

ROMANIA – 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?

If the foreign bank is not locally authorised, the below services can be provided only to the extent that they are purely occasional and isolated activities, the foreign bank does not channel its activity towards the local market, does not advertise in any way products and/or services on the local market and does not try to attract clients or business partners.

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 third country bank may not promote services and therefore try to attract clients and channel activity towards the local market if it is not duly authorised locally.

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 third country bank may establish a local representative office (subject to the notification of the National Bank of Romania – the local credit institutions regulatory authority) which may only conduct market research, representation and promotion activities. However, this may not automatically enable the foreign

bank to conduct the services on a cross border basis other than on an occasional and isolated basis, as mentioned above.

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?

The same rules as for the banking activity would generally apply. The services could be provided only on occasional and isolated basis, without an aim to channel activity towards the local market or promote such activities on the local market.

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 third country investment firm may not promote services and therefore try to attract clients and channel activity towards the local market if it is not duly authorised locally.

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)?

There are no specific restrictions regarding applicable law or jurisdiction for the concluded agreements.

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 not authorised locally, foreign banks can only perform occasional and isolated activities on the local market – the view has been expressed by the regulatory authority by way of points of view on particular queries from foreign banks. If a branch of the foreign bank is established on the local market, the bank may provide a wide range of banking services through that branch.

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)?

Third country banks may operate locally on a regular basis only by establishing branches, and not subsidiaries. No branches of third country banks are currently opened in Romania in accordance with the on-line registry held by the National Bank of Romania.

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

Third country banks may operate on a regular basis on the local market by establishing a local branch. As mentioned above, services on an occasional, isolated basis may be provided without local presence or authorisation.

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

The main benefit of operating through a branch is that the third country bank can provide on a regular basis the entire panel of banking activities / services. Third country banks may only operate locally on a regular basis by establishing a local branch.

The disadvantages of opening a local branch may be related to the capital level required (EUR 5,000,000) and general supervisory rules and compliance requirements of the local regulatory authority.

5. Establishing a branch

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

A branch established in Romania may not operate in other countries.

5.2 How is a branch regulated?

The opening of the branch of a third country bank in Romania must be approved by the National Bank of Romania. The regulatory authority from the third state must not oppose the opening of the branch in Romania. The branch must comply with the provisions of Emergency Government Ordinance 99/2006 regarding credit institutions and capital adequacy, Regulation No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 and legal provisions adopted for the implementation thereof. The minimum capital requirement for a branch of a third country bank is EUR 5,000,000. The branch may carry out those activities provided in the authorization issued by the National Bank of Romania which may not exceed the authorised activities for the mother credit institution.

Branches of foreign country investment firms must be locally authorized by the Romanian Financial Supervisory Authority.

6. Establishing a subsidiary

A third country bank/investment firm must establish a branch in Romania in order to provide services and not a subsidiary.

7. Supervision

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

The banking sector in Romania as well as the activity of foreign banks branches in Romania are authorised, regulated and supervised by the National Bank of Romania.

The capital markets sector, as well as the activity of investment firms or foreign investment firms branches in Romania are authorised, regulated and supervised by the Romanian Financial Supervisory Authority.

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?

Both authorities supervise the activity of the branch and in certain cases the local regulatory authority concludes collaboration protocols with home country authorities in order to enforce supervision.

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?

The general rules applicable for the management of credit institutions would also apply for the representatives of local branches of foreign banks. In case of fraud or other breaches of applicable legislation such persons can be held liable as would be the case for the management of Romanian credit institutions management members, therefore fines or even criminal liability may be applicable.

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

This would not extend to individuals that are employed by the mother credit institution / investment firm in the home country.

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

The management/representatives of the local branch are subject to local vetting when branches are authorised by local regulators. Generally, such persons must be reputed and experienced professionals who can ensure the proper management of the branch. Owners/controllers of the branch are subject to vetting in the process of the branch obtaining the authorization from local regulators.

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