

FRANCE – 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?

Under the French banking monopoly, only French or foreign authorised credit institutions may provide banking services in France. Thus, unless a third-country bank has obtained the French regulators' prior approval, it cannot offer banking services on a habitual basis and in a professional manner in France.

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

None except pure reverse solicitation which is delicate to establish given that under French criminal law, any act in relation to the service that is taking place in France (e.g. meeting, receiving the offer for a credit, signing the agreement, etc...) triggers a breach of the monopoly.

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.**

None except under a pure reverse solicitation and all features taking place outside France.

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)?

French law recognises the concept of representative office. However, these representative offices may not, under French law, promote in any way the foreign legal entity but solely assist in the relationships between French clients and the foreign banks. That being said, the French regulators tend to have a very narrow analysis of what these structures may in fact do.

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?

Under the French investment services monopoly, only French or foreign authorised credit institutions may provide investment services in France. Thus, unless a third-country bank has obtained the French regulators' prior approval, it cannot offer investment services on a habitual basis and in a professional manner in France.

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**

None except under a pure reverse solicitation and all features taking place outside France.

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)?

A French judge and French regulators would expect French consumers to benefit from French consumer law protection when they are considered as more protective than the law of a foreign country.

In that respect, the following legislation is intended to protect consumers:

- the French consumer code which implements (i) the EU Consumer Credit Directive 2008/48/EC; (ii) the EU Unfair Commercial Practices Directive 2005/29/EC; and (iii) the EU unfair terms in consumer contracts Directive 93/13/EEC;
- the French consumer code and the French monetary and financial code which implement the EU Distance Marketing Directive 2002/65/EC; and
- the French monetary and financial code, which implements the EU Payment Services Directive 2007/64/EC.

Under French law, consumers are individuals who enter into credit facilities (or benefit from an investment service) for a purpose which is outside their trade or business.

Consumers can only be natural persons and small businesses are not consumers. Although these rules are quite detailed, one must note in particular that:

- with respect to Banking Services, the main purpose of consumer laws is to protect consumers by regulating lenders' conduct.

- advertisements must, when communicating an interest rates or credit costs, include a numerical example of the proposed credit and/or insurance, and the words "a credit is a commitment and it must be repaid. Check your repayment capacity before you commit yourself".
- a standard form document containing certain information must be provided to the consumer to allow the consumer to compare offers before entering into a credit agreement.

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?

Extremely protective.

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)?

In general, foreign banks (third countries' banks) use subsidiaries rather than branches.

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

Both solutions are possible but using a subsidiary is easier to avoid conflicting obligations upon the same legal entities.

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

The main benefits/advantages are connected: Using a branch does not require structuring a specific legal entity but, from a pure regulatory perspective, the requirements applicable to the branch of a third-Country's entity are the same as those that would apply to a subsidiary (i.e. in terms of "own funds", means and resources, supervision by the French regulators, etc...) whilst the said branch will also be subject to its Home State regulations.

5. Establishing a branch

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

Yes to the extent however that question as to whether they may benefit from an EU legislation passport.

Conditions for the setting-up of branch (subsidiary*) are:

- its registered* office and its effective management in France;
- a share capital*/own funds ;
- thoroughly disclosed its operational procedures;
- allocated adequate means and resources the contemplated activities;
- disclosed the identity of its shareholders to the AMF/ACPR (thorough disclosure obligations);
- two "core-managers" (dirigeants responsables) (one of which must be based in France) that will manage the branch/subsidiary and that both will have sufficient experience, integrity and competence;
- two managers for each type of activities conducted by the branch/subsidiary (an individual may qualify for different activities if he/she can demonstrate having a solid experience of these activities);
- an adequate corporate structure (SA or SAS)*;
- a valid business plan for each type of activity the branch/subsidiary intends to conduct;
- a compliance/risk officer (employee of the branch/subsidiary or outside consultants) ; and
- entered into standard agreements with third parties.

5.2 How is a branch regulated?

The French branch of a Third Country entity is subject to the same rules as those of a French institution.

6. Establishing a subsidiary

Same rules as for branches save with respect to the specific regulatory supervision.

7. Supervision

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

Autorité de contrôle prudentiel et de résolution:

- authorises credit institutions and supervises their activities/organisation;
- authorises investment firms and supervises their activities/organization except with respect to portfolio management and investment advise;
- supervises banking services (including the nature of the services and, to a certain extent, the conduct of business rules connected to such services).

Autorité des marchés financiers:

- authorises investment management companies (under UCITS, AIFM or MIFID) and supervises their activities/organisation;
- authorises investment firms and supervises their activities/organization solely with respect to portfolio management and investment advise;
- supervises investment services (including the nature of the services and the conduct of business rules connected to such 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?

In practice, yes. For branches, by definition, the ACPR/AMF will liaise with the Home State regulator to organise the supervision. For subsidiaries, it is not per se a requirement but, it may be the case in practice. In that respect, please note that French regulators have entered into specific MOU with other Third Countries' regulators for supervision of branches/subsidiaries.

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. Any employee/representative located in France [is].

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

Yes: foreign based core managers and representatives of these entities. Also, any person that has breached French law (any employee) is subject to sanctions/fines.

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

Core managers (i.e. the responsible persons for the branch/subsidiaries, whether they are in France or abroad), legal representatives (from a corporate point of view) that are not core-managers for subsidiaries. The owners/controllers are also subject to local vetting.

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