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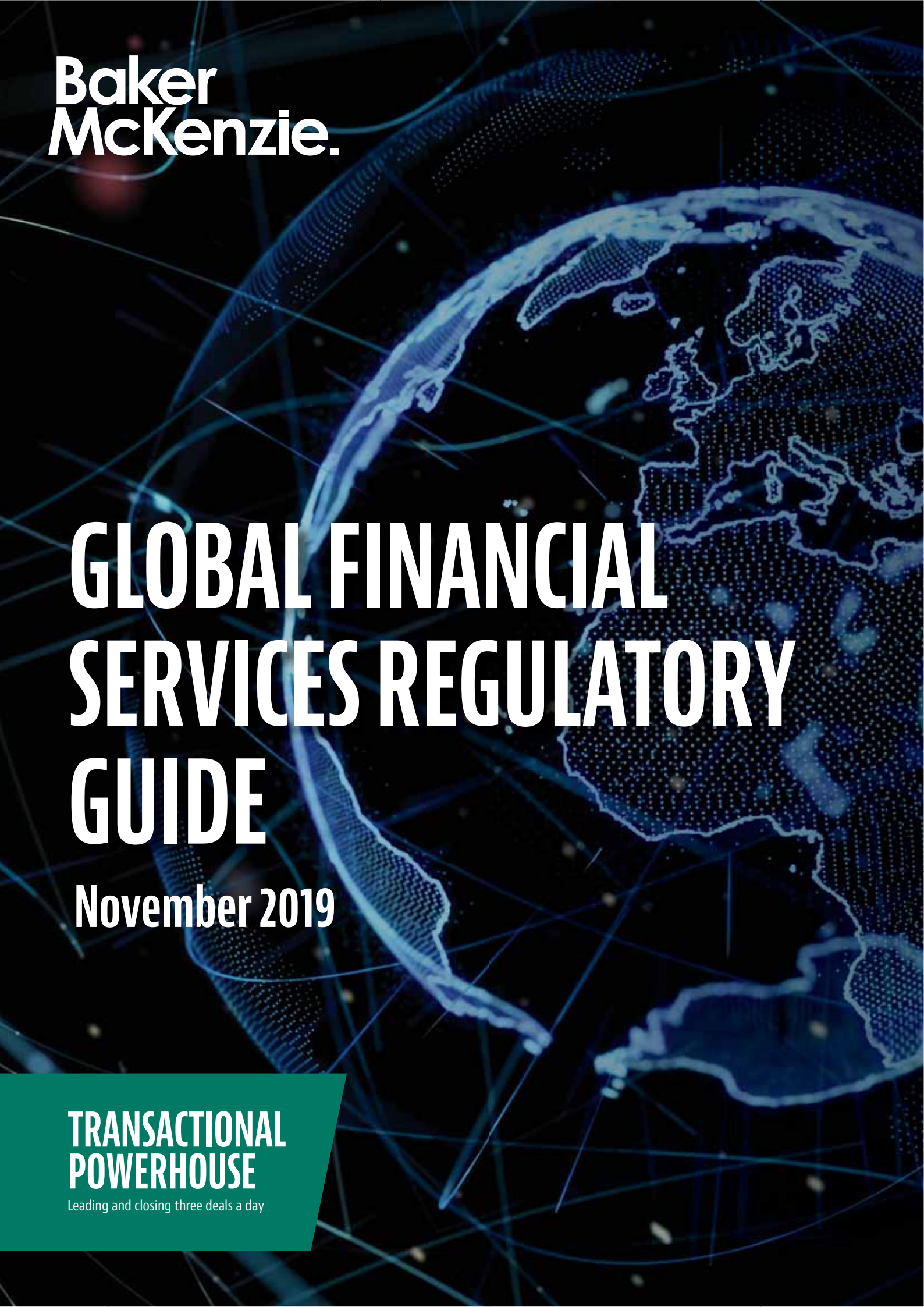

GLOBAL FINANCIAL SERVICES REGULATORY GUIDE

November 2019

TRANSACTIONAL POWERHOUSE

Leading and closing three deals a day

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

It covers 35 jurisdictions and brings together the collective knowledge and experience of more than 500 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.

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Argentina

1. Who regulates banking and financial services in Argentina?

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

The Argentine Central Bank's main duties include:

a) The regulation of the financial system

b) The enactment of financial regulations

c) The flow of funds and regulation of interest rates

d) The authorization regarding the registration of foreign banks

In accordance with the principle of equal treatment between both national and foreign capitals, 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*), which is the entity in charge of the regulation of public offerings, brokers and stock exchanges. 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 banking and financial activities in Argentina is mainly provided by the following laws:

- Financial Entities Law 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 Financial Entities Law regulates financial entities' organization, authorization and operational requirements as well as obligations, and permitted and prohibited activities. It also establishes sanctions for noncompliance, which include warnings, fines, disqualifications and revocation of the license to operate as a financial entity.
- Argentine Central Bank's Charter Law No. 24,144 - This law provides for the general organization of the Argentine Central Bank, 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.

- Argentine Central Bank's implementing regulations - The Argentine Central Bank issues several resolutions to further regulate and implement the financial system in Argentina. These 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 Argentine Securities Commission as the regulatory authority for the public market.
- Productive Financing Law No. 27,440 - This regulates derivatives operations - among others - and establishes the Argentine Securities Commission as the regulatory authority for the derivative market.
- Argentine Securities Commission's implementing regulations - The Argentine Securities Commission is the official body responsible for the promotion, supervision and control of stock markets. The main purpose of this commission 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 requires registration and licensing with the Argentine Central Bank. However, registration and licensing would not apply if the banking activities were performed entirely from outside Argentina following certain guidelines. In addition, it is important to note that the Financial Entities Law distinguishes among different types of financial entities, which include among others, commercial banks, investment banks, mortgages banks and financial entities.

In connection with capital markets, any public offering of securities is subject to the supervision and prior authorization of the Argentine Securities Commission. In addition, stockbrokers and other agents acting in Argentina within the Argentine securities markets must also be registered with the Argentine Securities Commission.

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

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

Any financial intermediation activity in Argentina should be conducted by local legal entities duly registered and licensed by the Argentine Central Bank. As stated in Article 13 of the Financial Entities Law, any foreign financial entity willing to promote its banking services and products in Argentina must first request the Argentine Central Bank's authorization. Once the authorization is granted, the entity will be allowed to give advice, analyze and manage financing and guarantees, as well as to carry on any other business of the foreign entity. The representative may not perform specific banking activities, including any action that directly or indirectly enables the representative to intermediate or raise funds in the local market.

With regard to securities, prior registration is required to operate in the Argentine capital market. The request for authorization to operate as a broker or other type of agent must be submitted to the Argentine Securities Commission for its analysis and approval.

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

To become an authorized financial entity, an applicant must satisfy the requirements stated by the Argentine Central Bank.

In considering the application for authorization, the Argentine Central Bank 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 who may be subject to financial penalties under Article 41 of the Financial Entities Law must provide a Guarantee of Performance.

b) Legal Address - The financial institution to be set up must establish a legal address in the city of Buenos Aires. This address will allow the Argentine Central Bank 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 a report with their participation in any other company (financial or not) in which they have holdings exceeding 5% of the corporate capital.

For the regulatory requirements regarding the process for obtaining authorization to conduct business as a financial entity or securities' broker, please refer to our answer under the next section.

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

To obtain authorization for banking activities, 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 Superintendence of Financial and Exchange Institutions. Also, the amount of ARS 51,000 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 is required:
  a) A certified copy of the bylaws
  b) A copy of the balance sheet and information regarding creditors and debtors
  c) A list of members of the board of directors with personal information regarding each of them
  d) A list of shareholders
- A draft of the bylaws or constitutional documents of the entity
- Anti-Money Laundering/Terrorism Financing handbook
- IT systems to be installed
- 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 Financial Entities Law
- A certificate of judicial records for each shareholder
- A description of the administrative organization of the institution
- A proposed budget and business plan for the next five years
- Organizational chart
- 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 ARS 15 million and ARS 26 million. For other financial entities, the minimum capital required will vary depending on the type.

On the other hand, the requirements to become an agent to operate in the capital market vary depending on the type of registration and license required (e.g., custody agent, broker, negotiating agent, clearing and settlement agent, among others).

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

- Copy of the bylaws and shareholders registry
- Anti-Money Laundering/Terrorism Financing sworn statement
- Payroll and personal information of the board of directors and auditors
- Copy of financial statements
- Information about external auditors
- Tax ID
- Minimum net worth (e.g., ARS 18 million for clearing and settlement agents)
- Sworn statement certifying the truth and correctness of the information provided at the registration request by electronic means

- Shareholder resolution authorizing the registration as an agent
- Sworn statement subscribed by the managers and directors of the company certifying they do not have an incompatibility according to the regulation issued by the Argentine Securities Commission

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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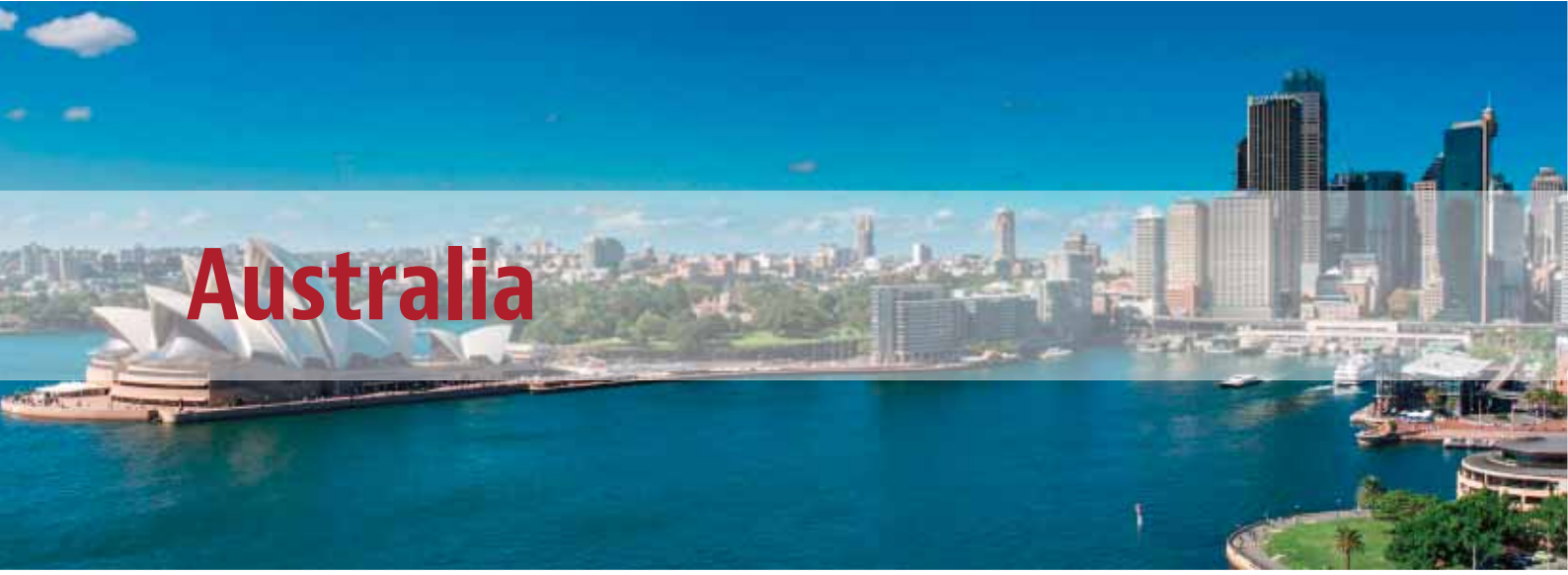

Australia

1. Who regulates banking and financial services in Australia?

Australia has four 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**), the Reserve Bank of Australia (**RBA**) and the Australian Transaction Reports and Analysis Centre (**AUSTRAC**). The allocation of responsibilities between APRA, ASIC, the RBA, and AUSTRAC 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 longstanding responsibility for the overall stability of the financial system, monetary policy and payment systems.

d) AUSTRAC regulates anti-money laundering and counter-terrorism financing, and is Australia's financial intelligence unit, combatting tax evasion, money laundering, terrorism and other forms of organized crime.

Please note that the roles and responsibilities of APRA and ASIC are subject to ongoing consideration and possible change, given the recommendations set out in Commissioner Hayne's Final Report to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

The broad framework for the regulation of banking and financial services is determined by the Australian government. As an executive arm of the 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) ("**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) ("**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), National Consumer Credit Protection Act 2010 (Cth), Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (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.

i. 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.

ii. Financial services

Any person or entity that is carrying out 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.

iii. Credit activities

Any person or entity that is carrying out activities relating to a type of credit or consumer lease to which the National Credit Code applies and that is an activity specified in the National Consumer Credit Protection Act 2010 (Cth) must obtain an Australian Credit Licence (**ACL**).

It is important to note that the National Credit Code only applies to circumstances where the debtor is a natural person or a strata corporation.

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

i. 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 out a business" in Australia. Whether an entity is "carrying out a business in Australia" depends on the factual circumstances of each case. However, an entity will generally be deemed to be carrying out a business in Australia if it provides services with system, repetition and continuity. Key indicia of carrying out 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 out 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 that 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 out a business in Australia."

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

ii. Banking business

APRA will authorize branches of foreign banks to carry out 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.

iii. 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 (**FFSPs**) have often relied upon to exempt them from the requirement to hold an AFSL:

1) Limited connection exemption

ASIC has historically granted class order relief from the requirement to hold an AFSL to persons who provide financial services with a "limited connection" to Australia ("**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 out a financial services business in Australia but for engaging in Inducing Conduct.

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 that 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.

Under the ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182, the Limited Connection Exemption was due to expire on 30 September 2019. ASIC intended to repeal the relief "because on the information we currently have, it appears that such relief no longer strikes the appropriate balance between cross-border investment facilitation, market integrity and investor protection envisaged in RG 54" (see CP 301). On 3 July 2019, ASIC announced that it would extend the Limited Connection relief to 31 March 2020 while they consult with stakeholders (see CP 315).

Given stakeholder submissions regarding the repeal of the Limited Connection Exemption highlighted the relevance of the Limited Connection Exemption for FFSPs in the funds management sector, ASIC has recently proposed to give relief to FFSPs providing funds management financial services. This will be subject to a cap on the scale of the FFSP's services to professional investors in Australia. It is also likely ASIC will impose conditions as part of this relief. Please note this is only a proposal as at August 2019 and we will update you on the progress of this proposal.

2) 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 Australian financial services licensing requirements where that foreign entity is regulated by a specified foreign regulator ("**Passporting Exemption**"). (For further details, see Section 7.) The Passporting Exemption is also referred to as the Sufficient Equivalence Exemption.

The Sufficient Equivalence Exemption will be extended till 31 March 2020, and a new foreign AFSL regime will take its place, commencing on 1 April 2020. There will be a 24-month transition period for FFSPs that are already relying on the Sufficient Equivalence Exemption. It is proposed that the new AFSL regime for FFSPs would involve FFSPs applying for a modified AFSL which would:

a) Require compliance with the general obligations under s 912A (for example, to have adequate risk management systems and to do all things necessary to ensure that the financial services covered by the license are provided efficiently, honestly and fairly)

b) Exempt FFSPs from specific provisions under Chapter 7 Corporations Act, where the relevant overseas regulator monitors and enforces the FFSP's compliance in relation to business activities in Australia and the regulatory regime in the FFSP's home jurisdiction produces similar regulatory outcomes to the Australian regime

c) Put in place tailored conditions on FFSP

d) Require FFSPs to provide similar documentation in applying as is required for an ordinary AFSL

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

i. 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 AUD 50 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.

ii. RADI authorization

An applicant for an ADI authorization can first apply with APRA for a restricted authorized deposit taking (RADI) license if they meet the requisite criteria. This is an alternative to the direct route to an ADI authorization described above. A RADI license allows its holder to conduct limited banking business with adjusted prudential requirements, while simultaneously building their capabilities, infrastructure and resources. A RADI license can only be held for a maximum of two years.

iii. 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 out 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 losses 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?

i. 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.

See also our comments in Section 5 above regarding RADI authorizations.

ii. 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 Organizational 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 FFSP 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

e) provides financial services in Australia to wholesale clients only

Please note that while the Passporting Exemption currently applies, as at 1 April 2020, a new AFSL regime for FFSPs will replace it (see Section 4 above).

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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. The FMA is authorized to conduct on-site inspections at financial services providers. The FMA may pass legally binding regulations (*Verordnungen*) on the basis of existing laws, and regularly issues rules and guidelines (*Rundschreiben*), which are not legally binding, but set out FMA's legal position on particular regulatory matters and should 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.

The supervisory authorities of the European Union (i.e., 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 the supervision process, especially as they are responsible for issuing guidelines, recommendations and technical standards in relation to EU legislation.

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) so-called significant credit institutions, which are deemed to be relevant to the functioning of the Eurozone banking system. Eight Austrian banks qualify as significant institutions. A list of all significant institutions can be obtained from the European Commission's website. The other credit institutions continue to be subject to supervision by the FMA and will only be indirectly supervised by the ECB.

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 2018* or WAG 2018; implementing MiFID II).
- The provision of payment services is regulated by the Austrian Payment Services Act (*Zahlungsdienstleistungsgesetz* or ZaDiG; implementing the Payment Services Directive II).
- 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 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 rules in Austria are based on EU directives and regulations.

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

The provision of financial services on a commercial scale in Austria generally constitutes a regulated business activity and is subject to Austrian licensing requirements. The following list includes examples for regulated financial services:

a) Banking services that are subject to licensing requirements under the BWG, including:
   - The acceptance of funds for the purpose of administration or as deposits (deposit business)
   - The provision of non-cash payment services, clearing services and current-account services (current account business)
   - Lending (irrespective of whether loans are provided to consumers or businesses)
   - The safeguarding and administration of securities (custody business)
   - The issuance and administration of payment instruments
   - The trading in securities or other investments on 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

- The brokerage of certain banking services, including the deposit and the lending business, whereas for the brokerage of loans, a trade license as commercial asset advisor under the Austrian Trade Code (*Gewerbeordnung*) may also suffice

b) Investment services that are subject to licensing requirements under the WAG 2018, including:

- The provision of investment advice in relation to financial instruments
- Individual portfolio management
- The receipt and transmission of orders relating to financial instruments

c) Insurance services that are subject to licensing requirements under the VAG, and insurance distribution activities that are subject to licensing requirements under the Austrian Trade Code (Licensing requirements set out in the EU Insurance Distribution Directive have, to date, not been transposed into the Austrian Trade Code.)

d) E-Money services that are subject to licensing requirements under the E-GeldG, including the issuance of electronic money by means of a prepaid electronic payment product based on either a card or an account

e) Payment services that are subject to licensing requirements under the ZaDiG, including, *inter alia*, the operation of payment accounts and the execution of payment transactions, money remittance, payment card issuance and acquiring card transactions

f) Collective portfolio/UCITS management activities that are subject to licensing requirements under the InvFG, and the management of AIF subject to licensing requirements under the AIFMG

g) The provision of investment services subject to licensing requirements either under the WAG 2018 (if in relation to financial instruments) (see item (b) above) or under the Austrian Trade Code (requiring a trade license as commercial asset advisor)

Crypto assets are not specifically regulated under Austrian law; however, depending on the nature of the services or products offered, they may fall within the scope of the above-mentioned regulatory framework. The same applies to initial coin-offerings (ICO), where regulatory requirements (for example, a prospectus requirement under the KMG) depend on the specifics of each individual ICO. The past treatment of crypto assets as mere unregulated chattels by the regulator in Austria is, in our view, no longer sustainable.

A particular license may also include the authorization to pursue activities regulated by other supervisory laws (e.g., an Austrian bank does not require a separate license under the WAG 2018 to provide investment services, but it is required to observe the respective provisions of the WAG 2018 when rendering investment services).

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.

Austria

Austrian law itself does not specify which criteria have to be fulfilled for services to qualify as services rendered in or cross-border into Austria, and no official FMA guidance has been published in this regard. The Austrian Supreme Court has found that the 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, considering, among other things, pre-contractual circumstances (such as the place where negotiations took place) and the contents of the contractual relationship.

Austrian laws and regulations can be **applicable** whenever a financial service provider domiciled outside of 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 of Austria)
- 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.

To avoid qualification as services rendered in or into Austria, it is further recommended that the relevant agreement with the customer be signed by both parties outside of Austria.

Marketing and communication activities are crucial for determining whether financial services are rendered in or into Austria. If an entity's marketing activities specifically target customers domiciled in Austria, such activities may 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 office of a foreign financial services provider. Note that EEA financial institutions may also passport their home-country license into Austria (see Passporting).

The licensing procedure itself will also depend on the license/activity in question. Typical requirements include:

- Location of place of establishment and head office in Austria
- Legal form of the entity (often a limited liability company or a stock company)
- Size, composition and qualification of management body, including residence and capabilities of directors
- Aptitude of qualified shareholders
- Appropriate resources, usually including minimum initial capital amounts and amounts at the management's free disposal

- Organizational (with regard to monitoring, controlling and limiting business risks and operational risks, establishment of a compliance organization) and staffing requirements (fitness, training and capabilities of certain officers)
- Appropriateness of articles of association/statute
- Availability of the entity for effective supervision by the FMA, meaning the absence of impediments arising from the applicant's close relation to other natural or legal persons or the applicability of third country regulations preventing the FMA from carrying out its monitoring duties

Please note that this list only represents typical requirements, while the actual requirements depend on the type of license sought.

