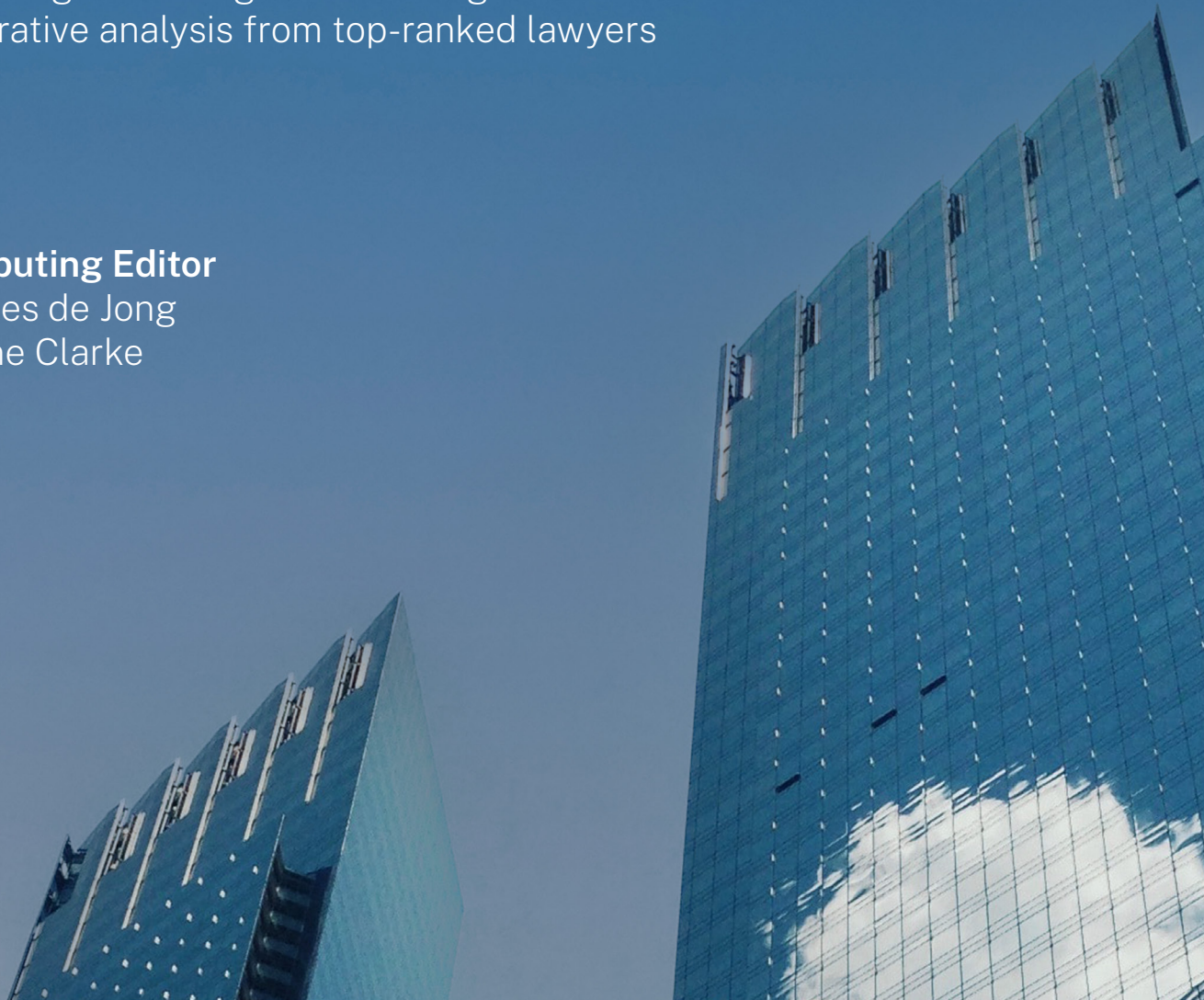

CHAMBERS GLOBAL PRACTICE GUIDES

Banking Regulation 2026

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Johannes de Jong
Osborne Clarke



Chambers
Global Practice Guides

Banking Regulation

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Johannes de Jong

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2026

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INTRODUCTION

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Osborne Clarke NV is a future-focused international legal practice with over 330 partners and more than 1,260 talented lawyers working across 26 global locations. Osborne Clarke is a full-service office with nine law practices in the Netherlands: financial regulatory, banking and finance, corporate M&A, employment, pensions and incentives, tax, litigation and arbitration, real estate and infrastructure, tech, media and

comms and notarial law. Osborne Clarke's financial regulatory practice has a standout reputation with clients and Dutch regulators. The financial regulation team primarily represents innovative and tech-driven clients in the fields of banking, payments, investment services and cryptocurrency. It is also known as one of the most significant Dutch practices for licence applications to key regulators – DNB and the AFM.

Contributing Editors



Johannes de Jong is a managing partner at Osborne Clarke and heads the financial regulatory team in Amsterdam. His expertise spans regulations concerning banks, the payment industry, the crypto market, investment firms and investment funds. He has acted for a broad range of clients, including most of the larger Dutch banks and financial institutions, on many regulatory matters, including the latest Dutch banking licence granted in 2024. He is qualified in the Netherlands and admitted to the Dutch Bar. Before joining Osborne Clarke in 2016, he worked as a financial regulatory lawyer at Allen & Overy Amsterdam and as a senior supervisor with the Dutch financial markets regulator, the AFM, where he headed many authorisations.



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INTRODUCTION

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Introduction

2026 is set to be another dynamic and demanding year for the global banking industry. Political tensions and trade frictions between major economies keep conditions uncertain worldwide. At the same time we see that regulatory development continues across jurisdictions. Notably the finalisation of the implementation phases of Basel III, which purports to create a largely harmonised baseline for capital adequacy, liquidity and risk management. Supervisory attention also shifts towards sustainability and climate integration. The European Banking Authority (EBA) Guidelines on the management of environmental, social and governance (ESG) risks will start to apply in early 2026, embedding ESG within the credit and risk assessment process, internal capital adequacy assessment process (ICAAP) and supervisory review and evaluation process (SREP).

Additionally, the rise of neobanks and rapid advancements in artificial intelligence (AI) and blockchain technology (DLT) are reshaping traditional banking models, expanding the reach of open finance, and increasing the need for robust operational resilience. In the UK, the post-Brexit regulatory landscape continues to evolve as authorities pursue a distinctive approach balancing international alignment with domestic priorities, including the implementation of Basel 3.1 reforms and the development of a proportionate regime for digital assets and stablecoins. In the USA, regional banks face challenges navigating the Basel III end-game proposals and state-level digital asset frameworks. In Switzerland, banks are adapting to FINMA's implementation of Basel III while leveraging their traditional strengths in wealth management and private banking. And in Asia-Pacific markets, including Singapore, Hong Kong, Australia and Japan, we see that institutions are integrating open-banking regimes, stablecoin licensing frameworks, and AI-driven innovations while managing trade-related headwinds.

Emerging Trends and Regulations

Digital transformation remains a top priority for banks. AI has become increasingly dominant, playing a pivotal role in reshaping banking processes. The EBA has reported that 92% of EU banks are deploying AI, probably reaching close to 100% in 2026. In the UK this was already 94% in 2024 according to the

Bank of England, and UK banks' investments in AI doubled in 2025. In the USA, large banks are piloting generative AI assistants for customer service and risk analytics but multiple research studies show that just about 50% of US banks have live AI use cases. In Asia-Pacific, about 90% of banks are at least beta testing generative AI applications, such as chatbots, risk models or underwriting solutions.

The digital transformation of the banking sector is being further shaped by the emergence of neobanks, which are increasingly obtaining full banking licences across multiple jurisdictions. This development is drawing neobank supervision into established frameworks for prudential regulation, AML laws, data protection and operational resilience. However, the regulatory perimeter around digital capabilities has tightened: digital operational resilience is now a formal requirement in many markets including the UK, USA and EU, and expectations for third-party risk management and incident response are significantly higher than a couple of years ago. Data protection, cybersecurity and AI accountability will further converge in 2026 as part of the ongoing compliance requirements for banks across the world. Pressures are increasing across EU banking markets as institutions seek scale efficiencies and enhanced competitive positioning.

Cross-border M&A activity is thus expected to accelerate in 2026, driven by the need to spread technology investments across larger customer bases, achieve cost synergies, and build the capital strength required to compete with global players and agile fintech challengers. For banks, consolidation presents both strategic opportunities and integration risks, requiring careful due diligence on technology platforms, cultural alignment, and regulatory approvals across multiple jurisdictions.

As we move towards 2026, open banking is expanding beyond banking into open finance, broadening the scope of data sharing across financial products and services. Regulatory frameworks are evolving globally: in the EU, the proposed Financial Data Access Regulation (FiDA) introduces a unified legal framework for data access and sharing, with implementation expected in late 2026 or 2027. In the USA, open banking initiatives are advancing through the Con-

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sumer Financial Protection Bureau's rulemaking, while in Asia-Pacific, jurisdictions including Singapore and Australia are implementing their own open banking and data portability regimes. Open finance is clearly no longer a Europe-only story. At the same time, the UK is striving to maintain its leading position in the open banking market, with the authorities consulting on expanding the existing framework to encompass even broader open finance initiatives.

Cryptocurrency, tokenised assets and DLT continue to evolve, presenting both opportunities and challenges for banks. Of particular interest in 2026 is the continued rise of stablecoins pegged to major currencies such as the US dollar or the euro. Regulatory approaches vary by jurisdiction: in the EU, the Markets in Crypto-Assets Regulation (MiCAR) has established uniform rules for market stability and investor protection, with jurisdictions like the Netherlands, Malta and Germany among the first to issue MiCAR licences after the 30 December 2024 implementation deadline. In the USA, momentum is building behind legislative proposals such as the GENIUS Act and state-level frameworks. In the UK, HM Treasury and the Bank of England are advancing a phased regulatory regime for fiat-referenced stablecoins as part of a broader framework for crypto assets, with consultation on wider crypto regulation ongoing. Hong Kong's licensing framework for stablecoin issuers continues to advance too.

In Switzerland, banks are navigating the evolving regulatory landscape shaped by the Swiss Financial Services Act (FinSA) and Financial Institutions Act (FinIA), while maintaining their traditional strengths in wealth management and private banking, which continue to generate substantial fee-based revenues and support resilience amid margin pressures.

Monetary Policy Prospects

Overall, the consensus across the major advanced economies is a move toward lower policy rates in 2026, with a potential hold in Japan and China. Generally, the global monetary policy in 2026 is expected to be influenced by diverging economic growth, uncertainty from trade policy, and the potential for renewed inflation. After an extended cycle of monetary tightening to combat inflation, central banks have subsequently

reduced interest rates. Headline (goods and services) inflation has fallen from post-pandemic peaks, yet services inflation and wage pressures remain sticky in many advanced economies. Energy and food prices remain vulnerable to geopolitical and climate-related shocks. After selective rate cuts in 2024 and 2025, some jurisdictions may continue gradual easing as inflation converges to target, while others may hold policy at restrictive levels for longer. According to the IMF's July 2025 World Economic Outlook, global headline inflation is projected to decline to 3.6% in 2026, although tariffs are expected to remain historically high, and persistent uncertainty surrounding trade policy will continue to weigh on investment and economic activity.

The trade frictions, particularly from the USA, create significant uncertainty for central banks trying to forecast inflation trends and the overall economic outlook. Multiple sources report that US regional banks face earnings pressure from higher rates and slower credit growth. Larger institutions seem to leverage diversified revenue streams to maintain profitability, pointing towards evidence that larger US banks have a more favourable 2026 outlook compared with regional banks. In Asia-Pacific, several economies face weaker banking sector outlooks due to lingering trade tensions, prompting tighter credit standards and a slowdown in loan growth in export-dependent markets.

The Bank of England continues to assess inflation risks as high even as the overall price outlook eases in the UK. Anticipated rate cuts in late 2025 and early 2026 are expected to compress net interest margins, especially for banks that rely heavily on traditional lending income. At the same time, the post-Brexit regulatory landscape continues to diverge from the EU: new UK-specific prudential rules, the expiration of EU-equivalence arrangements and a refreshed operational-resilience framework are reshaping supervision and compliance requirements. In 2026, the UK leverage-ratio calculation continues to grant an exemption for qualifying central bank deposits, preserving a major competitive advantage for UK fintech banks, which tend to benefit most from this treatment.

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Full Implementation of Basel III Framework

The Basel III framework developed by the Basel Committee on Banking Supervision (BCBS) remains the anchor of global bank prudential standards. While core elements on capital quality, the leverage ratio, and liquidity are already embedded worldwide, jurisdictions are now implementing the “final” Basel III reforms.

