

BULGARIA – Full Answers

1. Provision of banking services by a foreign bank, without a local licence, on cross border basis

1.1 To what extent can a foreign bank (which is not locally authorised) provide the services listed in 1.3 (on a cross border basis) to local retail customers, commercial clients and wholesale counterparties?

Generally, a foreign bank is not allowed to perform banking activities in the territory of Bulgaria unless it establishes a branch or a subsidiary in Bulgaria and seeks licence from the National Bulgarian Bank (the “BNB”).

One-off transactions at the client’s initiative however are not prohibited. Deposit taking from more than 30 clients (other than banks and institutional investors) will nonetheless require a licence.

A foreign bank might consider different options. For example, it may decide to establish a local financial institution (FI) which is allowed to lend money to the public from own funds. If that is its main activity the local FI must get registered, though not licenced, with the BNB. If that is not its main activity, the FI will not have to register.

Further, a foreign bank may establish a local payment institution for provision of payment services. However, it will have to obtain a licence from the BNB.

Note that transactions between a local and a foreign entity (including provision of bank accounts or money lending) are notified to the Bulgarian National Bank for statistical purposes.

1.2 Where local authorisation or licensing is required, are there any useful exemptions?

No

1.3 To what extent can a foreign bank (which is not locally authorised) promote the services below locally? Where there are restrictions on promotion, are there any useful exemptions?

- Deposit taking and payment services/provision of bank accounts;
- Lending (either secured, e.g. on land/real estate, or unsecured) and other forms of finance such as trade finance;
- Originating/purchasing/selling debt participations (secured or unsecured), such as syndicated loans or securitised debt obligations.

A foreign bank is not allowed to promote its services in the territory of Bulgaria unless it get licenced through a branch or a local subsidiary. It is not allowed to have a Bulgarian website or actively target Bulgarian clients. However, one-off promotion at the request of the client should be allowed.

1.4 Can a foreign bank establish a local representative office to promote such services where these are to be conducted by the bank on a cross border basis (and not by the local office)?

Under the current Bulgarian law it appears that foreign banks may establish local representative offices. They are registered with the Bulgarian Chamber of Commerce and Industry. The BNB is notified after completion of the registration. Representative offices are not allowed to perform commercial activity. Under Bulgarian law advertising activities are generally treated as commercial activities. Therefore, it is arguable whether a representative office can actively promote the activities of the foreign bank. One-off promotions at the client's request are allowed.

2. Provision of investment services from home country without a local license

2.1 To what extent can a foreign bank or investment firm (which is not locally authorised) provide the services below to local retail customers, commercial clients and wholesale counterparties? Are there any useful exemptions?

Generally, only local banks whose licence covers investment services or local investment intermediaries which are licenced from the Financial Supervision Commission (the "FSC") may provide regulated investment services. A foreign bank or a foreign investment intermediary may establish a local subsidiary or a branch and apply for a licence. One-off transactions at the client's request however should be allowed.

2.2 To what extent can a foreign bank or investment firm (which is not locally authorised) promote the services below locally? Are there any useful exemptions?

- **Dealing in/buying/selling investments (as principal or as agent)**
- **Investment advice**
- **Discretionary management**

Generally, they should be licenced. One-off promotions at the client's request seem permitted.

3. Local rules

3.1 When a foreign bank/investment firm enters into an agreement with a local customer, are there any restrictions on the contract being governed by foreign law and the courts of the foreign country having exclusive jurisdiction (i.e. is the contract required to be governed by local law and/or must the local courts have jurisdiction)?

Generally, the parties are free to choose the governing law and jurisdiction. However, the rules of public policy and the overriding mandatory rules of Bulgarian law would still apply. Further, persons that are considered consumers under Bulgarian law may not be deprived of rights available to them pursuant to Bulgarian or European law.

4. Regulatory appetite for foreign banks

4.1 What is the attitude of your national regulatory authority to cross border business and the presence of foreign banks?

If they comply with local legislation, the attitude is positive.

4.2 Is it generally more common for foreign banks to operate locally through a branch or a subsidiary, or both (and does this depend on the activities the bank carries out)?

Both options are common.

4.3 Is it mandatory, in any situation, to operate through a branch or subsidiary?

Yes. For example, if a bank takes deposits from more than 30 clients (other than banks and institutional investors) it must get a licence through a branch or subsidiary.

4.4 What are the benefits/disadvantages of operating through a branch or subsidiary?

One of the disadvantages is namely the requirement to obtain a licence in the event of regulated activity. Further, they are subject to the supervision from the Bulgarian regulators.

One of the advantages of a local subsidiary is that it can operate within the EU based on the single passport rule.

5. Establishing a branch

5.1 Does a branch have rights/recognition to trade in other countries

Generally, Bulgarian branches of foreign banks are allowed to act within the territory of Bulgaria only.

5.2 How is a branch regulated?

It must be licenced by the Bulgarian National Bank (if a branch of a bank) or by the Financial Supervision Commission (if a branch of an investment intermediary). The regulators exercise initial (through the licencing process) and on-going control on the activity of the branch. If the branch does not comply with Bulgarian law, the licence shall be revoked. The licence of the branch may cover only services included in the licence of the foreign bank/investment intermediary. The regulators may impose fines in the event of breach of local legislation.

6. Establishing a subsidiary

[No comment]

7. Supervision

7.1 Which national regulatory authority authorises, regulates and supervises foreign banks/investment firms/subsidiaries in your jurisdiction?

The main regulators are the Bulgarian National Bank (banks, financial and payment institutions) and the Financial Supervision Commission (investment intermediaries).

7.2 Is there any split in supervision between the local regulator and the foreign/home regulator – e.g. in the case of locally authorised branch?

Yes. For example, the competent foreign regulator must consent to the establishment of a branch of a foreign bank in Bulgaria. The BNB shall grant a licence to a local branch if it is satisfied that the foreign regulator exercises effective control over the foreign bank and if the regulators have entered into a supervision cooperation agreement.

8. Individuals

8.1 Where a local branch or subsidiary is established and (if applicable) authorised, are individuals personally regulated and/or liable to fines?

Yes, certain individuals are regulated. By way of example, these include members of management and supervisory bodies of local subsidiaries; managers of local branches of foreign banks/investment intermediaries; certain other administrators, etc.

They may be subject to fines and/or criminal liability (where the breach constitutes a criminal offence).

8.2 Does this extend to individuals overseas/in the home country?

Yes, this extends to individuals overseas if they are managers of branches, members of management/supervisory boards, representative of entities that are members of such boards, certain shareholders and representative of certain shareholders, etc.

8.3 Which officers and employees are subject to local vetting, and are the owners/controllers subject to local vetting?

Generally, this include, amongst others, members of management/supervisory bodies of local subsidiaries; managers of local branches of foreign banks/investment intermediaries; certain other administrators such as people who manage and/or control units engaged in activities directly related to the main business activities. Certain owners/controllers are also subject to local vetting (e.g. shareholders who own 3% or more of the voting shares in the capital of local subsidiaries of foreign banks, direct or indirect owners of 10 % or more of the shares or the voting rights in a local investment intermediary, etc.). Brokers engaged by investment intermediaries are also subject to local vetting.

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