

## HUNGARY – 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 may provide financial services to Hungarian customers only with a licence to be obtained from the National Bank of Hungary (“NHB”) which is the Hungarian financial supervisory authority by way of establishment of:

- a) a Hungarian branch office; or
- b) a Hungarian subsidiary.

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

Foreign banks are not entitled to provide financial services to local customers on a cross border basis, except for the following cases:

- a) A foreign financial institution established in a Member State of the Organization for Economic Cooperation and Development may provide the below financial services to Hungary on a cross border basis:
  - granting credit facility and loans;
  - financial leasing;
  - financial brokering on the interbank market,

each provided that such foreign service provider has been authorized to engage in such activities by the supervisory authority competent in such Member State.

- b) If a foreign financial institution does not provide financial services to Hungarian customers in a business-like manner, it will not be subject to a licence. This requirement (business-like manner) is to be examined on a case-by-case basis. However, we note that one transaction can also be regarded as a financial service provided in a business-like manner

#### 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 which is not locally authorised, neither it has established in Hungary a branch office or a subsidiary, may promote its financial services through its local representative office. For further details regarding a representative office, please refer to the following Q&A below in this questionnaire.

A foreign bank may promote financial services in Hungary. However, such promotion/marketing cannot be unfair which among others means that it is expected from such a foreign bank that it carries out the marketing with professional diligence, it does not distort usual behaviour of an average consumer with regard to the financial service and it enables the customer to make an informed decision.

#### **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)?**

Yes. A foreign bank can establish a permanent representative office to be registered with the Hungarian company register. Notwithstanding that the representative office will be one of the organisational units of the founder foreign bank without any own individual legal capacity or authorisation.

Representative offices cannot operate on their own name but on the name and for the benefit of their founder with the following limited scope of activity:

- a) offering contracts on the name of the foreign bank to customers;
- b) participating in the process of preparation of contracts; and
- c) organising marketing, promotion and advertisement activity.

Licence of the NBH is required to obtain for the establishment and operation of such a representative office.

Please note that representative offices have a sort of diplomatic role to acquire local clients for their foreign founders. However, since the foreign banks may not provide financial services to/in Hungary, such local clients shall contact these foreign banks abroad (either where such banks are registered or where they are permitted to provide financial services) to enter into any agreement with such banks.

## **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?**

Investment firms that are not locally authorised may not provide investment services to local retail customers, commercial clients and wholesale counterparties, except for the following cases:

- a) An investment firm registered in another EEA Member State may provide investment service on a cross-border basis to Hungary, provided that it is authorized to provide such services by its competent supervisory authority in its home state. A notification process is also required by which

each of the competent supervisory authority in the home state and the NBH can become aware of providing cross-border investment services by such foreign investment firm;

- b) If a foreign investment firm does not provide its service in a business-like manner to the Hungarian customers, it will not be subject to a licence.

Otherwise, an investment firm established in a third country may only provide services in Hungary through the establishment of a branch office.

## **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**

The same rules apply to investment firms/investment services with that set out in relation to the financial services above.

## **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)?**

Foreign banks/investment firms are free to enter into an agreement with a local customer/client under foreign governing law with the below main exceptions:

- mortgage over a real estate located in Hungary;
- charge/over any movable asset located in Hungary and/or registered with a Hungarian register (e.g. business quotas, trademarks, ships, aircrafts).

In addition to that, no agreement with a consumer in the jurisdiction may result in having the consumer exposed to being sued in courts other than the courts of the state in which his domicile or residence is located; or may exclude the opportunity for the consumer to file a lawsuit in the courts of the state in which his domicile or residence is located or in which the place of regular employment is located. These provisions shall not apply if the agreement is made after the parties have realised that such a legal dispute is necessary.

A Hungarian court shall have exclusive jurisdiction in the following cases relating to a financial transaction:

- a) in a dispute regarding real estate that is located in Hungary and in proceedings concerning lease and usufruct agreements;
- b) in proceedings concerning registration of rights, facts and data with public registers in Hungary;
- c) in disputes concerning enforcement in Hungary.