The final reforms focus on constraining model variability and improving risk sensitivity through the 72.5% output floor (limiting the benefit from internal models), revised credit risk approaches, a new standardised measurement approach for operational risk, revised market risk rules based on the Fundamental Review of the Trading Book (FRTB), and an updated Credit Valuation Adjustment (CVA) framework. Implementation is not uniform, and timing and scope differ by jurisdiction.

In the EU, the CRR3/CRD6 package implements the final Basel reforms from 2025, with extensive phase-ins. Notably, the EU postponed certain market risk framework elements to 1 January 2026, creating potential regulatory arbitrage risks. The output floor is being phased in over several years (ramping up to 72.5% by the end of the decade), and the EU retains certain regional adjustments (including aspects of the CVA exemption, SME and infrastructure calibrations, and proportionality measures). FRTB moves from reporting to binding capital requirements under CRR3. EU G-SIIs remain subject to a leverage ratio buffer.

The UK is implementing Basel 3.1 via the PRA’s rule-making, broadly aligned in substance with the BCBS outcomes but on a UK-specific timetable and with transitions designed to smooth RWA and capital impacts. On 17 January 2025, the PRA decided to postpone the UK implementation of the Basel 3.1 reforms to 1 January 2027. The PRA’s package covers the output floor, revised credit and operational risk frameworks, FRTB-based market risk, and an updated CVA regime, with staged application dates and multi-year phase-ins.

US regulators, namely the Fed, OCC and FDIC, plan to publish the final BASEL III rule package in early 2026, with a three-year phased rollout that meets full Basel

III endgame requirements. This includes the output floor, a risk-sensitive standardised credit risk framework, a binding FRTB-style market risk regime, and a new operational risk formula. The updated rule also clarifies data technology expectations and softens several of the more contentious provisions that drew market pushback during the earlier 2024 comment period.

Other leading jurisdictions (eg, Switzerland, Japan and Singapore) are advancing broadly consistent implementations on their own schedules. Switzerland’s implementation through FINMA ordinances reflects the jurisdiction’s commitment to maintaining alignment with international standards while preserving the competitiveness of its banking sector, with particular attention to the calibration of requirements for systemically important banks including UBS and the cantonal banks. Given these divergences, cross-border groups should plan for jurisdiction-specific calibrations, monitor transitional reliefs, and model RWA/output floor effects early to manage capital, product pricing, and disclosure impacts.

Geopolitical Tension

Geopolitical risk remains a defining feature of the 2026 landscape, with differentiated regional impacts. Ongoing conflicts, including the war between Russia and Ukraine, tensions in the Middle East, trade frictions and export controls continue to disrupt supply chains and alter patterns of trade finance and investment. These dynamics, together with evolving tariff regimes and trade defence measures, are impacting the global economy. Weaker trade flows are prompting tighter credit standards in affected sectors and contributing to slower loan growth in jurisdictions heavily reliant on global supply chains, with several APAC economies facing particularly acute pressures. Banks with exposure to affected regions must navigate increased credit risk, operational disruptions and complex compliance obligations. Additionally, operational and market risks are elevated. State-linked and criminal cyber activity targeting financial and political institutions as part of geopolitical tension remains a concern, with ransomware and DDoS campaigns periodically disrupting services.

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Moreover, the USA, EU and UK have expanded and iterated their Russia-related measures, increased enforcement against circumvention through third countries, and intensified expectations on banks' controls. In parallel, the use of secondary sanction-type tools has grown, heightening risk for foreign financial institutions that facilitate restricted activity. Banks must navigate differing ownership/control tests and licensing frameworks across jurisdictions, as well as tightened due diligence expectations on end-use, transshipment and re-exports.

Financial Crime

Financial crime risk remains high in the EU and globally. The EU's new anti-money laundering framework, comprising a directly applicable AML Regulation (AMLR), a sixth AML Directive (AMLD6) and a Regulation establishing the new Anti-Money Laundering Authority (AMLA), will phase in from 2026, with many requirements applying from 2027. AMLA will directly supervise selected high-risk institutions, and the package introduces tighter rules on beneficial ownership, cash payments and transactions involving high-risk third countries. Internationally, authorities have stepped up enforcement against sanctions evasion and trade-based money laundering, and the FATF "travel rule" for crypto transfers is increasingly being adopted in jurisdictions. Beneficial ownership reporting regimes and information-sharing tools are expanding, though access and privacy constraints differ across jurisdictions. In the UK, the Economic Crime and Corporate Transparency Act 2023 has strengthened corporate transparency requirements and expanded enforcement powers, while the FCA and PRA continue to intensify scrutiny of financial crime controls, sanctions compliance, and the effectiveness of banks' transaction monitoring and suspicious activity reporting. Practical priorities for banks include strengthening product governance and disclosures, enhancing sanctions screening and transaction monitoring controls (including trade finance due diligence), upgrading model governance for credit- and fraud-risk analytics, and ensuring timely remediation and redress where outcomes fall short.

Technological Advancements and Changing Customer Expectations

Banks globally are accelerating AI adoption across underwriting, collections, AML/fraud detection, operations and customer service. In the USA, large banks are piloting generative AI assistants for customer service and risk analytics, though fragmented data architectures remain a hurdle to full-scale deployment. In Europe and Asia, similar initiatives are underway, with early productivity gains balanced by governance, privacy and resilience requirements. Generative AI is being embedded as a tool for staff and as a conversational layer for customers, while traditional machine-learning models continue to drive decision-making and automation at scale. This shift promises productivity and service gains, but raises governance, fairness and resilience challenges, particularly around data quality, explainability, and model drift.

The EU AI Act begins phased application from 2025 to 2026. However, obligations for high-risk AI systems (eg, creditworthiness assessment) could be postponed (potentially by a year) to give firms more time to develop the necessary compliance frameworks and to allow regulators to finalise technical standards. UK authorities are pursuing a principles-based approach anchored in existing model risk, data protection and operational resilience rules, while US supervisors emphasise model risk management, fair lending compliance and explainability. Data protection and cross-border transfer regimes (eg, GDPR, China's PIPL and sectoral privacy rules) increasingly shape AI data pipelines. Operational resilience expectations are also rising, including oversight of critical third-party providers and concentration risk in cloud AI stacks.

Conclusion

In 2026, the global banking sector faces a landscape that is as complex but that is also full of opportunity. The finalisation of Basel III reforms, the expansion of open finance, and the maturation of crypto-asset regulation are creating a more harmonised yet demanding prudential and conduct environment. At the same time, digital transformation – driven by AI, blockchain and evolving customer expectations – is reshaping business models and competitive dynamics. Geopolitical tensions, monetary policy uncertainty and heightened financial crime risks add further lay-

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ers of complexity that require active management and robust governance. For banks, success in this environment will depend on strategic agility: the ability to invest in technology and talent while maintaining rigorous risk controls. Global operating banks have to navigate further divergent regulatory regimes. Those institutions that can integrate regulatory change as a catalyst for modernisation, embed ESG and operational resilience into core strategy, and harness data and AI responsibly may well be best positioned to thrive in the year ahead and beyond.



Law and Practice

Contributed by:

Miguel Cases and Laura Nieto

Cases & Lacambra

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Cases & Lacambra is a leading business law firm in the Principality of Andorra. It has a distinctly international outlook and places the client at the centre of its work, aiming to offer the best comprehensive business law advice to local and international players. The firm has a solid, recognised and highly tested track record in both national and cross-border banking matters, and in the regulation of financial mar-

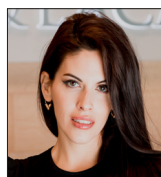
kets, corporate and debt transactions, special situations and asset recovery. It has also had a respected tax practice since 2016. The team consists of highly qualified professionals who apply rigorous methodologies and are dedicated to meeting the needs of the most demanding international institutional and private clients.

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CASES & LACAMBRA

1. Legal Framework

1.1 Key Laws and Regulations

The financial industry of the Principality of Andorra (“Andorra”) has historically been a key contributor to the domestic economy. In turn, the banking sector is the cornerstone of the Andorran financial system, which represents roughly 13% of the Andorran gross domestic product and almost 4% of Andorra’s wage earners (according to the most recent data published by the Andorran Banking Association).

Due to the country’s proximity to neighbouring European countries, along with the signature of the Monetary Agreement in 2011 between Andorra and the EU, the Andorran legal framework is aligned with EU legal initiatives in terms of banking regulation – namely solvency, capital requirements, supervision, investor protection and anti-money laundering and terrorist financing.

The most relevant Andorran regulations governing the banking sector are as follows:

- Law 35/2010 on the legal regime for authorising the creation of new operating entities within the Andorran financial system, dated 3 June 2010;
- Law 7/2013 on the legal regime of the entities operating within the Andorran financial system and other provisions regulating the exercise of financial activities in the Principality of Andorra, dated 9 May 2013;
- Law 7/2024, of 27 May 2024, on the organisation and functioning of the operative entities of the financial system and market abuse;
- Law 10/2008 regulating Andorran collective investment undertakings, dated 12 June 2008;
- Law 10/2013 of the Andorran Financial Authority (AFA), dated 23 May 2013;
- Law 7/2021 of 29 April 2021, regulating the Restructuring and Resolution of Banking Entities and Investment Entities;
- the Memorandum of Understanding signed between Andorra and Spain on 4 April 2011;
- Law 20/2018 of 13 September 2018, regulating the Andorran Guarantee Deposit Fund and Andorran Investment Guarantee System (the FAGADI Law);
- Law regulating the disciplinary regime of the financial system, dated 27 November 1997 (Disciplinary Law);
- Law 35/2018 on solvency, liquidity and prudential supervision of banking entities and investment firms, dated 20 December 2018;
- Regulation implementing Law 35/2018 on the solvency, liquidity and prudential supervision of banking entities and investment firms, dated 6 March 2019;
- Decree 90/2025 amending the regulation implementing Law 35/2018, of 20 December 2018, on the solvency, liquidity and prudential supervision of banking entities and investment firms, dated 12 March 2025;
- Decree approving the accounting framework for entities and collective investment undertakings created under Andorran law operating in the Andorran financial system, dated 22 December 2016;
- Law 14/2017 on the prevention and fight against money or securities laundering and terrorism financing, dated 22 June 2017 (the AML Law);
- Regulation for the development of Law 14/2017 on the prevention and fight against money or securities laundering and terrorism financing, dated 6 June 2019 (the AML Regulation);
- Law 20/2014, regulating electronic contracting and operators that develop their economic activity in a digital space, dated 16 October 2014;
- Law 13/2013, which regulates effective competition and consumer protection, dated 13 June 2013;
- Decree regulating the cessation of payments and insolvency, dated 4 October 1969 (the Insolvency Law);
- Law 9/2005, which regulates the Andorran Criminal Code, dated 21 February 2005;
- Law 29/2021 on the protection of personal data, dated 28 October 2021;
- Law 10/2012 on foreign investments, dated 21 June 2012, repealed by Law 5/2025 on sustainable growth and the right to housing, dated 6 March 2025;
- Law 19/2016 on the international automatic exchange of information in tax matters, dated 30 November 2016 (the Tax Information Exchange Law);
- Law 8/2018 on payment and electronic money services, dated 17 May 2018;

- Law 10/2024 on the audit of accounts of the Principality of Andorra, dated 27 May 2024;
- Law 8/2025 amending Law 10/2024, of 27 May 2024, on the audit of accounts of the Principality of Andorra, dated 15 April 2025; and
- Law 11/2025, on the consolidated text of the retirement reserve fund, dated 19 May 2025.

The Andorran regulatory and supervisory authorities for the banking sector are as follows.

- The AFA is the regulatory and supervisory authority of the Andorran financial system, and its powers include issuing technical communications and recommendations in order to develop regulations and standards regarding the exercise of banking, financial and insurance activities. The AFA may also adopt the applicable fall-back of international standards for interpretational and prudential supervision purposes. On 17 September 2013, the AFA was accepted as a new ordinary member of the International Organization of Securities Commissions (IOSCO).
- The Andorran Financial Intelligence Unit (UIFAND) is an independent body created to promote and co-ordinate measures to prevent money laundering and terrorist financing. It follows the recommendations of the European Council's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the 40 recommendations from the Financial Action Task Force (FATF).
- The State Agency for the Resolution of Banking Institutions (AREB) is a public institution and is responsible for managing the processes for the winding-up and resolution of banking and investment entities. In turn, the Andorran Fund for the Resolution of Banking Institutions was created for the purpose of financing the measures adopted by the AREB.
- The Andorran Data Protection Agency is a public and independent institution responsible for overseeing compliance with the treatment of personal information provided by individuals, private entities and Andorra's public administration.
- Although not a regulatory authority, the Association of Andorran Banks (ABA) represents the collective interests of all Andorran banking entities. The

activity carried out by the ABA is relevant for the banking sector as it provides information for its members and the public in general, proposes appropriate recommendations and promotes co-operation among its members.

