the CSRC is as follows:

(a) CBRC, is responsible for supervising banks, finance companies, trust companies and other deposit-taking financial institutions in China.
(b) CIRC, is responsible for supervising insurance companies and other insurance-related institutions in China.

(c) CSRC, is responsible for supervising securities products and services providers in China, such as listed companies, securities companies, securities investment fund management companies and stock exchanges.

PBOC also plays an important role in supervising the financial services, such as making the monetary policies and supervising the interbank bond market and interbank clearing system.

2. What are the main sources of regulatory laws in the PRC?

The Chinese legislative regime includes:

(a) laws that are promulgated by the National People’s Congress or the Standing Committee of National People’s Congress;

(b) administrative regulations that are published by the State Council;

(c) local regulations that are published by the local People’s Congress or the Standing Committee of the local People’s Congress; and

(d) rules that are published by the ministries, commissions and other governmental authorities at the central level or the local government.

The Supreme Court of the PRC may publish judicial interpretations on certain specific issues from time to time. Technically speaking, such judicial interpretations are not “laws” under the Legislation Law per se, but are widely complied with by the governmental authorities and the courts, hence from a practical point of view are usually considered as one of the sources of laws.
3. **What types of activities require a license in the PRC?**

The PRC regulates a broad range of activities, including the following:

(a) Setting up a bank would require approval from the CBRC.

(b) A bank would need to apply for a separate CBRC approval for certain business activities, such as bankcard, custodian for securities investment funds, derivative business, electronic banking, foreign exchange business and wealth management.

(c) Setting up an insurance company, insurance assets management company, insurance agency and insurance broker would require approval from the CIRC.

(d) Setting up a securities company, fund investment company, futures company and investment advisory institution would require approval from the CSRC.

(e) Setting up a non-financial institution payment service provider (including prepaid card issuance, bankcard acquiring, Internet payment, etc.) would require approval from the PBOC.

(f) Setting up a bankcard clearing institution would require approval from the PBOC.

4. **How do the PRC’s licensing requirements apply to cross-border business into the PRC?**

With a few exceptions (such as cross-border loans provided by foreign banks to Chinese companies), a foreign financial institution is not allowed to carry on any “operational activities” in China that may be deemed as regulated financial business without an appropriate business presence in China or approval from a competent Chinese regulator. Activities that involve soliciting business or clients for
specific products or transactions that are only allowed to be provided by licensed financial institutions in China may be considered as carrying on such regulated business activities in China.

Generally, the supervisory power of the PRC regulators would not extend to foreign institutions. Note, however, that any non-compliance with PRC law by a foreign institution may leave a “bad record” with the authorities, which may adversely affect its future activities and its local affiliates’ business operations in China.

5. What are the requirements to obtain authorization in the PRC?

The regulatory requirements for authorization differ depending on various factors, such as: (i) type of investor; (ii) type of financial institution in China; and (iii) business activities that the financial institution in China intends to carry on.

In general, the requirements may involve the following:

(a) The financial institution in China would need to have a minimum registered capital (for financial institutions, typically the capital should be actual paid-in capital).

(b) The investor would need to be in the relevant financial industry (where the investor is foreign, typically it needs to be a financial institution in its home jurisdiction).

(c) The investor would need to satisfy certain qualification requirements such as assets scale.

(d) Where the investor is foreign, there would need to be certain memorandum of understanding between the competent regulator in its home jurisdiction and the relevant regulator in China.

Please also note that there may be restrictions on whether a foreign investor may invest into the relevant industry and on the shareholding
percentage that a foreign investor may have in the financial institution in China. For example a foreign bank may set up a wholly owned subsidiary bank in China, while a securities company may not be wholly owned by a foreign investor.

6. What is the process for becoming authorized in the PRC?

In order for a financial institution to be set up in China and become authorized to carry on business activities, the investors will need to apply to the competent regulator (e.g., CBRC for commercial banks) for approval. While the detailed requirements and procedures of the CBRC, CIRC and CSRC may differ, the application process in general will comprise of two phases:

(a) Application for preparation - Once approved, the financial institution can be formally established.

(b) Application for commencement of operation - Once approved, the financial institution can then formally start with its business operation.

The whole approval and registration process for setting up a completely new financial institution in China may take around 18 months or even longer.

7. What financial services “passporting” arrangements does the PRC have with other jurisdictions?

China has a foreign exchange control regime in place, and such foreign currency and exchange control is rigid. Foreign exchange control applies to the foreign exchange receipts and payments or business activities of organizations and individuals in China, foreign establishments in China and expatriates in China. The State Administration of Foreign Exchange (SAFE) and its branches/sub-branches are the main regulator and are responsible for foreign exchange control in China.
Under the current foreign exchange control regime in China, cross-border fund transfer is divided into two categories: (a) current account items; and (b) capital account items. Depending on whether the relevant cross-border fund transfer is related to current account or capital account items, cross-border fund transfers are subject to different administration and supervision treatments.

Current account items usually are of a recurrent nature, examples of which are payments for foreign trade, cross-border supply of services, and remittance of profits and dividends to outside of China. Current account payments and currency conversion in relation to these payments may be made at any licensed foreign exchange bank, against presentment of the relevant supporting materials of the underlying transactions for which payments are to be made. Examples of these materials are purchase contracts and invoices. For current account item transactions, it is essential and a general principle that there should be: (a) genuine and legitimate underlying transaction and accordingly, genuine payment or receipt need; and (b) the amount paid or received should be consistent with the underlying transaction.

Capital account items, on the other hand, are generally related to investments or loans, including capital investments, foreign debts and securities investments. Unlike current account items, capital account payments usually require registration or recordal with SAFE before they may be made.

It is now also permissible to make cross-border fund transfer in RMB. In general, the exchange control regime (such as the requirement of genuineness for current account item transactions) applies to cross-border fund transfer in RMB as well.

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Colombia

1. Who regulates banking and financial services in Colombia?

Colombia has three main authorities with responsibility for supervising/regulating financial, securities and capital market institutions.

First, the Ministry of Finance and Public Credit, through its financial regulation unit (URF) is responsible for preparing and adopting regulations on the requirements, restrictions and guidelines for the operation of the financial, insurance and securities markets in Colombia, within the limits set forth by the Constitution of Colombia (the “Constitution”) and its framework laws. Under the Constitution, activities involving the collection, management, use and investment of resources collected from the public are activities of public interest and thus subject to special supervision by the state.

The Constitution sets forth that the President of Colombia is the authority responsible for the supervision, surveillance and control over anyone carrying out financial activities or activities involving securities markets or insurance, as well as any other activity related to the management, use or investment of resources obtained from the public (Article 189.24, Colombian Constitution).

The Constitution also entitles the President of Colombia to intervene in financial, capital market and insurance activities, as well as any other activity that is related to the management, use or investment of resources that come from the savings of third parties.

Law 35/1993 sets forth the objectives that the intervention in financial, securities market and insurance activities must have, which includes (among others): (i) the protection of the public interest and the rights of consumers; (ii) the safeness and transparency of contracts and markets; (iii) the promotion of free markets and efficiency among financial entities; (iv) the democratization of credit; (v) the avoidance
of excessive risk concentration; and (vi) the promotion of solidary financial institutions.

Second, the office of the Financial Superintendent of Colombia (Superintendencia Financiera de Colombia or SFC) is the main public authority responsible for inspecting, supervising and, to an extent, regulating financial, insurance and securities institutions. The SFC is responsible for the day-to-day supervision of regulated entities, authorizing those activities requiring regulatory authorization, and enforcing violations of financial regulation and the law in general by regulated entities (and in some instances, by unregulated parties).

Third, the Colombian central bank (Banco de la República, the “Central Bank”), as the monetary authority under the Constitution, is responsible for the macro-supervision of the banking industry. Although it is not a frontline regulator like the SFC, it does have a role under Articles 371 to 373 of the Constitution. In addition to this, the Central Bank is the main authority for foreign exchange regulation.

2. What are the main sources of regulatory laws in Colombia?

The relevant law in Colombia is composed of laws issued by the Congress of Colombia (either “framework” laws, or laws addressing specific matters), secondary legislation produced by the Ministry of Finance and Public Credit issued as presidential decrees, and resolutions and circulars of the SFC. Decrees issued as secondary legislation by the President are hierarchically below the laws produced by Congress and, thus, are meant to implement such laws, without exceeding the scope and boundaries of such laws. In turn, the secondary legislation produced by the SFC implements in detail the rules set forth by Presidential decrees, without exceeding the limits provided by such decrees. SFC regulation may address general or specific matters.
The following is a list of the main laws:

(a) Law 45/1990 – This law contains general rules and requirements applicable to regulated entities (such as banks, finance corporations, financing companies, finance lease companies, and insurers and insurance intermediaries).

(b) Decree 663/1993 – While formally a decree, it has the hierarchy of a law approved by Congress. This decree is of paramount importance as it contains the Financial Systems Organic Statute (EOSF), which, among other matters: (i) sets forth the general structure of the Colombian intermediated financial system; (ii) describes the activities authorized to regulated entities; (iii) sets forth in detail the creation, authorization, operation and liquidation of regulated entities; and (iv) sets forth in detail the powers of the SFC. This decree has been amended a number of times since its inception.

(c) Law 546/1999 – This law sets forth the rules on residential mortgage lending.

(d) Law 964/2005 – This is the framework law of the public securities market.

(e) Law 1328/2009 – This law amends Decree 663/1993, and sets forth rules on financial consumer protection.

In order to implement these laws, the government has issued the following secondary legislation (either directly or through the SFC):

(a) Decree 2555/2010 – This compiles in a single document secondary legislation applicable to financial intermediaries, insurance and, importantly, securities markets.

(b) SFC’s Basic Legal Circular – This contains detailed rules and guidance.
While these main and secondary legislation are applicable primarily to Colombian regulated institutions, they are also relevant in certain respects to non-Colombian entities, particularly concerning promotion of financial/capital-markets products (as further discussed).

3. What types of activities require a license in Colombia?

Based on constitutional mandates, Colombia regulates a broad range of activities, which require the SFC’s authorization and often, the setting up of a local, regulated entity. Relevant examples are as follows:

- Banking activities involving accepting deposits (this covers banks in general and an array of other deposit-taking institutions)
- Lending in general, when the sums originate in funds collected from the public
- Carrying out insurance and reinsurance in general
- Carrying out insurance and reinsurance intermediation
- Intermediation of publicly traded securities – This would cover, among others, broker-dealers, providing securities investment advice and providing activities ancillary to securities markets (e.g., custody, registration of transactions, settlement and self-regulation).
- Infrastructure providers (which covers electronic payment services, rating agencies and delivery of detailed market information, among others)
- Trust services (which may collect funds from the public)
- Bonded warehouses
- Investment management (which may be carried out by an array of institutions, such as broker-dealers, pension funds and trust companies)

- Financial cooperatives

- Management of pension funds

- Promotion of non-Colombian financial/capital market services and products in Colombia.

4. How do Colombia’s licensing requirements apply to cross-border business into Colombia?

Where a firm outside Colombia deals with a client or a counterparty located in Colombia, its activities will typically be considered promotion of financial/capital-market products and, thus, will be subject to Colombian regulations on such activity. The service provider will need to consider whether they are triggering a local licensing obligation and also whether they are complying with Colombian marketing rules.

A general restriction applies to any entity organized outside of Colombia whose corporate purpose is the offering of financial and/or securities-related services or products (the “Promotion Restriction”). The law defines “promotion or advertising” as any communication or message made directly to a person or transmitted through any means of communication, which is aimed at, or has the actual effect of, initiating (directly or indirectly) the delivery of financial or capital-market activities.
Broadly, the Promotion Restriction prohibits foreign entities from advertising or promoting financial or capital market services/products in Colombia or specifically targeting residents of Colombia for such purposes. In particular, such entities are prohibited from:

- sending employees, contractors, representatives or agents to Colombia or retaining the services of residents of Colombia for the purpose of carrying out promotion or advertising activities of the entity or its services/products; or

- perform, directly or indirectly, any promotional or advertising activities in Colombia in connection with the foreign entity.

Foreign entities may only promote or advertise their financial and/or capital-market services in Colombia or target individuals or companies in Colombia:

- if they have set up a representative office (oficina de representación); or

- if the Foreign Entity seeks to promote capital-market services/products, the foreign entity has signed a correspondent agreement (contrato de corresponsalía) with a local broker-dealer (sociedad comisionista de bolsa) or a financial corporation (corporación financiera).

Nonetheless, the Promotion Restriction does not apply under “reverse solicitation” scenarios, that is, when the Colombian client contacts the foreign entity, at its own initiative, and in the absence of any promotion or publicity by the foreign entity.

5. What are the requirements to obtain authorization in Colombia?

Separate authorization requirements must be considered, depending on whether the foreign entity wishes to carry out its activities offshore or onshore.
If offshore, the entity will need to file an application with the SFC for authorization for setting up a local representative office or for executing a correspondent agreement (as applicable). The process is set out in Section 6.

If onshore, the entity will need to file with the SFC an application for authorization for setting up a local entity and authorization for carrying out operations locally. While the process may vary depending on the nature of the activity to be carried out locally, in most cases the process set forth under Article 53 of the EOSF will apply (an “Article 53 Authorization”). The process is set out in Section 6. For most types of local regulated entities, regulatory capital requirements also apply.

6. What is the process for becoming authorized in Colombia?

(a) Offshore activities/products – representative office/correspondent agreement authorization

An applicant wishing to obtain authorization for promoting financial and/or capital market products/services must complete a formal process involving the completion of required application forms and the submission of supporting information.

In relation to timing, while the law does not set forth limits, in most cases the regulator will take between three and six months from receipt of a completed application in which to determine whether or not to approve the application.

In general, the following documents will be required to be filed:

(i) Certificate issued by the competent authority evidencing the: (i) legal existence; (ii) authorized representatives; and (iii) activities for which the entity is authorized in its own jurisdiction, as well as the initial and expiration dates of authorization (if applicable)
(ii) **Articles of incorporation and bylaws**

(iii) **Authorization or consent** issued by the competent authority for the promotion of services through a representative office

(iv) **Business plan**, which must contain a description of the main activities that will be conducted in Colombia, including a description of planned marketing activities

(v) **Documentation appointing an individual in Colombia as the representative** of the office (issued by the corresponding corporate body or authority), together with such individual’s CV (containing sufficient evidence enabling determination of such individual’s moral character, knowledge and experience in the field)

(b) **Onshore activities/products – Article 53 Authorization**

If an applicant wishes to carry out onshore regulated activities, an Article 53 Authorization most often will apply.

An applicant for must complete a formal process to obtain authorization, involving the completion of required application forms and the submission of supporting information.

In relation to timing, in most cases the regulator will have four months from receipt of a completed application in which to determine whether or not to approve the application (in practice, the filing process may take 12 months or more).

The requirements and complexity of an Article 53 Authorization may vary depending on the complexity of the activity to be carried out in Colombia and the nature of the entity to be set up. Nonetheless, in general, the following three steps will apply:
(a) Request, SFC approval and publication

This initial filing must include the following documents:

(i) Draft bylaws of the future company

(ii) Proposed capital and form of payment

(iii) CVs of the proposed shareholders (if individuals)

(iv) CVs of the proposed company managers and directors¹

(v) Business study confirming the feasibility of the company, which must describe:

   o technological and administrative infrastructure;
   
   o internal control mechanisms; and
   
   o risk management plan

(vi) Copy of the authorization issued by the corresponding regulator for the set-up of the entity (if applicable)

(vii) Any additional information as may be requested by the SFC

After filing all required documents in due form, the SFC will publish twice in a Colombian newspaper a notice indicating that a request has been made for the set-up of the entity and basic information on the filing (name of entity, proposed capital, etc.). The purpose of the notice is to allow third parties to present oppositions to the authorization (which any interested party must file within 10 days of each notice).

After the notices stage is terminated, and provided all documents are complete, the SFC must decide on the requested authorization within

¹ Must sufficiently reflect their character, responsibility and suitability.
the following four months. However, this term may be extended if the SFC asks further questions or complementary information. The SFC may deny authorization if it finds that the filing does not meet legal requirements or if it considers that the character, responsibility, suitability and capital solvency of the shareholders have not been satisfactorily proven.

(b) Incorporation

After the SFC issues its approval, the shareholders must incorporate the company (i.e., sign the corresponding public deed before a Colombian notary public and register the company in the corresponding chamber of commerce), within the term set forth by the SFC.

However, the entity may not yet start to operate.

(c) Authorization to operate

Finally, the newly created entity must provide evidence to the SFC of compliance with the following:

(i) Due incorporation

(ii) Payment of regulatory capital

(iii) Readiness of technical and operational infrastructure

Upon confirmation, the SFC must issue the authorization certificate within the following five days. The company may not start business operations until after the SFC issues such certificate.
7. What financial services “passporting” arrangements does Colombia have with other jurisdictions?

Currently, Colombia does not have in force regulations allowing passporting of authorization from other jurisdictions.

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Czech Republic

1. Who regulates banking and financial services in the Czech Republic?

The Czech National Bank (CNB) is the Czech Republic’s main regulator with responsibility to authorize or register, as applicable, and supervise banks, insurers and other financial institutions. The CNB regulates, among others:

(a) Czech banks, Czech branches of foreign non-European Economic Area (non-EEA) banks, credit unions, and to a limited extent, foreign European Economic Area (EEA) banks operating in the Czech Republic on the basis of the EEA single license* via a Czech branch;

(b) Czech insurance companies, Czech reinsurance companies, insurance intermediaries, independent loss adjusters, branches of foreign non-EEA insurance and reinsurance companies, and to a limited extent, foreign EEA insurance companies operating in the Czech Republic on the basis of the EEA single license (directly or via a Czech branch);

(c) Czech Payment institutions, foreign EEA payment institutions operating in the Czech Republic based on the EEA single license, Czech small-scale payment service providers, operators of payment systems with settlement finality, Czech electronic money institutions, foreign EEA electronic money institutions operating in the Czech Republic based on the EEA single license*, Czech small-scale electronic money issuers;

(d) Czech bank and non-bank investment firms (i.e., securities dealers), Czech branches of foreign non-EEA investment firms, investment intermediaries, tied agents of investment firms and investment intermediaries, and to a limited extent, foreign EEA investment firms operating in the Czech
Republic based on the EEA single license (directly or via a Czech branch);

(e) securities issuers, the central depository (i.e., the main Czech securities depository), other entities keeping a register of investment instruments;

(f) organizers of investment instrument markets (i.e., regulated markets in financial instruments), operators of settlement systems with settlement finality, credit rating agencies;

(g) investment companies and investment funds;

(h) bureaux-de-change; and

(i) pension funds, pension companies and other entities active in supplementary pension savings, pension savings and private pension schemes pursuant to special legislation private pension schemes, supplementary pension savings and pension savings.

* Entities operating in the Czech Republic on the basis of the EEA single license are subjects to the regulations and supervision of the country in which their headquarters are located.

The CNB is also responsible for the macro-supervision of the banking and financial services industries and the supervision of the banks, credit unions, investment firms and insurance companies in financial conglomerates. In addition, it operates the only interbank payment system in the Czech Republic.

Certain powers of supervision are also vested in the Czech Ministry of Finance, for example, under the Act on Certain Measures Against the Legalisation of Proceeds from Criminal Activity and Financing of Terrorism.
The European Union’s Supervisory Authorities (the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pension Schemes Authority) play an important role in issuing technical standards and in some limited respects have powers of supervision over Czech firms.

The European Central Bank (ECB) has recently become the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM). The Czech Republic is not in the Eurozone so Czech banks are not within the scope of the SSM. However, Eurozone branches or subsidiaries of Czech banks are in some cases within the scope of the SSM and the supervision of the ECB.

2. What are the main sources of regulatory laws in the Czech Republic?

Much of the relevant law in the Czech Republic is derived from European Union directives and regulations. In many respects, therefore, Czech domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives have been implemented across Europe can vary. In other words, the Czech Republic and other European jurisdictions have introduced domestic laws that exceed European level requirements. Moreover, directives contain obligations and discretions at a member state level and the Czech Republic also has various domestic rules.

The Czech law governing the banking and financial services is contained in separate acts for each category of the services. Accordingly, the relevant regulatory laws in the Czech Republic include, among others:

- the Act on Banks (No. 21/1992 Coll.);
- the Act on Business Activities on the Capital Market (No. 256/2004 Coll.);
• the Act on Bonds (No. 190/2004 Coll.);
• the Act on Investment Companies and Investment Funds (No. 240/2013 Coll.);
• the Act on Insurance Industry (No. 277/2009 Coll.);
• the Act on Financial Conglomerates (No. 377/2005 Coll.);
• the Act on Insurance Intermediaries and Loss Adjusters (No. 38/2004 Coll.);
• the Act on Payment Systems (No. 284/2009 Coll.);
• the Bureaux-de-Change Act (No. 277/2013 Coll.);
• the Foreign Exchange Act (No. 219/1995 Coll.)
• the Advertising Act (No. 40/1995 Coll.);
• the Trade Licensing Act (No. 455/1991 Coll.);
• the Consumer Credit Act (No. 145/2010 Coll.); and
• the Act on Certain Measure against the Legalisation of Proceeds from Criminal Activity and Financing of Terrorism (No. 253/2008 Coll.)

In addition to the above acts, the general rules applicable to the supervision by the CNB are contained in the Act on Czech National Bank (No. 6/1993 Coll.) and the Act on Supervision in the Capital Market Area (No. 15/1998 Coll.). General rules applicable to financial instruments (securities) are also contained in the Czech Civil Code (Act. No. 89/2012 Coll.) and the Business Corporations Act (Act. No. 90/2012 Coll.). There is also a large volume of secondary and delegated legislation. Additionally, the CNB issues rules and guidance, which apply to the entities that the CNB regulates.
Majority of the applicable regulatory laws (although not always up to date) are available in English at:

However, please be advised that these are English translations of the applicable Czech law and should be used solely for information purposes.

3. **What types of activities require a license in the Czech Republic?**

The Czech Republic regulates a broad range of activities. These include:

- **Accepting deposits** – This would cover typical retail banking activities involving the operation of current and deposit accounts.

- **Issuing electronic money** – Electronic money is a prepaid electronic payment product that can be card- or account-based.

- **Carrying on payment services** – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions and the operation of payment accounts.

- **Consumer lending by entities that are regulated by the CNB** (i.e., predominantly banks). At the same time, more than 50,000 consumer loan providers and intermediaries having a simple trading license are not subject to the regulation and supervision of the CNB.

- **Carrying on insurance business** (effecting and carrying out contracts of both life and general insurance)
• Providing investment advice – Providing advice on most categories of investments is a regulated activity in the Czech Republic. This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.

• Trading in investment instruments as principal or as agent on the basis of client’s instruments – This would predominantly cover entities such as investment firms.

• Arranging transactions in investments – This activity predominantly covers the role of intermediaries and tied agents in investment transactions.

• Investment advice in relation to investment instruments and investment mediation

• Insurance mediation activities – Czech regulation covers various insurance brokering activities as well as the handling of claims on behalf of the insured.

• Investment management – Managing investments on behalf of another person is a regulated activity. Specific permission is required where a person carries on this activity in relation to an investment fund.

• Establishing, operating and winding up an investment fund – These include the collective investment funds and funds of qualified investors.

• Providing custody (safeguarding and administration of investments) – Providing custody services in relation to assets that include investments is a regulated activity. Specific permission is required to act as the depositary of an investment fund.
4. How do the Czech Republic’s licensing requirements apply to cross-border business into the Czech Republic?

Where an entity outside the Czech Republic deals with a client or a counterparty located in the Czech Republic, those activities will typically be subject to Czech laws and regulations. The service provider will need to consider whether they are triggering local Czech licensing, registration or notification obligations, as applicable, and also whether they are complying with Czech marketing rules.

Until recently, European laws have not sought to harmonize the approach of member states to non-EEA entities. This has meant that access to the markets of member states has had to be considered on a case-by-case basis. However, the trend in European legislation is now towards harmonizing the approach across all member states to non-EEA entities. On the one hand, this approach is likely to create a barrier to entry to European markets. On the other hand, firms who become compliant with new EU standards will be able to access the whole EEA market as opposed to having to consider the market on a country-by-country basis.

Under Czech law, offering and provision of financial and investment services or products (further collectively as “Services”) in the Czech Republic may only be carried out by Czech-licensed entities (such as banks or investment firms), Czech-licensed branches of foreign non-EEA entities, or foreign EEA entities on the basis of the EEA single license, directly or via a Czech branch, as applicable. Czech investment intermediaries, tied agents and insurance intermediaries offering or providing financial or investment Services in the Czech Republic must be registered with the CNB.
Subject to exceptions, financial and investment Services are offered/provided in the Czech Republic in case:

(a) both the customer and an employee of the entity offering/providing the Services are physically present in the Czech Republic; this also generally applies in case an intermediary of such entity is present in the Czech Republic instead of its employee;

(b) the offering of the Services by means of distance communication (e.g., over the Internet, telephone, mail, email) is aimed at the Czech Republic and the Services may be used in the Czech Republic; the offering of the Services is aimed at the Czech Republic in case the Services are advertised in the Czech Republic with the intention to be provided in the Czech Republic, that is, advertised in Czech communication media, by means of the Internet, via directed mail, email, telephone calls, business introducers or intermediaries to customers in the Czech Republic.

However, in case the customer independently and proactively contacts the foreign entity by means of distance communication (customer reverse solicitation), the financial and investment Services are not provided in the Czech Republic and thus are not subject to Czech laws.

Where foreign investment intermediaries, tied agents or insurance intermediaries engage in offering or providing financial or investment Services in the Czech Republic from outside the Czech Republic, they must be registered with the CNB unless they provide such Services on an incidental basis only.

Additionally, any advertisement of financial and investment Services to persons in the Czech Republic must comply with the Czech rules on advertising. EEA entities operating in the Czech Republic under the EEA single license may freely advertise financial and investment Services to persons in the Czech Republic as long as they adhere to
the applicable Czech rules. However, non-EEA entities operating in the Czech Republic (and EEA entities not complying with the EEA single license requirements) may advertise their financial and investment Services in the Czech Republic without setting up a branch and obtaining a banking license from the CNB only if the advertising does not overlap into provision of financial or investment Services.

Please note that advertising and providing financial and investment Services by means of Web pages where the Czech language is an option may be considered as advertising in the Czech Republic and thus subject to Czech laws, regardless of where the company or the servers are situated.

As mentioned above, recent EU legislation will limit the ability of foreign firms to do business in the Czech Republic.

In particular:

- The Alternative Investment Fund Managers Directive imposes limitations on non-EEA persons marketing fund interests to persons in the Czech Republic (and other European jurisdictions); and

- MiFID II (comprising a recast of the Markets in Financial Instruments Directive and a European regulation), once implemented in 2017, will result in greater restrictions on non-EEA entities doing business in the Czech Republic.

5. What are the requirements to obtain authorization in the Czech Republic?

In order to become authorized, an applicant must satisfy the CNB that it meets the requirements set forth in the respective pieces of legislation applicable to the different categories of financial and investment Services. Under Czech law, providing financial and investment Services may be subject to a license, registration or mere notification to the regulatory authority.
These requirements can vary depending on the particular regulated activities that the applicant intends to carry on. Broadly, however, the following conditions will need to be satisfied in the case of corporates:

(a) **Location of offices** - The registered office must be located in the Czech Republic.

(b) **Effective supervision** - The CNB will consider whether there are any impediments to supervision of the applicant.

(c) **Appropriate financial resources** - Applicants must satisfy the CNB that they have adequate financial resources to carry on the relevant regulated activities and prove that the origin of the resources is transparent. The minimum registered capital must be paid up in full.

(d) **Appropriate human resources** - The executives of the applicant and persons in charge of its supervision must be, among others, trustworthy and sufficiently qualified and skilled. Management and control systems must be in place.

(e) **Business model** - The CNB will examine the applicant’s business model. These may also require submission of other plans and rules applicable to the applicant’s activity.

(f) **Transparency of the applicant’s group** - The CNB will require that the group to which the applicant pertains is transparent.

In certain cases, the CNB may also request supervisory authorities of other EEA countries to provide opinions with respect to the application.

Generally, individuals seeking to obtain authorization must, among others:

- be 18 years old;
- have full legal capacity;
be trustworthy;
not be previously declared insolvent;
be appropriately educated, qualified and/or skilled; and
be suitable to be granted authorization/registration.

Certain authorizations may be granted to corporates only. These include the banking license, the license to provide Services as an investment firm, or the license to carry out business activity as an insurance company. On the other hand, other activities such as investment intermediation or insurance intermediation may be carried out by both corporates and individuals.

6. What is the process for becoming authorized in the Czech Republic?

To obtain authorization, an applicant must go through a formal process, which involves the completion of required application forms and the submission of supporting information.

In relation to timing, in most cases the CNB will have six months from receipt of a completed application in which to determine whether or not to approve the application.

The particular forms that must be completed for submission to the regulator and the particular supporting information to be attached thereto will depend on the nature of the regulated activities to be conducted.

Generally, the documents that the applicant must submit in addition to the application may include the applicant’s business plan, constitutional documents, financial statements, documents evidencing the origin of its financial resources, list of management personnel and documents relating thereto, proposals of management and control system, and organizational structure. Details about persons/entities who control or exert influence over the firm must also be submitted.
7. What financial services “passporting” arrangements does the Czech Republic have with other jurisdictions?

Once authorized in the Czech Republic, a Czech firm can passport its authorization into other EEA member states. This passport is, however, only available to firms established in the Czech Republic and will not be available to Czech branches of non-EEA firms. Passporting permits the provision of cross-border services and also the establishment of a physical branch location.

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France

1. **Who regulates banking and financial services in France?**

France has two regulators responsible for the authorization and supervision of banks, insurers and other financial institutions. These are the *Autorité de Contrôle Prudentiel et de Résolution* (ACPR) and the *Autorité des Marchés Financiers* (AMF). The allocation of responsibilities between the ACPR and the AMF is as follows:

(a) The ACPR regulates the banking and insurance sectors in France. It is charged with preserving the stability of the financial system and protecting the customers, insurance policyholders, members and beneficiaries of the persons that it supervises.

(b) The AMF regulates participants and products in France’s financial markets. It approves the rules applicable to financial markets and market infrastructures, approves the corporate finance transactions of listed companies, and authorizes financial services professionals and the collective investment products under its supervision.

(c) Investment Services Providers (ISPs) are regulated by the AMF and the ACPR. The AMF issues opinions or makes observations on the programs of operations of the ISP, and the ACPR is charged with the enforcement of prudential rules.

Even if it is not a frontline regulator, the *Banque de France* (BdF) has three missions linked to banking and financial services in France:

- Ensuring the security of cashless means of payment and the relevance of the standards applicable in this area
- Ensuring the smooth operation and security of payment systems
Ensuring the security of financial instrument clearing and settlement systems

The Haut Conseil de stabilité financière (HCSF) is also not a frontline regulator. The HCSF is tasked with supervising the financial system as a whole, with the aim of safeguarding its stability and ensuring a sustainable contribution of the financial sector to economic growth.

The European Central Bank (ECB) has recently become the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM). Therefore, the ECB directly supervises significant banks, and less significant banks indirectly through the ACPR.

The European Union’s supervisory authorities (the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pension Schemes Authority) play an important role in issuing technical standards and in some limited respects have powers of supervision over French firms.

2. What are the main sources of regulatory laws in France?

Much of the relevant law in France is derived from European Union directives and regulations. In many respects, therefore, French domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives have been implemented across Europe can vary. In other words, the French and other European jurisdictions have introduced domestic laws that exceed European level requirements. Moreover, directives contain obligations and discretions at a member state level and France also has various domestic rules.

The last reform of the French legal framework is the Law on the Separation and Regulation of Banking Activities voted in 2013. This law requires banks to separate their speculative activities from those
useful for financing economy. It also enhances the power of the AMF and the ACPR. More generally, the French financial and monetary code contains all the main rules enforceable to the banking and financial services.

In France, both the ACPR and the AMF issue rules and guidance, which apply to the firms that they regulate. It is also necessary to take into account technical standards and guidance published by the European Union’s supervisory authorities and the European Central Bank.

3. What types of activities require a license in France?

In France, the ACPR is the competent authority that grants authorization for credit institutions—legal entities that carry out banking operations as its regular business (reception of repayable funds from the public, credit operations and payment banking services). However, if the credit institution is significant according to the European Union regulation, the ECB is the competent authority. Broadly, an entity must ask the ACPR for a specific license depending on its activity, as follows:

- Bank – all banking operations and receipt of funds from the public repayable on demand or at least than two years
- Mutual or cooperative bank – all banking operations and receipt of funds from the public repayable on demand or at least than two years
- Municipal credit bank – receipt of funds, provision of means of payment, loans secured by pledges, and if the authorization allows, other types of credit to individuals, local public establishments and associations
- Financing company – may only carry out banking operations resulting from their authorization or from specific legislative or regulatory provisions, but may not receive deposits from
the public repayable on demand or at less than two years unless authorized to do so

- Specialized financing institution – credit institutions to which the state has entrusted a permanent public interest mission

The ACPR is also competent to grant authorization to payment institutions, which operate the following activities:

- Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account

- Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account

- Execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider

- Execution of payment transactions where the funds are covered by a credit line for a payment service user

- Issuing and/or acquiring of payment instruments

- Money remittance

- Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services
The ACPR is the French authority competent to grant authorization to electronic money institutions, which are legal entities that issue electronic money.

The ACPR and the AMF are jointly responsible for delivering authorization to investment firms (excluding portfolio management companies), which are legal entities other than a credit institution providing investment services as a regular business. This category covers the following activities:

- Receiving and transmitting orders for third parties
- Executing orders for third parties
- Trading for own account
- Portfolio management for third parties
- Financial investment consultancy
- Underwriting
- Placing of financial instruments with or without a firm commitment basis
- Operation of multilateral trading facilities

The AMF authorizes and monitors asset management companies. These are companies whose main activity is discretionary portfolio management or exercising a collective management activity.

- Portfolio management for third parties (or discretionary management) consists of managing individual portfolios of financial instruments on behalf of clients, whether retail or institutional investors.
Collective management or management of collective investments (particularly UCITS or AIFs) broadly consists in managing collective portfolios. A collective investment comprises sums pooled by investors and managed on their behalf by a portfolio manager. The latter manages the sums raised in accordance with an investment policy, investing them in assets, such as financial investments (shares or bonds). Shares or units are issued, representing a portion of the assets in the collective investment, in return for the sums paid into the collective investment.

Depending on the method chosen, a crowdfunding operator may have to comply with banking and financial regulations and, as such, meet certain capital, authorization or registration requirements. Organizational and conduct of business rules may also apply. The type of business conducted will determine which requirements apply and which regulator is competent.

Finally, certain activities also need to be registered. For instance, the intermediaries in banking transactions and payment services or payment service providers should be registered and respect the proper regulation.

4. How do France’s licensing requirements apply to cross-border business into France?

Whether a firm outside France deals with a client or a counterparty located in France, activities they carry out will typically be subject to French laws and regulations. The service provider will need to consider whether they are triggering a local French licensing obligation.

The regulation applicable to a financial service provider doing business in France depends on its country of origin and the chosen structure to operate in France. Indeed, according to European laws, different regulations apply whether the relevant financial services have already been authorized outside or inside the European Union.
European Union service providers

The following procedures are applicable when a European Union service provider intends to open an establishment or exercise the freedom to provide services across the European Union, including in France.

If the financial services have already been authorized in a European Union country, it will only be necessary to contact the competent regulatory authority in the country of origin of the service provider. In this case only the services previously authorized by another European authority will be authorized in France. However, when a service provider intends to change a piece of information provided in the previous notification (for instance, a change in the scope of activities in the way of providing cross-border services), the competent regulatory authority in the European Union state of origin must be informed.

Third-party service providers

A foreign service provider authorized outside the European Union can decide between opening a representative office, an establishment or a subsidiary in France. Each possibility requires a special authorization or notification, depending on the level of services provided.

Thus, if the service provider intends to open:

- an office in order to exercise the activities of information, liaison and representation, the French competent authority must be notified of the project. It is important to underline that a representative office is not allowed to do global marketing for its services.

- an establishment, an authorization is required from the French competent authority. The conditions to deliver the agreement are close to those applicable to opening a subsidiary.
• a subsidiary, an authorization is required from the French competent authority. The subsidiary will have to fulfil all the same requirements as a French service provider.

5. **What are the requirements to obtain authorization in France?**

In order to become authorized, an applicant must satisfy the relevant regulator that it meets the conditions applicable to its activities.

The conditions can vary depending on the particular regulated activities that the applicant intends to carry on in France. Broadly, however, the following conditions will need to be satisfied:

(a) **Legal form** - The regulator will examine if the applicant’s legal form is appropriate to the activities.

(b) **Business model** - The regulator will examine the program of operations as well as the technical and financial resources.

(c) **Shareholders** - The regulator will examine the identity and suitability of contributors of capital and, where applicable, their guarantors.

(d) **Executives** - The effective determination of the activities’ orientation should be done by at least two persons whose respectability, competence and experience are proven.

(e) **Location of offices** - The applicant’s headquarters have to be located on the same national territory as the registered office and in some cases, the headquarters and registered office should be only in France.

(f) **Effective Supervision** - The applicant must be capable of being effectively supervised. The regulator could deny an agreement when its mission may be hampered by a foreign non-European Union regulation or by certain capital links.
(g) **Appropriate resources** - applicants must satisfy the regulator that they have adequate resources to carry on the relevant regulated activities. The regulator will check if the minimum required capital is paid up, as well as the quality of the contributors of capital.

6. **What is the process for becoming authorized in France?**

Before starting banking or financial activities in France, the applicant should contact the competent French regulator in order to present its plan and examine the schedule for carrying it out. Subsequently, an application form corresponding to the regulated activities must be completed and submitted to the regulator with all the relevant supporting documents.

The regulator will examine the application and may ask for further information or additional documents according to specific features of the project.

The procedural timeline depends on the authorization sought. It can vary between three months and 12 months, depending on the regulated activities.

7. **What financial services “passporting” arrangements does France have with other jurisdictions?**

A service provider authorized in France that intends to do business in another European Union country must notify the French regulator before starting its activities. Depending on the intent to create an establishment or to exercise the freedom to provide services across the European Union area, a specific notification form should be sent to the regulator. Once the regulator has given its decision, the services authorized in France can be provided across the European Union.
Moreover, the French service provider has to appoint a senior manager for the new European branch. Before the appointment can be effective, the French authority must be notified in order to give its approval.

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1. Who regulates banking and financial services in Germany?

Germany has two national regulators with responsibility for the authorization and supervision of banks, insurers and certain other financial sector companies. These are the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and the German Federal Bank (Deutsche Bundesbank).

The BaFin and the Deutsche Bundesbank share banking supervision, but not as a “twin peak” model. Pursuant to section 6 (1) of the Banking Act (Kreditwesengesetz or KWG), the BaFin is the administrative authority responsible for the supervision of institutions under the KWG. The Deutsche Bundesbank merely assists the BaFin in the supervision of banks and financial services providers. The cooperation of the BaFin and the Deutsche Bundesbank in the institutions’ ongoing supervision is governed by section 7 (1) KWG, which stipulates that, among other things, the Deutsche Bundesbank shall, as part of the ongoing supervision process, analyze the reports and returns that institutions have to submit on a regular basis and assess whether their capital and their risk management procedures are adequate. Ongoing monitoring of institutions by the Deutsche Bundesbank is normally carried out by its local head offices. In simplified terms, the Deutsche Bundesbank serves as the “eyes and ears” of the BaFin, but the Deutsche Bundesbank also gives input into the decision making of the BaFin, even if the BaFin retains ultimate responsibility.

Under the EU’s Single Supervisory Mechanism Regulation (SSM), the European Central Bank (ECB), carries out clearly defined supervisory tasks to protect the stability of the European financial system, together with the National Competent Authorities (NCAs) of participating member states. The SSM Regulation and the SSM Framework Regulation provide the legal basis for the operational arrangements related to the prudential tasks of the SSM.
The ECB is currently responsible for the direct supervision of approximately 20 German credit institutions representing the most important banks in the country and as such replaces the BaFin and the Deutsche Bundesbank under the relevant German supervisory laws. However the two German regulators still form an important part of the regulatory institutions and participate in the supervision within the framework of the so-called Joint Supervisory Teams.

The ECB’s responsibility extends to the following matters:

- Licensing (grant and revocation)
- Significant shareholdings (“ownership control”)
- Capital requirements
- Leverage ratio and liquidity requirements
- Governance
- Audits and stress testing
- Consolidated supervision
- Recovery plans, early intervention in case of breach of supervisory requirements

For the remaining lesser important institutions, the ECB has more limited supervisory powers but is directly responsible for the grant and withdrawal of licenses and the decision in the ownership control procedure. In all cases, the decision will be prepared by the BaFin, but final decision making takes place at the level of the ECB. In addition, the ECB has a step-in right in order to ensure consistent application of the rulebook (in consultation with the BaFin) and can also step in at the request of the BaFin.
In relation to recovery and resolution of banks under the rules implementing the EU Recovery and Resolution Directive (RRD), the responsible regulator is the Federal Agency for Financial Market Stabilisation (Bundesanstalt für Finanzmarktstabilisierung or FMSA).

2. What are the main sources of regulatory laws in Germany?

Banking Regulation

The main sources of regulatory laws applicable to credit institutions are the KWG, the Solvency Regulation (Solvabilitätsverordnung or SolV), the Liquidity Regulation (Liquiditätsverordnung or LiqV), and the Large Exposures and Million Credits Regulation (Groß- und Millionenkreditverordnung or GroMiKV).

The KWG implements, among other things, the EU Capital Requirements Directive IV (CRD IV). The impact of the SolVV, the LiqV and the GromiKV has been drastically reduced as a result of the enactment of the EU Capital Requirements Regulation (CRR). The CRR, is directly applicable, that is, it does not have to be implemented. The SolVV, the LiqV and the GroMiKV now only provide limited supplementary regulation on top of the CRR.

Further major banking regulations include the Ownership Control Regulation (Inhaberkontrollverordnung), which covers the ownership control procedure, and the Institutions Remuneration Regulation (Insitutsvergütungsverordnung), which deals with the regulation of variable compensation systems.

Under several provisions of the KWG, the BaFin may issue regulations, guidelines or orders that apply to those it regulates. Such (written) communications (other than those addressed to individual institutions) are disclosed on the BaFin or the Bundesbank website. Moreover, the BaFin provides guidance on its regulatory practice in circulars, guidance notices and interpretative letters.
Banking regulation for certain special banks is also contained in the Building Societies Act (*Bausparkassengesetz*) and the Mortgage-Covered Bond Act (*Pfandbriefgesetz*), which requires an additional license for banks who want to issue mortgage-covered bonds.

Savings and loan institutions (*Sparkassen*) are also regulated under laws of the federal states, since most such institutions are incorporated under public (state) law.

The RRD has been implemented in Germany in a separate legislation, the Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* or SAG).

**Regulation of Financial Services Providers, including Investment Firms**

The KWG also regulates financial services providers, such as financial leasing companies, factoring companies and investment firms.

Investment firms are partly regulated under the KWG, in particular as regards license requirements and general organizational duties, and partly in the Securities Trading Act (*Wertpapierhandelsgesetz* or *WpHG*). The KWG and the WpHG implement the EU Markets in Financial Instruments Directive (MiFID).

**Payment Services Regulation**

Payment services and e-money are regulated under the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz* or ZAG).

**Fund Manager and Fund Regulation**

Fund management companies and investment funds are regulated in Germany by the German Capital Investment Code (*Kapitalanlagegesetzbuch* or KAGB). The KAGB implements the UCITS Directive and the Alternative Investment Fund Managers (AIFM) Directive, but it also contains fund regulation for open and
closed end investment funds marketed with the general public as well as regulation of institutional funds (so-called special funds).

Money Laundering Regulation

Further important regulation applicable to all banks, financial services providers, fund managers and payment services providers is contained in the Money Laundering Act (Geldwäschegesetz or GwG).

3. What types of activities require a license in Germany?

Banking

Pursuant to section 1 (1) KWG, credit institutions are undertakings that conduct banking activities commercially or on a scale that requires a commercially organized business undertaking. Banking activities are:

1. the acceptance of funds from others as deposits or of other repayable funds from the public unless the claim to repayment is securitized in the form of bearer or order debt certificates, irrespective of whether or not interest is paid (deposit business);

2. the granting of money loans and acceptance credits (lending business);

3. the purchase of bills of exchange and cheques (discount business);

4. the purchase and sale of financial instruments in the credit institution’s own name for the account of others (principal brokerage);

5. the safe custody and administration of securities for the account of others (security deposit business);
6. the obligation to repurchase previously sold loan receivables prior to their maturity (loan repurchase business);

7. the assumption of sureties, guarantees and other warranties on behalf of others (guarantee business);

8. the execution of cashless collection of cheques (cheque collection business), collection of bills of exchange (bill of exchange collection business) and the issue of traveler’s cheques (traveler’s cheque business); and

9. the purchase of financial instruments for the own risk of the bank in connection with the placement of such instruments in the market or the assumption of equivalent guarantees (underwriting business).

Business is performed commercially if the operation is intended to continue for a certain length of time and is conducted with the intention of making a profit. Alternatively, the criterion that requires a commercially organized business undertaking applies. This criterion does not hinge on whether a commercially organized business undertaking exists, but solely on whether the scale of the business objectively requires a commercially organized business undertaking.

Financial Services

The definition of financial services is laid down in section 1 (1a) sentence 2 numbers 1 to 10 and section 1 (1a) sentence 3 of the KWG (some of which implement MiFID). Accordingly, financial services comprise:

1. the brokerage of transactions involving the purchase and sale of financial instruments (investment brokerage);

1a. the provision of personal recommendations regarding transactions in specified financial instruments to customers or their representatives, provided that such recommendations are based on an examination of the
investor’s personal circumstances or presented as being suitable for the investor and are not exclusively announced through information distribution channels or to the public (investment advice);

1b. the operation of a multilateral system that brings together the interest of a large number of persons in the sale and purchase of financial instruments within that system according to specified rules in a way that results in agreements on the purchase of such instruments being entered into (operation of a multilateral trading system);

1c. the placing of financial instruments without a firm commitment basis (placement business);

2. the sale and purchase of financial instruments in the name of and for the account of others (contract brokerage);

3. the management of individual portfolios of financial instruments for others on a discretionary basis (portfolio management);

4. the

4a. continuous offering of financial instruments for purchase or sale on an organized market or on multilateral trading facility at prices quoted by the institution;

4b. organized and systematic trading on a frequent basis for the own account outside an organized market or a multilateral trading facility by offering a system that is accessible to third parties to conclude transactions with them;

4c. purchase or sale of financial instruments for the own account as a service provided to others; or
4d. purchase or sale of financial instruments for the own account as a direct or indirect participant in a domestic organized market or a multilateral trading facility via a high-frequency, algorithmic trading scheme characterized by the use of infrastructures intended to minimize latencies by system determination, generating, routing or execution without human intervention for individual transactions or orders and by high message intra-day rates that constitute orders, quotes or cancellations, even if a service is not provided to others (dealing on own account);

5. the brokering of deposit business with enterprises domiciled in a non-EEA state (non-EEA deposit brokerage);

6. dealing in foreign notes and coins (foreign currency dealing);

7. the continuous purchase of receivables on the basis of framework agreements with or without recourse (factoring);

8. entering into financial lease agreements as lessor and the administration of property companies within the meaning of sec. 2 (6) sentence 1 no. 17 outside the management of an investment fund within the meaning of sec. 1 (1) KAGB (financial leasing);

9. the purchase and sale of financial instruments outside the management of an investment fund within the meaning of sec. 1 (1) KAGB, for a syndicate of investors, who are natural persons, with scope of decision making as regards the selection of financial instruments, provided that this is a focal point of the offered product and provided that it serves the purpose of the investors participating in the performance of the purchased financial instruments (investment administration); and
10. the safe custody and administration of securities exclusively for alternative investment funds (AIF) within the meaning of sec. 1 (3) KAGB (limited custody business).

Payment Services

Under the ZAG, the following activities require a payment services license, unless the payment services provider is a bank or an e-money issuer:

1. services enabling cash to be placed on a payment account or enabling cash withdrawals from a payment account, as well as all the operations required for operating a payment account (Pay-in and pay-out business);

2. execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider by:
   a. execution of direct debits, including one-off direct debits (direct debit business);
   b. execution of credit transfers, including standing orders (credit transfer business);
   c. execution of payment transactions through a payment card or a similar device (payment card business);
   d. without grant of credit (payment business);

3. execution of payment transactions as described in no. 2 where the funds are covered by a credit line for a payment service user (payment business with grant of credit);

4. issuing of payment authentication instruments and/or acceptance and settlement of payment transactions initiated by payment authentication instruments (payment authentication business);
5. execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services (digitalized payment business); and

6. a service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee (money remittance business).

E-Money

The ZAG also requires a license for the issuance of e-money, which is defined as electronically, including magnetically, stored monetary value as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions and accepted by a natural or legal person other than the electronic money issuer.

Fund Management

The KAGB requires a license for a capital management companies (Kapitalverwaltungsgesellschaft), which are companies domiciled in Germany whose business is to manage domestic investment funds. Such is the case where the companies render at least the portfolio management services or the risk management for one or several investment funds. The license requirement also applies to internally managed investment fund companies.

Certain fund managers are exempt from regulation and merely require a registration with the BaFin. Most importantly, this is the case for fund managers of special funds (i.e., not marketed to the general
public) whose aggregate assets under management do not exceed EUR500 million (unleveraged) or EUR100 million (leveraged).

4. **How do Germany’s licensing requirements apply to cross-border business into Germany?**

**Trigger Points for license**

**Banking and financial services including investment services**

Where a bank or financial services provider outside Germany deals with a client or a counterparty located in Germany, its activities will typically be subject to German laws and regulations. The bank or service provider will need to consider whether they are triggering a local German licensing obligation. The BaFin issued a guidance note in 2005 that clarifies the conditions under which cross-border activities of banks and financial services providers require a license in Germany. The guidance note distinguishes between offering services in a “directed” or “target-oriented way”—which require a license—and providing services passively, that is, on the initiative of German residents—which do not require a license. This distinction may be difficult to apply but in general, a foreign institution that does not solicit clients in Germany may, without being licensed, offer banking or financial services to German residents.

In order to be able to rely on this “passive freedom of services exemption,” it is advisable for the foreign institution to document that a transaction was solely based on the customer’s initiative. It is also advisable to rely on the passive freedom of services exemption only in isolated instances; reliance in a multitude of transactions would arouse the suspicion of the BaFin. Furthermore, a general solicitation effort by the foreign institution would destroy the exemption.

It is important to note that the guidance note does not contain a “sophisticated investor” exemption. Providing cross-border services to a sophisticated person or institution is treated the same way as providing services to a retail customer although in practice, it is easier to rely on and prove facts for a passive sale exemption in the case of
institutional clients and very difficult in the context of retail customers.

In general, according to the guidance note, foreign institutions are required to obtain a license in order to offer on a cross-border basis banking or financial services to customers in Germany where they cannot rely on the passive freedom of services exemption. Except where the EU-passport rules discussed below apply, a license requires a permanent establishment (headquarters or branch offices in Germany).

Payment Services

Pursuant to sec. 8 (1) ZAG, an institution wishing to provide payment services as a payment institution in Germany, commercially or on a scale that requires a commercially organized business undertaking, needs written authorization from the BaFin.

While the BaFin has not issued any specific guidance as to when exactly the license requirement is triggered for foreign providers serving German customers, it can be safely assumed that the same principles apply as with banks and financial services providers, that is, any form of solicitation by any means addressed to German residents will trigger the license requirement.

Fund Managers

As for fund managers, regulation of funds is primarily exercised through regulation of managers. It requires that the manager be either fully licensed or registered with the BaFin under the KAGB.

The triggering point for the license requirement would be the management of a fund set up under the KAGB as funds set up under the KAGB may only be managed by a duly licensed or registered fund manager.
Non-EEA funds marketed in Germany do not necessarily have to have a fund manager duly licensed in Germany, but would be subject to different rules for obtaining a registration for marketing in Germany under the KAGB.

At present, fund managers that are not domiciled in Germany cannot obtain a license under the KAGB.

**Exemptions from the License Requirement**

**Banks and Financial Services Providers**

Pursuant to sec. 2(4) of the KWG, foreign entities may be exempted from the license requirement. An exemption may be granted by the BaFin on a case-by-case review if “the enterprise does not require supervision, given the nature of the business it conducts.” Such an exemption from the license requirement can only be considered for limited business operations and in principle is only granted to entities that the BaFin can assume will not require additional supervision in Germany due to the effective supervision in their home country. Foreign institutions may be exempted for transactions involving interbank business and transactions with institutional investors such as the German federal government, the states, local authorities and their institutions, and credit and financial services institutions, including investment companies, insurance companies as well as certain major corporations.

Exemptions may also be granted where a foreign entity is a member of a group of an institution licensed in Germany. In particular, an exemption may be granted where a German licensed institution transfers customers to its foreign parent/subsidiary/affiliate. However, an exemption will only be granted if the entity is effectively supervised in its home country by the competent authority according to international standards, and the competent authority of the home state cooperates with the BaFin. Furthermore, the applicant must submit a certificate from the authority of the home country, which confirms that the foreign institution has a license in its home country,
that the intended cross-border activities do not raise any supervisory concerns and that any future concerns will be reported to the BaFin.

Moreover, the foreign institution must nominate an authorized agent for serving documents in Germany.

An institution that is fully licensed in Germany must act as intermediary if the institution intends to serve retail customers.

For Swiss banks, no intermediary needs to be used for contacting retail customers under a special regime agreed on with the Swiss FINMA, but subject to an obligation by the Swiss bank to comply with certain conduct of business rules based on MiFID and compliance with German anti-money laundering rules.

