

ITALY – 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?

A foreign bank can provide the services indicated below (either through a branch or on a cross-border basis) provided that it has been duly authorized by the Bank of Italy, according to the Italian Consolidated Banking Act (Legislative Decree no. 385 dated 1 September 1993) (“CBA”).

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

Italian laws and regulatory provisions do not expressly provide for any exemption from the authorization/licence requirement.

Based on general principles, no licence is required in case of the so called “reverse solicitation” or “reverse enquire”, i.e. when the client on his own initiative (i.e. without having been previously solicited by the bank, directly or through intermediaries) has requested to the foreign bank the provision of the relevant banking/financial service. Of course, in case of contestations in this case the bank must be in the position to give evidence that the client made the request on his own initiative.

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.**

No promotional activities in respect of banking/financial services can be carried out in Italy by non-authorized foreign banks, to the extent that such promotional activities entail the invitation to enter into a contract.

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)?

A foreign bank can set-up a representative office (ufficio di rappresentanza) in Italy in order to carry out promotional activity and study of the relevant market. No banking/financial activities can be carried out through the personnel of the representative office.

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?

According to the Italian Consolidated Financial Act (Italian Legislative Decree no. 58 of 24 February 1998) ("CFA"), non-EU investment firms can provide the investment services indicated below in Italy (i) through a branch or (ii) on a cross-border basis provided that they have been duly authorised by CONSOB (Commissione Nazionale per le Società e la Borsa), the Italian securities market Supervisory Authority, in case of investment companies, or the Bank of Italy, in case of foreign banks.

Italian laws and regulatory provisions do not expressly provide for any exemption from the above authorization/licence requirement.

Based on general principles, no licence is required in case of the so called "reverse solicitation" or "reverse enquire", i.e. when the client on his own initiative (i.e. without having been previously solicited by the bank, directly or through intermediaries) has requested to the bank/investment firm the provision of the relevant investment service. Of course in case of dispute the bank/investment firm must be in the position to give evidence that the client made the request on his own initiative.

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**

A foreign bank or investment firm (which is not authorised in Italy) cannot promote in Italy the above services if it is not authorized to provide investment services in Italy.

In this respect CONSOB stated that the qualifying criteria for determining whether an investment service is deemed to be provided in Italy – so triggering the relevant authorisation requirements – lies in the identification of the place where the investment firm targets its potential clients (i.e. if the activity is addressed to investors having their legal seat/residence in Italy), rather than the place where it gives execution to the contract with same.

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)?

If the client qualifies as “Consumer”, according to the Italian Consumers Code any dispute shall be submitted to the court of the place where the consumer has his domicile and it is not possible to derogate to such provision, as the relevant clause would be null and void.

In case of non-consumers, the relevant clause providing for a foreign jurisdiction should be specifically approved by the client.

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?

In the last years the Bank of Italy appeared to be keener to permit foreign banks to operate in Italy.

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)?

It is more common the acquisition of participations into existing banks or the setting up of branches.

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

No, the choice is exclusively upon the bank.

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

The operation through a subsidiary would be more burdensome in terms of compliance with respect to a branch, which would be subject to less stringent Italian rules.

5. Establishing a branch

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

A branch of a foreign bank/investment firm is allowed to provide the relevant authorized activities only in Italy.

5.2 How is a branch regulated?

A branch of a foreign bank duly authorized to perform banking activities in Italy is subject to several Supervisory Provisions issued by the Bank of Italy concerning among others:

- the rules related to the good repute and professional requirements requested to the directors and members of the board of statutory auditors of Italian banks;
- provisions concerning the supervisory capital (patrimonio di vigilanza);
- rules governing the equity participations in banks and banking group;
- provisions regulating the internal control system;
- transparency provisions in the banking services and operations;
- anti money-laundering provisions.

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?

Banca d'Italia (Bank of Italy) is the competent authority for supervising banks and financial companies in Italy.

CONSOB is the competent authority for supervising investment firms and banks limited to the provision of investment services.

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?

The home regulator would be competent for supervising certain aspects generally relating to compliance with capital requirements and operational organization, whilst the Italian regulator would supervise mainly on compliance with Italian conduct of business rules.

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?

Italian Law provides for specific rules concerning the good repute and professional requirements to be met by the managers of branches of foreign banks.

Save for the above rules, individuals are not personally regulated though they may be subject to fines in case of specific violations sanctioned by CBA.

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

Depending on the relevant violation, the CBA provides for administrative sanctions applicable to directors employees and individuals exercising direction activities, regardless of whether are located abroad or in Italy.

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

The following officers and employees are subject to local vetting: directors, managers and auditors, employees and non-employees entrusted with specific responsibilities in key-areas.

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