## 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?

The attitude of the NBH to cross border business and the presence of foreign banks is determined on the applicable laws and regulations (no discretionary power) which in turn are based on the actual government's policy regarding the banking system. Such a policy has been changed since the political regime changed around the 1990s' as follows: A liberalization strategy started in the early 1980s as a result of which the share of foreign banks has gradually risen. In 1993, foreign banks outnumbered domestic banks. By the end of the year of 2000, foreign controlled banks accounted for over two thirds of the total banking portfolio. Following the financial crisis and the so-called FX loan situation, the attitude of the government has been changed and the Prime Minister, Viktor Orban has declared that it's an unhealthy situation that foreigners have such a high degree of ownership in Hungary's banking system and the government seeks to lift local bank-industry ownership to at least 50 %.

### 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 appears that foreign banks now prefer establishing a branch office to setting up a subsidiary (at the end of 2013, less than 9% of the total balance sheet asset of the Hungarian banking system belonged to the branch sector). Earlier, the trend was that foreign banks provided services in Hungary mainly through their subsidiary.

According to one of the studies of the NBH, it is a strategic decision whether foreign banks prefer branch to subsidiary. Accordingly, such a decision does not depend on the financial service which foreign banks intend to provide in Hungary.

If a subsidiary is to be set up, the requirements applicable to such an entity will be the same with a financial institution established as a new Hungarian financial institution. Special regulations apply to financial branch offices which, however, do not provide more beneficial legal environment for foreign banks than those applicable to the Hungarian entities. The main difference is the extent of the supervision power of the NBH (micro-prudential supervision over branches is exercised basically by the foreign supervisory authority).

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

Yes, however please see the exceptions in question 1 above.

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

Subsidiaries operate as a Hungarian registered entity (limited liability company) with their own independent legal capacity whilst a branch office (notwithstanding that it is subject to registration with the Hungarian company register) represents its founder (i.e. the branch has no own (separate from the founder) legal capacity. Therefore, it means an advantage for establishment of a subsidiary that the foreign company and the branch office have joint and several liability for all debts incurred by the branch office.

An advantage for the branch office may be that the employees at the branch have an employment contract with the foreign banks. Therefore, the employers' rights are exercised by such foreign bank through the branch office (closer instruction power).

Notwithstanding that, as set out above in this section 4, whether a branch or a subsidiary is established in Hungary, it is a decision which is primarily based on the business strategy of the foreign banks rather than legal factors.

## 5. Establishing a branch

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

This is not regulated under Hungarian law [except for the Section (19) of the preamble of 2006/48 EU Directive, according to which a branch office of a foreign bank does not have the right to provide services to or establish an entity in any other Member States of the EU] because it is subject to the legislation of such other countries.

### 5.2 How is a branch regulated?

Financial branch offices in Hungary do not have own legal capacity, therefore they act on behalf of their founders. This practically means that they cannot acquire rights and any engagement taken by them obliges directly their founder. Also, they can only represent their founder in a court procedure.

A branch office is to be considered as the organisational unit of its foreign company, but can determine its own business activity. The foreign company and the branch office have joint and several liabilities for all debts of the branch. Thus, termination of the Hungarian branch offices would not have an impact on the existence, validity or effectiveness of the agreements made by such branch offices on behalf of its founder.

Setting-up a financial branch office is subject to the licence of the NBH. Such a licence (if issued) will authorise the foreign bank to establish such a branch office and the branch office to commence the activity in Hungary. The licencing procedure is free of any charge. However, strict formality requirements apply and the procedure requires a bunch of documents to be provided to the NBH (e.g. organisational and management structure of the foreign bank, certificate issued that at least 50% of the subscribed capital has been actually paid). Notwithstanding that the NBH should finish the procedure within three (3) months from receipt of the application, the procedure usually takes about six-eight (6-8) months.

