

SPAIN – 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?

Foreign banks cannot operate without authorisation from the Bank of Spain.

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

There are no exemptions.

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.**

Those services cannot be promoted without authorisation from the Bank of Spain. There are no exemptions.

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)?

Foreign banks may establish a local representative office, which cannot conduct banking transactions (deposit taking, lending, rendering financial assistance, etc.). Representative offices shall be authorised by the Bank of Spain.

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?

To no extent if the foreign bank or investment firm is not locally authorized. As regards investment firms, please note that article 64.7 of Act 24/1988 on Securities Market ("Securities Market Act") sets out that no entity may professionally or regularly carry out the activities reserved to investment services companies (among others, the services below) without having obtained a previous authorisation and without being registered in the Spanish National Securities Market Commission (Comisión Nacional del Mercado de Valores, the "CNMV"). Foreign (non-EU) investment firms need to be expressly authorized by CNMV to operate in Spain according to the Securities Market Act and the regulations implementing this Act.

As regards credit entities which are authorised to operate in Spain, they may also provide the investment services, if their legal status, by-laws and specific authorization enable them to provide the relevant services. In this regard please note that a foreign (non-EU) credit entity, in order to operate in Spain, needs to be expressly authorized by the Bank of Spain. Moreover, in case the foreign entity intends to provide investment services, the binding report of the CNMV will be a necessary requirement within the process of authorization by the Bank of Spain.

There are no exemptions.

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**

To no extent if the foreign bank or investment firm is not locally authorized.

There are no exemptions.

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)?

Provided that the relevant foreign bank or investment firm is authorised by the relevant Authority (Bank of Spain and/or CNMV) to provide said type of services, said entity would be subject to Spanish provisions on consumer protection. This being the case, please note that there is no restriction as regards the governing law of the agreements as far as the relevant governing law does not entail a waive to any right of the consumer.

As regards the exclusive jurisdiction, as per the above, the customer always has to have the right to file claims against the firm and also to make the firm filing claims against him at the local courts of his residence (since waiving the right to sue or be sued at his residence would be null and void).

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?

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)?

It is a business decision.

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

No, both are valid alternatives.

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

The subsidiary is subject to the control and regulation of the local authorities, whereas the branch, despite of being authorised locally, is subject to the control and regulation of the holding's regulations (despite of some provisions which must be complied with on a mandatory basis, please see below).

5. Establishing a branch

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

There are no Spanish provisions that deal with the possibility of a bank acting in Spain through a branch operating in other countries. It may depend on the regulation of the respective "third" country.

5.2 How is a branch regulated?

According to article 9.2 of Royal Decree 1245/1995, the incorporation of a branch of a foreign bank in Spain will be subject to the authorization of the Minister of Economy and Finance following the report of the Bank of Spain.

6. Establishing a subsidiary

Subsidiaries of foreign banks incorporated in Spain must comply with all procedures of authorisation required for banks operating in Spain.

7. Supervision

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

The Bank of Spain (credit entities/banks) and the CNMV (investment firms).

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?

Obligations in terms of solvency standards are required to branches of foreign banks, which are also subject to Spanish banking sanctions regime.

As per investment firms, solvency standards are not required, provided that the laws of their home country include equivalent provisions to those which apply in Spain. Investment firms whose parent company is a credit entity in a foreign country will not be subject to supervision on a consolidated basis in Spain provided that they are subject to said type of supervision in their home country.

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?

In some cases, yes.

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

In some cases, yes.

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

When these type of entities are subject to authorisation, Bank of Spain and/or the CNMV require a report on good repute of the shareholders and/or managers of the bank/branch/subsidiary.

Managers must also comply with experience and capability requirements.

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