Sanctions

The unauthorized provision of regulated services constitutes a punishable administrative offense, and can constitute a criminal offense punishable by the courts (such as fraud). The administrative fine for the unauthorized provision of regulated deposit or lending services amounts up to EUR 5 million or twice the amount of the benefit received from the breach.

The unauthorized provision of other banking, insurance or investment services may for instance be subject to a fine of up to EUR 100,000.

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

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

In order to obtain an Austrian license, the 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 law generally does not stipulate a certain minimum/maximum assessment period for license applications. In practice, the process for obtaining a banking license takes at least one year.

The documentation requirements depend on the type of license and the nature of the regulated activities. The documentation requirements are typically dependent on and linked to the requirements of the relevant authorization (see 5 above).

Note that the FMA does not have discretion whether to authorize an entity or not. If the (formal and material) requirements for an authorization are met, the FMA is required to provide the authorization. The applicant has a legal right to be provided with the authorization if the requirements are met.

Appeals against decisions of the FMA can be filed with the Federal Administrative Court (*Bundesverwaltungsgericht*), and ultimately, subject to additional requirements, with the Supreme Administrative Court (*Verwaltungsgerichtshof*) and/or the Constitutional Court (*Verfassungsgerichtshof*).

Austria

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

Since Austria is a member state of the EEA, EEA passporting rules apply into and out of Austria. An institution authorized to perform financial services in a member state under a local license may carry out regulated activities in other member states, including Austria. This enables the institution in question to provide cross-border services as well as to establish a branch in the host member state.

An EEA financial institution intending to passport into Austria is required to file a notification and certain documentation with its home country regulator, which will forward the notification and documents to the FMA (being the competent regulatory authority within Austria).

An institution authorized to perform financial services in Austria under an Austrian license may carry on business in other EEA member states by means of passporting. Passporting enables the institution in question to provide cross-border services as well as to establish a branch in the host member state. 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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Belgium

1. Who regulates banking and financial services in Belgium?

On 1 April 2011, Belgium adopted a "twin peaks" model with two autonomous supervisors, each with specific tasks and competences:

a) The National Bank of Belgium (NBB):

- The NBB oversees individual financial institutions (microprudential supervision) and looks after the proper functioning of the financial system as a whole (macroprudential supervision). The NBB thus ensures the financial soundness of financial institutions under its control, through requirements on solvency, liquidity and profitability.
- The NBB also oversees payment systems and securities settlement systems, supervising their proper functioning and ensuring their efficiency and solidity.

b) The Financial Services and Markets Authority (FSMA):

- The FSMA supervises the financial markets and listed companies, authorizes and supervises certain categories of financial institutions, is responsible for the "social supervision" of supplementary pensions and for supervising the unlawful offering of products and financial services.
- The FSMA also monitors compliance with rules of conduct applicable to financial intermediaries in order to guarantee the loyal, fair and professional treatment of their clients.
- The FSMA also contributes to the financial education of savers and investors.

Additionally, the following European Union authorities are relevant in Belgium as well:

- The European Union's Supervisory Authorities or ESAs - the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pension Schemes Authority (EIOPA):
  - The ESAs play an important role in issuing technical standards and guidelines. They have some limited supervisory powers over Belgian firms.
- The European Central Bank (ECB):
  - The ECB is 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?

Many relevant Belgian laws are 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, many EU directives only set minimum standards and provide Member States with a certain degree of discretion to impose stricter or more lenient obligations. Therefore, their implementation can vary across Europe. In other words, Belgium and other EU jurisdictions have introduced domestic laws that exceed European- level requirements.

EU rules have been implemented in various Belgian laws, such as the following:

- The Financial Supervisory Act
- The Anti-Money Laundering Act
- The Banking Act, the Investment Firms Act
- The Securities Act
- The Collective Investment Undertakings Act
- The Alternative Investment Fund Managers Act
- The Financial Intermediaries Act
- The Insurance Act
- The Insurance and Reinsurance Undertakings Act
- The Act on Financial Planning
- The Payment Services Act
- Belgium's Economic Law Code
- Various other acts and royal decrees

Both the NBB and the FSMA issue various circulars and communications that apply to the firms 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 from the public
- 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., travellers' 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
  - Operation of organized 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 of payment instruments and/or acquiring of payment transactions
    - Money remittance
    - Payment initiation services
    - Account information 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 distribution of insurance products (intermediation services) – Regulated insurance distribution activities consist of the following:
    - Advising on insurance contracts
    - Offering, proposing or carrying out preparatory work to the conclusion of insurance contracts
    - Concluding such contracts
    - Assisting in the management and performance of such contracts
    - Providing information about insurance contracts based on criteria chosen by a customer via a website or other media, and drawing up a ranking list of insurance products, including a price and product comparison, or a discount on the premium of an insurance contract if the customer can enter into an insurance contract (in)directly through a website or other media
- 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.
- Alternative financing services (crowdfunding platforms) - The offering of alternative financing services through electronic crowdfunding (or crowdlending) platforms is regulated.
- Financial planning - The provision or offering of advice on financial planning to non-professional clients is 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). It should be analysed, on a case-by-case basis, whether the provision and marketing of financial services to Belgian clients trigger the applicability of Belgian law.

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

a) the financial services are delivered/carried out in Belgium, or

b) 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, even if it is carried out from locations outside the Belgian territory, except for the following cases:

a) Provision of financial services to existing Belgian clients, who were not actively solicited for such financial services in the past, if:

   i) The performance of 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.

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

   iii) 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.

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

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

d) Acceptance of unsolicited calls from new Belgian clients and acceptance to serve 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.

e) Acceptance of 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 or other repayable funds from Belgian residents, deposits or other repayable funds are only deemed received from the public, triggering licensing or registration requirements if:

   i) 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.

   ii) Intermediaries are used.

   iii) More than 50 persons are contacted in Belgium by the company trying to receive deposits.

f) Provision of brokerage and investment advisory services to "permitted investors" in Belgium (light-touch notification procedure to be complied with before the FSMA)

Please note that a different regime exists for the offer of insurance in Belgium, since 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 be providing 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 to the relevant regulator certain registration and regulatory requirements.

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

a) Legal form - The applicant should be established in a specific legal form, 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 comprise natural persons only and have to possess the necessary professional trustworthiness and appropriate expertise ("fit and proper" requirements).

f) Organization - The applicant should have a management structure, administrative and accounting procedures, as well as internal control systems that are appropriate to the activities proposed.

g) Specific conditions governing the pursuit of the business of credit institutions, insurance companies, payment 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 should 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 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 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 may be required to secure individual approval or registration with the relevant regulator, such as: (i) members of the board of directors of the regulated business; (ii) senior managers; and (iii) "customer-facing" personnel.

They need to submit forms providing information about themselves that will enable the regulator to assess their suitability to perform their roles. An effect of individual registration is that the individual concerned could be subject to personal disciplinary proceedings if they are 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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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) Payments Canada (PC) 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 PC. 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. PC 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 oversee clearing and settlement systems for the purpose of controlling systemic risk or payments system risk.

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 ("PCMLTFA"). In June 2018, the Department of Finance announced proposed amendments to the PCMLTFA. The proposed amendments are expected to, among other things, update customer due-diligence requirements and beneficial ownership reporting requirements, allow the regulation of businesses dealing in virtual currency and update the foreign money service businesses regime. 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 risk in Canada. 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?

i. 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.

ii. 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 Insurance Act of Ontario 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.

iii. 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.

iv. 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 CAD 150,000, and it is generally required to maintain assets on deposit with a Canadian financial institution approved by the Superintendent equal to at least 5% of branch liabilities or CAD 5 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.

Canada

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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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. In 2018, CBRC and CIRC merged and the China Banking and Insurance Regulatory Commission (CBIRC) was formed to regulate both banking and insurance 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 before they can set up a business presence or carry on business or marketing activities in China.

China has two regulators responsible for the authorization and supervision of banks, insurers, securities firms and other financial institutions. The allocation of responsibilities between the CBIRC and the CSRC is as follows:

a) CBIRC is responsible for supervising banks, finance companies, trust companies, financial lease companies, financial assets management companies, consumer finance companies, auto finance companies, other deposit-taking financial institutions, insurance companies and other insurance-related institutions in China.

b) 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 the following:

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

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 regulators regulate a broad range of activities, including the following:

a) Setting up a bank would require approval from the CBIRC.

b) A bank would need to apply for a separate CBIRC 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 CBIRC.

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 noncompliance 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 a 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 in the relevant industry as well as 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., CBIRC for commercial banks) for approval. While the detailed requirements and procedures of the CBIRC and CSRC may differ, the application process in general will comprise 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 operations.

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 these may be made.

It is now also permissible to make cross-border fund transfers 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 responsible 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 ("**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 of 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*, "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.

Colombia

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 the 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 ("**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 the following:

- 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
- performing, 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 under either of the following circumstances:

- If they have set up a representative office (*oficina de representación*)
- 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 to set up a local representative office or execute 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 to set up a local entity and authorization to carry 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 ("**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?

i. 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:

a) **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)

b) **Articles of incorporation and bylaws**

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

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

e) **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)

ii. 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 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 directors[1]

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

- technological and administrative infrastructure
- internal control mechanisms
- risk management plan

vi) Copy of the authorization issued by the corresponding regulator for the setting-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).

[1] Must sufficiently reflect their character, responsibility and suitability.

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

Applicable law allows certain local securities intermediaries (e.g., broker-dealers) to distribute non-Colombian collective investment funds that meet certain conditions and criteria (regardless of their denomination), provided that the supervising authority in the place of incorporation of the fund has executed an information-sharing protocol or agreement with the SFC. For this mechanism to be viable, the fund must be subject to regulatory supervision.

The SFC has executed information sharing agreements with a number of regulators, including CIMA (Cayman Islands), CONSAR (Mexico), NYME (US), SBIF (Chile) and OSFI (Canada).

Under this distribution structure, the fund itself will not be subject to SFC supervision, but the local distributor will continue to be subject to local distribution rules and SFC supervision.

Colombia

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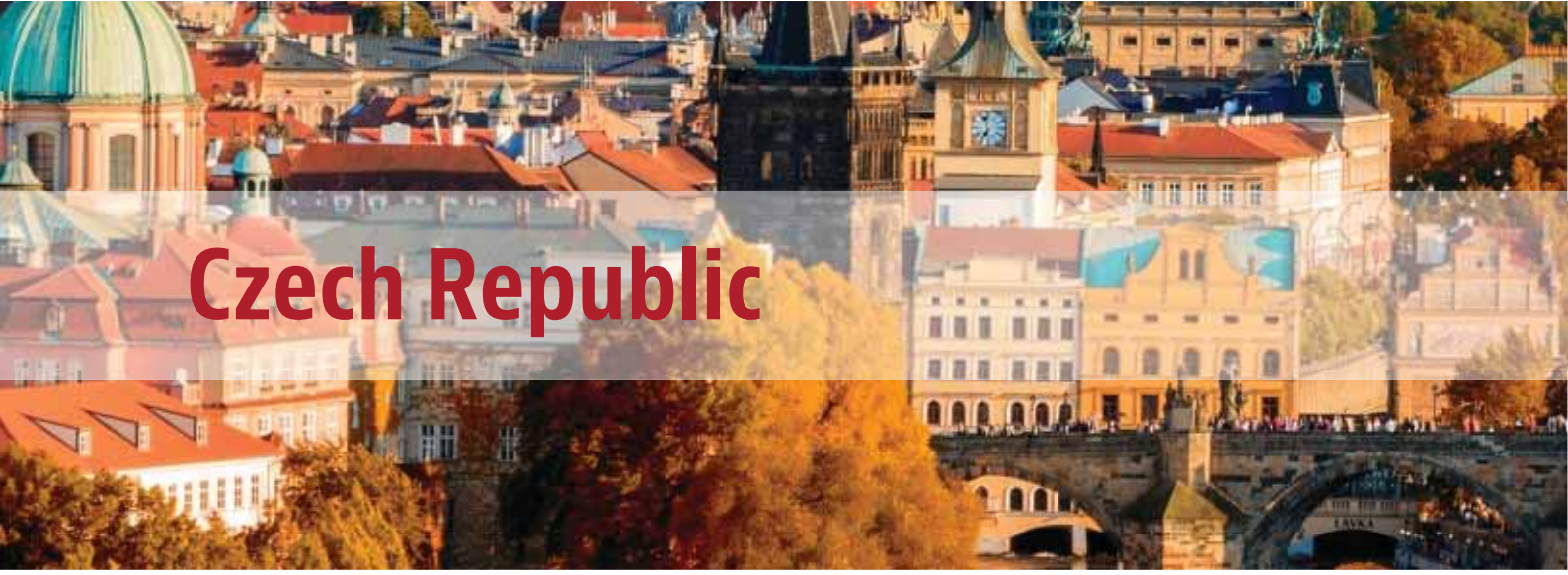

Czech Republic

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

The Czech National Bank (CNB) is the Czech Republic's main regulator, with the 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 trading venues(i.e., regulated markets, multilateral trading facilities and organised trading facilities), operators of settlement systems with settlement finality, credit rating agencies

g) Investment companies and investment funds;

h) Providers and intermediaries of consumer credit;

i) *Bureaux-de-change*

j) 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 Financial Analytical Office, 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.

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 Distribution of Insurance and Reinsurance (No. 170/2018 Coll.)
- The Act on Payment Systems (No. 370/2017 Coll.)
- The *Bureaux-de-Change* Act (No. 277/2013 Coll.)
- The Advertising Act (No. 40/1995 Coll.)

- The Trade Licensing Act (No. 455/1991 Coll.)
- The Consumer Credit Act (No. 257/2016 Coll.)
- 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: https://www.cnb.cz/en/supervision_financial_market/legislation/

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 - This covers a broad range of subjects providing credit to consumers, both as a plain consumer credit and as a mortgage consumer credit.
- Carrying on insurance business (effecting and carrying out contracts of both life and general insurance).
- 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 investment instruments – This activity predominantly covers the role of intermediaries and tied agents in transactions with investment instruments.
- Investment advice in relation to investment instruments and investment mediation (this does not include advice on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings; provision of such advice and services do not require CNB license).

- 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 investment instruments 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 investment instruments) – Providing custody services in relation to assets that include investment instruments 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 limits 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 results 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) Appropriate technical and organizational resources – The applicant must satisfy the CNB that it has in place appropriate technical and organizational resources to carry on the relevant regulated activities.

f) 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.

g) 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/for 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.

Czech Republic

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.

France

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 less than two years
- Mutual or cooperative bank – All banking operations and receipt of funds from the public repayable on demand or at less 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 that 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 of 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 these 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. Organization 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.

i. 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.

ii. 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.

France

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 out 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 reject 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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Germany

1. Who regulates banking and financial services in Germany?

Germany has two national regulators that are responsible for authorizing and supervising 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) of 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 provides input to 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?

i. Banking regulation

The main sources of regulatory laws applicable to credit institutions are the KWG, the Solvency Regulation (*Solvabilitätsverordnung* or SolvV), the Liquidity Regulation (*Liquiditäsverordnung* 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 that 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).

ii. 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 supervisehe EU Markets in Financial Instruments Directive (MiFID II).

iii. Payment services regulation

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

iv. 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).

v. Money laundering regulation

An additional 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?

i. 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 as follows:

a) 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)

b) The business specified in section 1 (1) sentence 2 of the Pfandbrief Act (Pfandbriefgesetz) (Pfandbrief business)

c) The granting of money loans and acceptance credits (lending business)

d) The purchase of bills of exchange and cheques (discount business)

e) The purchase and sale of financial instruments in the credit institution's own name for the account of others (principal brokerage)

f) The safe custody and administration of securities for the account of others (security deposit business)

g) The activities as central securities depository (central securities depository business)

h) The obligation to repurchase previously sold loan receivables prior to their maturity (loan repurchase business)

i) The assumption of sureties, guarantees and other warranties on behalf of others (guarantee business)

j) 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)

k) The purchase of financial instruments at the bank's own risk in connection with the placement of such instruments in the market or the assumption of equivalent guarantees (underwriting business)

l) Any activity as a central counterparty within the meaning of Regulation (EU) No 648/2012 (EMIR) (central counterparty 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.

ii. Financial services

The definition of financial services is laid down in section 1 (1a) sentence 2 numbers 1 to 12 and section 1 (1a) sentence 3 of the KWG (some of which implement MiFID II). Accordingly, financial services comprise:

a) The brokerage of transactions involving the purchase and sale of financial instruments (investment brokerage)

   i) 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)

   ii) The operation of a multilateral system that brings together the interests 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)

   iii) The placing of financial instruments without a firm commitment basis (placement business)

   iv) The operation of a multilateral system that is not an organized market or a multilateral trading system and that brings together the interests of a large number of third parties in the purchase and sale of debt securities, structured finance products, emission allowances or derivatives within the system in a manner consistent with a contract for the purchase of these financial instruments (operation of an organized trading system)

b) The sale and purchase of financial instruments in the name of and for the account of others (contract brokerage)

c) The management of individual portfolios of financial instruments for others on a discretionary basis (portfolio management)

d) Proprietary trading by accomplishing any of the following:

   i) Continuous offering of financial instruments for purchase or sale on an organized market or on a multilateral trading facility at prices quoted by the institution

   ii) 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

   iii) Purchase or sale of financial instruments for the own account as a service provided to others

   iv) Purchase or sale of financial instruments for own account as a direct or indirect participant in a domestic organized market or a multilateral or organized 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)

e) The brokering of a deposit business with enterprises domiciled in a non-EEA state (non-EEA deposit brokerage)

f) Dealing in foreign notes and coins (foreign currency dealing)

g) The continuous purchase of receivables on the basis of framework agreements with or without recourse (factoring)

h) 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)

i) 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)

j) The safe custody and administration of securities exclusively for alternative investment funds (AIF) within the meaning of sec. 1 (3) KAGB (limited custody business)

Moreover, proprietary trading is considered licensable own account trading within the meaning of No. 4 above if the entity is not otherwise regulated and operates the business with a view to generate profits or at a scale that requires a commercially organized undertaking, and is part of a group of institutions, financial holding group, mixed financial holding group or financial conglomerate that includes at least one CRR Credit Institution. This rule is a consequence of the bank separation rule introduced in German law effective 1 July 2016, by which CRR credit institutions that exceed a certain size must segregate their proprietary trading activities and conduct such activities via a so-called trading institution.

iii. 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:

a) 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)

b) 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:

   i) Execution of direct debits, including one-off direct debits (direct debit business)

   ii) Execution of credit transfers, including standing orders (credit transfer business)

   iii) Execution of payment transactions through a payment card or a similar device (payment card business)

   iv) Execution without grant of credit (payment business)

c) 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)

d) Issuance of payment authentication instruments and/or acceptance and settlement of payment transactions initiated by payment authentication instruments (payment authentication business)

e) 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)

f) A service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider (payment initiation services)

g) An online service for communicating consolidated information about a payment account or accounts of the payment service user to one or more other payment service providers (account information services)

iv. 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.

v. Fund management

The KAGB requires a license for a capital management companies (*Kapitalverwaltungsgesellschaft*), which are companies domiciled in Germany that manage domestic investment funds. Such is the case where the companies render at least portfolio management services or 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 EUR 500 million (unleveraged) or EUR 100 million (leveraged).

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

i. Trigger points for license

1) 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 requires a license —and providing services passively; that is, on the initiative of German residents — which does 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 made solely based upon the customer's initiative. It is also advisable to rely on the passive freedom of services exemption only in isolated instances; reliance on a multitude of transactions would arouse the suspicion of the BaFin. Furthermore, a general solicitation effort by the foreign institution would terminate 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).

2) Payment services

Pursuant to sec. 10 (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.

3) Fund managers

As for fund managers, regulation of funds is primarily exercised through the 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.

ii. Exemptions from the license requirement

1) Banks and financial services providers

Pursuant to sec. 2(5) 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 II 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 customers and 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*).

2) 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.

3) 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 to 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 EUR 500 million (unleveraged) or EUR 100 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.

iii. 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 to payment services providers or e-money issuers acting without license. Under sec. 63 ZAG, the managers of these parties are subject to criminal sanctions and under sec. 7 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 to be 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?

i. 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 EUR 730,000, while for CRR credit institutions it is at least EUR 5 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," which 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, which 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 EUR 50,000.

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% 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.

ii. 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. 10 of the ZAG in case of payment services firms and sec. 11a 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 EUR 20,000 and EUR 125,000 for payment services providers (depending on the type of business) and EUR 350,000 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.

iii. 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 for the manager.

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

Often, before the 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 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 the 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 do so in another member state by providing cross-border services or by establishing a branch.

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

i. Banks and investment firms

As a general rule, the process starts by notifying the competent home member state authority, and then 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 II, PSD II, 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 a 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, 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 again has 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 out 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 upon receipt of this notification.

ii. 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.

iii. 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 provide 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.

iv. 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.

Germany

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Hong Kong

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 (including virtual banks) 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 its 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.

- Insurance Authority (IA) – At present, the IA is the regulator of the Insurance Ordinance ("**Insurance Ordinance**"), which is the legislation governing the operation of insurance companies and insurance intermediaries. The IA is an independent authority, which is a statutory body established under the Insurance Ordinance. The IA is responsible for the supervision of insurers. Currently, supervision of insurance intermediaries 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 IA 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). It is expected

that by mid-2019, the IA will take over the roles of the IARB, HKCIB and PIBA in the supervision of the insurance intermediaries.