Lastly, it is also relevant to point out the self-regulation activity carried out historically by banking entities. Likewise, those Andorran banking entities that are, in turn, parent companies of consolidated groups also apply international standards on a self-regulation basis.

2. Authorisation

2.1 Licences and Application Process

Prior authorisation from the AFA is required in order to provide banking activities in Andorra.

Pursuant to Law 7/2013, Andorran banking entities are authorised to render the following financial services:

- deposit-taking, which includes taking deposits and other repayable funds (this service must only be rendered by Andorran banking entities);
- granting loans and credits, including consumer credit, mortgage, factoring, with or without recourse, and forfaiting;
- financial leasing and non-financial renting with the option to buy or not;
- the granting of guarantees;
- payment transactions;
- the issuance of means of payment, including credit cards, traveller's cheques and bank cheques;
- transactions for own account or on behalf of clients (on money market instruments, exchange markets, foreign exchange and securities);
- the issuance of securities and the provision of related services;
- intermediation in interbank markets;
- commercial reporting;
- the hiring of security boxes; and
- the issuance of electronic money.

Banking entities are also authorised to render the following investment and ancillary services:

- the reception and transmission of orders in relation to one or more financial instruments;
 - the execution of clients' orders;
 - trading for own account;
 - discretionary portfolio management;
 - providing investment advice;
 - the underwriting of either the issuance or placement of financial instruments;
 - the placement of financial instruments on the basis of a firm commitment or otherwise;
 - the management of multilateral trading facilities;
 - the custody and safekeeping of financial instruments on behalf of clients;
 - the granting of credit or loans to an investor to enable them to carry out a transaction in one or more financial instruments;
 - advising companies on capital structure, strategy and related issues, and providing advice and services on mergers and acquisitions of companies;
 - foreign exchange services related to the provision of investment services;
 - investment research; and
 - services related to underwriting the issuing or placing of financial instruments.
- The Banking Entity's Structural, Technical and Economic Forecast: This includes:
 - (a) a description of the technical means, organisational and human resources;
 - (b) a detailed description of the activities that are intended to be undertaken within Andorra and those that are to be outsourced abroad;
 - (c) a generic description of the measures that are planned to be implemented to ensure adequate internal control of the procedures;
 - (d) the location of the premises and forecasts regarding the establishment of subsidiaries, branches and offices;
 - (e) the recruitment forecasts for staff during the first three years, indicating qualification levels; and
 - (f) balance sheets and profit and loss statements for the first three years.
 - Evidence of Payment to the AFA of a Deposit Equal to 10% of the Share Capital: Note that this amount shall be returned to the applicant within 20 working days of the rejection of the application, or within 20 working days from the start of the business activity if the application is authorised.

The authorisation process for setting up a banking entity in Andorra is governed by Law 35/2010. The submission form must be addressed to the AFA, along with the following documentation.

- The Specific Features of the Banking Entity's Activity: This includes, for example, draft by-laws, the basic programme of activities, a specific statement on the foreseeable activities related to the promotion of the economy at a country level and a specific statement on the prospective provision of activities related to the sponsorship and patronage of educational and cultural activities in Andorra.
- The Identification of the Shareholders: If they are legal persons, information on the governing bodies must be provided, along with the annual financial statements and audit reports for the last three years, an affidavit on the contributions made by the shareholders to comply with the requirements established by the legislation on anti-money laundering and terrorism financing, the curriculum vitae of shareholders and the members of the governing bodies, and a code of conduct.

Upon submitting this documentation, the AFA has a maximum of six months to notify its decision.

According to Technical Communication 1/2025 issued on 3 February 2025 by the AFA, the submission fee for setting up a banking entity in Andorra is EUR36,801, and the annual supervision fee shall vary according to the banking entity's balance sheet, with a maximum fee of EUR251,084.

Branches are not allowed. For the provision of financial and investment services, a licence issued by the AFA is required (no EU passport).

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Changes in the shareholding of a banking entity are subject to prior authorisation from and later registration with the AFA when such changes imply the following:

- that any of the shareholders obtains or acquires a qualified participation;
- regardless of the relevant participation, that any of the shareholders obtains representation on the management body of the entity;
- that any of the shareholders increases the qualified participation to the extent that the percentage of voting rights or share capital is equal to or greater than 20%, 30% or 50%; or
- by virtue of the acquisition, that the entity may be controlled or become a subsidiary.

Qualified shareholding (*participació qualificada*) means any participation that, directly or indirectly, represents 10% or more of the share capital or voting rights of the banking entity. A shareholding is also deemed to be qualified if, without reaching the aforementioned percentage, it allows significant influence to be exercised over the entity. It is presumed that a natural or legal person can exercise a significant influence when, among other things, it has the power to appoint or remove a member of the board of directors.

No specific restrictions on foreign ownership apply to banking entities.

4. Governance

4.1 Corporate Governance Requirements

Pursuant to Law 7/2024, banking entities must have robust corporate governance arrangements, which include the following:

- a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- effective processes to identify, manage, monitor and report the risks to which they are or might be exposed;
- adequate internal control mechanisms, including sound administration and accounting procedures; and
- remuneration policies and practices that are consistent with and promote sound and effective risk management.

Notwithstanding this, the aforementioned arrangements, processes and mechanisms shall be compre-

hensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the entity's activities.

Accordingly, the board of directors of Andorran banking entities is obliged to define the entity's risk appetite and approve the relevant risk management policies and periodically monitor its compliance, and to adopt adequate internal policies and procedures.

As far as organisational requirements are concerned, Andorran banking entities must implement a compliance function, a risk management function and an internal audit department.

The compliance function is in charge of the supervision, monitoring and verification of effective compliance with legal provisions and professional standards by employees and financial agents, in order to protect clients and minimise compliance risk. Moreover, in order to guarantee that the compliance function works appropriately, the entities must ensure that they have adequate authority and both technical and human resources, and must appoint a person to be in charge of the compliance function, in addition to avoiding participating economically in the services or activities they are controlling.

The risk management function carries out the following activities:

- advising senior management on the management risk policies and the determination of the level of risk tolerance;
- introducing, applying and maintaining management risk procedures; and
- monitoring the measures adopted to reduce or mitigate risk exposure.

The internal audit function is entitled to prepare an annual report establishing its opinion regarding the efficiency and design of the internal control and risk management systems of the entity. This report is addressed to the management body for its review. A copy of this report must also be addressed to the AFA within the first semester following the closing of the exercise.

Law 7/2024 also establishes as a general principle that banking entities shall take all necessary measures in order to detect and prevent any conflict of interest that may arise during the performance of activities by any employee, director or assistant, which may cause any prejudice to clients.

In addition, according to the proportionality principle, banking entities may have the following committees:

- audit committee;
- risk committee;
- appointments committee; and
- remuneration committee.

The committees must be composed of members who do not perform executive functions, and the chairpersons must be independent directors. Law 7/2024 also provides for the possibility of combining the audit and risk committees and the appointments and remuneration committees, according to the proportionality principle and upon the AFA's authorisation.

Banking entities must also develop adequate procedures for employees to notify possible infringements internally (ie, whistle-blowing channels). These procedures must guarantee the confidentiality of both the reporting person and the offender.

Technical Communication 163/05, issued by the AFA, highlights some rules on ethics and professional behaviour that apply to Andorran banking entities – namely, the prohibition on carrying out own-account operations under identical or better conditions than those of clients to the latter's detriment, and the prohibition on providing incentives and compensation to clients with relevant influence on the entity.

The Andorran Banking Association published a Code of Conducts in 2017, which was updated in 2022 and reflects the minimum professional standards and recommendations for the banking sector.

In terms of diversity, Law 7/2024 states that the board of directors of banking entities must be formed by individuals with an appropriate mix of skills, diversity and experience.

4.2 Registration and Oversight of Senior Management

Law 7/2013 sets a limit on the number of directorships that may be held by a member of the management body in a banking entity, taking into account individual circumstances and the nature, scale and complexity of the entity's activities.

In this vein, banking entities may not hold more than one of the following combinations of directorships at the same time:

- one executive directorship with two non-executive directorships; and
- four non-executive directorships.

Moreover, board members must be persons of recognised commercial and professional honour, and must also possess adequate knowledge and experience in order to exercise their duties.

The requirements of honour, adequate knowledge and experience must also be met by the managing directors, and by those responsible for internal control functions (ie, those in charge of the compliance function, the risk management function and the internal audit department, as stated in **4.1 Corporate Governance Requirements**).

Prior authorisation by the AFA and subsequent registration are required for every appointment and replacement of directors and those responsible for the internal control functions.

Likewise, banking entities must periodically assess (at least once a year) the continued suitability of their board of directors and of each of its members, and of the relevant committees.

4.3 Remuneration Requirements

Remuneration requirements applicable to Andorran banking entities are aligned with European provisions and the guidelines on sound remuneration policies issued by the European Banking Authority and the European Securities and Markets Authority.

Pursuant to Law 7/2024, banking entities at the group level, parent companies and subsidiaries including

subsidiaries established in third countries (with the exception of foreign subsidiaries located in jurisdictions considered by the AFA to be equivalent for regulatory and supervisory purposes) – are obliged to comply with the remuneration requirements set forth in the applicable laws, regulations and technical communications issued by the AFA.

The principles that are applicable to remuneration policies are as follows:

- The remuneration policy should be compatible with a prudent risk management and long-term business strategy.
- The remuneration policy must be compatible with the business strategy and long-term interests of the banking entity, including measures to avoid conflicts of interest.
- The board of directors must adopt and periodically monitor the general principles of the remuneration policy.
- An internal and independent assessment of the implementation of the policy must be carried out at least once a year.
- Staff performing control functions must be independent and must have the necessary authority and be remunerated, regardless of the results of the business departments they monitor.
- The remuneration of the general management or those responsible for the risk management and compliance functions should be supervised directly by the remuneration committee or, if this committee is not created, by the board of directors.
- A clear distinction should be made between fixed and variable remuneration criteria.

In this line, Law 7/2024 also establishes the following ratios between the fixed and variable components of total remuneration:

- The variable component shall not exceed 100% of the fixed component of the total remuneration for each individual.
- Financial entities may allow shareholders to approve a higher maximum level of the ratio between the fixed and variable components of remuneration, provided that the overall level of the variable component does not exceed 200% of the

fixed component of the total remuneration for each individual.

Andorran banking entities must follow the guiding principles when implementing the remuneration policy, including salaries and discretionary retirement benefits for categories of staff such as senior management, employees who take risks, those who exercise internal control functions, and any employee who receives a lump-sum payment that places them in the same remuneration bracket as senior management and other risk-taking employees.

Law 7/2024 also establishes that infringements of these provisions may be sanctioned according to the Disciplinary Law.

5. AML/KYC

5.1 AML and CFT Requirements

Andorra is fully committed to complying with international standards on anti-money laundering and terrorism financing through the implementation of the Fourth Anti-Money Laundering Directive and the FATF's recommendations. In this vein, both the European provisions and the FATF's recommendations are intended to serve as the backbone of the Andorran system for the prevention of money laundering and terrorism financing.

In turn, the UIFAND is entitled to draw up and publish annual reports and statistics to assess the effectiveness of the Andorran system for the prevention of money laundering and terrorism financing. Andorra is also periodically subject to the assessments of the Council of Europe, carried out by MONEYVAL.

Banking entities must comply with the following obligations:

- Prior to the commencement of the business relationship, the entity must solicit the information regarding both the client (and the beneficial owner) and the transaction in order to identify them.
- The banking entity must report any suspicious transaction that could involve money laundering or terrorism financing to the UIFAND.

- Information about the identity of the issuer of the suspicious reporting must be kept confidential.
- simplified and enhanced due diligence measures must be applied according to the risk profile of the client, the business relationship, the product or the transaction.
- A client admission policy must be drawn up.
- Documentation must be kept for at least ten years.
- Adequate procedures must be adopted for the detection of unusual or suspicious transactions, with the possibility of submitting a suspicious transaction report to the UIFAND.
- AML/CFT training programmes for employees must be drawn up.
- An independent external audit must be conducted to verify compliance with AML/CFT provisions, with a copy of the report sent to the UIFAND.
- The FAGADI's ex ante resources must have reached 0.8% of guaranteed deposits by 30 June 2024, through the bank's annual contributions.
- The FAGADI will receive the available finance through contributions that its members submit at least once a year.
- If the FAGADI's available financial resources are not sufficient to reimburse depositors in cases of coverage, the FAGADI board of directors may solicit extraordinary contributions from member entities – these contributions may not exceed 0.5% of their guaranteed deposits per calendar year.
- The FAGADI board of directors, with prior consent from the AFA, may request higher contributions in exceptional circumstances that in no case imply exceeding the maximum limit of coverage established by the FAGADI Law.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The FAGADI Law regulates the guarantee system for deposits aligned with Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes. It also states that the FAGADI administers the scheme, as well as the relevant limits.