In relation to certain limited activities relating to financial instruments (investment advice and investment brokerage), an exemption is available for intermediation between domestic or “passported” banks and financial services providers or fund managers if the instruments are limited to fund interests (other than hedge funds) registered for distribution in German or certain alternative investments, and such intermediaries or advisers are not holding client assets. However, in such case, a license requirement for financial intermediaries may arise under the German Trade Regulation (Gewerbeordnung).

Payment Services Providers and E-money issuers

No specific exemptions for foreign payment services providers or e-money issuers apply, other than for activities that are generally exempt from the definition of payment services.

Fund Managers

No specific exemptions for foreign fund managers apply, except that non-EEA-based funds managed by them may be marketed into Germany if they have been duly registered. In theory, marketing to retail investors is also possible, but in such case the requirements for registration are so onerous (including a full prospectus requirement)
that there have not been many practical cases. Therefore, if at all, foreign fund managers will normally limit marketing of their funds to professional investors. Still, the costs for obtaining a registration for marketing and ongoing compliance obligations are so high that it is not common practice for non-EEA-based fund managers to register their funds for marketing in Germany.

A reverse solicitation exemption applies for sales of fund interests to German residents, but for all practical purposes, this exemption can only be used with professional or semi-professional investors, and great care should be taken to document the reverse inquiry. Under no circumstances should non-EEA fund managers rely on the reverse solicitation exemption as a strategic option to sell fund interests in Germany.

It should be noted that there is no option for foreign small fund managers to opt for a registration instead of a license if assets under management do not exceed EUR500 million (unleveraged) or EUR100 million (leveraged), except that EEA and non-EEA funds managed by such a foreign small funds managers registered in another member state of the EEA may be registered for marketing in Germany under simplified conditions set out in sec. 330a KAGB.

**Legal Consequences of Acting without a Required License**

According to sec. 54(1)(no. 2) KWG, a person who is conducting a banking or financial service business without a license may be punished with imprisonment for up to three years or with a monetary fine. In the case of a company, the responsible officer may be punished. Moreover, according to sec. 37(1) KWG, the BaFin may order the immediate discontinuation of the business as well as its liquidation, and appoint a liquidator for that purpose. In addition, it may publish its intervention against such types of business. The purpose behind this is to prevent potential customers and business partners from concluding further business with the foreign institution concerned.
The same also applies for payment services providers or e-money issuers acting without license. Under sec. 31 ZAG the managers of these parties are subject to criminal sanctions and under sec. 4 ZAG, the BaFin may order the immediate discontinuation of such activities and the winding down of existing business, and appoint a liquidator for such purpose.

Transactions concluded with an unlicensed party are not automatically invalid, but customers may have a claim in tort against such party with the remedy of “natural restitution,” that is, they can raise a claim of being put back in the same position as if the prohibited transaction or relationship had not been entered into.

Likewise, it is a criminal act to engage in fund management activities without the necessary license (sec. 339 KAGB). The BaFin can take all appropriate measures and issue administrative orders necessary to enforce the KAGB. While not explicitly mentioned, such is likely to include an order to immediately discontinue any activities conducted without license and to stop the marketing and sale of fund interests.

5. What are the requirements to obtain authorization in Germany?

Banks and Financial Services Providers

Authorizations may only be granted if certain requirements are met, such as under the following circumstances:

(a) When an institution is being established, it has to demonstrate that it is endowed with a minimum amount of initial capital, which will depend on the nature of its intended business. For investment banks, for example, the initial capital required is at least EUR730,000, while for CRR credit institutions it is at least EUR5 million.

It is also possible for a non-German institution to apply for a license for a branch established in Germany. In this case, the minimum capital must be provided in the form of “dotation
capital,” that is, a sum of money put at the disposal of the branch in the same manner as equity capital.

Investment advisers, investment brokers, contract brokers and portfolio managers, as well as operators of multilateral trading facilities or companies carrying out security placement business, that are not authorized to obtain ownership or possession of funds or securities of customers and which do not trade in financial instruments for their own account, must have at their disposal an amount equivalent to at least EUR50,000.

(b) Credit and financial services institutions that in the course of providing financial services are authorized to obtain ownership or possession of funds or securities of customers must have at least two senior managers (executive directors) who must be “fit and proper persons.” Being a “fit” person means that the persons concerned have acquired during their professional careers to date sufficient theoretical knowledge and practical experience to enable them to carry out their new jobs properly. The BaFin consults the Federal Central Register (Bundeszentralregister) for criminal offenses and the Central Commercial Register (Gewerbezentralregister) for business offenses in order to verify whether they are “proper” (i.e., reliable) persons.

(c) The applicant must also declare any holders of significant participating interests (10 percent or more) in the proposed institution and the size of any such interests. Any such persons must also be “proper” persons. If they are not, or if they fail to meet the standards required in the interest of sound and prudent management of the institution for any other reasons, the BaFin may refuse to grant the license.

(d) In addition, the authorization application must contain a viable business plan indicating the nature of the proposed business, the organizational structure and the proposed
internal control systems. The BaFin checks whether the applicant is ready and able to take the necessary organizational measures in order to be able to conduct its business in a proper manner.

Payment Services and E-money Issuers

As part of the licensing procedure, both groups of institutions are required to submit a business model, a business plan with a forecast P&L and balance sheets for the first three financial years, a description of the measures required to fulfil the segregation requirements in relation to client monies of sec. 13 of the ZAG in case of payment services firms and sec. 13a ZAG in the case of e-money issuers as well as a description of the internal organizational structure necessary to ensure compliance with the applicable laws, a description of intended outsourcings, the use of agents and branch offices and the participation in national and international payment systems.

As in the case of banks and financial services providers, there are certain minimum capital requirements, which are between EUR20,000 and EUR125,000 for payment services providers (depending on the type of business) and EUR350,000 for e-money issuers.

There are also “fit and proper” requirements for managers and owners of a significant participating interest. In addition, the applicant must submit copies of constitutional documents and register excerpts as well as the name of its external audit firm.

Fund managers

The licensing procedure is a fully fledged authorization process with requirements equivalent to the requirements for granting permission under article 8 AIFMD or article 6 of the UCITS Directive. The licensing procedure checks requirements, such as sufficient initial capital or own funds, fit and proper requirements for the directors, reliability of shareholders, and a proper organizational structure of the manager.
6. **What is the process for becoming authorized in Germany?**

Often, ahead of a formal submission of a license application, the applicant will request a meeting with the competent BaFin officials to present the project and the intended business model, introduce the managers, and generally discuss the licensing process. This helps to identify problematic points, establish trust and clarify a possible timeline for the authorization process.

The formal process starts with the submission of a written application (for which no form is required) as well as submission of the necessary documents (see section 5).

The BaFin will examine the documents and flag any items that are missing. Also, the BaFin will typically ask for clarifications or the removal of deficiencies in the documents.

There is a maximum period of review in which BaFin must decide on the application. Such review period only starts once complete documents have been submitted, and it is the BaFin who will decide when the submission is complete.

For banks and financial services providers, the review period is six months. If the applicant fails to submit complete documents within 12 months of the submission of the initial application, the license will be denied. The BaFin’s (or the ECB’s) decision is not discretionary, that is, if all requirements have been met, the license must be granted. However, in practice, the competent regulator will always find a reason to declare that the requirements have not been met. While a denial of a license can be challenged before the courts, this is usually not done as it will be too time-consuming and it is usually easier to address the BaFin’s or ECB’s concerns.

For payment services providers and e-money issuers, the review period is three months from the date of submission of a complete document package.
For fund managers, the review period is six months for UCITS and three months for managers of AIFs.

7. What financial services “passporting” arrangements does Germany have with other jurisdictions?

The single European passport is a system that allows financial services operators legally established in one EU/EEA member state to establish/provide their services in another member state without further authorization requirements.

A CRR credit institution or an investment firm authorized to conduct business in a member state of the EEA may conduct business in another member state by provision of cross-border services or by establishing a branch.

No passport is available for banks who are not CCR credit institutions (i.e., special banks who do not take deposits) or financial services providers who are not investment firms under MiFID, such as financial leasing or factoring companies.

Banks and Investment Firms

As a general rule, the process starts by notifying the competent home member state authority, following the rules set out in the relevant legislation and rules of the home member state, which are based on the relevant passporting provisions of the applicable EU Directive (CRD IV, MiFID, PSD, UCITS Directive or AIFMD).

Once the submission has been reviewed by the home member state authority, it will be transmitted to the BaFin, which essentially has no further task or right to reject the notification.

In case the notifying bank or investment firm intends to establish a branch office, the BaFin must communicate within two months after receipt of documents what filing and notification requirements apply in Germany and what legal provisions of German law must be observed. As soon as such communication has been received, or at the
latest after the end of the two-month period, the branch office can be established and business can be commenced.

Under the Single Supervisory Mechanism, a slightly modified procedure applies: If a significant institution that is directly supervised by the ECB wishes to establish a branch within the territory of another participating member state via passporting procedures, it has to notify the NCA of the participating member state where it has its head office and provide the necessary documentation. On receipt of this notification, the NCA immediately informs the ECB’s Authorisation Division, which then assesses the adequacy of the administrative structure in light of the activities envisaged. Where no decision to the contrary is taken by the ECB within two months of receipt of the credit institution’s notification, the significant institution may establish the branch and commence its activities. A similar procedure applies for a significant institution that is from a non-participating member state, but whether or not ECB is competent will depend on the size of the branch. If it meets the size criteria for a significant institution, it will be (co-)supervised by ECB and ECB will take steps accordingly; otherwise, the normal passporting happens, that is, the branch will be (co-)supervised by the BaFin.

In case the relevant institution merely wants to render services across the border into Germany without establishing a branch, the procedure is slightly simpler. Again, the institution will notify the competent authority of its home member state, which will review the notification and pass it on to the BaFin. While the BaFin has again two months to communicate applicable German law provisions to the institution, business may be commenced immediately after the BaFin has received the notification.

Under the SSM, any significant supervised entity wishing to exercise the freedom to provide services by carrying on its activities within Germany for the first time shall notify the NCA of the participating member state where the significant supervised entity has its head office of its intention. The NCA shall immediately inform the ECB and the BaFin on the receipt of this notification.
Payment Services Providers and E-money issuers

The passport system applies for payment services providers and e-money issuers from another EU/EEA member state in a similar manner as for banks and investment firms, except that there is no two-month waiting period for the establishment of a branch office.

As such entities do not fall under the SSM, no special rules involving the ECB will apply.

Fund Managers

Likewise, a passport is available for UCITS managers or AIFMs from other EEA member states.

For UCITS managers, a two-month waiting period as in the case of banks will apply in the case of establishment of a branch in Germany. As in the case of banks, there is no waiting period for a cross-border passport.

For AIFMs, the procedure is slightly different insofar as the competent home member state authority must have submitted the following documents to the BaFin: (i) a certificate confirming the due licensing of the AIFM in its home state; (ii) the notification of the intention to render cross-border services; and (iii) a business plan that shows which domestic special AIF the AIFM intends to manage in Germany or which ancillary services shall be rendered. In the case of establishment of a branch, the BaFin must have received in addition information on the organizational structure of the branch, a domestic address where documents can be requested, and the name and contact details of the branch managers.

Ongoing supervision by the BaFin

Generally, the BaFin has only limited competencies for supervising the passported entities and primarily needs to contact the home member state authority in case it suspects a breach of local law.
Generally, branches of foreign institutions must observe a large part of German anti-money laundering law.

Moreover, certain local regulation applies to branch offices, such as liquidity rules, rules on million credits, automated access by the BaFin to bank account information, and certain information rights and emergency powers of the BaFin.

In the case of branches of investment firms, the branches must observe German conduct of business rules (but remain exclusively subject to the prudential rules of their home member state).

In the case of branches of payment services providers and e-money institutions, money laundering law obligations apply, as well as certain information rights and emergency powers of the BaFin.

In the case of branches of fund managers, the branch will be subject to certain obligations to provide its services honestly, with the requisite skills and due care, and to act in the best interest of the investors and avoid conflicts of interest. Also, the branch must observe the German rules on marketing of its funds. If ancillary services that fall under MiFID are rendered, certain German conduct of business rules will apply in addition.

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1. Who regulates banking and financial services in Hong Kong?

Hong Kong’s financial services regulatory regime is industry-based and there is no single super-regulator. The regulatory status of an institution (bank, financial intermediary or insurance company) determines which regulator will have primary responsibility for overseeing its activities from both a prudential and a business conduct perspective. One entity may, however, be subject to supervision by more than one regulator. Increasing integration among the banking and financial services markets in recent years has given rise to more efficient coordination among the financial regulators on relevant cross-sectoral regulatory matters.

The principal regulators for each sector are as follows:

- Securities and Futures Commission (SFC) – The SFC is responsible for regulating the securities and futures markets in Hong Kong, and it is the principal supervisor of intermediaries (e.g., brokers, investment advisers and fund managers), which carry out regulated activities under the Securities and Futures Ordinance (SFO). Within this framework, the SFC also has regulatory oversight of the Hong Kong Exchanges and Clearing Limited (HKEx) and oversees the performance of The Stock Exchange of Hong Kong Limited (SEHK) as the frontline regulator of listing matters.

- Hong Kong Monetary Authority (HKMA) – The HKMA is the principal prudential regulator and supervisor of banks and deposit-taking institutions in Hong Kong. Where such institutions also conduct SFO-regulated activities in Hong Kong, they must, in most cases, also be registered with the SFC. Where an institution is dually registered, the HKMA will be the lead regulator responsible for overseeing their compliance with statutory and regulatory requirements. In
addition to banks and deposit-taking institutions, the HKMA also regulates money brokers, issuers of certain stored value facilities, and the operators and settlement institutions of certain payment systems. The HKMA is also Hong Kong’s de facto central bank and is responsible for maintaining monetary and banking stability.

- **Office of the Commissioner of Insurance (OCI)** – At present, the OCI is the lead regulator and administrator of the Insurance Companies Ordinance (ICO), which is the legislation governing the operation of insurance companies and insurance intermediaries. The OCI is a government department that supports the Insurance Authority, which is a public officer under the ICO. Supervision of insurance intermediaries currently takes the form of a self-regulating system. Insurance agents in Hong Kong are regulated by the Insurance Agents Registration Board (IARB), established under the Hong Kong Federation of Insurers. Insurance brokers need to be either authorized by the OCI or become a member of one of the two self regulatory bodies, namely, the Hong Kong Confederation of Insurance Brokers (HKCIB) and the Professional Insurance Brokers Association (PIBA).

With the passage of the Insurance Companies (Amendment) Ordinance 2015 (the “Amendment Ordinance”) in July 2015, the Independent Insurance Authority (IIA), which is a non-governmental regulator that is financially and operationally independent of the government, will be established to replace the OCI. The current regime will undergo significant reform once the IIA is established and becomes operational.

- **Mandatory Provident Fund Schemes Authority (MPFA)** – The MPFA regulates the operations of mandatory provident fund (MPF) schemes and occupational retirement schemes in Hong Kong. The MPFA is also the authority that administers the registration, prescribed conduct requirements and imposes disciplinary sanctions for registered MPF Intermediaries. The
HKMA, OCI and SFC remain the frontline regulators for the supervision and investigation of registered MPF intermediaries whose core business is in the banking, insurance and securities sectors, respectively.

2. What are the main sources of regulatory laws in Hong Kong?

- Securities and Futures Ordinance (SFO) – The SFO (along with its subsidiary legislation), is the principal legislative instrument that governs the securities and futures markets and the non-bank leveraged foreign exchange market in Hong Kong. In 2003, the SFO consolidated and updated a package of securities- and futures-related ordinances to create a modern regulatory framework commensurate with international best practice. The SFO also defines and governs the powers, roles and responsibilities of the SFC to administer the legal and regulatory framework within which intermediaries should operate. This includes making rules (in the form of subsidiary legislation) and issuing codes and guidelines (which are non-statutory in nature) across a wide range of areas.

- Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Companies Ordinance (CO) – The CO is the principal legislation governing companies. It also provides for the SFC to authorize prospectuses of share/ debenture offerings by companies (whether incorporated in or outside of Hong Kong) to the Hong Kong public.

- Banking Ordinance (BO) – The BO (along with its subsidiary legislation) provides the legal framework for banking supervision in Hong Kong. In addition, there is a large body of HKMA-issued regulatory guidelines and circulars and a number of HKMA-endorsed non-statutory codes published by industry bodies. The development of the regulatory framework for the Hong Kong banking sector is guided by
international standards, such as those recommended by the Basel Committee on Banking Supervision.

- Payment Systems and Stored Value Facilities Ordinance (Payment Systems Ordinance) (prior to 13 November 2015 known as Clearing and Settlement Systems Ordinance) – The Payment Systems Ordinance empowers the HKMA to designate certain payment systems and their operators and/or settlement institutions for HKMA supervision. Initially applied only to large-value clearing and settlement systems for securities and bank payments, the Payment Systems Ordinance now also empowers the HKMA to regulate retail payment systems.

- Insurance Companies Ordinance (ICO): – The ICO (along with its subsidiary legislation) governs the regulation of insurance companies and insurance intermediaries, and it provides for the authorization and prudential supervision by the OCI of insurers carrying on insurance business in or from Hong Kong. The OCI is empowered by the ICO to oversee the financial conditions and operations of authorized insurers.

- Mandatory Provident Fund Schemes Ordinance (MPFSO) – The MPFSO (along with its subsidiary legislation) is the principal legislation that governs the administration and management of MPF schemes. The MPFSO also provides for the approval of persons as trustees of MPF schemes and the control of such approved trustees, as well as the regulation of sales and marketing activities in relation to MPF schemes. The MPFA is a statutory body established under the MPFSO to perform the above functions. The MPFA also acts as Registrar of Occupational Retirement Schemes, which is another type of retirement scheme that can be set up voluntarily by employers to provide retirement benefits for their employees.
3. What types of activities require a license in Hong Kong?

Hong Kong regulates a broad range of activities, including the following:

- Financial services “regulated activities” – The SFC supervises 10 types of regulated activities (RAs) in Hong Kong. Companies (such as brokerages and fund managers), individuals and authorized institutions that intend to carry on a business in RAs in Hong Kong must generally be licensed or registered under the SFO to carry out the relevant type of RA. The RAs comprise the following types of activities:
  
  o Type 1: Dealing in securities
  o Type 2: Dealing in futures contracts
  o Type 3: Leveraged foreign exchange trading
  o Type 4: Advising on securities
  o Type 5: Advising on futures contracts
  o Type 6: Advising on corporate finance
  o Type 7: Providing automated trading services
  o Type 8: Securities margin financing
  o Type 9: Asset management

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1 As part of the new regime to regulate OTC derivative transactions in Hong Kong, two new regulated activities (being Type 11 (dealing in OTC derivative products or advising on OTC derivative products) and Type 12 (providing client clearing services for OTC derivative transactions)) will be introduced. There is currently no indication as to when this will become effective.
Type 10: Providing credit rating services

Exemptions from the licensing requirements for certain RAs may be available in some circumstances, for example, the performance of RAs (such as Type 4 - advising on securities, Type 6 – advising on corporate finance, and/or Type 9 - asset management) that are wholly incidental to the carrying out of another RA for which a person is already licensed (such as Type 1 - dealing in securities).

- Banking and deposit-taking – This would cover typical retail and wholesale banking activities involving the operation of current and deposit accounts. Engaging in such activities requires authorization by the HKMA under the BO. Hong Kong operates a three-tiered authorization regime, which covers licensed banks, restricted license banks and deposit-taking companies (collectively known as authorized institutions or AIs).

- Local representative offices – The establishment and operation of a Hong Kong representative office by a foreign bank or deposit-taking institution requires prior HKMA approval under the BO. Such offices can only engage in limited marketing, representational and liaison activities, but not in substantive business activities (such as receiving or holding funds, making loans, exchanging currencies and money remittance).

- Money broking – Intermediaries who broker certain currency trading and deposit agreements between parties that are (or include) an AI require HKMA approval under the BO. The money broker approval regime applies to voice-broking and online/electronic broking.

- Issuing (or facilitating the issuing) of certain stored value facilities (SVF) – SVF are prepaid payment facilities. The existing SVF licensing regime under the BO covers only card-
based products in physical form but will be replaced (on 13 November 2016) by the new SVF licensing regime under the Payment Systems Ordinance. The new regime will apply to card- and account-based SVF in physical and other forms. SVFs are, and will continue to be, regulated by the HKMA.

• Retail payment systems (RPS) and their system operators and settlement institutions – So long as they do not engage in activities that are otherwise regulated, RPS operators and settlement institutions (including the major international payment card schemes operating in Hong Kong) are currently not subject to formal regulation because the CSSO does not currently apply to RPS, but only to large-value clearing and settlement systems for securities and bank payments. The Amended Payment Systems Ordinance will change this and enable the HKMA to also “designate” certain RPS for HKMA supervision. The new RPS designation regime is intended to cover, in particular, the larger payment card schemes, merchant acquirers, payment gateways and mobile infrastructure (e.g., the infrastructure of the trusted service manager (TSM) of NFC mobile payment services).

• Operating a money service – This covers the operation of a money changing (currency exchange) service and/or a cross-border money remittance service in Hong Kong. Subject to certain exceptions (e.g., for AIs), persons providing these services in Hong Kong require a license from the Customs and Excise Department (CED) under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO).

• Lending – Hong Kong retains “old-style” money lenders legislation which, while aimed primarily at “loan sharking,” is capable of catching genuine commercial lending activities. Hong Kong’s Money Lenders Ordinance (MLO) imposes licensing and other compliance obligations that can apply to consumer and non-consumer lenders. The MLO provides for
various exemptions, but only AIs are wholly exempted from the MLO.

- Operating an insurance business – In general, any person wishes to carry on insurance business in or from Hong Kong will need to apply to the OCI for authorization to do so. Authorization to carry on insurance business in or from Hong Kong will only be granted to those insurers who meet the authorization requirements prescribed under the ICO.

- Insurance agent or broker services – Under the self-regulatory system of insurance intermediaries in Hong Kong, an insurance agent is required to be appointed by an insurer and registered with the IARB. An insurance broker needs to be either authorized by the OCI or become a member of one of the two approved broker bodies, namely the HKCIB and the PIBA. Under the Hong Kong regime, an insurance agent is a person who holds himself out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or subagent of an insurer. An insurance broker, on the other hand, is a person who carries on the business of negotiating or arranging contracts of insurance in or from Hong Kong as the agent of the policy holder or potential policy holder or advising on matters related to insurance agents.

The Amendment Ordinance establishes an independent regulatory regime for insurance intermediaries, which will involve the IIA replacing the existing self-regulatory system administered by the IARB, HKCIB and PIBA. The Amendment Ordinance also introduces a concept of “regulated activity” for insurance intermediaries. This new regime prohibits a person from carrying on or holding himself out as carrying on a regulated activity in the course of the person’s business or employment or for reward, unless the person is a licensed insurance intermediary. Under the new regime, a regulated activity includes the carrying out of activities such as negotiating or arranging a contract of
insurance or inviting or inducing another person to enter into a contract of insurance.

- MPF sales and marketing activities – In general, a person will be regarded as carrying on a regulated activity under the MPFSO if such person: (a) invites or induces, or attempts to invite or induce, another person to make a specified MPF decision (e.g., joining an MPF scheme or making/transferring MPF contributions); or (b) gives advice to another person concerning a specified MPF decision. Persons wishing to conduct such regulated activities in Hong Kong generally must be registered as MPF intermediaries under the MPFSO. Accordingly, if a person engages in MPF sales and marketing activities that may influence a prospective/existing participant of an MPF scheme in making a decision that affects such participant’s benefits in an MPF scheme, such person is required to be registered with the MPFA as an MPF intermediary.

4. How do Hong Kong’s licensing requirements apply to cross-border business into Hong Kong?

Where a firm outside Hong Kong deals with customers or counterparties in Hong Kong, such activities would normally be subject to Hong Kong laws and regulations. This may include the application of Hong Kong licensing/authorization requirements to the overseas firm. The overseas firm would also need to consider Hong Kong marketing regulations.

As discussed above, the SFO requires any person that carries on a business in an RA in Hong Kong to be licensed by the SFC. There are no express territorial criteria to be met in order to trigger the application of the licensing requirement, but it is generally understood that it applies to an activity conducted in Hong Kong, or where there is otherwise a sufficient nexus to Hong Kong.
The SFO also extends the licensing requirement to situations where the carrying on of the business by a person in an RA is conducted outside Hong Kong, but where there is active marketing to the public in Hong Kong of such services. Therefore, if no nexus with Hong Kong can be established, the second line of enquiry is whether the marketing activities by an overseas person will nevertheless trigger the licensing requirements.

The final analysis will depend on all the relevant facts and circumstances of each case. In determining whether cross-border activities will be subject to the licensing requirements, the key question to ask is whether that overseas person has actively marketed its RA services to the Hong Kong public. Examples of this may include frequently calling upon Hong Kong investors and marketing the services (including offering products); running a mass media program targeting the investing public in Hong Kong; and conducting Internet activities targeting Hong Kong investors. A particularly important consideration is whether the relevant services are sought out by the customers on their own initiative, and therefore whether the intermediary has acted passively throughout the marketing process. Note, however, that these factors are not definitive and any cross-border activities targeted at Hong Kong persons must be structured with care to ensure compliance with the licensing requirements.

In certain circumstances, the SFO may grant a temporary license to a corporation or individual who is regulated by a relevant overseas regulatory body in order to carry on an RA in Hong Kong, which is equivalent to that being carried on principally outside Hong Kong, for a short period of time. Temporary licenses are not valid for more than three months and the same entity or person will not be granted temporary licenses for more than six months within any two-year period. One of the key considerations in granting a temporary license is whether the overseas regulator concerned performs a function similar to the functions of the SFC and is empowered to investigate, and where applicable, to take disciplinary action for the conduct of the applicant in Hong Kong.
The authorization requirements for AIs and the approval requirements for local representative offices under the BO generally apply only if the relevant activities are carried on in Hong Kong. For example, the receipt and holding of deposits outside Hong Kong would not normally constitute the carrying on of a deposit-taking business in Hong Kong. On the other hand, the money broker approval requirement does not necessarily require that the money broker carries on business in Hong Kong – it is sufficient if the money broking service is provided from outside Hong Kong to persons in Hong Kong. Cross-border marketing activities into Hong Kong may be subject to restrictions under the BO. By way of example, there are mandatory disclosure requirements for invitations to place offshore deposits with a non-AI that are targeted at the Hong Kong public. There are also strict prohibitions on non-AIs representing themselves (expressly or impliedly) as conducting business as an AI in Hong Kong.

5. What are the requirements to obtain authorization in Hong Kong?

The basic approval criteria for obtaining authorization will vary depending on the regulator and type of business activity for which authorization is sought:

**SFC licensing requirements:**

- **Fit and Proper** – These are the fundamental criteria that the SFC will consider for each and every license or registration application, not just with respect to the applicant but also to its substantial shareholders and officers. They include the applicant’s financial status, its relevant educational or other qualifications, its general ability to act competently and honestly, and its reputation and financial integrity.

- **Incorporation** – Companies seeking a license must be incorporated in Hong Kong, or if they are a non-Hong Kong
company, registered with the Companies Registry of Hong Kong (i.e., a branch).

- Competence – Companies have to satisfy the SFC that they have a proper business structure, good internal control systems and qualified personnel to ensure that relevant risks can be properly managed. Individuals seeking a license will need to demonstrate they have the appropriate skills, knowledge and experience to properly manage and supervise the carrying out of RAs by their firm.

- Responsible Officers – Companies must appoint at least two responsible officers (with at least one acting as an executive director) to actively participate in or directly supervise the carrying out of each RA by the business. All executive directors will need to obtain the SFC’s approval as responsible officers of the corporation, which includes demonstrating that they have relevant academic/industry qualifications and have passed the local regulatory framework paper.

- Financial Resources – Depending on the type of RA applied for, companies are required to maintain no less than a specified amount of paid-up share capital and liquid capital at all times.

- Similar Role Overseas – Where a firm wants to apply for a temporary license, it must demonstrate that it is carrying on a business principally outside Hong Kong in an activity which, if carried on in Hong Kong, would constitute an RA. The license will relate solely to the carrying on in Hong Kong of that particular activity. Such firms will also need to be authorized by a relevant regulatory organization in their home jurisdiction to carry on the relevant activity or business.
HKMA authorization requirements:

In order to be authorized as an AI, an applicant must satisfy the HKMA that it fulfils certain minimum authorization criteria. Not all, but many, of these criteria apply equally to all AIs and regardless of the place where the AI is incorporated and its type of authorization (i.e., authorization as a licensed bank, restricted license bank or deposit-taking company). The minimum authorization criteria include the following:

- Adequate financial resources – Applicants must have adequate financial resources to carry on the relevant regulated activities. This includes, among other things, compliance with prescribed minimum paid-up share capital requirements (which differ depending on the type of authorization sought).

- Adequate liquidity – Applicants must maintain adequate liquidity to meet their obligations as they will or may fall due (including compliance with statutory liquidity ratio requirements).

- Adequate provisions – Applicants must maintain adequate provisions for depreciation or diminution in value of their assets for potential liabilities and losses.

- Adequate accounting and control systems – Applicants must satisfy the HKMA that they have adequate accounting systems and systems of control.

- Act with integrity, prudence and competence – Applicants are required to conduct all their business activities with integrity, prudence and competence so as not to be detrimental to the interests of actual or potential depositors.

- Fitness and propriety – The HKMA must be satisfied that the AI’s senior executives and controllers are fit and proper to
hold their positions. In some cases, this requires formal HKMA approval.

Money brokers are subject to similar (if somewhat less extensive) approval criteria. Similarly, the Amended Payment Systems Ordinance sets out extensive licensing criteria for licensed SVF issuers and SVF facilitators.

In view of the limits on their permitted activities, the approval criteria for local representative offices of foreign banks and deposit-taking institutions are much less burdensome.

The HKMA has wide discretion to attach further conditions to authorizations, approvals and licenses granted under the BO and (once in effect) the Amended Payment Systems Ordinance.

**OCI authorization requirements:**

- **Incorporation** – Companies interested in applying to the OCI for authorization to carry on insurance business in or from Hong Kong can be either incorporated in Hong Kong or a non-Hong Kong company registered with the Companies Registry of Hong Kong (i.e., a branch).

- **Fitness and Properness of Management and Shareholders** – The ICO requires that any person who is a director or “controller” of an insurer must be “fit and proper” to hold such position. Prior approval of the OCI is required for the appointment of certain controllers, such as the chief executive of an insurer. In applying the fit and proper test, the OCI will take into account, among other things, the character, qualifications and experience of the directors or “controllers” of the applicant company.

- **Financial Resources** – The minimum paid-up capital is currently HKD10 million, or HKD20 million for a composite insurer (i.e., carrying on both general and long term business)
or for an insurer wishing to carry on statutory classes of insurance business. However, in practice, the OCI would require a capital that is commensurate with the business plan of the applicant. Also, no further composite insurer license will be issued.

- Solvency Requirement – An insurer shall maintain an excess of assets over liabilities of not less than a required solvency margin. The objective is to provide a reasonable safeguard against the risk that the insurer’s assets may be inadequate to meet its liabilities arising from unpredictable events, such as adverse fluctuations in its operating result or the value of its assets and liabilities. There are separate provisions for a general business insurer, a long term business insurer and a captive insurer regarding the solvency requirements.

- Adequacy of Reinsurance Arrangements – The ICO requires that there must be adequate arrangements for the reinsurance of risks of those classes of insurance that are to be carried on by the insurer.

**MPFA authorization requirements:**

There are two types of MPF intermediaries, namely, principal intermediary and subsidiary intermediary, both of which must be registered with the MPFA.

- Principal intermediary – The MPFA may register any of the following business entities as a principal intermediary for carrying on regulated activities:

  (i) An authorized financial institution (e.g., a licensed bank) registered or a corporation licensed under the SFO for Type 1 (dealing in securities) and/or Type 4 (advising on securities) RAs
(ii) An insurer authorized under the ICO to carry on long term insurance business

(iii) An authorized long term insurance broker under the ICO

- Subsidiary intermediary – A subsidiary intermediary in general means a person who is registered as an intermediary for carrying on regulated activities on behalf of the principal intermediary to which the person is attached. A subsidiary intermediary needs to fulfil certain qualification requirements (e.g., examination and training requirements).

Both principal intermediaries and subsidiary intermediaries must be regulated by an industry regulator (e.g., HKMA, IA and SFC in the banking, insurance and securities sectors, respectively) and be of good standing.

- Responsible officer – A principal intermediary must have at least one responsible officer who must be a subsidiary intermediary attached to it. The responsible officer is responsible for ensuring that the principal intermediary has established and maintains proper controls and procedures for securing compliance with the MPFSO. A principal intermediary must ensure that the responsible officer has sufficient authority, resources and support within the principal intermediary for carrying out its specified responsibilities.

6. What is the process for becoming authorized in Hong Kong?

The formal processes for obtaining authorization will also vary with the regulator and type of business activity being conducted.
SFC licensing process:

- General – To lodge a license application, applicants will need to complete certain prescribed licensing forms and supplements, and pay an application fee. The application includes relevant information describing the following key areas:
  
  o Business Plan and Proposed Business Activities – The applicant must submit its business plan setting out in detail the proposed regulated activities by types to be undertaken. The SFC will consider the activities and the suitability of the RAs to be included in the license.

  o Corporate Structure – This will include information in relation to the structure of the corporation, its directors and its shareholders. All the directors (executive and non-executive), will therefore need to complete SFC application forms. Individual substantial shareholders and executive directors of the intermediate and ultimate holding companies who are substantial shareholders are also required to complete and submit forms for vetting.

  o Individual Forms – As each regulated activity must be supervised by at least two responsible officers, each individual to be appointed as a responsible officer must complete prescribed forms and provide supporting documents to enable the SFC to assess their fitness and propriety to perform their functions.

- The applicant may be asked to complete other supplements and provide additional information to the SFC where appropriate.

The SFC has indicated that the processing of an application submitted by a new industry participant normally takes approximately 15 weeks.
HKMA authorization process:

- Before submitting an application – The HKMA generally encourages applicants to meet with the HKMA first before an application is submitted. Although the HKMA maintains standard lists of required licensing materials, it is generally advisable to ask for a list on a case-by-case basis.

- Application materials – An application for authorization as AI will typically need, as a minimum, to comprise the following materials:
  
  - Application letter setting out the reasons for the application and the applicant’s background, and describing how the relevant authorization criteria will be met
  
  - Certified copies of the applicant’s audited annual reports for the last three years and certified copies of certain corporate documents (e.g., the board resolution approving the application and the applicant’s constitutional documents)
  
  - Business plan and financial projections (including projected balance sheet, capital and liquidity ratios and profitability) for the first three years of the proposed Hong Kong operation
  
  - Organizational chart, staffing plan and details of proposed internal control systems for the proposed Hong Kong operation
  
  - Questionnaires for certain senior executives of the Hong Kong operation (e.g., chief executive, alternate chief executive) and controllers
In the case of a foreign applicant, a letter from its home regulator confirming its consent to the applicant’s Hong Kong plans

- The HKMA has wide discretion to ask for additional information (which it will nearly always exercise).

Prescribed time periods apply only to the processing of applications for HKMA consent to the appointment of certain senior executives and (where required) controllers of an AI. The HKMA is generally required to approve or deny such applications within three months of receiving the completed application. However, the actual processing period is often longer because the “clock stops running” if the HKMA raises further information requests and until the requested information is provided to the HKMA.

The BO does not prescribe the time period within which the HKMA must process an application for AI authorization, and its processing may, depending on the circumstances, take substantially longer.

**OCI authorization process:**

- Preliminary Meeting with IA – A preliminary meeting with the OCI will usually be arranged before the application form is completed. Documents such as the market feasibility study report, background of the applicant and its group (if applicable) - including a corporate structure chart and the latest financial statements of the applicant and its group (if applicable)- and an overview of its business plan may need to be submitted to the OCI for prior consideration. The meeting will enable both the applicant and the OCI to understand each other better as well as to enable the OCI to give its informal views.

- Draft Application – The applicant may proceed to prepare the application after it has discussed its proposal with the OCI and it is considered acceptable to the OCI. The application is
normally submitted in draft form and the OCI will consider the information in detail and revert to the applicant on outstanding issues or deficiencies if necessary. As part of the draft application, the applicant will also need to submit documents such as corporate and proposed organizational charts, prescribed forms for individual and corporate controllers of the applicant, financial projections (prepared based on different assumptions), copies of reinsurance treaties, policies or manuals on internal control, underwriting, claims handling and reserving, reinsurance, investment and AML policies.

• Formal Application – As soon as the applicant receives positive notification of the OCI’s initial assessment, it may proceed to make a formal application to the OCI.

• Decision on the Application – Provided that the formal application has been properly prepared and contains all the relevant information and documents adequate for the OCI to make a decision, the OCI will advise the applicant of its decision on the application after a certain timeframe. If authorization can be given, the OCI will give its approval-in-principle to the applicant and at the same time advise it of the requirements that should be complied with before formal authorization will be given.

• On-site Inspection – The applicant may need to arrange a site visit to its office by the OCI when it has made all the preparations necessary to commence business. During the visit, the applicant will need to satisfy the OCI that all operational systems and staff are in place to enable the applicant to commence business immediately.

• Formal Authorization – If the OCI is satisfied that the applicant has fulfilled all the requisite requirements, a formal authorization will be issued.
MPFA authorization process:

For a corporation seeking to be a principal intermediary, it must complete an application form for registration as a principal intermediary. There should be at least an accompanying application for registration as a subsidiary intermediary (an individual) who will act as a responsible officer of the principal intermediary. The individual must complete an application form for registration as a subsidiary intermediary and approval of attachment of a subsidiary intermediary to a principal intermediary.

Principal Intermediaries with a large number of subsidiary intermediaries attached to it are encouraged to have more than one responsible officer to oversee the regulated activities. This will minimize the risk of the principal intermediary and subsidiary intermediaries not being able to carry on regulated activities if the approval of the only responsible officer is revoked or suspended.

As soon as practicable after the MPFA has registered a principal intermediary and/or subsidiary intermediary, the MPFA will assign an industry regulator as the frontline regulator (i.e., HKMA, IA and SFC in the banking, insurance and securities sectors, respectively) of such intermediary.

7. What financial services “passporting” arrangements does Hong Kong have with other jurisdictions?

Passporting into European Economic Area member states is not available to firms licensed or registered in Hong Kong.

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Hungary

1. Who regulates banking and financial services in Hungary?

Under the Hungarian legal regime, the Hungarian Central Bank (Magyar Nemzeti Bank or MNB) is the regulator of banking and financial services. Among others, the MNB is entitled to:

- define and implement monetary policy;
- issue banknotes and coins in the official currency of Hungary;
- hold and manage official foreign exchange and gold reserves in order to preserve the external stability of the Hungarian economy;
- execute foreign exchange operations in relation to the management of foreign exchange reserves and the implementation of exchange-rate policy;
- oversee payment and settlement systems, and securities settlement systems;
- collect and publish statistical information as necessary to carry out its tasks;
- develop a macro-prudential policy framework relating to the stability of the financial intermediary system; and
- function as the resolution authority within its powers delegated by specific other legislation.

Pursuant to Act CXXX of 2010 on legislation, the president of the MNB is authorized to provide normative instruction for the institutions (bodies and agencies) under its leadership, management or supervision. Since the Hungarian Financial Supervisory Agency (Pénzügyi Szervezetek Állami Felügyelete) was merged into the MNB
in 2013, the MNB has become the only institution that supervises entities providing banking and financial services.

2. What are the main sources of regulatory laws in Hungary?

The main sources of the Hungarian banking and financial law are acts, but government decrees and normative instructions of the president of the MNB are significant as well. Additionally - as Hungary is a member of the European Union - the EU legislation (directives and regulations) have a significant influence on the Hungarian regulatory framework as well. The most significant legal instrument laying down the basic rules of banking and financial services is Act CCXXXVII of 2013 on the Credit Institutions and Financial Enterprises (the “Credit Institutions Act”). Additionally, the legal framework of banking and financing consists of:

- Act CXXXIX of 2013 on the National Bank of Hungary;
- Act CCXXXV of 2013 on the Payment Services; and

In addition, Act V of 2013 on the Civil Code applies in many cases as a “background rule” by containing basic principles of contracts (e.g., consumer contracts, general terms and conditions).

As mentioned above, the President of the MNB has quite comprehensive rights in connection with the regulation of banking and financial operations. Therefore, the secondary legislation is also significant in the field of banking and finance.
3. What types of activities require a license in Hungary?

Under the Hungarian legal regime, the provision of various banking and financial operations require a license, including the following:

- Taking deposits and receiving other repayable funds from the public;
- Credit and loan operations (which includes various forms and products);
- Financial leasing;
- Money transmission services;
- Issuance of electronic money;
- Issuance of paper-based cash-substitute payment instruments (for example, traveller’s checks and bills printed on paper) and the provision of the services related thereto, which are not recognized as money transmission services;
- Providing surety facilities and guarantees, as well as other forms of banker’s obligations;
- Commercial activities in foreign currency, foreign exchange - other than currency exchange services - bills and checks on own account or as commission agents;
- Financial intermediation services;
- Safe custody services, safety deposit box services;
- Credit reference services;
- Purchasing receivables;
• Currency exchange activities;
• Operation of payment systems;
• Money processing activities;
• Financial brokering on the interbank market;
• Activities for the issue of negotiable credit tokens.

Authorization/license can be issued only by the MNB. It is important to note that the MNB does not have discretion to decide whether a license is required in connection with financial services. It may, however, limit the authorization for specific activities, i.e. predetermine the time-period and/or the territorial scope of the license, it may require to comply with specific conditions, and within financial service activities, limit the license to certain business lines or products.

4. How do Hungary’s licensing requirements apply to cross-border business into Hungary?

As the Credit Institutions Act prescribes that its provisions apply to financial services (and financial auxiliary services) performed in the territory of Hungary, it is applicable where such services are provided by foreign entities as well. As a general rule, a foreign company may provide financial services (or engage in financial auxiliary service activities): (i) solely by way of its Hungarian branch for which a license/authorization is generally required; or (ii) on a cross-border basis as described below.

However, financial services (and financial auxiliary services) may be performed subject to authorization issued by the MNB. Generally, there is an exemption in connection with foreign financial institutions established in a member state of the Organization for Economic Cooperation and Development (OECD), as they may engage in the activities of credit and loan operations; financial leasing; purchasing
receivables; and financial brokering on the interbank market in the form of cross-border services if they have been authorized to engage in such activities by the competent supervisory authority of the state where they were established.

In connection with the exemptions from licensing requirements of financial institutions established in another member state of the European Union, please see the Passporting section.

5. What are the requirements to obtain authorization in Hungary?

In order to become authorized, an applicant must comply with the basic rules prescribed in the Credit Institutions Act, such as fulfilling the requirements of the initial capital and the legal form.

Under the Hungarian legal regime, there is a distinction between authorization for establishment and authorization for operation. Furthermore, there are different rules concerning financial institutions and branches of the foreign financial institutions (as foreign financial companies may provide financial services solely by way of their branches). It is important to note that the authorization for operation is not always required, as it depends on the form in which the entity provides financial services. If the entity providing financial services is a credit institution or a Hungarian branch of a foreign credit institution, authorization for operation is always required.

The application of a financial institution for authorization of establishment are requires the submission of the following documents:

- The charter document that clearly defines the type and scope of activities of the financial institution to be established;
- The document that defines the proposed area of operation (nationwide or limited to a specific region);
• Proof of having 50 percent of the initial capital for credit institutions, or the full amount of the initial capital for financial enterprises deposited and paid up by the founders;

• Drafts of the financial institution’s organizational and management structure, decision-making and control mechanisms, and its organizational and operational procedures, if they are not contained in the charter document in sufficient detail;

• If the applicant is established abroad, a statement identifying the applicant’s delivery agent (such agent must be an attorney or a law firm registered in Hungary, or the applicant’s bank representative office in Hungary);

• Proof of compliance of the financial enterprise with personnel and infrastructure requirements for providing financial services;

• In the case of credit institutions that are subject to supervision on a consolidated basis or supplementary supervision under the Act on the Supplementary Supervision of Financial Conglomerates, a description of the apparatus for the conveyance of information related to supervision on a consolidated basis or supplementary supervision and a statement from the persons with close links to the credit institution guaranteeing to provide the authority with the data, facts and information that are necessary for supervising the credit institution on a consolidated basis or for supplementary supervision;

• In the case of credit institutions that are subject to supervision on a consolidated basis or supplementary supervision under the Act on the Supplementary Supervision of Financial Conglomerates, a statement from each natural person with close links to the credit institution containing his consent to have the personal data he has disclosed to the credit institution
processed and disclosed for the purposes of supervision on a consolidated basis or supplementary supervision;

- A statement on having a main office in Hungary from which governance of the financial institution takes place.

Moreover, it is important to note that additional documents may be required in connection with the special types of financial institutions such as credit unions and financial holdings.

As regards the establishment of a financial institution incorporated as a branch, the applicant must provide the following, in addition to the documents detailed above:

- The foreign financial institution’s charter document;

- The foreign financial institution’s certificate of incorporation or a certificate issued within three months to date in proof of the foreign financial institution being registered in the companies (or trade) register;

- A copy of the authorization issued by the competent supervisory authority of the state where the foreign financial institution is established;

- A certificate issued within 30 days to date proving that the foreign financial institution participating in the foundation has no outstanding debts owed to the tax or customs authorities or the health insurance administration agency or pension insurance administration agency of competence in Hungary or in the state where the said foreign financial institution is established;

- A certificate from the competent supervisory authority of the state where the financial institution is established stating that the institution’s head office from which its operations are directed is in that state;
• In the case of a credit institution or a financial enterprise, the audited and approved balance sheet and the profit and loss account of the founder, respectively, for the previous three fiscal years or for the previous fiscal year;

• A statement concerning the off-balance sheet liabilities of the foreign financial institution;

• A detailed description of the founder’s ownership structure and of the circumstances under which the founder is considered to belong to the group of persons being affiliated with, as well as the leading company’s consolidated annual account for the previous year if the leading company is required to prepare a consolidated annual account;

• A statement executed in a private document representing conclusive evidence from the persons indicated in the application in which to grant consent to having the authenticity of the documents attached to the application for authorization checked by the authority by way of the agencies it has contacted;

• An indication of the financial services and financial auxiliary services performed by the applicant as authorized by the competent supervisory authority of the place where it was established, as well as the locations where such activities are performed;

• A description of the scope of authority of the senior executive of the branch and a description of the applicant’s bodies, the approval of which is expressly required for passing certain decisions;

• A statement of the competent supervisory authority of the place where the applicant was established, in evidence of having no grounds to exclude the senior executive - of
citizenship other than Hungarian - from filling and occupying such office

As mentioned above, credit institutions (and branches of foreign credit institutions as well) may take up operations only upon possession of the license issued by the MNB, for which the following shall be enclosed:

- Proof of having the initial capital paid up in full;

- If all or part of the assets of the initial capital is spent, evidence or a statement to declare that such expenditure was made in connection with the foundation or the commencement of operations;

- Information sufficient to identify each shareholder of the credit institution that holds a minimum 5 percent share or voting right;

- A medium-term business plan for the first three years, excluding credit institutions permanently affiliated to a central body, and the facts regarding compliance with personnel and infrastructure requirements prescribed for operations;

- One or more standard service agreements containing, inter alia, the standard contract terms and conditions pertaining to the activities planned to be performed;

- A statement specifying the date proposed for the commencement of operations;

- A copy of the letter of intent of admission sent to the National Deposit Insurance Fund (Országos Betétszűkítési Alap or OBA), with the exception of credit institutions incorporated as a branch, which are not required under the Credit Institutions Act to join the OBA;
A statement regarding having the necessary facilities in place to comply with data disclosure obligations as prescribed by the relevant legislation, as well as the results of live tests of the computer programs used for such disclosure of data;

A draft of the accounting policy and detailed accounting system;

A statement concerning direct connection to any payment system between credit institutions and an auditor’s certificate concerning the information technology system providing this connection, or a statement concerning the acceptance of an indirect connection;

A statement regarding joining the central credit information system (defined in Act CXXII of 2011 on the Central Credit Information System);

The rules of procedure, approved by the executive board, to be applied in the event of an emergency situation seriously jeopardizing the liquidity or solvency of the credit institution, and - if the credit institution is not covered by supervision on a consolidated basis - a recovery plan according to the Credit Institutions Act;

The organizational structure, system of management, decision-making and control procedures as well as the organizational and operational regulations, if such are not contained in detail in the charter document;

In the case of credit institutions set up as cooperative societies, a statement of admission submitted to the Integration Organization provided for in the ICCI;

As regards the Hungarian branches of third-country credit institutions, if, under the authority’s permission granted under
the Credit Institutions Act, they are not required to join the OBA:

- their commitment for providing clients with information in Hungarian relating to the forms of insured deposits;
- the third-country credit institution’s commitment pertaining to the indemnification of deposit holders in Hungary;
- the conditions and method of indemnification, the manner in which procedures are carried out, and agreements ensuring payments of indemnification;

- A copy of the statement on joining the Resolution Fund;

- The complaints-handling policy

It is important to note that for the branch to be granted authorization, additional requirements regarding the mother company may be required by the MNB, such as detailed policy of data treatment and protection, and proper policy against money laundering and terrorism financing, among others.

6. What is the process for becoming authorized in Hungary?

The rules of becoming authorized are detailed primarily in Act CXXXIX of 2013 on the National Bank of Hungary (the “MNB Act”). Additionally, Act CXL of 2004 on the General Rules of Administrative Proceedings and Services applies as a background rule.
According to the provisions of the MNB Act, an applicant must complete a formal process to obtain authorization. This involves the completion of the prescribed forms or standard electronic forms and the payment of an administrative service fee. Additionally, the applicant must declare that it has disclosed to the MNB all important facts, data and information required for the authorization.

The administrative time limit in the proceedings for the authorization of establishment, merger and division, operating licenses and termination of activities is generally three months. However, it may be extended on one occasion by up to three months on a duly justified basis (which means that the MNB may decide in its sole discretion whether the additional three-month period is necessary). If the MNB has requested the applicant to provide supplementary or additional information, the administrative time limit shall be calculated starting from the time when the deficiencies are remedied in full.

As a general rule, in the course of authorization procedures, the MNB shall carefully study the documents and information furnished with the application and shall ascertain that the granting of authorization does not violate any legal provision. As part of the authorization procedure, the authority shall conduct site inspections to check whether all requirements for authorization are satisfied.

If there are missing or false documents, or the requirements have not been fulfilled at all, the MNB notifies the applicant about the necessary measures that shall be fulfilled within a given time period. If all of the requirements are met, the MNB issues the authorization.

7. What financial services “passporting” arrangements does Hungary have with other jurisdictions?

Pursuant to the Credit Institutions Act, authorization for establishment and operation is not required for the Hungarian branches of credit institutions that are established in another EEA member state.
In connection with financial enterprises, authorization is not required if the financial enterprise is established in an EEA member state, and:

- is the subsidiary, or a jointly controlled entity of a credit institution that is established in the same EEA member state as the financial enterprise, or is the subsidiary, or a jointly controlled entity of a financial enterprise that is established in the same EEA member state as the financial enterprise;

- performs its activities in the EEA member state in which it is established;

- the parent company controls at least 90 of the voting rights;

- the parent company provides the authority with a certificate from the competent supervisory authority of the EEA member state in which it is established, stating that the financial enterprise is managed in a prudent and circumspect manner;

- the parent company, with the consent of the competent supervisory authority, undertakes full responsibility for the financial enterprise’s obligations; and

- the financial enterprise is subject to supervision on a consolidated basis with the parent company.

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Indonesia

1. Who regulates banking and financial services in Indonesia?

Indonesia has two regulators with responsibility for the authorization and supervision of banks, insurers and other financial institutions. They are Bank Indonesia (BI) and the Financial Services Authority (Otoritas Jasa Keuangan or OJK).

OJK was established in 2011 to take over the role of BI in supervising and regulating banks and protecting consumers in the financial services industry and of Bapepam-LK in supervising and regulating non-bank financial institutions and the capital market. BI is responsible for the macro-supervision of the banking and financial services industries.

The allocation of responsibilities between BI and OJK is as follows:

(a) BI regulates the macro-supervision of the banking and financial services industries. BI is also responsible for regulating monetary and payment system services for prudential and conduct purposes. BI is also the main regulatory authority for money remittances and payment system services providers such as Visa and MasterCard.

(b) OJK regulates banks, insurers and large investment firms (i.e., investment banks) for prudential and for conduct purposes, including in relation to regulatory capital requirements. Firms that OJK regulates include banks, asset managers, brokers, financial advisers, pension funds, insurance companies and multi-finance companies.
2. What are the main sources of regulatory laws in Indonesia?

Aside from legislative products issued by the government and the House of Representatives, much of the relevant law in Indonesia is derived from regulations and decrees issued by BI and OJK.

OJK regulations are the main legal framework in Indonesia for the banking, financial services and insurance industries. There is also a large volume of secondary and delegated legislation. BI regulations are the main regulatory framework for monetary and payment system services and also for macro-supervision of the banking and finance industry.

Both BI and OJK issue rules and guidance, which apply to the firms that they regulate. BI and OJK publish a handbook that contains detailed rules and guidance. These rules and guidance are applicable primarily to Indonesian-regulated or -supervised firms but are also relevant in certain respects for non-Indonesian firms.

3. What types of activities require a license in Indonesia?

Indonesia regulates a broad range of activities, including the following:

- Accepting deposits – This covers typical retail banking activities involving the operation of current and deposit accounts.

- Issuing and processing electronic money – Electronic money is a prepaid electronic payment product which can be card- or account-based.

- Providing payment services – This covers a broad range of activities involving matters such as money remittance, debit or credit card issuance, acquiring card transactions and the operation of payment accounts.
• Consumer lending – This covers both lending to consumers and activities such as credit brokerage and debt collection on behalf of third parties.