- 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, prescribes conduct requirements and imposes disciplinary sanctions for registered MPF Intermediaries. The HKMA, IA and SFC remain the frontline regulators for the supervision and investigation of registered MPF intermediaries whose respective core businesses are in the banking, insurance and securities sectors.

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

- Securities and Futures Ordinance – 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 – The Banking Ordinance (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. The Payment Systems Ordinance also regulates the issuing and facilitation of certain stored value facilities.

- Insurance Ordinance: – The Insurance Ordinance (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 IA of insurers carrying on insurance business in or from Hong Kong. The IA is empowered by the Insurance Ordinance 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[1] of regulated activities (RAs) in Hong Kong. Companies (such as brokerages and fund managers), individuals and authorized institutions that intend to carry out 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:
    - Type 1: Dealing in securities
    - Type 2: Dealing in futures contracts
    - Type 3: Leveraged foreign exchange trading
    - Type 4: Advising on securities
    - Type 5: Advising on futures contracts
    - Type 6: Advising on corporate finance
    - Type 7: Providing automated trading services
    - Type 8: Securities margin financing
    - Type 9: Asset management
    - 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 business activities in Hong Kong requires authorization by the HKMA under the Banking Ordinance. Hong Kong operates a three-tiered authorization regime, which covers licensed banks, restricted license banks and deposit-taking companies (collectively known as authorized institutions).

[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.

(This regime also covers "virtual banks," which the HKMA defines as banks that primarily deliver retail banking services through the internet or other forms of electronic channels instead of physical branches. Under new guidelines for the authorization of "virtual banks" adopted by the HKMA in May 2018, a "virtual bank" must be incorporated in Hong Kong.)

- Local representative offices – The establishment and operation of a Hong Kong representative office by a foreign bank or deposit-taking institution that is not an authorized institution requires prior HKMA approval under the Banking Ordinance. 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 remittances).
- Money broking – Intermediaries who broker certain currency trading and deposit agreements between parties that are (or include) authorized institutions require HKMA approval under the Banking Ordinance. The money broker approval regime applies to voice-broking and online/electronic broking.
- Issuing (or facilitating the issuing) of certain stored value facilities – Stored value facilities are prepaid payment facilities. The previous stored value facility licensing regime under the Banking Ordinance (which covered only card-based products in physical form) was replaced on 13 November 2016 by the new stored value facility licensing regime under the Payment Systems Ordinance. The new regime applies to card- and account-based stored value facilities in physical and other forms, which continue to be regulated by the HKMA.
- Retail payment systems and their system operators and settlement institutions – Prior to November 2015, the Payment Systems Ordinance empowered the HKMA to "designate" only large-value clearing and settlement systems for securities and bank payments for HKMA supervision, but not retail payment systems. Since November 2015, the HKMA can also "designate" certain retail payment systems for HKMA supervision. The new retail payment system 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).
- Operation of 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 authorized institutions), persons providing these services in Hong Kong require a license from the Customs and Excise Department under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (formerly known as Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance) ("**AML Ordinance**").
- Providing a trust and company service – This covers the provision of trust or company services as a business in Hong Kong (e.g., a service of acting or arranging for another person to act as a trustee of an express trust or a similar legal arrangement). Pursuant to amendments to the AML Ordinance, which took effect in March 2018, subject to certain exceptions (e.g., for authorized institution) persons carrying out such business in Hong Kong require a license from the Registrar of Companies under the AML Ordinance.
- Lending – Hong Kong retains "old-style" money lenders legislation that, while aimed primarily at "loan sharking," is capable of catching genuine commercial lending activities. Hong Kong's Money Lenders Ordinance imposes licensing and other compliance obligations that can apply to consumer

and non-consumer lenders. The Money Lenders Ordinance provides for various exemptions, but only authorized institutions are wholly exempted from the Money Lenders Ordinance.

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

- Insurance agent or broker services – Under the current 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 IA 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 themselves out to advise on or arrange contracts of insurance in or from Hong Kong as an agent or sub-agent 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.

  From mid 2019 (exact date to be announced), the IA will take over the roles of the IARB, HKCIB and PIBA on the supervision of insurance intermediaries. A concept of "regulated activity" for insurance intermediaries will be introduced. 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 out 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 out 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 out 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 inquiry 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 SFC may grant a temporary license to a corporation or individual who is regulated by a relevant overseas regulatory body in order to carry out 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 and approval requirements for authorized institutions and local representative offices under the Banking Ordinance and the stored value facility licensing requirements under the Payment Systems Ordinance generally apply only if the relevant activities are carried out in Hong Kong. For example, the receipt and holding of deposits outside Hong Kong would not normally constitute the carrying out 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 Banking Ordinance or Payment Systems Ordinance. By way of example, there are mandatory disclosure requirements for invitations to place offshore deposits with a non-authorized institution that are targeted at the Hong Kong public. There are also strict prohibitions on non-authorized institutions representing themselves (expressly or impliedly) as conducting business as an authorized institution in Hong Kong. This includes restrictions on the use of the word "bank" and derivatives thereof (e.g., banking) by persons other than HKMA-licensed banks or recognized central banks.

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:

i. 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 or solvency, 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. The SFC generally expects that the Managers-in-Charge of the Overall Management Oversight function and the Key Business Line function should seek the SFC's approval as responsible officers in respect of the RA they oversee.
- 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 out 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 out 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 out the relevant activity or business.

ii. HKMA authorization requirements

In order to be recognized as an authorized institution, an applicant must satisfy the HKMA that it fulfils certain minimum authorization criteria. Not all, but many, of these criteria apply equally to all authorized institutions, regardless of the place where the authorized institution 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 out 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.

- 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 Payment Systems Ordinance sets out extensive licensing criteria for licensed stored value facility issuers and 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 Banking Ordinance and the Payment Systems Ordinance.

iii. IA authorization requirements

- Incorporation – Companies interested in applying to the IA for authorization to carry out 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 Insurance Ordinance requires that any person who is a director or "controller" or key persons of the control functions of an insurer must be "fit and proper" to hold such position. Prior approval of the IA is required for the appointment of their controllers. In applying the fit and proper test, the IA will take into account, among other things, the character, qualifications and experience of the directors or "controllers" or "key persons of the control functions" of the applicant company.
- Financial resources – The minimum paid-up capital is currently HKD 10 million, or HKD 20 million for a composite insurer (i.e., carrying on both general and long-term business) or for an insurer wishing to carry out statutory classes of insurance business. However, in practice, the IA 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 IA requires that there must be adequate arrangements for the reinsurance of risks of those classes of insurance that are to be carried out by the insurer.

iv. 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 out 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 IO to carry out long- term insurance business

iii) An authorized long-term insurance broker under the IO

- Subsidiary intermediary – A subsidiary intermediary in general refers to a person who is registered as an intermediary for carrying out 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.

i. 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:

  - Proposed business activities – The applicant must provide information on its business profile and internal control summary in relation to 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.

  - 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.

  - 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.

ii. 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 an authorized institution will typically need, as a minimum, to be composed of 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 authorized institution. 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 Banking Ordinance does not prescribe the time period within which the HKMA must process an application for authorization as an authorized institution, and its processing may, depending on the circumstances, take substantially longer.

iii. IA authorization process

- Preliminary meeting with IA – A preliminary meeting with the IA 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 IA for prior consideration. The meeting will enable both the applicant and the IA to understand each other better as well as enable the IA to give its informal views.

- Draft application – The applicant may proceed to prepare the application after it has discussed its proposal with the IA and it is considered acceptable to the IA. The application is normally submitted in draft form and the IA 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 IA's initial assessment, it may proceed to make a formal application to the IA.
- Decision on the application – Provided that the formal application has been properly prepared and contains all the relevant information and documents adequate for the IA to make a decision, the IA will advise the applicant of its decision on the application after a certain time frame. If authorization can be given, the IA 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 IA when it has made all the preparations necessary to commence business. During the visit, the applicant will need to satisfy the IA that all operational systems and staff are in place to enable the applicant to commence business immediately.
- Formal authorization – If the IA is satisfied that the applicant has fulfilled all the requisite requirements, a formal authorization will be issued.

iv. 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 out 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.

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 do the following:

- 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.
- Function as the resolution authority within its powers delegated by specific other legislation.
- Supervise the financial intermediary system.

Pursuant to the Fundamental Law of Hungary, the president of the MNB will, within the framework of their responsibilities and duties defined by an implementing act and under authorization conferred by law, have the authority to issue decrees.

Furthermore, pursuant to Act CXXX of 2010 on the Legislative Procedure, the president of the MNB is authorized to provide normative instruction for the institutions (bodies and agencies) under its 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 main institution that supervises entities providing banking and financial services.

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

The main sources of Hungarian regulatory norms are acts, but government decrees, ministerial decrees, and the decrees and normative instructions of the president of the MNB are significant as well. Furthermore,

since Hungary is a member of the European Union, EU legislation also has a significant influence on the Hungarian regulatory framework. The most significant legal instruments laying down the basic rules of banking and financial services are the following:

- Act CCXXXVII of 2013 on the Credit Institutions and Financial Enterprises ("**Credit Institutions Act**")
- Act CXXXIX of 2013 on the National Bank of Hungary
- Act CCXXXV of 2013 on the Payment Services
- Act LXXXV of 2009 on the Pursuit of the Business of Payment Services

In addition, Act V of 2013 of the Civil Code sets out the principles of contract law and the default rules of several banking and finance- related contracts.

As mentioned above, the president of the MNB has comprehensive rights and responsibilities in connection with the regulation of banking and financial operations. Therefore, the publications and the non-binding guidelines of the MNB are also significant in the field of banking and finance.

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

Pursuant to the Credit Institution Act and unless otherwise provided for by law, the provision of the following services on a businesslike basis is subject to the license of the MNB:

- 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
- Credit consultancy services

Authorization/license can be issued only by the MNB. The MNB 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 applies to financial services (and financial auxiliary services) provided in the territory of Hungary, it is also applicable where such services are provided by foreign entities under the right of establishment or the freedom to provide services. Accordingly, a foreign company may provide financial services (or engage in financial auxiliary service activities): (i) by way of its Hungarian branch; or (ii) on a cross-border basis as described below for which a license/authorization is generally required.

As mentioned above, financial services (and financial auxiliary services) may be provided subject to the authorization of the MNB. However, 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 these entities 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 for 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?

The Credit Institutions Act distinguishes between authorization for establishment and authorization for operation. Furthermore, there are different rules concerning financial institutions established in Hungary and branches of foreign financial institutions (as in principle, foreign financial companies may provide financial services solely under the right of establishment).

It is important to note that the authorization for operation is not always required by law. However, 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 for the authorization of establishment 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% 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 these 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 (and related documents referred to in s.20.(2) of the Credit Institutions Act)
- 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 that the authority will be provided 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 their consent to have the personal data they have disclosed to the credit institution processed and disclosed for the purposes of supervision on a consolidated basis or supplementary supervision
- A statement about 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 as proof of the foreign financial institution's registration 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, of evidence that there are no grounds to exclude the senior executive — of a 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 the issuance of the license for operation, for which the following must 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 declaring that such expenditure was made in connection with the foundation or the commencement of operations
- Information for the identification of each shareholder of the credit institution with minimum 5% share or voting right, or if there is no shareholder with a qualifying holding in the credit institution, for the identification of the 20 largest shareholders or members with voting rights
- A medium-term business plan for the first three years, excluding credit institutions permanently affiliated with 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 Betétbiztosítási 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 the 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 to 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 parent company may be set by the MNB, such as a detailed policy on data treatment, and protection and policies on AML requirements.

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 ("**MNB Act**"). Additionally, Act CL of 2016 on the General Public Administration Procedures 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, if duly justified, the time limit may be extended on one occasion by up to three months (which means that the MNB may decide, at its sole discretion, whether the additional three-month period is necessary). If the MNB has requested that the applicant provide supplementary or additional information, the administrative time limit shall be calculated starting from the time the deficiencies are remedied in full.

As a general rule, in the course of authorization procedures, the MNB will carefully study the documents and information furnished with the application and then ascertain that the granting of authorization does not violate any legal provision. As part of the authorization procedure, the authority may conduct site inspections to check whether all requirements for authorization are satisfied.

If there are missing or false documents, or other requirements have not been met, the MNB notifies the applicant about the necessary measures that should be taken 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 Hungarian branches of credit institutions that are established in another EEA member state.

Authorization is also not required if the branch is established by a financial enterprise that is established in an EEA member state, and

- the financial enterprise:
    - 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 meets the condition set out in the subparagraph above and is established in the same EEA Member State as its subsidiary
- 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
- 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?

In Indonesia, two regulators have responsibility for the authorization and supervision of banks, insurers and other financial institutions: 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. OJK has also regulated financial technology companies operating in the financial services space (e.g., P2P lending platform operators).

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.

Indonesia

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 server-based.
- Providing payment services – This covers a broad range of activities involving matters such as money remittance, debit or credit card issuance, electronic wallet services, acquiring card transactions (including payment gateway services) 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, which includes operating P2P lending platforms that connect and match lenders with borrowers.
- 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 one's 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 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 international financing transactions, 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 an in-principle and business license based on the relevant laws and regulations depending on the specific sectors. For some financial services businesses such as banking, insurance and financing companies, the following conditions will need to be fulfilled:

i. Legal form and ownership

Generally, a financial services company established under the laws of Indonesia can be in the form of a limited liability company. The 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 sectors.

ii. Fit and proper test

Primary parties of financial services companies in certain sectors generally are required to 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.

iii. Capital requirement

The minimum capital requirement will vary depending on the specific sector. For instance, a newly established commercial bank doing conventional banking must have minimum capital of IDR 3 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 (MOLHR).

iv. Business plan

The applicant should be able to provide the regulator with the business plan of the relevant financial services, including feasibility studies on market and economic potential, business activities and projected balance sheet.

v. 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 MOLHR approval for the deed of establishment.

Indonesia

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 all of the required documents have been submitted to the relevant authority and deemed complete. 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 at least six months.

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.

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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 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 (sometimes 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. It 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 their 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 by 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 out 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 residing 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 toward harmonizing the approach across all member states to TCFs. On the one hand, this approach is likely to create a barrier to entry into European markets. On

the other hand, firms that 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) results 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 must submit a plan concerning the initial activity, together with the articles of incorporation and the bylaws. The plan is necessary in order to evaluate the business projects of the applicant.

g) Structure of the group - The applicant must 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.

Italy

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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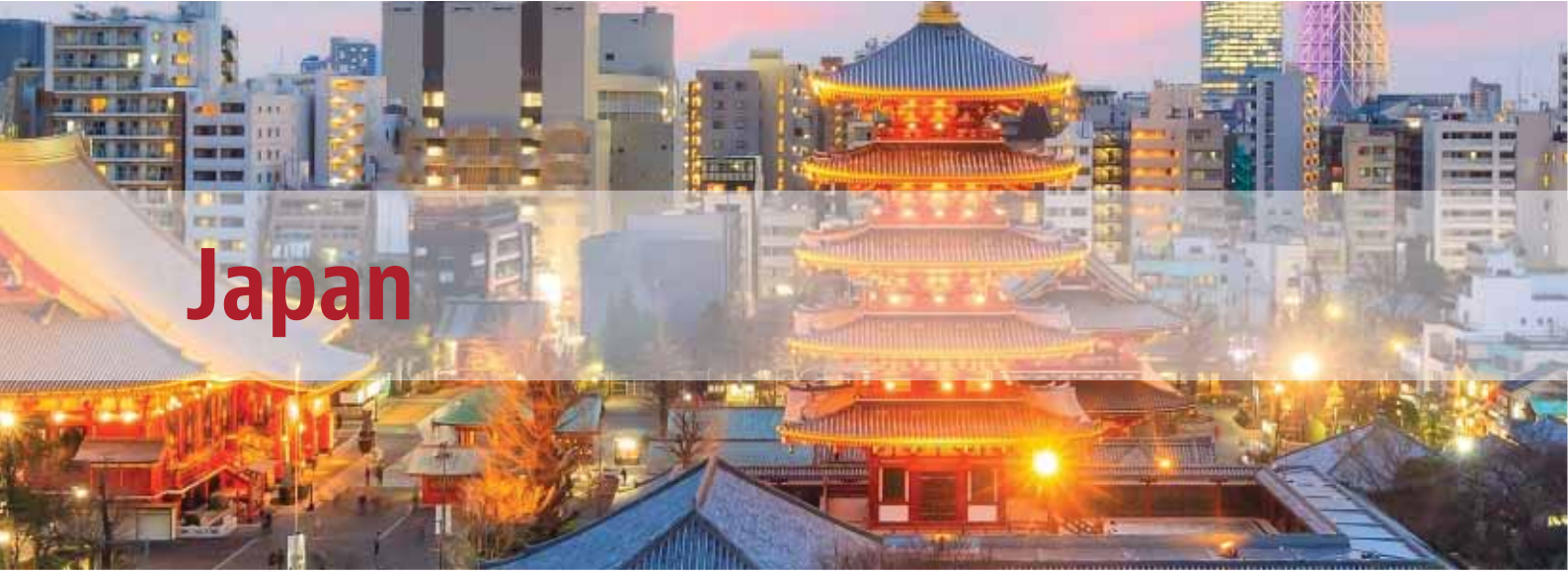

Japan

1. Who regulates banking and financial services in Japan?

The Financial Services Agency (JFSA) is the Japanese regulator responsible for the provision of authorization to 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 seamless off-site and on-site monitoring by the Supervisory Bureau of the JFSA. Please note that in 2018, JFSA established two bureaus and abolished the Inspection Bureau as part of an internal restructuring, with the aim of conducting more effective and efficient monitoring. In addition, the Ministry of Economy, Trade and Industry regulates credit card companies.

The Bank of Japan (BOJ) is responsible for the macro supervision of the banking and financial services industries, with the aim of maintaining a safe and sound financial system. The BOJ is not a regulatory authority under the Banking Act, but it 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, which prepare guidelines to share 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 Services Act – This regulates companies that engage in: (i) small-fund transfer business (a fund transfer transaction of JPY 1 million or less); and (ii) prepaid cards/instruments business. In principle, to engage in the fund transfer business, a company must obtain a banking license, but a 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) and 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 cards 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 reporting system for suspicious transactions.

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 - A 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 instalment 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 an 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?

i. 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 any relevant activity outside Japan is taken into consideration. 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 an internet site, 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., on a reverse solicitation basis), 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 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.

ii. Specific considerations and rules for cross-border application

1) Receiving deposits

There is no clear rule as to whether a foreign bank without a Japanese banking license may receive deposits from Japan residents. However, it is clear that when a foreign bank engages in marketing or solicitation in Japan (directly, or indirectly through agents or brokers) to receive deposits, it must obtain a Japanese banking license. Please note, however, that if a foreign bank has a licensed branch in Japan and that branch is licensed to provide foreign bank agency services, the foreign bank may receive deposits via the foreign bank agency. 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.

2) 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 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.)

3) Funds transfer service

There is no clear provision in the Banking Act covering funds 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 brokers) for funds transfer, it will trigger the licensing requirements under the Banking Act. It is not clear whether the Banking Act will apply to a funds transfer transaction solely conducted through a web-based system located outside Japan.

On the other hand, the Payment Services Act clearly provides that a foreign funds transfer service provider (i.e., a person who is authorized to conduct funds transfer transactions in the ordinary course of its business in a foreign jurisdiction, when such authorization is equivalent to registration under Article 37 of the Payment Services Act) may not solicit residents of Japan without registration under the Payment Services Act.

4) Underwriting, selling agency or brokerage of security and security-related derivatives

Foreign securities companies are not allowed to engage in business such as underwriting, sales agency or brokerage of security and security-related derivatives ("**Securities-Related Business**") with persons located in Japan unless its main office in Japan is registered under the FIEA.

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.

5) Cross-border transactions using the internet

A foreign securities company that posts advertisements on its 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.

b) 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 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.

6) 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) a full delegation scheme to use a licensed entity in Japan; (ii) the so-called Article 63 exemption if investors meet certain qualification thresholds; (iii) off-shore fund exemptions where less than one-third of the total assets are acquired by a limited number of professional investors that reside in Japan; or (iv) threshold of securities and securities deemed less than 50% of total target assets. Please note, however, that the availability of the so-called Article 63 exemption above was limited by an amendment to the FIEA, which came into effect in 2016. Such amendment also imposed additional requirements with which to qualify for the exemption and further restrictions on the conduct of the business of fund managers, etc.

7) Insurance

The Insurance Business Act has a license system for foreign insurance companies.

8) Trust-related business

The Trust Business Act has a license and a registration system for foreign trust business operators.

9) Issuance of credit cards

The Installment 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.

10) Credit card-acquiring business

In 2018, the Installment Sales Act was amended to regulate credit card-acquiring businesses, under which acquirers (including foreign acquirers) are obliged to register with the relevant regulatory authority in Japan (i.e., the Ministry of Economy, Trade and Industry).

11) Issuance of prepaid cards (including any other prepaid-type payment methods)

The Payment Services Act does not apply to mere sales of prepaid cards issued outside Japan to residents in Japan. However, it clearly provides that a foreign prepaid card issuer may not solicit residents in Japan to purchase prepaid cards issued outside Japan.

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. A foreign entity 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 out the relevant regulated activities. Resources include financial resources as well as human resources (including management with the required skills) and infrastructure. With respect to human resources, the applicant must 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.