The key regulatory features of the deposit guarantee system are as follows:

- If an Andorran banking entity becomes insolvent, the clients' deposits would be repaid up to EUR100,000, and additional coverages are foreseen in exceptional cases that guarantee the following, up to a limit of EUR300,000:
 - (a) deposits from real estate transactions of a residential and private nature;
 - (b) payments received by the depositor on a one-off basis and linked to marriage, divorce, retirement, dismissal, disability or death; and
 - (c) payments that are based on the payment of insurance benefits or compensation for damages and are the result of a crime or a legal error, provided that these balances have been paid to the covered accounts during the three previous months.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Law 35/2018 is aligned with:

- Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and
- Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, amending Regulation (EU) No 648/2012.

It requires banking entities to have minimum internal capital that is adequate in quantity, quality and distribution, having regard to the risks to which they are or may be exposed. Accordingly, Andorran banking entities must develop strategies and processes for assessing and maintaining the adequacy of their internal capital.

The amount of capital maintained by banking entities is subdivided as follows:

- Common Equity Tier 1 capital, intended to ensure business continuity;
- Additional Tier 1 capital; and
- Tier 2 capital, intended to cover losses in the event of a liquidation scenario.

As far as the minimum capital requirements are concerned, the total amount of capital required to be held by banking entities must be at least 8% of their risk-weighted assets. The part corresponding to the highest quality capital – Common Equity Tier 1 capital – must represent 4.5% of the risk-weighted assets and 6% of the part corresponding to Tier 1 capital.

Law 35/2018 also introduces the obligation to cover 100% of the liquidity outflows net of liquidity inflows with high liquidity assets within 30 days and in a stress scenario, such as a major withdrawal of deposits. Other obligations include:

- the inclusion of intra-day operations in the supervision regime;
- the obligation to develop methodologies to manage the positions of financing;
- making a distinction between pledged assets and unencumbered assets; and
- the adoption of liquidity recovery plans.

Regarding structural long-term liquidity ratios or stable funding, Andorran provisions require banking entities to cover their long-term liabilities (ie, longer than 12 months) through a variety of stable funding instruments, under both normal and stress conditions. On a quarterly basis and in a single currency, they must also report to the AFA on the elements that require stable financing.

Law 35/2018 also includes the obligation to publish the so-called solvency report, which must include the following information:

- data on the financial situation and activity of the banking entity;
- market strategy;
- risk control;
- internal organisation and corporate governance; and

- compliance with the minimum equity requirements laid down in the solvency regulations.

Likewise, banking entities must have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage.

These indicators include the leverage ratio, which is the amount of Tier 1 capital of the entity divided into the total exposure value of the entity, expressed as a percentage. To this extent, the obliged entity shall address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the entity's own funds through expected or realised losses, depending on the applicable accounting rules. In addition, entities must submit information on the leverage ratio to the AFA, which must monitor the levels of leverage in order to reduce the risk of excessive leverage.

In addition to other own fund requirements, banking entities must hold a capital conservation buffer and a countercyclical capital buffer to ensure that they accumulate a sufficient capital base during periods of economic growth to absorb losses in stressed periods. The countercyclical capital buffer should be built up when aggregate growth in credit and other asset classes with a significant impact on the risk profile of such banking entities is judged to be associated with a build-up of system-wide risk, and drawn down during stressed periods.

Note also that Andorran banking entities have implemented IFRS standards with the Decree approving the accounting framework for entities and collective investment undertakings created under Andorran law operating in the Andorran financial system, dated 22 December 2016, which requires entities operating in the Andorran financial system and Andorran collective investment undertakings to prepare their individual and consolidated annual accounts in accordance with the international financial reporting standards adopted by the European Union (IFRS-EU).

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Law 7/2021 establishes a framework for the recovery and resolution of Andorran banking entities and is extended to investment firms and other financial institutions (with the exclusion of insurance companies); it also regulates the legal status of the resolution authority, the AREB.

This piece of law establishes that a banking entity is under a restructuring situation when it breaches or could breach the applicable liquidity and solvency regulations in the near future, but it is able to comply again with those regulations by its own means. In such a situation, the bank must give notice to the AFA in order for it to adopt ex officio measures such as a formal requirement for the bank's management body to draft an action plan to redress the situation, the appointment of a special administrator, or the removal of one or more members of the management body, among others.

If the banking entity cannot redress its stressed situation, the AREB shall assess whether it has to initiate its resolution process, which shall be initiated if:

- it is not financially viable;
- it is reasonably unexpected that it could be redressed by measures from private stakeholders; and
- there are reasons of public interest.

Law 7/2021 entitles the AREB to apply a set catalogue of resolution tools (*instruments de resolució*) and to intervene in a banking entity to ensure continuity in its critical financial and economic functions, while minimising the impact of the banking entity's failure on the Andorran economy and national financial system, and minimising the total resolution costs for taxpayers.

The resolution measures established by Law 7/2021 include the sale of business tool, the bridge institution tool, the asset separation tool and the bail-in tool (ie, including the exercise of write-down and conversion powers). The bail-in tool does not apply to claims insofar as they are secured, collateralised or otherwise

guaranteed. Certain kinds of unsecured liability are excluded from the bail-in tool, as covered deposits.

The most relevant provisions of Law 7/2021 are as follows:

- the regulatory requirements cover:
 - (a) the drawing up of recovery plans; and
 - (b) the calculation of the minimum requirement for own funds and eligible liabilities (MREL) ratio, as an additional and complementary requirement to capital, liquidity and leverage ratios; and
- a separation of situations involving early temporary measures by the AFA from the resolution phase by the AREB (to this extent, the resolution phase is divided into the preventative phase and the execution phase).

If the AFA detects any material deficiency in the recovery plans (preliminary phase) drawn up by the institutions, it may require the modification of the plan or the enforcement of the following measures (they are not *numerus clausus*):

- reduction of the risk profile (eg, liquidity);
- allowing the timely adoption of internal recapitalisation measures;
- reviewing the strategy and structure;
- modifying the funding strategy; or
- introducing changes to its corporate governance system.

In any case, the AREB will also have to be informed.

As far as early intervention measures are concerned, Law 7/2021 establishes that the AFA may adopt other measures, which may include the segregation of assets to an asset management company.

Law 7/2021 also sets out the measures that the AREB, in co-ordination with the AFA, may adopt to overcome the obstacles identified in the resolution plans (assessment of the potential resolution of the institution), including:

- a review of funding mechanisms;
- limits on individual and aggregate risks;

- the divestment of specific assets;
- a limit or cessation of certain activities;
- setting up a parent financial holding company; and
- issuing eligible liabilities.

The powers of the AREB include the power to oblige institutions under resolution to adopt effective measures in relation to assets held in third countries, or even to halt the adoption of measures or revoke measures already adopted when they are not effective.

In respect of procedural issues, Law 7/2021 implements the following:

- the introduction of liability against the AREB and its representatives;
- the impossibility of exercising the social action of liability;
- that civil courts are subject to the resolutions handed down by the administrative courts;
- the inadmissibility of the interim suspension;
- the urgent and preferential procedure for the protection of rights and freedoms; and
- the appeal against the decisions and administrative acts issued in matters of amortisation or the conversion of instruments, as well as internal recapitalisation.

Regarding the winding-up regime, the most important aspects are as follows:

- the rules on the priority of claims and loss absorption have the character of special legislation in Andorra;
- the implementation of a new regime regarding the effects of early intervention and resolution processes and applications for a declaration of cessation of payments or insolvency; and
- amendment of the Insolvency Law to include a new regime applicable to entities, covering general privileged credits, ordinary preferential credits (the European standard uses the opposite sense and refers to ordinary non-preferential credits) and subordinated credits, with a clear alignment with EU Directive 2017/2339.

9. ESG

9.1 ESG Requirements

Andorran banking entities have been contributing to more sustainable development for the last 20 years in terms of complying with corporate social responsibility principles.

In terms of ESG requirements, the Andorran Banking Association published a report in 2020 in order to promote sustainable finance. ESG criteria followed by the European Commission, the Paris Agreement (signed by the Principality of Andorra in 2016) and the 2030 agenda of the United Nations are the cornerstones of sustainability, and the Principality of Andorra undertakes to adopt and implement them.

All of these embryonic steps have materialised in specific actions carried out by both the Andorran government and banking entities. The most relevant action has been the first international global debt issuance programme of up to EUR1.2 billion and the issue of EUR500 million sustainable notes under this programme by the Andorran government. In parallel, Andorran banking entities have prioritised the development of investment products incorporating social responsibility criteria.

10. DORA

10.1 DORA Requirements

Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector has not yet been incorporated into the Andorran legal system. Nevertheless, it has been listed as legislation eligible for transposition under the last amendment to the annex to the Monetary Agreement, dated 23 July 2025, entered into between Andorra and the European Union.

It is expected that such Regulation will be incorporated into the Andorran legal system no later than 31 December 2028.

In addition, in terms of cybersecurity, the Andorran government promoted the adoption of Law 22/2022,

of 9 June 2022, on measures for the security of networks and information systems.

This law establishes a set of specific regulatory requirements for banks in terms of digital risks. Banks are required to identify themselves as a critical or significant institution. Likewise, as essential institutions, banks must implement measures to manage the risks associated with the security of critical infrastructure.

11. Horizon Scanning

11.1 Regulatory Developments

Andorran banking entities continuously monitor the most up-to-date, significant developments in banking regulation.

On 24 November 2022, Law 35/2022, modifying former Law 8/2013 of 9 May 2013 on the organisational requirements and operating conditions of the operational entities of the financial system, investor protection, abuse of markets and financial guarantee agreements (now Law 7/2024), was approved to implement EMIR.

Also noteworthy is the introduction of MiFID II in Andorra through Law 7/2024 (except for the reverse solicitation scheme applicable to third countries) and the conclusion of the negotiation of the Association Agreement between Andorra and the European Union (subject to a referendum in the upcoming years), which will challenge the current paradigm in the provision of financial and investment services.

At present, Andorran banking entities face a twofold challenge:

- the regulatory challenge; and
- technological innovation and digital transformation.

As a consequence, the banking industry is facing a substantive transformation of its activity because of the need to renew the provision of its services in the interest of investors and society at large. To illustrate this, two pieces of legislation play a leading role:

- Law 24/2022, of 30 June 2022, on digital representation through cryptography and DLT/blockchain technology; and
- Law 42/2022, on digital economy, entrepreneurship and innovation, as approved on 1 December 2022, establishing the regulatory framework for crowd-funding platforms in Andorra.

On the other hand, it should be noted that on 31 May 2024, the EU adopted a legislative package (AML Package), which constitutes the most far-reaching and ambitious reform to date of the European framework on the prevention of money laundering and terrorist financing.

This new framework aims to strengthen the integrity of the European financial system through a single body of directly applicable rules, or “single rulebook”, designed to ensure a harmonised implementation of preventive obligations, address pre-existing regulatory shortcomings, and extend the scope of supervision to emerging and higher-risk sectors, in view of the emergence of new actors and disruptive business models within the financial environment.

In the case of the Principality of Andorra, the adoption of the AML Package entails the need for a thorough review of the existing regulatory framework on AML/CFT. In accordance with the latest amendment to the Monetary Agreement with the EU, Andorra must fully transpose and implement the provisions contained in the AML Package by 31 December 2028.

Lastly, within the framework of the most recent amendment to the annex to the Monetary Agreement, Regulation (EU) 2024/886 has been listed as legislation eligible for transposition into the Andorran legal system. This Regulation amends Regulations (EU) No 260/2012 and (EU) 2021/1230, as well as Directives 98/26/EC and (EU) 2015/2366, in connection with instant credit transfers in euros.

Such Regulation represents a major reform of the SEPA framework, aimed at ensuring that all citizens and businesses within the EU can send and receive instant payments at any time of day, without interruption.

The implementation of this new regulatory regime will require adjustments by banking entities in:

- their payment systems;
- operational risk control processes; and
- their fee and commission models.

The transposition deadline is no later than 31 December 2026.

Trends and Developments

Contributed by:

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Cases & Lacambra is a leading business law firm in the Principality of Andorra. It has a distinctly international outlook and places the client at the centre of its work, aiming to offer the best comprehensive business law advice to local and international players. The firm has a solid, recognised and highly tested track record in both national and cross-border banking matters, and in the regulation of financial mar-

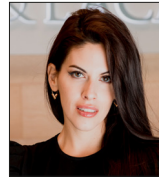
kets, corporate and debt transactions, special situations and asset recovery. It has also had a respected tax practice since 2016. The team consists of highly qualified professionals who apply rigorous methodologies and are dedicated to meeting the needs of the most demanding international institutional and private clients.