• Carrying on insurance business (effecting and carrying out insurance contracts, both life and general)

• Insurance brokerage and agency activities – Indonesian regulations cover various insurance broking activities, as well as the handling of claims on behalf of the insured.

• Providing investment advice – Providing advice on most categories of investment is a regulated activity in Indonesia. This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.

• Trading in or brokering securities – This would cover brokerage of securities for its own interest or the interest of other parties.

• Arranging transactions in investments – This activity covers the role of intermediaries in investment transactions. It is very broad and covers infrastructure providers, including electronic communication networks that route orders for execution.

• Providing finance leases or other types of financing – This activity is conducted primarily by multi-finance companies.

• Underwriting the sale of securities, including underwriting shares in a public offering for the issuer’s interest with or without the obligation to buy the unsold/remaining securities

• Establishing, operating and winding up a collective investment scheme – Most types of funds will be regarded as collective investment schemes under Indonesian law. This will extend to open-ended corporate bodies and partnerships.
Providing custody (safeguarding and administration of investments). Providing custody services in relation to assets that include investment is a regulated activity.

4. How do Indonesia’s licensing requirements apply to cross-border business into Indonesia?

Foreign parties who intend to conduct business in collecting funds or establishing a financial services company in Indonesia will generally be subject to Indonesian laws and regulations. Indonesian financial services companies should obtain a business license from the relevant Indonesian authorities. The licensing or approval requirements from the relevant authorities also apply to some financial services products, such as collective investment contracts or banking products. However, in an international financing transaction, it is not necessary for foreign parties as the lender to be licensed in the Republic of Indonesia.

5. What are the requirements to obtain authorization in Indonesia?

To establish an Indonesian financial services company, the applicant typically should apply for a principle and business license based on the relevant laws and regulations depending on the financial services. For some financial services such as banking, insurance and financing companies, the following conditions will need to be fulfilled:

Legal Form and Ownership

Generally, Indonesian incorporated financial services companies can be in the form of a limited liability company. The relevant law requires at least two shareholders to establish and maintain a limited liability company, which could be Indonesian citizens and/or Indonesian legal entities and foreign citizens and/or foreign legal entities. However, as mentioned above, foreign parties should consider any foreign shareholding limitation in the relevant financial services.
Fit and Proper Test

Certain parties of the financial services company should pass the fit and proper test by OJK. The parties who are obliged to undertake the fit and proper test include members of the board of directors and board of commissioners and controlling shareholders. The fit and proper test is conducted by way of: (a) administrative research, which consists of research of required documents, track record and financial reputation; and (b) interviews with candidates who have completed the administrative research.

Capital Requirement

The minimum capital requirement will vary depending on the financial services companies. A newly established commercial bank doing conventional banking must have minimum capital of IDR3 trillion. The capital must be paid up by the shareholders before the deed of establishment is submitted to the Minister of Law and Human Rights.

Business Plan

The applicant should be able to provide the business plan of the relevant financial services to the regulator, which includes feasibility studies on market and economic potential, business activities and projected balance sheet.

Ministry of Law and Human Rights’ Approvals

Before obtaining a particular business license for the relevant financial service, a limited liability company must be established. This requires executing the deed of establishment before a public notary, injecting the issued and paid-up capital into the company, and obtaining Ministry of Law and Human Rights approval of the deed of establishment.
6. What is the process for becoming authorized in Indonesia?

In obtaining a business license, an applicant must complete the administrative process involving the submission of required documents. The particular documents that must be submitted to the regulator will also depend on the nature of the activities. How long the application process will take will depend on the laws and regulations relevant to the financial services. For example, the approval of an application for a banking business license should in theory be issued at the latest 60 business days after the submission of all required documents. The approval of a business license for an insurance company should be issued at the latest 30 business days after all required documents are submitted. However, in practice, the full process of obtaining a license would typically take approximately six months to one year.

For some financial services such as banking and insurance companies, the documents required for a license application include:

(a) deed of establishment;
(b) shareholders’, board of director’s and board of commissioner’s data;
(c) evidence of capital injection; and
(d) business plan, risk management and organization structure.

7. What financial services “passporting” arrangements does Indonesia have with other jurisdictions?

Indonesia does not have any financial services “passporting” arrangements with any other country.
Italy

1. Who regulates banking and financial services in Italy?

Italy has three main regulators with responsibility for the authorization and supervision of banks, insurers and other financial institutions. These are the Bank of Italy, the *Istituto per la Vigilanza sulle Assicurazioni* (IVASS) and the *Commissione Nazionale per le Società e la Borsa* (Consob). The allocation of responsibilities among the above authorities may be summarized as follows:

(a) The Bank of Italy oversees the activity of banks and financial intermediaries in the banking market, which is mostly governed by Legislative Decree no. 385 of September 1, 1993, as amended, and by secondary regulations issued by the Bank of Italy. More in particular, the Bank of Italy issues general regulations and specific recommendations, and is in charge of setting the risk control and the capital adequacy requirements of said intermediaries and of ensuring the stability of the domestic financial system. It should, however, be considered that the European Central Bank (ECB) has recently become the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM), thereby taking over certain supervisory powers over the most relevant Italian banks.

(b) The Consob oversees the activity of the securities markets, which is mostly governed by Legislative Decree no. 58 of February 24, 1998, as amended, and by secondary regulations issued by the Consob (sometime in agreement with the Bank of Italy). More in particular, the Consob is in charge of ensuring the transparency of the markets and the fairness and transparent conduct of intermediaries and issuers.

(c) The IVASS is the official body that controls and supervises the insurance and reinsurance business and insurance and
reinsurance mediation, which is mostly governed by Legislative Decree no. 209 of September 7, 2005, as amended, and by secondary regulations issued by the IVASS.

The Bank of Italy, the Consob and the IVASS have formal reciprocal cooperation protocols in place, in an effort to facilitate achievement of the respective goals.

In addition to the above, an important role in the Italian banking and securities market is played by the Italian Ministry of Finance (Ministro dell’Economia e delle Finanze), which has cross-area competencies, ranging from the collective portfolio management industry (as the Ministry of Finance is the authority that defines the mandatory requirements that Italian investment funds must satisfy in order to be authorized) to the investment services sector (such as the power to identify new types of “financial instruments”).

Finally, the European Union’s supervisory authorities (the European Banking Authority or EBA), the European Securities and Markets Authority, and the European Insurance and Occupational Pension Schemes Authority) play an important role in issuing technical standards in the financial and insurance sector. The ECB closely cooperates with the European Union supervisory authorities, especially the EBA. In particular, the ECB is involved in the EBA’s work and contributes significantly to supervisory convergence by integrating supervision across jurisdictions.

2. What are the main sources of regulatory laws in Italy?

A substantial part of the relevant law in Italy is derived from, or has been harmonized to adjust to, European Union directives and regulations. In many respects, therefore, Italian domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European Directives only set minimum standards, the way in which directives have been implemented across Europe can vary. In other words, Italy and other European
jurisdictions have introduced domestic laws that exceed European-level requirements. Directives also contain obligations and discretions at a member state level, and Italy also has various domestic rules.

The main domestic sources of the Italian regulatory framework are essentially as follows (each of which is further detailed by secondary regulations issued by the competent authorities):

- Legislative Decree no. 385 of September 1, 1993, as amended (the Consolidated Banking Act or CBA), for the banking sector
- Legislative Decree no. 58 of February 24, 1998, as amended (the Consolidated Financial Act or CFA), for the securities sector
- Legislative Decree no. 209 of September 7, 2005, as amended, for the insurance sector

3. What types of activities require a license in Italy?

Italy regulates a broad range of financial activities. These include, among others, the following:

- Accepting deposits – This covers the acquisition of funds with a repayment obligation in the form of deposits or in any other form.
- Issuing electronic money – Electronic money is a prepaid electronic payment product that can be card- or account-based.
- Carrying on payment services – This covers a broad range of activities involving matters such as execution of credit transfers, operating a payment account, execution of payment transactions, transfer of funds and the execution of direct debits.
• Granting of financing – This covers the granting of financing, in any form, to the public and includes loans, finance leases, factoring, and issuance of guarantees and performance bonds.

• Investment consultancy – This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.

• Reception and transmission of orders – This covers both the reception and the transmission of orders by the client regarding the subscription and the buying and selling of financial instruments.

• Execution of orders for clients – This activity covers the role of intermediaries in investment transactions. It means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients.

• Portfolio management – This activity covers the management, on an individual basis, of investment portfolios that include one or more financial instruments, under terms of reference established by the client.

• Management of multilateral trading facility – This activity covers the management by a financial intermediary of those systems aimed at allowing the contacts of multiple interests of buying and selling of financial instruments.

• Dealing for own account – This activity covers the buying and selling of financial instruments in respect of client’s orders.

• Subscription and/or placement with firm commitment underwriting or standby – This covers the activity of the underwriter, who acquires the financial instruments in order to offer them on the market. In such case, the underwriter bears the risk in the event of failure to place the financial instruments.
• Placement without firm or standby commitment to issuers – In such activity, the underwriter does not bear any risk in connection to the placement of the financial instruments.

• Collective asset management – This covers the service that is carried out through the management of UCIs and of the relative risks.

4. How do Italy’s licensing requirements apply to cross-border business into Italy?

Where a firm located outside Italy deals with a client or a counterparty located in Italy, those activities will typically be considered to be subject to Italian laws and regulations, unless it is clear that the firm was contacted by the Italian counterparty without any solicitation. Foreign service providers will need to consider whether they are triggering a local licensing requirement and whether they are complying with Italian marketing rules.

The marketing of financial/banking services to Italian residents will most likely constitute financial promotions, which would not be allowed if the foreign entity were not authorized to provide such services in Italy. Hence, no similar offers/solicitation directed to Italian residents should be made through any means within Italy, including any form of mass communication with the public or with groups of prospective investors, such as customers of a particular bank or any other financial institution. Marketing activities should generally be restricted to prospective clients resident in Italy that are believed to be “qualified investors,” as defined under the securities laws of Italy, but in any case at their unsolicited request. In this respect, however, since the Italian authorities have not released any official paper/guideline on the so-called reverse solicitation scheme (i.e., unsolicited investments of Italian residents), any similar scheme should be carefully evaluated on case-by-case basis having regard to factual scenario. Note that the unauthorized performance of regulated financial activities constitutes a crime; criminal courts may have, and in the past often had, a different and stricter view than that of
regulatory authorities of what can and cannot be done without possessing a license.

Under European law, firms established outside the European Economic Area (EEA) are called “Third Country Firms” (TCFs). Until recently, European laws have not sought to harmonize the approach of member states to TCFs. This meant that access to the markets of member states had to be considered on a case by case basis. However, the trend in European legislation is now towards harmonizing the approach across all member states to TCFs. On the one hand, this approach is likely to create a barrier to entry to European markets. On the other hand, firms who become compliant with new EU standards will be able to access the whole EEA market as opposed to having to consider the market on a country-by-country basis.

Recent EU legislation, the following in particular, may limit the ability of foreign firms to do business in Italy:

- The Alternative Investment Fund Managers Directive imposes limitations on non-EEA persons marketing fund interests to persons in Italy (and other European jurisdictions).

- MiFID II (comprising a recast of the Markets in Financial Instruments Directive and a European regulation), once implemented in 2017, will result in greater restrictions on TCFs doing business in Italy.

5. What are the requirements to obtain authorization in Italy?

In order to obtain authorization, an applicant must satisfy the conditions set forth in the applicable Italian regulations.

The conditions can vary depending on the particular regulated activities that the applicant intends to carry out and, in particular, whether the applicant is to be authorized by the Bank of Italy, the
Consob, the ECB or the IVASS. Broadly, however, the following conditions will usually need to be satisfied:

(a) **Location of offices** - For Italian incorporated companies, both the head and registered office must be located in Italy.

(b) **Business model** - The regulator will examine the applicant’s business model. In particular, specific business models are required in order to carry out certain activities.

(c) **Capital requirement** - Certain capital requirements will need to be met, depending on the authorization sought.

(d) **Independence and integrity requirements** - The corporate officers (i.e., those performing administrative, management or control functions) must meet certain experience, independence and integrity requirements.

(e) **Shareholders’ requirements** - The substantial shareholders must satisfy certain integrity requirements.

(f) **Corporate plan** - The applicant shall submit a plan concerning the initial activity, together with the articles of incorporation and the by-laws. The plan is necessary in order to evaluate the business projects of the applicant.

(g) **Structure of the group** - The applicant shall not have a group structure that may impede the supervision activity by the relevant authorities.

6. **What is the process for becoming authorized in Italy?**

An applicant must complete a formal process to obtain authorization. The documents to be attached to the authorization application as well as the timing for obtaining the relevant authorization vary depending on the type of authorization request.
7. What financial services “passporting” arrangements does Italy have with other jurisdictions?

Once authorized in Italy, an Italian firm can passport its authorization into other EEA member states. This passport, however, is only available to firms established in Italy and will not be available to Italian branches of TCFs. Passporting permits the provision of cross-border services and also the establishment of a physical branch location in other EEA member states.

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Japan

1. Who regulates banking and financial services in Japan?

The Financial Services Agency (JFSA) is the Japanese regulator with responsibility for the authorization and supervision of financial institutions, including banks, trust banks, trust companies, fund transfer/settlement related service providers, insurers, security firms, investment advisors and funds. This includes on-site inspections conducted by the Inspection Bureau of the JFSA and constant monitoring by the Supervisory Bureau of the JFSA. In addition, the Ministry of Economy, Trade and Industry regulates credit card companies.

The Bank of Japan (BOJ) is responsible for macro supervision of the banking and financial services industries to maintain a safe and sound financial system. The BOJ is not a regulatory authority under the Banking Act but does conduct on-site examinations based on bilateral agreements with financial institutions that have current accounts with the BOJ under the Bank of Japan Act. The BOJ also conducts examinations of banks’ overseas branches and off-site monitoring of such financial institutions. The BOJ’s on-site examinations and off-site monitoring cover both Japanese financial institutions and foreign banks in Japan.

There are also industry organizations for each type of financial institution, such as the Japanese Bankers Association and the Japan Securities Dealers Association, that prepare guidelines to share the best practices within the industry. These guidelines are considered quasi-regulations in the industry.
2. **What are the main sources of regulatory laws in Japan?**

Under the Japanese regulatory framework for financial services, each type of financial service has its own specified regulation, including the following:

- **Banking Act** – This is the primary legislation for the banking business and covers licensing, supervision, bank holding companies, scope of businesses for banks and bank holding companies and their subsidiaries, foreign bank agency services, bank agency services, accounting, capital adequacy requirements, major shareholder and branches of foreign banks.

- **Deposit Insurance Act** – This covers the deposit insurance system.

- **Money Lending Business Act** – This regulates companies engaging in money lending business (including agents or brokers for money lending) and covers licensing, supervision and consumer protection.

- **Payment Service Act (or Fund Settlement Act)** – This regulates companies that engage in: (i) small-fund transfer business (a fund transfer transaction of JPY1 million or less); and (ii) pre-paid cards/instruments business. In principle, to engage in the fund transfer business, a company must obtain a banking license, but the small-fund transfer business is exempted from this requirement under this Act. The act covers licensing, supervision, security deposit, consumer protection, foreign fund transfer service provider, and clearing for fund transfers.

- **Financial Instruments and Exchange Act (FIEA)** – This comprehensive legislation regulates various security and other financial investment products (including derivatives) related
business. Businesses covered include underwriting, securities dealing and brokerage, investment advice, investment management, asset management and funds management. This act covers licensing, supervision, disclosure system, take-over-bids, insider trading, scope of business of securities firms, major shareholders of securities firms, foreign securities firms, accounting, exchanges, clearing, self-regulatory functions and customer protection.

- **Financial Instruments Sales Act** – This covers consumer protection in connection with financial investment products.

- **Trust Business Act** – This regulates companies that engage in trust-related services (such as acting as trustee and an agent under a trust agreement). This act covers licensing, supervision, scope of business, accounting, consumer protection, major shareholders and foreign trust companies.

- **Law Concerning Concurrent Business, etc., of Trust Business by Financial Institutions** – This regulates banks that engage in trust business concurrently with their banking business.

- **Insurance Business Act** – This regulates companies that engage in insurance services, such as insurance companies and insurance brokers. This act covers licensing, supervision, scope of business, accounting, consumer protection, major shareholders, subsidiaries of insurance companies and foreign insurance companies.

- **Installment Sales Act** – This provides consumer protection in connection with credit card and other types of instalment sales. The act also establishes a registration system for credit card companies.
• **Foreign Exchange and Trade Act** – This regulates foreign exchange transactions and other international transactions undertaken by financial service providers.

The Act for the Prevention of Transfer of Criminal Proceeds is Japan’s comprehensive anti-money laundering legislation for financial institutions that provide: (i) a statutory KYC procedure; and (ii) a suspicious transaction reporting system.

There is also a large volume of secondary and delegated legislation as well as guidelines prepared by industry organizations.

3. What types of activities require a license in Japan?

Japan regulates a broad range of activities relating to financial services, including the following:

• Accepting deposits - Typical banking activities involving the operation of current and deposit accounts

• Lending or brokerage of lending - Lending to consumers and corporations

• Debt collection on behalf of third parties - Debt collection business must be handled by licensed lawyers, but as an exemption, a debt collection service provider may engage in a limited range of debt collection services by obtaining a license.

• Payment and fund transfer related services - Matters such as money remittance and the operation of payment accounts

• Issuing prepaid cards or other prepaid fund settlement methods - Electronic and non-electronic payment methods, either card-based or account-based

• Providing credit for installment sales - Credit card services
• Underwriting or handling the issue of securities
• Trading in securities and other financial investments as a principal, agent or broker
• Providing advice on financial investment - The provision of advice on the merits of acquiring or disposing of particular investments
• Investment management - Managing investments on behalf of another person
• Arranging transactions in financial investments - Acting as an intermediary in investment transactions
• Operating an exchange or proprietary trading system
• Establishing and operating a collective investment scheme
• Providing custody (safeguarding and administration of investments)
• Carrying on insurance business and insurance brokerage business
• Carrying on trustee services, or agency or brokerage services for trust agreements/beneficial interests

4. How do Japan’s licensing requirements apply to cross-border business into Japan?

Overview of Regime

Japanese financial regulations apply based on a territorial basis (i.e., whether or not the activity is carried out within Japan) but, to a certain extent, the effect in Japan of the relevant activity outside Japan is taken into consideration. The Japanese licensing requirements apply to a firm’s activities undertaken directly (by its staff) or indirectly
(through agents) within Japan or into Japan (i.e., through remote communications such as web-page, telephone, fax or email) regardless of the residency or nationality, or the status of the targeted clients. The issue of whether marketing or solicitation is made in Japan by a foreign firm is an important factor in determining whether Japanese laws will apply. However, even when financial services are provided by a foreign firm at the client’s request (i.e., reverse solicitation), the regulations could apply to the foreign firm and the service.

There is little law or guidance dealing with the application of licensing requirements to cross-border business brought into Japan. Generally if a person outside Japan deals with a client or a counterparty located in Japan, those activities would be subject to Japanese licensing requirements.

Specific Considerations and Rules for Cross-Border Application

Receiving Deposits

There is no clear rule as to whether a foreign bank without a Japanese banking license may receive deposits from residents of Japan. However, it is clear when a foreign bank engages in marketing or solicitation in Japan (directly, or indirectly through agents or brokers) for receiving deposits, it must obtain a Japanese banking license. In addition, a foreign bank may engage in some non-core banking activities that are delegated by a licensed bank, such as acting as a calculation agent business, subject to detailed relevant guidelines in Japan as to outsourcing of banking service.

Lending

There is no clear rule as to whether a foreign lender without a Japanese license (either a banking license or a money lending business license under the Money Lending Business Act) may lend to residents

1 Please note, however, that if a foreign bank has its bank branch licensed as a foreign bank branch in Japan and the bank branch has a license to provide foreign bank agency services, the foreign bank may receive deposits via foreign bank agency service.
of Japan. However, when a foreign lender engages in marketing or solicitation in Japan (directly, or indirectly through agents or brokers) for lending, it must obtain a Japanese banking license. It is not clear whether or not the relevant regulations apply to money lending by a foreign lender to residents of Japan when the transaction takes place solely at the borrower’s request (i.e., reverse solicitation basis.)

Fund Transfer Service

There is no clear provision in the Banking Act covering fund transfer services provided to residents of Japan by a foreign firm. However, when a foreign firm engages in marketing or solicitation in Japan (directly, or indirectly through agents or broker) for fund transfer service, it will trigger the licensing requirements under the Banking Act. It is not clear whether the Banking Act will apply to a fund transfer transaction solely conducted through a web-system located outside Japan.

On the other hand, the Payment Service Act clearly provides that a foreign fund transfer service provider\(^2\) may not solicit residents of Japan without registration under the Payment Service Act.

Underwriting, Selling Agency or Brokerage of Security and Security-related Derivatives

Foreign securities companies are not allowed to engage in business such as underwriting, selling, agency or brokerage of security and security-related derivatives (“Securities-Related Business”) with persons located in Japan unless it’s main office in Japan is registered under the FIEA.

\(^2\) A person who carries out fund transfer transactions in the course of trade in a foreign state under registration, which is the same as the registration under Article 37 pursuant to the provisions of laws and regulations of said foreign state equivalent to the Payment Service Act (including permission or other administrative dispositions similar to said registration)
However, as an exemption to this requirement, an unregistered foreign securities company with no business base in Japan is allowed to engage in Securities-Related Business with persons in Japan if they either: (i) take orders without solicitation; or (ii) take orders through an agency or brokerage service provided by a person licensed under the FIEA (e.g., a traditional securities company). Furthermore, a foreign securities company may trade financial instruments on exchanges in Japan if authorized under Article 60 of the FIEA.

Cross-Border Transactions using the Internet  

A foreign securities company that posts advertisements on it’s website regarding Securities-Related Business is engaging in solicitation unless it takes reasonable measures, including the following steps, to prevent investors in Japan from purchasing services of Securities-Related Business from the foreign securities company.

(a) Disclaimer

The website must include a disclaimer stating that the advertised service is not targeted at investors in Japan. In judging whether an adequate disclaimer is properly indicated, attention must be paid to the following points:

(i) No computer operation other than viewing the advertisement should be necessary for reading and understanding the disclaimer.

(ii) The disclaimer must be written in a language reasonably likely to be readable and understandable by investors in Japan who access the website.

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3 Basically, the JFSA’s view on cross-border transactions using the Internet as discussed here will also apply to solicitation regarding other financial service activities.
Measures to Prevent Transactions

Measures to prevent transactions regarding Securities-Related Business must be in place. In judging whether adequate measures are in place, attention must be paid to the following points:

(i) When making transactions, the foreign securities company checks the location of the investors by requiring them to provide information as to their residence, location, mailing address, email address, payment method and other items.

(ii) Care must be taken to avoid taking orders from the investors in cases where there are reasonable grounds to believe that the orders obviously concern the Securities-Related Business involving investors in Japan.

(iii) Care must be taken to avoid inducing investors in Japan to conduct Securities-Related Business by, for example, refraining from establishing a call center targeted at customers in Japan and establishing links to Web pages targeted at investors in Japan.

These measures are merely examples, so if other measures equivalent or more effective than these have been implemented, the posting of advertisements by foreign securities companies will not constitute a solicitation.

Investment Advice and Investment Management

In principle, a foreign firm providing investment advice or investment management services may not provide those services to residents in Japan without having the relevant license under the FIEA. However, there are some options to exempt a foreign firm from these license requirement, which may include: (i) full delegation scheme to use a licensed entity in Japan; (ii) so-called Article 63 exemption if
investors resident in Japan meet certain qualification thresholds\(^4\); (iii) off-shore fund exemption where less than one-third of the total asset is acquired by a limited number of Japanese residents; or (iv) threshold of securities and deemed securities less than 50 percent of total target assets.

**Insurance**

The Insurance Business Act has a license system for foreign insurance companies.

**Trust-Related Business**

The Trust Business Act has a license and a registration system for foreign trust business operators.

**Issuing Credit Cards**

The Instalment Sales Act does not have a specific provision for a foreign firm issuing credit cards to residents of Japan, but it is generally understood that the foreign firm should be registered through its business office in Japan.

**Issuing Prepaid Cards (including any other prepaid-type payment methods)**

The Payment Service Act does not apply to mere sales of a prepaid card issued outside Japan to residents in Japan. However, the Payment Service Act clearly provides that a foreign prepaid card issuer may not solicit residents in Japan to purchase prepaid cards issued outside Japan.

\(^4\) Effective from March 1, 2016, the rules as to exempted registration under Article 63 of the FIEA have been amended with the addition of a new limitation of qualified investors in Japan and code of conduct for fund managers, etc.
5. What are the requirements to obtain authorization in Japan?

In order to obtain a license or authorization, or to be registered, the applicant must satisfy the applicable requirements for the particular regulated activities under the relevant regulations. The detailed requirements differ depending on the specific license, authorization or registration. However, broadly, the following factors should be examined with certain exceptions:

- **The Type of Applicant** – The applicant must be a corporation.

- **Location of Offices** – The applicant must be located in Japan. For a foreign entity, it must have a presence in Japan and at least one person who is domiciled in Japan as its representative. Further, the requirement in relation to the “appropriate resources,” as explained below, means that certain key senior management personnel may be required to be residents in Japan and a proper administrative center will also need to be located in Japan.

- **Capital and Net Asset Requirement** – The applicant must have stated capital and net assets exceeding the specified minimum amount.

- **Appropriate Resources** – The applicant must satisfy the regulator that it has adequate resources to carry on the relevant regulated activities. Resources include financial resources as well as human resources (including the management with the required skills) and infrastructure. With respect to human resources, the applicant shall deploy personnel who have the knowledge and experience to be able to carry out the regulated business appropriately, fairly and efficiently, and have sufficient social credibility.
• Compliance – The applicant must have a system in place to ensure its compliance with the applicable laws and its internal rules.

• No Anti-Social Force – Neither the applicant nor its senior management should be associated with any anti-social forces.5

• Record of Senior Management – Certain members of senior management of the applicant are required to: (i) have legal capacity; and (ii) not have been or be bankrupt.6 The criminal and administrative records of senior management will be examined.

• Major Shareholder – The applicant’s major shareholders must be appropriate for the regulated business.

• Other Businesses – The applicant’s businesses other than the regulated business for which the applicant will obtain the license, authorization or registration must not be contrary to the public interest and must not interfere with the proper and reliable operations of the regulated business.

• Business Model and Plan – The regulators will examine the applicant’s business model as well as the economic aspects of the business. Regard will be given to matters such as the impact of the model on consumers and on the Japanese financial system.

5 “Anti-social force” is generally defined as organized crime (boryokudan) or any other individual or organization whose activities purposefully disrupt normal, legal and moral business and social conduct, including any group companies of such organization, and an organization or an individual that has strong relationship therewith.

6 If he or she has commenced a bankruptcy proceeding, he or she must obtain a restoration of rights to be part of senior management.
6. What is the process for becoming authorized in Japan?

An applicant applying for a license, authorization or registration must undertake a formal process. This involves the completion of required application forms and the submission of supporting information.

In relation to timing, each regulation has a specified standard processing period (depending on each case, but broadly, between two weeks and four months), but this period does not include the time necessary for consultation with the regulator, amendment of the application to reflect the regulator’s concerns, response to the regulator’s questionnaire, or submitting additional material for further explanation.

In practice, the regulator usually requests the applicant to consult with it before formally submitting the application. Commonly, it will take six months to one-and-a-half years to obtain the financial business license after the start of the application process.

Further, for certain licenses, the applicable laws provide for a formal preliminary examination procedure that the applicant may use, on a voluntary basis, to assess whether it can obtain the license.

The particular forms and annexes that must be completed for submission to the regulator depend on the applicable laws and the type of the regulated activity to be conducted. However, broadly speaking, the following items should be included:

- The application form containing basic information regarding the applicant and its business
- The Articles of Incorporation and other constitutional documents
- An explanation of corporate governance
- All relevant internal rules
• Financial statements
• Resumes for members of senior management (including their respective track-record and capabilities)
• Details of major shareholders and corporate group
• Certain undertakings, and representations and warranties

7. What financial services “passporting” arrangements does Japan have with other jurisdictions?

Japan does not currently have any passporting arrangements for foreign funds or securities. However, on 11 September 2015, the Finance Ministers from Australia, Japan, Korea, New Zealand, the Philippines and Thailand signed the Passport Statement of Understanding, signaling their commitment to join the Asia Region Funds Passport that is due to be launched in 2016 or 2017.

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Luxembourg

1. Who regulates banking and financial services in Luxembourg?

In Luxembourg the prudential supervision duties of the financial services is split between two separate regulators:

(a) *The Commissariat aux Assurances* (CAA) supervises insurance and reinsurance companies, insurance intermediaries and professionals of the insurance sector.

(b) *The Commission de Surveillance du Secteur Financier* (CSSF) is responsible for the prudential supervision of credit institutions, professionals of the financial sector (PFS), undertakings for collective investment funds, UCI management companies including AIFMs, authorized securitization undertakings, fiduciary-representatives having dealings with securitization undertakings, regulated markets and their operators, multilateral trading facilities, payment institutions, and electronic money institutions. It also supervises the securities markets, including their operators.

The prudential supervision exercised by the *Banque du Luxembourg* has two components: the supervision of the global liquidity situation as well as the supervision of the individual situation of the liquidity of each operator, and secondly, the oversight of payment and settlement infrastructures.

The European system set up for the supervision of the finance sector is made up of three supervisory authorities: the European Securities and Markets Authorities (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA). Meanwhile, the CSSF as national supervisory authority remains in charge of supervising the individual financial institutions. The objective of the European supervisory authorities is to improve
the functioning of the internal market by ensuring appropriate, efficient and harmonized European regulation and supervision.

Luxembourg is part of the Eurozone and as such, the European Central Bank has become the supervisor of Luxembourg banks under the EU’s Single Supervisory Mechanism (SSM).

2. What are the main sources of regulatory laws in Luxembourg?

Much of the relevant law in Luxembourg is derived from European Union directives and regulations. In many respects, therefore, Luxembourg’s domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives are “minimum harmonizing” directives, the way in which they are implemented across Europe can vary. Directives also contain obligations and discretions at a member state level, and Luxembourg also has various domestic rules.

The Law of 5 April 1993 on the Financial Sector, as amended, is the main framework law in Luxembourg for banking and financial services. The core regulation for insurance business in Luxembourg is set out by the Law of 7 December 2015 on the Insurance Sector. With regard to electronic money institutions and payment services, the Law of 10 November 2009 on Payment Services, as amended, lays down the specific rules for these financial service providers. There are also a large number of Grand-ducal Regulations and CSSF and CAA Regulations completing the regulatory framework of financial services in Luxembourg.
3. What types of activities require a license in Luxembourg?

Luxembourg regulates a broad range of activities. These include the following:

(a) Insurance

- Conducting activities of direct insurance and reinsurance activities in Luxembourg

- Insurance and reinsurance mediation activities – Luxembourg regulations cover various mediation activities like presenting and proposing (re)insurance contracts, carrying out preparatory work to their conclusion, as well as contributing to the execution of (re)insurance contracts, notably the handling of claims on behalf of the insured.

(b) Banking, custody

- Activities of credit institutions - Receiving deposits or other repayable funds from the public and granting credits for their own account; such activity would be considered as an activity of a credit institution. Eligible credit institutions who will act as custodian bank holding the underlying assets of Luxembourg life insurance contracts or pension funds have to be approved by the CAA.

- Providing custody - Safeguarding, settlement of transactions and other related administration in relation to assets that include investments is a regulated activity
Electronic money and payment services

- Issuing, distributing and redeeming electronic money - Electronic money is a prepaid electronic payment product that can be card- or account-based.

- Carrying on payment services – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions and the operation of payment accounts.

Investment and other financial services

- Luxembourg law requires that companies engaged in financial services other than banking, payment or e-money services adopt a regulated status as PFS, of which there are three types:
  - Investment firms – Luxembourg law recognizes 10 different types of investment firms, including companies active in the business of providing financial advice, investment and brokerage services, market making and the distribution of financial products.
  - Specialized PFS – Specialized PFS are financial professionals that exercise activities outside the scope of investment firms as defined in the European directives. Luxembourg law recognizes 12 different types of specialized PFS, such as corporate domiciliation agents, registrar agents, professional depositaries, Family Offices and professionals performing securities lending.
Support PFS – A support PFS is a company that enters into an outsourcing arrangement with a credit institution, payment institution, investment fund, pension fund, insurance/reinsurance undertaking or another PFS to provide services that require access to confidential data. These services fall under four categories: client communication agents, administrative agents, primary IT systems operators and secondary IT systems, and communication network operators. Because of the PFS status, these companies operate under the same regulatory regime as the financial institutions themselves.

Portfolio management, administration and marketing of an undertaking for collective investment (UCI) - All management companies domiciled in Luxembourg, be it UCITS or non UCITS, must be duly licensed by the CSSF.

4. How do Luxembourg’s licensing requirements apply to cross-border business into Luxembourg?

Financial services providers that are authorized in another EEA member state may carry on their activities and provide their services in Luxembourg through the establishment of a branch, provided that their activities are covered by their authorization. They may provide ancillary services in Luxembourg only if offered together with their core service activity. The exercise of their activities is not subject to any additional authorization by the Luxembourg authorities.

Credit institutions, investment firms, electronic money institutions and payment service providers that are not established in another EEA member state (“Third Country Firms”) and any PFS other than investment firms, whether established inside or outside the EEA,
wishing to establish a branch in Luxembourg shall be subject to the same authorization rules as those applying to financial services providers governed by Luxembourg law.

Where a firm outside of Luxembourg has a client or a counterparty domiciled in Luxembourg, this does not mean that it performs ipso facto regulated activities on the Luxembourg territory. It will depend on the specific activities and physical travel of agents to Luxembourg in order to determine whether those activities trigger a local licensing obligation. Activities such as simple canvassing of clients or the advertising and organization of a “road show” are exempted from the need of a Luxembourg license. The same applies to mere introductory visits to Luxembourg-based clients. However, if agents of Third Country Firms travel occasionally and temporarily to Luxembourg notably to collect deposits or other payable funds from the public and to provide any other financial service that is covered by Luxembourg law on the financial sector, a local authorization would be required.

By way of example, the following activities are regarded as being carried on outside of Luxembourg and therefore not subject to Luxembourg regulation:

- Accepting deposits is regarded as being carried on where deposit funds are accepted. Where a Luxembourg resident credits funds to a bank account held outside Luxembourg, the foreign bank where the individual holds his account will not be regarded as accepting deposits in Luxembourg. A Third Country bank or a non-passported EEA bank can, therefore, hold an account for a Luxembourg resident without contravening Luxembourg laws.

- Direct insurance activities would generally be considered as having been conducted in Luxembourg if the solicitation of Luxembourg resident policyholders and the conclusion and execution of the insurance contract took place in Luxembourg. However, a Third Country insurance undertaking is not deemed to be performing insurance
activities in Luxembourg when the policyholder took the initiative to enter into the contract without having been contacted by the insurance undertaking beforehand.

In other cases, the activities might be deemed to be carried on in Luxembourg and subject to Luxembourg laws. For example, advice is regarded as being given where the recipient of the advice is located, so that where a foreign firm is advising a client in Luxembourg, the firm will be regarded as carrying on the activity of advising in Luxembourg. The same analysis applies in relation to the activity of dealing, so that where a counterparty to a transaction is located in Luxembourg, the activity of dealing will be regarded as being carried on in Luxembourg.

An exclusion to the above could apply in case the Luxembourg client approached the financial service provider in his home country solely upon his own initiative and without having been previously solicited by the service provider (reverse solicitation).

Recent EU legislation that will have an impact on doing business in Luxembourg in particular are as follows:

- **AIFMD (Directive on Alternative Investment Funds Manager)** – Should the passport be extended to non-EU alternative investment fund managers, they would have to apply for an authorization in Luxembourg for the marketing of fund interests in an EU alternative investment fund. For the marketing of a non-EU alternative investment fund, they may choose between the national private placement rules (including specific additional EU conditions) and the passport up until 2018.

- **MiFID II (comprising a recast of the Markets in Financial Instruments Directive and a European regulation)** – This will harmonize the ability of Third Country Firms to access the EU market. Once implemented and until January 2018, the new directive will affect the authorization procedure of Third
Country Firms doing business in Luxembourg and other EU jurisdictions. Under the MIFID II regime, Third Country Firms will be able to apply to ESMA for a status as permitted Third Country Firm, which would allow them to provide investment services or perform activities directly to specific counterparties and clients (excluding retail clients) across the EU without first establishing a branch.

- **IDD (recast of the Insurance Mediation Directive)** – This will extend the supervisory control to all distribution channels of (re)insurance contracts, including direct sales by (re)insurance undertakings, ancillary insurance intermediaries and certain activities by insurance aggregator or price and product comparison websites. At the same time, IDD contains important new or slightly reworded carve-outs excluding certain activities from regulation.

5. **What are the requirements to obtain authorization in Luxembourg?**

As set out above, PFS is a generic label that embraces various and heterogeneous types of statuses – from traditional actors of the financial sector (such as investment firms) to highly technical service providers (such as IT service providers, regulated as Support PFS). Depending on their activity and the risks they are likely to face, the intensity of the rules applicable to them will vary.

Broadly, however, the following conditions will need to be satisfied:

(a) **Shareholder structure** - The applicant must be capable of being effectively supervised. The regulator will also consider the transparency of the structure of the firm, that is, whether there are any impediments to supervision of the applicant, including the group structure and any relevant laws restricting access to information.
(b) **Contemplated activities** - The authorization requested by the entity seeking authorization must correspond to the contemplated activities, and the entity must actually carry out the activities covered by the license; the activities must also include the required anti money laundering and Know Your Customer procedures. The application for authorization shall not be examined in terms of the economic needs of the Luxembourg market.

(c) **Central administration** - The registered office and the central administrations must be located in Luxembourg. This emphasizes the need for firms to have a substantive presence in Luxembourg that is accessible to the regulator and enables the regulator to supervise the firm.

(d) **Appropriate infrastructure and resources** - Applicants must satisfy the regulator that they have adequate resources to carry on the relevant regulated activities, including qualified management of the firm in a healthy and prudent manner. Resources include financial resources as well as human resources (including the composition and qualification of the board of directors and key functions holder’s suitability) and infrastructure comprising the appropriate accounting and IT system.

(e) **External auditing** – The annual accounts must be audited by an external auditor who must be established as a Luxembourg *réviseur d’entreprise agréé* (approved statutory auditor) and have adequate professional experience.

6. **What is the process for becoming authorized in Luxembourg?**

The authorization as financial service provider requires an application to the Ministry of Finance. The authorization will be granted after seeking advice from the CSSF.
An applicant must complete a formal process to obtain authorization, which involves the completion of required application forms and the submission of supporting information.

In relation to timing, in most cases the regulator will have six months from receipt of a completed application in which to determine whether or not to approve the application. The application must be decided on within 12 months after the receipt of the application. The absence of a decision within 12 months shall be deemed to constitute the rejection of the application.

The documents elements that have to be provided for submission to the regulator will depend on the nature of the regulated activities to be conducted.

For an investment firm, the application file consists in particular of the following:

- **Main application form for PFS authorization** - This form is the core document that must be filled in. The five sections within this form include details about the applicant, information of the shareholder structure, the contemplated activities and the central administration, the infrastructure and the internal governance of the investment firm.

- **Articles (or draft articles) of incorporation**, together with an extract from the Trade and Companies Register in Luxembourg if the entity has already been incorporated

- **Detailed memorandum describing the contemplated activities**

- **Supporting documents with regards to the identification of the group head shareholder, the beneficial owner, the direct shareholders having a qualifying holding and shareholders’ agreement (where applicable)**
• Annual report and accounts for the previous three years (if the entity has already been incorporated)

• Organization chart of the company

• Names, curriculum vitae, extract of the police record and personal declaration of honor of natural persons and of each board member and each supervisory board member as well as of the people who will be responsible for the day-to-day management of the entity

• Engagement letter of the external auditor

• Name and curriculum vitae of the compliance officer and of the internal auditor

• Provisional budget for each of the three upcoming years

• Details of the human, technical and material resources to be employed in Luxembourg

• AML and KYC procedures

• Description of the IT infrastructure

• Description of the compliance and risk management function

• Information on the membership in an authorized investor compensation scheme

7. What financial services “passporting” arrangements does Luxembourg have with other jurisdictions?

A European “Passport” permits the provision of cross-border services and also the establishment of a physical branch location.

In Luxembourg, only PFS belonging to the category of investment firms within the meaning of MIFID can be passported, that is,
specialized and support PFS as mentioned above cannot benefit from this particular concept within the EU single market. Passporting means that in accordance with the required notification procedure of the CSSF, they could exercise in other EEA member states those specific investment services and ancillary services that are covered by the relevant financial service provider’s authorization in Luxembourg.

Ancillary services, however, only benefit from a European “Passport” if they are provided together with an investment service and/or investment activity. As a general principle of the European “Passport” the latter is only available to firms having their head office established in Luxembourg or another EU jurisdiction and will not be available to branches of Third Country Firms.

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1. **Who regulates banking and financial services in Malaysia?**

The banking and financial services sector falls within the purview of the Malaysian Minister of Finance (MOF). Although the MOF is the primary regulator, as it relates to licensing banks and insurers, it acts on the recommendation of the regulators having direct supervision of these entities. Specifically, Malaysia has two regulators with responsibility for the licensing, approval or registration, regulation and supervision of banks, insurers, capital market intermediaries and other financial institutions. These are the Central Bank of Malaysia (CBM) (also known as Bank Negara Malaysia) and the Securities Commission Malaysia (SC). The allocation of responsibilities between the CBM and the SC is as follows:

(a) The CBM regulates financial institutions such as banks, insurers, payment system operators, insurance brokers, money brokers, financial advisors and adjusters. Although the CBM is a statutory body formed under the Central Bank of Malaysia Act 2009, the CBM acts as a banker and an adviser to the government of Malaysia and as set out above, generally falls under the supervision of the MOF.

(b) The SC regulates capital market activities and specifically, capital market intermediaries such as fund managers, corporate finance advisors, investment advisors, financial planners and persons who deal in securities, derivatives and private retirement schemes.

2. **What are the main sources of regulatory laws in Malaysia?**

The regulatory regime for financial services in Malaysia is governed by federal legislation, namely the Financial Services Act 2013 (FSA), the Islamic Financial Services Act 2013 (IFSA), and the Capital
Markets and Services Act 2007 (CMSA), as well as rules, orders and regulations promulgated under the respective legislation. The CBM administers the FSA and IFSA (which governs Islamic financial services), whereas the SC administers the CMSA.

In addition, the CBM and the SC have wide powers to issue guidelines, handbooks, circulars and standards from time to time. Such guidelines, handbooks, circulars and standards set out, among others, the prudential and operational requirements that must be complied with by the relevant financial institutions and capital market intermediaries. For example, the CBM issued a framework setting out the prudential requirements applicable to banks and insurers, whereas the SC issued a licensing handbook setting out the licensing and operational requirements applicable to capital market intermediaries.

3. What types of activities require a license in Malaysia?

The FSA and the IFSA regulate a broad range of activities that require either a license or an approval from the CBM, or a registration with the CBM (collectively, the “FSA/IFSA Activities”), as follows:

- Banking and investment banking activities, which include accepting deposits, dealing with cheques, providing finance (i.e., consumer and retail lending, leasing, factoring, purchase of instruments such as promissory notes, and providing guarantees) or carrying on regulated activities under the CMSA
- Insurance business by way of effecting and carrying out contracts of insurance, both life and general
- Operation of a payment system or issuance of a designated payment instrument, which covers a broad range of activities such as the remittance of funds or securities and issuance of electronic money (including the provision of merchant acquiring services)
• Insurance broking business, which entails facilitating transactions for the entry into or renewal of contracts of insurance and reinsurance on behalf of clients

• Money broking business, which entails facilitating transactions in the money market or foreign exchange market (but does not include transactions for the sale and purchase of currencies)

• Financial advisory activities by way of arranging for contracts of insurance based on the individual needs of clients

• Adjusting activities in respect of investigations of losses under insurance claims

Under the CMSA, entities carrying on the following regulated activities (collectively, the “CMSA Activities”) require a capital markets services license (CMSL), and individuals employed to undertake the regulated activities require a capital markets services representative’s license (CMSRL) from the SC:

• Dealing in securities and derivatives by inducing or potentially inducing clients to enter into transactions involving securities or derivatives

• Fund management of a portfolio of securities, derivatives or assets

• Advising on corporate finance, which covers advising on takeovers and mergers, issuance of securities, raising of funds and providing advice to listed companies

• Providing investment advice on securities or derivatives

• Financial planning for clients by analyzing their financial circumstances and introducing investment plans
• Dealing in private retirement schemes by inducing or potentially inducing clients to acquire or dispose interests in or contribute to, a private retirement scheme

Trustees of unit trust schemes and for debenture holders must also be registered and approved by the SC.

4. How do Malaysia’s licensing requirements apply to cross-border business into Malaysia?

As a general rule, Malaysian legislation does not have extraterritorial application in the absence of a specific provision to the contrary. Save for the provisions relating to the operation of a payment system outside Malaysia and the buying and selling of currencies under the FSA and IFSA, the provisions of FSA, IFSA and CMSA generally do not apply if the FSA and IFSA Activities (save for the operation of a payment system outside Malaysia, which accepts payment or settlement instructions from Malaysian residents and still falls within the purview of the FSA and IFSA) as well as the CMSA activities are wholly carried on from a place outside of Malaysia. If, however, the services are carried on within Malaysia, Malaysian legislation will apply unless certain exceptions apply.

5. What are the requirements to obtain authorization in Malaysia?

In assessing the written application for a license, approval or registration to carry out the FSA/IFSA Activities, the CBM shall consider the factors set out in Schedule 5 of the FSA and the IFSA and such other matters that the CBM considers relevant. The factors in Schedule 5 of the FSA and IFSA include the following:

(a) Reputation and Experience - The applicant should have a reputation that is consistent with the standards of good governance and integrity, and the business record and experience of the applicant will also be taken into account.
(b) **Detrimental Effect** - The business must not be detrimental to the interests of its future depositors, policy owners, participants, users or the public generally.

(c) **Business Plan** - The applicant must convince the CBM that its business plans for the future conduct and development of the business are sound.

(d) **Financial Resources** - The applicant must be able to demonstrate sufficient financial resources as a source of continuing financial support. There may also be minimum paid up capital requirements.

(e) **National Interest** - Whether the application will be in the best interest of Malaysia, having regard to, among others, the contribution of the business to the Malaysian financial ecosystem and economy and Malaysia’s relationship with other countries, will be considered.

(f) **Effective Supervision** - Whether the nature, scale and activities of the corporate group of the applicant will impede effective regulation and supervision, including having regard to the nature and degree of regulation and supervision of any financial institution within that corporate group, will also be considered.

In considering whether to issue a CMSL to carry out the CMSA Activities, the applicant must be considered as “fit and proper” by the SC. In assessing whether an applicant is fit and proper, the SC will consider the following criteria:

(a) **Organizational Requirements** - The applicant should have a properly established business with clear lines of responsibility and authority, as well as the necessary infrastructure, policies and processes. There are also certain positions of authority; Bumiputera (i.e., the indigenous people of Malaysia) participation requirements that apply to the directors, CMSRL
holders and employees; and job functions which are mandated by the SC, and the requirements for each such matter would depend on the type of CMSA Activities that is undertaken.

(b) **Shareholding Composition** - There are generally no prescribed shareholding requirements, unless the applicant is incorporated as an investment bank or undertakes portfolio management in connection with fund management.

(c) **Financial Resources** - The applicant must fulfil minimum paid up capital and shareholders’ funds requirements.

(d) **Competency of CMSRL holders** - The applicant’s representatives must comply with prescribed qualification, experience, academic and licensing examination requirements.

(e) **National Interest** - Whether the application will be in the best interest of Malaysia, having regard to among others, the expertise that can be contributed to the Malaysian capital market and economy and the ability to develop strategic sectors, will also be considered.

### 6. What is the process for becoming authorized in Malaysia?

In order to be licensed, approved or registered, an applicant must go through a formal process involving the completion of required application forms and the submission of supporting information to the CBM or the SC, as the case may be. The particular forms that must be completed for submission to the regulator will depend on the nature of the regulated activities undertaken. The CBM and the SC may reject or approve the application, with or without conditions, at their discretion.

In relation to timing, in most cases the regulator will take approximately three to four months from receipt of a completed application to approve or reject an application.
Note that as a matter of policy, the MOF does not generally grant new licenses to operate a banking business at present.

7. What financial services “passporting” arrangements does Malaysia have with other jurisdictions?

There is no ability for Malaysian licensed, approved or registered entities to passport across any other ASEAN countries. As part of the ASEAN Capital Markets Framework, there is an initiative that is intended to be developed to allow for cross recognition of education and experience of market professionals, but there have not been any developments on this initiative to date.

Likewise, there is currently no ability for a Malaysian licensed, approved or registered entity to passport into other European Economic Area member states.

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Mexico

1. Who regulates banking and financial services in Mexico?

Mexico has six regulators with responsibility for the authorization and supervision of banks, insurers and other financial institutions. These are the Ministry of Treasury and Public Finance (Secretaría de Hacienda y Crédito Público or SHCP); the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores or CNBV); the National Insurance and Bonding Commission (Comisión Nacional de Seguros y Fianzas or CNSF); the Central Bank of Mexico (Banco de México or Banxico); the Institute for the Protection of Banking Savings (Instituto para la Protección al Ahorro Bancario or IPAB); and the National Commission for the Protection of Users of Financial Services (Comisión Nacional para la Protección y Defensa de los Usuarios de los Servicios Financieros or CONDUSEF).

The allocation of responsibilities between the SHCP, Banxico, CNBV, CNSF, IPAB and CONDUSEF is as follows:

(a) The SHCP regulates the organization and operation of banks (deposit takers) and development banks, and it issues rules for the activities of offices of foreign financial entities and for the establishment of credit institutions and commercial bank affiliates.

(b) The CNBV authorizes and oversees the organization, operation and regulatory compliance of credit institutions (i.e., Commercial banks).

(c) The CNSF is in charge of the operation, organization and supervision of activities of insurance and bonding companies. Moreover, it acts as an advisor to the SHCP in all matters concerning insurance and bonding activities.
The IPAB is a decentralized organism responsible of the administration of the system for the protection of banking savings (insurance of deposits) of the general public. Therefore, it assumes and pays, on a subsidiary basis, the secured obligations (i.e., deposits, loans and credits) undertaken by banking institutions. It also assumes obligations and fund programs for the benefit of banking institutions and companies in which the IPAB participates.

The CONDUSEF reviews queries and complaints of users of financial services, conducts conciliatory and arbitration proceedings on disputes among users and financial institutions, and serves as legal advisor of users of financial services in the event of litigation against financial institutions.

Banxico is by constitutional mandate the government’s advisor in matters concerning economic and financial policy. Its principal function is to provide domestic currency to the Mexican economy and its main priority is to ensure the stability of the domestic currency’s purchasing power. It aims to promote both the sound development of the financial system and the optimal functioning of the payment systems. Its responsibilities include the issuance of specific rules for certain banking and financial operations and regulation and oversight of the services and operations performed by credit institutions.

Such governmental authorities act together to make the system operational.

2. What are the main sources of regulatory laws in Mexico?

In Mexico all laws are drafted, discussed and approved by the legislative branch of government (Mexican Congress) and issued and published by the executive branch in the Federal Official Gazette (DOF). Moreover, the SHCP, Banxico, the CNBV, the CNSF and the
IPAB are the governmental organisms in charge of the issuance of secondary and delegated legislation that provide for specific financial rules, guidelines and regulations aiming to establish the legal framework for each financial activity. The Federal Government has issued a number of structural reforms in order to modernize the legal framework of the main economic industries in Mexico in order to adapt to global standards. In this regard, the Financial Reform was published in the DOF on 10 January 2014. The purpose of the Financial Reform is to allow the Mexican banking and financial sectors to strengthen Mexico’s economic growth by increasing competition within the financial sector, in order to obtain lower costs, better services and wider coverage of the credit facilities in Mexico. The Financial Reform impacted the main framework laws in the Mexican financial sector, including reforms to the banking, financial services and insurance industries.

Additionally, on 31 December 2014 and 9 January 2015, the SHCP published in the DOF new amendments to certain financial laws for the purpose of strengthening the Financial Reform. Among the most relevant aspects, the SHCP put in place amendments to the legal framework of affiliates of foreign financial institutions and representative offices of foreign financial institutions.

### 3. What types of activities require a license in Mexico?

Mexico regulates a broad range of activities, including the following:

- **Receipt of deposits by credit institutions and foreign financial entities** – This covers typical retail banking activities involving the operation of current and deposit accounts.

- **Accepting loans and credits by credit institutions**

- **Issuing electronic money on foreign currency** – Electronic money is a prepaid electronic payment product on foreign currency that can be card- or account-based.
• Performing payment services – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions, issuance of checks and the operation of payment accounts.

• Consumer lending

• Carrying on insurance and bonding activities (effecting and carrying out contracts of insurance and bonds)

• Investment advisory services (engaging in a habitual and professional manner in the rendering of portfolio management and investment advisory)

• Financial intermediaries trading investments securities – Trading in securities and other investments as principal or as agent; this covers brokers as well as most firms engaged in proprietary trading.

• Arranging transactions in investments – This activity covers the role of intermediaries in investment transactions.

• Insurance activities (insurance brokerage activities)

• Investment management – Managing investments on behalf of another person is a regulated activity.

• Providing custodial services of cash and securities

4. How do Mexico’s licensing requirements apply to cross-border business into Mexico?

Mexican law is territorial, and thus, all transactions/business done within Mexican territory are subject to Mexican law.

Where a firm outside Mexico deals with a client or a counterparty located in Mexico, those activities will typically be subject to Mexican
laws and regulations. The service provider will need to consider whether they are triggering a Mexican licensing obligation and also whether they are complying with Mexican marketing rules.