- Lack of association with anti-social forces – Neither the applicant nor its senior management should be associated with any anti-social forces (i.e., 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 a strong relationship therewith).
- 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. The criminal and administrative records of senior management will be examined.
- Major shareholder – The applicant's major shareholders must be suited to 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.

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 submission of additional material for further explanation.

In practice, the regulator usually requests that the applicant consult them 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 records and capabilities)
- Details of major shareholders and corporate groups
- Certain undertakings, and representations and warranties

7. What financial services "passporting" arrangements does Japan have with other jurisdictions?

Japan is one of five countries participating in the Asia Region Funds Passport (ARFP), a cross-border funds passporting program in Asia that enables cross-border offerings of managed funds to retail investors and, at the same time, maintains appropriate investor protections. The ARFP was launched on 1 February 2019, which was when Japan (as well as Thailand and Australia) started accepting registration applications from local prospective passported funds. New Zealand and South Korea are in the process of meeting the legal and regulatory requirements for implementation required in each jurisdiction.

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Luxembourg

1. Who regulates banking and financial services in Luxembourg?

In Luxembourg, prudential supervision duties in financial services are 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: (i) supervision of the global liquidity situation as well as the supervision of the individual situation of the liquidity of each operator; and (ii) oversight of payment and settlement infrastructures.

The European system set up for the supervision of the finance sector consists 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 contain obligations and discretions at member state level, while Luxembourg also has various domestic rules.

The Law of 5 April 1993 on the Financial Sector, as amended, is the main framework law for banking and financial services in Luxembourg. 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. A large number of Grand-ducal Regulations and CSSF and CAA Regulations complete 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 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 works 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 that act as custodian banks holding the underlying assets of Luxembourg life insurance contracts or pension funds require approval from the CAA.
- Providing custody - Safeguarding and settlement of transactions and other related administration in relation to assets that include investments is a regulated activity

c) 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.

d) 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 conduct activities outside the scope of investment firms as defined in the European directives. Luxembourg law recognizes 14 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 six categories: client communication agents, administrative agents, primary IT systems operators, secondary IT systems, dematerialization service providers and conservation service providers. By virtue of their 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 they 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. Whether those activities trigger a local licensing obligation will depend on the specific activities and physical travel of agents to Luxembourg in. Activities such as simple canvassing of clients or the advertising and organization of a "road show" are exempted from the need for 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 out 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 out 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 out 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 out 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 (i.e., reverse solicitation).

Recent EU legislation that will have an impact on doing business in Luxembourg in particular are as follows:

- AIFMD II (Directive on Alternative Investment Funds Manager) –Brexit seems to be the main reason for the delay in adopting a clear position for third-country passporting and regulatory equivalent approvals provided within AIFMD I. AIFMD II will apply from 2 August 2021 and shall clarify this situation depending on the outcome of Brexit.
- MiFID II (comprising a recast of the Markets in Financial Instruments Directive and a European regulation) – MIFID II harmonizes the ability of Third Country Firms to access the EU market. Under the MIFID II regime, Third Country Firms are able to apply to ESMA for status as permitted Third Country Firm, which allows 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) – The IDD is applicable as of 1 October 2018. This Directive extends 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 firm's structure, 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 out 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 an established Luxembourg *réviseur d'entreprise agréé* (approved statutory auditor) and have adequate professional experience.

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

Authorization as financial service provider requires an application to the Ministry of Finance. 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 on 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 regard 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 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. 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.

Luxembourg

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Malaysia

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). As the primary regulator, the MOF acts on the recommendation of the regulatory bodies that supervise financial institutions and capital market intermediaries.

In Malaysia, the two regulatory bodies responsible for the licensing, approval or registration, regulation and supervision of banks, insurers, capital market intermediaries and other financial institutions are the Central Bank of Malaysia (CBM) (also known as Bank Negara Malaysia) and the Securities Commission Malaysia (SC).

The CBM regulates financial institutions such as banks, insurers, payment system operators, insurance brokers, money brokers, financial advisers and adjusters. It also acts as a banker and an adviser to the government of Malaysia.

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 the Financial Services Act 2013 (FSA), the Islamic Financial Services Act 2013 (IFSA), and the Capital Markets and Services Act 2007 (CMSA). Rules, orders and regulations promulgated under the respective legislation are also applicable. The CBM administers the FSA and IFSA, whereas the SC administers the CMSA.

In addition, the CBM and the SC have extensive 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?

Under the FSA and the IFSA, activities that require either a license or approval from the CBM, or a registration with the CBM (collectively, the "**FSA/IFSA Activities**") are 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 out 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 out the following regulated activities (collectively, "**CMSA Activities**") require a capital markets services license (CMSL), and individuals employed to undertake the regulated activities will 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?

Malaysian legislation does not, generally, have extraterritorial application. Save for the provisions relating to the operation of a payment system outside Malaysia and the buying and selling of currencies, the provisions of the FSA, IFSA and CMSA generally do not apply if the regulated activities are wholly carried out from a place outside of Malaysia. If, however, the services are carried out 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 FSA/IFSA Activities, the CBM will consider the factors set out in Schedule 5 of the FSA and the IFSA, as well as such other matters that the CBM considers relevant. These 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, the economy and Malaysia's relationship with other countries, should be determined.

f) Effective supervision - Whether the nature, scale and activities of the corporate group of the applicant will impede effective regulation and supervision, having considered the nature and degree of regulation and supervision of any financial institution within that corporate group, should be considered.

The applicant must be considered as "fit and proper" by the SC in order to apply for a CMSL to carry out the CMSA Activities. In assessing whether an applicant is fit and proper, the SC will consider the following:

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 that are mandated by the SC, and the requirements for each 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 intending to carry out investment banking or undertake 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 complete and submit the required application forms together with supporting information to the CBM or the SC, as the case may be. The forms that must be completed for submission to the regulator 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.

From the date of receipt of a completed application, the regulator will generally take approximately three to six months to review the application, and provide a response to such 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?

As part of the ASEAN Capital Markets Forum (ACMF)'s initiative to facilitate the mobility of professionals in carrying out investment advice activities among ASEAN countries, professionals may apply for an ACMF Pass to be a Recognised Representative under the ASEAN Capital Market Professional Mobility Framework.

An individual licensed, recognised, approved or authorised by their home regulator in a Recognised ACMF member country (i.e., Thailand, Singapore and the Philippines) may apply to undertake a regulated activity, including but not limited to "investment advice" under the CMSA in Malaysia, provided that the individual satisfies the relevant criteria stipulated by the SC.

As the ACMF Pass is country specific, an individual needs to apply for an ACMF Pass at each Recognised ACMF member country if they wish to undertake the regulated activities specified in the framework.

However, there is currently no means for a Malaysian licensed, approved or registered person to passport into the European Economic Area member states.

Malaysia

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Mexico

1. Who regulates banking and financial services in Mexico?

Mexico has six regulators that are responsible 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.

d) The IPAB is a decentralized entity 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.

e) 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.

f) 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, as well as 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 entities 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:

- Receiving 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, acquisition of card transactions, issuance of checks and the operation of payment accounts.
- Consumer lending
- Carrying out 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)

- Managing 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.
- Facilitating insurance activities (insurance brokerage activities)
- Providing 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.

i. Banking and credit activities

The Mexican Law of Credit Institutions (*Ley de Instituciones de Crédito* or LIC) provides that only Mexican banks authorized by the 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.

ii. 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. This type of office shall not carry out any financial intermediation activity in the national market that

requires an authorization from the federal government, and it cannot participate, 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.

iii. 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).

iv. 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.

v. 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*).

vi. 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.

vii. Establishment of a Mexican insurer

Pursuant to the Insurance Law (*Ley de Instituciones de Seguros y Fianzas*), to establish a Mexican insurer, authorization from the federal government, through the CNBV by means of the previous resolution of its governing board, must be obtained.

viii. Establishment of an 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 bylaws
- Information of the shareholders
- Information of relevant officers
- Operational plan
- Manual of conduct
- In the case of banks, a deposit in guarantee

Mexico

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 activities, such as offering financial services, providing investment services and managing regulated investment funds. The AFM is also responsible for supervising and enforcing the rules and regulations surrounding transparency, market abuse and prospectus supervision.

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 do not 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, which 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 Fourth Money Laundering Directive ((EU) 2015/849) 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 the business of which it is to receive repayable funds, beyond a restricted circle, from parties other than professional market operators, and that grant credits for their 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, and 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) (Managers of) Collective investment schemes – Collective investment schemes cover undertakings for collective investment in transferable securities (called UCITS) and alternative investment funds (AIFs). 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 firms that offer services or perform acts "in 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.

When 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. Specific territorial scope rules have been formulated for certain financial institutions, such as non-life insurance companies.

Dutch law recognises the concept of reverse solicitation: 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 on 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 narrowly. Based on case law and the limited guidance available, there are a number of factors that will help determine whether a foreign financial undertaking has actively marketed its services to Dutch clients. These include the following:

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)

g) Referencing or providing information on Dutch law

Please note that reverse solicitation has been explicitly recognized to be applicable to investment firms and alternative investment fund managers. Reverse solicitation has not been recognized to apply to every category of financial undertaking. There is, therefore, some ambiguity as to whether other types of financial undertakings can rely on reverse solicitation.

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) 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.

b) 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.

c) Sound business operations – Business processes and risks have to be managed properly. Financial undertakings need to a have 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.

d) Outsourcing requirements – The DFSA provides for a number of requirements relating to outsourcing.

e) 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.

f) Anti-money laundering – Most financial undertakings are required to implement policies and procedures to combat money laundering pertaining to, *inter alia*, client due diligence, reporting "unusual" transactions and internal anti-money laundering compliance.

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 an application for a license. Different consideration periods may apply for specific licenses (for example, the AFM has 26 weeks to decide on the application for a license as alternative investment fund manager). However, the actual consideration period depends on many factors, and this consideration period may 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 three years, and an overview of costs for the coming three years

c) A description of business processes, including governance manuals, compliance manuals, internal controls, anti-money laundering policies, remuneration policies etc.

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 who 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 Dutch supervisor of their intention to provide their services in that particular member state.

Please note that undertakings with a license under the DFSA that is not based on harmonised EU legislation generally also do not have passport rights. For example, financial service providers that have a license for providing consumer credit cannot typically passport such a license to other EU member states.

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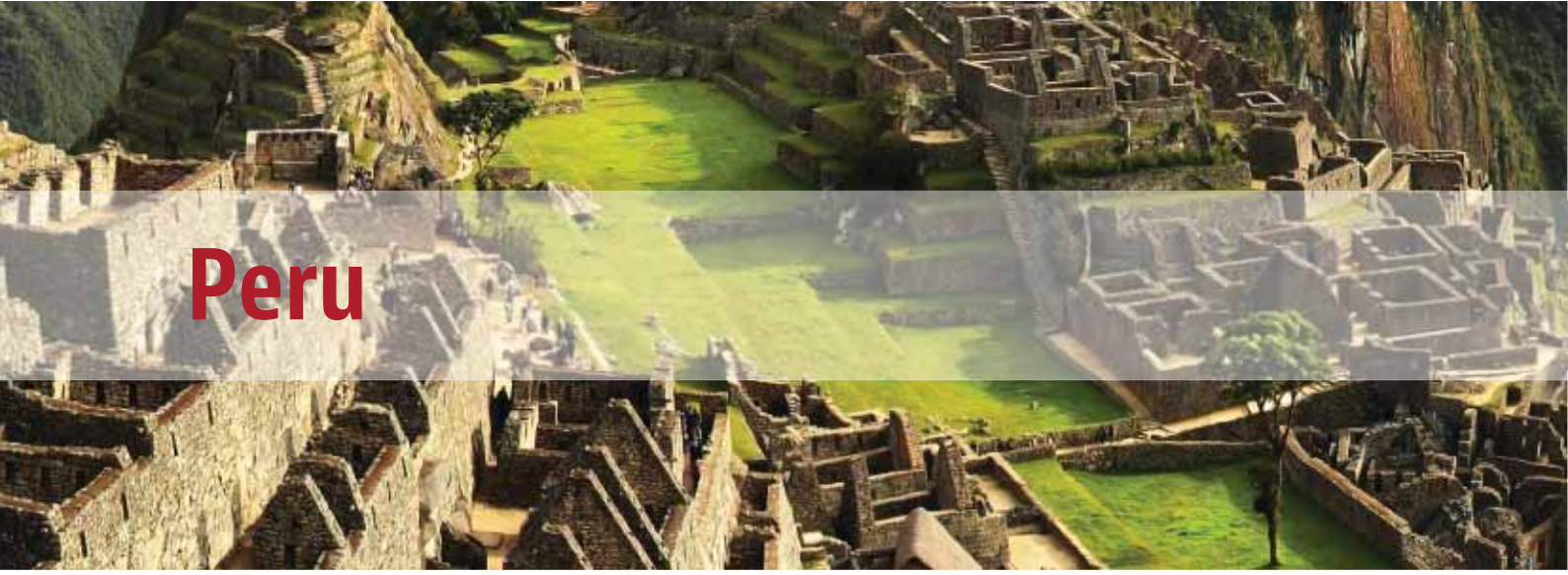

Peru

1. Who regulates banking and financial services in Peru?

The *Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones* (hereinafter, SBS) is responsible for the supervision and regulation of all financial institutions in Peru (including commercial banks and investment banks), insurance companies and pension funds administrators.

The SBS is also 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* ("**Peruvian Banking Law**") and the rules and regulations enacted thereunder.

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

d) Lead and supervise the anti-money laundering system

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 bylaws 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)

g) Supervising the anti-money laundering system through the *Unidad de Inteligencia Financiera - Perú*

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, because 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.

Please note the offer, sale, marketing and transfer of securities in Peru falls under the scope of the *Ley del Mercado de Valores* and is subject to the regulatory authority of the *Superintendencia del Mercado de Valores*.

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

The Peruvian Banking Law is the main framework law in Peru for the 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 on Banking Supervision. The SBS has adopted the principles and guidelines of Basel II, and is adopting Bassel III recommendations.

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, which are activities involving the collection of money from the public on a regular basis, whether in the form of deposits or otherwise, and placing 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 of 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 those described above that is being pursued without a license from the SBS may be considered "Illegal Banking." Pursuant to the Peruvian Banking Law, a legal presumption of engaging in Illegal Banking activities will apply to a person or entity that, 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. Also, 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, in regular market practice, such activities are conducted on a one-on-one basis in order to prevent giving the wrong impression, i.e., 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. Accordingly, 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%, as long as they comply with the requirements specified in the income tax 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%.

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.

In addition, interest payments to non-banking, non-financial or non-credit entities will be subject to VAT at a rate of 18%.

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 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 out 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 an organization license takes approximately 220 calendar days to complete, pursuant to the following stages:

Organization License Procedure		
Stage	Requirement	Term
1st. Request	The organizers must file an organization license request.	
2nd. Publication	Publications (2) to inform the public regarding certain information about the future financial entity must be issued. Any interested person will have the right to object to the incorporation of the future financial entity.	Immediately after presenting the request for the organization license
3rd. SBS evaluation	In case no one objects or the objection is declared unjustified, the SBS will proceed to evaluate the organization license request. For that matter, the SBS will meet with the organizers and officers of the future financial entity.	
4th. Central Bank evaluation	After SBS finished its evaluation, it will inform the Central Bank about the organization license request.	Within 30 calendar days after being notified by the SBS
5th. Resolution	After receiving the opinion of the Central Bank, the SBS will notify the organizers of the approval or denial of the organization license request. Along with the resolution of approval, the SBS will issue the organization license certificate.	Within 90 calendar days after being notified of the Central Bank's opinion
6th. Publication	The organization license certificate will be published.	Within 30 calendar days of the certificate's issuance

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		
Stage	Requirement	Term
1st. Request	The organizers shall must file a business license request at the SBS, containing all the documentation required.	
2nd. Evaluation	The SBS will evaluate the business license request.	
3rd. Resolution	The SBS will notify the organizers of the approval or denial of the organization license request.$$$Along with the resolution of approval, the SBS will issue the business license certificate.	30 calendar days after the evaluation's conclusion
4th. Publication	Publication of the business license certificate	
5th. Listing of securities	The financial entity must list their equity shares in the Lima Stock Exchange (LSE) prior to commencing operations.	
6th. Commencement of operations	The company must initiate its operations, making this event public knowledge through a medium of mass communication.	Within three months after the issuance of the business license certificate

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 promoting 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 way it regards a local financial institution for regulatory purposes.

In addition, Peru, together with Chile, Colombia and Mexico, integrated its 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 offerings 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.

Peru

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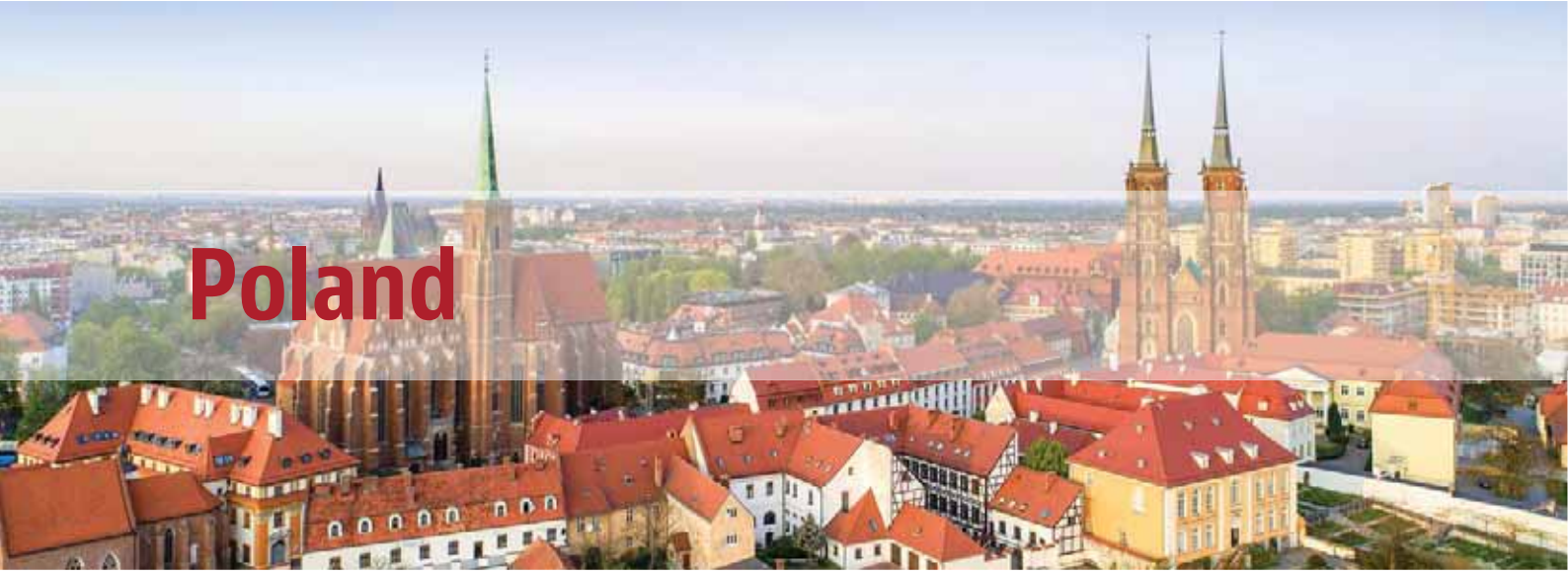

Poland

1. Who regulates banking and financial services in Poland?

In Poland, as a result of changes that took effect on 1 January 2019, the Polish Financial Supervision Authority (*Urząd Komisji Nadzoru Finansowego*) (**PFSA**), a public administrative body, together with its Board and Chair,is responsible for state supervision over the Polish financial market. The PFSA exercises supervision over:

- the financial market, including banking supervision;
- the capital market;
- the insurance market;
- the pension market;
- supplementary supervision of credit institutions, insurance undertakings, reinsurance undertakings and investment firms in a financial conglomerate;
- payment institutions, payment service offices, electronic money institutions and branches of foreign money institutions;
- rating agencies;
- credit unions and the National Association of Credit Unions; and
- mortgage credit intermediaries and their agents.

The types of cases for which the PFSA is the only competent body that can issue rulings and recommendations 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 the proper functioning of the financial market, especially regarding its practical aspects.

The President of the Council of Ministers exercises supervision over the 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 is 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,

branches or subsidiaries of Polish banks located in the Eurozone are within the SSM and are supervised by the European Central Bank.

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 Member State level, and Poland also has various domestic rules.

The Financial Market Supervision Act of 21 July 2006 (unified text: Journal of Laws of 2019, item 875, as amended; 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 competencies as well as rules of proceedings conducted by the PFSA. Furthermore, the Capital Market Supervision Act of 29 July 2005 (unified text: Journal of Laws of 2018, item 2243, as amended) contains specific regulations regarding supervision of the capital market. These are, in particular, rules for the exchange of information between national and European financial supervisory authorities as well as rules for the execution of obligations resulting from the European regulations.

The laws considered crucial to the substantial regulation of financial services are as follows:

- The Banking Law Act of 29 August 1997 (unified text: Journal of Laws of 2019, item 1074, as amended; referred to as "**Banking Law Act**") sets out the principles for conducting banking activity; establishing and organizing banks, 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 29 July 2005 (unified text: Journal of Laws of 2018, item 2243, as amended; 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 financial instruments; and the rights and duties of entities participating in such trading, as well as their supervision.
- The Payment Services Act of 19 August 2011 (unified text: Journal of Laws of 2019, item 659, as amended; referred to as "Payment Services Act") sets out the principles for providing payment services, and issuing and re-purchasing of electronic money and principles regarding position of consumers. The Payment Services Act also sets out basic market principles for domestic payment card 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 applicable laws, acting on the basis of licenses authorizing them to pursue banking operations.