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Miguel Cases is the managing partner of Cases & Lacambra, and leader of the markets and financial services group. His practice includes the regulation of the financial sector, where he is an expert in the legal

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institutions and investment services firms on the legal framework and regulatory environment applicable to entities subject to prudential supervision, especially in the provision of financial and investment services. Her practice includes the pre-contracting, contracting and post-contracting of financial instruments and structured products, as well as providing global legal advice on netting market agreements and financial collateral arrangements. Laura's practice also includes cross-border transactions and funds distribution.

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CASES & LACAMBRA

Association Agreement

Introduction

The Principality of Andorra (“Andorra”) is currently engaged in negotiations with the European Union (EU) to formalise an Association Agreement. This unique process involves a microstate navigating the complexities of international relationships. The Association Agreement aims to facilitate Andorra’s gradual integration into the European single market, promoting the free movement of goods, people, services and capital.

As a microstate, Andorra faces distinctive challenges and opportunities in its negotiations with the EU. Unlike larger nations, Andorra’s size and limited resources require a delicate balance in navigating the complexities of international relationships. Achieving this agreement would grant Andorra the status of an associated state with the EU and provide a strong framework for economic diversification.

Due to its previously close interaction with EU member states, Andorra signed a monetary agreement with the EU in June 2011, which came into effect on 1 April 2012 (*Acord, del 30 de juny del 2011, monetari entre el Principat d’Andorra i la Unió Europea* the “Monetary Agreement”). The Monetary Agreement allowed Andorra to use the euro as its official currency and to commit to adopting and implementing substantial EU legislation. The financial and economic implications of this agreement were key in the country’s journey toward closer integration with Europe.

In accordance with the Monetary Agreement, Andorra has a significant banking sector that operates in close relation to the Eurozone. Therefore, it is necessary to gradually implement the relevant EU legislative provisions in Andorra in the field of banking and finance. This includes regulations concerning money laundering prevention, fraud and counterfeiting prevention for non-cash payment methods, and the obligation to report statistical data. This gradual implementation aims to ensure the highest level of equal treatment.

It is important to note that negotiations of the Association Agreement concluded at the end of 2023 with an agreed text, published in April 2024, and it is expected

to be followed by a public consultation and a binding referendum within the upcoming years.

Structure of the Association Agreement

The Association Agreement is built upon several key components, offering a well-structured foundation for Andorra’s collaboration with the EU. These components encompass the overarching Framework Agreement, country-specific protocols and an array of annexes dedicated to the adoption of EU legislation. Collectively, these elements form a comprehensive framework that defines and governs Andorra’s association with the EU.

This structure ensures clarity, co-operation and a shared commitment to the agreement’s objectives, fostering a productive and mutually beneficial relationship between Andorra and the EU. As mentioned above, the Association Agreement is composed of three main blocks, each with a specific role in shaping the ongoing negotiation process.

Block 1: Framework Agreement

The Framework Agreement sets the foundation for Andorra’s collaboration with the EU, and establishes common provisions for Andorra and San Marino and the EU. During this initial phase of negotiations, the Framework Agreement defines the general rules agreed upon between the EU and the microstates. These foundational provisions serve as the guiding principles for future negotiations, outlining the rules that will govern the relationship between both parties.

Block 2: country protocols

Within this block, specific adaptations are made for each country involved. These general rules vary according to the particular circumstances of each of the three microstates negotiating with the EU. Therefore, these differences are encapsulated in three separate protocols, with each negotiating state having its own set of protocols. Up to this point, Andorra’s protocol has focused primarily on issues related to the free movement of goods.

Block 3: thematic annexes

The third block consists of 25 thematic annexes in total, with one dedicated to each specific area of concern (including matters such as financial services, the

free movement of capital, the free movement of workers, energy, competition, state aid, rights of establishment, consumer protection, company law, trade, environment, health and safety at work, labour law, equal treatment, intellectual property, etc). These annexes represent the legislative framework of the EU.

A significant step towards EU integration

The Association Agreement between Andorra and the European Union represents a landmark development in Andorra's closer alignment with the EU regulatory and institutional framework. While not conferring full EU membership, the Agreement establishes a structured pathway for regulatory convergence, market access, and administrative co-operation across multiple sectors, including financial services, taxation, and digital markets.

In this sense, these negotiations have implications for various aspects, from financial services to cybersecurity, and they also present an opportunity for Andorra to embrace sustainability and ESG principles. By addressing these challenges and opportunities, Andorra can secure a strong foundation for its future partnership with the EU and continued economic growth.

Key implications for financial institutions and the banking sector

- **Regulatory Alignment:** Andorra will gradually adapt its domestic legislation to comply with EU directives and regulations applicable under the Agreement. This includes provisions related to anti-money laundering, prudential supervision, and operational transparency. Banks should anticipate potential modifications in licensing, reporting, and compliance obligations.
- **Enhanced Cross-Border Co-Operation:** The Agreement facilitates co-operation with EU supervisory authorities and administrative bodies. This may enhance information sharing, enforcement co-ordination, and alignment on emerging regulatory standards.
- **Market Access and Opportunities:** Although full access to the EU single market is not granted, the Agreement provides mechanisms for Andorran entities to operate under harmonised rules in specific sectors, potentially opening opportunities

for cross-border financial services and investment activities.

- **Incremental Integration:** Implementation of the Agreement will occur in stages, subject to domestic ratification and adaptation of national legislation. Financial institutions should closely monitor developments, including sector-specific protocols, amendments to existing frameworks, and timelines for compliance.
- **Strategic Considerations:** Early alignment with EU standards under the Agreement may position Andorran banks favourably in anticipation of future regulatory convergence, while also mitigating risks associated with divergences from EU practices.

In conclusion, the Association Agreement marks a significant step toward EU integration, offering both regulatory clarity and operational guidance for Andorra's financial sector. Banks and financial institutions are advised to prepare for incremental compliance obligations and to leverage potential opportunities arising from closer alignment with EU norms.

Digital Identity and eIDAS 2.0 – Andorra

Background

On 15 October 2025, the Andorran government approved Decree 373/2025, establishing the Digital Wallet ("Cartera Digital") as a personal data repository platform under the framework of the amended Law 35/2014 on electronic trust services (as amended by Law 9/2021). This system anticipates the future European interoperable digital identity framework (eIDAS 2.0), scheduled for full implementation across EU member states by December 2026.

Scope and purpose

The Digital Wallet functions as a personal data repository, enabling both natural and legal persons to obtain electronic signature certificates and verified attribute certificates from authentic data sources, including administrative registries. The system allows secure sharing with third parties, reducing reliance on paper documents.

Operational structure

- **Management:** The platform is managed by the Department of Digital Transformation, coordinating relations with issuing and validating entities.

- **Issuance:** The Office of Trust Services of Andorra (*Oficina de Serveis de Confiança del Principat d'Andorra*, or Oscepa) operates the issuance of verified attribute certificates in collaboration with issuing entities.
- **Users:** Individuals must install the Wallet app, identify themselves with a national ID (NIA) and electronic signature, and accept the privacy policy. Certificates may be presented individually or in combination, adhering to data minimisation principles.
- **Issuers and Validators:** Entities issuing attributes must be accredited and use Oscepa's services. Validators (both individuals and legal persons) must ensure proper use of attributes and comply with data protection principles. Oscepa can also act as a validator under supervision.
- **Operational Collaboration:** The Oscepa acts as the operational provider of verified attribute certificates, in co-ordination with authorised issuers, ensuring a centralised, regulated, and secure framework.
- **Preparation for Cross-Border Services:** While initially limited to Andorran territory, the platform positions the Principality for integration with future EU digital identity systems, facilitating cross-border digital financial services for resident and foreign investors.
- **Compliance and Risk Management:** Adoption of the Digital Wallet necessitates updating internal processes, IT infrastructure, and security protocols to comply with national regulations and EU-aligned standards, enhancing operational resilience and reducing fraud risks.

Possible impact for financial institutions

- **Enhanced KYC & Client Onboarding:** Banks and financial institutions can rely on verified digital identity attributes for client due diligence, significantly streamlining onboarding processes and reducing reliance on physical documents.
- **Legally Binding Digital Signatures:** The platform enables issuance and validation of electronic signature certificates, providing full legal effect equivalent to paper-based documentation. This supports digital contracting and secure execution of financial transactions.
- **Verified Attribute Certificates:** Users can share specific verified attributes (eg, proof of residency, tax status, or corporate affiliation) with financial institutions, allowing for granular, privacy-preserving verification aligned with data minimisation principles.

Conclusion

The Digital Wallet constitutes a significant development in Andorra's digital identity framework. It establishes a regulated mechanism for the issuance and use of verified attribute certificates and electronic signatures, with full legal effect under Andorran law. Financial institutions and banks will need to align their internal processes, IT systems, and identity verification procedures with the implementation of the Digital Wallet, while monitoring developments for potential future interoperability with cross-border digital identity frameworks.

ANGOLA



Law and Practice

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1.1 Key Laws and Regulations

The Angolan financial system operates under an integrated legal framework designed to ensure the soundness, integrity and transparency of banking, non-banking and capital markets institutions.

The BNA (National Bank of Angola) is the banking supervisory and regulatory authority in Angola and its activity is mainly subject to the rules set out in Law No 24/21, of 18 October – the BNA Law, remaining the primary prudential authority for the entire banking sector and also for non-banking financial institutions. It issues Notices (*Avisos*), Instructions (*Instrutivos*) and Directives (*Directivas*) governing authorisation procedures, risk management, corporate governance, internal control and AML/CFT compliance.

BNA also has the primary mission of ensuring price stability, preserving the value of the national currency, and maintaining the stability of the financial system. It is responsible for formulating and implementing the monetary policy, the supervision of financial institutions, the management of the payment system, and acting as the banker to the state by administering its treasury account.

The General Regime of Financial Institutions (Law No 14/21, of 19 May) is the core legal instrument, which governs the establishment, licensing, operation, governance and prudential supervision of financial institutions in Angola. This law applies to both banking and non-banking financial institutions, as well as to auxiliary financial entities, such as leasing, factoring and payment service providers.

Complementary statutes reinforce the prudential and conduct framework.

The Securities Code (Law No 22/15, of 31 August) regulates the organisation and functioning of capital markets, including public offerings, listed companies, and the provision of investment and custody services. Entities performing this kind of operation are subject to CMC (Capital Markets Commission) supervision. As market conduct regulator, it issues Regulations (*Regulamentos*) and Instructions (*Instruções*) applicable to intermediaries, issuers and collective investment entities.

Insofar as payment services are concerned, financial institutions must comply with Law 40/20, of 16 December, which sets the legal framework applicable to the supervision, regulation, management, and operation of the Payment System of Angola and is complemented by several secondary statutes and regulations.

In the field of AML/CFT, the overarching legal basis is Law No 5/20, of 27 January, complemented by BNA's Notice No 02/24, of 22 March and Instruction No 05/24, of 12 June, and by CMC Regulation No 5/21, of 8 November. These instruments impose comprehensive obligations on financial and capital markets institutions regarding customer due diligence, risk assessment, monitoring and reporting to the Financial Intelligence Unit (*Unidade de Informação Financeira* – UIF). Institutions must retain client and employee data for at least ten years and designate a Compliance Officer responsible for implementing internal AML policies.

Competition and market structure considerations, also relevant for the financial sector, are governed by the Competition Law (Law No 5/18, of 10 May) and

its Regulation (Presidential Decree No 240/18, of 12 October).

Together, the BNA, CMC and ARC (Competition Authority) exercise complementary supervisory mandates, collectively ensuring prudential stability, fair competition and market integrity, while promoting Angola's progressive alignment with international standards.

2. Authorisation

2.1 Licences and Application Process

To establish a financial institution (for the purposes of this article, the term “financial institution” will be used in line with Angolan law, which adopts this designation when referring specifically to banks) in Angola (whether a commercial bank, branch, subsidiary or representative office of a foreign financial institution) an authorisation request must be submitted to the BNA including, among others, the following elements:

- a description of the type of financial institution to be established and a draft of the statutes;
- identification of shareholders (both direct and indirect), specifying the share capital to be subscribed by each, and highlighting those with qualified holdings and the respective amounts, including the identity of the ultimate beneficial owner(s);
- a projected economic and financial viability study covering at least the first three years of activity, including a business plan, geographic presence, corporate governance model, description of the institution's operating model (including risk management, operational structure, and controls to be implemented), as well as projected financial statements, and evidence of compliance with all applicable legal and regulatory requirements for financial institutions;
- proof of a prior deposit equivalent to 5% of the minimum share capital, which may alternatively be substituted by a bank guarantee accepted by the BNA;
- documentation evidencing the good standing of founding shareholders, including ultimate beneficial owners, where such persons may directly or

indirectly exercise significant influence over the institution's activity;

- proof of the origin of the funds to be used in the operation;
- identification of members of the management and supervisory bodies, along with a rationale demonstrating their suitability to ensure sound and prudent management of the financial institution; and
- in the case of an application for the establishment of a subsidiary of a foreign institution, evidence of no objection from the supervisory authority of the parent company.