Mexican financial laws and regulations prohibit, in general, non-licensed financial institutions engaging in any solicitation activities tending to or promoting the offering of financial services or products within Mexico. Meetings with prospective clients in Mexico, cold calls to Mexican residents, distribution of promotional materials and the organization of seminars and presentations in Mexico with the purpose of selling the products or services would be considered as solicitation activities by Mexican authorities.

5. What are the requirements to obtain authorization in Mexico?

In general, in order to become authorized, a governmental authorization must be secured.

A. Banking and Credit Activities

The Mexican Law of Credit Institutions (*Ley de Instituciones de Crédito* or LIC) provides that only Mexican banks authorized by Federal Government, through the CNBV by means of the previous resolution of its governing board and the favorable opinion of Banxico, are authorized to engage in banking and credit activities in Mexico. These authorizations are non-transferable.

In general, Mexican financial laws and regulations prohibit foreign financial institutions from engaging in solicitation activities of any form, from obtaining funds from the public, whether in the form of bank deposits, securities or through mutual funds and from offering offshore investments to the public in Mexico.

B. Representative office of foreign financial institutions

Article 7 of the LIC provides that the CNBV, by means of the previous resolution of its governing board, is entitled to authorize
foreign financial entities to establish a representative office in the national territory. Said office shall not carry out any financial intermediation activity in the national market that requires an authorization from the federal government, and are prevented from participating, directly or through a third party, in transactions to receive funds from the public, either for themselves or for a third party.

Such representative offices are, however, allowed to provide, upon their clients’ request, information regarding transactions performed by the foreign financial entity in its country of origin, on the understanding that such representative offices cannot disseminate publicity or advertise to the general public regarding passive transactions.

C. **Securities Brokerage Houses and Securities Brokerage Activities**

The Mexican Securities Market Law (*Ley del Mercado de Valores* or *LMV*) states that to operate as a securities brokerage house, the CNBV, by means of the previous resolution of its governing board, must grant its authorization.

Pursuant to Article 113 of the LMV, financial entities authorized to conduct securities brokerage activities in Mexico are duly licensed broker/dealers, banks, mutual fund managing companies (*sociedades operadoras de sociedades de inversión*), pension fund managers, and distributors of shares issued by mutual funds (*sociedades distribuidoras de acciones de sociedades de inversión*).

No other individuals or entities are authorized under Mexican law to engage in solicitation activities or brokerage activities within Mexican territory, except in certain specific cases (i.e., private offering of certain securities).
D. **Investment Advisory Services**

The rendering of investment advisory services in Mexico is also governed by the LMV, which sets forth under its Article 225 that investment advisors may engage in the habitual and professional rendering of the following securities services:

(a) Portfolio management - making investment decisions on behalf of third parties

(b) Investment advisory - conducting analysis and issuing investment recommendations

The foregoing services are not deemed securities brokerage activities.

Only Mexican corporations may act as investment advisors and they must be registered with the CNBV.

E. **Investment Funds**

Pursuant to the Mexican Investment Funds Law (*Ley de Fondos de Inversión* or LFI), prior authorization of the CNBV (no previous resolution of its governing board) is required for the incorporation and operation of investment funds, which must be organized as Mexican stock companies (*sociedades anónimas*).

F. **Organization of Management, Distributor and Appraisal Companies**

Pursuant to Article 33 of the LFI, the prior authorization of the CNBV is required for the incorporation and operation of the following entities, all of which must be organized as Mexican stock companies (*sociedades anónimas*):

(a) Management companies of investment companies (*sociedades operadoras de fondos de inversión*), which provide asset management services to investment funds
(b) Distributor companies of investment fund shares (sociedades distribuidoras de acciones de fondos de inversión), which engage in promotional, advisory, purchase and sale services to the investors in connection with the purchase of investment fund shares.

(c) Appraisal companies of investment fund shares (sociedades valuadoras de acciones de fondos de inversión), which determine the price of investment fund shares.

G. Establishment of a Mexican insurer

Pursuant to the Insurance Law (Ley de Instituciones de Seguros y Fianzas), to establish a Mexican Insurer, the authorization from the Federal Government, through the CNBV by means of the previous resolution of its governing board, must be obtained.

H. Insurance broker

The incorporation and operation of insurance brokers in Mexico requires the obtainment of a specific authorization from the CNSF, which is non-transferable. The CNSF is entitled to revoke the authorization granted to insurance brokers or suspend said authorization for a period of up to two years in case of violation or failure to comply with the provisions of the Insurance Law, the regulations or circulars issued by the CNSF.

Only duly authorized Mexican insurance brokers or intermediaries incorporated pursuant to the Insurance Law are permitted to offer within national territory insurance products issued by Mexican insurers. Thus, no individual or entity is permitted to offer or intermediate within national territory in the sale of insurance products issued by foreign insurance companies.
6. What is the process for becoming authorized in Mexico?

To obtain authorization, an applicant must complete a formal process, which involves the completion of required application forms and the submission of supporting information.

In relation to timing, in most cases the regulator will have three to six months from receipt of a completed application in which to determine whether or not to approve the application.

The particular forms that must be completed for submission to the corresponding regulator will depend on the nature of the regulated activities being conducted.

In general terms, regulators request the following information:

- Draft by-laws
- Information of the shareholders
- Information of relevant officers
- Operational plan
- Manual of conduct
- In the case of banks, a deposit in guarantee
7. What financial services “passporting” arrangements does Mexico have with other jurisdictions?

Mexico does not have any financial services “passporting” arrangements with any other country.

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Netherlands

1. Who regulates banking and financial services in the Netherlands?

Like certain other European Union (EU) countries, financial supervision in the Netherlands is based on a so-called twin peaks model. The first peak is formed by prudential supervision consisting of supervising the liquidity and solidity of financial companies. This supervision is exercised by the Dutch Central Bank (De Nederlandsche Bank or DNB). The DNB carries out its supervision of banks as an ancillary supervisor to the European Central Bank (ECB). As supervisors, the DNB’s and the ECB’s aim is to ensure the solidity of the Dutch financial system as a whole by, for example, regulating access to financial markets and supervising compliance with capital requirements.

The second peak is formed by market conduct supervision. This supervision is exercised by the Dutch Authority for Financial Markets (Autoriteit Financiële Markten or AFM). Market conduct supervision is aimed at regulating the way in which market participants conduct their operations. The AFM aims to promote orderly and transparent market processes, proper treatment of consumers and fair relationships between financial undertakings.

These twin peaks also correlate with what is generally recognized as the functions of financial supervision: (i) systemic supervision; (ii) commercial supervision; and (iii) conduct supervision. As a result, responsibilities are not centralized but allocated between the different supervisors:

(a) The DNB regulates banks, insurance companies and companies active in the payment and clearing industry. It does so by regulating market access through the provision of licenses - except for banks requiring a license from the ECB - and various other systemic and prudential tasks such as
supervising compliance with capital requirements and granting approval to certain take-overs.

(b) The AFM supervises market conduct for all financial undertakings and provides licenses for companies engaging in various financial activities such as offering investment services or acting as an intermediary in respect of financial products such as consumer credit or insurance. The AFM is also responsible for supervising and enforcing the rules and regulations surrounding transparency and fair market conduct.

(c) The ECB, in cooperation with the DNB, is the supervisor for Eurozone banks under the Single Supervisory Mechanism. The ECB provides licenses for Dutch banks and is directly responsible for prudential and systemic supervision of large Dutch banks.

The EU’s supervisory authorities - the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pension Schemes Authority- have limited supervisory powers in the Netherlands. However, they play an important role in drafting and issuing technical standards and preparing guidance relating to various European directives and regulations. These EU supervisory authorities aim to accomplish efficient and harmonized financial supervision across the EU.

2. What are the main sources of regulatory laws in the Netherlands?

Much of the regulatory laws either directly or indirectly stem from European directives and regulations. European regulations are directly applicable in the Netherlands and don’t require national implementation. European directives generally do require national implementation. As directives sometimes only set certain minimum or maximum standards - and often offer optional provisions to be implemented at a member state’s own discretion - the laws implementing a particular directive can vary wildly across the EU.
The introduction of the Dutch functional model of supervision in 2002 (described under paragraph 1 above) brought with it an extensive reorganization of Dutch financial regulations. This eventually led to the adoption of the Dutch Financial Supervision Act (Wet op het financieel toezicht or DFSA) on 1 January 2007. The DFSA (including lower regulations and decrees) is the primary source of financial regulations in the Netherlands.

Aside from the DFSA, there are various other laws that contain financial regulatory provisions. Pension funds, for example, are also subject to the requirements set forth in the Dutch Pension Act (Pensioenwet), in addition to the DFSA. Another example are trust offices, who must comply with the Dutch Act on the Supervision of Trust Offices (Wet toezicht trustkantoren).

In addition, please be aware that the provisions of the European Commission’s Third Money Laundering Directive (2005/60/EC) have been implemented in the Dutch Act on the prevention of money laundering and terrorism financing (Wet ter voorkoming van witwassen en financieren terrorisme or Wwft). The Wwft imposes certain know-your-customer requirements relevant to most financial undertakings operating in the Netherlands.

3. What types of activities require a license in the Netherlands?

A broad range of financial activities are subject to supervision in the Netherlands. Many undertakings operating in the financial sector require either a license or are under an obligation to notify the relevant supervisor of their intent to carry out their business in the Netherlands. These undertakings include the following:

(a) Banks – Banks (or more specifically, credit institutions) are defined as entities whose business it is to receive repayable funds, beyond a restricted circle, from parties other than professional market operators, and who grant credits for its own account. Please be aware that there is a general
prohibition in the Netherlands on accepting repayable funds (such as deposits) in the Netherlands, without being appropriately licensed or otherwise authorized.

(b) Insurers – This includes life, non-life, funeral expenses and benefits in kind insurers of reinsurers.

(c) Payment service providers – Regulated payment services include a broad range of activities such as executing payment transactions, money remittance, issuing and/or acquiring payment instruments.

(d) Trust offices – A trust office is a legal entity, partnership or natural person that provides one or more trust services on a commercial basis, including acting as director, providing an address or correspondence, acting as trustee, etc.

(e) Clearing institutions – Clearing institutions settle transactions relating to financial instruments through a central counterparty, thereby guaranteeing the commitments of the traders on whose behalf they act.

(f) Electronic money institutions – Electronic money institutions issue “electronic money” in exchange for legal currency. Electronic money is a prepaid electronic payment product, which can be card- or account-based, and is represented as a balance in an electronic wallet or on a physical card.

(g) Pension funds – “Ordinary” pension funds are required to notify the DNB of their establishment. Premium pension funds - a new form of pension administrator - are subject to licensing requirements and may operate on a cross-border basis.

(h) Money transactions offices – This covers institutions that pursue the business of performing exchange transactions consisting of currency exchange transactions or the payment
of notes and coins upon presentation of credit card or a cheque.

(i) Collective investment schemes – Collective investment schemes cover undertakings for collective investment in transferable securities (so called UCITS) and alternative investment funds (AIF). Regulations relating to AIFs and UCITS are mainly addressed at the fund’s manager, rather than the fund itself.

(j) Settlement agents – Settlement agents provide services aimed at relaying requests that relate to the approval of payment orders, approving such orders on behalf of payment service providers or certain particular netting services.

(k) Investment firms – This includes undertakings offering investment advice, asset management services or execution only services in relation to financial instrument trading. In addition, certain firms engaging in own account trading in financial instruments may also qualify as investment firms.

(l) Financial service providers – Financial service providers refers to a broad range of undertakings, and includes undertakings that - for example - offer certain financial products, provide advisory services or act as intermediary.

4. How do the Netherlands’ licensing requirements apply to cross-border business into the Netherlands?

Dutch licensing requirements generally apply to all firms that offer services or perform acts “in or from the Netherlands.” Offering services “in” the Netherlands also includes offering online services in a different EU member state through a Dutch company or through a Dutch branch of a company that has its registered seat in a non-EU member state.
Where services are provided to cross border Dutch clients it can be difficult to assess whether these services are being provided “in the Netherlands.”

As a rule of thumb, where Dutch clients are actively solicited by the foreign institution, that foreign institution will be subject to Dutch financial regulations. However, if an undertaking enters into a business relationship with a Dutch client as a result of reverse solicitation, this generally will not trigger any Dutch licensing or authorization requirements. Reverse solicitation refers to the situation where a client decides to approach a foreign undertaking out of its own volition, without being approached by that particular undertaking.

The Dutch regulators have issued very little guidance with regard to the exact scope of the reverse solicitation exemption. In general, it is clear though that the scope of the reverse solicitation exemption must be interpreted quite narrow. Based on case law and the limited guidance available, there are a number of factors that will help to determine whether a foreign financial undertaking has actively marketed its services to Dutch clients. These include:

(a) not using disclaimers and/or selling restrictions (if applicable), or poorly enforcing them;
(b) making use of media for promotional purposes that include the Netherlands in their coverage area;
(c) using Dutch language on a website or in promotional and/or informational materials;
(d) having Dutch customers referred to by an intermediary;
(e) providing information on Dutch tax regimes;
(f) directly addressing potential customers based in the Netherlands (for example via email); and
(g) referencing or providing information on Dutch law.
5. **What are the requirements to obtain authorization in the Netherlands?**

The exact requirements to obtain authorization differ depending on the type of undertaking. Most of the overlapping requirements can be grouped as follows:

(a) **Registered office** – The undertaking applying for a license has to have its registered office in the Netherlands.

(b) **Integrity and suitability requirements** – Managing directors and supervisory board members of financial institutions must be trustworthy and suitable. Therefore the relevant supervisor will screen potential candidates for integrity and suitability. Candidates will have to submit their personal details, diplomas, references and a curriculum vitae, as well as disclose possible antecedents ranging from criminal to tax law, and disclose certain qualified holdings.

(c) **Ethical business operations requirements** – Financial undertakings are required to implement adequate policies to ensure ethical operational requirement, for example, in relation to conflicts of interest, systemic risk and the management of integrity risks.

(d) **Sound business operations** – Business processes and risks have to be managed properly. Financial undertakings need to have a clear, balanced and adequate organizational structure, division of duties, powers and responsibilities. They need to keep adequate records, reporting lines and communications channels. Some types of financial undertakings are also required to have a certain number of natural persons as managing directors or supervisory board members.

(e) **Outsourcing requirements** – The DFSA provides for a number of requirements relating to outsourcing.
Minimum own finds, solvency and liquidity provisions. A number of financial undertakings, such as banks, insurers and investment firms are subject to solvency and liquidity requirements.

6. What is the process for becoming authorized in the Netherlands?

The actual process for application depends on a number of factors, such as the type of license or authorization being applied for. However, most application processes take the form set out below.

The application process starts with the submission of the relevant forms and other essential documents. When these have been received in good order, the relevant supervisor will evaluate the firm’s compliance with the applicable requirements as set in Chapter 5. In general, the DNB and the AFM have 13 weeks to decide on the application for a license. However, the actual consideration period depends on many factors, and this consideration period may normally be extended. Often this is either due to a lack of quality and completeness of the application or due to the submitted documents giving rise to further information requests.

In addition to the relevant license application forms, the following forms and documents have to be submitted by most undertakings:

(a) Forms regarding the suitability and integrity of managing directors and supervisory board members, including supporting documents

(b) A business plan that contains at least the names and titles of the employees, the way in which customers are solicited, potential cooperation agreements with other companies, remuneration policies, turnover for each financial product and/or service for the coming two years, and an overview of costs for the coming two years

(c) A description of business processes
(d) An organizational chart including majority shareholders and the names of all managing directors

(e) A recent extract from the trade register

(f) A form disclosing that all day-to-day policymakers and/or supervisors that are not subject to the aforementioned suitability and integrity requirements have taken a “banker’s oath” or will do so within three months

7. What financial services “passporting” arrangements does the Netherlands have with other jurisdictions?

Most undertakings holding a Dutch license may rely on a “passporting” regime to provide their services within the EU. This passport allows the undertaking to provide cross-border services and/or establish a branch in an EU member state without having to apply for a separate license. These firms generally do have to notify the relevant supervisor in the other member state of their intention to provide their services in that particular member state.

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1. Who regulates banking and financial services in Peru?

The Superintendencia de Banca, Seguros y AFPs (SBS) is the regulatory authority responsible for the implementation and enforcement of the Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros - Law N° 26702 (the “Peruvian Banking Law”) and the rules and regulations promulgated thereunder, and, more generally, for the supervision and regulation of all banks (including investment banks), insurance companies, private pension funds, as well as the investments that are made by such entities.1

The main purpose of the SBS is to:

(a) protect the public interest;

(b) safeguard the financial stability of the institutions over which it has authority;

(c) penalize violations of the Peruvian Banking Law and the rules and regulations thereunder; and

(d) lead and supervise the anti-money laundering system.

1 Note that the offer, sale, marketing and transfer of securities in Peru falls under the scope of the Peruvian Securities Market Law (Ley del Mercado de Valores). The Superintendencia del Mercado de Valores is the Peruvian securities market regulatory authority. Its main purpose is to promote, supervise and regulate the securities market, the transactions of individuals and institutions participating in the capital markets (such as broker dealers, stock exchanges, clearing and settlement houses, securitization companies, mutual funds and its administrators and other participants), and enforce compliance of the Peruvian Securities Market Law and its regulations.
The responsibilities of the SBS include:

(a) reviewing and approving, with the assistance of the Peruvian Central Bank, the establishment, organization and operations of the institutions it regulates and their subsidiaries;

(b) overseeing mergers, dissolutions and reorganization of banks, financial institutions and insurance companies;

(c) supervising financial, insurance and related companies from which information on an individual or consolidated basis is required, through changes in ownership and management control;

(d) reviewing the by-laws and related amendments of these companies;

(e) setting forth criteria governing the transfer of bank shares, when permitted by law, valuing assets and liabilities for purposes of establishing minimum capital requirements;

(f) controlling the Bank Risk Assessment Center (Central de Riesgos), to which all regulated financial institutions are legally required to provide information regarding all business and individuals with whom they deal, regardless of the credit risk (the information provided is made available to all banks and other regulated institutions to allow them to monitor individual borrowers’ overall exposure to Peru’s financial system); and

(g) supervising the anti-money laundering system through its financial intelligence unit.

The SBS enforces the Peruvian Banking Law on an ongoing basis through periodic resolutions. The Peruvian Banking Law provides for strict loan loss reserve standards, aligns asset risk weighing with the Basel Committee on Banking Supervision guidelines, and includes the supervision of holding companies of financial institutions by the SBS.
The SBS also conducts an annual on-site examination to ensure compliance with the Peruvian Banking Law and the rules and regulations thereunder.

The SBS has the power to impose administrative sanctions on institutions subject to its supervision, including their directors and employees, as a result of any violation of the Peruvian financial system rules. Sanctions vary from monetary fines to revoking licenses. The SBS may also sanction members of the board and other officers of the institutions that are subject to its supervision for breaching SBS regulations.

2. What are the main sources of regulatory laws in Peru?

The Peruvian Banking Law is the main framework law in Peru for the banking, financial services and insurance industries. Pension funds managed by Administradoras Privadas de Pensiones in Peru (“Pension Funds”) are subject to the Ley del Sistema Privado de Administración de Fondos de Pensiones and the rules and regulations enacted thereunder.

There is also a large volume of secondary and delegated legislation applicable to financial institutions and Pension Funds.

Banking regulations on capital adequacy in Peru take into account the recommendations of the Basel Committee. The SBS has adopted the principles and guidelines of Basel II, and it is expected that in adopting the Basel III recommendations approved in September 2010, the SBS may increase the minimum regulatory capital required for Peruvian banks.

3. What types of activities require a license in Peru?

The Peruvian Banking Law strictly prohibits any person from conducting intermediary banking activities in Peru without prior authorization from the SBS. No person without prior authorization from the SBS may engage in business activities that are considered
activities involving the collection of money from the public on a regular basis, whether in the form of deposits or otherwise, and place such funds in the form of credits or other investments. Likewise, companies wishing to offer insurance in Peru must obtain prior permission from the SBS.

The following activities are reserved for entities licensed by the SBS:

- Activities similar to the corporate purpose of licensed entities of the Peruvian financial system, and in particular, regularly receiving money from the public, by way of deposits, loans or any other form, and regularly using those funds for loans, investments or to somehow provide availability over such funds, under any contractual form

- Advertising or publishing announcements asserting or suggesting the execution of transactions or services reserved for licensed entities of the Peruvian financial system

- Using in its corporate name, in business forms or in any other means of publicity, any terms that may lead someone to believe that it is licensed to offer products and services that may only be carried out with a license from the SBS

Accordingly, any action similar to the ones described above being pursued without a license from the SBS may be considered as “Illegal Banking.” Pursuant to the Peruvian Banking Law, a legal presumption of engaging in Illegal Banking activities will apply to a person or entity which, from a fixed place of business, invites the public to deposit their funds under any agreement or contractual arrangement, or in general makes any publicity thereof, without a license from the SBS.

Nevertheless, there are no restrictions on granting loans to Peruvian residents. Foreign financial institutions may serve Peruvian clients in the normal course, provided such activities are conducted outside of Peru.
In Peru, activities conducted by a foreign financial institution should be strictly limited to providing financial advisory services. So long as the foreign financial institution is providing financial advice to clients or potential clients in Peru, there are no restrictions on such activities. However, the market practice is to conduct such activities on a one-on-one basis in order to avoid the appearance that the foreign financial institution is making a public offering. As previously mentioned, the foreign financial institution may not provide financial advisory services if such services are conducted (i) for the purpose of receiving or depositing money from the public; or (ii) as a means of selling its products. As a result, the foreign financial institution may freely provide financial advisory activities in Peru on a one-on-one basis, provided such activities do not violate or contravene items (i) and (ii) above.

4. How do Peru’s licensing requirements apply to cross-border business into Peru?

Currently, there is no rule in Peru that prohibits or restricts the granting of credit by persons not domiciled in the country. In this sense, both the non-domiciled lender and the borrower have flexibility to agree on the terms and conditions under which credit will be granted.

However, please note that there is an important difference between lending activities that are carried out by licensed banks and those carried out by any other entities or individuals (including foreign banks and multilateral development institutions not authorized by the SBS). Such difference is related to interest rates. Any lending activities performed by individuals and entities that are not authorized by the SBS to carry out banking activities in Peru, pursuant to credit agreements under Peruvian law, are subject to an interest rate ceiling that is established by the Peruvian Central Bank. Entities licensed by the SBS to engage in banking activities may freely establish interest rates without any regulatory ceiling.
In credit agreements, the parties may agree on the submission to foreign laws. They may agree to refer to a foreign court or arbitration, whether local or international, the settlement of disputes arising between them.

With regard to income tax applicable to financing granted by legal persons not domiciled in Peru, the interest payable on foreign loans is subject to a withholding tax at a rate of 4.99 percent, as long as they comply with the requirements specified in the law. In case of noncompliance with the requirements, or if economic ties exist between the parties, interest payments will be subject to a withholding tax at a rate of 30 percent.

For purposes of the Peruvian tax law, expenses and commissions, bonuses and any other additional amount paid to foreign beneficiaries beyond the interest agreed will be considered as interest.

Also, interest payments to non-banking, non-financial or non-credit entities shall be subject to value added tax, at a rate of 18 percent.

As for guarantees to ensure compliance with the obligations assumed by the borrower, the parties may agree on the creation of personal and real guarantees, such as sureties, endorsements, mortgages, securities, guarantees on flows, mortgages on infrastructure concessions and letters of credit. It is also possible to provide more complex guarantees, as in the case of trusts.

Foreign investors can establish a bank, a branch or a representative office in Peru. Banks must be established under the form of a corporation or as branches of foreign banks.

Representative offices are established by foreign financial companies to do business with companies of a similar nature operating in Peru, in order to facilitate foreign trade and provide foreign financing and other services. Representatives of financial companies cannot raise funds from the public or perform operations and provide services that are specific to their principal’s activity.
Foreign investors may establish an insurance company in Peru or designate an intermediary, or an insurance or reinsurance broker. Insurance companies must be organized under the form of a corporation and may freely determine the terms and conditions of insurance stipulated in their policies, their fees and commissions.

5. What are the requirements to obtain authorization in Peru?

In order to obtain a full license as a financial entity, a licensing process that comprises two successive approval procedures must be followed:

• Organization Licensing

The first approval procedure is the organization licensing, which comprises a screening of the shareholders and organizers of the financial entity to be incorporated, as well as an analysis of the business plan of such financial entity. This screening and analysis is carried through the review of a series of documents by the SBS and the Peruvian Central Bank, and through meetings with the SBS. The first approval procedure ends with the granting of the organization license by the SBS, which authorizes the beginning of the second approval procedure.

• Operating Licensing

The second approval procedure, which ends in the granting of the business license by the SBS, focuses on the operational aspects of the future financial entity. During this stage, the SBS will evaluate: (i) the operational capacity of the future financial entity; and (ii) the credentials of the directors and principal officers. Accordingly, before filing, the future financial entity should have retained its principal officers, implemented the necessary infrastructure and completed the
policy and operational manuals. Once the business license has been obtained, the financial entity may start operating.

6. What is the process for becoming authorized in Peru?

An applicant for authorization must complete a formal process, which involves the completion of required application forms and the submission of supporting information. Such process, as described in Section 5 above, comprises two stages: (i) the organization licensing; and (ii) the operating licensing.

The procedure established by the Peruvian Banking Law to obtain the organization license takes approximately 220 calendar days to complete, pursuant to the following stages:

<table>
<thead>
<tr>
<th>Organization License Procedure</th>
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<tbody>
<tr>
<td>Stage</td>
</tr>
<tr>
<td>-------------------------------</td>
</tr>
<tr>
<td>1st. Request</td>
</tr>
<tr>
<td>2nd. Publication</td>
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<tr>
<td>3rd. SBS Evaluation</td>
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</tbody>
</table>

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### Organization License Procedure

<table>
<thead>
<tr>
<th>Stage</th>
<th>Requirement</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>4th. Central Bank Evaluation</td>
<td>After the evaluation by the SBS, the same will inform the Central Bank about the organization license request.</td>
<td>Within 30 calendar days after being notified by the SBS</td>
</tr>
<tr>
<td>5th. Resolution</td>
<td>After receiving the opinion of the Central Bank, the SBS will notify the organizers the approval or denial of the organization license request. Along with the resolution of approval, the SBS will issue the organization license certificate.</td>
<td>Within 90 calendar days after being notified of the Central Bank opinion</td>
</tr>
<tr>
<td>6th. Publication</td>
<td>Publication of the organization license certificate.</td>
<td>Within 30 calendar days of the certificate’s issuance</td>
</tr>
</tbody>
</table>

The procedure established by the Peruvian Banking Law to obtain the business license takes approximately 180 calendar days to complete, pursuant to the following stages:

### Business License Procedure

<table>
<thead>
<tr>
<th>Stage</th>
<th>Requirement</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st. Request</td>
<td>The organizers shall file a business license request before the SBS, containing all the documentation required.</td>
<td></td>
</tr>
</tbody>
</table>
### Business License Procedure

<table>
<thead>
<tr>
<th>Stage</th>
<th>Requirement</th>
<th>Term</th>
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<tbody>
<tr>
<td>2nd. <strong>Evaluation</strong></td>
<td>The SBS will proceed to evaluate the business license request.</td>
<td></td>
</tr>
<tr>
<td>3rd. <strong>Resolution</strong></td>
<td>The SBS will notify the organizers of the approval or denial of the organization license request.</td>
<td>30 calendar days after concluding the evaluation</td>
</tr>
<tr>
<td></td>
<td>Along with the resolution of approval, the SBS will issue the business license certificate.</td>
<td></td>
</tr>
<tr>
<td>4th. <strong>Publication</strong></td>
<td>Publication of the business license certificate</td>
<td></td>
</tr>
<tr>
<td>5th. <strong>Listing of securities</strong></td>
<td>The financial entity must list their equity shares in the Lima Stock Exchange (LSE) prior to commencing operations.</td>
<td></td>
</tr>
<tr>
<td>6th. <strong>Commencing operations</strong></td>
<td>The company must initiate its operations making this event of public knowledge through a media of mass communication.</td>
<td>Within 3 months after the issuance of the business license certificate</td>
</tr>
</tbody>
</table>

7. **What financial services “passporting” arrangements does Peru have with other jurisdictions?**

Together with Chile, Colombia and Mexico, Peru is a signatory to the Pacific Alliance, which is an initiative to promote regional economic and commercial integration. To date, however, there have been no financial services passporting arrangements implemented. Nevertheless, each member country must treat a foreign financial
institution the same way as a local financial institution for regulatory purposes.

In addition, Peru, together with Chile, Colombia and Mexico integrated their stock exchanges through the formation of the Latin America Integrated Market (MILA). Although the MILA has not been expressly contemplated in the Pacific Alliance Additional Protocol, country members of the Pacific Alliance have shown great interest and commitment to boost the MILA and tackle the main legal as well as operational challenges that may be undermining its development. In connection to MILA, some improvements have been made recently, as MILA countries have authorized the launch of secondary public offering of securities (including equity and debt instruments) in all MILA countries, provided that the public offering has been previously registered or approved in one MILA country without the need to register it in another MILA country. In addition, recently drafted regulations that would allow conducting initial public offerings simultaneously in all MILA countries but limiting the registration to one of the MILA countries have been made public by the Peruvian Capital Markets Superintendency.

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1. Who regulates banking and financial services in the Philippines?

The Bangko Sentral ng Pilipinas (BSP) (or the Philippine Central Bank) is the central monetary authority in charge of regulating money, banking, and credit in the Philippines. The BSP is an independent government-owned corporation with the primary responsibility of supervising and regulating bank operations of finance companies, non-bank financial institutions performing quasi-banking functions, and other institutions performing similar functions. The primary objective of the BSP is to promote and preserve monetary stability and the convertibility of the national currency (Philippine Peso).

The BSP is governed by the Monetary Board composed of seven members appointed by the president of the Philippines, with the Governor as its chairman. The BSP, through the Monetary Board, issues rules and regulations in exercise of its regulatory powers and directs the management, operations and administration of the BSP.

Under the New Central Bank Act, the BSP performs the following functions, all of which relate to its status as the Philippines’ central monetary authority:

- **Liquidity Management** – The BSP formulates and implements monetary policy aimed at influencing money supply consistent with its primary objective to maintain price stability.

- **Currency issue** – The BSP has the exclusive power to issue the national currency. All notes and coins issued by the BSP are fully guaranteed by the government and are considered legal tender for all private and public debts.

- **Lender of last resort** – The BSP extends discounts, loans and advances to banking institutions for liquidity purposes.
• **Financial Supervision** – The BSP supervises banks and exercises regulatory powers over non-bank institutions performing quasi-banking functions.

• **Management of foreign currency reserves** – The BSP seeks to maintain sufficient international reserves to meet any foreseeable net demands for foreign currencies in order to preserve the international stability and convertibility of the Philippine peso.

• **Determination of exchange rate policy** – The BSP determines the exchange rate policy of the Philippines. Currently, the BSP adheres to a market-oriented foreign exchange rate policy, principally to ensure orderly conditions in the market.

• **Other activities.** The BSP functions as the banker, financial advisor and official depository of the government, its political subdivisions and instrumentalities, and government-owned and -controlled corporations.

The Philippine Deposit Insurance Corporation (PDIC) has the power to conduct examination of banks with the prior approval of the Monetary Board and within terms and conditions determined by law. All banks are obligated to ensure deposit liabilities with the PDIC up to a maximum amount of PHP500,000 or its foreign equivalent.

2. **What are the main sources of regulatory laws in the Philippines?**

The main framework of regulatory laws in the Philippines is Republic Act No. 8791 (the “General Banking Law of 2000” or GBL). The GBL sets the general standards and guidelines in banking and finance in the Philippines. It governs and defines the classification of banks (universal, commercial, thrift), the authority of the BSP, and the organization, management and administration of banks, quasi-banks and trust entities in the Philippines. The GBL also regulates deposits,
loans and other banking operations, including foreign operations, conservatorship, cessation of banking business and trust operations. Secondary and delegated legislation supplement and enhance the GBL’s basic framework.

On the other hand, the Thrift Banks Act, Rural Banks Act, the Philippine Cooperative Code and the Charter of Al-Amanah Islamic Investment Bank of the Philippines govern the general conduct of thrift banks, rural banks, and cooperative banks in matters not covered by the GBL.

On a micro level, the BSP Manual of Regulations for Banks (MORB) is the implementing law of the GBL, which outlines the more specific rules and regulations that all financial institutions doing business in the Philippines should comply with. The MORB serves as a complete manual for local and foreign exchange transactions. The BSP periodically issues various regulations, circulars and guidelines to update and enhance the MORB and to keep abreast with market and economic developments.

Both the GBL and MORB provide guidance to general regulatory laws in the Philippines. Other banking laws are embodied in numerous presidential decrees and republic acts promulgated by the president.

3. What types of activities require a license in the Philippines?

No person or entity shall engage in banking operations or quasi-banking functions in the Philippines without authority from the BSP. A financial institution that has been given authority to engage in universal or commercial bank activities is also authorized to engage in quasi-banking activities.

The following banking or quasi-banking activities are regulated in the Philippines:

(a) Maintaining adequate risk-based capital – The Monetary Board prescribes the minimum ratio that the net worth of a
A bank must bear to its total risk assets, which may include contingent accounts. The minimum capital requirements of banks are found in the MORB.

(b) **Accepting demand deposits** – A bank other than a universal or commercial bank cannot accept or create demand deposits except upon prior approval of, and subject to such conditions and rules as may be prescribed by the Monetary Board.

(c) **Granting loans or credit accommodations** – Regulation covers credit exposure, use of loan proceeds, interest and other charges, and disclosure requirements in the grant of secured or unsecured loans. Among other guidelines, the BSP imposes the Single Borrower’s Limit and regulates credit accommodations granted by banks to its directors, officers, stockholders and their related interests.

(d) **Issuing foreign letters of credit and pay/accept/negotiate import and export drafts/bills of exchange** – For non-universal or non-commercial banks, prior approval of the BSP is required before engaging in these activities.

(e) **Establishing a subsidiary, regional or operating headquarters, or local branch in the Philippines by a foreign bank** – No bank operating in the Philippines shall establish branches, extension offices or other banking offices, or transact business outside the premises of its duly authorized principal office or head office without the prior approval of the Monetary Board.

(f) **Sale or relocation of banks, bank closure and conservatorship** – The BSP regulates and/or approves any change in ownership, location or status of a bank or any other financial institution.
Disclosing confidential information or credit data – Philippine law promotes secrecy of bank deposits (both local and foreign), but subject to exceptions such as those contained in the Anti-Money Laundering Act.

Insuring deposits – All banks and financial institutions are required to coordinate with the Philippine Deposit Insurance Corporation in insuring its deposits.

Borrowing from the BSP or other agencies of the government – In the case of borrowings (including emergency loans and advances) by a BSP-registered bank or non-bank financial institution from the BSP or the government, there is an application procedure that must be followed.

Foreign exchange transactions – There are regulations for foreign exchange transactions including, among others, current accounts, deposits, forwards and swaps, foreign merchandise trade transactions (import and export), loans and guarantees, foreign investments, offshore banking, foreign currency deposit units and expanded foreign currency deposit units, and representative offices of foreign banks.

Reporting requirements – Banks and financial institutions are required to regularly report to the BSP on certain transactions. Minimum auditing standards must be complied with.

4. How do the Philippines’ licensing requirements apply to cross-border business into the Philippines?

Foreign exchange transactions by financial institutions domiciled in the Philippines (including subsidiaries, affiliates, branches, and offshore banking units of foreign corporations) are regulated by the BSP. Some transactions require prior BSP approval while other transactions need no approval but are subject to reporting
requirements. The following are regulated and/or closely monitored by the BSP: (i) sales of foreign exchange; (ii) cross-border transfers of local and foreign currencies; (iii) buying and selling of gold; (iv) import trade transactions with banking transactions; (v) foreign and foreign currency loans’ (vi) foreign investments; and (vii) activities of offshore banking units (a foreign banking corporation that is duly authorized by the BSP to engage in banking transactions in foreign currencies involving the receipt of funds principally from external sources), representative offices and foreign currency deposit units (unit of a local bank or of a local branch of a foreign bank authorized by the BSP to engage in foreign currency-denominated transactions) of foreign banks; and (vi) forwards, swaps and open foreign exchange positions of banks. The Manual of Regulations for Banks contains a complete general framework as regards the licensing requirements for these transactions.

Pursuant to its commitment and support of the global fight against money laundering, the BSP closely monitors cross-border transfers of local and foreign currencies. All commercial, universal and thrift banks are required to submit a quarterly report on their cross-border financial positions, including claims from and financial liabilities to non-residents and multilateral agencies, according to the sector of their non-resident counterparty (the other party that participates in a financial transaction) within a country.¹ Late and/or erroneous reporting are subject to penalties prescribed in the MORB.

5. What are the requirements to obtain authorization in the Philippines?

The Monetary Board of the BSP determines whether a person or entity shall be allowed to perform banking or quasi-banking functions. The GBL requires banks and other financial institution to be stock corporations with funds obtained from the public (equivalent to deposits/investments of at least 20 persons). There are minimum capital requirements that must be met. The Monetary Board, in

¹ BSP Circular 850, September 2014.
granting authorization/license, shall take into consideration an entity’s capability in terms of their financial resources, technical expertise and integrity.

Once authorized, the powers and scope of authority of banks shall be based on its classification (i.e., universal bank, commercial bank, thrift banks\(^2\), rural banks, cooperative banks, Islamic banks and quasi-banks\(^3\)). In general, in addition to the powers authorized for a commercial bank in Section 29 of the GBL, a universal bank has the authority to exercise the powers of an investment house as provided in existing laws and the power to invest in non-allied enterprises. Commercial banks possess general powers incident to corporations and all such powers as may be necessary to carry on the business of commercial banking.\(^4\)

An investing company that is engaged solely in investing, re-investing or trading in securities is not engaged in banking and need not comply with the requirements of the General Banking Law.\(^5\)

\(^2\) Further classified into (a) savings and mortgage banks; (b) stock savings and loan associations; and (c) private development banks.

\(^3\) Quasi-banks are entities engaged in the borrowing of funds through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes for purposes of relending or purchasing of receivables and other obligations.

\(^4\) These include accepting drafts and issuing letters of credit; discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; accepting or creating demand deposits; receiving other types of deposits and deposit substitutes; buying and selling foreign exchange and gold or silver bullion; acquiring marketable bonds and other debt securities; and extending credit, subject to such rules as the Monetary Board may promulgate. These rules may include the determination of bonds and other debt securities eligible for investment, the maturities and aggregate amount of such investment.

6. What is the process for becoming authorized in the Philippines?

An entity desiring to do banking transactions in the Philippines must follow the application process established by the BSP.

First, the applicant must accomplish an Application for Authority to Establish a Bank (standard form provided by the BSP) in triplicate. The original copy and duplicate copy shall be submitted to the Central Applications and Licensing Group (CALG) of the BSP. The third copy shall be retained by the applicant.

Second, the applicant shall be required to submit numerous papers/documents and information in support of the Application, some of which must be in the format supplied by the BSP. Among these are the Agreement to Organize a Bank; bio data of each of the incorporators, proposed directors and officers, and subscribers; their Statement of Assets and Liabilities\(^6\); Statement of Income and Expense\(^7\); and other financial documents as may be required, as well as their clearances from the National Bureau of Investigation and Bureau of Internal Revenue. For corporate subscribers and foreign bank subscribers, the BSP requires relevant corporate papers and audited financial statements for the last two years prior to the application, among others. Applicants must also submit a Detailed Plan of Operation and Economic Justification for establishing the bank.

Third, the applicant must comply with the minimum capital requirements (ranging from PHP10 million\(^8\) to PHP4.95 billion\(^9\)). The

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\(^6\) The statement must be sworn to by the subscriber himself and duly notarized, or certified by a certified public accountant, with schedules detailing cash in banks, securities, real estate, accounts receivable and accounts payable of the subscriber as of a date not earlier than 90 days prior to the filing of application of each of the subscribers.

\(^7\) The statement must be sworn to by the subscriber himself and duly notarized, or certified by a certified public accountant.

\(^8\) This is the minimum capital requirement for cooperative banks.
application shall be processed on a first-come, first-served basis, provided that all the required documents are complete and properly accomplished.

Fourth, the incorporators/subscribers, proposed directors and officers of the bank shall be subject to qualifications, grounds for disqualification and other requirements of existing laws, rules and regulations of the BSP.

Fifth, there is a procedure to be followed for the issuance of an Authority to Operate. Once the Monetary Board/Governor of the BSP approves the application for Authority to Establish a bank, the applicant shall be required to submit additional supporting documents and thereafter, effect the filing and registration of said documents with the Securities and Exchange Commission. The applicant will then be given a period to complete additional requirements, if there are any.

Following the above procedure, the applicant may begin operating the bank, and within 30 days after first day of operations: (a) Inform the BSP of the first day of operation and the banking hours and days; and (b) submit a Statement of Condition as of the first day of operation.

The authority to establish a bank shall be automatically revoked if the bank is not organized and opened for business within six months (for commercial banks and thrift banks) and eight months (for rural banks) after receipt by the organizers of the notice of approval by the Monetary Board/Governor of their application. Extension may be granted upon presentation of a justifiable reason for failure to open the bank within the prescribed period and proof that the bank can be opened within the extension period.

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9 This is the minimum capital requirement for universal banks. The Monetary Board has different requirements for specialized banks, such as those engaged in micro-finance.
The establishment of non-bank financial institutions performing quasi-banking functions are governed by the Manual of Regulations for Non-Bank Financial Institutions and its implementing rules and regulations.

7. What financial services “passporting” arrangements does the Philippines have with other jurisdictions?

Once authorized or licensed in the Philippines, the financial institution can transact across Europe and other countries, subject to regulations on cross-border transactions and foreign exchange transactions. The Manual of Regulations on Foreign Exchange Transactions, together with other BSP issuances, consolidates all the regulations governing foreign exchange transactions.

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Poland

1. Who regulates banking and financial services in Poland?

In Poland, the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego or PFSA) is the public administration body responsible for state supervision over the Polish financial market. PFSA exercises supervision of:

- the financial market, including banking supervision;
- the capital market;
- the insurance market;
- the pension market;
- supplementary supervision of financial conglomerates;
- electronic money institutions, payment institutions and payment service bureaus; and
- cooperative savings and credit unions.

The types of cases for which the PFSA is the only competent body that can issue rulings are defined by law.

Such cases include, among others, authorization to operate on the financial market, administrative sanctions and other issues that are essential for proper functioning of the financial market.

The Polish Prime Minister exercises supervision of operations of the PFSA.

The European Union’s Supervisory Authorities (the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pension Schemes
Authority) play an important role in issuing technical standards and in some limited respects have powers of supervision over Polish firms.

The European Central Bank has recently become the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM). Poland is not in the Eurozone so Polish banks are not within the scope of the SSM. However, Eurozone branches or subsidiaries of Polish banks are in some cases within the SSM and are thus under supervision by the ECB.

2. What are the main sources of regulatory laws in Poland?

Much of the relevant law in Poland is derived from European Union directives and regulations. In many respects, therefore, Polish domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives are implemented across Europe can vary. In other words, Poland and other European jurisdictions have introduced domestic laws that exceed European level requirements. Directives also contain obligations and discretions at a member state level, and Poland also has various domestic rules.

The Financial Market Supervision Act of July 21, 2006 (unified text: Journal of Laws of 2015, item 614, referred to as FMS) is the main framework law in Poland regarding supervision of the financial market. FMS defines the abovementioned PFSA’s scope of supervision, PFSA’s competences as well as rules of proceedings conducted by the PFSA. Furthermore, the Capital Market Supervision Act of July 29, 2005 (unified text: Journal of Laws of 2014, item 614) contains specific regulations regarding supervision of the capital market. These are, in particular, rules for the exchange of information between national financial supervisory authorities.
The following legislation is crucial regarding substantial regulation of providing financial services:

- The Banking Law Act of August 29, 1997 (unified text: Journal of Laws of 2015, item 128, referred to as “Banking Law Act”) sets out the principles for conducting banking activity; establishing and organizing banks, the branch offices and representative offices of foreign banks, as well as branch offices of credit institutions; and the principles for exercising banking supervision, resolution framework, and the winding up and bankruptcy of banks.

- The Financial Instruments Trading Act of July 29, 2005 (unified text: Journal of Laws of 2015, item 128, referred to as “FIT Act”) governs the principles, procedures, and conditions for the taking up and pursuit of the business relating to the trading in securities and other financial instruments; and the rights and duties of entities participating in such trading, as well as their supervision.

- The Payment Services Act of August 19, 2011 (unified text: Journal of Laws of 2014, item 873, referred to as “Payment Services Act”) sets out the principles for providing payment services, and issuing and re-purchasing of electronic money. The Payment Services Act also sets out basic principles of the market for domestic payment cards’ transactions.

3. What types of activities require a license in Poland?

A broad range of activities are regulated by the Banking Law Act, the FIT Act and the Payment Services Act.

According to the Banking Law Act, the general rule is that only banks can perform banking operations. The Banking Law Act defines a bank as a legal entity established in accordance with the provisions of the applicable acts of law, acting on the basis of licenses authorizing them
to pursue banking operations that subject repayable funds entrusted to them, on whatever terms of repayment, to risk.

Banking operations include:

- accepting cash deposits payable on demand or on a specified date and operating the related accounts for such deposits;
- operating other bank accounts;
- granting of credit;
- granting and confirming bank guarantees, and opening and confirming letters of credit;
- issuing bank securities;
- performing bank monetary settlements; and
- performing other operations reserved solely for a bank under separate acts of law.

Under the FIT Act, an entity that intends to perform brokerage activities must obtain a license from the PFSA. Brokerage activities include:

- reception and transmission of orders for the acquisition or disposal of financial instruments;
- execution of the abovementioned orders for the account of the investors from whom those orders originate;
- acquisition or disposal of financial instruments for own account;
- portfolio management, where such portfolios include one or more financial instruments;
• investment advice;

• offering financial instruments;

• services provided under firm commitment underwriting agreements and standby underwriting agreements, or the conclusion or performance of other agreements of similar nature, in relation to financial instruments; and

• organization of an alternative trading system (a multilateral system, operated by an investment firm or an operator of a regulated market, outside of a regulated market, which brings together buyers and sellers of financial instruments, in a way that results in transactions concluded within that system, in accordance with the specific rules).

The Payment Services Act does not require an entity to obtain a license directly, but introduces limitations on which entities are allowed to provide payment services. These entities are:

• the national bank;

• credit institutions/ branches of credit institutions;

• branches of foreign banks;

• electronic money institutions;

• payment institutions;

• the European Central Bank, National Bank of Poland, central banks;

• public administration bodies;

• Cash Savings and Credit Society (SKOK);
• payment services offices; and

• branches of authorized entities from the EU.

The entities listed above are either public bodies or strictly regulated, i.e., banks, with those noted in bold aimed at providing payment services and require either a license (payment institutions) or entry into the payment services offices’ register.

The Payment Services Act defines payment services as activities that include:

• placement and withdrawal of cash / operating a payment account;

• execution of payment transactions: direct debits, payment transactions through a payment card, transfer orders;

• issuing of payment instruments;

• entering into agreements with suppliers of goods and services for accepting payment transactions executed with use of payment instruments;

• money remittance;

• execution of mobile payments; and

• execution of internet payments.

4. How do Poland’s licensing requirements apply to cross-border business into Poland?

Background

Cross-border activities mean activities actively performed by a financial institution within the territory of the Republic of Poland or by a domestic financial institution in the territory of the host state, if
the operations are conducted without the participation of a branch of this financial institution.

The main factor in establishing whether the financial operation is conducted within the territory of Poland is the place where the performance deriving from this financial operation is to be made and subsequently is the performance deriving from this activity with its Polish clients considered to be conducted in the territory of Poland.

According to Polish civil law, the agreement is conducted in the place that:

(a) is directly specified in the agreement;

(b) is derived from the essential features of the obligation;

(c) if (a) and (b) are not applicable
   o in the case of in-kind performances - it is considered to be conducted in the place where the debtor has its domicile;
   o in the case of pecuniary performances – it is considered to be conducted in the place of the creditor’s domicile.

It is important that pursuant to international law, the interpretation of the agreement and the performance made on its basis, regarding whether a financial institution’s services are deemed “cross-border activities,” should always be done in accordance with Polish law. This is because this issue is subject to norms of Polish public law, which the parties cannot make inapplicable contractually.
Performing banking operations

In relation to performing banking operations, cross-border activities may be conducted in Poland only by a credit institution.

A credit institution is defined in the Banking Law Act as an entity having its seat outside the Republic of Poland in one of the EU member states (this regulation also applies to non-EU member states that are members of the European Economic Area) (the “Member State”), conducting in its own name and on its own account, under a permit from competent home country supervisory authorities, activities consisting in accepting deposits or other means entrusted with the right to refund and granting credits or issuing electronic money.

The definition of a credit institution under Polish law leads to the conclusion that a bank having its seat outside the Republic of Poland, within a state not being a member of the European Union or European Economic Area (being defined in the Banking Law Act as a “foreign bank”) may not conduct cross-border banking activities in Poland.

Performing brokerage activity

Cross-border brokerage activities may be conducted in Poland only by a foreign investment firm.

A foreign investment firm is defined in the FIT Act as an entity having its registered seat in the Member State performing brokerage activities under a license granted by the competent supervisory authority in that Member State, as well as a foreign credit institution.

In turn, a foreign credit institution means a credit institution as defined in the Banking Law Act, which performs brokerage activities in the Member State under a license granted by the competent supervisory authority, or maintains accounts in which securities admitted to trading on a foreign regulated market are registered, under a license granted by the competent supervisory authority in the Member State.
The above definitions lead to the conclusion that only entities that have already been entitled to perform brokerage activities in the Member State may conduct cross-border brokerage activities in Poland.

Performing payment services

Cross-border payment services may be conducted in Poland only by an EU payment institution.

An EU payment institution is defined in the Payment Services Act as a legal entity granted a license to perform payment services by the competent supervisory authority. It means that conducting cross-border payment services in Poland is strictly limited to EU entities.

5. What are the requirements to obtain authorization in Poland?

In relation to performing banking activities, the PFSA has to be informed by the competent supervisory authorities of a home Member State about the types of operations to be performed by a credit institution. Information about types of operations is not limited to indicate banking operations but also all other activities that are going to be performed.

Brokerage activities may be commenced by a foreign investment firm in the Republic of Poland after the PFSA has been notified by the competent supervisory authority that has granted the investment firm license to perform brokerage activities, of the planned commencement of such activities. Where brokerage activities are to be performed without setting up a branch office, such activities may be commenced after the PFSA has received the relevant notification from the competent foreign supervisory authority.

In cases where a foreign investment firm is going to perform brokerage activities in the Republic of Poland by its tied agents, the PFSA may apply to the competent foreign supervisory authority for the information about the tied agents of the foreign investment firm
concerned. Moreover, the PFSA is obliged to inform a foreign investment firm about the terms and conditions for the performance of brokerage activities in the Republic of Poland, particularly in relation to:

- the promotion of their services and contacts with potential clients;
- the conclusion and clearing of transactions;
- the classification of clients in different categories;
- the provision of services, including services provided to different client categories;
- keeping records of transactions concluded and archiving documents and other data media prepared in connection with the activities pursued; and
- the establishment and enforcement of a security for the repayment of credits and loans granted to finance the acquisition of financial instruments, and a security for claims relating to financial instruments, where the structure of such instruments makes it possible to establish a security.

An EU payment institution may commence cross-border activities in the Republic of Poland after the PFSA has been informed by the competent supervisory authorities of a home Member State about a name, a registered seat, an address and types of payment services to be performed by such institution.

6. **What is the process for becoming authorized in Poland?**

As requirements to obtain authorization are limited to receiving the abovementioned information, the process for becoming authorized is governed by each Member State.
An example from the Banking Law Act: When a Polish bank intends to pursue cross-border activities, it should notify the PFSA of this intention. The notification should specify in each case the operations covered by the license obtained by the bank, which the bank intends to perform. Then, the PFSA will send the said notification to the competent supervisory authorities of the host Member State within one month from the date of the notification’s receipt, and will inform the bank concerned thereof.

7. What financial services “passporting” arrangements does Poland have with other jurisdictions?

Once established in Poland, a Polish firm can passport its authorization into other European Member States. Passporting permits the provision of cross-border services and also the establishment of a physical branch location.

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Russia

1. Who regulates banking and financial services in Russia?

The primary regulatory body governing the banking sector of the Russian Federation is the Bank of Russia. It is one of the few institutions under the control of the Russian legislative (rather than executive) branch. The State Duma must both approve the nomination and the resignation of the chairman of the Bank of Russia. The National Banking Council, comprised of representatives of various executive and legislative bodies, exercises control over the Bank of Russia’s board of directors, and participates in establishing the basic principles of Russian banking and financial policy.

The Bank of Russia and the government share authority over monetary policy. It is responsible for circulating monetary funds and ensuring the stability of the Russian ruble. As part of its regulatory role, the Bank of Russia establishes state registration; accounting, reporting and licensing rules for credit organizations; supervises them; sets minimum reserve requirements for lending operations, and mandatory ratios (capital adequacy, liquidity, etc.) and requirements on the amount of charter capital. Also, the Bank of Russia maintains regional offices throughout the Russian Federation.