To set up a branch office, the foreign bank must donate to its branch a minimum initial capital of 2 billion HUF (approx. 6,367,000 EUR) that must be paid up in cash.

## 6. Establishing a subsidiary

Whilst a branch office will be one of the organisational units of the foreign bank, the subsidiary will be an individual Hungarian legal entity owned by a foreign bank with its own separate liability.

If the foreign bank decides to establish a subsidiary in Hungary, depending on which financial service such a subsidiary intends to provide, the following forms of financial institutions would be available:

a) credit institutions which may be:

- banks (Banks are those special credit institutions which may carry out collecting deposits, receiving other repayable funds from the public, granting loans and money transmission services. They can be established with an initial capital of 2 billion HUF, approx. 6,367,000 EUR);
- specialized credit institutions (such as mortgage banks);
- cooperatives (with an initial capital of 300 million HUF, approx. 954,000 EUR).

Credit institutions can be private limited companies.

The following financial services may be provided only by credit institution:

- collecting deposits and other repayable funds from the public;

- currency exchange services.

b) financial enterprises:

A financial enterprise is authorized to provide one or more financial services (with the exception of money transmission services, issuance of electronic money, collecting deposits and other repayable funds from the public and currency exchange services) and to be engaged in the operation of payment systems. Also, a financial enterprise may be engaged in financial brokering on the interbank market (only on exclusivity basis). Financial enterprises (with the exception of financial holding companies (minimum 2 billion HUF, approx. 6,367,000 EUR) and financial enterprises operating payment systems (minimum 5 hundred million HUF, approx. 1,590,000 EUR)) may be established with a minimum initial capital of 50 million HUF (approx. 159,000 EUR).

## 7. Supervision

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

The NBH is the national regulatory authority. It shall supervise those entities and other persons who provide financial services in Hungary in addition to issue licences for establishment and operation of such entities and other persons.

### 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?

There is no binding rule that would result in splitting competences between local and foreign regulators.

However, the NBH is a party to certain multi- and bilateral co-operation treaties made with foreign authorities which among others cover the exchange of information, providing documents and consultation.

## 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.

The executive officers and the members of the supervisory board of a financial institution and a branch must ensure that the financial institution and the branch perform the authorized activities. They must act at all times with due diligence and expertise consistent with the professional requirements applicable to their respective positions.

The amount of the fine may be in the range from one hundred thousand to twenty million forints (approx. EUR 64,000). If the executive officer is obliged to pay the fine, such fine may not be paid by the financial institution or the branch.

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

Yes, the fine can be enforced against those individuals who are out of Hungary and in this case, the competent Hungarian authority will take all steps available to it to collect fines in foreign countries. Any action of the Hungarian authority is subject to foreign enforcement law. However, Hungary is a party to certain bilateral treaties the aim of which is to facilitate enforcement procedures abroad.

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

Local vetting as such does not exist in Hungary. However, a similar process is implied in the licensing procedure of a branch office / subsidiary when the NBH examines whether or not the executive officers to be appointed for the financial institution meets certain personnel and commercial requirements. The NBH examines among others:

Personnel requirements are for example the submission of a certificate evidencing the absence of any criminal record and a proof of good business reputation.

Commercial requirements: The NBH will approve the appointment of an executive officer unless he/she:

- has or had a qualifying holding in or who is or has been the executive officer of a financial institution, provided that (a) in the case of such financial institution, insolvency could be avoided only by exceptional measures of the NBH or (b) such financial institution was terminated in liquidation proceedings after the NBH has withdrawn the licence of the financial institution and the liability of whom for such a situation has been declared in a final and binding court decision;
- has violated the Hungarian banking regulations and such has been determined by the NBH, another authority or the court in the previous 5 years;
- has less than 3 years of experience in banking, financial or business management;
- has any other position which may prevent him from complying with his duties as an executive officer of a financial institution.

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