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;
- organization of an MTF (a multilateral system operated outside the regulated market that matches financial instruments acquisition and disposal offers in a manner resulting in transactions concluded within the system in accordance with the specific rules and in a non-discretionary manner); and
- organization of an OTF (a multilateral system which matches, on a discretionary basis, offers for the acquisition or disposal submitted by third parties with regard to bonds, structured finance products, emission allowances, derivative instruments, or energy products constituting the object of wholesale trade that have to be effected by way of delivery, without being a regulated market or an MTF).

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 domestic bank;
- credit institutions and 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**;
- branches of authorized entities from the EU;
- small payment institutions;
- service providers performing only informational duties on a payment account.

The entities listed above are either public or strictly regulated bodies, i.e., banks, with those highlighted in bold aimed at providing payment services and requiring either a license (in the case of 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;
- issuance of payment instruments;
- entering into agreements with suppliers of goods and services for accepting payment transactions executed using payment instruments;
- money remittance; and
- initiation of payment transaction and account information service providers in relation to a payment account.

4. How do Poland's licensing requirements apply to cross-border business into Poland?

i. 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 a host state, if conducted by the financial institution without the participation of a branch.

The main factor in establishing whether a financial operation with Polish clients is conducted within the territory of the Republic of Poland is the place of performance and and if it is considered to be conducted in the territory of the Republic 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

- in the case of in-kind performances - it is considered to be conducted in the place where the debtor has its domicile or seat;
- in the case of pecuniary performances – it is considered to be conducted in the place of the creditor's domicile or seat.

It is important to note 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 the issue is subject to the norms of Polish public law, which the parties cannot make contractually inapplicable.

ii. 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 by a reference to the Regulations (EU) no 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (the "Regulation 575/2013") as an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account, 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 ("**Member State**").

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 that is not 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.

iii. 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 a legal person (or an organisational unit without legal personality), having its registered office in another Member State, or having its head office in another Member State, or a natural person with his place of residence in another Member State, performing investment services and activities under a licence granted by the competent supervisory authority in another Member State, or a foreign credit institution.

In turn, a foreign credit institution means a credit institution as defined in Regulation 575/2013 that performs brokerage activity within the territory of another Member State on the basis of an authorization of a competent supervision authority or an institution keeping - on the basis of an authorization of a competent supervision authority - accounts in which securities admitted to trading on a foreign regulated market are registered.

The above definitions lead to the conclusion that only entities that are already entitled to perform brokerage activities in a Member State may conduct cross-border brokerage activities in the Republic of Poland.

iv. Performing payment services

Cross-border payment services may be conducted in the Republic of 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 by the competent supervisory authority to perform payment services. 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 banking operations but includes all other activities to be performed.

Brokerage activities may be commenced by a foreign investment firm in the Republic of Poland after the PFSA has been notified of the planned commencement of such activities by the competent supervisory authority that granted the investment firm a license to perform brokerage 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 through its tied agents, the PFSA may apply to the competent foreign supervisory authority for information about the tied agents. 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, i.e., principles defined in the provisions of the FIT Act, implementing regulations issued on the basis thereof, and directly applied provisions of law of the European Union applicable to the activities performed by a particular foreign investment firm.

An EU payment institution may commence cross-border activities in the Republic of Poland after the competent supervisory authorities of the home Member State have provided the PFSA with the specified information listed in the Payment Services Act. An EU payment institution may perform payment services within the territory of the Republic of Poland in the area covered by the authorization issued by the competent supervisory authorities.

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

As requirements to obtain authorization are limited to receiving the abovementioned information, the process of becoming authorized in Poland is governed by the provisions of the Polish Act on Banking Law.

The process of authorization is complex in nature and is based on the evaluation of all areas and aspects of the banking activities involved (i.e., the capital base, organization, people and technology involved).

Poland

7. What financial services "passporting" arrangements does Poland have with other jurisdictions?

Once established in the Republic of Poland, a Polish firm can passport its authorization into other European Member States. Passporting permits the provision of cross-border services and the establishment of a physical branch location.

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Philippines

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 the 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 PHP 500,000 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 ("**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 bank must bear to its total risk assets, which may include contingent accounts. T he 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) **Selling or relocating banks, closing banks and conservatorships** – The BSP regulates and/or approves any change in ownership, location or status of a bank or any other financial institution.

g) **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.

h) **Insuring deposits** – All banks and financial institutions are required to coordinate with the Philippine Deposit Insurance Corporation in insuring its deposits.

i) **Borrowing from the BSP or other agencies of the government** – There is an application procedure that must be followed when a BSP-registered bank or non-bank financial institution borrows (including emergency loans and advances) from the BSP or the government.

j) **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 transactions with representative offices of foreign banks.

k) **Reporting requirements** – Banks and financial institutions are required to regularly report certain transactions to the BSP. 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 (such as 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

MORB and the Manual of Regulations on Foreign Exchange Transactions contain 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 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]

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.

[1] BSP Circular 850, September 2014.
[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 evidence 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.
[5] *Banas vs. Asia Pacific Finance Corporation*, G.R. No. 128703, 18 October 2000.

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; biodata 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 PHP 10 million[8] to PHP 3 billion[9]). The 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 five banking days after the start 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 one year after receipt by the organizers of the notice of approval by the Monetary Board of their application.

The establishment of non-bank financial institutions performing quasi-banking functions is governed by the Manual of Regulations for Non-Bank Financial Institutions and its implementing rules and regulations.

[6] The statement must be sworn to by the subscriber themselves 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 themselves and duly notarized or certified by a certified public accountant.
[8] This is the minimum capital requirement for cooperative banks.
[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.

Philippines

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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Russia

1. Who regulates banking and financial services in Russia?

The Central Bank of Russia ("CBR") has broad regulatory powers for the entire financial services sector. Namely, the CBR is responsible for: circulating monetary funds and ensuring the stability of the Russian ruble; rules on licensing, minimum reserves and other mandatory reserves and charter capital, in particular for lending operations; reporting, accounting and ongoing supervision sets minimum reserve requirements for lending operations; and mandatory ratios (capital adequacy, liquidity, etc.) and requirements on the amount of charter capital.

The CBR has certain independence from the government in that the State Duma must approve the nomination of the chairman of the CBR. Also, the National Banking Council, comprising representatives of various executive and legislative bodies, exercises control over the CBR's board of directors, and participates in establishing the basic principles of Russian banking and financial policy. Finally, the CBR and the government share authority over monetary policy. It 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:

- Civil Code of the Russian Federation, Federal Law No. 395-1 "On Banks and Banking Activities," dated 2 December 1990
- Federal Law No. 86-FZ "On the Central Bank of the Russian Federation," dated 10 July 2002
- Federal Law No. 177-FZ "On the Insurance of Deposits of Individuals in the Banks of the Russian Federation," dated 23 December 2003
- Federal Law No. 353-FZ "On Consumer Credits (Loans)," dated 21 December 2013
- Federal Law No. 115-FZ "On Combating Money Laundering and the Financing of Terrorism," dated 7 August 2011
- Federal Law No. 39-FZ "On Securities Market," dated 22 April 1996

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 from the CBR. Only credit organizations holding this license are

allowed to carry out certain activities, which are called "banking operations." The list of banking operations includes the following:

- Raising 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 of and placing precious metals, opening and maintaining bank accounts and making transfers 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; acquiring a third party's claim on monetary obligations; 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.

Professional activities in the securities market also require a license, namely:

- Broker activity
- Forex dealer activity
- Dealer activity
- Securities management
- Investment advisory (which requires a license starting on 21 December 2018)
- Depositary business
- Maintenance of security holders register

In order to give microcredits, a state registration needs to be obtained. There are certain requirements for executive bodies and founders of microcredit organizations, including business reputation requirements. 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 bureau of credit histories.

Licenses for the right to carry out insurance activities are issued by the CBR, which has been the only body that provides insurance supervision in the Russian Federation since 2013. The CBR has the right to suspend or limit the extent of a license, as well as to revoke licenses. Insurance licenses can granted to 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.

i. 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 establishment of a bank with foreign investments requires the prior approval of the CBR. In addition, should the foreign capital exceed 50%, no further licenses are awarded. According to the CBR calculation, in 2019, the capital of foreign companies is 12,41%. The requirements for the subsidiaries of foreign banks are the same as for Russian banks.

ii. Representative offices

Representative offices of foreign banks and employees who are foreign citizens are accredited by the CBR. 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 CBR grants such accreditation. Accreditation can be renewed an unlimited number of times. The CBR 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 to the extent it does not constitute investment advisory; 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 CBR, 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?

i. Licensing and banking supervision

A credit organization is to be registered in the Russian Federation according to a specific procedure and must be licensed by the CBR. Russian law provides for a proportional regulation for licensing. For a bank to obtain a general license for carrying out all types of banking operations, its capital should be not less than RUB 300 million (approximately USD 4.5 million). In order to obtain a basic license that provides for a limited scope of operations, the bank's capital should amount to not less than RUB 1 billion (approximately USD 15.1 million).

The basic license does not permit placement of money allocated as deposits on the bank's own behalf and at its own expense, holding deposits and placement of precious metals, and issuance of bank guarantees.

The CBR may refuse to issue a banking license in the event of the following:

- Noncompliance of the application documents with Russian legal requirements
- Unsatisfactory financial standing of founders of the credit organization, persons exercising control over the founders who own more than 10% in 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 founder who owns more than 10% in the credit organization, a nominee for the position of chief executive officer, chief accountant of the credit organization or his deputy, member of a board of directors and other persons who participate in the system of internal control in the credit organization

The CBR 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 CBR 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% or more of the shares in a Russian bank or non-banking credit organization requires the CBR's approval. If the acquisition is for more than 1% but less than 10% of shares, only a notification to the CBR 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% in the charter capital of a bank and at the same time, the target bank's assets exceed RUB 33 billion (approximately USD 500 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.

ii. 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 CBR 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 CBR must be assured that: the bank's financial accounts and reports are accurate; the bank is in full compliance with the CBR's mandatory ratios; the bank's solvency position is stable and that the CBR 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 0.15%. All individual depositors with deposits in member banks are entitled to 100% compensation for aggregate amounts up to RUB 1.4 million (approximately USD 21,200) for each bank. However, the deposit insurance would not cover e-money deposits.

iii. Countering money laundering

Based on recommendations made by the Financial Action Task Force on Money Laundering (FATF), the State Duma adopted Federal Law No. 115-FZ "On Combating Money Laundering and the Financing of Terrorism," dated 7 August 2001 ("**Anti-Money Laundering Law**"), which came into force on 1 February 2002.

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 do the following:

- 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 RUB 600,000 (approximately USD 9,000) or more (or the equivalent in foreign currency), and transactions with real property of RUB 3 million (approximately USD 45,400) 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.
- 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.

iv. Capitalization and Basel III implementation

Russian banks are required to comply with the capital adequacy requirements set by the CBR, 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, the CBR Regulation No. 646-P "On Methods for Calculation of the Capital of Credit Organizations," dated 04 July 2018 (that replaced the CBR Regulation No. 395-P, dated 27 February 2013) implements the rules of Basel III on capital adequacy in Russia in a manner that is more strict 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 the bank's base capital, share capital and the bank's owned funds (its capital) to the total amount of its risk-weighted assets. From June 2017, the minimum capital adequacy ratio required by the CBR is 4.5% for the bank's base capital, 6% for its share capital and 8% for the bank's owned funds (its capital). If the capital adequacy ratio of a bank for each type of capital drops below 2%, the CBR will revoke its banking license.

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 CBR.
- 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 CBR also adopted Regulation No. 421-P "On the Calculation of the Liquidity Coverage Ratio," dated 30 May 2014 and Regulation No. 510-P "On the Calculation of the Liquidity Coverage Ratio by Systemically Important Banks," dated 3 December 2015. The standard aims to show 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. Generally, the liquidity coverage ratio applies to systemically important domestic banks and its minimal value is to be 100%. However, banks with assets of not less than RUB 50 billion (approximately USD 757 million) (or) with funds raised from individuals of not less than RUB 10 billion (approximately USD 151.4 million) also should report to the CBR on calculation of the liquidity coverage ratio.

Regulation No. 596-P "On the Calculation of the Net Stable Funding Ratio by Systemically Important Banks," came into effect from January 1, 2018 and implemented additional rations for the systemically important domestic banks. The standard is calculated as the ratio of the available stable funding to its required volume and its minimal value is required to be 100%.

In addition, the CBR 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 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% 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 CBR.

v. 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 International Financial Reporting Standards (IFRS).

The CBR 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 CBR, 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 CBR.

vi. Grounds for the Refusal of a License

The basis for refusing to grant a license to a professional participant in the securities market are as follows:

a) Doubt-raising or distorted information in the documents submitted by the license seeker

b) Discrepancy between the license seeker and the license requirements and conditions

c) Discrepancy between the documents submitted by the competitor of the license and 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

d) Previous cancellation or revocation of a license for banking operations in the Russian Federation issued by the CBR

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

After presentation of documents, the CBR will issue a written certificate to the founders of the credit organization confirming the receipt of documents.

The decision on the 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 all documents were presented. The CBR, 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 exercise 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 CBR about it within one working day following the date of making the appropriate entry.

The CBR then has three working days to inform the founders of the credit organization about it, with the demand of making within one month 100% payment of the declared authorized capital of the credit

organization and then issue to the founders thereof a document confirming the fact of that an entry about the credit organization has been made 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 CBR to bring a claim in court for liquidation of the credit organization. To accept the payment of the registered capital, the CBR shall open a correspondent accountin the CBR 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 CBR of the state registration of the credit organization and issue the license for banking operations. When the document confirming the full payment of the stated registered capital of the credit organization is presented, the CBR 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 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, custodians 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.

i. 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.

ii. 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 28 June 2005G) and the Authorized Persons Regulations issued by the CMA board resolution no. 1-83-2005 dated 21/05/1426H (corresponding to 28 June 2005G) and as amended by the CMA board resolution no. 3-85-2017 dated 27/12/1438H (corresponding to 18/09/2017G).

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.

i. 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-boarder 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 than 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 defines 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.

ii. 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, there are two further exemptions from obtaining prior authorization to engage in securities business in Saudi Arabia.

The first applies 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).

The second is set out in a CMA resolution dated 23/05/1437H (corresponding to 3 March 2016) which exempts foreign financial institutions from its authorization requirement when dealing with certain clients who have initiated contact on a reverse enquiry basis. The exemption applies where the client is either: (i) an "institution" (defined in the CMA regulations as an entity or group with net assets to a value of at least SAR 10,000,000) or (ii) an individual whose total investments exceed SAR 50,000,000, or who owns not less than SAR 50,000,000 worth of net assets, provided that the reverse enquiry request was initiated by the client and was not as a result of the foreign financial institution marketing its activities in Saudi Arabia, and that further the relevant transactions concern securities that are not issued or listed in Saudi Arabia.

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.

i. 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. Whilst the applicant will complete this form and submit it as part of its hard documents submission, the CMA requires the application form to be filled online.

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 each securities 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 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 3 years' audited financial statements in accordance with the standards issued by SOCPA and presented in the format prescribed by the CMA.

h) Cover Letters – The applicant must submit 2 cover letters as part of its application submission. One letter covers the applicant's intention to apply for the category of securities licenses and the second letter covers the proposed board of members and identifies their status (executive, non-executive and independent).

i) 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.

j) **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.

k) **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.

l) **Terms of Business** – The applicant must submit a copy of the proposed terms of business.

m) **Fees** – The applicant must submit a list of proposed fees, commissions, charges and other expenses payable by clients.

n) **Contracts** – The applicant must submit any agreements, arrangements and understandings with third parties to provide any material services or operations.

o) **Insurance** – The applicant must submit details of professional indemnity insurance policies in accordance with the requirements prescribed by the CMA.

p) **Incorporation Documents** – The applicant must submit a copy of its proposed articles of association and/or by-laws.

q) **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.

r) **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.

s) **Business Continuity Plan** – The Applicant must submit a copy of the Applicant's business continuity plan.

ii. 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) Acknowledgment Letter – The applicant must submit an acknowledgement letter in the form prescribed by SAMA, whereby the applicant certifies that the shared information is accurate and correct.

c) Incorporation Documents – The applicant must submit draft articles of association and by-laws.

d) 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.

e) Founding Shareholders – The applicant must submit a list of the founding shareholders, setting out the number and percentage of shares of each founding shareholder.

f) Financial Statements – The applicant must submit the latest financial statements of any proposed owners.

g) Business Plan – The applicant must submit a business plan covering at least the background of the applicant, the opportunities identified in the Kingdom of Saudi Arabia, and the business planning (e.g. products and services, target markets, tupe of clients, 3 years' financial projections, marketing approach, innovative products and services etc.).

h) Risk Management and Control Framework – The applicant must submit any proposed management plan or manual covering how the applicant or applicant's parent (for foreign branch applications) will evaluate and mitigate key risks areas.

i) Management/Control and Outsourcig – the applicant must submit a chart on the allocation of responsibilities and reporting lines, a job description for compliance oversight function, a chart on reporting lines for compliance functions, a compliance manual, a policy on complaints handling, a document on business continuity procedures, and a staff handbook.

j) Financial Crime and Anti-Money Laundering (AML) – The applicant must submit AML policies and procedures, and a job description of ALM officer.

k) Human and IT Resouces – The applicant must submit the organization chart of the back office operations function and the information security policy.

l) 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.

m) 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.

n) Contracts – the applicant must submit draft agreements and contracts with third parties, especially those with related parties or external service providers.

o) Additional Documents – The applicant must submit any other documents or information that the SAMA may request.

Saudi Arabia

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)
- The Securities and Futures Act (Cap. 289)
- The new Payment Services Act ("**PSA**"), which is expected to come into force in 2019/2020

  The PSA will be a single activity-based legislation, streamlining the regulation of business currently separately falling under the Payment Systems (Oversight) Act ("**PS(O)A**") or the Money-Changing and Remittance Businesses Act ("**MCRBA**").

The various Acts provide the MAS with the authority to prescribe subsidiary legislation, make regulations and issue directions. The subsidiary legislation, regulations and directions set out in greater detail the requirements that financial institutions have to comply with, and they lay out in detail the criteria that the regulated entities must meet when applying for the necessary licenses. Compliance is mandatory, and contravention of subsidiary legislation, regulations or directions is a criminal offense.

The MAS also issues guidelines that set out the best practices that govern:

- The conduct of financial institutions

- Anti-money laundering and countering the financing of terrorism (AML/CFT) practices to adhere to MAS's supervisory regime.

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 offense 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 checks drawn by or paid in by customers, and the making of advances to customers.
- Dealing in capital markets products– This includes dealing in futures contracts, leveraged foreign exchange contracts, exchange traded derivatives, over-the-counter derivatives, and dealing in units of CIS.
- Financial advisory services – This covers advising others concerning any investment products (including Over-The-Counter Derivatives), issuing or promulgating research analyses or research reports concerning any investment products (including Over-The-Counter Derivatives), 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 out 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 businesses – Money-changing refers to the business of buying or selling foreign currency, currently only supervised primarily for AML/CFT purposes.
- Remittance businesses - This refers to the business of accepting moneys for the purpose of transmitting them to persons resident in another country, currently only supervised primarily for AML/CFT purposes.
- Payment systems - Funds transfer system or other system that facilitates the circulation of money, including any instruments and procedures that relate to the system. Where the payment systems is sufficiently significant that its disruption would cause a systemic disruption to the financial system of Singapore or affect public confidence, it will be designated by MAS for regulation under the PS(O)A.

- Stored valued facilities (SVFs)/e-money issuance - An SVF is a facility (other than cash), whether in physical or electronic form, which 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 that is available for use under the terms and conditions applying to the facility, 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). SVF holders in excess of SGD 30 million are regulated under the PS(O)A.

  [Note that after the PSA comes into force, it will supersede both the PS(O)A and the MCRBA and it will regulate all businesses providing any type of payment service in Singapore including:

  - money-changing
  - account issuance
  - domestic money transfer
  - cross-border money transfer
  - merchant acquisition
  - digital payment token (not currency-denominated)
  - e-money issuance (denominated in currency)

  The PSA will license payment service providers as follows:

  - Money-changing licensee - money-changing service
  - Standard Payment Institution licensee -
    - money-changing service
    - any payment account (account issuance, domestic money transfer, cross-border money transfer, merchant acquisition, digital payment token) where the monthly transactions is less than SGD 3 million for any one service or less than SGD 6 million for any two or more
    - E-money issuance service where the average daily stored value is less than SGD 5 million or the average daily value of specified e-money issued is less than SGD 5 million
  - Major Payment Institution licensee -
    - money-changing service
    - any payment account (account issuance, domestic money transfer, cross-border money transfer, merchant acquisition, digital payment token) where the monthly transactions is more than SGD 3 million for any one service or more than SGD 6 million for any two or more
    - E-money issuance service where the average daily stored value is more than SGD 5 million or the average daily value of specified e-money issued is more than SGD 5 million]

- Other capital markets services – This includes advising on corporate finance, real estate investment trust management, securities financing and provision of credit rating services.

- 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.

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 on whether the applicable statute governing that activity has extraterritorial 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 out financial advisory business in Singapore if they engage 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 them.