2. What are the main sources of regulatory laws in Russia?

The primary pieces of banking legislation are as follows:


3. What types of activities require a license in Russia?

Both banks and non-banking credit organizations are entitled to carry out banking operations from the moment of receipt of a banking license issued by the Bank of Russia. Under the Banking Law, only credit organizations holding the respective license are allowed to carry out certain activities, which are called “banking operations.” The list of banking operations includes the following:

- Attraction of monetary funds for on-demand and term deposits and placement of such funds in the name and at the expense of the relevant credit organizations
- Holding deposits and placement of precious metals
- Opening and maintaining bank accounts for individuals and legal entities
- Collecting money, promissory notes and bills of exchange, payment and settlement documents
- Providing cash services to individuals and legal entities
- Exchanging foreign currency
• Issuing bank guarantees

• Transferring money (including e-money) with or without opening of bank accounts

Banks and non-banking credit organizations are also entitled to perform certain non-banking operations, inter alia: providing financial suretyship; fiduciary management; performing operations with precious metals and stones; renting out safe deposit boxes; participating in financial leasing operations; and providing consultancy and other informational services. Subject to compliance with respective licensing requirements, credit organizations may act as professional participants in the securities market. Credit organizations are prohibited from engaging in any industrial, trade, or insurance activities, other than derivatives transactions.

Additionally, all professional activities in the securities market also require a license. The list of such activities is as follows:

• Broker activity

• Forex broker activity (requires a license from 1 October 2015)

• Dealer activity

• Securities management

• Depositary business

• Maintenance of security holders register

In order to give microcredits, a state registration needs to be obtained. There are certain requirements to the executive bodies of microcredit organizations (i.e., they cannot be presented by persons who have previously violated the law acting as a head of any financial organization, by persons disqualified on the ground of administrative penalty, or by persons who have criminal record for economic crime).
In addition, microcredit organizations have to file quarterly reports on their business and executive bodies. Besides, microcredit organizations must regularly provide relevant information to a credit bureau of credit histories.

Furthermore, there is also regulation of insurance. Licenses for the right to carry out the insurance activity are issued by the Bank of Russia, which is the only body of insurance supervision in the Russian Federation since 2013. The Bank of Russia has the right to stop or limit action of the license, as well as to revoke the license. The four types of insurance licenses are for insurance companies, reinsurers, mutual insurance companies and insurance brokers.

4. How do Russia’s licensing requirements apply to cross-border business into Russia?

Although foreign banks may not currently open branch offices in the Russian Federation, a local subsidiary or a representative office may be established.

Foreign direct ownership

A foreign bank may establish a subsidiary in Russia in the form of a Russian legal entity (joint-stock company or limited liability company).

The requirements for the subsidiaries of foreign banks are the same as for Russian banks.

Representative Offices

Representative offices of foreign banks and employees who are foreign citizens are accredited by the Bank of Russia. A representative office of a foreign bank can be accredited for a term of three years. Accreditation becomes effective if a representative office of a foreign bank starts operating within six months after the Bank of Russia grants such accreditation. Accreditation can be renewed an unlimited number of times. The Bank of Russia may grant permission to open a
representative office to a foreign bank that meets all the following criteria:

- The foreign bank has been operating in its country of incorporation for at least five years.
- The foreign bank has a good reputation in the banking system of its country
- The foreign bank has a stable financial position.

Confirmation of the foreign bank’s compliance with these criteria should be requested from the relevant supervisory body in the country where the foreign bank is incorporated.

Representative offices of foreign banks have limited legal capacity under Russian law. They are allowed to study the economic situation and standing of the Russian banking sector, to maintain and develop contacts with Russian banks, and to develop international cooperation. It may provide consultancy services to existing clients of the foreign bank; however, the representative office of a foreign bank may not solicit new clients for the bank.

Representative offices of foreign banks are subject to the supervisory control of the Bank of Russia, which may close the representative office of a foreign bank at any time at its discretion.

5. What are the requirements to obtain authorization in Russia?

Licensing and Banking Supervision

A credit organization must be registered in the Russian Federation according to a specific procedure and must be licensed by the Bank of Russia. Newly established banks can receive licenses permitting a limited scope of operations. A bank that has held a license for a period of two years or more is entitled to apply for licenses permitting an extended scope of operations, in particular working with the public at
large. The Bank of Russia may refuse to issue a banking license in the event of the following:

- Non-compliance of the application documents with Russian legal requirements
- Unsatisfactory financial standing of the founders of the credit organization, or their failure to perform their respective obligations before the federal budget, the budgets of constituent entities of the Russian Federation or local budgets
- Failure of the nominee for the position of chief executive officer or chief accountant of the credit organization (or their deputies) to meet the qualification requirements, or an unsatisfactory business reputation of a nominee for the position of a member of the board of directors (supervisory board) of the credit organization

The Bank of Russia has controlling powers over Russian banks. It approves the appointment of the senior management of all credit organizations, holds mandatory reserves placed by credit organizations, and monitors credit organizations’ compliance with applicable requirements. If a credit organization fails to comply with these requirements, the Bank of Russia is authorized to exercise various sanctions, which range from a warning and fine to suspension of certain banking operations and revocation of its banking license, which triggers the dissolution or bankruptcy of the credit organization.

The acquisition of 10 percent or more of the shares in a Russian bank or non-banking credit organization requires the approval of the Bank of Russia. If the acquisition is for more than 1 percent but less than 10 percent of shares, only a notification to the Bank of Russia is needed.

Under certain circumstances, banks have to involve the Federal Antimonopoly Service (FAS). For example, in the case of mergers, banks are required to obtain preliminary clearance from FAS if the purchaser will acquire more than 25 percent in the charter capital of a
bank and at the same time the target bank’s assets exceed RUB29 billion (approximately USD515.6 million). Where the figure does not exceed the established limit, it is sufficient for the lending institutions concerned to notify the FAS of the merger.

Deposit Insurance

Federal Law No. 177-FZ “On the Insurance of Deposits of Individuals in the Banks of the Russian Federation,” dated 23 December 2003, establishes an insurance system for the deposits of individuals. It stipulates that all banks accepting individual deposits must be members of the deposit insurance system. The Agency for Deposit Insurance is responsible for supervising this system.

Banks that hold a valid retail banking license need to apply with the Bank of Russia to become registered as a participant in the mandatory deposit insurance system. A bank is expected to pass a number of tests before it can be admitted. The Bank of Russia must be assured that: the bank’s financial accounts and reports are accurate; the bank is in full compliance with the Bank of Russia’s mandatory ratios; the bank’s solvency position is sufficient; and that the Bank of Russia has not cancelled the bank’s banking license.

If a bank fails the above tests or chooses not to participate in the deposit insurance system, it will not be able to attract deposits from, or open accounts for, individuals. Member banks have to make contributions to a special deposit insurance fund. These contributions are calculated as a percentage of the average daily balance of individual deposits maintained with a particular bank, and are subject to an upper limit of 0.1 percent. All individual depositors with deposits in member banks are entitled to 100 percent compensation for aggregate amounts up to RUB1.4 million (approximately USD25,000) for each bank. However, the deposit insurance would not cover e-money deposits.
Countering Money Laundering


The Anti-Money Laundering Law imposes certain requirements on credit organizations, professional participants in the securities market, insurance and leasing companies, and postal and other entities that deal with the transmission of money or other valuables. These entities must:

- identify clients and beneficiaries pursuant to a specific procedure;
- require certain information on payers in payment orders;
- report to the Federal Financial Monitoring Service on certain types of transactions of RUB600,000 (approximately USD10,600) or more (or the equivalent in foreign currency), and transactions with real property of RUB3 million (approximately USD53,300) or more (or the equivalent in foreign currency), and all complex or unusual transaction schemes that have no apparent economic or lawful purpose, irrespective of their amount
- identify foreign public officials and the sources of their money and other property; and
- pay increased attention to transfers of monetary funds and other property between foreign public officials and their close relatives. The Anti-Money Laundering Law disallows the creation and maintenance of anonymously held accounts.
Capitalization and Basel III implementation

Russian banks are required to comply with the capital adequacy requirements set by the Bank of Russia, which has approved implementation of Basel III as developed by the Basel Committee on Banking Regulations and the Supervision Practices of the Bank for International Settlements.

Namely, Regulation of the Bank of Russia No. 395-P “On Methods for Calculation of the Capital of Credit Organizations,” dated 27 February 2013 (“Regulation 395-P”), implemented the rules of Basel III on capital adequacy in Russia in a manner that is tighter than the default rules suggested by the Basel Committee.

Under Russian law, the minimum capital adequacy ratio that banks are required to maintain is calculated (on an unconsolidated basis) as the ratio of a bank’s owned funds (its capital) to the total amount of its risk weighted assets. From the beginning of 2012, the minimum capital adequacy ratio required by the Bank of Russia is 10 percent for banks whose capital is RUB300 million (approximately USD5.3 million). If the capital adequacy ratio of a bank drops below 2 percent, then the Bank of Russia should revoke its banking license.

Existing banks are required to achieve the above amounts of capital by 2015. Should a bank fail to reach the above level of capital, the Bank of Russia will revoke its license. From the beginning of 2012, the minimum capital of newly registered banks must be RUB300 million (approximately USD5.3 million).

Implementation of Basel III heavily influenced the regulation of subordinated instruments widely used by banks to boost their capital. In order to qualify as a subordinated instrument and be eligible for inclusion into a bank’s capital, subordinated instruments should meet the following requirements:

• The borrower should not be obliged to repay a subordinated loan before the maturity date and the creditor should not be entitled to claim early repayment of the debt.
The terms and conditions of the subordinated instrument (including the interest rate) should not differ substantially from market conditions.

The subordinated instrument should expressly provide that it cannot be prepaid, amended or terminated without prior consent of the Bank of Russia.

In case of the borrower’s bankruptcy, the subordinated loan may only be repaid after satisfaction of all other creditors’ claims.

The subordinated loan may not provide for: (i) any security; (ii) non-monetary form of settlement; or (iii) a natural person, subsidiary or affiliated company as a party to the subordinated instrument.

Subordinated loans must be provided for at least five years and, in certain cases, for at least 50 years or on a perpetual basis.

The Bank of Russia adopted Regulation No. 421-P “On the Calculation of the Liquidity Coverage Ratio,” dated 30 May 2014 (the “LCR”), which became effective on 1 July 2015. The LCR is aimed at showing a bank’s ability to properly perform its monetary and other obligations within 30 calendar days from the moment of calculation of the liquidity coverage ratio in times of economic instability. At first, only systemically important domestic banks will be subject to the LCR rules. However, in the course of time the Bank of Russia will subject more Russian banks to the LCR rules.

The Bank of Russia adopted Instruction No. 154-I “On the Procedure for Assessment of Compensation in Credit Organizations and Rectifying Violations of the Rules on Compensation,” dated 17 June 2014, which became effective on 1 January 2015. This instruction regulates the remuneration of the management and employees of banks who affect the risk profile of the bank. This regulation provides
that at least 40 percent of such remuneration should be variable and paid, taking into account the level of risk management and overall performance of the employee. However, banks are allowed to introduce higher thresholds for the variable part of remuneration for a wider range of employees. Banks should prepare remuneration policies, which should be approved by the Bank of Russia.

Financial Statements and Reporting Standards

Accounting and reporting requirements in Russia are not comparable to those in other (especially Western) jurisdictions. All credit organizations in the Russian Federation must prepare Russian Accounting Standards (RAS) statutory accounting reports and, on an annual basis, their financial statements according to the IFRS.

The Bank of Russia devises reporting forms for credit organizations and works out procedures for preparing reports and filing them. Banks are obliged to submit a very large quantity of information to the Bank of Russia, with some of the reports to be filed on a regular basis. The list of information may vary depending on the type of operations carried out by a particular credit organization and the number of licenses it holds. Thus, all credit organizations should disclose, among others, information concerning their affiliates, file accounting statements, provide information on analogous claims and loans grouped in portfolios, together with information on the quality of the credit organization’s assets and information on securities acquired by the credit organization, data on loans and market risks, information on obligatory norms and any deviation therefrom, and information on forward transactions.

If a bank is a joint-stock company and a securities market participant, it must also disclose information at various stages of each securities issue. Such information is disclosed in the form of an offering statement, quarterly securities issuer reports, and disclosure of material facts affecting the bank’s financial and business activities. Information to be disclosed must be published by one of the authorized services. In addition, a particular issuer may use its own or
some other Internet site for such purposes. The rules covering this disclosure are set by the Bank of Russia.

Licensing and professional participants in the securities market

There are two types of licenses for the activity of professional participants in the securities market: license of the professional participant in the securities market and license for maintaining the register of security holders. According to the application of the license seeker, the license of the professional participant in the securities market for carrying out broker activities can be issued only for the conclusion of the derivative contracts where the basic asset are the goods. License conditions and requirements to broker activity can be various, depending on the transactions and operations made at the implementation of broker activity. Condition of rendering by the broker and (or) the dealer of services in preparation of the prospectus of securities is its compliance to the requirements to the size of the Charter Capital and qualification requirements to employees (workers) established by regulations of the Bank of Russia.

The basis for refusal of granting a license to a professional participant in the securities market are:

(a) the doubtful or distorted information in the documents submitted by the license seeker;

(b) discrepancy of the license seeker to the license requirements and conditions;

(c) discrepancy in the documents submitted by the competitor of the license with requirements of the legislation of the Russian Federation about securities, legislations of the Russian Federation on executive production, and also legislations of the Russian Federation on counteraction of legalization (washing) of income gained in the criminal way and to financing of terrorism; and
(d) previous cancellation or revocation of a license for banking operations in the Russian Federation issued by the Central bank (for credit organizations).

6. What is the process for becoming authorized in Russia?

After presentation of documents, the Bank of Russia will issue a written certificate to the founders of the credit organization confirming the receipt of documents.

The decision on state registration of a credit organization and the issuance of a license for banking operations, or a refusal thereof, shall be made within six months from the date of presenting all documents. The Bank of Russia, upon the adoption of a decision on state registration of a credit organization, shall submit to the authorized registering body the data and documents required for the exercising by this body of the functions related to keeping the Unified State Register of Legal Entities.

The authorized registering body must, within five working days, make an appropriate entry into the Unified State Register of Legal Entities and inform the Bank of Russia about it within one working day following the date of making the appropriate entry.

The Bank of Russia then has three working days to inform the founders of the credit organization about it, with the demand of making within one month a 100 percent payment of the declared authorized capital of the credit organization and issue to the founders thereof a document confirming the fact of making an entry about the credit organization in the Unified State Register of Legal Entities.

Non-payment or incomplete payment of the authorized capital stock within the established term shall be grounds for the Bank of Russia to bring a claim in court for liquidation of the credit organization. To accept the payment of the registered capital, the Bank of Russia shall open a correspondent account in the Bank of Russia for the registered
bank, and if necessary, for the non-banking credit organization. The requisites of the correspondent account shall be indicated in the notification of the Bank of Russia of the state registration of the credit organization and issue of the license for banking operations. When the document confirming the full payment of the stated-registered capital of the credit organization is presented, the Bank of Russia shall issue the license for banking operations to the credit organization within three days.

7. What financial services “passporting” arrangements does Russia have with other jurisdictions?

There is no passporting regime in Russia, even among the countries that are united with Russia in a customs union.

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Saudi Arabia

1. Who regulates banking and financial services in Saudi Arabia?

The Kingdom of Saudi Arabia has two regulators with responsibility for the authorization and supervision of banks, insurance companies and other financial institutions. These are the Saudi Arabian Monetary Agency (SAMA) and the Capital Market Authority (CMA). The allocation of responsibilities between the SAMA and the CMA is as follows:

(a) The SAMA regulates the following entities:

- Conventional banks (deposit takers)
- Insurance companies that engage in any insurance and re-insurance activities, including general insurance, health insurance and protection and savings insurance
- Finance companies that engage in real estate finance, production asset finance, small and medium enterprise finance, finance lease, credit card finance, consumer finance, micro finance and any other finance activity approved by the SAMA

Given that the above entities are regulated by the SAMA, no banking business, insurance or re-insurance activity or finance activity may be engaged in Saudi Arabia without obtaining a license from the SAMA. It is strictly prohibited to conduct any of the activities listed above without obtaining a license from the SAMA.

(b) The CMA regulates financial institutions that conduct securities business (“Authorized Persons”). Such Authorized Persons include investment banks, asset managers, brokers and financial advisers. (For more details on what constitutes securities business, please see Section 3 below.)
It is strictly prohibited to conduct any securities activity in Saudi Arabia without obtaining a license from the CMA.

2. What are the main sources of regulatory laws in Saudi Arabia?

The paramount body of law in Saudi Arabia is the Shariah (Islamic Law). The Shariah is derived from the Holy Quran and the Sunna (words and deeds) of the Prophet Mohammed, as interpreted by influential scholars of Islamic jurisprudence. The Shariah consists of precepts that are often expressed as general principles. This leaves a Saudi Arabian court (or other adjudicatory authority) with considerable discretion as to how to apply such precepts. Moreover, there are different schools of Islamic jurisprudence, and they construe certain precepts differently. The Hanbali school of Islamic jurisprudence is followed in Saudi Arabia, and within the Hanbali school there are majority and minority views on various issues, either of which may be applied in any particular case. In addition, there are certain instances in which precepts of other schools of Islamic jurisprudence have been applied by the courts where such application was deemed by such courts to be appropriate in the interests of justice and fairness with respect to the particular matter in question. In general, Saudi courts and other adjudicatory authorities do not report their decisions and previous decisions, and such decisions are not considered to establish a binding precedent for the decision of later cases.

The secular authorities are permitted to supplement the Shariah, and the Saudi government does so through the issuance of statutes, regulations, decrees and circulars, as well as the adoption of policy positions, all of which can be, and frequently are, changed from time to time to adapt to changed circumstances or to take into account other considerations. Royal decrees, ministerial decisions and resolutions, departmental circulars and other pronouncements of official bodies of Saudi Arabia having the force of law are not generally or consistently indexed and collected in a central place or made available as a matter of public record.
SAMA Rules and Regulations

Conventional banking, insurance and re-insurance and finance activities in Saudi Arabia are governed and regulated through the following main laws:

(a) The Banking Control Law promulgated by Royal Decree No. M/5 dated 22/02/1386H (corresponding to 12/06/1966G) – The SAMA has also issued a number of secondary implementing regulations that further govern banks in Saudi Arabia.

(b) The Finance Company Control Law promulgated by Royal Decree No. M/51 dated 13/08/1433H (corresponding to 03/07/2012G) – The SAMA has also issued a number of secondary implementing regulations that further govern finance companies in Saudi Arabia.

(c) The Control for Cooperative Insurance Companies Law promulgated by Royal Decree No. M/32 dated 02/06/1424H (corresponding to 31/07/2003G) – The SAMA has also issued a number of secondary implementing regulations that further govern insurance companies in Saudi Arabia.

CMA Rules and Regulations

The Capital Market Law promulgated by Royal Decree No. No. M/30 dated 02/06/1424H (corresponding to 31/07/2003G) is the main law that regulates the investment banking sector in Saudi Arabia.

The CMA has also issued a number secondary implementing regulations that provide further governance rules for the capital markets regime and regulation of other securities activities in Saudi Arabia, such as the Securities Business Regulations issued by the CMA board resolution no. 2-83-2005 dated 21/05/1426H (corresponding to 18 June 2005G) and the Authorized Persons Regulations issued by the CMA board resolution no. 1-83-2005 dated 21/05/1426H (corresponding to 18 June 2005G).
Both the SAMA and the CMA have also issued a number of circulars that offer guidance to all banks, insurance companies, finance companies and financial institutions operating in Saudi Arabia. However, not all of these circulars are publicly available.

3. What types of activities require a license in Saudi Arabia?

The SAMA regulates a range of activities. These include licensing and regulating:

- banks that carry out conventional banking activities such as accepting money on current or fixed deposit accounts, opening of current accounts, opening letters of credit (L/C), issuing letters of guarantee, payment and collection of cheques, orders and similar other papers of value, discounting of bills, promissory notes and other commercial papers;

- entities carrying out foreign exchange business;

- insurance companies carrying on insurance business (effecting and carrying out contracts of insurance); and

- finance companies that provide real estate financing solutions, financial lease services, credit cards, and financing and leasing of equipment and machinery.

The CMA regulates financial institutions carrying out the following securities business:

- Dealing – This covers a person dealing in a security as principal or as agent, and dealing includes to sell, buy, manage the subscription of or underwrite securities.

- Arranging – This involves a person introducing parties in relation to securities business, advising on corporate finance
business or otherwise acting to bring about a deal in a security.

- Managing – This means a person managing a security belonging to another person in circumstances involving the exercise of discretion.

- Advising – This involves a person advising another person on the merits of that person dealing in a security or exercising any right to deal conferred by a security.

- Custody – This covers a person safeguarding assets belonging to another person, which include a security, or arranging for another person to do so, and custody includes taking the necessary administrative measures.

4. How do Saudi Arabia’s licensing requirements apply to cross-border business into Saudi Arabia?

Any firm outside Saudi Arabia wishing to act for or deal with a client or counterparty located in Saudi Arabia would typically be subject to Saudi laws and regulations. The service provider will need to consider whether they are triggering a local licensing obligation and complying with local marketing rules.

SAMA Licensing Requirements

Foreign banks that are not licensed by the SAMA to operate in Saudi Arabia are not permitted to carry on any banking business or to engage in cross-border electronic banking activities in the Saudi market. The same restriction applies to insurance and financing activities where such activities may not be conducted in Saudi Arabia without being authorized or licensed by the SAMA. Insurance activities may only be conducted by a public joint stock company listed in the Saudi Stock Exchange, which means that other then SAMA rules and regulations, insurance companies are also subject to CMA rules and regulations.
In relation to marketing, the Banking Control Law prohibits any entity not licensed by the SAMA to conduct any banking business in Saudi Arabia. Advertising, marketing, contacting of clients and offering of any banking products may fall under the definition of banking business under the “other banking business” category as the Banking Control Law defined banking business as “the business of receiving money on current or fixed deposit account, opening of current accounts, opening of letters of credit, issuance of letters of guarantee, payment and collection of cheques, payment orders, promissory notes and similar other papers of value, discounting of bills, bills of exchange and other commercial papers, foreign exchange transactions and other banking business”. Any aggressive marketing, advertising, offering of banking products and contact with clients in Saudi Arabia is likely to result in investigations and /or penalization by the relevant authorities. It should be noted that the use of the word “bank” by any entity not licensed by the SAMA is also prohibited.

In relation to exemptions from SAMA authorization to conduct banking business in Saudi Arabia, the Banking Control Law prohibits any unlicensed person, natural or juristic, from carrying on any banking business. However, the Banking Control Law excludes juristic persons licensed in accordance with another law or special decree to carry on banking business as such persons may practice such business within the limits of their intended purposes, and licensed moneychangers may practice exchange of currency in the form of notes and coins, but no other banking business.

CMA Licensing Requirements

The CMA strictly prohibits any person from conducting securities business in Saudi Arabia or for a person in Saudi Arabia without authorization and licensing from the CMA.

In relation to marketing, the Securities Business Regulations regulate the issuance of securities advertisements, which is defined as any form of verbal, electronic, broadcast or written communication made in the course of business for the purpose of inviting or inducing a person to
engage in securities activity. Given that the definition of a securities advertisement is so broad, most forms of communications with counterparties or clients located in Saudi Arabia will most likely constitute securities advertisement. A securities advertisement is made or communicated to a person in Saudi Arabia if it is available to persons in Saudi Arabia, including advertisements made via the Internet. Various exclusions exist in relation both to the need to be authorized and in relation to marketing to persons in Saudi Arabia.

The Securities Business Regulations provide various exclusions from authorization with respect to conducting securities activities in Saudi Arabia and also authorizes the CMA to exempt any other person from the authorization requirement. These exclusions vary depending on the type of the securities business the unauthorized person wishes to conduct and the client that the services are being provided to.

By way of example, the Securities Business Regulations provide that the activities of arranging, managing, advising and custody are excluded from the authorization requirement where the service provider is a member of a group and the services in question are provided for a member of the same group. The activity of dealing is excluded from the authorization requirement if the transaction is between two persons acting as principals who are members of the same group or participants in a joint enterprise (provided that the transaction is for the purpose of the joint enterprise). There are a number of other exclusions listed in the Securities Business Regulations.

In addition to the exemptions listed in the Securities Business Regulations, the CMA has exempt foreign investment banks from its authorization requirement when engaging in securities activities in Saudi Arabia with or for certain Saudi Arabian government entities and bodies. This exemption is derived from a CMA resolution dated 19/05/1434H (corresponding to 31/03/2013G), which entitles the unauthorized foreign investment bank to provide services to each of the Ministry of Finance (Public Investment Fund), the SAMA, the
General Organization of Social Insurance, the Public Pension Agency and the Saudi Arabian Investment Company (Sanabil Investments).

As explained above, certain exclusions are presently available under Saudi law, which enable unauthorized financial institutions and persons inside and outside Saudi Arabia to deal with Saudi-based clients. This is on the basis that the activities in question will be regarded as being carried on based on a specific exemption that covers the relevant activities.

5. **What are the requirements to obtain authorization in Saudi Arabia?**

In order to obtain a license to conduct banking, insurance, financial leasing or securities activities, an applicant must satisfy the relevant regulator that it meets the conditions set out by the regulator.

The threshold conditions can vary depending on the particular regulated activities that the applicant intends to carry on and, in particular, whether the applicant will be CMA- or SAMA-authorized. Broadly, however, the following conditions will need to be satisfied:

(a) **Location of offices** – For Saudi-incorporated companies, both the management and head office must be located in Saudi Arabia. This can have implications for the composition of the board of directors, so that a majority of the board will need to be resident in Saudi Arabia and the administrative center will also need to be located in Saudi Arabia.

(b) **Effective Supervision** – The applicant must be capable of being effectively supervised. This emphasizes the need for firms to have a substantive presence in Saudi Arabia that is accessible to the Saudi Arabian regulators and enables the regulator to supervise the firm. The regulator will also consider whether there are any impediments to supervision of the applicant, including the group structure and any relevant laws restricting access to information.
(c) **Appropriate resources** – Applicants must satisfy the regulator that they have adequate resources to carry on the relevant regulated activities. Resources include financial resources as well as human resources (including management with the required skills, qualifications and integrity) and infrastructure.

(d) **Suitability** – The requirement is that applicants must be fit and proper to be authorized, having regard to all the circumstances.

(e) **Business model** – The regulator will examine the applicant’s business model. In addition to understanding the economic aspects of the business, the impact of the model on consumers and the impact on the Saudi economy will also be considered.

6. **What is the process for becoming authorized in Saudi Arabia?**

To obtain authorization, an applicant must complete a formal process, which involves the completion of required application forms and the submission of supporting information.

**CMA Authorization Process**

In relation to timing, the CMA will notify the applicant of receipt of the completed application and all required documents and information, and will have 30 days from the date of the notice to determine whether or not to approve the application. In practice, it could take several months (if not longer) for the CMA to process an application and license an Authorized Person.

The particular forms that must be completed for submission to the CMA will depend on the nature of the regulated activities to be conducted.
In general, the following forms will be required to be completed:

(a) **Application Form** – This is the main licensing application form, which sets out background factual information relating to the applicant.

(b) **Controllers** – Details must be submitted about identity, ownership (if applicable), integrity, regulatory status, business record and financial position of each proposed controller persons / entities who control or exert influence over the firm.

(c) **Close Links** – Details must be submitted about all persons that have, or are proposed to have, close links with the applicant, and provide details of the identity, ownership (if applicable), integrity, regulatory status, business record and financial position of each such person.

(d) **Governing Body Resolution** – The applicant must submit to the CMA a resolution in the form prescribed by the CMA, approving the application and its contents, and certifying the accuracy and completeness of the accompanying information and documents.

(e) Business Profile – The applicant must submit a proposed business profile, including full details of all services for which the Applicant proposes to provide for its advising activity that it is applying to carry on.

(f) **Business Plan** – The applicant must submit a business plan, setting out a detailed description of the securities business activities, that is, the advising activity that the applicant proposes to undertake during, at least, the first 12 months after authorization, and a description of the nature of the proposed clients of the applicant.
(g) **Financial Statements** – The applicant must submit financial statements in accordance with the standards issued by SOCPA and presented in the format prescribed by the CMA.

(h) **Individual Registration Forms** – The applicant must submit a list of each person who is to be a registered person (as required under the Authorized Persons Regulations) and an application form for registration for each such person in the format prescribed by the CMA, including details of their qualifications and experience.

(i) **Systems and Controls** – The applicant must submit systems and controls documentation such as risk management policies and systems, anti-money laundering and anti-terrorism financing procedures, compliance manual, compliance monitoring program and code of conduct.

(j) **Operations Manual** – The applicant must submit an operational procedures manual detailing the procedures and systems to be employed in relation to all material business and administrative operations.

(k) **Terms of Business** – The applicant must submit a copy of the proposed terms of business.

(l) **Fees** – The applicant must submit a list of proposed fees, commissions, charges and other expenses payable by clients.

(m) **Contracts** – The applicant must submit any agreements, arrangements and understandings with third parties to provide any material services or operations.

(n) **Insurance** – The applicant must submit details of professional indemnity insurance policies in accordance with the requirements prescribed by the CMA.

(o) **Incorporation Documents** – The applicant must submit a copy of its proposed articles of association and/or by-laws.
(p) **Structure Chart** – The applicant must submit an ownership structure chart showing the group of which the applicant forms part, including each controller and each person with whom the applicant has close links.

(q) **Organization Chart** – The applicant must submit an organization chart identifying the applicant’s governing body, the CEO and senior management, the compliance officer and MLRO. The chart must outline the reporting lines of each department within the business.

(r) **Business Continuity Plan** – The Applicant must submit a copy of the Applicant’s business continuity plan.

**SAMA Authorization Process**

In relation to timing, the SAMA will notify the applicant of receipt of the completed application and all required documents and information, and will have 60 days from the date of the notice to issue either a preliminary approval or rejection of application. The preliminary approval expires within six months from its issuance, and an applicant must establish the entity as a joint stock company within that period in order to obtain a license. Approval does not constitute a license. In most cases, the processing largely depends on the SAMA’s discretion, though it is generally a lengthy process.

The particular forms that must be completed for submission to the SAMA will depend on the nature of the regulated activities to be conducted.

In general, the following forms will be required to be completed:

(a) **Application Form** – The applicant must submit a completed application form.

(b) **Incorporation Documents** – The applicant must submit draft articles of association and by-laws.
(c) **Organization Structure** – The applicant must submit a description of the organizational structure of the bank, including all departments and necessary positions, and the main focus of each.

(d) **Founding Shareholders** – The applicant must submit a list of the founding shareholders, setting out the number and percentage of shares of each founding shareholder.

(e) **Fit and Proper Forms** – The applicant must submit the fit and proper form for founding shareholders signed by each founding shareholder and for each candidate for board membership and signed by each candidate of board membership.

(f) **Feasibility Study** – The applicant must submit a feasibility study identifying the target market, services to be provided, business model and strategy of the finance company in addition to a five-year business plan.

(g) **Bank Guarantee** – The applicant must submit an irrevocable bank guarantee that is at a minimum equal to the minimum capital of the financing activities to be licensed, to be issued by any local bank for the benefit of the SAMA, and automatically renewable until such date the capital is paid in full.

(h) **Contracts** – the applicant must submit draft agreements and contracts with third parties, especially those with related parties or external service providers.

(i) **Additional Documents** – The applicant must submit any other documents or information that the SAMA may request.
7. What financial services “passporting” arrangements does Saudi Arabia have with other jurisdictions?

Authorization in Saudi Arabia does not permit locally licensed banks or financial institutions to passport their authorization into European Economic Area member states. Saudi Arabia does not have any financial services passporting arrangements with any other country. In order to provide financial services/securities activities in Saudi Arabia, an entity must be licensed by the relevant Saudi authority.

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Singapore

1. Who regulates banking and financial services in Singapore?

The Monetary Authority of Singapore (MAS) is the integrated supervisor overseeing all financial institutions in Singapore, including banks, insurers, capital market intermediaries, financial advisors and market operators. The MAS is also tasked with promoting and developing Singapore as an internationally competitive financial center.

In addition to the MAS, the Commercial Affairs Department (CAD) of the Singapore Police Force is the principal white-collar crime investigation agency in Singapore. Among others, the CAD investigates money laundering, terrorism financing and fraud involving employees of financial institutions.

2. What are the main sources of regulatory laws in Singapore?

The main sources of regulatory laws in Singapore are found in primary legislation such as the Banking Act (Cap. 19), the Financial Advisers Act (Cap. 110), the Insurance Act (Cap. 142) and the Securities and Futures Act (Cap. 289). The various Acts provide the MAS with the authority to prescribe subsidiary legislation and issue directions. The subsidiary legislation and directions set out in greater detail the requirements that financial institutions have to comply with. Compliance is mandatory, and contravention of subsidiary legislation or directions is a criminal offence.

The MAS also issues guidelines that set out best practices that govern the conduct of financial institutions. While compliance is not strictly mandatory, the degree of observance with guidelines may have an impact on the MAS’s overall risk assessment of a financial institution. Codes are also sometimes used to set out a system of rules governing the conduct of certain specific activities. Failure to abide by a Code
does not in itself amount to a criminal offence but may have other consequences, including sanctions like private reprimand or public censure. The MAS also regularly issues Practice Notes and Circulars to a specific or specific class of financial institutions in order to provide guidance or information.

3. What types of activities require a license in Singapore?

Singapore regulates a broad range of financial activities, including the following:

- **Banking business** – This covers the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers, and the making of advances to customers.

- **Establishing or operating markets and clearing facilities** – This includes securities and futures markets, and clearing and settlement facilities for securities, futures and derivatives contracts.

- **Establishing, operating and winding up a collective investment scheme** – This will extend to open-ended funds that are primarily and exclusively redeemable at the election of the interest holders, as well as closed-end funds constituted on or after 1 July 2013.

- **Financial advisory services** – This covers advising others concerning any investment products, issuing or promulgating research analyses or research reports concerning any investment products, marketing of any collective investment scheme, and arranging life policies.

- **Fund management** – This covers undertaking on behalf of customers (whether on a discretionary authority or otherwise) the management of a portfolio of securities or futures contract,
or foreign exchange trading or leveraged foreign exchange trading for the purpose of managing customers’ funds.

- Insurance or insurance broking business – Insurance business includes insurance business concerned with life and non-life policies. Insurance brokers are persons who carry on insurance business as agents for the insured.

- Issuing credit and charge cards – Credit and charge card refers to any article, whether in physical or electronic form, intended for use in purchasing goods or services on credit.

- Money-changing and remittance businesses – Money-changing refers to the business of buying or selling foreign currency. Remittance business refers to the business of accepting moneys for the purpose of transmitting them to persons resident in another country.

- Other capital markets services – This includes advising on corporate finance, real estate investment trust management, securities financing and providing credit rating services.

- Payment systems and stored value facilities – A payment system refers to a funds transfer system or other system that facilitates the circulation of money. A stored value facility is a facility (other than cash) that is purchased or otherwise acquired by a user to be used as a means of making payment for goods or services up to the amount of the stored value, and payment for the goods or services is made by the holder of the stored value in respect of the facility (rather than by the user).

- Providing custodial services for securities – This includes having custody of securities and carrying on functions such as settlement of transactions, collecting or distributing dividends, paying tax or costs associated with the securities, exercising rights attached to securities, and other functions necessary or
incidental to the safeguarding or administration of the securities.

• Trading in securities, futures contracts, leveraged foreign exchange contracts – The scope of activities regulated extend to acts of inducing or attempting to induce persons to enter into such trades. This would cover brokers.

For each of these activities, certain exemptions from the requirement to be licensed, registered, authorized or recognized may apply.

4. How do Singapore’s licensing requirements apply to cross-border business into Singapore?

A firm outside Singapore that deals with a client or counterparty located in Singapore is subject to Singapore laws and regulations if it conducts activities or transacts business in Singapore or targets persons in Singapore.

Where the firm conducts its activities wholly outside Singapore, it may still be subject to Singapore laws and regulations, depending whether the applicable statute governing that activity has extra-territorial jurisdiction. For example, under the Banking Act, no person, whether in Singapore or elsewhere, shall accept in Singapore any deposit from any person in Singapore, or accept or receive in Singapore any application for a credit card or charge card. Under the Securities and Futures Act (which generally regulates capital markets activities) and the Insurance Act (which regulates insurance and insurance broking business), acts done wholly outside Singapore will be subject to regulation if they have a substantial and foreseeable effect in Singapore. Under the Financial Advisers Act (which regulates financial advisory services), a person is regarded as carrying on financial advisory business in Singapore if he engages in any activity or conduct that is intended to or likely to induce the public in Singapore to use any financial advisory service provided by him.
Certain exemptions do apply. For example, it is not the MAS’s policy intent to regulate activities conducted wholly outside Singapore where the foreign entity is responding to unsolicited enquiries or applications from persons in Singapore, the foreign entity is servicing a client previously resident overseas who has subsequently become a resident in Singapore, or when the foreign entity purchases the services of or provides services to a regulated person. Exemption from licensing requirements may also apply for certain specific activities where the foreign firm is related to an entity regulated in Singapore.

A firm based outside Singapore should also be cautious of regulatory requirements in Singapore when conducting non-regulated activities in Singapore. Under Singapore law, any person carrying on business or having a place of business in Singapore must register the business or company in Singapore. Firms should also not transact business in Singapore under the name “bank”; carry on business in Singapore under the name “insurance,” “insurance broker” or “financial advisor”; or display the title or description “securities exchange,” “futures exchange,” “securities clearing house” or “futures clearing house” in Singapore unless they are authorized to do so by the MAS.

There is no restriction on foreign ownership of entities carrying on regulated activities in Singapore. However, in some cases such as fund management, the MAS will require that a company be incorporated in Singapore. In other cases, where a company is seeking a license to carry on trading activities, provide custodial services for securities or provide financial advice, it will be required to establish and operate out of a physical office in Singapore.

Where a firm is authorized to carry out regulated activities such as fund management, trading, provision of custodial services or provision of financial advisory services, it may be required to register individuals acting on its behalf in the public register of representatives maintained by the MAS. To cater to situations where individuals ordinarily based outside Singapore may carry on regulated activities in Singapore on behalf of their firms, an individual may be appointed as a temporary representative. A temporary representative is not required
to comply with certain minimum examination requirements, but may not carry out regulated activities in Singapore for more than six months in any 24-month period.

5. What are the requirements to obtain authorization in Singapore?

In order to become authorized, recognized, licensed or registered to carry on regulated activities in Singapore, an applicant for authorization must satisfy the relevant regulator that it meets certain requirements. The requirements, which may be set out in primary or subsidiary legislation, notices, directions or guidelines, vary depending on the type of activity that the applicant intends to carry out.

Broadly, however, the following conditions will need to be satisfied:

(a) **Location of offices** - Companies seeking license to carry on capital markets services or financial advisory services must establish and operate out of a Singapore office. In addition, such companies may be required to appoint a chief executive officer and/or director who is resident in Singapore.

(b) **Adequate resources** - Generally, the MAS will prescribe a minimum capital or financial requirement for financial institutions applying to carry on regulated activities in Singapore. For some activities, professional indemnity insurance is either required or strongly encouraged.

(c) **Suitability** - The MAS will consider whether the applicant, its officers, directors and shareholders are fit and proper to carry on regulated activities in Singapore. The criteria for considering whether they are fit and proper include, but are not limited to the following: honesty, integrity and reputation; competence and capability; and financial soundness.
Experience - The MAS may also consider the track record of the applicant, and whether its directors and representatives have relevant experience. Where the applicant is a foreign company, the MAS will also consider whether it is subject to proper supervision by a recognized home regulatory authority.

6. What is the process for becoming authorized in Singapore?

Generally, an applicant must complete a formal process involving the completion of required application forms and the submission of supporting information. There is no time frame in which the MAS must consider and determine an application. The particular forms that must be completed for submission to the MAS will depend on the nature of the regulated activities to be conducted. The requisite forms (if any) may be found on MAS’s website.

For a license to carry on capital markets services or financial advisory services, the following forms are broadly required:

(a) **License Application Form** - This form sets out information about the applicant, its proposed business activities, organizational structure, shareholders and directors.

(b) **Individual Forms** - An applicant will also have to submit forms providing information about individuals to be appointed as representatives, chief executive officer and directors. The applicant will have to certify that it is satisfied that such individuals are fit and proper.

(c) **Supporting documents** - Various documents such as business plans, organization charts and recent audited financial statements must be submitted with the forms set out above.

(d) **Letter of responsibility or undertaking** - In some cases, the MAS may require the applicant to procure a letter of responsibility or undertaking from its parent company, which commits the parent company to maintain adequate oversight.
over the applicant or to undertake liability if the applicant fails to maintain certain liquidity or financial requirements.

7. What financial services “passporting” arrangements does Singapore have with other jurisdictions?

To take advantage of investor interest in the growing economies and sophistication of the financial markets in the Asia Pacific region, a number of Asian economies have collaborated to initiate Asia-centric fund passport schemes. Two schemes involving Singapore are:

(a) the Association of Southeast Asian Nations Collective Investment Schemes Framework for Cross Border Offering of Funds (ASEAN CIS Framework); and

(b) the Asia-Pacific Economic Cooperation (APEC) Asia Region Funds Passport.

ASEAN CIS Framework

In October 2013, the securities regulators and capital market authorities of Singapore, Malaysia and Thailand have signed a Memorandum of Understanding to establish the ASEAN CIS Framework for the cross-border offering of collective investment schemes (CIS).

The objective of the ASEAN CIS Framework is to allow a qualifying fund manager to offer units of an ASEAN CIS authorized in its home jurisdiction to retail investors in other host jurisdictions with minimal regulatory hurdles. The participating countries adopt a uniform Standards of Qualifying CIS, which among others, sets out the minimum qualifications required for the CIS operator and its management and personnel, relevant investment restrictions, and the obligations of the CIS operator.

At the time of writing, there have been at least 12 funds registered under the ASEAN CIS Framework.
We understand that the participating countries have also separately agreed to an arrangement to provide mutual assistance to facilitate cross-border offerings of CIS to non-retail investors. However, no further details in this regard is currently given.

**APEC Asia Region Funds Passport**

Another funds passport scheme that has not yet been launched is the APEC Asia Region Funds Passport. It aims to facilitate the distribution across regional borders of CIS funds manufactured, distributed, and administered within the APEC region, similar to the operation of the ASEAN CIS Framework but with a broader reach.

A Statement of Intent to establish the APEC Asia Region Funds Passport (APEC ARFP) was signed by the Finance Ministers of Singapore, the Republic of Korea, Australia, and New Zealand in September 2013. Other countries have been involved in discussions and in September 2015, the foregoing countries (except Singapore) were joined by Japan, the Philippines and Thailand in signing a Statement of Understanding. It is anticipated that this fund passport regime will be launched in 2017.

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South Africa

1. Who regulates banking and financial services in South Africa?

The national government department responsible for setting policy in respect of the regulation of private and public sector investment in South Africa is the National Treasury headed by the Minister of Finance. The main regulators responsible for administering legislation applicable to banking and financial services in South Africa are the South African Reserve Bank (SARB) and the Financial Services Board (FSB).

The following regulatory authorities are responsible for overseeing banks:

(a) The SARB, as the central bank, and more particularly the Registrar of Banks, who is an officer of the SARB, are primarily responsible for overseeing banks. Also, the SARB, in terms of the National Payment System Act, 1988 (the “NPS Act”), recognizes the Payment Association of South Africa as a payment system management body with the object of organizing, managing and regulating the participation of its members (i.e., banks) in the payment system.

(b) The Financial Intelligence Centre (FIC)

(c) The FSB

(d) The National Credit Regulator

(e) The National Consumer Commission

(f) The Information Regulator, which is to be established once the Protection of Personal Information Act, 2013 (POPI) becomes effective, and whose responsibilities will include monitoring and enforcing compliance with the provisions of POPI.
The FSB is a statutory body that supervises and enforces compliance with the laws regulating financial institutions and the provision of financial services. The FSB is organized by sector-specific departments, each headed by a Registrar and Deputy Registrar (for example, the Pension Funds Department is headed by the Registrar of Pension Funds). The legislation administered by the FSB is fragmented, with a specific piece of primary legislation applying to each of the different types of financial institutions and financial services providers (FSPs) regulated by the FSB, namely, exchanges, clearing houses, securities depositories, trade repositories, credit ratings agencies, insurance companies, pension funds, collective investment schemes, friendly societies and FSPs. Broadly speaking, subordinate legislation is made by the Minister of Finance, while the FSB is given wide powers to regulate approved financial institutions and FSPs through conditions, directives, rules and the like.

The regulatory duties and powers of some industries are also split horizontally since some functions are delegated to associations or self-regulatory organizations (SROs). In terms of the Financial Markets Act 2012 (FMA), a licensed exchange, a central securities depository (CSD) and an independent clearing house operate as SROs. They regulate the activities of authorized users (members of an exchange), participants (members of a central securities depository) and clearing members of an independent clearing house in terms of the provisions of the FMA.

In addition, there has been proposed changes to the current regulatory framework in which regulators perform prudential, market conduct oversight, administrative and enforcement functions in their respective sectors, to a “Twin Peaks Model” of regulation. This model is aimed at enhancing systemic stability, improving market conduct regulation, bolstering micro- and macro-prudential regulation, and strengthening South African regulators.

The Twin Peaks Model’s emphasis on goal-centric regulation by dedicated regulators and streamlining interaction between the regulators and the financial services industry, is designed to remedy
this inefficiency. Under the Twin Peaks Model, the SARB (through a new Prudential Authority (PA)) will act as prudential regulator, and the new, standalone FSB Market Conduct Authority (MCA) as a market conduct “super-regulator” over the entire financial services industry. The draft Financial Sector Regulation Bill covers this first phase of the Model of establishing the two regulatory authorities. There are two phases to the implementation of the Twin Peaks system. Phase 1 provides for the reform process, this being the intermediate steps in creating the final new regulatory framework envisaged to take place during 2015 until 2016. Phase 2 represents the long-run framework that will be implemented from 2016 until 2018.

In terms of the Twin Peaks Model, all role players will be classified as either a “mono-regulated” institution (collective investment schemes, advisory and intermediary services providers, credit rating agencies and pension funds – regulated by the MCA only) or a “dual regulated” institution (banks, insurers, exchanges, the national payment system operators and financial markets infrastructure operators – regulated by both the MCA and the PA).

Once implemented, the Twin Peaks Model will streamline interaction between the regulators and the financial services industry by, inter alia, centralizing certain supervisory activities.

The Financial Sector Regulation Bill, which will give effect to the Twin Peaks Model:

(a) provides for the establishment of the Financial Services Tribunal to facilitate swift administrative action and effective enforcement and for the implementation of codes of good practice for role players in the financial services industry; and

(b) changes the Financial Services Ombud Schemes Act 2004 in order to strengthen the ombud system by putting measures in place to enhance public awareness of the ombud system and requiring all financial institutions to be members of an ombud scheme as part of public protection.
2. What are the main sources of regulatory laws in South Africa?

The following primary statutes and regulations govern the banking, financial services and insurance industry:

(a) The Banks Act 1990 and regulations published in terms thereof, providing for the regulation and supervision of the taking of deposits from the public

(b) The South African Reserve Bank Act 1989, specifically regulating the SARB and the monetary system

(c) The NPS Act, providing for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in South Africa

(d) The Inspection of Financial Institutions Act 1998, providing for the inspection of the affairs of financial institutions (such as banks) and for the inspection of the affairs of unregistered entities conducting the business of financial institutions

(e) The Currency and Exchanges Act 1933, regulating legal tender, currency, exchanges and banking; Exchange Control Regulations issued in terms of that Act impose exchange control that restricts the export of capital from South Africa

(f) The Financial Intelligence Centre Act 2001 (FICA), establishing the FIC and a Money Laundering Advisory Council to combat money laundering activities and the financing of terrorist and related activities, and imposing certain duties on institutions and other persons who might be used for such

(g) The Financial Advisory and Intermediary Services Act 2002 (FAIS), regulating the rendering of certain financial advisory and intermediary services to clients
(h) The Mutual Banks Act 1993, providing for the regulation and supervision of the activities of mutual banks;

(i) The Co-operative Banks Act 2007, providing for the regulation and supervision of cooperative banks; the legislation acknowledges member-based financial services cooperatives as a different tier of the official banking sector. Note, however, that rules to be implemented in terms of this Act are still in draft form.

(j) The National Credit Act 2005 (NCA), regulating consumer credit and improved standards of consumer information, prohibits certain unfair credit and credit-marketing practices as well as reckless credit granting, provides for debt reorganization in cases of over indebtedness, regulates credit information, and provides for registration of credit bureaus, credit providers and debt-counselling services.

(k) The Credit Rating Services Act 2012 (CRSA), providing for the registration and regulation of credit rating agencies in accordance with international regulatory principles in order to participate in efforts to establish consistent regulatory frameworks for credit rating agencies (CRAs) worldwide.

(l) The Consumer Protection Act 2008 (CPA), which is intended to protect certain fundamental consumer rights, and which also applies to the provision of banking services to consumers, unless exempted, except to the extent that any such service constitutes advice or intermediary services regulated by FAIS, or is regulated in terms of the Long-term Insurance Act 1998 (LTIA) or the Short-term Insurance Act 1998 (STIA).

(m) The FMA, which provides, inter alia, for the regulation of financial markets, the custody and administration of securities, and the prohibition of insider trading; the FMA also regulates and controls exchanges and the trading of securities. It aims to reduce systemic risk while promoting international
competitiveness and requires that only licensed persons operate as exchanges, central securities depositories or clearing houses. The only licensed exchange in South Africa, the Johannesburg Stock Exchange (JSE), currently operates three markets, each with their own listings, membership requirements and rules. They are the Equities Market, the Derivatives Market and the Interest Rate Market.

(n) The POPI, which will, once fully effective, regulate the manner in which personal information may be processed by establishing the conditions, in harmony with international standards, that prescribe the minimum threshold requirements for its lawful processing.

(o) The STIA, which deals with prudential regulation and defines short term insurance as the business of providing or undertaking to provide policy benefits under short term policies, such as engineering, guarantee, miscellaneous, motor, accident and health, property or transportation policies or contracts comprising a combination of any of those policies, and including a contract whereby any such contract is renewed or varied.

(p) The LTIA, which deals with prudential regulation and in terms of which long-term insurance is defined as the business of providing or undertaking to provide policy benefits under long-term policies, which include assistance policies, disability policies, fund policies, health policies, life policies or sinking fund policies, or contracts comprising a combination of any of those policies, and includes a contract whereby any such contract is varied.

(q) The Pension Funds Act 2008 (PFA), which provides for the registration, incorporation, regulation and dissolution of pension funds.
The Collective Investment Schemes Control Act 2002 (CISCA), which regulates and controls the establishment and administration of collective investment schemes.

3. What types of activities require a license in South Africa?

There are various role players and activities regulated in South Africa, which include the following:

- Accepting deposits for the general public – This would cover typical retail banking activities involving: member-based organizations (stokvels, co-operative finance institutions, co-operative banks, friendly societies and mutual banks); banks (retail banks, microbanks); and other microfinance institutions (non-banks credit providers, microenterprise lenders).

- Conducting the business of an exchange – An exchange provides the infrastructure for the trading of securities listed on the exchange, that is, bringing together buyers and sellers of those securities in respect of which a license has been obtained and matching those orders to buy or sell. Once matched, the orders become transactions.

- Conducting the business of a clearing house – A clearing house provides infrastructure to clear transactions in securities. A clearing house may be associated with the exchange or independent.

- Acting as an authorized user – An authorized user is a person authorized in terms of the exchange rules to perform one or more securities services and includes an external authorized user.
• Conducting the business of a CSD – A CSD provides infrastructure for holding uncertificated securities, which enables the making of entries in respect thereof and includes a securities settlement system.

• Acting as a participant – A participant is a person authorized by a CSD to perform custody and administration services or settlement services or both in terms of the CSD rules and includes an external participant where appropriate.

• Acting as an issuer – An issuer of securities may be a company issuing shares or a utility issuing debt instruments.

• Acting as a regulated person – A regulated person may be an exchange, authorized user, CSD, participant, clearing house, clearing member, nominee and trade repository. An issuer is also a regulated person but only under certain circumstances.

• Acting as a trade repository – A trade repository is an exchange, authorized user, CSD, participant, clearing house, clearing member, nominee and trade repository. An issuer is also a regulated person but only under certain circumstances.

• Providing a credit rating service – A credit rating service is the analysis, evaluation, approval, issuing or review of data and information for purposes of a credit rating, whereas a credit rating is an opinion regarding the creditworthiness of an entity, a security or financial instrument or an issuer of a security or financial instrument using an established and defined ranking system of rating categories.

• Carrying on insurance business – Providing short-term or long-term insurance products (general and life insurance)

• Establishing and operating a retirement fund – Actions of retirement funds trustees are carefully legislated and regulated to protect the members of the funds.
Collective investment schemes – Investor funds are commonly pooled for investment purposes of collective investment schemes typically in securities, property and participation bonds and foreign schemes (which must apply to the Registrar of Collective Investment Schemes to be approved and registered), securities, property and participation bonds. Specific conditions relating to foreign collective investment schemes have been promulgated, which regulate the marketing and investment of foreign collective investment schemes in South Africa.

Rendering of financial advisory and intermediary services – Businesses typically covered by the FAIS are investment managers, investment advisers, insurance brokers and advisers, foreign exchange intermediaries (persons who trade foreign exchange as an asset class for clients), financial planners and advisers. Financial advisers are required to adhere to strict standards imposed by the FAIS in terms of which no person may offer financial services without a license. Furthermore, licensed financial service providers must meet various obligations, including prescribed ‘fit and proper’ behavior and codes of conduct.

4. How do South Africa’s licensing requirements apply to cross-border business into South Africa?

Broadly speaking, the FSB acknowledges that foreign financial service providers that solicit for business or provide financial services in South Africa may be subject to similar regulation and supervision by regulators in their home jurisdictions. Accordingly, in terms of the FAIS Act, provided the licensing requirements of the foreign regulator are at a standard that the FSB regards as sufficiently high, foreign financial service providers and their compliance officers may be able to obtain exemptions from compliance with some local ‘fit and proper’ and auditing requirements.
5. What are the requirements to obtain authorization in South Africa?