For shareholders that are legal entities and hold qualified holdings in the proposed financial institution, the following additional information must be provided:

- a commercial registry certificate issued within the last three months;
- corporate statutes and a list of board members;
- balance sheet and accounts for the last three months; and
- a list of the shareholders of the legal entity who themselves hold qualified holdings.

The BNA may request additional information from applicants, or waive the submission of certain elements that are already known to the authority.

Only after a favourable opinion is issued regarding the authorisation process for incorporation may a financial institution commence its activities, and the commencement of duties of the members of the management and supervisory bodies may happen once duly registered in the special register at the BNA.

The deadline to apply for special registration is 30 days, counting from the date of the definitive commercial registration of the financial institution or, in the case of foreign financial institutions established in Angola, from the date of their authorisation to be established in Angola.

Within a maximum period of 30 days from the registration request or, as appropriate, from the receipt of additional information requested from the financial institution, the BNA will oppose the registration if it considers that the circumstances provided for in the

General Regime of Financial Institutions have been demonstrated.

Once duly licensed, financial institutions may conduct, among others, the following activities:

- receipt of deposits or other repayable funds;
- granting of credit, including guarantees, other commitments, leasing and financial assignments;
- provision of payment services, including issuing and managing payment instruments such as paper checks, travellers' checks, and letters of credit;
- participation in interbank markets;
- operations involving precious stones and metals;
- safe deposit box rental and safekeeping of valuables;
- provision of business information services; and
- other similar operations not prohibited by law.

On the other hand, financial institutions are expressly prohibited from engaging in the following activities:

- acquiring, selling or holding the ownership or co-ownership of any movable or immovable assets that are not exclusively for their own use or for their technical reserves;
- dealing or acting as intermediaries in transactions involving movable or immovable assets, unless such ownership arises from foreclosure or debt settlement arrangements undertaken by the institution; and
- acquiring or accepting as collateral shares or financial instruments representing their own capital, without prior authorisation from the relevant supervisory authority.

The authorisation for the financial institution shall lapse if (i) the applicants expressly renounce it, (ii) the financial institution is not incorporated within six months from the date of the authorisation, or (iii) it does not commence activities within 12 months from the authorisation date. However, in exceptional circumstances, upon a duly substantiated request by the financial institution, the BNA may extend, on a one-time basis, the deadline for commencing activities for up to six months.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

The acquisition, increase or reduction of qualified shareholdings in Angolan financial institutions is regulated under the General Regime of Financial Institutions, complemented by the Competition Law and its Regulation. These instruments collectively ensure that ownership and control changes preserve both prudential stability and market competition within the Angolan financial system.

A qualified shareholding arises when a person, whether natural or legal, directly or indirectly, holds 10% or more of the share capital or voting rights of a financial institution, or otherwise exercises significant influence over its management. Thresholds of 10%, 20%, one-third and 50% trigger prior notification and assessment obligations to the BNA.

Any natural or legal person intending to acquire, increase or dispose of a qualified participation must notify the BNA in advance and submit documentation evidencing:

- the identity and beneficial ownership of the acquirer;
- the lawful origin of funds and financial standing;
- the strategic rationale and potential impact on the institution's stability; and
- compliance with AML/CFT and governance requirements.

The BNA conducts a fit-and-proper and prudential assessment evaluating the acquirer's integrity, financial capacity and capacity to ensure sound and prudent management. If BNA understands that the acquisition undermines effective supervision or increases systemic concentration risk, it may object to the transaction.

BNA must decide within 30 business days from receipt of a complete file (extendable if additional information is required).

BNA may impose administrative sanctions or order the divestment of unlawfully acquired shares.

In parallel, when the acquisition or merger results in an economic concentration as defined under the Competition Law – namely, a lasting change of control arising from a merger, acquisition or joint venture agreement, the transaction must obtain prior clearance from the ARC before completion. Notification to ARC is mandatory before completion in parallel with prudential authorisation from BNA whenever, as result of the acquisition:

- the acquiring group obtains or reinforces a market share equal to or exceeding 50% in the national market of a relevant financial service; or
- the transaction results in a market share between 30% and 50%, provided that at least two of the undertakings involved each recorded annual turnover in Angola above AOA450 million (currently around USD500,000) in the preceding financial year.

ARC assesses whether the concentration substantially restricts effective competition in the national or relevant market. Its approval is a precondition for subsequent authorisation by the BNA, which retains prudential oversight.

With this integrated supervisory framework, involving the BNA and ARC, Angola ensures that all ownership and control changes in the financial sector respect the principles of prudential soundness, transparency, and fair competition, safeguarding financial stability and market integrity.

4. Governance

4.1 Corporate Governance Requirements

In Angola, corporate governance directives are primarily found in the following legislation: (i) the Commercial Companies Law; (ii) the General Framework for Financial Institutions; and at a second level, (iii) Notice 1/22, of 28 January, which regulates governance and internal control systems.

Angolan financial institutions always take the form of a public limited company (*sociedade anónima*).

Corporate governance in financial institutions can be divided into two main components: (i) the organisational structure, including the chosen model of governance; and (ii) the policies and procedures that regulate the institution's internal operations and controls.

Organisational Structure

When adopting a corporate governance model, financial institutions must comply with certain mandatory structures, including: (i) establishment of an executive committee; (ii) separation of the roles of chair of the executive committee and chair of the board of directors, the same person not being allowed to occupy both positions; and (iii) the board of directors must have an odd number of members, including at least one independent director who serves a single, non-renewable term (this requirement does not apply to systemically important financial institutions, which must have at least three independent directors).

The board of directors is responsible for establishing specialised committees as required for the effective exercise of its responsibilities. Two committees are mandatory: the Internal Control Committee (responsible for formalising and operating an effective and well-documented information reporting system) and the Audit Committee (responsible for overseeing the activities and independence of external auditors, and for establishing an effective channel of communication).

Mandatory functions within the structure of a financial institution include compliance, risk management, internal audit, and information and communication systems. These must be supported by formal, transparent processes and technological applications.

It should also be noted that any changes to the corporate governance model must be communicated in advance to the BNA, together with a prudential justification explaining why the institution believes the new governance model will contribute to sounder and more prudent management, in light of the institution's current circumstances.

Policies

Financial institutions are required to establish, implement and periodically review their corporate govern-

ance model, at least once a year. This review should cover capital structure, business strategy, risk management policies and processes, and organisational units and structures. Key policies include:

- remuneration policy;
- internal control policy;
- compliance policy;
- policy on related-party transactions and prevention of conflicts of interest;
- transparency and information disclosure policy;
- code of conduct; and
- whistle-blowing channel.

The corporate governance framework of financial institutions must facilitate and enable independent assessments of the quality, accuracy and effectiveness of the institution's risk management, financial reporting and regulatory compliance functions.

Although there is no legal requirement for diversity policies, financial institutions may choose to adopt internal diversity policies, applicable both to the workforce and to the members of the board of directors or supervisory board. Diversity may refer to qualifications, gender, technical or sectoral expertise.

4.2 Registration and Oversight of Senior Management

The appointment and ongoing oversight of senior management in Angolan financial institutions is governed by the General Regime of Financial Institutions, which establishes the criteria and procedures for assessing the adequacy of board members, supervisory bodies and key function holders.

The members of the board of directors and of the supervisory body, as well as holders of key control or management functions such as compliance, risk management, internal audit and internal control, must obtain prior authorisation from the BNA before taking office.

The financial institution must apply for these authorisations supported by its own internal suitability assessment report. The BNA conducts an independent fit and proper assessment based on four core dimensions (integrity, professional competence, inde-

pendence and availability) and may request additional information or interviews as part of this process.

Specifically:

- integrity – evaluation of the individual's reputation, ethical conduct and compliance record;
- professional competence – assessment of academic background, technical expertise, professional experience and leadership capability;
- independence – verification that the individual can exercise sound judgment and make decisions free from conflicts of interest or undue influence; and
- availability – confirmation that the individual can dedicate sufficient time to their role and is not overextended through the accumulation of multiple mandates.

Once authorised, the appointment must be entered in the BNA's special register within 30 business days, as registration is a mandatory condition for assuming office. Any change in the composition of these bodies or the renewal of their mandates must also be notified to the BNA for validation and registration. Financial institutions must adopt internal policies and procedures for the assessment, appointment and periodic review of senior management, supported by a competence matrix and individual evaluation records.

The concept of collective suitability also applies, requiring that each governing body demonstrates an appropriate balance of knowledge, diversity and experience.

In the event deficiencies are identified, either initially or during ongoing supervision, BNA or the CMC may require remedial action, impose sanctions, suspend or revoke authorisations, or order the replacement of individuals deemed unfit. Based on new information or supervisory findings, the regulator has the power to re-evaluate suitability at any time.

This regime ensures that prudential supervision is properly co-ordinated, aligned with international standards, reinforcing transparency, accountability and professional competence across Angola's financial sector.

4.3 Remuneration Requirements

Financial institutions are required to maintain distinct remuneration policies for employees and for members of the corporate bodies (board of directors and supervisory board). These policies are intended to establish processes that define the criteria, frequency, responsible parties for performance evaluation, and the form, structure and conditions for the payment of remuneration. Remuneration includes any economic benefits granted to members of corporate bodies and employees of an institution in return for their services, whether periodic or non-periodic, fixed or variable, monetary or otherwise, and may include salaries, performance bonuses, allowances and pension liabilities.

The remuneration policies of financial institutions should be appropriately tailored to the institution's size, internal organisation, and the nature, scope and complexity of its activities. The following requirements must be met.

- Promote sound risk management: Remuneration practices must foster and be consistent with sound and prudent risk management, and must not encourage the assumption of risks exceeding the risk appetite established by the financial institution.
- Alignment with corporate strategy: The policy must be compatible with the financial institution's corporate strategy, objectives, long-term values and interests, and should include measures to prevent conflicts of interest.
- Independence of control and risk management functions: The policy should ensure the independence of employees performing control and risk management functions relative to the units they oversee, providing them with appropriate authority and compensation based on the achievement of objectives associated with their functions, independently of the performance of the business areas they control.
- Separation of fixed and variable remuneration criteria: The policy must clearly differentiate the criteria for defining fixed remuneration, primarily based on relevant professional experience and the organisational responsibilities of the position, from those for variable remuneration, which should be based on sustainable, risk-adjusted performance and

the fulfilment of responsibilities beyond ordinary requirements.

The management body or, if established, the remuneration committee, must submit the remuneration policy for members of the management and supervisory bodies to the general meeting for approval annually. In addition, the management body is responsible for approving and periodically reviewing the remuneration policy governing all other employees.

The remuneration paid to members of the general meeting board and the supervisory body should be exclusively fixed, with no direct links to the financial institution's results. In contrast, the remuneration of executive board members may include a variable component linked to the institution's short, medium and long-term performance, provided that this component does not create incentives for excessive risk-taking.

5. AML/KYC

5.1 AML and CFT Requirements

The Angolan framework for Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) is primarily governed by Law No 5/20, of 27 January, complemented by BNA's Notice No 02/24, of 3 March and Instruction No 05/24 of 12 June. Together, these instruments create a comprehensive regime applicable to both banking and non-banking financial institutions, aligning national standards with FATF (Financial Action Task Force) recommendations and Basel principles.

The regime requires financial institutions to establish sound internal control systems supported by risk management, compliance, and reporting mechanisms. A Compliance Officer must be appointed to co-ordinate AML/CTF policies and ensure effective communication with the supervisory authorities and the UIF.

The Compliance Officer's core responsibilities include:

- advisory and monitoring – guiding management and staff on regulatory obligations and oversee-

ing adherence to laws, BNA notices, and internal policies;

- prevention of breaches – identifying, assessing, and mitigating compliance and conduct risks;
- reporting and escalation – maintaining channels for reporting suspicious activities and ensuring timely communication to the BNA or other authorities;
- policy oversight – designing, updating and implementing internal compliance frameworks;
- training and awareness – fostering a culture of compliance through regular training and internal communication;
- independence and access – performing duties autonomously with direct access to the board or audit committee; and
- record-keeping – documenting compliance reports, investigations and follow-up actions.

Under the General Regime of Financial Institutions and related regulations (Regulation No 5/21 and Notice No 02/24), AML/CTF compliance relies essentially on the following pillars.