Certain exemptions do apply. For example, it is not the MAS's policy's intent to regulate activities conducted wholly outside Singapore where the foreign entity is responding to unsolicited inquiries 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 out 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 out 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 out 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 out 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 a license to carry out 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 a resident in Singapore.

b) Adequate resources - Generally, the MAS will prescribe a minimum capital or financial requirement for financial institutions applying to carry out 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 out 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.

d) 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 out 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 maintaining adequate oversight over the applicant or undertaking 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 as follows:

a) The Association of Southeast Asian Nations Collective Investment Schemes Framework for Cross Border Offering of Funds (ASEAN CIS Framework)

b) The Asia-Pacific Economic Cooperation (APEC) Asia Region Funds Passport

i. ASEAN CIS Framework

In October 2013, the securities regulators and capital market authorities of Singapore, Malaysia and Thailand 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 uniform Standards of Qualifying CIS, which among others, set 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 SFA and approved as Qualifying CIS 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.

ii. APEC Asia Region Funds Passport

Another funds passport scheme is the APEC Asia Region Funds Passport, which was launched on 1 February 2019. It facilitates 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.

Japan, Thailand and Australia are ready to receive registration applications from local prospective Passport funds and entry applications from foreign Passport funds.

Singapore

New Zealand and Korea continue to make progress with the legal and regulatory requirements for implementation required in their respective jurisdictions.

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South Africa

1. Who regulates banking and financial services in South Africa?

The National Treasury, headed by the Minister of Finance, is responsible for setting policy in respect of the regulation of private and public sector investment in South Africa. The South African Reserve Bank (SARB) is tasked with financial stability. The SARB also oversees the National Payment System and the Financial Surveillance Division of the SARB, which is responsible for the administration of exchange controls in South Africa.

The following regulatory authorities are responsible for overseeing activities by participants in the financial sector:

a) The Prudential Authority, operating within the administration of the SARB, is primarily responsible for overseeing banks, insurers, cooperative financial institutions, financial conglomerates and certain market infrastructures.

b) The Financial Sector Conduct Authority (FSCA) is a statutory body that supervises market conduct in relation to the provision of financial products and financial services in South Africa, including the conduct of financial institutions licensed in terms of various financial sector laws, such as banks, insurers, retirement funds and administrators and market infrastructures. The mandate of the FSCA is significantly broader than that of its predecessor, the Financial Services Board.

c) The SARB is the primary regulatory authority for payment systems and is responsible for the safety and soundness of the national payment system. SARB, in terms of the National Payment System Act, 1988, recognizes the Payment Association of South Africa as a payment system management body that has the organizing, managing and regulating of participation of its members (mostly banks) in the payment system as one of its objectives. This supervisory structure is currently under review and material changes are expected.

d) The Financial Intelligence Centre is responsible for implementing regulations aimed at combatting money laundering and the financing of terrorist activities.

e) The National Credit Regulator is responsible for registering credit providers and supervising compliance with prescribed regulations for consumer credit.

f) Once the Protection of Personal Information Act, 2013, is fully enforced, the responsibilities of the Information Regulator (akin to a data protection authority) will include monitoring and enforcing compliance with the provisions of the Act.

In some industries, certain regulatory functions are delegated to associations or self-regulatory organizations. In terms of the Financial Markets Act, 2012, licensed exchanges, central securities depositories

and independent clearing houses operate as self-regulatory organisations that create rules and regulate the activities of their members and participants, subject to the provisions of the Financial Markets Act.

South Africa is in the process of implementing a "Twin Peaks" approach to financial sector supervision, which commenced with the enactment of the Financial Sector Regulation Act in August 2017 and the creation of the Prudential Authority and FSCA in April 2018. Existing financial sector legislation is fragmented, with a distinct statute applying to each of the different types of financial institutions providing a particular type of financial product or service, namely, securities exchanges, insurance companies, pension funds, collective investment schemes, banks, mutual banks, friendly societies, financial advisors and intermediaries. Although existing sector-specific legislation will remain in place for an interim period, the National Treasury has confirmed that some or all of these laws will be replaced and consolidated by the overarching Conduct of Financial Institutions Act as part of the next phase of implementing the Twin Peaks model. The Treasury seeks to implement the transition of the South African financial sector regulation to a Twin Peaks Model in two phases.

As part of Phase 1, the Prudential Authority and FSCA were established and the Financial Sector Regulation Act was enacted (although some provisions of this statute have not yet become effective). The Financial Sector Regulation Act affords the new regulators supervisory and enforcement powers in addition to those provided under the existing industry-specific legislation. The new regulators will also be able to issue new standards under the industry-specific legislation. In this sense, the mandates of the new regulators are broader than the mandates of their predecessors. During Phase 1, the existing industry-specific legislation will remain in force and has been allocated to one of the new regulators (as set out in Schedule 2 of the Act) as the principal regulatory authority. Broadly speaking, the Prudential Authority is responsible for legislation previously administered by the Banks Supervision Department of the SARB, as well as the supervision of prudential standards relating to insurers and market infrastructures; the FSCA, meanwhile, is responsible for legislation previously administered by the FSB. Both the Prudential Authority and the FSCA have been designated as primary regulatory authority in respect of the insurance industry. The designated regulator will act as the licensing authority and (primary) supervisory authority for the particular legislation during Phase 1. However, both regulators will have the power to exercise supervisory powers and to apply and enforce the industry-specific legislation on a financial institution — the Prudential Authority in respect of prudential aspects and the FSCA in respect of market-conduct issues.

Phase 2 represents the creation of a new consolidated regulatory framework that combines the regulation of, and the standards applied to, the various financial subsectors into an overarching legislation applicable to all financial institutions.

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

The following primary statutes and regulations govern "financial institutions," including: (i) financial products or service providers; (ii) market infrastructures; (iii) holding companies of financial conglomerates; or (iv) persons required to be licensed in terms of a financial sector law.

i. Legislation affecting participants in the financial sector generally

The Financial Sector Regulation Act, 2017 provides an overarching framework for the regulation and supervision of activities and participants in the South African financial sector. Please see the discussion under question 1 for more information.

The Inspection of Financial Institutions Act, 1998 provides for the inspection of the affairs of financial institutions and for the inspection of the affairs of unregistered entities conducting the business of financial institutions.

The Financial Institutions (Protection of Funds) Act, 2001 provides for the laws relating to the investment, safe custody and administration of funds and trust property by financial institutions.

The Financial Intelligence Centre Act, 2001 establishes the Financial Intelligence Centre and a Money Laundering Advisory Council to combat money laundering activities and the financing of terrorist and related activities, and imposes identification, record-keeping and reporting obligations upon "accountable institutions," including banks, attorneys, accountants, estate agents, investment managers and authorised users of securities exchanges.

The Prevention of Organised Crime Act, 1998 provides measures for the combatting of organised crime, money laundering and criminal gang activities.

The Currency and Exchanges Act, 1933 and the regulations issued in terms thereof, regulates, *inter alia*, legal tender and currency and the export of capital from South Africa, the holding of foreign currency in South Africa, and the retention of the South African rand abroad.

The Electronic Communications and Transactions Act, 2002 provides for the facilitation and regulation of electronic communications and transactions.

The Protection of Personal Information Act, 2013 will, once fully effective, regulate the manner in which personal information may be processed by prescribing minimum threshold requirements for the lawful processing of specified personal information in line with international data protection laws. The substantive provisions of the Act are not yet in force.

The Trust Property Control Act, 1996 aims to regulate control of trust property, which is to be administered in accordance with a trust instrument.

The Consumer Protection Act, 2008 under the Financial Sector Regulation Act provides that the Consumer Protection Act does not apply to: (a) any transaction product or service that is subject to the National Payment Systems Act, 1988 or any financial sector law, and which is regulated by the FSCA, the SARB, the Prudential Authority or the Prudential Committee in terms of the Financial Sector Regulation Act; and (b) any transaction that constitutes a credit agreement in terms of the National Credit Act.

ii. Legislation applicable to the banking sector

The Banks Act, 1990 and the regulations published in terms thereof, provide for the regulation and supervision of the taking of deposits from members of the public and of related activities.

The South African Reserve Bank Act, 1989 regulates the SARB and the South African monetary system.

The Mutual Banks Act, 1993 provides for the regulation and supervision of the activities of a juristic person that is registered as a mutual bank and its members

The Co-operative Banks Act, 2007 provides 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.

iii. Other sector-specific financial regulations

The National Payment Systems Act, 1988, together with regulations and notices issued thereunder, provides for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in South Africa.

The Financial Advisory and Intermediary Services Act, 2002 provides for the regulation and supervision of the rendering of certain financial advisory and intermediary services to clients and the marketing of financial products and services.

The National Credit Act, 2005 regulates the provision of consumer credit and provides for the registration of credit providers, credit bureaus and debt-counsellors.

The Home Loans and Mortgage Disclosure Act, 2000 promotes fair lending practices, which require disclosure by financial institutions of information regarding the provision of home loans and establishes an Office of Disclosure.

The Credit Rating Services Act, 2012 provides for the registration and regulation of credit rating agencies in accordance with international regulatory principles.

The Financial Markets Act, 2012 provides for the regulation of financial markets, including, inter alia, the establishment, licensing and operation of market infrastructures for the trading, custody and administration of securities and the clearing and settlement of transactions, as well as the conduct of authorised users of, or participants in, any market infrastructure. Users or participants must also comply with the rules of the relevant exchange or central securities depository. The Financial Markets Act also deals with the prohibition on insider trading.

The Insurance Act, 2017 recently replaced and consolidated parts of the Long-term Insurance Act, 1998 and the Short-term Insurance Act, 1998. The new Insurance Act aims to bring stability to the South African insurance market, in part by introducing stricter regulation for certain entities such as foreign-based insurers in the local market. It also creates a legal framework for the micro-insurance industry, thus promoting financial inclusion and unifying insurance related regulations. In addition:

- The Short-term Insurance Act, 1998 deals with the registration of short-term insurers and the regulation of short term insurance providers and intermediaries, as well as the provision of policy benefits under short term policies such as engineering, guarantee, miscellaneous, motor, accident and health, property or transportation policies.
- The Long-term Insurance Act, 1998 provides for the registration of long-term insurers and the regulation of long-term insurance providers and intermediaries in relation to the provision of policy benefits under long-term policies, which include assistance policies, disability policies, fund policies, health policies, life policies or sinking fund policies. Further amendments to the Short-term Insurance Act and Long-term Insurance Act are pending.

The Pension Funds Act, 2008 and regulations issued thereunder provide for the registration, incorporation, regulation and dissolution of pension funds.

The Collective Investment Schemes Control Act, 2002 regulates and controls the establishment and administration of collective investment schemes and the marketing of domestic and foreign investment schemes or funds to South African residents.

3. What types of activities require a licence in South Africa?

There are various role players and activities regulated in South Africa, which include the following:

a) **Accepting deposits from the general public** – Subject to a few exceptions, this activity would generally include:

- the acceptance of, soliciting of, or advertising for deposits from the general public (including persons in the employ of the person accepting such deposits) as a regular feature of a business (this would cover typical retail banking activities under the Banks Act or deposit taking by member-based organisations such as stokvels, co-operative finance institutions, co-operative banks, friendly societies and mutual banks in terms of legislation specific to those organisations);
- the utilisation of money accepted by way of deposit for: (i) for the granting of loans to other persons; (ii) investment by any person acting as investor in such person's own name or through the medium of a trust or a nominee; or (iii) the financing, to any material extent, by any person of any other business activity conducted by such person in his or her own name or through the medium of a trust or a nominee;
- the obtaining of money through the sale and repurchase of assets, to any person other than a bank, as a regular feature of the business.

b) **Dealing in foreign exchange** - No person (other than an authorised dealer) is permitted to buy or borrow any foreign currency or any gold from or sell or lend any foreign currency or any gold to any person not being an authorised dealer, unless they have obtained the requisite approval from the SARB through an authorised. An authorised dealer is a person authorised by the Financial Surveillance Department of the SARB in respect of any transaction in respect of gold or foreign exchange, or to deal in gold or foreign exchange.

c) **Payment Services and money remittances**

d) Any of the following "securities services," which are regulated in terms of the Financial Markets Act:

- **Dealing in securities**, including the buying or selling of securities as part of a business, the use of a securities exchange to buy or sell listed securities, or the furnishing of advice relating to security to any person
- **Operating a securities exchange** – providing infrastructure for the trading of listed securities
- **Operating a clearing house** – providing infrastructure for the clearing of transactions in listed or unlisted securities;
- Providing or participating in **clearing and settlement processes**;
- **Operating a securities depository** – the provision of infrastructure for holding uncertificated securities, including a securities settlement system
- **Custody and administration services** - a person (referred to as a participant) authorised by a central securities depository to perform custody and administration services in terms of the central securities depository rules

- **Maintaining records of securities transactions** – a person (referred to as a trade repository) who maintains a centralised electronic database of records of securities transaction data

e) **Providing advisory or intermediary services in relation to a financial product or financial service** - "Advice" includes any recommendation, guidance or proposal of a financial nature to any person in respect of the purchase of, or investment in, any financial product; or the conclusion of any other transaction aimed at incurring any liability or acquiring of any right or benefit in respect of any financial product; or on the variation of any term or condition applying to a financial product. "Intermediary services" include any act other than the furnishing of advice the result of which is that a client may enter into any transaction in respect of a financial product, including actions taken with a view to buying, selling or otherwise dealing in, managing, administering, keeping in safe custody, maintaining or servicing a financial product; or collecting or accounting for premiums; or processing claims. Businesses typically affected by the Financial Advisory and Intermediary Services Act 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.

f) **Collective investment schemes** – This involves establishing and managing an investment scheme into which individual investors' funds are pooled for investment purposes and marketing of domestic or foreign collective investment schemes or funds.

g) **Loans to consumers** - The National Credit Act, 2005 applies to all credit agreements entered into, or having an effect in, South Africa and which contemplates a credit facility, a credit transaction, a credit guarantee or any combination of these products or transactions being provided to a consumer. All credit providers must apply to be registered as a credit provider with the National Credit Regulator, unless one of the following exceptions apply:

- The borrower is a juristic person with a total asset value or annual turnover exceeding the specified threshold (currently at ZAR 1 million);
- The borrower is a juristic person with a total asset value or annual turnover not exceeding the above threshold and the credit agreement is a mortgage agreement; or any other credit transaction where the principal debt amounts to ZAR 250,000 or more.
- The credit agreement is not concluded on arm's length terms (i.e., related party transactions).
- The agreement or transaction relates only to incidental credit, the letting of immoveable property, an insurance policy, credit provided for the payment of insurance premiums, or a transaction between a stokvel and its members in accordance with the rules of the stokvel.

h) **Credit rating services** – This refers to the analysis, evaluation, approval, issuing or review of data and information for purposes of providing a credit rating that determines the creditworthiness of an entity, a security or financial instrument, or an issuer of a security or financial instrument.

i) **Establishing and operating a retirement fund**

j) **Providing short-term or long-term insurance products**

k) **Supplying any financial product** - If the provision of a particular financial product is not regulated under any specific financial sector law, the product provider will be required to register under the Financial Sector Regulation Act.

4. How do South Africa's licensing requirements apply to cross-border business into South Africa?

There is no single system by which foreign financial service or product providers can apply to supply such services or products to South African residents. Currently this is determined by each financial subsector as indicated below.

Banking - An institution established in a foreign jurisdiction and which lawfully conducts the business of a bank in such jurisdiction may establish the following:

a) A representative office in South Africa, after obtaining the written consent of the Prudential Authority pursuant to a written application to be submitted to the Prudential Authority, together with the prescribed fee and a certificate from the competent authority in the foreign jurisdiction in which such institution conducts a business similar to the business of a bank – A representative office may not conduct the business of a bank in South Africa and instead serves to promote and facilitate the business of the foreign bank outside of South Africa.

b) A branch of the foreign bank in South Africa to conduct the business of a bank in South Africa, with the prior written authorisation of the Prudential Authority and subject to the prescribed conditions and to such further conditions, if any, as the Prudential Authority may determine – The foreign bank will be required to lodge with the Prudential Authority an application in the form set out in the Regulations relating to Banks together with the prescribed fee. The application must include information regarding the nature and extent of supervision exercised or to be exercised by the responsible supervisory authority of the foreign institution's country of domicile. The Prudential Authority will not approve an application unless he or she is satisfied that proper supervision is or will be exercised by the responsible supervisory authority of the foreign institution's country of domicile. The foreign institution will also be required to register as an external company (in accordance with the Companies Act, 2008).

Financial advisors and intermediaries - In terms of the Financial Advisory and Intermediary Services Act, a financial services provider who is not a resident may submit an application to the FSCA in the form and manner determined by the authority, which must be accompanied by information to satisfy the FSCA that the applicant complies with the prescribed fit and proper requirements. Broadly speaking, the FSCA acknowledges that foreign financial service providers may be subject to similar regulation and supervision by regulators in their home jurisdictions. Accordingly, provided the licensing requirements of the foreign regulator are at a standard acceptable to the FSCA, 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 prescribed in terms of the Financial Advisory and Intermediary Services Act.

Collective investment schemes - The manager or operator of a foreign investment fund must apply to the Registrar of Collective Investment Schemes, which is a functionary of the FSCA, for the registration of the particular investment fund and each relevant portfolio as a collective investment scheme in terms of the Collective Investment Schemes Control Act prior to soliciting investments in any such fund from members of the public in South Africa. The foreign investment fund must comply with the following requirements to be registered:

- The investment fund must be registered and supervised in a jurisdiction that is acceptable to the FSCA.

- The operator of the investment fund must be subject to at least the same standard of regulation and supervision as South African collective investment schemes.
- The operator must either: (a) enter into a representative agreement with a South African collective investment scheme manager that is authorised in terms of Collective Investment Schemes Control Act; or (b) establish and maintain a representative office in South Africa (which must be a company incorporated under the Companies Act, 2008).
- The operator must satisfy certain requirements by the Registrar, including the liquidity of the investment fund and that the assets of investors are properly protected by the principle of segregation and identification.

5. What are the requirements to obtain authorisation in South Africa?

The primary legislation applying to each of the different types of financial institutions and financial services providers generally sets out the specific requirements that an applicant for a specific financial sector licence must satisfy. Broadly speaking, the following requirements must be met to the satisfaction of the sector-specific authority:

a) *Fit and proper* - The applicant must provide the Registrar with information evidencing that the fit and proper requirements have been satisfied in respect of the personal character, competence, operational ability and financial soundness of the individual applying for a license or key individuals or management of a legal entity applying for a licence. The individual requirements will, however, vary according to the type of licence sought by the applicant.

b) *Assets and resources* - The applicant must implement an effective and reliable infrastructure and have adequate assets and resources within South Africa to ensure that it will comply with the requirements of financial sector laws in relation to the licence. Relevant resources include financial, management and human resources with appropriate experience to perform its licensed function.

c) *Governance arrangements* - Governance arrangements must, inter alia, be clear and transparent, promote the safety and efficiency of the financial market infrastructure, and support the stability of the broader financial system, whilst taking into account relevant public interest considerations and the objectives of relevant stakeholders.

d) *Surveillance, supervision and monitoring* - The applicant must demonstrate arrangements for the efficient and effective surveillance, supervision and monitoring of all transactions, authorized users and general compliance. The nature and scope of surveillance, supervision and monitoring arrangements that an applicant must demonstrate will depend on the specific activity that is the subject of the licence application. The applicant must demonstrate that it will be able to comply with the surveillance, supervision and monitoring obligations prescribed in terms of the specific legislation applicable to authorised entities in the relevant sub-sector.

e) *Risk management* - The applicant must implement arrangements to efficiently and effectively monitor and manage the material risks associated with the relevant activity.

f) *Record keeping and reporting* - The applicant must demonstrate that it has arranged for efficient and effective security and back-up procedures to ensure the integrity of the records of transactions.

g) *Prudential requirements and/or liability insurance* - The applicant must comply with the minimum capital requirements or comply with the prescribed insurance, a guarantee, compensation fund or

other warranty requirements, which are prescribed for the particular sub-sector under sector-specific legislation.

h) *Public interest* - The relevant authority must consider whether issuing the licence to the applicant would be contrary to the interests of financial customers, the financial sector or the public interest.

In terms of the Financial Advisory and Intermediary Services Act (FAIS) and the Determination of Fit and Proper Requirements financial services providers, key individuals and representatives of the provider must comply with the prescribed "fit and proper requirements." The Determination of Fit and Proper Requirements sets out the honesty, integrity and good standing; competency; operational ability; and financial soundness requirements for all financial services providers, key individuals and representatives. Individuals exercising oversight over the rendering of financial services by a financial services provider authorised under FAIS (referred to as "key individuals") or who represent the authorised financial services provider in rendering financial services to clients (referred to as "representatives") must successfully complete certain regulatory examinations prescribed under the Determination of Fit and Proper Requirements.

6. What is the process for becoming authorized in South Africa?

The licensing process for the various financial sector activities is currently prescribed under the various sector-specific statutes and subordinate legislation. The application process involves, *inter alia*, the completion of sector-specific required application forms, the submission of supporting information and documents evidencing compliance with the requirements referred to under question 5 generally and as set out in the specific financial sector legislation, and in the case of financial services providers, the completion of regulatory examinations prescribed by the FSCA.