Under the FAIS Act, the Registrar must, after consultation with the Advisory Committee, determine the requirements that FSPs, key individuals and representatives of the provider must comply with. These requirements are termed the “Determination of Fit and Proper Requirements for FSPs and their representatives.” The fit and proper requirements were updated in 2008 and subsequent several amendments have been effected. The requirements set the honesty and integrity, competency and operational ability requirements for all FSPs, key individuals and representatives. It also set out the solvency requirements applicable to FSPs.

A recent requirement introduced by the FSB in relation to FSPs is that individuals exercising oversight over the rendering of financial services by a license holder under the FAIS Act (termed “key individuals”) or who represent the license holder in rendering financial services to clients (termed “representatives”) must, in order to illustrate the required level of competence, successfully complete certain regulatory examinations prescribed by the FSB. A limited exemption applies to this requirement in respect of license holders not domiciled in South Africa but who are licensed under the FAIS Act to provide intermediary services only.

The primary legislation applying to each of the different types of financial institutions and FSPs generally sets out the specific requirements an applicant for authorization must satisfy. Broadly, however, the following requirements will have to be met to the satisfaction of the sector-specific Registrar:

(a) Assets and resources - The applicant must implement an effective and reliable infrastructure, have adequate assets and resources within South Africa, which resources include financial, management and human resources with appropriate experience to perform its licensed function.
(b) Governance arrangements - These must, inter alia, be clear and transparent, support the stability of the broader financial system, taking into account relevant public interest considerations and the objectives of relevant stakeholders.

(c) Fit and proper requirements - These will vary according to the type of license sought by the applicant.

(d) Surveillance, supervision and monitoring - An applicant will have to show arrangements for the efficient and effective surveillance, supervision and monitoring of all transactions, authorized users and general compliance.

(e) Risk management - Implement arrangements to efficiently and effectively manage the material risks associated with the given operations.

(f) Records keeping - Have made arrangements for efficient and effective security and back-up procedures to ensure the integrity of the records of transactions.

(g) Insurance - Have insurance, a guarantee, compensation fund or other warranty in place to enable it to provide compensation to clients.

6. What is the process for becoming authorized in South Africa?

Each sector-specific Registrar prescribes a formal process to be completed by an applicant to obtain the required authorization, depending on the nature of the regulated activity conducted.

The application process involves, inter alia, the completion of sector-specific required application forms, the submission of supporting information and documents, and/or the completion of certain regulatory examinations prescribed by the FSB.
Applications may be submitted to the FSB directly or through a recognized representative body, appointed as such by the FSB to assist the processing of applications for authorization.

The various sector-specific required application forms, together with explanatory notes, may be obtained from the FSB’s official website at www.fsb.co.za.

7. What financial services “passporting” arrangements does South Africa have with other jurisdictions?

This does not apply to authorizations obtained in South Africa by South African firms.

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Spain

1. Who regulates banking and financial services in Spain?

There are different public bodies overseeing the conduct of banking and financial services businesses in Spain. These public bodies have regulatory and supervisory authority over participants in both banking and financial markets.

The main supervisory authorities in Spain are the following:

The Bank of Spain

The Bank of Spain, together with the European Central Bank (ECB), since the entry into force of Council Regulation (EU) No 1024/2013, on 15 October 2013, establishing a single supervisory mechanism for banks in the euro area (the “SSM Regulation”), supervises the Spanish banking system.¹

The Bank of Spain is comprised of a Governor, a Sub-governor, a Governing Council (which is composed of the Governor, the Sub-governor, six directors, the General Director of the Treasury and Financial Policy, and the Vice-President of the Comision Nacional del Mercado de Valores or CNMV), and an Executive Commission (made up by the Governor, the Sub-governor and two directors, although all general directors of the Bank of Spain may attend without voting rights).

¹ Consistent with the exclusion made under Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council, dated 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms; the institutions identified thereunder are also excluded from the supervisory tasks conferred upon the ECB, which in the case of Spain affects the state-owned Instituto de Crédito Oficial (ICO).
The Bank of Spain is empowered with a wide range of functions, which can be classified in two broad categories:

A) Functions linked to its members-status of the European System of Central Banks

B) Functions as a National Central Bank:

- Holding and managing currency and precious metal reserves not transferred to the ECB
- Promoting the proper working and stability of the financial system
- Supervising solvency and compliance with specific rules of credit institutions, other entities and financial markets, for which it has been entrusted with supervisory responsibility
- Placing coins in circulation and performing, on behalf of the state, any other functions entrusted to it related to this function
- Preparing and publishing statistics relating to its functions and assisting the ECB in the compilation of statistical information
- Providing treasury services and acting as a financial agent for government debt
- Advising the government and preparing appropriate reports and studies

European System of Central Banks

The European System of Central Banks (ESCB) is the central bank for the Eurozone’s single currency, the euro. The ECB’s main task is to preserve the euro’s purchasing power by maintaining price stability in the Eurozone.
As mentioned, in addition to the foregoing and pursuant to the SSM Regulation, the ECB has been vested with prudential supervisory powers to be exercised over credit institutions in the European Union. Together with each of the supervisory authorities of the participating member states, it constitutes the SSM, the main purpose of which is to carry out thorough and effective banking supervision and to contribute to the safety and soundness of the banking system and to the stability of the financial system, guaranteeing equal treatment and conditions throughout the EU.

The Single Supervisory Mechanism

By virtue of the SSM Regulation, the ECB has exclusive competency to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions (CIs) established in participating member states:

1. To authorize and, where appropriate, withdraw the authorization of CIs and to assess notifications of acquisition or disposal of qualifying holdings in CIs, with certain caveats in the case of bank resolutions

2. To act as the home competent authority for CIs established in a participating member state that wishes to establish a branch or provide cross-border services in a non-participating member state

3. To ensure compliance with EU law on prudential requirements (Pillar 1), supervisory review procedures (Pillar 2) and market disclosure (Pillar 3), comprising, among other matters, the analysis of: own funds requirements, large exposure limits, liquidity, leverage, governance arrangements, the fit and proper requirements for senior management, internal control mechanisms, remuneration policies and capital adequacy, including the assessment of internal risk models and the performance of stress tests
4. To carry out supervision on a consolidated basis over CIs’ parent firms established in a participating member state, including over financial holding companies and mixed financial holding companies; where parent firms are not established in a participating member state, the ECB will participate in colleges of supervisors, without prejudice to the participation of National Competent Authorities (NCAs) as observers.

5. To participate in supplementary supervision of financial conglomerates in relation to their CIs, assuming, where appropriate, the task of coordinator of the financial conglomerate

6. To supervise recovery plans and early intervention measures and, where appropriate, request that the measures needed to resolve problems be adopted, excluding any resolution powers

7. To impose more stringent requirements, in close coordination with the national authorities of participating member states in respect of own funds requirements, additional capital buffers and systemic or macro-prudential measures

These supervisory functions are without prejudice to others entrusted to the ECB in relation to significant CIs.

The CNMV

The CNMV is Spain’s national securities commission in charge of overseeing Spanish financial markets and supervising the activities of all market participants.

The main functions of the CNMV are to supervise and monitor the securities markets and the activity of all individuals or legal entities in relation thereto and, where appropriate, to impose sanctions following infringements of securities market. It is also an advisory body to the central government and to the autonomous regions in all matters related to the securities markets.
Its main aim is to ensure the transparency and efficiency of the securities markets, orderly pricing therein and investor protection, as well as to disseminate any information that may be necessary for these purposes. Likewise, when so empowered by legislation, on a case-by-case basis, it can also issue circulars containing mandatory rules for the implementation and enforcement of the regulations issued by the Council of Ministers or the Minister of Economy and Competitiveness.

2. What are the main sources of regulatory laws in Spain?

As Spain is a member of the EU, a large part of the legal provisions derive from EU directives and regulations. Therefore, much of the Spanish legislation regarding banking and financial matters is enacted in order to give effect to EU legislation.

The main statutory provisions on banking and financial regulation in Spain are Act 10/2014, dated 26 June 2014, on the organization, supervision and solvency of credit institutions (Ley de Ordenación, Supervisión y Solvencia de entidades de crédito) (OSSA), and Royal Legislative Decree 4/2015, dated 23 October, enacting the recast Security Markets Act (Texto refundido de la Ley de Mercado de Valores) (SMA).

In addition, both the Bank of Spain and the CNMV have been vested with authority to issue statutory dispositions called orders (Ordenes) and circulars (Circulares).

3. What types of activities require a license in Spain?

Spanish law regulates a wide array of banking and financial activities. It follows that, as a general rule, entities wishing to carry on those activities in Spain will need to obtain the necessary license from the relevant supervisory authority, for which they will need meet certain criteria.
Banking Activities

Under Article 3 of OSSA, the activity of taking repayable funds from the public, either in the form of a deposit, loan, temporary assignment of financial assets or otherwise, and irrespective of their final destination, is an activity reserved for CIs in Spain. Any entity wishing to carry on such an activity must be duly authorized and registered with the Bank of Spain as a CI.

Without prejudice to the above, CIs duly authorized in other member states may, by virtue of the EU-banking passport, provide this service in Spain (as well as all those activities itemized in the Annex of OSSA\(^2\)) without applying for a Spanish license.

Financial Services

According to Article 138 of the SMA, *investment firms* are those entities whose main corporate purpose is the provision, on a professional basis, of investment services to third parties in relation to those financial instruments described in Article 2 of the SMA.

In relation to what constitutes an “*investment service,*” Article 140 of the SMA lists the following activities:

1. Reception and transmission of orders in relation to one or more financial instruments
2. Execution of orders on behalf of clients
3. Dealing on own account
4. Discretionary portfolio management activities in accordance with a mandate received from a client

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\(^2\) The list enclosed as Annex to OSSA mirrors the list of activities subject to mutual recognition comprised in Annex I of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.
5. Underwriting of financial instruments

6. Placing of financial instruments on a firm commitment basis or without a firm commitment basis

7. Investment advice

8. Operation of Multilateral Trading Facilities

Similarly, Article 141 of the SMA classifies as “ancillary investment services” the following activities:

1. Safekeeping and administration of financial instruments for the account of clients

2. Granting credits or loans to an investor to allow them to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction

3. Advice to undertakings on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings

4. Services related to underwriting transactions

5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments

6. Foreign exchange services where these are connected to the provision of investment services

7. Investment services and activities, as well as ancillary services related to the non financial assets underlying those financial instruments under clauses 3, 4, 5 and 8 of Article 2 of the SMA, when connected to the provision of investment or ancillary services
Pursuant to Article 144 of the SMA, all “investment services” and all “ancillary investment services” are reserved to investment firms. There are two exceptions for: (a) the provision of advice to undertakings on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings; and (b) the carrying out of investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments. As a consequence, any entity wishing to pursue any of those services will need to obtain prior authorization.

4. How do Spain’s licensing requirements apply to cross-border business into Spain?

Nearly all the activities carried out by a foreign entity when dealing with a client or a counterparty located in Spain are subject to Spanish laws and regulations, and therefore to supervision by the relevant supervisory authority. However, there are important differences depending on whether the foreign entity is based in an EU member state or not.

In relation to EU-based foreign entities, please see Section 7 relating to passporting.

Credit institutions and investment service companies from non-EU countries, which have not been authorized in another member state, need to seek authorization from the Bank of Spain or the CNMV before starting to carry out services in Spain. In these cases, the Bank of Spain and the CNMV may request further information and, if deemed appropriate, deny permission to carry on all or part of the activities for which authorization was sought, or to impose additional requirements.

Neither the Bank of Spain nor the CNMV have issued guidelines in relation to when Spanish law considers that a banking or an investment service is provided in Spain. Although certain specific legislation contains criteria in this regard (e.g., Act 22/2007, dated 11
July 2007, on distance marketing of financial services to consumers), in general terms, and specifically in relation to banking services, Spanish doctrine tends to rely on the European Commission’s Interpretative Communication of 1997 on the “freedom to provide services and the interest of the general good in the second banking directive.” This states that in order to establish the place where an activity was carried out, the analysis must focus on the place where what may be termed as the “characteristic performance” of the service (i.e., the essential supply for which payment is due) is to be provided.

5. What are the requirements to obtain authorization in Spain?

The requirements to be met in order to obtain authorization vary depending on: (i) how the applicant wishes to conduct banking business in Spain (i.e., the incorporation of a new entity with a Spanish license, the establishment of a Spanish branch, the incorporation of a Spanish subsidiary or the provision of cross-border services in Spain without a fixed establishment); and (ii) the nature of the applicant.

1. Credit Institutions

1.1. Incorporation of new CIs

As a general rule, any person or entity seeking to undertake a banking business in Spain through a Spanish legal entity must first obtain a banking license. The application for authorization must be addressed to the Bank of Spain, although it is the ECB who ultimately grants the authorization, based on the proposal issued by the Bank of Spain.

Before conveying its proposal to the ECB, the Bank of Spain must obtain a report from the Spanish Anti-money Laundering Commission (SEPBLAC) and, where appropriate, from the CNMV and the General Directorate for Insurance and Pension Funds.
Authorization may be denied if the applicant: (i) lacks an adequate organizational structure, does not comply with the minimum capital requirements, or fails to have adequate administrative and accounting procedures or internal controls to ensure safe and sound management; (ii) the shareholders or directors are not fit and proper; (iii) lacks adequate procedures for the prevention of money laundering or terrorism financing; or (iv) the entity fails to meet any of the basic statutory requirements mentioned below.

Basic statutory requirements for incorporating a new CI in Spain include, but are not limited to, the following:

- The entity must be incorporated as a public limited company (sociedad anónima).

- The entity must have a minimum fully paid up share capital of EUR18 million represented by shares, which must be nominative.

- The corporate purpose of the entity must be limited to banking activities.

- Shareholders owning qualifying holdings must be considered suitable according to Article 6 of Spanish Royal Decree 84/2015 developing OSSA (“RD 84/2015”).

- No special rights or preferences are be granted to the entity’s founders.

- Management must be entrusted to a board of directors of at least five members, all of whom must be suitable. Any person who has been convicted of a criminal offence or has been indicted for crimes involving dishonesty or a breach of a fiduciary duty, such as money laundering, misuse of public funds, “unfaithfulness” in the custody of documents or disclosure of secrets, is ineligible to serve as a director. Furthermore, the majority of the members of the board of
directors must have practical and theoretical knowledge and expertise in the running of a bank. All of the foregoing requirements also apply to the entity’s general managers.

- The entity must have an appropriate administrative and accounting organization, as well as internal control procedures that ensure safe and sound management.

- The entity’s registered address and headquarters must be located in Spain.

- The entity must put in place appropriate proceedings for the prevention of money laundering in accordance with applicable legislation. This requirement also includes the drafting of an AML manual and the appointment of a representative before the SEPBLAC (i.e., MLRO).

1.2. Incorporation of a Subsidiary

Regarding the incorporation of subsidiaries, it must be noted that while the rules for incorporating a subsidiary of a foreign CI are substantially the same as the rules applicable to the incorporation of a new bank in Spain, two major differences exist for non-EU based entities:

- A foreign bank may be denied permission to incorporate a Spanish subsidiary if the country of residence of the parent foreign bank does not guarantee reciprocal treatment for Spanish banks under an international agreement.

- The Bank of Spain may require the parent bank to guarantee the obligations of the Spanish subsidiary.

1.3. Opening of a Spanish Branch

As will be further explained under Section 7 below, the opening of Spanish branches by CIs incorporated in EU Member States are
regulated through the “EU-passport,” which enables an applicant that already holds an authorization from its home member state to carry on activities in Spain by notifying its home country’s competent authority, which shall, in turn, notify the Bank of Spain. Consequently, there is no prior authorization requirement vis à vis the Spanish authorities.

Conversely, the establishment of branches of CIs from non-EU countries is subject to prior authorization by the Bank of Spain. The authorization must comply with requirements similar to those outlined for the incorporation of new CIs in Spain, although adapted to the legal nature of branches in Spain (i.e., non-legal entities, part of their parent undertaking). The main requirements are as follows:

- References to minimum share capital shall be deemed to be made to permanent/fixed funds indefinitely allocated to the Spanish branch, available for loss absorption.
- The requirement of a board of directors is substituted by two general managers. The same eligibility criteria and requirements apply.
- The Spanish branches’ business cannot include activities for which the parent undertaking does not hold a license in its home country.
- The application shall include detailed information on the financial, legal and management characteristics of the parent undertaking, as well as evidence proving the parent undertaking is a duly authorized and registered CI in its home country.

The application may be rejected on the basis of a lack of reciprocity for Spanish CIs in the home country of the parent undertaking.
1.4. Representative office’s incorporation

Representative offices are permanent establishments that are functionally and organically dependent on a duly authorized CI based in another country. The main purpose of such an establishment relates to general promotion of and information services on banking activities, as well as to provide support to the provision of cross-border services without a fixed commercial establishment in Spain. Consequently, representative offices cannot be remunerated for the provision of these services.

Banks from EU countries that are looking to establish a representative office in Spain need to communicate their intention to the Bank of Spain. Non-EU banks must apply for prior authorization from the Bank of Spain in order to establish the office.

Both the notification and the authorization should contain the following information:

- Details of the activities to be carried out by the representative office
- The name and personal details of the manager of the office

2. Other licensed entities providing banking services

According to Spanish law, there are other institutions that, even though they are not CIs, are entitled to carry on certain banking activities:

2.1. Financial Credit Entities: Regulated by Title II, 1st and 2nd Additional Provisions, 3rd 4th and 5th Interim Provisions of Act 5/2015, dated 27 April, on the fostering of enterprise financing and Royal Decree 692/1996, dated 26 April, on the legal regime of financial credit entities,\(^3\) can provide the

\(^3\) The applicability and enforceability of this Royal Decree is temporary until the new regulation is enacted.
following services: (a) lending, including, inter alia, consumer credit, mortgage credit and factoring; (b) leasing, including certain ancillary services in relation thereto; and (c) the granting of financial guarantees. Additionally, and subject to a specific regime, these entities could provide payment services or issue e-money. The incorporation of financial credit entities is authorized by the Minister of Economy, in light of the conclusions of reports issued by the Bank of Spain and SEPBLAC.

2.2. Financial Institutions: Pursuant to the transposition to Spanish law of Article 34 of 2013/36/EU of the European Parliament and of the Council, dated 26 June, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (“CRD IV”), undertakings other than CIs, when subsidiaries of a CI or jointly owned subsidiaries of two or more CIs based in EU member states, the principal activity of which is to acquire holdings or to pursue one or more of the banking activities listed in Annex I of CRD IV (except taking deposits and other repayable funds), including a financial holding company, a mixed financial holding company, a payment institution or an asset management company, also benefit from the EU-passport for the cross-border provision of services recognized for the parent CIs. As a consequence, these entities may provide services in Spain, either under the “freedom to provide services” regime or on a “right of establishment” as explained under Section 7 below.

As this regime is ultimately based on EU legislation, there is no legal framework for the benefit of non-EU financial institutions.

2.3. Payment Service Providers: Regulated by Act 16/2009, dated 13 November, on payment services (PSA) and Royal Decree 712/2010, dated 28 May, enacting the legal framework of payments services and payment service providers (PSR),
these entities may carry out the: (i) execution of payment transactions; (ii) services enabling cash crediting/withdrawals to/from a payment account, as well as all the operations required for operating a payment account; (iii) money remittance services; and (iv) the issuance and acquisition of payment instruments.

The incorporation of payment service providers (PSPs) must be authorized by the Spanish Ministry of Economy and Competitiveness, based on the conclusions of the reports to be respectively obtained by the Bank of Spain and SEPBLAC. In order to obtain the abovementioned authorization the applicant must meet the requirements set forth in Article 2 of PSR.

In relation to the cross-border provision of payment services in Spain, one must differentiate between two regimes: one applicable to EU member state-based PSPs and another one for non-EU PSPs. While the former benefit from EU-passport regime enabling them to provide services either under the “freedom to provide services” or under the “right of establishment” without requiring authorization from Spanish authorities (i.e., authorization is granted by the competent authority in its home country, which notifies the Bank of Spain of its approval), the latter need to apply for prior authorization from the Minister of Economy and Competitiveness.

2.4. E-Money Entity: Regulated by Act 21/2011, dated 26 July, on e-money, and Royal Decree 778/2012, dated 4 May, on legal regime of e-money issuers. These entities can carry on the issuance of e-money and provide payment services.

The incorporation of e-money entities must be authorized by the Ministry of Economy and Competitiveness, based on the conclusions of reports obtained by the Bank of Spain and SEPBLAC.
With respect to the cross-border provision of payment services in Spain, a regime similar to that mentioned for PSPs apply.

3. Incorporation of Investment Firms

According to Article 143 of SMA and Article 4 of the Spanish Royal Decree 217/2008 of 15 February, on the legal regime of investment firms and other entities providing investment services (“RD 217/2008”), Spanish law recognizes four different types of investment firms (IFs), the main differentiating characteristic among them being the scope of their authorization (i.e., the investment services they are allowed to perform):

3.1. Securities entities (sociedades de valores): These are investment firms that are entitled to operate either in their own name or in the name and on behalf of third parties, and which can carry out all the investment services and ancillary investment services described in Articles 140 and 141 of the SMA (which mirrors the list of services and activities under Section A and B of Annex I to Directive 2004/39/EC of the European Parliament and of the Council, dated 21 April 2004, on markets in financial instruments (MiFID)).

3.2. Securities agencies (agencias de valores): These are investment firms that are only entitled to act in the name and on behalf of third parties, either with or without representation. Securities agencies are entitled to carry out all the investment services and ancillary financial services described in Articles 140 and 141 of the SMA, with the exception of: (i) dealing on own account; (ii) underwriting of financial instruments and/or placing of financial instruments (in relation to financial services); and (iii) the granting of credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments envisaged under Article 2 of SMA (in relation to ancillary financial services).
3.3. Portfolio management companies (sociedades gestoras de cartera): These are investment firms that are only entitled to provide two financial services: (i) portfolio management services; and (ii) investment advice, as well as two ancillary financial services: (a) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings; and (b) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

3.4. Financial advisory entities (empresas de asesoramiento financiero): These are legal or natural persons that can only provide investment advice (as financial service) and two ancillary financial services: (a) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings; and (b) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

For purposes of carrying out investment services in Spain, investment services entities must be duly authorized and registered with the relevant registry of the CNMV.

Pursuant to Article 149 of the SMA, authorization to create investment firms shall be granted by the CNMV. Any entity wishing to obtain authorization must submit an application before the CNMV, which should include a program of activities identifying the investment services to be pursued by the applicant, as well as its

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4 Please note that Article 12 of RD 217/2008 still refers to the regime in force before the amendment introduced by Act 5/2015, dated 27 April, on the fostering of enterprise financing on the former SMA. Based on the hierarchy principle ruling between Acts and RD, the reference made by RD 217/2008 must be disregarded.
organizational arrangements and the means for the performance of the same.

In order to be granted authorization, the relevant applicant must satisfy, among others, the following statutory requirements:

- As a general rule, entities must be incorporated as a public limited company (sociedad anónima). As an exception, financial advisory entities may be incorporated as private limited companies (sociedades de responsabilidad limitada).

- Investment services entities must have a minimum fully paid up share capital of:

  (i) securities entities: EUR730,000;

  (ii) securities agencies: as a general rule EUR125,000, and for those not authorized to hold funds or securities of their clients, EUR50,000;

  (iii) portfolio management companies: alternatively,

      ▪ an initial capital of EUR50,000;

      ▪ a civil liability insurance policy and a guarantee or similar instrument, covering professional liability in the EU, for an amount of up to EUR1 million in relation to each claim for damages, and a total annual amount of EUR1.5 million for all claims; or

      ▪ a combination of the preceding that provides similar coverage.

  (iv) financial advisory entities: alternatively,

      ▪ an initial capital of EUR50,000;
a civil liability insurance policy covering professional liability in the EU, for an amount of up to EUR1 million in relation to each claim for damages, and a total annual amount of EUR1.5 million for all claims; or

- a combination of the preceding that provides similar coverage.

- The corporate purpose of the relevant entity must be limited to the investment services and ancillary investment services it shall pursue.

- No special rights or preferences may be granted to the entity’s founders.

- As a general rule, the relevant entity must be governed by a board of directors of at least three members. All members of the board of directors of the company as well as its general managers or persons with similar positions must satisfy the requirements of suitability, experience and good repute enshrined in Article 182 of the SMA.

- The entity must have appropriate administrative and accounting procedures, as well as internal control procedures that ensure safe and sound management of the activities it intends to perform.

- The entity must have internal conduct regulation based on the rules and regulations governing the Spanish Securities Markets (as established by SMA), as well as special regime for the transactions to be performed by directors, executives, employees and attorneys of the entity, which guarantee the fulfillment of the conduct of business rules.

- Except for entities applying to become financial advisory entities, all other entities must adhere to the Spanish
Investment Guarantee Scheme (*Fondo de Garantía de Inversiones*).

- The entity’s registered address and headquarters must be located in Spain.

- The entity must have a business plan evidencing the viability of its project.

The CNMV may only reject an application for authorization for purposes of establishing an investment firm when:

(i) the applicant entity fails to comply with any of the statutory requirements;

(ii) shareholders owning qualifying holdings in the share capital of the entity fail to be considered suitable on the grounds of the safety and soundness of the entities management;

(iii) there is lack of transparency in relation to the group structure to which the entity shall eventually belong or where there are close links with other investment firms or natural or legal persons that could hinder the effective execution of the CNMV’s supervisory functions;

(iv) the members of the board of directors are not suitable, or lack sufficient expertise and good repute; and

(v) there are significant conflicts of interest between the offices, responsibilities or functions held by the members of the board of directors of the investment firm and other offices, and/or responsibilities or functions simultaneously held.
Finally, Spanish investment firms will also be entitled to carry out activities in a foreign country, albeit the regime will differ depending on the targeted country:

a) If a Spanish investment firm wishes to open a branch or to carry out activities without a fixed establishment in another member state, it must notify the CNMV, which shall, in turn, convey that information to the supervisory authority of the relevant member state.

b) If the investment firm wishes to operate in a non-EU country by opening a branch or without a fixed establishment, it must obtain prior authorization from the CNMV.

Notwithstanding the foregoing, a Spanish entity must comply with the regulations and specific requirements of the country where it intends to operate.

6. What is the process for becoming authorized in Spain?

1. Credit Institutions

According to Article 6 of the OSSA and Article 3 of RD 84/2015, it is the ECB, based on the proposal of authorization of the Bank of Spain, which grants authorization to undertake core banking business (i.e., the taking of deposits).

For these purposes, the authorization process must be completed within six months from receipt of a completed application by the Bank of Spain and, in any case, within 12 months from its receipt. Failure to obtain an express resolution should be deemed to constitute an implied rejection/denial.
Pursuant to Article 5 of the RD 84/2015, the application for incorporating a new CI shall be submitted with the following documents:

- A draft copy of the bylaws of the entity, including a negative certification (*certificación registral negativa*) granted by the Spanish Central Commercial Registry evidencing that the proposed corporate name has not yet been registered

- The program of activities, which shall comprise: (i) the activities the entity intends to carry out; (ii) the entity’s administrative and accounting procedures; (iii) the entity’s internal control procedures; (iv) procedures to address client claims and complaints; and (v) internal procedures and bodies for the prevention of money laundering and terrorism financing

- Disclosure of the identity of the founding shareholders, indicating their stake in the share capital of the company

- Information on the members of the board of directors, general managers or equivalent, as well as on the individuals in charge of the internal control functions of the entity or holding key positions concerning the daily management of the company, with detailed information on the fulfillment of suitability requirements

- Evidence of having made a cash deposit in the Bank of Spain or having blocked public debt for the benefit of the Bank of Spain in an amount equivalent to 20 percent of the entity’s minimum required share capital

2. Investment Firms

According to Article 149 of the SMA, it is the CNMV that shall grant authorization to undertake investment services.
For these purposes, the authorization must be resolved within three months from its receipt, or from the date all relevant documentation is filed and, in any case, the applicant must be informed of the outcome within six months from its receipt. Failure to obtain an express resolution thereof is deemed to constitute an implied rejection/denial.

Pursuant to Article 16 of the RD 277/2008, the application for incorporating a new investment firm shall be submitted with the following documents:

- A draft copy of the bylaws of the entity, including a negative certification (certificación registral negativa) granted by the Spanish Central Commercial Registry evidencing that the proposed corporate name has not been already registered

- The program of activities, which shall comprise: (i) the investment services and the ancillary investment services the entity intends to carry out, indication over which financial instruments it shall provide them; (ii) the entity’s administrative and accounting procedures; (iii) the entity’s internal control procedures; (iv) procedures to address client claims and complaints; and (v) internal procedures and bodies for the prevention of money laundering and terrorism financing

- Disclosure of the identity of the founding shareholders, indicating their stake in the share capital of the company

- Information about the members of the board of directors, general managers or equivalent, with detailed information on their careers and expertise

- Internal conduct regulation based on the rules and regulations governing the Spanish Securities Markets (as established by SMA), as well as special regime for the transactions to be performed by directors, executives, employees and attorneys
of the entity, which guarantee the fulfillment of the conduct of business rules.

This, of course, does not preclude the CNMV from requesting any additional documents or information it deems appropriate.

7. What financial services “passporting” arrangements does Spain have with other jurisdictions?

The Treaty on the Functioning of the European Union (TFEU) recognizes the “freedom to provide services” and the “right of establishment” regimes. CRD IV and MiFID further develop these freedoms by way of a mutual license recognition system among member states. Credit institutions and investment service companies that are authorized in another member state may carry on activities in Spain with no other requirement than a prior notification from the relevant home member state’s competent authority to the relevant Spanish competent authority (depending on the type of entity) and vice versa. This regime is the so-called EU-passport.

While the “right of establishment” essentially entails the opening of a fixed establishment, typically a branch, the “freedom to provide services” enables entities to provide services without a fixed establishment in other ember states.

The process, as previously explained: (a) requires the legal entity to be legally entitled to pursue the relevant activity; and (b) is dealt with between the regulated entity and its home member state competent authority.

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1. Who regulates banking and financial services in Sweden?

Sweden has one regulator with responsibility for the authorization and supervision of banks, insurers and other financial institutions – the Financial Supervisory Authority (SFSA).

Sweden’s Central Bank (Riksbanken) is a public authority under the Swedish parliament (Sveriges riksdag). The Central Bank’s objective is to ensure that inflation is low and stable and is therefore responsible for Sweden’s monetary policy, that is, influencing inflation through the interest rate. The Central Bank has also been given the task of overseeing that the system for making payments functions without disruption. Additionally, the Central Bank issues banknotes and coins and manages Sweden’s reserve of gold and foreign currencies.

The European Union’s supervisory authorities, namely, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pension Schemes Authority (EIOPA) play an important role in issuing technical standards, and in some limited respects have powers of supervision over Swedish institutions.

The European Central Bank (ECB) has recently become the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM). Sweden is not in the Eurozone so Swedish banks are not within the scope of the SSM. However, Eurozone branches or subsidiaries of Swedish banks are in some cases within the SSM and therefore under supervision by the ECB.
2. What are the main sources of regulatory laws in Sweden?

Much of the relevant law in Sweden is derived from European Union directives and regulations. In many respects, therefore, Swedish local legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives are implemented across Europe can vary. In other words, Sweden and other European jurisdictions have introduced local laws that may exceed European level requirements. Directives also contain obligations and discretions at a member state level, and Sweden also has various local rules.

The main regulatory laws in Sweden for the banking, financial services and insurance industries are as follows:

- Securities Market Act (*lag (2007:528) om värdepappersmarknaden*)
- Insurance Mediation Act (*lag (2005:405) om försäkringsförmedling*)
- Swedish UCITS Act (*lag (2004:46) om värdepappersfonder*)
- Alternative Investment Funds Managers Act (*lag (2013:561) om förvaltare av alternativa investeringsfonder*)

There is also a large volume of delegated legislation in the form of regulations and guidelines from the SFSA. These regulations and guidelines are applicable primarily to Swedish regulated or supervised
institutions but are also relevant in certain respects to non-Swedish institutions.

3. **What types of activities require a license in Sweden?**

Sweden regulates a broad range of activities. These include the following:

- **Accepting deposits** – This covers typical retail banking activities involving the operation of current and deposit accounts.

- **Issuing electronic money** – Electronic money is a prepaid electronic payment product that can be card- or account-based.

- **Carrying on payment services** – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions and the operation of payment accounts.

- **Consumer lending** – This covers both lending to consumers as well as activities such as credit brokerage and debt collection on behalf of third parties.

- **Arranging regulated mortgage contracts** – This relates to the sale of certain residential mortgage contracts.

- **Carrying on insurance business** – This involves effecting and carrying out contracts of insurance, both life and general.

- **Providing investment advice** – Providing advice on most categories of investments is a regulated activity in Sweden. This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.
• Trading in securities and other investments as principal or as agent – This covers brokers as well as most institutions engaged in proprietary trading.

• Arranging transactions in investments – This activity covers the role of intermediaries in investment transactions. It is very broad and covers infrastructure providers, including electronic communication networks that route orders for execution.

• Insurance mediation activities – Swedish regulation covers various insurance brokering activities.

• Discretionary investment management – Managing investments on behalf of another person is a regulated activity. Specific permission is required where a person carries on this activity in relation to an alternative investment fund.

• Establishing, operating and winding up a collective investment scheme – Most types of funds will be regarded as collective investment schemes under Swedish law. This will extend to open-ended bodies corporate, unit trusts and partnerships.

• Providing custody (safeguarding and administration of investments) – Providing custody services in relation to assets that include investments is a regulated activity.

4. How do Sweden’s licensing requirements apply to cross-border business into Sweden?

Where an institution outside Sweden deals with a client or a counterparty located in Sweden, those activities will typically be subject to Swedish laws and regulations. The service provider will need to consider whether they are triggering a local Swedish licensing obligation and whether they are complying with Swedish marketing rules.
In relation to marketing, Swedish laws regulate the issuance of “financial promotions,” which is defined as an “invitation or inducement” to engage in an investment activity. The decisive issue is whether or not a service is directed/offered to the Swedish market. Thus, if a service provider is approached by a client abroad on such client’s own initiative (reverse solicitation), it does not matter if the transactional documents are sent to the client’s address in Sweden. Correspondingly, if Swedish entities/persons are targeted, that is, via marketing or a webpage in Swedish, services will be seen as offered irrespective of whether any agreements are entered into in Sweden.

Under European laws, institutions established outside the European Economic Area (EEA) are called “Third Country Firms” (TCF). Until recently, European laws have not sought to harmonize the approach of member states to TCFs. This has meant that access to the markets of member states had to be considered on a case-by-case basis. However, the trend in European legislation is now towards harmonizing the approach across all member states to TCFs. On the one hand, this approach is likely to create a barrier to entry to European markets. On the other hand, institutions who become compliant with new EU standards will be able to access the whole EEA market as opposed to having to consider the market on a country-by-country basis.

Certain exclusions are presently available under Swedish law, which enable TCFs to deal with clients based in Sweden. This is on the basis that the activities in question will be regarded as being carried on outside the territory of Sweden and therefore not subject to Swedish laws, or because a specific exemption will cover the activities.

By way of example, the following activity is regarded as being carried on outside Sweden and therefore not subject to Swedish regulation (although providers of these services will still need to consider Swedish marketing restrictions):

- The activity of accepting deposits is regarded as being carried on where deposit funds are accepted. Where a Swedish person credits funds to a bank account that he or she holds outside
Sweden, the foreign bank where the individual holds the account will not be regarded as accepting deposits in Sweden. A Swedish resident can, therefore, hold an account with an offshore bank without the bank contravening Swedish laws. Some financial promotion rules, which impose some limitations on marketing offshore bank accounts to Swedish customers, will apply to this activity.

In other cases, the activities might be deemed to be carried on in Swedish and subject to Swedish laws.

Recent EU legislation, particularly the following, will limit the ability of foreign institutions to do business in Sweden:

- The Alternative Investment Fund Managers Directive imposes limitations on non-EEA persons marketing fund interests to persons in Sweden (and other European jurisdictions).
- MiFID II (comprising a recast of the Markets in Financial Instruments Directive and a European regulation), once implemented in 2017, will result in greater restrictions on TCFs doing business in Sweden.

5. What are the requirements to obtain authorization in Sweden?

In order to become authorized, an applicant must satisfy the SFSA that it meets the requirements for authorization set out in the relevant applicable act.

The requirements for authorization can vary depending on the particular regulated activities that the applicant intends to carry on. Broadly, however, the following conditions will need to be satisfied:

(a) Location of offices /residence of directors - For Swedish incorporated companies, the head office must be located in Sweden. As to the composition of the board of directors, a
majority of the board and the managing director will need to be resident in the EEA.

(b) **Effective Supervision** - The applicant must be capable of being effectively supervised. This emphasizes the need for institutions to have a substantive presence in Sweden that is accessible to Swedish regulators and enables the regulator to supervise the institution. The regulator will also consider whether there are any impediments to supervision of the applicant, including the group structure and any relevant laws restricting access to information.

(c) **Appropriate resources** - Applicants must satisfy the regulator that they have adequate resources to carry on the relevant regulated activities. Resources include financial as well as human resources (including management with the required skills) and infrastructure.

(d) **Suitability** - The requirement is that applicants must be fit and proper to be authorized, having regard to all the circumstances.

(e) **Business model** - The regulator will examine the applicant’s business model. In addition to understanding the economic aspects of the business, matters such as the impact of the model on clients and that the planned operations will be conducted under the applicable regulations will be regarded.

6. What is the process for becoming authorized in Sweden?

An applicant must complete a formal process to obtain authorization, involving the completion of required application forms and the submission of supporting information.

In relation to timing, the regulator in most cases will have five months from receipt of a completed application in which to determine whether or not to approve the application.
The forms required for authorization vary depending on the particular regulated activities that the applicant intends to carry on. Broadly, however, the following forms will be required to be completed:

(a) **Core details** - This form sets out factual background information relating to the applicant.

(b) **The Supplements** - The Supplements will require the institution to provide details of its Regulatory Business Plan and Internal Guidelines, the regulated activities it will perform, its financial resources, its personnel, its compliance arrangements and its fees/levies.

(c) **Ownership assessment** - Details about individuals/entities who control or exert influence over the institution, which will enable the regulator to assess their roles, must be submitted.

(d) **Management assessment** - Details about certain individuals in management positions must be submitted. They will need to submit forms providing information about themselves, which will enable the regulator to assess their fitness and propriety to perform their roles.

(e) **Financial statements and projections** - Information on the applicant’s financials along with projections must be submitted.

(f) **Outsourcing agreements** - Certain outsourcing agreements (e.g., risk management and compliance functions) must be submitted and registered with the SFSA.

(g) **Supporting documents** - Various documents must be submitted with the application (e.g., articles of association for approval by the SFSA and relevant board minutes).

Moreover, other information that the applicant deems necessary for the application to be complete must be submitted.
7. What financial services “passporting” arrangements does Sweden have with other jurisdictions?

Once authorized in Sweden, a Swedish institution can passport its authorization into other EEA member states. This passport is, however, only available to institutions established in Sweden and will not be available to EEA branches of TCFs. Passporting permits the provision of cross-border services and also the establishment of a physical branch location.

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1. Who regulates banking and financial services in Switzerland?

The Swiss Financial Market Authority (FINMA) is the main regulatory and supervisory authority in Switzerland. FINMA is a functionally and personally independent governmental institution with extensive regulatory competencies.

It is mandated to supervise banks, insurance companies, exchanges, securities dealers, collective investment schemes, and their asset managers and fund management companies. Furthermore, it regulates distributors and insurance intermediaries. In short, FINMA is responsible for microprudential supervision, that is, the firm-level oversight of financial firms. The regulatory aims pursued by FINMA are the protection of creditors, investors and holders of insurance policies, as well as safeguarding the proper functioning of financial markets. To achieve these aims, FINMA has a broad range of enforcement tools: It may issue declaratory rulings and prohibitions from practicing a profession, publish supervisory rulings (“naming and shaming”), confiscate profits, appoint an investigating agent, and revoke the respective license. However, unlike financial market authorities in other jurisdictions, FINMA is not authorized to impose fines.

In addition to FINMA, the Swiss National Bank (SNB) has certain regulatory competencies that relate to macroprudential supervision, that is, in respect of the stability of the whole financial system. For instance, the SNB is responsible for designating systemically important banks (SIBs), which means that these banks must meet additional regulatory criteria, or for recommending an increase of capital levels of certain banks (countercyclical capital buffer). Compared to FINMA, however, the regulatory competencies of the SNB can be considered rather narrow.
FINMA may: (i) carry out a supervisory review itself; (ii) arrange it to be carried out by an audit agent appointed by FINMA; or (iii) arrange it to be carried out by an auditor appointed by the supervised financial firm. As a general rule, FINMA does not conduct supervisory activities itself but delegates these tasks to audit agents. This leads to a high participation rate of audit firms in the supervisory process.

2. What are the main sources of regulatory laws in Switzerland?

The Swiss financial market architecture is currently undergoing significant reforms. Traditionally, particular types of financial market activities (e.g., banking, stock exchanges) were regulated in separate federal acts. The current reform project aims at regulating financial activities in four federal framework acts that span across different types of activities. This will also have the effect that rights and duties in respect of particular types of financial activities are more intensely regulated on the ordinance level, that is, in regulations issued by the Swiss Federal Council (which means the Swiss Federal Executive Government), FINMA or the SNB. However, the entire new Swiss financial market architecture is not expected to become effective before January 2018.

The new regulatory framework will, subject to approval in parliament (to the extent still required), consist of the following four acts:


- Federal Act on Financial Services (FinSA), which will regulate the provision of financial services, in particular the behavior of organizations and client advisors (bill to be approved in 2016/2017)
Federal Act on Financial Institutions (FinIA), which is mainly concerned with the supervision of previously unregulated asset managers and trusts (bill to be approved in 2016/2017)

Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA, already entered into force on 1 January 2009)

As an exception to the principle that all types of financial activities are regulated within these four acts, the business of banks is (and will continue to be) regulated in the Banking Act of 1934 (BankA), as amended. The BankA will remain in force after the reform of the mentioned Swiss financial market regime, subject to partial amendments. The same applies to the supervision of insurances (Insurance Supervision Act or ISA) and to collective investment schemes (Collective Investments Schemes Act or CISA).

Furthermore, the Anti-Money Laundering Act (AMLA) that applies to all financial intermediaries and certain dealers (that accept substantial amounts of cash) as well as the National Bank Act (NBA) (which regulates the SNB) are significant sources of the Swiss financial market regime.

It is noteworthy that the newer Swiss financial market laws aim at achieving equivalence with EU regulations in order to (hopefully) ensure market access to the EU. This particularly holds true with respect to investor protection rules, which are largely based on the respective EU regulations (MiFiD II and MiFIR).

3. What types of activities require a license in Switzerland?

Switzerland regulates a broad range of financial activities. As a basic principle, accepting and managing assets deposited by the public for commercial purposes requires a license issued by FINMA, and the acceptance of funds from the public other than in the context of a debenture issue or within certain narrowly defined exceptions set out
in the Banking Ordinance is prohibited without the respective license. In particular, the following types of activities must be licensed by FINMA:

- **Banking** – Banking is defined as the acceptance of deposits from the public to finance (in a broad sense) third parties. The right to execute foreign exchange dealings for customers is also reserved to banks.

- **Securities dealing** – Various types of trading require licenses. Banks are required to have a securities dealer license if they want to trade in securities. Nearly all banks also have obtained a securities dealer license.

- **Operation of stock exchanges and similar institutions such as organized trading facilities (OTFs) and multilateral trading facilities (MTFs)** – Some activities, such as the operation of OTFs, may only be conducted by banks.

- **Operation of financial market infrastructures: central counterparties (CCPs), central securities depositories, trade repositories and payment systems** – A payment system requires a license only if this is necessary to safeguard the proper functioning of the financial system or the protection of financial market participants. A bank is not required to obtain an additional license for the operation of payment systems.

- **Establishing, managing and offering of collective investment schemes** – Accepting money from the public for the purpose of collective investments requires a license. Anyone who acts as custodian for collective investment schemes, distributes schemes of this kind to non-qualified investors, or distributes foreign collective investment schemes to qualified investors must be authorized by FINMA to do so. “Distribution” of collective investment schemes is very broadly defined and, generally speaking, includes all kinds of offerings.
Offering insurance – The licensing requirement applies both to direct insurance and reinsurance. Furthermore, with a very few exceptions, insurance brokers are subject to registration with FINMA.

Issuing mortgage bonds (Pfandbriefe) – Only two institutions are allowed to issue mortgage bonds in Switzerland.

All other financial dealing/intermediation, such as independent asset management, precious metal and commodity dealing, leasing or factoring is (currently still only) subject to anti-money-laundering supervision under the AMLA. In principle, the dealer/intermediary may choose between being supervised by FINMA directly or joining a self-regulatory organization (SRO). These SROs are, in turn, supervised by FINMA.

It is noteworthy that some of these licensing requirements are set out in bills that are still subject to discussion and approval by parliament. Furthermore, it can be expected that independent asset managers will be subjected to more intense regulation and supervision under the proposed new FinIA.

4. How do Switzerland’s licensing requirements apply to cross-border business into Switzerland?

Contrary to the regulatory regimes in most European countries, Swiss financial regulation in general only requires licenses for client-related financial service activities that are actually conducted in Switzerland. Hence, generally speaking, the current regime is still quite liberal and foreign financial service providers have a relatively large room to maneuver with regard to customer acquisition and care. Only if and once the service provider has an actual presence (a de facto presence suffices) in Switzerland (i.e., representation, branch or subsidiary), it becomes subject to the respective licensing requirements. In this context, however, careful attention needs to be paid to the frequency and regularity of visits to Switzerland (for professional purposes) and
business activities in this country (to avoid FINMA considering the visits and/or activities as amounting to a *de facto* presence). Foreign financial service providers should also avoid providing a Swiss telephone number or a Swiss address where the potential Swiss client could get in touch with. The potential Swiss client should be required to call (or otherwise contact) the foreign financial service provider outside of Switzerland. The proposed FinSA bill (currently subject to approval in parliament) stipulates certain duties for foreign financial service providers not subject to supervision in Switzerland, such as a duty of registration for client advisors.

In any case, the distribution of collective investment schemes to non-qualified investors or the offering of insurance in Switzerland is subject to authorization by FINMA. Furthermore, foreign stock exchanges without registered office in Switzerland must be authorized by FINMA before they can allow Swiss securities dealers to access their facilities. Certain activities, such as the distribution of collective investment schemes to qualified investors in Switzerland, do not necessarily require a license from FINMA, but at least an equivalent license abroad, and they may be subject to other requirements such as a formal, FINMA-approved representation in Switzerland.

In addition, since the entry into force of the revised Anti-Money Laundering Act (AMLA) on 1 January 2016, it appears that the applicability of the AMLA in the context of cross-border services into Switzerland has been broadened. As the scope of this change is currently not yet clear and FINMA has so far only announced further guidance on the issue in the course of this year, specific legal advice is to be sought, in particular where a foreign financial intermediary does not limit its cross-border activities to a really small number of individual transactions in Switzerland. However, FINMA has already indicated that a foreign financial intermediary engaged by its customers to manage assets on a Swiss bank account or to open a bank account on their behalf in Switzerland shall not be subject to AMLA.
5. **What are the requirements to obtain authorization in Switzerland?**

The requirements to obtain a license depend on the particular type of activity. FINMA publishes detailed guidelines regarding the information and documents required for all types of licenses (available at www.finma.ch, partially available in English language). In general, the following criteria are examined by FINMA:

(a) **Capital adequacy** – In particular, banks, securities dealers, and insurers are subject to minimum capital requirements. The business plan is examined as a part of the licensing process in order to ensure that capital adequacy can be maintained.

(b) **Proper business conduct** – The management and the qualified participants/shareholders (being persons who directly or indirectly hold at least 10 percent of the capital or the voting rights) of the licensed entity must warrant proper business conduct. This requirement gives FINMA a rather broad discretion with respect to granting and revoking a license – and to impose sanctions.

(c) **Organization** – Depending on the type of license, FINMA examines the organization of the management, the separation of internal functions, the effectiveness of the risk management and the internal control system.

(d) **Location of offices and legal form** – Some licenses require a registered office and central management in Switzerland or a certain legal form (e.g., stock corporation).

(e) **Consolidated supervision** – If the entity is part of a financial group, it may be subject to the requirement of adequate consolidated supervision by a recognized supervisory authority.
(f) **Reciprocity** – Applicants under foreign control are in general only eligible for a license if the country where the qualified participants are domiciled guarantees reciprocal rights.

(g) **Appointment of supervisory auditor** – A regulatory audit firm (recognized by FINMA) that conducts the ongoing supervision of the entity is required for some types of licenses.

6. **What is the process for becoming authorized in Switzerland?**

In order to obtain a license from FINMA, the applicant is required to complete a formal process. This includes the submission of a detailed application that shows that the license requirements are met and that they can be maintained. The documentation to be filed strongly depends on the type of license sought. Broadly, details on the following items must be provided:

(a) **General data** – Business model, financials, history of the parent entity, etc.

(b) **Capitalization and shareholdings** – Information on the company capital and shareholders, particularly in respect to qualified participations/shareholders

(c) **Management** – Organization and composition of management bodies and detailed information on the members of the governing bodies

(d) **Activity and organization** – Details on the planned activities and internal processes

(e) **Business plan** – Detailed business plan including budget for the next fiscal years

(f) **Audit firm** – Information regarding the supervisory auditor
(g) Proof of adequate consolidated supervision – If the applicant is part of a financial group, it must be demonstrated to FINMA that the group is subject to adequate consolidated supervision.

The application must be filed in a Swiss official language (i.e., German, French or Italian). It is advantageous to establish informal contact with FINMA before the formal application is filed. The length of the application process strongly depends on the type of license and the quality and complexity of the application at hand. As a point of reference, FINMA indicates a period of approximately six months to obtain a bank or securities dealer license. For applications with cross-border elements, such as the establishment of branches of foreign firms, the response time of the respective foreign supervisory authorities must be taken into account.

7. What financial services “passporting” arrangements does Switzerland have with other jurisdictions?

As Switzerland is not a member of the European Union (EU) or the European Economic Area (EEA), financial institutions based in Switzerland do not automatically have a “passport” to conduct activities in the EU. As there is presently no general cross-border exemption for Swiss-based firms, such firms are in principle required to follow the ordinary approval procedure for the establishment of a branch or subsidiary in the EU. Certain simplifications regarding access to the EEA particularly apply under the Alternative Investment Fund Managers Directive (AIFMD). However, automatic access is not guaranteed. Access of Swiss financial service providers to the EU/EEA in the future will, to a large extent, depend on whether or not Swiss financial regulation, as it is currently being reformed, is regarded as equivalent to EU regulation.

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Taiwan

1. Who regulates banking and financial services in Taiwan?

Taiwan has two regulators with responsibility for the authorization and supervision of banks, insurers and other financial institutions. These are the Financial Supervisory Commission (FSC) and the Central Bank of the Republic of China (Taiwan) (CBC). The allocation of responsibilities between the FSC and the CBC is as follows:

(a) The FSC functions as an independent agency that directly reports to the Executive Yuan, Republic of China (Taiwan), the highest administrative agency in Taiwan. Its responsibilities include supervision, examination and inspection of the financial market. Four bureaus and one government-owned corporation, the Central Deposit Insurance Corporation (CDIC), comprise the FSC. The Banking Bureau, the Securities and Futures Bureau and the Insurance Bureau supervise financial institutions, while the Examination Bureau monitors their operations. CDIC is organized for the purpose of protecting the rights and interests of depositors in financial institutions, maintaining credit order and enhancing sound development of financial businesses in accordance with Banking Act and Deposit Insurance Act.

(b) The CBC is mandated by the Banking Act and the Central Bank of the Republic of China (Taiwan) Act to implement monetary policy and foreign exchange regulations. It adjusts the national money supply to promote its policy goals of price stability and sound economic growth.
2. What are the main sources of regulatory laws in Taiwan?

The Banking Act, the Financial Holding Company Act and the Central Bank of the Republic of China (Taiwan) Act are the three main pillars of the legal framework for the domestic banking industry. The Banking Act sets forth general regulations that govern the banking business, protect depositors, facilitate the development of enterprises, and coordinate the operation of banks within the national financial policy of Taiwan. The Financial Holding Company Act regulates the establishment and operations of financial holding companies. In addition, a separate Offshore Banking Act governs offshore banking units and the Credit Cooperatives Act regulates community financial institutions.

The Insurance Act is the main framework law in Taiwan for the insurance enterprises. There are a number of regulations, including Enforcement Rules for the Insurance Act, Regulations Governing Insurance Brokers, Regulations Governing Insurance Agents, Regulations Governing Establishment and Management of Insurance Enterprises, Regulations Governing Establishment and Management of offshore Insurance Enterprises.

The Securities and Exchange Act is the main framework law in Taiwan for securities and securities firms. The regulations include Regulations Governing the Offering and Issuance of Securities by Securities Issuers, Regulations Governing the Offering and Issuance of Securities by Foreign Issuers, Regulations Governing Securities Firms and Regulations Governing Offshore Structured Products.

The government has promulgated other financial laws to regulate various financial activities in Taiwan, including the Trust Enterprise Act, the Financial Institutions Merger Act, the Act Governing Bills Finance Business, Securities Investment Trust and Consulting Act, the Statute Governing Electronic Payment Institutions, the Statute Governing Issuance of Electronic Stored Value Cards, the Financial Securitization Act and the Real Estate Securitization Act.
3. **What types of activities require a license in Taiwan?**

The types of activity that may qualify as banking and financial activity requiring a license in Taiwan include the following:

- **Deposit taking** – As defined in the Banking Act, deposit taking refers to the act of accepting deposits or other funds from the general public, and agreeing to return the principal or to pay an amount equal to or greater than the principal.

- **Providing mortgage loans** – Under the Banking Act, a mortgage loan refers to a kind of “secured credit,” which implies that the following types of collateral have been furnished to secure such credit:
  
  1. Mortgage for immovables or movables
  2. Pledge for movables or rights
  3. Bills/notes receivable from business transactions of a borrower
  4. Guarantees extended by a government agency in charge of the public treasury, a bank or a government-authorized credit agency.