Risk-Based Approach and Customer Due Diligence (CDD)

Financial institutions must conduct periodic risk assessments covering products, clients and geographical exposure. Results must be documented, reviewed annually and reflected in internal procedures. CDD measures require identifying and verifying clients and beneficial owners, maintaining updated risk profiles, applying enhanced due diligence to high-risk clients (such as PEPs or offshore entities), and adopting simplified measures only when justified by a demonstrably low risk.

Governance and Internal Controls

The board of directors bears ultimate responsibility for AML/CTF compliance, approving and periodically reviewing policies, allocating sufficient resources, and promoting integrity and ethical conduct. Independent internal audit or external reviews must assess the effectiveness of AML systems at least once a year, with findings reported to the board and made available to supervisors.

Reporting and Co-operation Duties

Financial institutions are legally required to report promptly to the UIF any transaction suspected of involving money laundering, terrorist financing, or proliferation financing, without tipping off the client.

Non-compliance, including failure to conduct CDD, report suspicious transactions or maintain effective governance, may result in administrative fines, management disqualification, or, in severe cases, revocation of the financial institution's licence.

Through this modernised framework, Angola reinforces its commitment to financial transparency, regulatory accountability and global AML/CTF best practices.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Deposit Guarantee Fund is a public entity whose main purpose is to ensure the reimbursement of deposits made into participating Financial Institutions. The Legal Framework of Financial Institutions establishes the legal rules applicable to the Deposit Guarantee Fund as is further regulated by Presidential Decree No 195/18 of 22 August, and by Notice No 2/19, of 11 January, which sets forth supplementary rules for the operation of the Deposit Guarantee Fund.

The Fund is managed by a Management Committee composed of three members: the chairperson, who is either a member of the board of directors of the BNA or designated by it; one member appointed by the Minister of Finance; and a third member appointed by the association representing the participating financial institutions. In order to fulfil its mandate, the Deposit Guarantee Fund is endowed with financial resources made up of: (i) initial contributions from participating financial institutions; (ii) periodic contributions from financial institutions; (iii) income generated from the application of its resources; (iv) donations; and (v) any other revenues, income or amounts resulting from the activity of financial institutions or assigned by law or contract, including proceeds from fines imposed on financial institutions.

All financial institutions authorised to receive deposits and subject to the prudential supervision of the BNA are required to participate in the deposit guarantee fund.

The guarantee covers deposits placed with banking financial institutions by both individuals and legal entities. Eligible deposits include, among others: demand deposits, notice accounts, term deposits, non-redeemable term deposits, home savings deposits, emigrant deposits, retirement savings, condominium savings, deposits represented by certificates of deposit, mandatory deposits and any other deposits provided by law.

The Deposit Guarantee Fund guarantees the reimbursement of the full amount of each depositor's cash balances, up to a maximum of AOA12.5 million (currently around USD13,500).

Reimbursement must be made within three months from the date on which the BNA confirms and notifies the Deposit Guarantee Fund of the unavailability of deposits.

Certain deposits are excluded from the guarantee, specifically: (i) deposits resulting from transactions for which there is a final criminal conviction related to money laundering activities; (ii) deposits placed with unauthorised entities; and (iii) deposits pledged as collateral for loan agreements, among others.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

The Angolan prudential framework governing financial institutions is primarily set out in the General Regime of Financial Institutions and is further complemented by Notice No 08/21, of 5 July, which operationalises Basel III principles on own funds, capital buffers, risk management, supervisory review and market discipline. Minimum share capital requirements are additionally specified by Notice No 03/24.

Adherence to Basel III Standards

Angola has progressively implemented the Basel III framework through a three-pillar structure. Under the General Regime of Financial Institutions, the BNA has the power to regulate solvency, liquidity and leverage ratios, and to define minimum capital adequacy standards.

Notice No 08/21 transposes Basel's concepts of Tier 1 and Tier 2 capital and establishes quantitative ratios broadly consistent with international benchmarks, while adapting them to domestic conditions. The framework integrates minimum capital requirements (Pillar I), the supervisory review and evaluation process (Pillar II), and market-discipline obligations (Pillar III).

Risk-Management Rules

The board of directors holds primary responsibility for risk governance. Financial institutions must adopt strategies and internal procedures to identify, measure and mitigate all material risks, ensuring their integration into daily decision-making.

A Risk Committee composed mainly of non-executive members is mandatory for systemic financial institutions, and an independent risk-management function must operate with sufficient authority and resources.

Risk-management policies must cover credit, market, liquidity, operational, concentration and leverage risks. In particular, for liquidity-risk management, financial institutions are required to establish clear policies, early-warning indicators and contingency-funding plans that are reviewed and tested at least annually. Financial institutions must also maintain adequate information systems for real-time monitoring of exposures and submit periodic reports to the BNA.

Capital Requirements

Own funds are divided into Common Equity Tier 1 (CET1), Additional Tier 1 (AT1), and Tier 2 capital. The composition of regulatory capital follows Basel III definitions, including paid-up shares, reserves, retained earnings and eligible subordinated instruments.

According to Notice No 08/2021, financial institutions must at all times maintain:

- CET1 capital ratio – 4.5%;
- Tier 1 capital ratio – 6%;
- Total capital ratio – 8% of risk-weighted assets (RWA); and
- Leverage ratio – 3%.

Beyond these minimums, the Combined Buffer Requirement applies, consisting of:

- a capital-conservation buffer of 2.5% CET1;
- a countercyclical buffer ranging from 0% to 2.5% CET1, set quarterly by the BNA; and
- a systemic-importance buffer of up to 4% CET1 for systemically important financial institutions.

The General Regime of Financial Institutions also requires that own funds never fall below the legally established minimum share capital for each category of institution and mandates the creation of reserves to absorb unforeseen losses.

Minimum Share Capital

To ensure a stable funding base, the BNA imposes fully paid-up capital thresholds under Notices No 03/2024 and No 04/2024, as follows:

- commercial banks – minimum of AOA15 billion; and
- development banks – minimum of AOA 50 billion (Notice 03/2024, Article 3).

These amounts must be fully realised in cash and may be reviewed by the BNA to reflect macroeconomic developments or systemic-risk conditions. Institutions failing to comply commit a regulatory offence under Notices 03/2024 and 04/2024, read together with the General Regime of Financial Institutions.

Liquidity Requirements

Liquidity-risk management is comprehensively regulated by the General Regime of Financial Institutions, which requires financial institutions to maintain strategies and procedures ensuring adequate liquidity relative to their operations and risk appetite.

Financial institutions must monitor maturity mismatches, diversify funding sources, and maintain a sufficient stock of high-quality liquid assets to with-

stand stress scenarios. Contingency-funding plans must be approved by the board, regularly tested and updated to reflect changing market conditions.

The BNA exercises ongoing prudential supervision by assessing the financial institutions liquidity positions through regular reporting and on-site inspections. When material deficiencies are identified, the BNA may require corrective measures, restrict distributions or impose additional liquidity requirements.

Systemically Important Financial Institutions and Macroprudential Buffers

Systemically important financial institutions are identified annually by the BNA based on size, complexity, cross-border activity and inter-connectedness. Designated financial institutions must maintain an additional CET1 buffer of up to 4% of RWA on a consolidated basis and are subject to enhanced supervisory expectations, including stricter governance standards and intensified monitoring of risk-management systems.

Overall Assessment

The Angolan prudential framework closely mirrors Basel III in both structure and intent, combining quantitative capital ratios with qualitative governance and risk-management obligations. While implementation remains adapted to local market maturity, the regime provides a solid foundation for financial stability.

Commercial and development banks must comply with high share-capital thresholds, maintain minimum solvency ratios, and hold multiple capital buffers to absorb shocks. Liquidity management is rigorously supervised, and systemically important institutions face heightened prudential expectations.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The legal framework governing insolvency, recovery and resolution of financial institutions is set out in the General Regime of Financial Institutions.

Whenever the BNA determines that a financial institution is in serious breach of the legal or regulatory provisions governing banking activity, such that the

financial soundness of the institution, the interests of depositors, or the stability of the financial system are consequently put at risk, the BNA may impose one or more of the following measures:

- corrective intervention;
- provisional administration; and
- resolution

Insofar as corrective intervention is concerned, the following measures, among others, may be applied: (i) the approval of a restructuring plan; (ii) the suspension or replacement of one or more members of the management or supervisory bodies of the financial institution; (iii) the appointment by the BNA of a supervisory committee or a sole supervisor; and (iv) restrictions on the granting of credit and the investment of funds in certain categories of assets.

Measures of provisional administration entail the removal of the members of the board of directors and the subsequent appointment of provisional directors by the BNA.

Should none of these measures prove sufficient to resolve the situation or facilitate the recovery of the financial institution concerned, and should the BNA (the Resolution Authority) determine that the financial institution either fails, or is at imminent and serious risk of failing, to meet the legal requirements for maintaining its authorisation to conduct banking activities (and that such failure poses a risk of contagion to other financial institutions) the BNA may, in accordance with a Resolution Plan approved for this purpose, implement one of the following resolution measures.

- The BNA may, in accordance with the law, order the partial or total sale of the business to another financial institution authorised to carry out such activities. This may include the transfer of rights and obligations comprising assets, liabilities, off-balance sheet items, ownership of shares or other securities representing the share capital of the financial institution under resolution, as well as the transfer of assets under management by such financial institution. The disposal shall be carried out under commercial conditions and shall take into account the circumstances of the specific case

and the evaluation performed by an independent entity at the expense of the financial institution under resolution.

- The BNA may order the partial or total transfer of rights and obligations of a financial institution, which constitute assets, liabilities, off-balance sheet items, and assets under management, as well as the transfer of ownership of shares or other securities representing its share capital, to bridge institutions constituted for this purpose, with the aim of facilitating their subsequent sale. The bridge institution (whose share capital is fully or partially subscribed and paid by the Resolution Fund (*Fundo de Resolução*), must be duly authorised to conduct the activities related to the transferred rights and obligations, and must ensure the continuity of the provision of financial services inherent to the transferred activity, as well as the management of assets, liabilities, off-balance sheet items, assets under management, shares, or other instruments that have been transferred to it, with a view to enhancing the value of the business conducted. The bridge institution shall also seek to dispose of such assets as soon as circumstances so permit, in a manner that maximises the value of the assets in question.
- The rights and obligations of a financial institution or a bridge institution, including its assets, liabilities, off-balance sheet items and managed assets, are transferred to asset management vehicles established for this purpose, with the goal of maximising their value for subsequent sale or liquidation. These asset management vehicles are created to receive and manage all or part of the rights and obligations of financial institutions under resolution or a bridge institution. Similarly to bridge institutions, the share capital of the asset management vehicle is fully or partially subscribed and paid by the Resolution Fund.
- The BNA may also determine an internal recapitalisation measure to strengthen the own funds of a financial institution to the extent necessary to enable it to meet the requirements for maintaining its authorisation to operate and to obtain autonomous and sustainable financing from the financial markets. This is applicable in cases where there is a reasonable prospect that the measure, along with other relevant measures, will achieve the objectives

set out in the law and restore the long-term financial stability and viability of the financial institution. The following powers may be applied:

- (i) partial or total reduction of the nominal value of the liabilities of the financial institution under resolution that do not arise from ownership of own funds instruments and that are included within the scope of the internal recapitalisation measure; and
- (ii) increase in the capital of the credit institution under resolution or its parent company by partially or fully converting the liabilities included within the scope of the internal recapitalisation measure into common shares or securities representing the capital of the financial institution under resolution or its parent company.

All the aforementioned measures are aimed at preserving the stability of financial institutions and, ultimately, in the event of failure, the BNA may revoke the authorisation to conduct banking activities, which results in the immediate liquidation of the financial institution, with all resulting effects.

9. ESG

9.1 ESG Requirements

The topics of ESG in the financial system are not currently regulated by specific legislation. Although there have been efforts and promises of regulations from the BNA, according to the five-year strategic plan (2023 to 2028) for modernisation and sustainability of the financial system, to date only a set of Generic Recommendations called Principles of Sustainability of the Angolan Financial System was issued in 2023 by the CSSF (Council of Financial System Supervisors), with the aim of ensuring the transition to a financially sustainable economy, based on internationally accepted principles, criteria and practices.

According to the document itself, these sustainability principles constitute a set of standards intended to support Financial Institutions in the gradual adoption of ESG criteria, taking into account the commitments assumed by Angola by signing the Paris Agreements, Agenda 2030 and the National Strategy for Climate

Change 2018–2030. In this context, they represent the commitment of the Angolan Financial System to the energy transition, reduction of dependence on the oil sector, and promotion of sustainable development.