The various sector-specific application forms, together with explanatory notes, may be obtained from the official website of the primary regulator:

- The Prudential Authority: www.resbank.co.za/PrudentialAuthority/Pages/default.aspx
- The FSCA: www.fsca.co.za
- The National Credit Regulator: www.ncr.org.za
- The Payments Association of South Africa: http://www.pasa.org.za

In the event that the proposed financial sector activity does not fall within the scope of any sector-specific legislation, the entity is required to submit an application in terms of the Financial Sector Regulation Act and in accordance with standards to be published in terms thereof.

7. What financial services "passporting" arrangements does South Africa have with other jurisdictions?

South Africa does not have a financial services passporting regime.

South Africa

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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:

i. 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 ("**SSM Regulation**"), supervises the Spanish banking system.[1]

The Bank of Spain comprises 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 *Comisión 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).

The Bank of Spain is empowered with a wide range of functions, which can be classified into 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

[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**").

- 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
- Supervising credit institutions and other entities, in order to ensure compliance with regulatory and disciplinary rules. To perform this function, it may carry out the actions and exercise the powers provided. In order to carry out the supervisory function, the Bank of Spain may, among others:
  - Gather from the institutions and persons subject to its supervisory function the information needed to check that the regulatory and disciplinary rules are being followed.
  - Require of and communicate to the institutions subject to its supervision, the information and measures included in the regulatory and disciplinary rules.
  - Conduct all the necessary investigations or inspections.

ii. 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.

1) 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:

a) 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

b) To act as the localompetent 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

c) 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

d) 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)

e) To participate in supplementary supervision of financial conglomerates in relation to their CIs, assuming, where appropriate, the task of coordinator of the financial conglomerate

f) 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

g) 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.

iii. 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 Business.

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*) ("**CSSCIA**"), 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 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 out those activities in Spain will need to obtain the necessary license from the relevant supervisory authority, for which they will need meet certain criteria.

i. Banking activities

Under Article 3 of CSSCIA, 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 out 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 CSSCIA) without applying for a Spanish license.

ii. Financial services

According to Article 138 of the SMA, investment firms are entities that have as their main corporate purpose the provision, on a professional basis, of investment services to third parties in relation to 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:

a) Reception and transmission of orders from clients in relation to one or more financial instruments

b) Execution of orders on behalf of clients

c) Dealing on own account

d) Portfolio management

e) Placing of financial instruments without a firm commitment basis

f) Underwriting and placing of financial instruments on a firm commitment basis

g) Investment advice

h) Operation of Multilateral Trading Facilities

i) Operation of Contractual Organized Facilities

Similarly, Article 141 of the SMA classifies as **ancillary investment services** the following activities:

a) Safekeeping and administration of financial instruments for the account of clients

b) Granting of 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

c) 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

d) Provision of services related to underwriting transactions

e) Administration of investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments

f) Provision of foreign exchange services where these are connected to the provision of investment services

g) Provision of investment services and activities, as well as ancillary services related to the non-financial assets underlying those financial instruments under sections e), f), g) and j) of Annex 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 regarding 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. Consequently, 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 out all or part of the activities for which authorization was sought, or to impose additional requirements.

Neither the Bank of Spain nor the CNMV had issued guidelines in relation to when Spanish law considers 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 is 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.

i. Credit institutions

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 that 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: (i) the applicant 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) the applicant 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 EUR 18 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 CSSCIA ("CSSCIR").
- No special rights or preferences must 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 offense 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).

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.

3) Opening of a Spanish branch

As will be further explained in 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 authorization from its home member state to carry out 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 the prior authorization of 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 based on a lack of reciprocity for Spanish CIs in the home country of the parent undertaking.

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 the general promotion of 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

ii. 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 out certain banking activities:

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, these entities can provide the 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 Ministry of Economy and Business, in light of the conclusions of reports issued by the Bank of Spain and SEPBLAC.

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 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 in 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.

3) Payment service providers

Regulated by Royal Decree - Act 19/2018 on payment services and other urgent financial measures 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: (i) the provision of services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account; (ii) the provision of services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account; (iii) the 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; (iv) the execution of payment transactions where the funds are covered by a credit line for a payment service user; (v) the issuance of payment instruments and/or acquiring of payment transactions; (vi) the provision of money remittance services; (vii) the provision of payment initiation services; (viii) the provision of account information services.

The incorporation of payment service providers (PSPs) must be authorized by the Bank of Spain, based on the conclusions of the reports obtained by 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 Bank of Spain.

4) E-money entities

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 out the issuance of e-money and granting of credit in relation with some payment services.

The incorporation of e-money entities must be authorized by the Ministry of Economy and Business, 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.

iii. 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):

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 2014/65/EU of the European Parliament and of the Council, dated 15 May 2014, on markets in financial instruments ("MiFID II")).

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, allowing them to carry out a transaction in one or more financial instruments envisaged under Article 2 of SMA (in relation to ancillary financial services).

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: (i) advice to undertakings on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the

purchase of undertakings; and (ii) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

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) providing 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) undertaking 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 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: EUR 730,000
  - ii) Securities agencies: As a general rule, EUR 125,000, and for those not authorized to hold funds or securities of their clients, EUR 50,000
  - iii) Portfolio management companies: Alternatively:
    - An initial capital of EUR 50,000
    - A civil liability insurance policy and a guarantee or similar instrument, covering professional liability in the EU, for an amount of up to EUR 1 million in relation to each claim for damages, and a total annual amount of EUR 1.5 million for all claims, or
    - A combination of the preceding that provides similar coverage
  - iv) Financial advisory entities: alternatively,
    - An initial capital of EUR 50,000
    - A civil liability insurance policy covering professional liability in the EU, for an amount of up to EUR 1 million in relation to each claim for damages, and a total annual amount of EUR 1.5 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 encapsulated 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 a 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:

a) The applicant entity fails to comply with any of the statutory requirements.

b) 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.

c) 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.

d) When the applicable legal framework to the natural or legal persons of a non-member state with whom the invest firm has close links may block the effective supervision.

e) The members of the board of directors are not suitable, or lack sufficient expertise and good repute.

f) 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?

i. Credit institutions

According to Article 6 of the CSSCIA and Article 3 of the CSSCIR, 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 CSSCIR, 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% of the entity's minimum required share capital

ii. Investment firms

According to Article 149 of the SMA, it is the CNMV that shall grant authorization to those that wish to undertake the provision of investment services.

For these purposes, 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 217/2008, 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 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 qualifications.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 II further develop this freedom and this right 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 out 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 member 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's competent authority.

Switzerland

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. Additionally, under the new legislation entering into force in 2020, FINMA is mandated to approve independent asset managers and trustees. However, asset managers and trustees will be supervised by a new supervisory entity that will in turn be supervised by FINMA. In short, FINMA is responsible for microprudential supervision, that is, the firm-level oversight of most 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 and the supervisory authority for independent asset managers and trustees, 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. The entire new Swiss financial market architecture is expected to become effective on 1 January 2020.

The new regulatory framework consist of the following four acts:

- Federal Act on the Financial Market Infrastructure and the Market Behaviour in Securities and Derivatives Trading (FMIA, which already entered into force on 1 January 2016)
- Federal Act on Financial Services (FinSA), which will regulate the provision of financial services, in particular the behavior of organizations and client advisors (expected to enter into force on 1 January 2020)
- Federal Act on Financial Institutions (FinIA), which is mainly concerned with the supervision of previously unregulated asset managers and trusts (expected to enter into force on 1 January 2020)
- Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA, which already entered into force on 1 January 2009)

As an exception to the principle that all types of financial activities are regulated by these four acts, the business of banks is (and will continue to be) regulated by 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 for banks.
- Fintech license – This newly introduced "banking license light" category is designed for innovative firms that intend to accept deposits from the public of up to CHF 100 million without conducting the traditional deposits and loans banking business.
- Securities dealing – Various types of trading require licenses (slightly revised under the new FinIA).
- Independent asset managers and trustees (once the new FinSA has come into effect)

- 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, securities dealers or other financial market participants supervised by FINMA. Furthermore, the Federal Council intends to introduce a new license category for blockchain-based trading.
- 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, safekeeping and offering collective investment schemes
- 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 issuing means of payment (incl. payment tokens), 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.

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 prevent FINMA from considering these 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 new FinSA imposes certain duties on 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. The offering of such investment schemes to qualified investors requires a Swiss representative and a Swiss paying agent (and, under current law, also a distributor license from FINMA or an equivalent license abroad). Furthermore, foreign stock exchanges without a registered office in Switzerland must be authorized by FINMA before they can allow Swiss securities dealers to access their facilities.

Finally, the granting or brokerage of consumer loans to Swiss consumers on a cross-border basis requires approval from the relevant cantonal authorities under the Federal Act regarding Consumer Credits.

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

The requirements with which 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% of the capital or the voting rights) of the licensed entity must exhibit 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 sought, 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 undergo and complete a formal process. This includes the submission of a detailed application showing 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 sought 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), compose the FSC. The Banking Bureau, the Securities and Futures Bureau and the Insurance Bureau supervise financial institutions, while the Examination Bureau monitors their operations and audits financial institutions from time to time. 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 the Banking Act and the Deposit Insurance Act. Anti-money laundering and counter-terrorism are the key areas monitored by the FSC and the Ministry of Justice, which is the competent authority of the Money Laundering Control 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.

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 Act Governing Electronic Payment Institutions and Act Governing Issuance of Electronic Stored Value Cards are the two pillars governing electronic payment, which have increased in significance as fintech solutions emerged from the financial market.

The Insurance Act is the main framework law in Taiwan for the insurance enterprises. There are a number of regulations, including the Enforcement Rules for the Insurance Act, the Regulations Governing Insurance Brokers, the Regulations Governing Insurance Agents, Regulations Governing Establishment and

Management of Insurance Enterprises, and the Regulations Governing Offshore Insurance Branches. In general, insurance activities in Taiwan will trigger different requirements for insurance licenses.

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 Act Governing Electronic Payment Institutions, the Act Governing Issuance of Electronic Stored Value Cards, the Financial Asset Securitization Act and the Real Estate Securitization Act. Initial coin offerings or securities token offerings are emerging from the Taiwan market. However, the rules governing such activities are still unclear. In general, utility tokens are of less concern to the FSC. However, tokens that are akin to securities may subject issuers to securities- related regulations.

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:
    i) Mortgage for immovables or movables
    ii) Pledge for movables or rights
    iii) Bills/notes receivable from business transactions of a borrower
    iv) 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, 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. The Fair Trade Commission and various consumer protection institutions closely monitor the consumer lending terms and conditions.
- Issuing credit and charge cards – 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 electronic stored value cards – According to the Act Governing Issuance of Electronic Stored Value Cards, "electronic stored value card" refers to an IC chip, card, certificate or other forms of debt obligation that uses electronic, magnetic or optical means to store monetary value and performs the function of data storage or computing, and is used for multiple payment purposes. Only an institution that has been approved by the FSC may engage in an electronic stored value card business.
- Taiwan, as well as other countries, is keen to develop its fintech by introducing a sandbox regulation where fintech solution providers may be exempted from certain regulatory requirements if they are approved to enter into experiment.
- 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:

  i) Foreign exchange business related to export

  ii) Foreign exchange business related to import

  iii) Inward and outward remittances

  iv) Foreign currency deposits

  v) Foreign currency loans

  vi) Foreign currency payment guarantees

  vii) Foreign exchange derivatives business

  viii) Other foreign exchange businesses
- Conducting trust business – This covers the following activities:

  i) Trust of money

  ii) Trust of loans and related security interests

  iii) Trust of securities

  iv) Trust of movable property

  v) Trust of real estate

  vi) Trust of leases

  vii) Trust of superficies

  viii) Trust of patents

  ix) Trust of copyrights

  x) Trust of other property rights.

  Trust products or services in Taiwan are standardized because they are highly regulated by the FSC.

- 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 ("**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:

  i) 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 TWD 1 billion

  ii) Accepting deposits of funds as stored value funds

  iii) Transferring funds between e-payment accounts

  iv) 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. However the REIT or REAT markets are no longer active in Taiwan because the regulations are not flexible, and there are better alternatives in the market.
- Financial information service business— This refers to an inter-bank financial information network operator that provides a value-added network for real-time settlement of interbank transactions between financial institutions. The term "settlement" refers to the procedures of crediting and debiting the designated accounts of participants according to the payment instructions of financial

institutions and the netting of receivables and payables between financial institutions to discharge the payment obligations of paying bank.

- Service enterprise engaged in inter-bank credit information processing and exchange — This is an enterprise that either gathers credit information from financial institutions and/or enterprises related to financial institutions, or, having been authorized by the competent authority, gathers and processes various kinds of credit information with the object of duly providing such information for access and use by financial institutions, interested parties or other parties authorized by the competent authority.

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 in Taiwan by a foreign bank/branch without license or approval in Taiwan is not allowed. In other words, even though an 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 clients in Taiwan.

By way of reiteration of this policy, the FSC issued two rulings to the ROC Bankers' Association in Taiwan on 27 March 2014 ("**27 March Letter**") and on 10 May 2016 ("**10 May Letter**"), which expressly provide 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 ("**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 is 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 offshore financial institutions may come to Taiwan and meet clients 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, these 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 lending (including project finance, ship/aircraft finance, real estate finance, acquisition finance and trade finance) by offshore arrangers and/or lenders to onshore borrowers is 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 activities 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 first apply to the FSC for prior approval and obtain an establishment permit. Upon receiving an 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 for an establishment permit; business plan; the list of promoters and its certification; self-assessment form for promoters from financial industry meeting requirements of investments-related regulations; the application forms for the same person or the same interested parties who have more than 10% of the shares concerning promoters who are from a non-financial industry; the minutes of the promoters' meeting; written declaration of the promoters stating that they have good moral character; certification that the promoters have already deposited the capital; description of promoters' fund source/s; articles of public offering; the certification of qualifications of the president, vice president and assistant vice president; articles of incorporation of the bank; auditing opinions of a certified public accountant and lawyer; other documents required by the competent authority.

b) Having a 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 (including a virtual bank) is TWD 10 billion; TWD 2 billion for an insurance company; TWD 500 million for an electric payment institution (TWD 100 million for payment/collection agent business); from TWD 200 million to TWD 400 million for a securities firm; TWD 300 million for a securities investment trust enterprise; TWD 20 million for a securities investment consulting enterprise; TWD 2 billion for a trust enterprise; and TWD 300 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 time frame within which 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:

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:

a) Application form for establishment permit

- Business plan: The business scope, the principles and guidelines of the business operation and the concrete method to carry out (including the location of 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), etc.
- The list of promoters and their certifications
- Self-assessment form for promoters from financial industry meeting requirements of investments-related regulations
- The application forms stipulated in paragraph 6 of Article 25 of the Banking Act for the same person or the same interested parties who have more than 10% of the shares concerning promoters who are from non-financial industry
- The minutes of the promoters' meeting
- Written declaration of the promoters stating that none of the circumstances listed in Article 3 of the "Regulations for the Responsible Persons of the Bank" apply to them
- Certification that the promoters have already deposited the capital at least TWD 2 billion
- Description of promoters' fund source/s
- Articles of public offering
- Certification of qualifications of the president, vice president and assistant vice president
- Articles of incorporation of the bank
- Auditing opinions of a certified public accountant and lawyer
- Other documents required by the competent authority

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 TWD 10 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

d) 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 for a banking business license
- Certificate of company registration
- Statement of capital verification
- 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.

Taiwan

Regulations governing the establishment of virtual banks or non-financial enterprises providing limited regulated financial activities with innovative digital technology or business model by trying sandbox, are underway.

7. What financial services "passporting" arrangements does Taiwan have with other jurisdictions?

As Taiwan is not an European Economic Area member state, a Taiwan-regulated financial institution is not entitled to the right of passporting across Europe or to any other jurisdiction.

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Thailand

1. Who regulates banking and financial services in Thailand?

In general, Thailand has three main regulators that are responsible 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 foncier 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. Listed companies in Thailand 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 ("**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 that it issues.
- The Securities and Exchange Act B.E. 2535 (1992), as amended ("**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 the SEC Act.
- The Derivatives Act B.E. 2546 (2003), as amended ("**Derivatives Act**"), governs derivatives business operation in Thailand such as derivatives brokerage activities. The SEC is also the regulator of 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 three 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 acquisition of card transactions.
- Providing personal loans – This basically covers providing uncollateralized loans to retail consumers and also lending with vehicle registration as collateral, as well as lending that originated from hire purchase and lease that is not for vehicles and machineries.
- Conducting a digital asset business – This would cover the offering of digital assets and businesses undertaking digital asset-related activities, such as digital asset exchanges, digital asset brokering and digital asset dealerships.
- Carrying out insurance business – Thai regulation covers various insurance activities such as acting as insurer or reinsurer, as well as insurance agencies or brokerages.
- 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 an 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 while the latter is the management of investments through a custodial account on behalf of another person.

Notwithstanding the examples above, the Foreign Business Act B.E. 2542 (1999) ("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 — whether or not regulated under other specific regulation — 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, unless a foreign business operator sends an employee to conduct business activities in Thailand. On the other hand, some business-specific licensing requirements (e.g., securities businesses 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 or in reliance on official exemptions, 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 a 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.

i. 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.

ii. 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**.

iii. 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 operators should not be subject to the regulatory scheme under Thai law. This practice should, however, be adopted with extreme care.

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 capacities 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 on which to apply 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.

Thailand

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 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 Ministry of Treasury and Finance (*Hazine ve Maliye Bakanlığı* or "**Ministry of 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 "**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 following:

- Banking Law No. 5411

- Capital Markets Law No. 6362
- Insurance Law No. 5684
- Private Pension Savings and Investment System Law No. 4632
- Financial Leasing, Factoring and Financing Companies Law No. 6361
- Payment Services and Electronic Money Institutions Law No. 6493
- Debit Cards and Credit Cards Law No. 5464

The BRSA, the CMB and the Ministry of Treasury have 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 Ministry of Treasury's 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 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 Ministry of 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 prepaid 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.

- Operating payment and securities settlement systems - This covers operating a platform for the realization of clearing and settlement transactions in connection with the fund and security transfer orders given by three or more participants.
- 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 constitute ancillary financial services (e.g., deposit banks' capital markets activities or private pension companies' life and personal accident insurance business) may 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 Ministry of 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 Ministry of 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 attest to 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.

f) Transparent 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 a 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 Ministry of 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 time frame 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:

a) 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 the license can be obtained.

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 suitability 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 European Economic Area member states or any other jurisdiction, and foreign financial institutions cannot operate without required licenses in Turkey.

Turkey

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United Arab Emirates

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

The UAE has five different regulators that are responsible for the authorization and supervision of banks, insurers and other financial institutions. These are: (i) the Central Bank of the UAE (CB); (ii) the Insurance Authority (IA); (iii) the Securities and Commodities Authority (SCA); (iv) the Dubai Financial Services Authority (DFSA), regulator of the Dubai International Financial Centre (DIFC); and the Financial Services Regulatory Authority (FSRA), the regulator of the Abu-Dhabi Global Market (ADGM).

The allocation of responsibilities between the CB, IA, SCA, DFSA and FSRA is as follows:

a) The CB, IA and SCA regulate and supervise on a UAE federal level, respectively, all banks, insurers and insurance brokers, and securities traders.

b) The DFSA is the financial regulator and supervisor of all banks, investment firms, securities traders and re-insurers that operate within the 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.

c) The FSRA is the financial regulator and supervisor of all banks, investment firms, securities traders and re-insurers that operate within the ADGM, a financial free zone located in the Emirate of Abu Dhabi, which is governed by its own rules and regulations based on England and Wales laws, as opposed to civil law on the UAE federal level. ADGM-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. 14 of 2018 regarding the Central Bank and organization of Financial Institution and Activities, which replaced the old 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.

The Central Bank is also supposed to issue a number of updated regulations pursuant to its new law.

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.

The FSRA issued the Financial Services and Market Regulations, which were broadly modelled on the UK's Financial Services and Markets Act (2000) and other related legislation.

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 out 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
- Crowdfunding

4. How do the UAE's licensing requirements apply to cross-border business into the UAE?

Currently, there is no prohibition on foreign banks that deal with clients located in the UAE. The only restriction would be the prohibition on holding mortgages on real estate, 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.

A recent law was issued in 2016, creating a security registry for movable assets, and foreign banks may register as pledgee and hold movable assets as security without needing to have a local security agent.

There are more restrictions on insurers and insurance brokers that must mandatorily be licensed by the Insurance Authority. Foreign insurance companies may not insure assets located in the UAE.

Similar restrictions apply to 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 and ADGM, which are wholesale jurisdictions, 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 five 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 the following:

   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

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, as well as to 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, and to enable them to assess the adequacy of the applicant firm's resources. The applicant firm will need to do the following:

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 depth how it will monitor and control these risks

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; however, the DFSA has signed a number of MOUs with foreign regulators.

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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 Bank of England which acts through 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, insurance intermediaries, consumer credit firms and payment providers.

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 also 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 also has a Payment Systems Regulator (PSR) which is an economic regulator in respect of various payments systems, including the New Payment System Operator (comprising Bacs, Faster Payments and Cheque & Credit), CHAPS, Mastercard and Visa Europe. The PSR looks to see that payment systems are operated and developed in the interests of users while promoting competition and innovation. 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 (ESMA) 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. In this regard, ESMA has direct supervisory powers in the following areas: Credit Rating Agencies, Trade Repositories and Securitisation Repositories. These responsibilities will be transferred to UK authorities in respect of UK based firms and activities after Brexit.