- **Consumer lending** – This is defined as the extension of credit by a bank to a person to accommodate the financing needs of such person for the acquisition of a property, an investment, and consumption or other expenditures, as defined in the Guidelines Governing the Credit Extensions by Member Banks of the ROC Bankers Association. A bank will usually expect the borrower’s salary, interest revenue, leasing revenue, investments, and the like, as repayment sources.

- **Issuing credit and charge card** – Credit card pertains to the card used by a card holder to obtain in advance, by virtue of the card-issuing institution’s credit, money, goods, services or
other benefits from certain specially arranged parties, and to repay the relevant indebtedness thereafter or in accordance with other arrangements.

- Issuing stored value card – Stored value card means a card which uses electronic, magnetic or optical means to store the value of money such that the cardholder may use all or part of the stored value to exchange it for merchandise or services or to otherwise make payments.

- Providing foreign exchange and money remittance services – Money remittance services refer to the purchase or sale of foreign currency and money transfers to and from Taiwan. The definition and scope of “foreign exchange business” includes the following:
  1. Foreign exchange business related to export
  2. Foreign exchange business related to import
  3. Inward and outward remittances
  4. Foreign currency deposits
  5. Foreign currency loans
  6. Foreign currency payment guarantees
  7. Foreign exchange derivatives business
  8. Other foreign exchange businesses

- Conducting trust business – This covers the following activities:
  1. Trust of money
  2. Trust of loans and related security interests
3. Trust of securities
4. Trust of movable property
5. Trust of real estate
6. Trust of leases
7. Trust of superficies
8. Trust of patents
9. Trust of copyrights
10. Trust of other property rights.

- Providing securities investment trust and securities investment consulting services – Securities investment trust services refer to offering securities investment trust funds and issuing beneficial interest certificates to unspecified persons, or privately placing securities investment trust funds and delivering beneficial interest certificates to specified persons, and investing in or trading securities, securities-related products, or other items approved by the competent authority. Securities investment consulting services refer to providing analysis, opinions, or recommendations on matters relating to investment in or trading of securities, securities-related products or other items approved by the competent authority, in return for compensation obtained directly or indirectly from a principal or third party.

- Carrying on insurance business, insurance agency business and insurance broker business – Insurance agent refers to a person who, on the basis of a contract of agency or a letter of authorization, collects remuneration from an insurer and acts as a business agent on the insurer’s behalf. Insurance broker refers to a person who, on the basis of the interest of the
insured, negotiates an insurable contract or provides related services and collects a commission or remuneration.

- Providing securities custody, book-entry transfer and registration of book-entry securities

- Carrying on business of securities underwriting, proprietary trading and securities brokerage – Only a licensed securities firm is allowed to carry on securities business.

- Providing electronic payment services – Electronic payment institution means a company approved by the competent authority to accept, through a network or electronic payment platforms, the registration and opening of an account by users that keep track of their funds transfer and funds deposit records (the “e-payment account”), and use electronic equipment to convey the receipt/payment information via connection to engage in the following businesses in the capacity of an intermediary between payers and recipients:

  1. Collecting and making payments for real transactions as an agent, excluding an institution that engages only in this business and where the total balance of funds collected/paid and kept by them as an agent does not exceed TWD1 billion

  2. Accepting deposits of funds as stored value funds

  3. Transferring funds between e-payment accounts

  4. Other businesses approved by the competent authority

- Securitization of real estate and financial assets – Securitization of real estate covers a trustee establishing a real estate investment trust (REIT) or real estate asset trust (REAT) and acquiring funds from issuing beneficiary securities to specific persons through private placement.
Securitization of financial assets covers the act that the originator entrusts the assets to a trustee or transfer the assets to a specific purpose company (SPC), whereby the trustee or SPC issues beneficial securities or asset-backed securities.

4. How do Taiwan’s licensing requirements apply to cross-border business into Taiwan?

Banking and financial activities are highly regulated in Taiwan. Any person (individual and entity) planning to conduct banking and financial activities shall be recognized and licensed for its business and activities in Taiwan. An offshore financial institutions that is not licensed in Taiwan cannot operate any banking or financial business or conduct any related activities in Taiwan.

Furthermore, it is the FSC’s strict policy that an offshore bank may not dispatch its staff into Taiwan for any banking business activities. Banking business and activities in Taiwan by an offshore bank or its staff is strictly prohibited, and the FSC has not provided any exemption for an unlicensed offshore bank in that regard. In addition, cross-border financial services provided into Taiwan by a foreign bank/branch without license or approval in Taiwan is not allowed. In other words, even though the offshore financial institution has set up its Taipei branch, staff from other branches, subsidiaries or affiliates of such offshore financial institution may not conduct any business activities in Taiwan, and the staff from its branch(es) other than its Taipei branch cannot promote or introduce any financial products to the clients in Taiwan.

By way of reiteration of this policy, the FSC issued a ruling to the ROC Bankers’ Association in Taiwan on 27 March 2014 (the “27 March Letter”), which expressly provides that financial institutions that have no presence in Taiwan shall not provide financial services within the territory of Taiwan, and the local branches or subsidiaries of an offshore bank shall not solicit a client in Taiwan to open an overseas account with the head office, affiliates and/or alliance of
such offshore bank or any other financial institution that is not approved by the competent authorities of Taiwan, nor absorb funds.

Nevertheless, according to the FSC ruling to the ROC Bankers’ Association in Taiwan on 9 September 2014 (the “9 September Letter”), a local bank may provide assistance to its offshore entities with respect to confirmation and delivery of information, contract signing and identity verification in the process of conducting deposit taking, and credit facility business with corporate clients and responsible persons of corporates. With respect to the deposit taking, however, a local bank may only provide assistance to offshore branches; with respect to the credit facility business, a local bank may provide assistance to offshore branches and subsidiaries. Further, provision of assistance by offshore subsidiaries of a local bank to such local bank with respect to confirmation and delivery of information, contract signing and identity verification in the process of conducting deposit taking and facility business is currently not prohibited by ROC laws and subject to the laws of the place where the offshore subsidiary located.

To provide information/marketing material via remote communication such as telephone or email by a foreign unlicensed institution upon a client’s request is not expressly prohibited. We note that the offshore financial institutions may come to Taiwan and meet the client for a courtesy visit or social event. Such activity is not restricted because a courtesy visit or social event in Taiwan is not deemed as a business activity. However, the offshore financial institutions should be cautious not to mention or explain any unapproved or non-licensed offshore products or offshore services to clients in Taiwan even if a client makes any request during such visit or social event.

It is common market practice in Taiwan for an offshore branch of a multinational financial institution to participate in a cross-border syndication for granting straight loans to Taiwan customers or simply in a bilateral loan because the lending (including project finance, ship/aircraft finance, real estate finance, acquisition finance and trade finance) by offshore arrangers and/or lenders to onshore borrowers are
not prohibited. There are no requirements or prohibitions on the location of the booking centers for such straight loans. Other unlicensed banking services or products provided by an offshore bank or financial institution to Taiwan customers, including but not limited to promotion and solicitation activity in Taiwan, visiting customers in Taiwan or executing contracts and documentation in Taiwan, are restricted. Negotiation and discussion of the terms of any financial products with clients in Taiwan could be deemed to be within the scope of conducting banking or financial business, which is not allowed.

5. What are the requirements to obtain authorization in Taiwan?

The requirements for becoming authorized to conduct banking and financial activities in Taiwan can vary depending on the particular regulated activities. In general, the applicant should firstly apply to the FSC for prior approval and obtain the establishment permit. Upon receiving the establishment permit, the applicant is required to apply for company registration before applying for a business license from the FSC. Broadly, the following requirements may need to be satisfied:

(a) Submission of information and supporting documents – This may include an application form; business plan; list of promoter and its certification; minutes of promoters’ and shareholders’ meeting; written declaration of the promoters; certification of deposit funds; description of the source of fund; a list and certification of qualifications of directors, supervisors and managerial officials; auditing opinion of a certified public accountant and lawyers; statement of verification of capital injection; internal rules and guidelines; and business procedures and other documents as required by the competent authorities.
(b) Having physical presence in Taiwan – The applicant must establish a company limited by shares, a branch or a representative office in Taiwan.

(c) Meeting capital requirement – The minimum paid-in capital for an onshore commercial bank is TWD10 billion; TWD2 billion for an insurance company; TWD500 million for an electric payment institution; from TWD200 million to TWD400 million for a securities firm; TWD300 million for a securities investment trust enterprise; TWD20 million for a securities investment consulting enterprise; TWD2 billion for a trust enterprise; and TWD300 million for issuing electronic stored value cards.

6. What is the process for becoming authorized in Taiwan?

An applicant for authorization must complete a formal process to apply for prior approval and obtain an establishment permit. After incorporation but before commencement of business, an applicant must apply for a business license from the FSC. Also, in order to meet the capital requirements, an applicant must apply for injection of capital to invest in Taiwan and after the capital injection, it is also required to apply for verification of such investment with the Investment Commission, MOEA (IC).

The timing to obtain approvals and of commencement of business is on a case-by-case basis. For instance, it may take about two months for the FSC to determine whether or not to approve the application of establishment of a securities firm, one month for the IC to approve the injection of capital, and one month for the FSC to issue a business license for a securities firm.
For an onshore commercial bank, the following are required to be completed:

(a) Prior approval – To establish an onshore commercial bank in Taiwan, the applicants (e.g., the promoters of the bank) must submit the following information before incorporation:

- Incorporation application form setting forth type of bank, company name and type of company organization
- Business plan, including the business scope, the principles and guidelines of the business operation, and the concrete business implementation plan (including the location facility, the division of the internal organization, the employment and training of personnel, the business development plan and the financial forecast for the next three years)
- List of promoters and their certification
- Minutes of the promoters’ meeting
- Written declaration of the promoters stating that they are not in any of the circumstances listed in Article 3 of the Regulations Governing Qualification Requirements for Responsible Persons of Banks
- Certification that the promoters have already deposited at least TWD2 billion in capital, in accordance with Paragraph 1 of Article 10 of the Standards for Establishment of Commercial Banks
- Description of promoters’ source of fund
- Articles of public offering
(b) Incorporation and registration – Upon receiving approval from the FSC, the promoters shall then incorporate the onshore commercial bank by filing a company registration application with the Ministry of Economic Affairs (MOEA). When applying for company registration, an application together with a complete set of the documents as required must be filed with the MOEA. The minimum paid-in capital of an onshore commercial bank is TWD10 billion.

(c) Capital injection – To inject capital to invest in the contemplated bank, the applicants must submit the following information:

- Application form for investment
- Identification Information of the applicant
- Information of the invested enterprise (i.e., the contemplated bank)
- Minutes of board or shareholders’ meeting
- Other supporting document as required
Banking Business License – After incorporation but before commencement of a banking business, an onshore commercial bank must apply for a banking business license from the FSC by submitting the following supporting documents:

- Application of a banking business license
- Certificate of company registration
- Statement for verification of capital
- Articles of Incorporation of the bank
- Minutes of the promoters’ meeting
- Shareholders’ roster and minutes of shareholders’ meetings
- Directors’ roster and minutes of board meetings
- Managing directors’ roster and minutes of their meetings
- Supervisors’ roster and minutes of their meetings
- Managerial officers’ roster
- Internal rules and guidelines as well as business procedures
- Declaration statements of directors, supervisors and managerial officers
- A record of operation of simulated business for two weeks or more
The scope of business of each onshore commercial bank shall be approved by the FSC in accordance with the type of bank and the business items provided under the Banking Act. However, the business items related to foreign exchange must be approved by the CBC. The business items of an onshore commercial bank will be provided in its banking business license granted by the FSC.

7. What financial services “passporting” arrangements does Taiwan have with other jurisdictions?

As Taiwan is not one of the European Economic Area member states, a Taiwan-regulated financial institution is not entitled to the right of passporting across Europe or indeed any other jurisdiction.

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Thailand

1. Who regulates banking and financial services in Thailand?

In general, Thailand has three main regulators with responsibility for the approval and supervision of banks, insurers and securities companies. These are the Bank of Thailand (BOT), the Office of Insurance Commission (OIC), and the Securities and Exchange Commission (SEC). The allocation of responsibilities between the BOT, the OIC and the SEC is as follows:

(a) The BOT, as Thailand’s central bank, is responsible for the macro-supervision of the banking and financial services industries in general. These include all credit property companies, finance companies and commercial banks (deposit takers), and certain financial activities such as exchange controls and electronic payment systems.

(b) The SEC regulates all activities related to securities and certain types of regulated over-the-counter derivatives and also activities of listed companies in Thailand. For supervision of listed companies in Thailand, they are also subject to rules issued by the Stock Exchange of Thailand (SET).

(c) The OIC supervises all insurance companies, both life and non-life.

2. What are the main sources of regulatory laws in Thailand?

Generally, the relevant legislation in Thailand can be classified according to the regulators in charge.

- The Financial Institution Business Act B.E. 2551 (2008), as amended (the “FIBA”), is the key legislation for the banking and financial services industries that governs all key financial
institutions in Thailand. The BOT is the main regulator in charge under this legislation; there is therefore a large volume of secondary and delegated regulations issued by it.

- The Securities and Exchange Act B.E. 2535 (1992), as amended (the “SEC Act”), is the main framework law in Thailand that governs all securities-related activities, including securities offering and securities business operation. As the key regulator, the SEC has issued a number of subordinated regulations under this Act.

- The Derivatives Act B.E. 2546 (2003), as amended (the “Derivatives Act”), governs derivatives business operation in Thailand such as derivatives brokerage activities. The SEC is also the regulator for this legislation under which several subordinated regulations have been issued.

- For insurance businesses, the relevant statutory laws are the Life Insurance Act B.E. 2535 (1992), as amended, and the Non-Life Insurance Act B.E. 2535 (1992), as amended. Similar to the two foregoing legislations above, there are many regulations issued by the OIC under these Acts.

3. What types of activities require a license in Thailand?

Thailand regulates a broad range of activities, which include, but are not limited to the following:

- **Conducting a financial institution business** – This would cover typical banking activities involving the operation of current and deposit accounts. The bottom line is that any financial business that accepts deposits from the public is regulated.
- **Issuing electronic money** – Electronic money is a prepaid electronic payment product, which can be either card- or account-based.

- **Carrying out payment services** – This covers a broad range of activities involving matters such as money remittance, card issuance and acquiring card transactions.

- **Providing personal loans** – This basically covers providing uncollateralized loans to retail consumers.

- **Carrying out insurance business** – Thai regulation covers various insurance activities such as acting as insurer or reinsurer, as well as insurance agency or brokerage.

- **Providing investment advice** – Providing advice on investments in most types of securities or derivatives is a regulated activity in Thailand. For example, provision of advice on the merits of acquiring or disposing of particular securities requires the proper license.

- **Trading securities or derivatives as principal or as agent** – This would cover brokers as well as dealers.

- **Underwriting securities** – This covers the act of underwriting securities for subscription on behalf of the issuer.

- **Providing securities lending** – Securities lenders, whether acting as a principal or agent, are regulated.

- **Conducting foreign exchange business** – The regulated businesses include money changing, cross-border remittance and treasury centers, for which a specific license is required.

- **Engaging in fund management** – This mainly covers mutual fund and private fund management. The former is the
operation of a collective investment scheme and the latter is management of investments through a custodial account on behalf of another person.

Notwithstanding the examples above, the Foreign Business Act B.E. 2542 (1999) (the “FBA”), being the main general legislation regulating foreign participation in the operation of restricted businesses (e.g., service-based business) in Thailand, requires any non-Thai person who carries out any business in Thailand to obtain a foreign business license before actually operating the business. By “any business,” the FBA covers a broad range of business activities—with certain exemptions.

4. How do Thailand’s licensing requirements apply to cross-border business into Thailand?

Thai regulations operate on a territorial basis. This means business or activities subject to Thai licensing requirements must have at least some element taking place in Thailand. Based on this, whether and to what extent a given activity will be regulated under Thai law can be considered in light of the following conceptual scenarios:

- **Purely offshore** – If not a single element of the business activity takes place in Thailand, such as if the service provider is located outside Thailand with no presence or communication entering or originating in Thailand, such a business activity will generally not be subject to the licensing requirements under Thai law.

- **Cross-border communication** – Where there is no physical presence of the service provider in Thailand but communication (e.g., emails and phone calls) is made to or from clients or prospects in Thailand, separate consideration needs to be given to two different regulatory schemes: the FBA requirements and other business-specific licensing requirements (including securities offering regulations). For
the FBA aspect, since there is no physical activity in Thailand, based on the authority’s view, it is very unlikely that the service provider will be considered conducting restricted business in Thailand that would require a license under the FBA. On the other hand, some business-specific licensing requirements, such as investment advisory licensing requirements, take a slightly more conservative view: remote communication made between an offshore investment advisor and clients in Thailand is sufficient to make the activity subject to Thai regulation. However, for other business-specific licensing requirements (e.g., securities brokerage or banking business), if there is no solicitation made by the offshore business operators to Thailand-based clients or prospects for them to use their services or buy their products regulated under Thai law but the offshore business operators offer their products/services to Thailand-based clients on a reverse inquiry basis, the offshore business operator will not be subject to business-specific licensing requirements under Thai law.

- **Onshore basis** – Where a regulated activity is physically conducted in Thailand, the regulatory risks would substantially increase from both the perspectives of the FBA and business-specific licensing requirements. Most activities conducted by non-Thai persons are restricted and not permitted without the license under the FBA. Separately, whether any business-specific licensing requirement applies needs to be considered on a case-by-case basis.

There are specific exemptions from certain licensing requirements when the activity is conducted on a cross-border basis. By way of example, we wish to highlight the following regulated businesses for which there are official exemptions: investment advisory and private fund management services.
Investment advisory

Providing what is considered “investment advice” in the normal course of business for a fee is regulated as investment advisory business. While a specific license is required, none is available to offshore entities. Thus, there are certain exemptions from the licensing requirement. One instance is where investment advice is made by an offshore investment advisor duly licensed by a securities regulatory agency that is a member of the IOSCO and given exclusively to a Qualified Institutional Investor. Another example is where such an offshore investment advisor gives investment advice to retail investors through a Thai licensed brokerage firm or investment advisor who arranges such investment advice. Both of these cases are exempt from the investment advisory license.

Private fund management

Regulated private fund management services under Thai law is also known as discretionary investment management services. Those who manage investment of Thailand-based investors through a custodial account under an investment mandate given by the investors are subject to this licensing requirement. A relevant example of the official exemptions available is where an offshore securities business operator (duly licensed to operate securities business by an agency of a country that is a member of IOSCO) offers and/or provides its private fund management services exclusively to a Qualified Institutional Investor.

Unofficial safe harbor

Apart from the official exemptions discussed above, the practice of “reverse inquiry” is adopted by some offshore business operators as an unofficial safe harbor to provide their products or services to clients in Thailand. While this practice is neither official nor endorsed by any regulator, it is often used as an argument that the offshore operator has no intention to provide its products or services in Thailand, but rather it is the client or investor that approaches the offshore business to obtain them; therefore, the business operation, they argue, should be
considered as operating offshore and the offshore business operator should not be subject to the regulatory scheme under Thai law.

This practice should, however, be adopted with extreme care. Also, this unofficial safe harbor is not suitable for all types of activities, such as engaging in an investment advisory business.

5. What are the requirements to obtain authorization in Thailand?

While there are many types of licenses for providing financial services in Thailand depending on the nature of the activity in question, most business-specific licenses are only available to Thai entities—with some available to Thai branches of foreign entities. For example, commercial banks seeking a banking license under the FIBA can be either a Thailand-incorporated entity or a Thai branch of a foreign bank (which, once licensed, will have varying legal capacity in terms of operating their banking business in Thailand), while no securities business licenses under the SEC Act are available to offshore entities. As there is no unified platform under any particular regulation for applying for different types of financial business licenses; the application process needs to be considered on a case-by-case basis.

For business activities in Thailand in general, non-Thai persons (determined based on the place of incorporation and/or shareholding structure in the case of companies) are required to obtain a foreign business license under the FBA. Only some types of businesses are narrowly excluded from this general licensing requirement.

Notwithstanding the foregoing, some business activities, such as issuing certain types of electronic money, only require registration or notification to the authority. Some registration schemes are available to offshore entities for certain activities such as dealing in derivatives on one’s own account.
6. What is the process for becoming authorized in Thailand?

In most cases, an applicant for a license (or registration) must complete a formal process involving the completion of required application forms and the submission of supporting documentation to the authority in charge. While there is no unified application process for all licenses/registration and the particular forms that must be completed will depend on the nature of the regulated activities being conducted, the Facilitation Act B.E. 2558 (2015)—effective 21 July 2015—requires the authorities responsible for any specific license/registration to publish a relevant licensing manual for the public. Each manual must cover the rules, procedures and conditions for submission of the application, as well as the authority’s timing commitment. A centralized online database of such manuals is available at https://www.info.go.th.

7. What financial services “passporting” arrangements does Thailand have with other jurisdictions?

While Thailand has no equivalent for European passporting as in the EEA, the closest yet much narrower scheme available in Thailand is the ASEAN CIS, which aims to streamline the regulatory approval and filing processes for offering of investment units in certain qualified collective investment schemes (CIS) across certain ASEAN nations (at present, Thailand, Malaysia and Singapore).

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Turkey

1. Who regulates banking and financial services in Turkey?

Turkey has three main regulators that authorize and supervise bank and non-bank financial institutions.

(a) The Banking Regulation and Supervision Authority (Bankacılık Düzenleme ve Denetleme Kurumu or BRSA) regulates deposit banks, participation banks, investment and development banks, branches and representative offices of non-Turkish banks, and certain non-bank financial institutions such as factoring companies, financial leasing companies, finance companies, and payment and electronic money institutions.

(b) The Capital Markets Board (Sermaye Piyasası Kurulu or CMB) regulates brokerage firms, portfolio management companies, mutual funds, pension funds, investment companies, investment advisory firms, stock exchanges, real estate valuation companies, banks operating in capital markets and rating firms offering services to institutions operating in capital markets.

(c) The Undersecretariat of Treasury (Hazine Müsteşarlığı or the “Treasury”) regulates insurance and private pension companies and intermediaries such as insurance agents, brokers and private pension intermediaries.

The Central Bank of the Republic of Turkey (Türkiye Cumhuriyet Merkez Bankası or the “Central Bank”) plays a complementary role in regulating the banking industry as it implements policies related to the protection of the value of the Turkish currency and financial stability. For example the Central Bank determines the overnight and weekly repo interest rates; calculates reserve and liquidity requirement ratios; supervises the implementation of maximum interest rates applied by
banks on deposits and loans; and supervises maximum interest rates in credit card agreements. Banks operating in Turkey must provide their financial statements to the Central Bank periodically. The Central Bank is the regulator of payment and securities settlement system operators.

The Savings Deposit Insurance Fund (Tasarruf Mevduatı Sigorta Fonu) is responsible for protecting the rights of depositors and restructuring banks experiencing financial difficulties. It implements various measures imposed by the BRSA, such as restructuring or taking over the management or ownership of a bank with a weak financial structure or failing to comply with banking laws in rare cases.

2. What are the main sources of regulatory laws in Turkey?

Turkey has various framework laws for financial institutions and services, including:

- the Banking Law No. 5411;
- the Capital Markets Law No. 6362;
- the Insurance Law No. 5684;
- the Private Pension Savings and Investment System Law No. 4632;
- the Financial Leasing, Factoring and Financing Companies’ Law No. 6361;
- the Payment Services and Electronic Money Institutions Law No. 6493; and
- the Debit Cards and Credit Cards Law No. 5464.
The BRSA, the CMB and the Treasury set detailed rules and guidelines applicable to companies and activities they regulate in the form of regulations, communiqués, respective board resolutions, circulars, sector announcements and guidelines. The BRSA, the CMB and the Treasury rules and guidelines are prudential regulations that include audit requirements, capital adequacy ratios, corporate governance requirements, financial statements and reporting standards, internal systems, regulators’ audits, record retention and provisioning requirements.

Although not a member, Turkey is a candidate for full European Union (EU) membership and has been in accession negotiations since 2005. It is also active in harmonizing its financial services legislation with the acquis. Turkey aligned its financial market infrastructure, securities markets and investment services regulations in line with the acquis with the enactment of the Banking Law No. 5411 and the Capital Markets Law No. 6362 and their secondary regulations. Turkey has also adopted Basel II and some Basel III principles in the Turkish banking sector.

3. What types of activities require a license in Turkey?

Turkey strictly regulates a broad range of financial services and activities. Financial institutions must be authorized by their regulators (i.e., the BRSA, the CMB and the Treasury) for incorporation and authorization. These services include the following:

- Accepting deposits – This would cover typical retail banking activities involving the operation of current and deposit accounts.

- Accepting participation funds – This would cover Islamic banking activities involving the operation of current and participation accounts (i.e., accounts paying a yield of profit share under Islamic banking principles).
Extending loans – This covers both cash and non-cash loans extended to legal entities, individuals and consumers.

Providing factoring and financial leasing services

Issuing electronic money – Electronic money is a pre-paid electronic payment product accepted as a payment instrument by its issuer and other individuals and legal entities.

Carrying out payment services – This includes deposit and withdrawals from payment accounts, fund transfers, issuing or accepting payment instruments and money transfers.

Banks’ asset management – This covers purchasing and selling banks and other financial institutions’ non-performing loans.

Issuing debit and credit cards and providing related payment services – This covers financial institutions’ provision of debit and credit card services.

Trading and carrying out intermediation activities in securities and other capital markets instruments – This covers banks and brokerage firms engaging in proprietary trading that also receive and route orders for the sale and purchase of securities.

Underwriting and intermediation of public offering of capital markets instruments

Providing investment advice – This is a regulated activity under Turkish law.

Asset management – Managing investments on behalf of third parties is a regulated activity under Turkish law, requiring specific permission in relation to investment companies, mutual funds and non-Turkish collective investment schemes
(e.g., alternative investment funds or US management investment companies).

- Establishing, operating and winding up investment companies and mutual funds (i.e., collective investment schemes under Turkish law)

- Providing custody services. Custody services related to assets that include investments is a regulated activity. Specific permission is required to act as the custodian of a collective investment scheme (i.e., investment companies and mutual funds).

- Carrying out insurance business (effecting and carrying out both life and non-life insurance contracts) – Each insurance branch (e.g., accident insurance, health insurance) requires a separate license.

- Carrying out private pension business (can also engage in life and personal accident insurance business with separate licenses)

- Insurance and private pension intermediation activities – This covers insurance agents and brokers as well as private pension intermediaries.

In addition, the activities of financial institutions that do not constitute financial services (e.g., a deposit banks’ capital markets activities or a private pension companies’ life and personal accident insurance business) can require separate permits from the regulator overseeing those activities.
4. How do Turkey’s licensing requirements apply to cross-border business into Turkey?

The activities of a firm outside Turkey relating to a client or counterparty located in Turkey might be subject to Turkish law. The service provider located abroad needs to consider whether it is triggering a Turkish licensing obligation and complying with Turkish marketing rules that may trigger a requirement to obtain a license in Turkey.

Foreign financial service providers must take no action that would create an impression that they are providing financial services in Turkey; however, they can respond to reverse inquiries where the Turkish resident customer has initiated the relationship. Foreign financial service providers must avoid any promotion, distribution, marketing or other solicitation of their services and products in Turkey that may be subject to licensing in Turkey.

There is no exact definition of “marketing, promotion and solicitation of financial products and services” under Turkish financial services regulations. It does cover all initiatives to market financial products and services, including passive marketing. For instance, a foreign bank calling or emailing a customer resident in Turkey to provide information on its products and/or services without the customer asking first is marketing its services and products in Turkey.

5. What are the requirements to obtain authorization in Turkey?

Generally, foreign financial service providers that will enter into the Turkish market need to incorporate a subsidiary or branch in Turkey and apply with the respective regulator to obtain an incorporation permit. Applicants seeking incorporation permits for financial services must satisfy the conditions set out by the regulator supervising the applicant’s planned activity. The conditions can vary depending on the intended regulated activities (e.g., banking, insurance or capital markets brokerage) and, in particular, whether the applicant will be
regulated by the BRSA, the CMB or the Treasury. Generally, the following conditions need to be satisfied:

(a) **Company type and registered offices** – Financial institutions incorporated in Turkey are generally required to be formed as joint stock companies (*anonim şirket*). Banks and insurers located abroad can establish branches in Turkey with the BRSA and the Treasury’s approval, respectively, without incorporating a Turkish entity. Other non-Turkish financial institutions seeking to operate in Turkey are required to incorporate a Turkish entity.

(b) **Constitutional documents** – Applicants’ articles of association must be in line with the laws and regulations of the activities planned to be conducted, and approved by the regulator.

(c) **Capital requirements and financial adequacy** – The regulator must be satisfied that the applicant has adequate financial resources to carry out the activities. The minimum capital requirement varies depending on the extent of the services a financial institution provides (e.g., higher for banks compared to capital markets brokerage firms), which can be increased upon the regulator’s request after assessing the application.

(d) **Founders’ and directors’ suitability** – Applicants’ founders and their directors must be financially sound, reputable and proper (i.e., financial and criminal records must evidence their adequacy to be shareholder/director of the financial service provider).

(e) **Viable business model** – The regulator will examine the applicant’s business model, the economic aspects of the business and the applicant’s projections.
Transparency Shareholding Structure – The regulator will examine the applicant’s shareholding structure, its shareholders’ financial adequacy, and documentation on the financial institution’s direct and indirect shareholding.

6. What is the process for becoming authorized in Turkey?

Under Turkish law, certain financial institutions (e.g., payment and electronic money institutions) are required to obtain one single permit to be authorized to operate in Turkey, while others (e.g., banks, insurance companies, private pension companies and brokerage firms) are required to obtain both incorporation and operation licenses.

To obtain authorization, an applicant for an operation license must complete a formal process, which involves the completion and submission of required application documents, forms, undertakings and supporting information. The BRSA, the CMB or the Treasury can require additional documents from applicants if necessary.

In most cases, the regulator responds to the applicant within three months to six months from receipt of the complete application. This timeframe can be extended, depending on the regulator’s assessment and satisfaction with the applicant’s documents.

The documents, forms, undertakings and supporting information required will depend on the nature of the regulated activities being conducted. Generally, however, a financial institution will need to satisfy the following conditions to obtain an operation license:

- **Required capital** – The minimum required capital (or any higher amount the regulator deems necessary) must be fully paid in cash, and shares must be issued in registered form (nama yazılı). Any other payable fees or contributions to the government must also be paid before obtaining the license.
(b) **Corporate governance** – A financial institution must comply with the corporate governance requirements set by its regulator, such as having a certain number of independent board members and publishing quarterly and annual reports.

(c) **Internal systems** – A financial institution must set up required internal systems, such as internal control, internal audit and risk management systems.

(d) **Technical infrastructure** – A financial institution’s technical infrastructure, such as its IT systems, must be in place to be able to carry out its activities and to protect customer privacy and other confidentiality requirements.

(e) **Personnel requirements and qualifications** – A financial institution must have an adequate number of personnel with sufficient qualifications. Directors, managers and other designated officers, such as portfolio manager and internal control director, must meet certain qualifications depending on the financial institution. The applicant will need to submit forms providing information that enables the regulator to assess their fitness and propriety to perform their roles.

7. **What financial services “passporting” arrangements does Turkey have with other jurisdictions?**

Although Turkey is a candidate for full membership, it is not a member of the EU or the European Economic Area, or a party to an agreement for passporting financial services across Europe. Therefore, a Turkish financial institution cannot passport its authorization into the European Economic Area member states or any other jurisdiction, and foreign financial institutions cannot operate without required licenses in Turkey.
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Ukraine

1. Who regulates banking and financial services in Ukraine?

In Ukraine, the National Bank of Ukraine (the NBU) regulates banking services, and the Commission for Regulation of Financial Services Markets of Ukraine (the “Financial Services Commission”) with the National Securities and Stock Market Commission (NSEC) regulates financial services. However, it is likely that the Financial Services Commission will be abolished in 2016/2017 and its functions will be performed by the NBU and the NSEC.

2. What are the main sources of regulatory laws in Ukraine?

The main laws and regulations in the fields of banking and financial services are the following:

Banking Services

- Civil Code of Ukraine dated 16 January 2003
- Law of Ukraine “On Banks and Banking Activity” dated 7 December 2000
- Regulation “On Registration and Licensing of Commercial Banks in Ukraine” approved by the NBU Resolution No. 306 on 8 September 2011
Financial Services

- Civil Code of Ukraine dated 16 January 2003
- Law of Ukraine “On prevention and counteraction to legalization (money laundering) of the proceeds from crime or terrorism financing, as well as financing of the proliferation of weapons of mass destruction” dated 14 October 2014

3. What types of activities require a license in Ukraine?

Banking Activities

A commercial bank carries out its banking activities pursuant to a banking license issued by the NBU. A banking license permits a bank to: attract funds (deposits) from legal entities and individuals; open, maintain and carry out transactions with current accounts of clients and correspondent banks; and place attracted funds in its own name, on its own terms and at its own risk. Only a duly licensed commercial bank may carry out all of the foregoing except for certain banking operations that may be carried out by the Central Securities Depository based on the license of the NBU. A duly licensed commercial bank may also render financial services to its clients (save for other commercial banks), including through its commercial agents based on agency agreements. The list of such services is set out by the NBU.
In addition, a duly licensed commercial bank may also carry out the following activities:

- Issuance of its own securities
- Provision of safekeeping services (but not including the custody of securities)
- Rendering of consulting and information services related to banking and other financial services
- Investments
- Transportation of currency valuables and cash collection.

A duly licensed commercial bank may also render banking and other financial services in foreign currencies, which constitute foreign currency operations, only on the basis of a general license for carrying out foreign currency operations issued by the NBU.

Financial Services Activities

In the financial sector, certain types of professional activity may only be carried out by a financial institution, provided that it has obtained the respective license from the Financial Services Commission, the National Bank of Ukraine or the National Securities and Stock Market Commission accordingly.

Pursuant to the applicable Ukrainian legislation, the Financial Services Commission issues licenses to financial institutions for:

- insurance activity;
- administering private pension funds;
- issuing financial credits using solicited deposits; and
• rendering any financial services, the provider of which intends to directly or indirectly solicit financial assets from individuals.

4. How do Ukraine’s licensing requirements apply to cross-border business into Ukraine?

Banking Activities

A foreign bank may establish a presence in Ukraine through a representative office (with no right to conduct banking business) and/or a foreign bank branch. A representative office and Ukrainian commercial subsidiary bank may operate in Ukraine only upon accreditation with the NBU. Accreditation of the foreign bank is effected by means of an appropriate entry in the State Register of Banks and by granting the banking license. Accreditation of a foreign bank branch is the basis for its banking activity. Accreditation of the representative office of a foreign bank is effected by means of an appropriate entry in the State Register of Banks.

Foreign participation in a Ukrainian commercial bank is not restricted. However, the prior permission of the NBU is required for the establishment of a commercial bank with foreign participation or for the “conversion” of an existing commercial bank into a bank with foreign participation. Notwithstanding that the applicable legislation does not limit the allowed participation in the charter capital of a commercial bank to any maximum threshold, the permission of the NBU is still required for a Ukrainian or foreign legal entity or individual to directly or indirectly own, hold or control various thresholds of a commercial bank’s charter capital or voting rights in its governing body, that is, 10 percent or more, 25 percent or more, 50 percent or more, or 75 percent or more. At each threshold, a new approval of the NBU must be obtained.
Financial Activities

Foreign participation in Ukrainian financial institutions is not restricted. However, a foreign legal entity would have to either set up a new financial institution and obtain an appropriate license for it (if necessary) or buy an existing financial institution. In both cases, it would have to comply with the legislation applicable to foreign investments and the applicable competition legislation.

The prior written approval of the Financial Services Commission is required for a Ukrainian or foreign legal entity or for an individual to directly or indirectly own, hold or control various thresholds of a financial institution’s charter capital or voting rights in its governing body, that is, 10 percent or more, 25 percent or more, 50 percent or more, or 75 percent or more. At each threshold, a new approval of the Financial Services Commission must be obtained.

5. What are the requirements to obtain authorization in Ukraine?

Banking Activities

Under the Law of Ukraine On Banks and Banking Activity (the “Banking Law”), a commercial bank registered with the NBU may only commence its banking operations upon obtaining a banking license from the NBU. The NBU decides to grant the banking license on the basis of a bank’s application within two months upon receipt of the documents evidencing that the bank has satisfied the following requirements:

(a) Share capital is fully paid up and registered in conformity with requirements of the Banking Law.

(b) The bank is fully equipped with banking equipment, computer hardware and software, and appropriate leased or owned banking office premises, as required by the NBU.
At least three individuals, who possess the necessary professional skills and business reputation, are appointed as board members.

Individuals, who possess necessary professional skills and business reputation, are appointed as chief accountant and head of internal audit.

The NBU may refuse to grant the license if the aforementioned NBU requirements are not complied with by a bank within one year from the date of its state registration. In such cases, the state registration of the bank would be cancelled and the bank would be subject to liquidation procedures.

Financial Activities

The requirements to obtain authorization and the process for becoming authorized in the field of financial activity depends on the type of financial institution (insurance company, custodian, pension fund, etc.). Ukrainian legislation provides for different requirements and procedures for each type of financial institution.

6. **What is the process for becoming authorized in Ukraine?**

Banking Activity

In order to obtain a banking license (authorization to perform banking services), a commercial bank must submit to the NBU an application form (based on the form provided by the legislation) and the following supporting documents:

(a) A copy of the by-laws of the bank with the state registrar’s indication of the state registration of the legal entity
(b) For a bank established as a public joint stock company, copies of the report registered by the State Commission for Securities and Stock Market on the results of private stock placement and certificate of registration of issue of shares

(c) Information on the number of members of the Supervisory Council, Board and Revision Committee

(d) Evidence set out in an NBU form showing:
   o the availability of at least three persons, appointed members of the Board, including the Chairman thereof, as well as information on their professional skills and business reputation;
   o the professional skills of the chief accountant and the head of Internal Audit;
   o the business reputation of the Supervisory Council members, chief accountant and the head of Internal Audit; and
   o the availability of the organizational structure and corresponding specialists necessary to ensure provision of banking and other financial services, banking equipment, computers, software and premises compliant with NBU requirements

(e) Copies of the internal bank regulations that: a) govern rendering of banking and other financial services; and b) determine performance of internal control and risk management procedures

(f) A business plan for three years compiled in line with NBU requirements
(g) A copy of the payment document confirming payment of the fee for the banking license in an amount determined by the NBU

The NBU must decide whether to grant the banking license within two months from the day when it received the full set of documents.

Financial Activity

The documents and time scales to obtain authorization and process for becoming authorized in the field of financial activity depends on the type of financial institution (insurance company, custodian, pension fund, etc.). Ukrainian legislation provides for different requirements and procedures for each type of financial institution.

7. What financial services “passporting” arrangements does Ukraine have with other jurisdictions?

The Ukraine does not currently have any passporting arrangements for foreign funds or securities.

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United Arab Emirates

1. Who regulates banking and financial services in the UAE?

The UAE has four, and in the near future five, different regulators who are responsible for the authorization and supervision of banks, insurers and other financial institutions. These are the Central Bank of the UAE (CB), the Insurance Authority (IA), the Securities and Commodities Authority (SCA), the Dubai Financial Services Authority (DFSA), and the regulator at the new financial free zone in Abu-Dhabi called the Abu-Dhabi Global Market (ADGM).

The allocation of responsibilities between the CB, IA, SCA and DFSA is as follows:

(a) The CB, IA and SCA regulate and supervise on a federal level all banks, insurers and insurance brokers, and securities traders.

(b) The DFSA is the financial regulator and supervisor for all banks, investment firms, securities traders and insurers that operate within the Dubai International Financial Centre (DIFC), a financial free zone located in the Emirate of Dubai, which is governed by its own rules and regulations largely based on common law principles, as opposed to civil law on the UAE federal level. The DFSA-regulated firms include investment firms, asset managers, hedge funds, brokers, financial advisers and insurance intermediaries.

2. What are the main sources of regulatory laws in the UAE?

The main federal law in the UAE for the banking and financial services is Federal Law No. 10 of 1980 concerning the Central Bank, the Monetary System and Organization of Banking. The insurance industries are governed by the Federal Law No. 6 of 2007 concerning the establishment of the Insurance Authority and the organization of
its operations. The SCA is governed by federal Law No. 4 for the year 2000 concerning the Emirates Securities and Commodities Authority and Market. The three regulators have issued a number of regulations applicable to the financial institutions that fall under their jurisdictions.

With regard to the DIFC, the DFSA issues rules and regulations that apply to the financial institutions that operate within the DIFC. The main laws governing financial institutions in the DIFC are the following:

(a) Regulatory Law 2004
(b) Markets Law 2012
(c) Law Regulating Islamic Financial Business 2004
(d) Trust Law 2005
(e) Collective Investment Law 2010
(f) Investment Trust Law 2006

In addition, the DFSA has published a number of regulations applicable to financial institutions incorporated within the DIFC.

3. **What types of activities require a license in the UAE?**

The UAE regulates various activities, which include the following:

- Accepting deposits
- Dealing in investments as principal or as agent
- Providing credit
- Managing assets
• Operating collective investment funds
• Providing custody and trust services
• Acting as a trustee of a fund
• Advising on financial products or credit
• Insurance intermediation and management
• Carrying on payment services
• Consumer lending
• Providing investment advice
• Trading in securities and other investments as principal or as agent
• Arranging transactions in investments
• Managing profit sharing investment accounts

It is worth pointing out, however, that the UAE regulators have not classified activities but only institutions, and it is now slowly moving to a new legislative framework where activities will be licensed.

4. How do the UAE’s licensing requirements apply to cross-border business into the UAE?

Currently, there is no prohibition on foreign banks dealing with clients located in the UAE. The only restriction would be the prohibition to hold security, and such banks would need to have recourse to a local security agent that is a bank or a financial institution licensed by the Central Bank.
There are more restrictions for insurers and insurance brokers who must mandatorily be licensed by the Insurance Authority. Foreign insurance companies may not insure assets located in the UAE.

Similar restrictions apply for the promotion and marketing of foreign funds in the UAE. This must mandatorily be done through a local agent licensed by the Central Bank or the SCA, unless it is on a reverse solicitation basis or such foreign funds are targeted to Sovereign Wealth Funds.

In the DIFC, which is a wholesale jurisdiction, a foreign entity may only deal through a DFSA-authorized firm unless it is dealing with a market counterparty.

5. What are the requirements to obtain authorization in the UAE?

Each of the four regulators mentioned above have their own specific requirements that must be satisfied by the applicant firm seeking to become authorized. These requirements are also largely dependent on the type of activity the applicant firm is seeking to practice. However, the following general factors will be considered:

(a) Ownership and group structure
(b) Corporate governance structure
(c) Senior management resources
(d) Suitability

6. What is the process for becoming authorized in the UAE?

An applicant firm must complete a formal process to obtain authorization from the relevant regulator. As described above, the process for authorization will vary depending on the regulator.
For example, the process for becoming authorized by the DFSA involves the following:

(a) **Submission of a Letter of Intent** – The Letter of Intent generally covers:

(i) intention of the applicant and intended activities to be conducted;

(ii) reasons for setting up in the DIFC;

(iii) founding directors and corporate structure;

(iv) resources and functions - details of who will be based in the DIFC entity; and

(v) permanent office space requirements.

(b) **Submission of a Regulatory Business Plan (RBP)** – The RBP should set out the strategy and rationale for establishing an operation in the DIFC and also demonstrate how the business will be managed and controlled. The DFSA needs to understand the business model of the applicant firm so they can ensure it is authorized for the correct financial services, investment types and client types, to enable them to assess the adequacy of the applicant firm’s resources. The applicant firm will need to:

(i) identify all the financial services and any other activities it intends to carry out;

(ii) identify all the likely business and regulatory risk factors;

(iii) explain in high level how it will monitor and control these risks; and

(iv) take into account any intended activities.
(c) Submission of additional DFSA Application Forms and supporting documentation.

The timing for processing each application for authorization can take anywhere between four months and six months from the date of receiving the applicant firm’s full and complete application.

7. What financial services “passporting” arrangements does the UAE have with other jurisdictions?

The UAE does not have financial services “passporting” arrangements with any other jurisdiction.

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United Kingdom

1. Who regulates banking and financial services in the UK?

The UK has two regulators with responsibility for the authorization and supervision of banks, insurers and other financial institutions. These are the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). The allocation of responsibilities between the PRA and the FCA is as follows:

(a) The PRA regulates banks (deposit takers), insurers and large investment firms (i.e., investment banks) for prudential purposes, including in relation to regulatory capital requirements.

(b) The FCA regulates all other firms for prudential purposes. FCA-regulated firms include investment firms, asset managers, hedge funds, brokers, financial advisers and insurance intermediaries.

(c) The FCA supervises all types of firms for conduct purposes. Accordingly, firms supervised by the PRA for prudential purposes will also be supervised by the FCA for conduct purposes (dual regulated firms).

The Bank of England is responsible for the macro-supervision of the banking and financial services industries. Although it is not a frontline regulator like the PRA or FCA, it does have a statutory role under Part 5 of the Banking Act 2009, in the oversight of interbank payment systems. The UK has also recently introduced the Payment Systems Regulator, which regulates various payments systems, including CHAPS, Mastercard and Visa Europe. HM Treasury is the UK government department responsible for banking and financial services.
The European Union’s supervisory authorities (the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pension Schemes Authority) play an important role in issuing technical standards and in some limited respects have powers of supervision over UK firms.

The European Central Bank (ECB) has recently become the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM). The UK is not in the Eurozone and so UK banks are not within the scope of the SSM. However, Eurozone branches or subsidiaries of UK banks are in some cases within the SSM and therefore under supervision by the ECB.

On 23 June 2016 the UK voted in a referendum to leave the EU (known as Brexit). As the referendum was of advisory status, until the Government gives notice to the European Council under Article 50 of the Treaty on the Functioning of the EU, the UK’s legal relationship remains unchanged. In a statement released on 24 June 2016, the FCA confirmed that EU legislation remains applicable until changes are made and firms will be expected to comply in the meantime. In the meantime firms should continue to prepare to implement pending new regulation.

Under Article 50 TFEU, once notice is given by the UK there will then be a period of up to two years (unless extended by mutual agreement) for negotiations to take place, after which the UK will cease to be a Member State. This is not expected now until the beginning of 2019 at the earliest.

2. What are the main sources of regulatory laws in the UK?

Much of the relevant law in the UK is derived from European Union directives and regulations. In many respects, therefore, UK domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives are implemented
across Europe can vary. In other words, the UK and other European jurisdictions have introduced domestic laws that exceed European level requirements. Directives also contain obligations and discretions at a member state level and the UK also has various domestic rules.

The Financial Services and Markets Act 2000 is the main framework law in the UK for the banking, financial services and insurance industries. There is also a large volume of secondary and delegated legislation.

Both the FCA and the PRA issue rules and guidance, which apply to the firms that they regulate. The FCA publishes a handbook that contains detailed rules and guidance. These rules and guidance are applicable primarily to UK-regulated or -supervised firms but are also relevant in certain respects to non-UK firms. For UK-regulated firms the rules and guidance contained in the handbook form the bedrock of their legal and regulatory obligations.

3. What types of activities require a license in the UK?

The UK regulates a broad range of activities, including the following:

- Accepting deposits – This covers typical retail banking activities involving the operation of current and deposit accounts.

- Issuing electronic money – Electronic money is a prepaid electronic payment product that can be card- or account-based.

- Carrying on payment services – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions and the operation of payment accounts.
Consumer lending – This covers both lending to consumers as well as activities such as credit brokerage and debt collection on behalf of third parties.

Arranging regulated mortgage contracts – This relates to the sale of certain residential mortgage contracts.

Carrying on insurance business – This relates to effecting and carrying out contracts of insurance, both life and general.

Providing investment advice – Providing advice on most categories of investments is a regulated activity in the UK. This activity covers the provision of advice on the merits of acquiring or disposing of particular investments.

Trading in securities and other investments as principal or as agent – This would cover brokers as well as most firms engaged in proprietary trading.

Arranging transactions in investments – This activity covers the role of intermediaries in investment transactions. It is very broad and covers infrastructure providers, including electronic communication networks that route orders for execution.

Insurance mediation activities – UK regulation covers various insurance broking activities as well as the handling of claims on behalf of the insured.

Investment management – Managing investments on behalf of another person is a regulated activity. Specific permission is required where a person carries on this activity in relation to an alternative investment fund.

Establishing, operating and winding up a collective investment scheme – Most types of funds will be regarded as collective investment schemes under UK law. This will extend to open-ended bodies corporate, unit trusts and
partnerships. Closed-end bodies corporates were formerly not regarded as collective investment schemes under UK laws, but under the European Union’s Alternative Investment Fund Directive, certain closed-ended bodies corporate are now categorized as alternative investment funds (AIF). For example, certain listed investment trusts are now treated as AIFs.

- Providing custody (safeguarding and administration of investments) – Providing custody services in relation to assets that include investments is a regulated activity. Specific permission is required to act as the depositary of an alternative investment fund.

4. How do the UK’s licensing requirements apply to cross-border business into the UK?

Where a firm outside the UK deals with a client or a counterparty located in the UK, those activities will typically be subject to UK laws and regulations. The service provider will need to consider whether they are triggering a local UK licensing obligation and also whether they are complying with UK marketing rules.

In relation to marketing, UK laws regulate the issuance of “financial promotions,” which is defined as an “invitation or inducement” to engage in an investment activity. Communications with UK counterparties or clients will most likely constitute financial promotions. Various exemptions exist in relation both to the need to be authorized and in relation to marketing to UK persons.

Under European laws firms established outside the European Economic Area are called “Third Country Firms” (TCFs). Until recently, European laws have not sought to harmonize the approach of member states to TCFs. This means that access to the markets of member states had to be considered on a case-by-case basis. However, the trend in European legislation is now towards harmonizing the approach across all member states to TCFs. On the one hand, this
approach is likely to create a barrier to entry to European markets. As explained below, presently for wholesale business, the UK operates a relatively open regime. On the other hand, firms who become compliant with new EU standards will be able to access the whole European Economic Area market as opposed to having to consider the market on a country-by-country basis.

As explained above, certain exclusions are presently available under UK regulation, which enable TCFs to deal with UK-based clients. This is on the basis that the activities in question will be regarded as being carried on outside the territory of the UK and therefore not subject to UK laws or because a specific exemption will cover the activities.

By way of example, the following activities are regarded as being carried on outside the UK and therefore not subject to UK regulation (although providers of these services will still need to consider UK marketing restrictions).

- Accepting deposits is regarded as being carried on where deposit funds are accepted. Where a UK person credits funds to a bank account that they hold outside the UK, the foreign bank where the individual holds his account will not be regarded as accepting deposits in the UK. A UK resident can, therefore, hold an account with an offshore bank without contravening UK laws. Some financial promotion rules will apply to this activity, which impose some limitations on marketing offshore bank accounts to UK customers.

- Managing investments is carried on where discretionary investment decisions are taken. Where all members of an investment committee are located outside the UK when making decisions, the activity of managing investments will be regarded as being carried on abroad and not be subject to UK regulation. If on the other hand a person located in the UK participates in the making of discretionary decisions, this is likely to be sufficient to trigger UK licensing obligation
even where the majority of the other decision makers are located outside the UK.

• Effecting and carrying out contracts of insurance is regarded as being carried on where underwriting decisions are taken.

In other cases, the activities might be deemed to be carried on in the UK and subject to UK laws. For example, advice is regarded as being given where the recipient of the advice is located so that where a foreign firm is advising a client in the UK, the firm will be regarded as carrying on the activity of advising in the UK. The same analysis applies in relation to the activity of dealing, so that where a counterparty to a transaction is located in the UK the activity of dealing will be regarded as being carried on in the UK.

The UK has a specific exclusion for overseas firms called the “overseas persons” exclusion. This enables persons who do not carry on UK-regulated activities from a permanent place of business in the UK to carry on business with persons in the UK and also to travel to the UK on temporary visits without needing a UK license. This enables a relationship manager to come to the UK to meet with clients or firms to come on roadshows to the UK to promote particular investments. The overseas persons exclusion is only available in limited circumstances, however. In order for this exclusion to apply, the client must either approach the overseas firm (reverse solicitation) or the overseas firm must be able to rely on an exclusion from the UK’s rules on financial promotion. The effect of this is that overseas persons can carry on certain activities with other financial institutions, large corporates and, subject to some limitations, high net worth individuals. Other exemptions might apply.

As mentioned above, recent EU legislation, particularly the following, will limit the ability of foreign firms to do business in the UK”

• The Alternative Investment Fund Managers Directive imposes limitations on non-EEA persons marketing fund interests to persons in the UK (and other European jurisdictions).
MiFID II (comprising a recast of the Markets in Financial Instruments Directive and a European regulation), once implemented in 2018, will result in greater restrictions on “third country firms” doing business in the UK.

The impact of Brexit on EEA firms doing cross border business into the UK or with branches in the UK should not be underestimated. The allocation of responsibilities between Home and Host State regulatory authorities underpins the Single Market Directives. EEA firms may therefore come under closer UK regulatory scrutiny in respect of their cross-border business and branches of EEA firms might need to obtain authorization in their own right if the UK ceases to recognize their passport pursuant to their Home State authorization.

5. What are the requirements to obtain authorization in the UK?

In order to become authorized, an applicant must satisfy the relevant regulator that it meets the Threshold Conditions set out in Schedule 6 of the Financial Services and Markets Act 2000. The requirements set out in Schedule 6 are supplemented by the Threshold Conditions (COND) part of the handbook.