The European Central Bank (ECB) is the supervisor of Eurozone banks under the EU's Single Supervisory Mechanism (SSM). All "significant" banks are directly supervised by the ECB, while the supervision of the remaining 5,000 is led by national authorities albeit under the overall direction of the ECB. 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.

United Kingdom

On 23 June 2016 the UK voted in a referendum to leave the EU (known as Brexit). The UK has given notice under Article 50 of the Treaty on the Functioning of the EU and, as a result, will leave the EU on 31 October 2019, unless the notice is revoked by the UK or all countries agree to an extension. In the meantime, the UK's legal relationship remains unchanged and EU legislation remains applicable.

If the UK exits the EU with a withdrawal agreement, it is expected that there will be a two year implentation period until December 2020 (which may be extended) during which time the status quo will be preserved. The intention is to negotiate a Free Trade Agreement between the UK and the EU on the basis of a "Political Declation on the Framework for the Future Relationship." In contrast, in the event of a no-deal Brexit (i.e. there is implementation period), the UK has put in place transitional measures including temporary permissions regimes to mitigate the risk of firms facing a "cliff edge" on 29 March 2019 when their authorisation and licences to carry on UK/EU-27 cross-business would come to an end. For their part, the EU and individual member states have taken more modest contigency steps.

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 additionally contain exemptions and discretions at a member state level and the UK also has various domestic rules. This body of EU law will be retained post-Brexit subject to those changes which are necessary to correct deficiencies that arise because the UK is no longer part of the EU (i.e. substituting references to EU bodies for UK ones or limiting territorial scope). Over time UK and EU financial services law may diverge although the UK may choose to maintain alignment in certain areas to facilitate equivalence assessments and therefore access to the EU's Single Market.

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 crowdfunding, 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.
- Crypto-assets - there is no bespoke regime for crypto-assets and related activities. The FCA will analyse the nature of a cryptoasset to determine whether it falls within the regulatory perimeter (i.e. if it is a security, payment service or utility token). To assist market participants it has published guidance on its approach.

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 Union 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 or "equivalent" 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. Post Brexit (and after the expiry of any implementation agremment), EU member states will be TCFs.

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 for so long as the UK remains a member state or during any implementation period, 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), could result in greater restrictions on "third country firms" doing business in the UK because of the need for third-country firms to demonstrate equivalence of regulation.
- 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 will therefore come under closer UK regulatory scrutiny in respect of their cross-border business and branches of EEA firms will need to obtain authorization in their own right when 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 authorised, 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 authorisation, 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) Checklist and declaration form

g) Fees and levies supplement

h) 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?

While the UK remains a member state of the EU or during the implementation period of any withdrawal agreement, once authorised in the UK, a UK firm can passport into other EEA 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.

On Brexit and after any implementation period, 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 (when 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. There are, however, significant limitations to such arrangement which cannot in any event amount to little more than "post-boxes." The European Supervisory Authorities such as ESMA have published guidelines on supervisory principles in this regard.

United Kingdom

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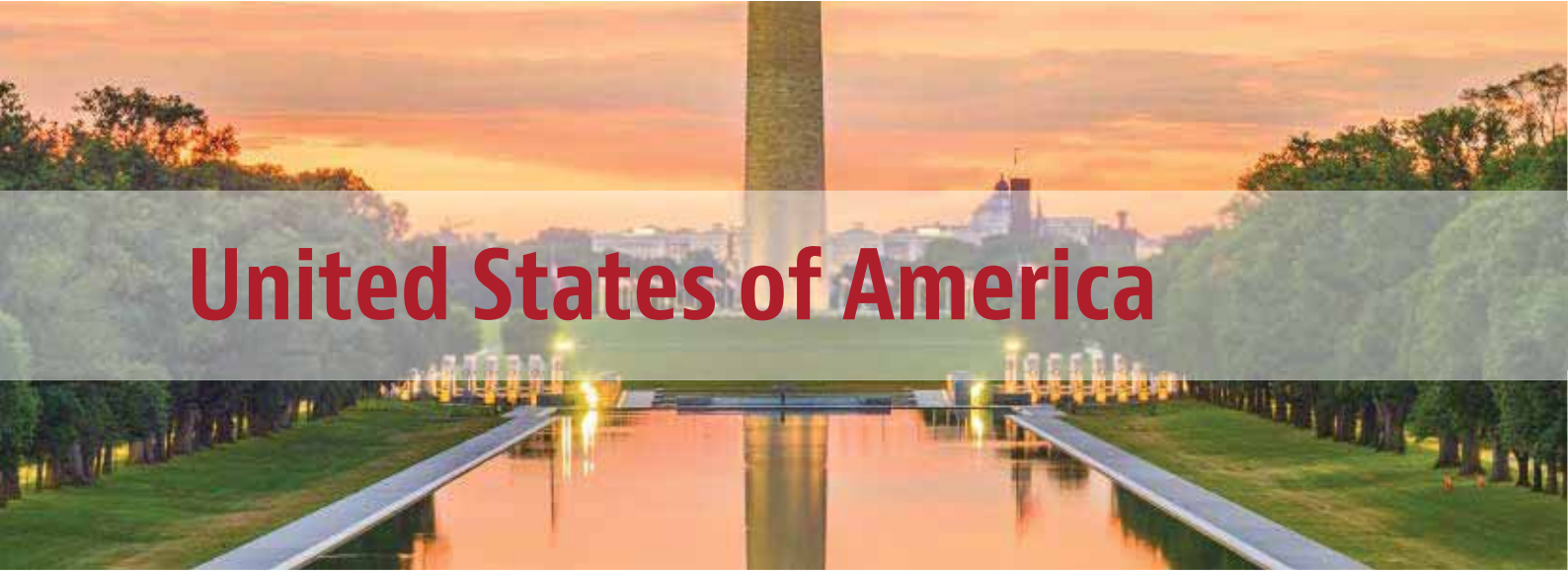

United States of America

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

i. Banks

The United States has a dual banking system comprising 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 United States 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 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 United States include the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the FDIC and the state banking agencies.

1) 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

[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.

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 gives 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.

2) 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.

3) 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.

4) 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.

5) 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.

ii. 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 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.

iii. 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 United States. 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]

iv. 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.

v. 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.

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

i. 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

[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."

[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).

regulatory agencies, impose a comprehensive system of supervision, regulation and enforcement over the operations of financial institutions, their holding companies and affiliates.

1) 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 (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. It 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 ("**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.

2) 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.

ii. 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 or entities engaged in securities and investment activities, unless an exemption is available.

iii. 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.

iv. Insurance

Each state has its own laws and regulations governing the sale of insurance products and other insurance activities.

v. 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?

i. 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
- Lending activities, including loans to consumers and certain commercial lending
- Providing trust services (which may require a separate license or special powers)

ii. 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 their own account, through a broker or otherwise, is required to register as a broker-dealer in the United States, 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.

[5] 7 USC ch. 1 §1 et seq.

With respect to the foregoing, the United States 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.

iii. 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 who 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.

- 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.[8] 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.

- Operating a Commodity Pool. A commodity pool is an enterprise (e.g., collective investment vehicle) 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.[9] A commodity pool operator (CPO) is a person that operates a commodity pool and solicits funds for that commodity pool.[10] Registration is required unless an exemption applies. 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 commodity pool registers with the CFTC with respect to each commodity pool.

- 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[11] 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

[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(12), which defines the term "commodity trading advisor."
[9] See CEA §1a(10), which defines the term "commodity pool."
[10] See CEA §1a(11), which defines the term "commodity pool operator."
[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.

commonly known in the trade as a dealer or market maker in swaps.[12] 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 that such person has entered into, together with such positions entered into by its affiliates with U.S. persons do not exceed USD 8 billion in aggregate gross notional amount. If the dealer enters into swaps with a federal or state government agency, pension plan or other "special entity," then a lower threshold of USD 25 million in aggregate gross notional amount applies.

iv. 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.

v. 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?

i. 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 United States, but who periodically travel to the United States 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).

ii. 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 United States, but who periodically travel to the United States 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 United States. However, certain exemptions may be available to foreign financial services firms, depending on the activities conducted and the manner in which they are conducted.

iii. Derivatives

With respect to transactions involving futures contracts (and options thereon), if the solicitation, advice or management is occurring in the United States, registration will be required. Thus, to the extent that a person solicits orders, advises U.S. residents or manages any investments from the United States, registration will be required, absent an exemption.

[12] See CEA §1a(49), which defines the term "swap dealer."

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 ("**Guidance**"), the application of the CFTC's swaps regulatory regime (other than margining and segregation of margin) to a cross-border transaction depends, in large part, on whether one of the counterparties to the transaction is a "U.S. person,"[13] as defined in the Guidance. The Guidance defined the term "U.S. person" broadly to include, but not be limited to the following:

a) Any natural person who is a resident of the United States

b) Any estate of a decedent who was a resident of the United States 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) ("**Specified Legal Entity**"), in each case that is organized or incorporated in the United States or having its principal place of business in the United States

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 ("**U.S. Pension Plan**")

e) Any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States 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 ("**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

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."[14]

With respect to margining and segregation of margin for uncleared swaps, the CFTC adopted a slightly different definition of "U.S. person."[15] Accordingly, to the extent that a person engages in swaps transactions,

[13] *See* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013).
[14] Guidance at 45,316.

careful analysis of both U.S. person definitions should be conducted to determine the applicable substantive provisions of the swaps regulatory regime.

iv. 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.

v. 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.

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

i. 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.

ii. Securities and investments

Depending on the type of securities or investment activity to be conducted in the United States, 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.

iii. 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 and regulations. Individual associated persons employed by the registrant will need to satisfy the proficiency requirements, which generally involve completion of the Series 3 proficiency examination.

[15] See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 Fed. Reg. 34818 (31 May 2016) ("**Cross-Border Margin Rules**"). For example, the Cross-Border Margin Rules' "U.S. person" definition includes non-U.S. branches of U.S. persons for certain prongs and excludes the entities contained in prong (f) under the Guidance definition (i.e., relating to non-U.S. pools that are majority owned by U.S. persons).

iv. 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.

v. 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?

i. 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.

ii. 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.

iii. 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.

iv. 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?

i. Banking

The concept of passporting is not available under U.S. banking laws and regulations.

ii. Securities and Investments

The concept of passporting is not available under U.S. securities laws and regulations.

iii. Derivatives

The concept of passporting is not applicable under the CEA.

iv. Insurance

Although the appropriate state's laws should be reviewed to confirm, the concept of passporting is likely not available under state insurance laws.

v. 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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Vietnam

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 Credit Institutions has subsequently been amended, with the amendments taking effect from 15 January 2018. The Law on Securities and the Law on Insurance Business compose 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 the following:

- 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
- Banks, finance companies and finance leasing companies may deal in and provide 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, among others, issue money deposits, provide loans (including consuming loans), provide guarantees and issue credit cards.
- Finance leasing companies may, among others, take deposits from organizations, issue money deposits, and provide finance leases and operating leases.

Insurance companies may carry out insurance business (effecting and carrying out contracts for both life and non-life insurance), including, among others:

- Insurance business, reinsurance business
- Risk, loss prevention and limitation
- Damage assessment
- Damage assessment agency, indemnity settlement, request for compensation by a third party
- Fund management and capital investment

Insurance brokers may perform insurance broking activities, including, among others, supply of information, consultancy, negotiation, and arrangement of the execution of insurance contracts.

The business activities for securities companies and fund management companies include, but are not limited to, the following:

- 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 underwriting and securities investment consultancy.
- Securities companies may carry out entrusted management of individual investors' securities trading accounts, provide financial consultancy services and other financial services.
- Fund management companies may carry out management of securities investment funds and securities portfolios and securities investment consultancy.
- Fund management companies may mobilize and manage foreign investment funds with the objective of investing in Vietnam.

The SBV, SSC and the MOF are the state bodies with the authority to grant licenses for banks and other financial institutions. The scope of a financial institution's permitted activities is specified in its establishment and operation license.

4. How do Vietnam's licensing requirements apply to cross-border business into Vietnam?

The cross-border supply of banking and financial 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 banking services into Vietnam on a cross-border basis:

- The provision and transfer of financial information and financial data processing and related software by suppliers of other financial services
- Advisory, intermediation and other auxiliary financial services

Offshore insurance companies and insurance brokerage companies can supply the following insurance services into Vietnam on a cross-border basis:

- Insurance services provided to enterprises with 49% or more foreign-invested capital and foreigners working in Vietnam
- Reinsurance services
- Insurance services in international transportation, including insurance of risks relating to:
    - international maritime transport and international commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising there-from
    - goods in international transit
- Insurance broking and reinsurance broking services
- Consultancy, actuarial, risk assessment and claim settlement services

Offshore financial institutions can supply the following securities services into Vietnam on a cross-border basis:

- Provision and transfer of financial information, and related software by suppliers of securities services
- Advisory, intermediation and other auxiliary securities-related services, including investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy

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 that 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.

Foreign investors who intend to invest in insurance or insurance brokerage activities in Vietnam may purchase shares of Vietnamese insurance companies or insurance brokers and/or set up a local insurance company or broker. Foreign non-life insurance companies may establish a branch in Vietnam.

Foreign investors who intend to invest in securities activities in Vietnam may establish a joint venture, purchase shares of Vietnamese securities/fund management companies, and/or set up a 100% foreign-owned securities/fund management company or a branch in Vietnam.

i. Restrictions on foreign ownership in Vietnamese credit institutions, insurance companies/ brokers and securities/fund management companies

1) Credit institutions

The acquisition by foreign investors of a shareholding in a Vietnamese joint stock credit institution is subject to significant restrictions.

The total aggregate shareholding of foreign investors in a Vietnamese credit institution may not exceed 30% of its 'charter capital.' Other ownership limits applicable to each type of foreign investor, including Vietnamese investors, are as follows:

- Individual investors – 5%
- Organizations –15%
- Strategic investors: – 20%

The shareholding of any single foreign investor and its affiliated persons may not exceed 20% of the charter capital of a Vietnamese credit institution.

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.

The parent entity must have total assets of at least USD 10 billion at the end of the year prior to its application. Entirely foreign-owned credit institutions must comply with Vietnamese prudential requirements on a stand-alone basis.

2) Insurance companies

There is no foreign ownership limit applicable specifically to insurance companies and insurance brokers.

3) Securities/fund management companies

Foreign investors being organizations meeting certain requirements (discussed under Section 6 below) may purchase shares to own up to 100% charter capital of a securities company or a fund management company, or establish a 100% foreign-invested securities company or fund management company.

Foreign investors being organizations not meeting such requirements or foreign investors being individuals may only own less than 51% of the charter capital of a securities company or fund management company.

ii. Foreign bank branches, foreign non-life insurance companies branches, foreign securities/fund management companies branches

1) Foreign bank branches

Foreign banks may also open branches with no separate legal status. The parent bank must have total assets of more than USD 20 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.

a) Foreign non-life insurance companies branches

Foreign non-life insurance companies may open branches with no separate legal status before it may participate in the non-life insurance business. The foreign parent company must undertake to be responsible for all obligations and undertakings of the branch in Vietnam.

b) Foreign securities companies branches

Foreign securities companies may open branches with no separate legal status to carry out securities trading activities allowed for securities companies, except direct management of customers' deposit for securities and opening of domestic investors' securities trading account.

iii. Representative offices of foreign banks, insurance companies, securities companies and fund management companies

Foreign banks, insurance companies, insurance brokers, securities companies and fund management companies can 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/company 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?

i. Credit institutions

In general, to set up a joint venture or wholly foreign-owned credit institution in Vietnam, the foreign investor must fully meet the following conditions, among others:

- The foreign credit institution may conduct banking operations under the law of the country in which it has its headquarters.
- The operations to be conducted in Vietnam are those that the foreign credit institution is licensed to conduct in the country in which it has its headquarters.
- The foreign credit institution's operation is healthy and it meets requirements on total assets, financial status and safety ratios under the SBV's regulations.
- 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 keeps the actual value of its charter capital not lower than the legal capital and observes regulations on safety assurance under the laws.
- 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 the consolidated supervision of the foreign credit institution's operations according to international practices.

In general, to set up a foreign bank branch, the foreign bank must fully meet the following conditions, among others:

- The foreign bank may conduct banking operations under the law of the country in which it has its headquarters.
- The operations to be conducted in Vietnam are those that the foreign bank is licensed to conduct in the country in which it has its headquarters
- The foreign bank's operation is healthy and it meets requirements on total assets, financial status and safety ratios under the SBV's regulations.
- A competent foreign authority has signed an agreement with the SBV on inspection and supervision of banking operations and exchange of information on banking safety oversight, and has made a written commitment on consolidated supervision of the foreign bank's operations according to international practices.
- 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 it fully meets the following conditions, among others:

- It is a legal entity licensed for banking operations overseas.

- Under the law of the country in which it has its headquarters, it may set up a representative office in Vietnam.

The legal capital required for the joint venture bank and wholly foreign-owned bank is VND 3,000 billion (approximately USD 130 million), and USD 15 million for a foreign bank branch.

The official fee for setting up a foreign-owned bank or a foreign bank branch in Vietnam is VND 140 million (approximately USD 6,000).

By law, the timeline for the establishment of a foreign-owned bank or a bank branch spans 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.

ii. Insurance companies

In general, to set up an insurance company or insurance broker in Vietnam, an investor must first fully meet the following conditions, among others:

- The investor must actualize their capital contributions in cash, which must not be financed by a loan or investment entrusted from other entities.
- Investors being organizations contributing to at least 10% of the charter capital must have a profitable business in three consecutive years immediately preceding the year in which the application for license is submitted.
- Investors being organizations conducting business lines having a prescribed legal capital must ensure that their owner's equity less the minimum legal capital is at least equal to the planned amount of investment.
- If an investor being an organization is an insurance company, insurance broker, commercial bank, finance company or securities company, it must fulfil and maintain financial safety conditions and obtain permission from competent authorities to make the investments in accordance with specialized laws.

Besides the general conditions, to set up a limited liability insurance company, the foreign investor must be an organization, and must further meet the following conditions:

- Is a foreign insurance company authorized by competent foreign authorities to conduct business in the sector contemplated to be carried out in Vietnam; or a subsidiary specializing in outbound investment under a foreign insurance company, duly authorized by such foreign insurance company to contribute capital to establish an insurance company in Vietnam
- Has at least seven years of experience in the business it plans to conduct in Vietnam
- Has total assets amounting to at least USD 2 billion in the year immediately preceding the year it submits the application for a license
- Has not seriously violated regulations on insurance business of the country where the foreign investor has its headquarters during the three years preceding the year the application for a license is submitted

Besides the general conditions, to set up an insurance broker, a foreign investor must further meet the following conditions:

- Is a foreign insurance broker authorized by the competent foreign authority to conduct insurance broking business in Vietnam
- Has at least seven years of experience in insurance broking
- Has not seriously violated regulations on insurance broking of the country where the foreign investor has its headquarters during the three years preceding the year the application for a license is submitted

The legal capital required for a insurance company varies depending on the operation as follows:

- Non-life insurance company: VND 300 billion to 400 billion
- Life insurance company: VND 600 billion to 1,000 billion
- Health insurance company: VND 300 billion
- Foreign branches: VND 200 billion to 300 billion
- Reinsurance company: VND 400 billion to 1,100 billion
- Insurance broker: VND 4 billion to 8 billion

By law, the timeline for the establishment of an insurance company spans about three months from the date the Ministry of Finance receives a complete valid application dossier. However, in practice, this time frame can be longer.

iii. Securities/fund management companies

In general, to set up a securities company or fund management company, an investor being an organization must fully meet the following conditions, among others:

- Have legal capacity and is not in a state of consolidation, merger, division, separation, dissolution, bankruptcy and not prohibited from establishment and management of enterprises in accordance with the laws and regulations on enterprises
- Have a profitable business in the two preceding years and no accumulated losses
- If the foreign investor is a commercial bank, insurance company, or securities business organization, the foreign investor must not be under special supervision, resolution or other warning statuses, and at the same time, must fully meet the conditions to participate in capital contribution and investment in accordance with specialized laws.
- If the foreign investor is not a commercial bank, insurance company, or securities business organization, the foreign investor must:
    - Have an operation term of at least five consecutive years preceding the year of capital contribution
    - Have the remainder owner's equity, after subtracting long-term assets, that is at least equal to the estimated capital to be contributed
    - Have a working capital that is at least equal to the estimated capital to be contributed

- Use only owner's equity and other legitimate capital sources in accordance with applicable specialized laws
- Its most recent audited financial statement must be unqualified.

Besides the requirements above, foreign investors being organizations must further satisfy the following conditions to own 100% of a securities company or fund management company:

- Is an organization in the banking, securities, insurance sector that has an operation term of at least two years immediately preceding the year of capital contributions or share purchase
- The foreign specialized supervising authority [of the foreign investor] in the banking, securities, insurance sector and the SSC must have signed a bilateral or multilateral agreement on exchange of information, and cooperation on management, inspection and supervising securities activities and the securities market

The legal capital required for a securities company varies depending on the operation as follows:

- Securities brokerage: VND 25 billion
- Securities proprietary trading: VND 50 billion
- Securities underwriting: VND 165 billion
- Securities investment consultancy: VND 10 billion

If a securities company applies for more than one operation in its license, the required legal capital is the sum of the legal capital required for all operations applied for.

The legal capital required for a fund management company is VND 25 billion. The official fee for setting up a securities company in Vietnam is VND 30 million.

By law, the timeline for the establishment of a securities company or fund management company spans about four months from the date the SSC receives a complete valid application dossier. However, in practice, the timing can be longer.

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 that 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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