The Threshold Conditions can vary depending on the particular regulated activities that the applicant intends to carry on and, in particular, whether the applicant will be PRA- or FCA-authorized. Broadly, however, the following conditions need to be satisfied:

(a) **Location of offices** - For UK incorporated companies, both the head and registered office must be located in the UK. This can have implications for the composition of the board of directors, so that a majority of the board will need to be resident in the UK and the administrative center will also need to be located in the UK.
(b) **Effective Supervision** - The applicant must be capable of being effectively supervised. This emphasizes the need for firms to have a substantive presence in the UK that is accessible to UK regulators and enables the regulator to supervise the firm. The regulator will also consider whether there are any impediments to supervision of the applicant, including the group structure and any relevant laws restricting access to information.

(c) **Appropriate resources** - Applicants must satisfy the regulator that they have adequate resources to carry on the relevant regulated activities. Resources include financial resources as well as human resources (including management with the required skills) and infrastructure.

(d) **Suitability** - The requirement is that applicants must be fit and proper to be authorized, having regard to all the circumstances.

(e) **Business model** - The regulator will examine the applicant’s business model. In addition to understanding the economic aspects of the business, matters such as the impact of the model on consumers and the impact on the UK financial system will also be considered.

6. **What is the process for becoming authorized in the UK?**

An applicant must complete a formal process to obtain authorization, which involves the completion of required application forms and the submission of supporting information.

In relation to timing, in most cases the regulator will have six months from receipt of a completed application in which to determine whether or not to approve the application. The application must be determined within 12 months where it is deemed to have been submitted incomplete.
The particular forms that must be completed for submission to the regulator will depend on the nature of the regulated activities being conducted.

For a non-complex Securities and Futures Firm, the following forms will be required to be completed:

(a) **Core details** - This form sets out factual background information relating to the applicant.

(b) **The Supplement** - The Supplement will require the firm to provide details of its Regulatory Business Plan, the regulated activities it will perform, its financial resources, its personnel, its compliance arrangements and its fees/levies.

(c) **Individual Forms** - Certain individuals will be required to be personally registered with the regulator to perform controlled functions. They will need to submit forms providing information about themselves that will enable the regulator to assess their fitness and propriety to perform their roles.

(d) **Owners and Influencers Appendix** - Details about persons / entities who control or exert influence over the firm must be submitted.

(e) **IT systems questionnaire** - Details of the firm’s IT systems must be provided.

(f) **Supporting documents** - Various documents must be submitted with the application or at least available for review, if required. Applicants will need to document compliance arrangements, monitoring programs and have a compliance manual. Financial statements and projections must also be provided with the forms.
7. **What financial services “passporting” arrangements does the UK have with other jurisdictions?**

Once authorized in the UK, a UK firm can passport its authorization into other European Economic Area member states. This passport is, however, only available to firms established in the UK and will not be available to UK branches of TCFs. Passporting permits the provision of cross-border services and also the establishment of a physical branch location.

Brexit likely denotes a loss of Single Market passporting rights for UK firms and loss of status as EU “credit institutions”, “investment firms” and “insurance undertakings”.

UK firms will become TCFs - i.e., firms with their head or registered office in a jurisdiction outside the EEA. So far as the EU is concerned the UK may potentially be in no better position to access the EEA market than say a US or Australian firm.

Strategies for UK firms to access European markets (if the UK is outside the EEA) include:

- Reviewing whether they need a passport at all to service EEA based clients. EU law applies what is known as the “characteristic performance” test in determining whether a firm is regarded as doing business in another jurisdiction. The “characteristic performance” comprises the services that the firm is supplying to clients and for which it is being remunerated. Depending on the facts, firms might take the view that the “characteristic performance” takes place in the UK so that no passport is needed even where clients are located in an EEA country. This is on the basis that the firm is not carrying on any relevant activities in other jurisdictions. If so, no passport would be needed.
• Certain EEA countries have a light touch regime for TCFs which permits them to access their markets without having a passport under a Single Market Directive (particularly in the case of wholesale/institutional business). Firms can investigate the options available to them to provide services under such light touch regimes, which can involve no more than a straightforward registration or notification procedure.

• Use of reverse solicitation rules (particularly for existing customers and contacts). A firm that does not actively market its services in EEA jurisdictions might fall outside local regulations. Where a client or counterparty approaches the firm for the provision of services or to enter into a transaction, then this would be permissible under the reverse solicitation principle.

• Use of the National Private Placement Regime for marketing alternative investment funds.

• Using a group company located in an EEA jurisdiction to introduce business to the UK firm.

• Setting up delegation and/or outsourcing arrangements between an EEA licensed firm and a UK group company to carry on performing some activities in the UK.

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1. Who regulates banking and financial services in the US?

Banks

The United States has a dual banking system comprised of both federally chartered and state-chartered banks. In addition, the United States permits banks to have a corporate structure, including bank holding companies and financial holding companies, some of which may now be designated “systemically important financial institutions.”

All banks engaging in banking activities, including the acceptance of deposits, must obtain a bank charter before conducting business in the United States. There are many different charters available to banks in the United States, each with different financial powers as prescribed by state and federal laws. The principal categories of banks in the U.S. include national banks, state member banks and state non-member banks. Foreign banks may also establish a presence in the United States by obtaining authorization to operate various types of offices depending on the types of activities to be conducted. Other types of banks that are included within the U.S. banking system, but which are smaller in number, include private banks, uninsured state banks, bankers’ banks, trust companies, industrial banks and savings banks.¹

Almost all banks are subject to the regulatory authority of more than one bank regulatory agency. All banks fall under the supervision and regulation of their chartering authority, at either the state or federal level. If deposit insurance is obtained (which it almost always is), a bank is subject to certain statutes of the Federal Deposit Insurance

¹ Although not covered in this chapter, credit unions are another type of financial institution in the United States that are similar to banks, but operate as cooperative, non-profit entities. Credit unions are regulated by the National Credit Union Administration, and are subject to independent statutes, rules and regulations under the Nation Credit Union Act.
Act, and in the case of a state non-member bank, to direct supervision by the Federal Deposit Insurance Company (FDIC). If a state bank becomes a member of the Federal Reserve System, the Federal Reserve is its primary federal supervisor. Bank holding companies and financial holding companies subject their bank and other subsidiaries to an additional layer of regulation and supervision at the parent company level.

The regulatory agencies primarily responsible for supervising the internal operations of commercial banks and administering the state and federal banking laws applicable to commercial banks in the U.S. include the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the FDIC and the state banking agencies.

**The Federal Reserve System.** The Federal Reserve directly supervises state-chartered banks that choose to become members as well as foreign banking offices and Edge corporations. The Federal Reserve is also the primary supervisor and regulator of bank holding companies and financial holding companies. For bank holding companies and financial holding companies, the Federal Reserve either reviews or receives notification of their formation and expansion, and is also responsible for supervising the overall banking organization, which allows it insight into the operation of banks not directly under its supervision. The Federal Reserve has a number of powers to enforce its supervisory policies and regulations, including the authority to issue cease and desist orders, remove bank and holding company officers and other affiliated parties, levy fines, revoke membership, and order divestiture or termination of financial holding company activities.

**The Office of the Comptroller of the Currency.** The OCC is the oldest of the federal bank regulatory agencies, and is the primary supervisory agency for national banks, savings associations and federal branches of foreign banks. The OCC is a bureau of the U.S. Department of Treasury. The OCC is responsible for chartering national banks, reviewing national bank branch and merger applications, implementing regulations, and examining and
supervising all national banks. The OCC may also issue cease and desist orders; levy fines against national bank officers, directors, employees or other affiliated parties for violating laws or regulations or engaging in unsafe or unsound banking practices; remove or suspend bank officials and other parties affiliated with a national bank; and place national banks into conservatorship or revoke their charters.

**The Federal Deposit Insurance Corporation.** The FDIC was organized in 1934 to provide federal insurance of deposits at commercial banks. Deposit insurance is required of all Federal Reserve member banks and is extended to non-member banks with the approval of the FDIC. Nearly all non-member banks are FDIC-insured. The FDIC is empowered to examine all banks with FDIC insurance; however, to prevent regulatory duplication, the FDIC only directly supervises and examines state-chartered banks that are not members of the Federal Reserve System.

As part of its insurance responsibilities, the FDIC also acts as receiver for failed banks and administers the deposit insurance funds. The FDIC is empowered to make special examinations of banks to determine the condition of the bank for insurance purposes. The FDIC’s enforcement powers include the ability to terminate deposit insurance at insured institutions and to issue cease and desist orders, remove bank officials and other affiliated parties, levy fines at state non-member banks, or recommend or pursue enforcement actions against other insured depository institutions. It may also appoint itself conservator or receiver of an insured depository institution.

**State Banking Agencies.** Every state has its own regulatory agency responsible for chartering and supervising state banks, as well as foreign banks located within the state. The organizational features of these agencies vary from state to state. Banks chartered by the state must follow all applicable state laws and regulations. In addition, if a state bank takes out deposit insurance or becomes a member of the Federal Reserve, it must also comply with the appropriate federal regulations. State regulatory agencies issue bank charters, conduct
bank examinations, construct and enforce bank regulations, and decide on proposed branch and merger applications. All state regulatory agencies can impose sanctions such as revoking a state bank’s charter, issuing cease and desist orders, removing bank officials and levying fines.

**Other Regulators.** Other state and federal regulatory agencies are also responsible for various supervisory and other matters over U.S. banks. Some of the more important agencies are the Consumer Financial Protection Bureau (CFPB), the Financial Crimes Enforcement Network, the Federal Financial Institutions Examination Counsel, the Department of Justice, the Securities and Exchange Commission, and the Federal Trade Commission.

**Securities and Investments**

Companies engaged in securities—\(^2\) or investment-related activities are primarily regulated by the U.S. Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority, Inc. (FINRA) and the state securities agencies. The SEC was established in 1934 to regulate practices in the securities industry. The SEC’s responsibilities include the protection of investors; the maintenance of fair, orderly and efficient markets; and the facilitation of capital formation. The

\(^2\) A “security” under US securities laws includes “any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.”
SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. FINRA is a non-governmental, self-regulatory organization that is overseen by the SEC, and that supervises and regulates the conduct of its member brokerage firms and exchange markets. In addition to the SEC and FINRA, all states have securities regulatory agencies that supervise the securities and investment activities within their state.

**Derivatives**

The U.S. Commodity Futures Trading Commission (CFTC), which is an independent federal agency of the U.S. government, has exclusive jurisdiction over transactions in “Commodity Interests” that are executed or booked in the U.S. The term “Commodity Interests” collectively refers to the following instruments: (i) futures contracts; (ii) options on futures contracts; (iii) swaps;\(^3\) (iv) leveraged retail foreign exchange and commodity contracts; and (v) certain other leveraged products.\(^4\)

**Insurance**

Individual states and their insurance commissioners or departments have general authority to regulate insurance activities. Companies that desire to engage in insurance activities must comply with state licensing laws and other state insurance laws and regulations.

**Money Transmission**

Individual states are responsible for regulating the money transmission services business and their activities. Depending on the type of business, product or activity, the SEC, the CFTC and/or the CFPB, among others, may also have jurisdiction over the business.

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\(^3\) The definition of “swap” is set forth in CEA §1(a)(47) and CFTC Rule 1.3(xxx).

\(^4\) See CFTC Rule 1.3(yy).
2. What are the main sources of regulatory laws in the US?

Banking

Financial institutions, their holding companies and their affiliates are extensively regulated under federal and state laws in the United States. Federal and state banking statutes, regulations of the bank regulatory agencies issued under them, as well as less formal guidance, interpretations, letters and notices from the regulatory agencies, impose a comprehensive system of supervision, regulation and enforcement over the operations of financial institutions, their holding companies and affiliates.

**Federal Banking Statutes.** Most of the federal statutes applicable to banks are codified in Section 12 of the U.S. Code in order of enactment. Many other laws applicable to banks have been adopted throughout the years in various other “acts”; however, these laws and acts were adopted in the form of amendments to the statutes below. The banking statutes found in the U.S. Code are as follows:

- National Bank Act of 1864 - The National Bank Act (formerly, the Currency Act of 1863) created the national bank charter and the first federal banking agency in the United States (the OCC), and regulated the distribution of currency national banks were authorized to issue. The authorization of the national bank charter created the parallel scheme of state and federally chartered banks still in place today.

- Federal Reserve Act of 1913 - This created the Federal Reserve System and the Board of Governors of the Federal Reserve System; granted the Federal Reserve the power to make loans secured by eligible paper of member banks, which allowed banks to obtain funds to meet large cash withdrawals or increases in credit; and authorized the Federal Reserve to hold reserves of member banks and to conduct monetary policy through open-market operations.
• Home Owners’ Loan Act (HOLA) - This created a dual system for savings associations, allowing for federal savings associations, in addition to state savings associations. HOLA was extensively amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1998.

• Federal Credit Union Act - This established the federal credit union system, which is regulated now by the National Credit Union Administration.

• Federal Deposit Insurance Act (FDIA)- Initially enacted in 1933 as an amendment to the Federal Reserve Act, the FDIA offered deposit insurance for accounts in banks. The FDIA created the FDIC to administer this insurance program, and provided for the primary regulation and supervision of state non-member banks and the secondary regulation and supervision of national banks and state member banks.

• The Bank Holding Company Act of 1956 (BHCA) - This gave the Federal Reserve the authority to regulate the formation and operation of bank holding companies (BHCs), and limits the nonbanking activities of all BHCs to those that are “so closely related to banking as to be a proper incident thereto.”

• International Banking Act of 1978 - This provides equal treatment for foreign and domestic banks in the United States with respect to branching, reserve requirements and other regulations.

Significant amendments to the banking statutes above include the following:

• The Gramm-Leach-Bliley Act of 1999 (GLBA) was adopted in order to allow affiliations among banks, securities firms and insurance companies under a financial holding company structure supervised by the Federal Reserve. The GLBA also
provides privacy safeguards for limiting disclosures of personal information.

- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) was adopted on 21 July 2010, and represented a material reform of the supervisory and regulatory framework applicable to financial institutions and capital markets in the United States. The Dodd-Frank Act created 13 new federal offices, including the CFPB, and requires numerous regulations to be adopted by the bank and other financial institution regulators.

**Federal Regulations.** Federal regulations applicable to banks in the United States are located in Title 12 of the U.S. Code of Federal Regulations. The OCC, Federal Reserve, FDIC and the CFPB each have their respective regulations in Title 12.

**Securities and Investments**

There are many laws and regulations in the United States that govern securities- and investment-related activities, products and services. The following are the primary federal statutes applicable to securities and investment activities and products:

- **Securities Act of 1933** - This requires registration of securities with the SEC, unless an exemption is available, so that investors receive financial and other significant information concerning the securities being offered. The Act also prohibits deceit, misrepresentations and other fraud in the sale of securities.

- **Securities Exchange Act of 1934** - This grants the SEC the authority to register, regulate and oversee brokerage firms, transfer agents and clearing agencies. The Act identifies and prohibits certain types of conduct in the markets and gives the SEC disciplinary powers over regulated entities and their associated persons.
• Investment Company Act of 1940 - This regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting and trading in securities, and whose own securities are offered to the investing public.

• Investment Advisers Act of 1940 - This provides for the registration and regulation of persons and entities who are engaged in providing advice to others regarding securities investments by the SEC. The Act also requires such persons and entities to conform to regulations designed to protect investors.

Many of the foregoing statutes were also amended by the Dodd-Frank Act. In addition to the foregoing, all securities and investment activities and products are subject to the rules, regulations, orders and interpretations of the SEC.

In addition to the federal statutes, U.S. broker-dealers are required to register with FINRA and are subject to FINRA’s rules set forth in the FINRA Manual. The FINRA Manual contains a comprehensive set of rules regulating all aspects of the business of a broker-dealer. All FINRA rules are approved by the SEC prior to adoption.

Each state has its own set of securities laws and regulations that are designed to protect investors against fraudulent sales practices and activities. Even though the laws vary from state to state, most state laws require companies making security offerings to register the offerings before being sold in that state, unless there is a specific state exemption available. State laws and regulations may also require registration of personnel engaged in securities and investment activities, unless an exemption is available.
Derivatives

Transactions in Commodity Interests are governed by the Commodity Exchange Act (CEA)\(^5\), as amended by Title VII of the Dodd-Frank Act, and the CFTC’s rules, orders and interpretations.

Insurance

Each state has its own laws and regulations governing the sale of insurance products and other insurance activities.

Money Transmission

Each state has its own laws and regulations defining and governing the conduct of a money transmission business. Depending on the particular product or service being offered, the laws, rules or regulations of the SEC, CFTC or CFPB could be applicable, as well.

The Bank Secrecy Act, the USA PATRIOT Act, as well as regulations promulgated by FinCEN and the Office of Foreign Assets Control contain the laws, rules and regulations concerning anti-money laundering controls, processes, reporting, disclosure and other requirements applicable to most financial institutions and other businesses conducting activities that could raise money laundering risks.

3. What types of activities require a license in the US?

Banking

A broad range of activities may be regulated as banking activities in the U.S. Examples of such activities include the following:

- Soliciting or receiving funds for deposit, including typical retail banking activities involving the operation of demand deposit, savings or other accounts

\(^5\) 7 USC ch. 1 §1 \textit{et seq.}
• Lending activities, including loans to consumers and certain commercial lending

• Providing trust services (which may require a separate license or special powers)

Securities and Investments

Any person who is engaged in the business of effecting transactions in securities for the account of others, or is engaged in the business of buying and selling securities for his own account, through a broker or otherwise, is required to register as a broker-dealer in the U.S., unless an exemption is available. These types of activities include soliciting securities transactions, offering or selling securities to customers or discussing securities transactions with them.

Any person that issues securities and is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities, or that owns or proposes to acquire a certain amount of investment securities is required to be registered as an investment company, unless an exemption is available.

In addition, a person that is engaged in the business of providing investment advice to others or issuing reports or analyses regarding securities, for compensation, would be considered an investment adviser and be required to be registered as such, unless an exemption is available.

With respect to the foregoing, the U.S. takes a broad view of these types of activities, and requires registration before conducting such activities if the person uses the mails or any means or instrumentality of interstate commerce (commonly referred to as “U.S. jurisdictional means”). Accordingly, any person that uses U.S. phone lines, mail or other jurisdictional means in connection with securities or investment activities will be required to register as appropriate, unless an exemption is available. A number of exemptions are available under
the federal securities statutes, which should be carefully analyzed before being relied upon.

**Derivatives**

The CFTC regulates a broad range of activities. These include the following:

- **Soliciting or accepting orders to buy/sell Commodity Interests and accepting deposits.** A futures commission merchant (FCM) is a person that: (i) solicits or accepts orders to buy or sell commodity interests; and (ii) accepts money or other assets from customers to support such orders.\(^6\) FCMs essentially operate as brokers that execute transactions in futures contracts. Registration is required unless an exemption applies.

- **Soliciting or accepting orders to buy/sell Commodity Interests, but not accepting deposits.** An introducing broker (IB) is a person that solicits or accepts orders to buy or sell Commodity Interests, but does not accept money or other assets from customers to support such orders.\(^7\) Registration is required unless an exemption applies.

- **Operating a Commodity Pool.** A commodity pool is an enterprise in which funds contributed by a number of persons are combined for the purpose of trading Commodity Interests, or to invest in another commodity pool.\(^8\) A commodity pool operator (CPO) is a person that operates a commodity pool and solicits funds for that commodity pool. Registration is required unless an exemption applies. CPOs operate as collective investment vehicles—*i.e.*, commodity pools—that solicit or accept funds for the purchase of interests in the

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\(^6\) See CEA §1a(28), which defines the term “futures commission merchant.”

\(^7\) See CEA §1a(31), which defines the term “introducing broker.”

\(^8\) See CEA §1a(11), which defines the term “commodity pool operator.”
collective investment vehicle. Commodity pools seek to provide investors with the opportunity to invest in Commodity Interests under the direction of one or more CTAs (which may also be the CPO). Commodity pools are not required to be registered under the CEA. Rather, absent an exemption, the CPO of a pool registers with the CFTC with respect to each commodity pool.

- **Providing Commodity Trading Advice.** A commodity trading advisor (CTA) is a person who, for compensation or profit, advises others as to the value of or the advisability of buying or selling Commodity Interests. Providing advice includes exercising trading authority over a customer’s account as well as giving advice based upon knowledge of or tailored to a customer’s particular Commodity Interest account, particular Commodity Interest trading activity, or other similar types of information. Registration is required unless the person or entity qualifies for an exemption from registration.

- **Swaps Dealing.** A swap dealer (SD) is a person or entity that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the entity to be commonly known in the trade as a dealer or market maker in swaps. Registration is required unless an exemption applies. A *de minimis* exception from SD status is available to a person so long as the swap positions connected with dealing activities

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9 See CEA §1a(10), which defines the term “commodity pool.”
10 See CEA §1a(12), which defines the term “commodity trading advisor.”
11 Market-making activity includes routinely: (a) quoting bid or offer prices or other terms for swaps on an exchange; (b) responding to requests made directly or through interdealer brokers regarding bilaterally negotiated swaps; and/or (c) placing limit orders for swaps or acting in a market-maker capacity on an exchange or trading system.
12 See CEA §1a(49), which defines the term “swap dealer.”
that such person has entered into, together with such positions entered into by its affiliates with U.S. persons do not exceed USD8 billion in aggregate gross notional amount.\textsuperscript{13} If the dealer enters into swaps with a federal or state government agency, pension plan or other “special entity,” then a lower threshold of USD25 million in aggregate gross notional amount applies.

Insurance

Insurance-related activities that require a license are determined by state law. Activities that would most likely be considered insurance-related, and requiring a license, include soliciting insurance business and selling insurance policies.

Money Transmission

Money transmission and money services businesses that require a license are determined by state law. Activities that are commonly registered and regulated as money transmitters include foreign currency exchange, the sale and issuance of prepaid or stored value cards, check cashing and money transfers or transmission.

4. How do the US’s licensing requirements apply to cross-border business into the US?

Banking

In general, U.S. banking laws and regulations, including licensure requirements, apply if a foreign bank or financial services firm has a presence in the United States where it conducts banking business, or solicits or conducts banking business through employees or agents based in the United States, through employees or agents based outside the U.S., but who periodically travel to the U.S. to meet with

\textsuperscript{13} Current CFTC rules contemplate that the USD8 billion threshold will be reduced to USD3 billion after a phase-in period.
customers, or otherwise through the use of U.S. jurisdictional means (e.g., the U.S. mail or U.S. telephone lines).

Securities and Investments

As is the case with respect to banking activities, generally, a foreign financial services firm that engages in a securities or investment business has a presence in the United States where it conducts securities or investment business, or solicits or conducts a securities or investment business through employees or agents based in the United States, through employees or agents based outside the U.S., but who periodically travel to the U.S. to meet with customers, or otherwise through the use of U.S. jurisdictional means (e.g., the U.S. mail or U.S. telephone lines) to conduct a securities or investment business will be required to be licensed in the U.S. However, certain exemptions may be available to foreign financial services firms, depending on the activities conducted and the manner in which they are conducted.

Derivatives

With respect to transactions involving futures contracts (and options thereon), if the solicitation, advice or management is occurring in the U.S., registration will be required. Thus, to the extent that a person solicits orders, advises U.S. residents or manages any investments from the U.S., registration will be required, absent an exemption.

The Dodd-Frank Act added Section 2(i) to the CEA, which provides that the swap provisions of Title VII apply to cross-border activities when such activities have a “direct and significant connection with activities in, or effect on, commerce of the United States” or when they contravene CFTC rules or regulations aimed at preventing evasion of Title VII. Prior to the Dodd-Frank Act, swaps were not subject to CFTC regulation (or any federal agency regulation).

As reflected in the CFTC’s Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (the “Guidance”), the application of the CFTC’s swaps regulatory regime
to a cross-border transaction depends, in large part, on whether one of the counterparties to the transaction is a “U.S. person.” The CFTC interprets the term “U.S. person” broadly to include, but not be limited to:

(a) any natural person who is a resident of the U.S.;

(b) any estate of a decedent who was a resident of the U.S. at the time of death;

(c) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than a “U.S. Pension Plan” or a “U.S. Trust,” each as defined below) (a “Specified Legal Entity”), in each case that is organized or incorporated in the U.S. or having its principal place of business in the U.S.;

(d) any pension plan for the employees, officers or principals of a Specified Legal Entity, unless the plan is primarily for foreign employees of such entity (a “U.S. Pension Plan”);

(e) any trust governed by the laws of a state or other jurisdiction in the U.S., if a court within the U.S. is able to exercise primary supervision over its administration;

(f) any commodity pool or other collective investment vehicle that is not a Specified Legal Entity and that is majority-owned by one or more persons described above (a “U.S. Collective Investment Vehicle”), except any such entity that is publicly offered only to non-U.S. persons and not offered to U.S. persons;

(g) any Specified Legal Entity (other than a limited liability company, limited liability partnership or similar entity where all the owners have limited liability) that is directly or indirectly majority-owned by one or more persons described above (other than a U.S. Collective Investment Vehicle) and in which such person(s) bear unlimited responsibility for the obligations and liabilities of the entity; and

(h) any individual account or joint account (discretionary or not) where the beneficial owner is a U.S. person as described above.

The Guidance makes clear that the prongs of the U.S. person definition are not exhaustive and that there may be circumstances not fully addressed by those prongs and situations where the Guidance does not “appropriately resolve whether a person should be included in the interpretation of the term ‘U.S. person.’”

Insurance

State laws in the United States applicable to insurance business will likely be invoked to the extent a foreign company’s conduct involves U.S. persons or entities located within that state.

Money Transmission

State laws in the United States applicable to money transmission and other money services business will likely be invoked to the extent a foreign company’s conduct involves U.S. persons or entities located within that state.

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15 Guidance at 45,316.
5. What are the requirements to obtain authorization in the US?

Banking

As indicated above, different licenses are available depending on the type of banking institution and the type of activities to be conducted by the institution that is seeking authorization. All banking licenses are obtained by filing an application with the appropriate federal and state regulatory agency. The applications are usually extensive and are required to demonstrate, among other things, that the banking institution is or will be adequately capitalized, well-managed and able to comply with applicable U.S. laws and regulations and requests from the supervising regulatory agencies.

Securities and Investments

Depending on the type of securities or investment activity to be conducted in the U.S., the person or entity will be required to file an application with the applicable securities regulators. In addition, individual persons working for or managing the business will likely be required to file individual applications and pass any required qualification examinations.

Investment companies issuing securities that do not qualify for an exemption will have to register their securities with the SEC and pay applicable registration fees. In addition, persons managing investment companies should be registered as investment advisers.

Derivatives

Registration requirements vary depending on the type of registrant. FCMs, IBs and SDs are subject to minimum capital requirements, while CPOs and CTAs currently do not have minimum capital requirements. All registrants should have robust written compliance and supervisory procedures in place, which should address relevant CFTC Rules. Individual associated persons employed by the registrant
will need to satisfy the proficiency requirements, which generally involve completion of the Series 3 proficiency examination.

Insurance

Registration requirements vary depending on the state in which the business will be conducted, but will typically require an application. Individual licensure as agents by persons involved in the activities of the insurance company will typically also be required.

Money Transmission

The registration and licensure requirements for businesses desiring to engage in a money transmission business will vary depending on the type of activity to be conducted and the state in which the business will operate. An application will usually be required.

6. What is the process for becoming authorized in the US?

Banking

A bank seeking licensure in the United States would have to follow the application process outlined by the appropriate bank supervisory authority(ies) responsible for the type of charter sought. All regulatory agencies will require a form of application to be completed, along with supporting documentation such as audited financial statements, business plan, fingerprints and background checks for senior management and directors; comprehensive policies and procedures; and required application fees. No banking business may be conducted until the application is approved by the appropriate bank regulatory agencies. In addition, if a holding company structure is utilized, an application to, and approval by, the Federal Reserve would also be required.

Securities and Investments

Broker-dealers are required to submit a New Member Application to FINRA and submit a completed Form BD to the SEC in order to
register with the SEC and FINRA. All materials are submitted online through FINRA, which handles the registration process for FINRA, the SEC and the appropriate states. Documents and information that are required to be submitted with the application can include audited financials, a business plan, written compliance and supervisory procedures, forms of customer agreements, fingerprint cards/background checks for individuals registering as associated persons or being listed as principals, and registration fees.

Depending on the amount of assets under management, investment advisers are required to submit a completed Form ADV to either the SEC or the state(s) in which the investment adviser will conduct business. The Form ADV is submitted online through FINRA, which handles the registration process. Information set forth in the ADV includes ownership information, proposed business activities and arrangements, background regarding principals, management of conflicts of interest and registration fees.

Investment companies are required to submit an application to the SEC and, if securities will be issued, the company must follow the securities registration process required by the SEC.

Derivatives

In order to register with the CFTC, applicants must submit applications to the National Futures Association (NFA), which handles the registration process for the CFTC. Depending on the type of registrant, documents and information that are submitted can include applications, audited financials, written compliance and supervisory procedures, fingerprint cards/background checks for individuals registering as associated persons or being listed as principals, and registration fees.

Insurance and Money Transmission

Each state has its own process for becoming authorized in the insurance industry or money transmission industry, but typically registration will involve the submission of an application, registration
fee, background and fingerprints for senior management, and details regarding the intended business.

7. What financial services “passporting” arrangements does the US have with other jurisdictions?

Banking
The concept of passporting is not available under U.S. banking laws and regulations.

Securities and Investments
The concept of passporting is not available under U.S. securities laws and regulations.

Derivatives
The concept of passporting is not applicable under the CEA.

Insurance
Although the appropriate state’s laws should be reviewed to confirm, the concept of passporting is likely not available under state insurance laws.

Money Transmission
Although the appropriate state’s laws should be reviewed to confirm, the concept of passporting is likely not available under state money transmission laws.

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Venezuela

1. Who regulates banking and financial services in Venezuela?

The Venezuelan financial system has three main branches: (i) the banking sector; (ii) the insurance sector; and (iii) the securities market sector. Each branch has a government entity that supervises, controls and regulates the activities carried forth by individuals, financial institutions and other entities within the specific sector. The National Superintendence of the Institutions of the Banking Sector (NSIBS) is the government entity in charge of banking-related matters. The National Superintendence of Insurance Activity (NSIA) is the government entity in charge of insurance related matters. The National Superintendence of Securities (NSS) is the government entity in charge of securities market-related matters. In addition, the Superior Entity of the National Financial System (SONFS) acts as an umbrella for those three main government entities and is integrated into the Ministry of Economy and Finance (the “Ministry”). The allocation of responsibilities between the SONFS, NSIBS, NSS and the Central Bank of Venezuela (CBV) is as follows:

(a) The SONFS regulates, supervises, controls and coordinates the operation and functionality of the institutions and entities that compose the national financial system. Additionally, it has the power to impose administrative sanctions to public officers working at the aforementioned entities and individuals who engage in conduct prohibited by law and that are not included in the special legislation that regulates the three main branches.

(b) The NSIBS supervises and authorizes financial intermediation in Venezuela and the banks that carry forth financial intermediation. The NSIBS is empowered to impose administrative sanctions to the entities that breach applicable regulations, to intervene and liquidate entities subject to its control, and to enact regulations.
(c) The NSIA controls, supervises and authorizes all insurance activities in Venezuela carried forth by insurance or reinsurance companies, agents and brokers, and representative offices of insurance or reinsurance companies, among others. The NSIA is empowered to impose administrative sanctions to the entities that breach applicable regulations, to intervene and liquidate entities subject to its control, and to enact regulations.

(d) The NSS oversees the operation of the securities market; the issuance, purchase, custody and brokerage of securities issued by private entities (securities issued by government or public entities are subject to different regulations); as well as the granting of authorizations to act as a securities broker or an investment advisor. The NSS keeps and controls the National Registry of Securities.

(e) The CBV is in charge of: (i) regulating and authorizing methods of payment; (ii) enacting exchange agreements that constitute the legal framework of the exchange system, in coordination with the Executive Branch; (iii) setting passive and active interest rates; (iv) determining and controlling the mandatory reserves that all financial institutions must keep deposited in the CBV; and (v) controlling and administering the Strategic Exchange and Financial Information System.

2. What are the main sources of regulatory laws in Venezuela?

Each branch of the Venezuelan financial system has a specific law that governs the general aspects of the financial activities and the powers and structure of the corresponding regulating entities.

- The Financial System Law (FSL) regulates the financial system.
The Law of the Institutions of the Banking Sector (LIBS) regulates the banking sector.

The Securities Market Law (SML) regulates the securities market.

The Insurance Activity Law (IAL) regulates the Insurance Sector.

Additionally, there are special laws that regulate some specific financial activities, and each regulating entity has the power to enact regulations that establish mandatory requirements or provisions for all subjects that carry forth restricted activities within the corresponding sector. The areas regulated by regulations are very broad. They generally cover, amongst others, registration procedures and requirements, rules on promotion or advertisement of the restricted activities set forth by the special laws, and information that must be supplied to the entity by the regulated subjects and applicable accounting rules.

3. What types of activities require a license in Venezuela?

There are several activities that require prior licensing and authorization (“restricted activities”).

(a) In the Banking Sector:

  o Deposit Taking – Deposit taking activities in Venezuela are strictly reserved to banks and financial institutions licensed under the Banking Law. The Banking Law regulates the following types of deposits: (i) deposits at sight; (ii) saving deposits; and (iii) deposits at term. All deposits must be nominative. Deposits at term must be evidenced through certificates issued by the corresponding bank.
Mortgages – Banks and financial institutions licensed under the Banking Law may grant loans guaranteed by real estate or securities and other assets and credits. Such loans are subject to certain limitations, conditions and prohibitions set forth in the Banking Law. In particular, banks are prohibited from granting loans guaranteed by a mortgage over real estate assets that exceed: (i) an amount equivalent to 85 percent of the value of the mortgaged real estate; and (ii) a term of 35 years.

Consumer Lending – Banks and financial institutions licensed under the Banking Law may grant consumer loans subject to the terms, restrictions and prohibitions set forth in the Banking Law. In particular, consumer loans may not exceed: (i) an amount equivalent to 15,500 Tax Units; and (ii) a term of five years.

Credit and Charge Cards – The issuance and operation of credit cards, debit cards, prepaid cards and financing or electronic payment cards in Venezuela is strictly reserved to banks, financial institutions and credit card-issuing and -operating companies authorized by the Office of the Superintendent of Banks.

E-Money Product – The Credit Card Law defines financing or electronic payments cards as cards that allow cardholders to make purchases or payments in Venezuela or abroad by magnetic and electronic means or by any other form of technology. The issuance and operation of financing or electronic payment cards in Venezuela is strictly reserved to banks, financial and credit card-issuing and -operating companies duly authorized by the Office of the Superintendent of Banks.
o Trusts – Under Venezuelan law, only licensed banks and insurance companies incorporated and licensed in Venezuela are entitled to act as trustees.

(b) In the Insurance Sector:

o Insurance Activity – Insurance activity is defined as all relations or operations related to the insurance and reinsurance contracts, including intermediation, risks inspection, appraisals, loss adjustments, prepaid medicine services, bonds and premium financing (“Insurance Activity”). Subjects regulated by the IAL must be licensed or authorized by the NSIA.

(c) In the Securities Market Sector:

o Public Offerings – The SML defines a public offering of securities as an offering made to the public or to sectors or designated groups by means of any type of publicity or dissemination. The NSS has the power to qualify an offering in case of doubt as to its nature. All public offerings must be authorized by the NSS.

o Soliciting, Advising and Brokerage Services – The performance of securities brokerage and investment advisory activities within Venezuela is a restricted activity that may only be carried out by authorized securities operators and investment advisors duly authorized by the NSS. The distribution in Venezuela of investment research reports containing recommendations in connection with the purchase and sale of securities issued in Venezuela or abroad, constitutes the rendering of investment advisory services under the SML.
4. How do Venezuela’s licensing requirements apply to cross-border business into Venezuela?

As a general rule, with a few exceptions, Venezuelan law only applies on a territorial basis. This means that Venezuelan law only applies to activities totally or partially conducted within Venezuela. Venezuelan law does not apply in cases where all the activities are conducted totally outside of Venezuela.

Generally, there are no statutory provisions or standards that clearly and conclusively define the situs where a particular financial activity or contact should be deemed to have taken place. The existing rules that might apply are broad, unclear and vague. In addition, there is no significant and coherent body of case law or administrative practice to provide a level of predictability on the construction and application of the general principles embodied in the statute.

It is not possible to conclude with absolute certainty when a restricted activity is deemed to take place entirely outside of Venezuela because of the absence of clear and definitive rules for the determination of the situs of cross-border contacts in Venezuelan laws. Given the lack of clear and definitive rules establishing clear guidelines, all efforts should be made to avoid any type of restricted activity within Venezuelan territory, and an in-depth analysis should be undertaken on a case-by-case basis.

Specific sector analysis:

(a) Banking Cross-Border Business – As Venezuelan law applies only on a territorial basis, it only applies to activities totally or partially conducted within Venezuela. Therefore, Venezuelan law does not apply in cases where all the activities are conducted totally outside of Venezuela. However, in most cases, there are no statutory provisions or standards that clearly and conclusively define the situs where a particular financial activity or contact should be deemed to have taken place. Generally speaking, the existing rules that might apply
are broad, unclear and vague. In addition, there is no significant and coherent body of case law or administrative practice to provide a level of predictability on the construction and application of the general principles embodied in the statute.

Consequently, any activity that may constitute financial intermediation (see 3.i. above) must be authorized by the regulating entity. If an institution executes any restricted activity, totally or partially within Venezuela, without the proper authorization, it may be subject to severe sanctions (fines and/or imprisonment).

(b) Insurance Cross-Border Business – Pursuant to the regulations set forth by the Insurance Law, only the subjects that have been authorized and registered in Venezuela, regulated subjects, may execute insurance activities within the territory of the republic. Similar criteria as explained above (see 4.i. regarding territorial application of the law), applies to the restricted activities. Regulated subjects that wish to conduct restricted activities, either partially or totally in Venezuela, must first obtain the proper authorization issued by the regulating entity.

The Insurance Activity Law applies to all Insurance Activity: (i) developed within Venezuela or materialized abroad; (ii) carried out by the entities regulated under the law and those individuals and legal entities performing activities characterized as insurance activities; and (iii) related to risks or persons located in Venezuela.

(c) Securities Cross-Border Business – The SML empowers the NSS to issue the rules governing the activities of foreign entities intending to engage in securities brokerage activities and advisory services in Venezuela. These rules have not been issued so far.
The conduct of securities brokerage and intermediation activities and the rendering of investment advisory services within Venezuela is strictly reserved to authorized securities operators and investment advisors licensed under the SML. Additionally, the public offering of securities in Venezuela is subject to the prior authorization of the NSS. Private offerings of securities are totally out of the scope of the SML and, hence, not subject to the prior authorization of the NSS.

5. What are the requirements to obtain authorization in Venezuela?

Requirements may vary depending on the financial institution and the sector in which the institution wishes to participate (banking, insurance or securities sector). In all cases, the source of funds is supervised and verified, as well as the experience and honor of the members of the board of directors of the corresponding entity. The entities in charge of the authorization process have a broad discretion and may ask for documents and information not specifically set forth in the applicable regulations.

- Banking Sector – All financial institutions must comply with the following requirements in order to be able to legally perform financial intermediation. An application must be submitted to the SONFS and the corresponding authorization must be obtained. Financial institutions must:

  (i) adopt the form of a stock corporation;
  
  (ii) have at least 10 shareholders;
  
  (iii) have its capital stock represented in nominative shares of a single class;
  
  (iv) have a favorable result in the economic study carried forth by the regulating entity and backed by the binding opinion of the SONFS;
(v) have the minimum stock capital required by law (which varies depending on the financial institution); and

(vi) maintain a board of directors comprised of at least seven members. Such members must meet several standards set forth in the applicable law.

There are several prohibitions that must also be taken into account when applying to obtain an authorization.

- Insurance Sector

(i) Onshore Insurer – In order to obtain and maintain the authorization to operate, insurance companies must, among others:

a. adopt the form of a stock corporation;

b. indicate in the Articles of Incorporation that the company will be engaged in the insurance or reinsurance operations established in the Insurance Law;

c. maintain a board of directors comprised of at least five members, all of whom must meet several standards set forth in the Insurance Law;

d. have at least five shareholders (those members with more than 5 percent of the capital stock of the company must evidence experience and knowledge on the insurance and reinsurance activity.);

e. nominative shares of a single class; and
f. comply with additional capital stock requirements.

• Securities Market Sector

The application to be submitted to the NSS in order to make a public offering of securities must contain the following information and documentation:

(i) An identification sheet containing the following information:

- Name of the company
- The company’s registration information
- The company’s tax information number (RIF)
- Address and phone numbers of the company’s main office
- Name, address and telephone number of the authorized representative of the company responsible for filing and formalizing the application
- Description of the securities

(ii) Preliminary version of the prospectus – If the Company determines that additional information will be useful in informing the investor of the company’s position, such information may also be included in the prospectus. The prospectus must be drafted in accordance to the Rules on Public Offers.

(iii) Additional information not required in the prospectus – This information shall be for NSS internal use. The
public shall have access to this information, unless the company requests confidential treatment and the NSS so agrees. To protect investors, the NSS may provide that part of the information provided herein be included in the prospectus.

(iv) Exhibits and copies of supplementary material to be distributed to the public

6. What is the process for becoming authorized in Venezuela?

- Banking Sector

(i) Request for the granting of the authorization – The person or entity representing the parties interested in constituting a financial institution must file an application stating their intent and provide all of the information and documentation required by law.

(ii) Analysis of the request by the regulating entity – The regulating entity will verify compliance with the applicable requirements and analyze the documents submitted and their content.

(iii) Economic study – There must be a favorable result in the economic study carried forth and the endorsement of the binding opinion of the SONFS.

After receiving the request for authorization, the regulating entity will have a three month period (extendable for another three months) to issue a statement regarding the request. For the authorization to be official, it must be published as a resolution of the regulating entity in the Official Gazette. The authorized parties will submit before the Commercial Registry a copy of the Statutory By-Laws and of the Official Gazette.
• Insurance Sector

(i) Request to act as promotor – The party interested in acting as a promotor for an entity of the insurance sector must file an application for authorization, which must be published in a newspaper that has nationwide circulation.

(ii) Request to constitute an entity of the insurance sector – This request must be filed within the three months following the authorization of the promotion. The written request must be accompanied by the information established in Article 47[a-f] of the Regulation of the Law of the Insurance Activity. Once the authorization to constitute the insurance sector entity has been granted, the regulating entity will hand back the Statutory By-Laws duly sealed for their registration and publication.

(iii) Authorization to Operate – Within the following six months of the issuance of the authorization to constitute an entity of the insurance sector, the interested parties must comply with the formalities set forth by law and submit the documents required thereof. The regulating entity will verify the due adhesion to the regulations and grant - once compliance has been verified- the authorization to operate as an entity of the insurance sector.

• Securities Market Sector

Any entity that wishes to publicly offer their shares and other securities must first register with the National Securities Register (NSR). To do so, the entity must comply with the following formalities:
(i) Register with the NSR the amount and class of securities that the entity wishes to publicly offer. Additionally, the entity must provide information that evidences that it has been duly and legally constituted and that there are no legal impediments for the registration of the entity with the NSR.

(ii) Once the issuance of securities has been registered with the NSR, pursuant to the requirements set forth in point (i), the entity must request a separate authorization to publicly offer the registered securities. The process to obtain said authorization must begin within the following three months of the registration with the NSR.

(iii) For the primary placement of shares, the issuing entity must notify and inform the National Superintendence of Securities of the series, number and class of shares that will be issued and the time period within which they will be offered. Also, the issuing entity must notify, through a newspaper that has nationwide circulation, the characteristics of the offering. Once the shares have been allocated, purchased, the issuing entity must then notify the National Superintendent of Securities of the characteristics of the purchase or allocation (buyer, number and class of shares purchase by each purchaser and so on).

(iv) All placements of securities must then be registered with the NSR. Once the following formalities have been complied with, all shares will be considered legally placed and purchased, thus concluding the process.
Other procedures, such as the procedure to obtain the authorization to act as a public securities broker or as an investment advisor, also require the filing of applications with information and documentation required by the applicable laws and regulations and by the practice followed by the NSS.

7. **What financial services “passporting” arrangements does Venezuela have with other jurisdictions?**

Venezuela does not currently have any passporting arrangements for foreign funds or securities.

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1. **Who regulates banking and financial services in Vietnam?**

In Vietnam, the two following regulators are responsible for the authorization and supervision of banks, insurers and other financial institutions: the State Bank of Vietnam (SBV) and the Ministry of Finance (MOF). The allocation of responsibilities between the SBV and the MOF is as follows:

(a) The SBV regulates banks and other credit institutions (i.e., finance companies, financial leasing companies, other non-bank credit institutions, microfinance institutions and People’s Credit Funds). The SBV (through its headquarters in Hanoi and its network of provincial branches) performs the traditional role of a central bank and regulates the banking system in Vietnam, that is, it is in charge of granting licenses for the establishment and operation of banks in Vietnam, issuing guidance for banking activities, and supervising the banking system.

(b) The MOF regulates insurance companies, securities companies and fund management companies. The State Securities Commission (SSC), which is an organization under the MOF, regulates all securities activities in Vietnam.

2. **What are the main sources of regulatory laws in Vietnam?**

Banking activity in Vietnam is governed by the Law on the State Bank of Vietnam and the Law on Credit Institutions, both passed by the National Assembly on 16 June 2010, and effective since 1 January 2011. The Law on Securities and the Law on Insurance Business comprise the main legal framework in Vietnam for securities activities and insurance business. The government and the relevant authorities (i.e., the SBV and the MOF) have also issued a number of
implementing decrees, circulars and decisions to govern banking activities.

International treaties are also an important legal source, especially for offshore providers, to provide cross-border services into Vietnam.

3. What types of activities require a license in Vietnam?

Vietnamese regulations provide on a broad range of activities for each type of financial institution.

For banks and other credit institutions, these activities include:

- Deposit taking, that is, receiving money from an organization or individual as a demand or term deposit, or a savings deposit, and issuing deposit certificates, bills or treasury bills, and other forms of receiving deposits on the principle of full payments of principals and interest to the depositor under agreement

- Credit extension, that is, an agreement allowing an organization or individual to use a sum of money, or a commitment allowing the use of a sum of money, on the repayment principle by the following types of operations: lending, providing discounts, financial leasing, factoring, providing bank guarantees and other credit extension operations

- Provision of services via account payments, that is, the provision of payment instruments; provision of services of payment by check, payment order, payment authorization, collection, collection authorization, bank cards, letters of credit and other payment services for clients via their accounts

- Borrowing of loans from the SBV and/or other credit institution and financial institutions
• Dealing in and providing foreign exchange services and derivative products

• Other business activities, which include cash management, banking and financial consultancy, asset management and preservation, and safekeeping; consultancy of corporate finance, business acquisition, sale, consolidation and merger and investment; trading in government bonds and corporate bonds; money brokerage services; and securities depository, gold trading and other business activities related to banking operation

• Commercial banks may also act as a custodian bank for securities following registration with the SSC for providing depository services and supervising the management of public funds and securities investment companies. The assets that a bank manages as a custodian must be held separately from its other assets. The duties of a custodian bank can also include the certification of reports prepared by a fund management company or a securities investment company (as applicable).

• Commercial banks may operate as an agent to provide insurance products and services for Vietnamese customers through its banking channels, with approval from the SBV.

• Finance companies may issue money deposits, provide loans (including consuming loans), provide guarantees and issue credit cards.

• Finance leasing companies may take deposits from organizations, issue money deposits, and provide finance leases and operating leases.
The business activities for insurance companies, securities companies and fund management companies include, but are not limited to, the following:

- Insurance companies may carry out insurance business (effecting and carrying out contracts for both life and general insurance).
- Securities companies may trade in securities and other investments as principal or as the agent. This would cover trading as brokers as well as proprietary trading.
- Securities companies may carry out securities issuance underwriting and securities investment consultancy.
- Securities companies may provide financial consultancy services and other financial services.
- Fund management companies may carry out management of securities, investment funds and securities portfolios.

The SBV, SSC and the MOF are the state bodies with the authority to grant licenses for banks and other financial institutions. For banking activities, the scope of a credit institution’s permitted activities is specified in its banking license.

4. How do Vietnam’s licensing requirements apply to cross-border business into Vietnam?

The cross-border supply of banking services into Vietnam is subject to Vietnamese law and the international treaties that Vietnam has acceded to. In general, offshore financial institutions can supply the following services into Vietnam on a cross-border basis: (i) the provision and transfer of financial information and financial data processing and related software by suppliers of other financial services; and (ii) advisory, intermediation and other auxiliary financial services.
Lending services from an offshore provider is permitted under Vietnamese law and is subject to registration with the SBV where applicable. The offshore lender may provide loans into Vietnam without license or approval from the SBV.

5. What are the requirements to obtain authorization in Vietnam?

Foreign investors who intend to invest in banking activities in Vietnam may purchase shares of Vietnamese commercial banks and/or set up a local bank or a foreign bank branch in Vietnam.

Restrictions on foreign ownership in Vietnamese banks

The acquisition by foreign investors of a shareholding in a Vietnamese commercial joint stock bank is subject to significant restrictions. The regime has recently been slightly amended to support the restructuring of the banking system.

The total aggregate shareholding of foreign investors in a Vietnamese bank may not exceed 30 percent of its ‘charter capital.’ Other ownership limits applicable to each type of foreign investor, including Vietnamese investors, are as follows:

- Individual investors – 5 percent
- Organizations – 15 percent
- Strategic investors: – 20 percent

The shareholding of any single foreign investor and its affiliated persons may not exceed 20 percent of the charter capital of a Vietnamese bank.

The Prime Minister has the right to lift the limits on foreign shareholders’ participation in a Vietnamese credit institution, but only for the purpose of restructuring weak credit institutions facing difficulties or ensuring the stability of the credit institutions system.
The determination of institutions that would fall within this definition will, in practice, be at the discretion of the SBV or other competent authorities.

**Banks established in Vietnam must operate under one of the following permitted forms:**

- A state-owned commercial bank where 100 percent of the charter capital is owned by the state
- A joint stock commercial bank
- A joint venture commercial bank
- An entirely foreign-owned commercial bank

The parent bank must have total assets of more than USD10 billion at the end of the year prior to its application. Entirely foreign-owned banks must comply with Vietnamese prudential requirements on a stand-alone basis.

**Foreign bank branches**

Foreign banks may also open branches as subsidiary units with no separate legal status. The parent bank must have total assets of more than USD20 billion at the end of the year prior to application. A foreign bank branch may not open transaction offices at locations other than its registered branch office, which in practice, poses real practical problems for foreign banks in expanding their activities in Vietnam.

**Representative offices of foreign banks**

Some foreign banks operate through representative offices, which are not permitted to conduct commercial/profit-generating activities in Vietnam. A representative office merely acts as a liaison office between the parent bank and their clients in Vietnam. As such, its activity is generally limited to market research and the promotion and
follow-up of the offshore parent entity’s activities involving Vietnamese credit institutions or companies.

6. What is the process for becoming authorized in Vietnam?

In general, a joint venture or wholly foreign-owned credit institution may obtain a license when fully meeting the following conditions, among others:

(a) The foreign credit institution may conduct banking operations under the law of the country in which it is headquartered.

(b) The operations to be conducted in Vietnam are those that the foreign credit institution is licensed to conduct in the country in which it is headquartered.

(c) The foreign credit institution’s operations are healthy and it meets requirements on total assets, financial status and safety ratios under the SBV’s regulations.

(d) The foreign institution makes a written commitment to provide support in finance, technology, governance, administration and operation for the joint venture or wholly foreign-owned credit institution. It guarantees that the joint venture or wholly foreign-owned credit institution preserves the actual value of its charter capital not lower than the legal capital and observes regulations on safety assurance under the laws.

(e) A competent foreign authority has signed an agreement with the SBV on inspection and oversight of banking operations and exchange of information on banking safety oversight, and has made a written commitment on consolidated oversight of the foreign credit institution’s operations according to international practices.
In general, a foreign bank branch may obtain a license when fully meeting the following conditions, among others:

(a) The foreign credit institution may conduct banking operations under the law of the country in which it is headquartered.

(b) The operations to be conducted in Vietnam are those that the foreign credit institution is licensed to conduct in the country in which it is headquartered.

(c) The foreign credit institution’s operations are healthy and it meets requirements on total assets, financial status and safety ratios under the SBV’s regulations.

(d) A competent foreign authority has signed an agreement with the SBV on inspection and oversight of banking operations and exchange of information on banking safety oversight, and has made a written commitment on consolidated oversight of the foreign credit institution’s operations according to international practices.

(e) The foreign bank makes a written commitment to be liable for all obligations and commitments of its branch in Vietnam; and to guarantee that the actual value of the branch’s allocated capital is not lower than the legal capital, as well as of its observance of regulations on safety assurance.

In general, a foreign credit institution or another foreign institution engaged in banking operations may obtain a license for a representative office when fully meeting the following conditions, among others:

(a) It is a legal entity licensed for banking operations overseas.

(b) Under the law of the country in which it is headquartered, it may set up a representative office in Vietnam.
The legal capital required for the joint venture bank and wholly foreign-owned bank is VND3,000 billion (approximately USD150 million), and USD15 million for a foreign bank branch.

The official fee for setting up a foreign-owned bank or a foreign bank branch in Vietnam is approximately USD7,000.

By law, the timeline for the establishment of a foreign-owned bank or a bank branch spans to about one year. However, in practice, the timing could vary from two or three years to even six or seven years in some cases. In addition, as a matter of policy, in recent years the SBV has not supported the setting up of new banks wholly owned by foreign companies and foreign bank branches in Vietnam.

7. What financial services “passporting” arrangements does Vietnam have with other jurisdictions?

Vietnam does not currently have any passporting arrangements for foreign countries in financial services. That being said, foreign financial institutions who wish to set up a presence in Vietnam or provide cross-border services into Vietnam must comply with Vietnamese laws and the international treaties to which Vietnam has acceded.

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