These principles are as follows:

- Principle I – Promotion of Training and Knowledge;
- Principle II – Identification and Incorporation of Social and Environmental Risks in Governance and Risk Management Models;
- Principle III – Leveraging Partnerships to Deepen Understanding of Sustainability Issues and Practices;
- Principle IV – Promotion of Financial Inclusion; and
- Principle V – Transparency and/or Reporting of Information.

However, to date, these principles are merely recommendations that financial institutions may or may not adopt, and therefore, there is no legal obligation for their adoption.

10. DORA

10.1 DORA Requirements

Financial institutions must establish, implement, and maintain a cybersecurity policy based on internationally accepted standards, principles and guidelines, aimed at ensuring the confidentiality, integrity and availability of the networks, data and information systems used, with the following minimum content:

- the size, risk profile and business model of the institution;
- the nature of the institution's operations and the complexity of its products, services, activities and processes; and
- the sensitivity of the data and information for which the institution is responsible.

According to Notice No 8/2020 of 16 March, on cybersecurity policy and the terms and conditions for the contracting of data processing, data storage and cloud computing services, the cybersecurity policy must be disclosed to the public, employees and service providers using clear, objective, and accessible

language, in accordance with the functions performed and the sensitivity of the information covered by the policy.

For the purposes of implementing the cybersecurity policy, financial institutions must develop an action plan capable of responding to incidents, which should include, at least the following requirements:

- adequacy of organisational and operational structures;
- routines, procedures, controls and technologies to be used in the prevention of and response to incidents;
- actions to be undertaken by the financial institutions to align their organisational and operational structures with the principles and guidelines of the cybersecurity policy;
- identification of the area responsible for the recording, monitoring and control of relevant incidents; and
- a cybersecurity policy procedures manual, approved by the management or administrative body (to be reviewed annually or whenever there are material changes within the institution).

Immediately upon detection of an incident, financial institutions are required to report to the BNA any breaches of networks and information systems, or losses of integrity that have a significant impact on the functioning of those networks and services, providing status updates every four hours until normal services are restored.

Adopting cloud services requires the adaptation of policies, strategies and structures for the management of risks inherent to the outsourcing of such services. In assessing the relevance of the service to be made available in the cloud, the financial institution must consider the criticality and sensitivity of the data and information supported by such service, in accordance with their classification, as well as the risk involved in the event of unauthorised access.

The contracting of services supported by cloud computing is subject to prior authorisation from the BNA, which must be requested at least 60 days in advance, including the following information:

- the company to be contracted;
- the business continuity plan;
- the services to be provided;
- the location or country where the infrastructure, systems and processing will be hosted;
- the type of information to be migrated to the cloud;
- the governing law of the contract;
- evidence of the skills and resources required to maintain and monitor the service; and
- the willingness of the cloud service providers to co-operate with the national supervising authorities.

11. Horizon Scanning

11.1 Regulatory Developments

A revision of the Securities Code is currently in progress, with the objective of aligning its provisions with the prevailing conditions of the national securities and derivatives markets. The main objectives of this revision are as follows:

- to update the Securities Code in line with the new context of the functioning of the national securities and derivatives market;
- to simplify and reduce regulatory burdens and barriers;
- to stimulate the equity segment within the Angolan securities and derivatives market;
- to improve the level of protection for minority investors, as part of efforts to enhance the business environment; and
- to promote the identification, management and preservation of information relating to the ultimate beneficial owners of certain types of entities, taking into account their increased visibility, economic importance, and public relevance.

Following the approval of Presidential Decree No 111/22 – which establishes the rules for the organisation and functioning of the Resolution Fund and complements the provisions of the General Regime Applicable to Financial Institutions – the Notice No 05/25, of 4 August was recently approved. This Notice sets out the method for determining the initial, periodic and extraordinary contributions that participating institutions are required to make to the Resolution Fund.

According to this Notice, an initial contribution rate of 1% of the equity capital of institutions subject to the contribution has been established. In addition to this initial contribution, financial institutions are also required to make annual periodic contributions, calculated by reference to the average monthly balances of the aggregate liabilities for the year preceding the year in which the contribution is payable.

Extraordinary contributions will only be required in cases where the BNA adopts a resolution measure that results in the Resolution Fund lacking sufficient financial resources. Financial institutions are now awaiting guidance from the BNA on the timeframe for the initial capitalisation of the Resolution Fund.

A Presidential Decree approving the National Financial Inclusion Strategy was very recently enacted. This strategy sets out the country's priorities for advancing financial inclusion by ensuring universal, safe, and responsible access to financial products and services for the population as well as for micro, small, and medium-sized enterprises. It also aims to promote financial literacy and consumer protection. The publication of the decree is awaited by the Angolan financial sector, which would like to understand the role the financial institutions will have within this strategy and its impact on the activities of institutions operating in Angola.

AUSTRIA

Law and Practice

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KPMG Law - Buchberger Ettmayer Rechtsanwälte is a full-service law firm based in Vienna with a team of around 30 lawyers. Working seamlessly with KPMG's tax, advisory and audit teams, the firm provides integrated solutions across corporate/M&A, commercial, real estate, employment, dispute resolution, restructuring and regulatory mandates. In 2022, KPMG Law was named "Law Firm of the Year – Austria" by a leading legal ranking, which noted that the banking and finance practice group was the most visible

and active among Austrian Big Four firms and highlighted its effective integration. KPMG Law advises leading corporates, financial institutions and public bodies on complex transactions and regulatory matters, including financings, financial services restructurings and banking and investment funds mandates. Embedded in KPMG's international network, the firm regularly collaborates with colleagues in Germany, Switzerland, Spain and the UK to deliver a consistent cross-border work product.

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1. Legal Framework

1.1 Key Laws and Regulations

Key Laws and Regulations

Effective regulation of banks is fundamental to the stability and safety of the financial system. Considering its importance, the banking sector is the most closely supervised and regulated area. The Austrian legal framework for banks operates within the EU's legislative architecture and is implemented through a coherent set of domestic acts and supervisory instruments. The core national statute is the Banking Act (*Bankwesengesetz* BWG), which governs licensing, ownership control, prudential governance and the conduct of credit institutions. Capital and liquidity requirements derive from the EU Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD), as transposed in the BWG. Recovery and resolution are governed by the Bank Recovery and Resolution Directive (BRRD), implemented by the Bank Recovery and Resolution Act (*Bundesgesetz über die Sanierung und Abwicklung von Banken* BaSAG). Deposit protection is set by the Deposit Guarantee Schemes Directive (DGSD) and implemented by the Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz* ESAEG). For banks acting in the form of a savings bank (Sparkasse), a separate legal act (*Sparkassengesetz* SpG) governs the organisational structure of this specific legal form for credit institutions.

Complementary statutes include the Financial Market Authority Act (*Finanzmarktaufsichtsbehördengesetz* FMABG), which establishes the Austrian Financial Market Authority (FMA) and defines its supervisory mandate and powers. For rendering financial services, the relevant legislation is the Securities Supervision Act 2018 (*Wertpapieraufsichtsgesetz* "WAG 2018") transposing the EU Markets in Financial Instruments Directive (MiFID) regime, the Payment Services Act 2018 (*Zahlungsdiensteengesetz* ZaDiG 2018) for payment service (Second Payment Services Directive; PSD2) activities, the Covered Bonds Act (*Pfandbriefgesetz* PfandBG) for covered bond issuance and the Financial Markets Anti-Money Laundering Act (*Finanzmarktgeldwäschegesetz* FM-GwG) together with the Beneficial Owners Register Act (*Wirtschaftliche Eigentümer Register Gesetz* WiEReG) for AML/CFT

and beneficial ownership duties. Consumer lending is further shaped by the Mortgage and Real Estate Credit Act (*Hypothekar- und Immobilienkreditgesetz* HIKrG) and the Consumer Credit Act (*Verbraucher-kreditgesetz* VKrG), alongside general consumer laws.

Supervisory Authorities

Austria participates in the EU's Single Supervisory Mechanism (SSM), under which banking supervision is shared between the European Central Bank (ECB) and the Austrian FMA and the Austrian National Bank (*Österreichische Nationalbank* OeNB).

The ECB is responsible for banking supervision in the euro area. It supervises significant institutions established in Austria and oversees the supervision of less significant institutions nationally. Domestically, the FMA is the integrated supervisor for licensing, ongoing prudential and conduct oversight, and AML/CFT enforcement for credit and financial institutions. The OeNB has no decision-making powers in banking supervision. It supports micro-prudential supervision through data collection, off-site analysis and on-site inspections under a statutory co-operation model with the FMA and contributes to macro-prudential buffers via the Financial Market Stability Board framework.

2. Authorisation

2.1 Licences and Application Process

In Austria, rendering banking services requires prior authorisation under the BWG. The catalogue of licensable activities is set out in Section 1, paragraph 1 of the BWG and includes taking deposits, granting credit for own account, trading on own account in financial instruments, safekeeping and administration of securities, issuing or acquiring payment instruments, foreign-exchange and money-broking, giving guarantees and commitments, and underwriting or placing financial instruments. Undertakings for Collective Investment in Transferable Securities (UCITS) investment companies are also banks in the meaning of the BWG, even though they are governed at the EU level by a different legal framework.

The licence and application process differentiates between CRR credit institutions and others. A "CRR

credit institution” is defined in Article 4, paragraph 1 of the CRR as an undertaking that takes deposits or other repayable funds from the public and grants credit for its own account. For such CRR credit institutions, the ECB has exclusive competence to grant (and extend) authorisations within the SSM. These cases run through the SSM’s common procedures: the application is filed with and co-ordinated by the FMA, which conducts the fact-finding and assessment with the applicant. The ECB then issues the final decision, applying EU law together with the relevant national provisions of the BWG. By contrast, where the applicant does not meet the CRR definition (so-called non-CRR credit institutions under Austrian law), or where the case concerns a branch of a third-country bank, the FMA is the licensing authority and decides the application under the BWG.

Authorisation Process

The licensing application must be submitted to the FMA, regardless of whether the final decision rests with the FMA or the ECB. Where the applicant is an Austrian non-CRR credit institution or a branch of a foreign credit institution, the procedure is handled entirely by the FMA. If the applicant meets the CRR definition of a credit institution, the FMA processes the file and forwards it together with a draft decision and the supporting documentation to the ECB, which takes the final decision.

Following submission, the FMA typically holds a short pre-filing dialogue and then performs a completeness check. Once completeness is acknowledged, the assessment period begins. By law, a decision is normally taken within six months. In this context, applicants are expected to file a coherent dossier covering:

- a programme of operations and three-year business plan;
- evidence of initial capital as required by the CRD and the BWG (as a rule, at least EUR5 million, freely available to the managers without restriction);
- a governance and organisational blueprint – risk management, compliance, internal audit, outsourcing and information and communication technology (ICT) arrangements consistent with applicable EU standards, including the Digital Operational Resilience Act (DORA);

- comprehensive AML/CFT, conduct and product governance policies; and
- full fit-and-proper documentation for members of the management and supervisory bodies and other key function holders.

The FMA’s review is interactive and typically involves written rounds of questions, meetings or interviews with proposed managers, and (where appropriate) conditions or remediation undertakings.

Licensing Requirements

A licence is granted if the conditions in Section 5 of the BWG are met; in particular:

- the applicant uses a permitted legal form (company, co-operative or savings bank);
- the constitutional documents must support the safeguarding of client assets and the proper conduct of Section 1, paragraph 1 of the BWG;
- initial capital of at least EUR5 million, unencumbered and freely available in Austria to the managers;
- the managers must be professionally qualified and experienced (“fit and proper”);
- at least two managing directors (no sole representation, including *sole prokura*) – in co-operatives, management is restricted to the appointed managers;
- no managing director may have another principal occupation outside banking (or insurance/pension funds); and
- the registered office and head office must be located in Austria.

Costs

Bank licensing involves a one-off application fee under the FMA Fee Regulation for the initial licence and any later extension, and amounts to EUR12,500 for the initial licence and EUR2,500 for any later extension. CRR credit institutions within the SSM also pay the ECB’s annual supervisory fee. Besides the statutory fees, extra costs can include fit-and-proper documents, certified translations and notarisation.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

In Austria, acquisitions of qualifying holdings in credit institutions follow the EU “qualifying holdings” regime, as implemented in Section 20 of the BWG and carried out within the SSM (ie, ownership control procedure). Before entering into binding commitments (ie, before signing), a written notification must be filed with the FMA by any person who:

- intends to acquire, directly or indirectly, a qualifying holding (10% or more) in an Austrian bank;
- intends to increase such a holding so that their voting rights or capital reach or exceed 20%, 30% or 50%; or
- intends to make the bank its daughter company.

Falling below any of these thresholds also triggers a notification duty. Separately, the credit institution itself must notify the FMA promptly in writing once it becomes aware of any acquisition or disposal of a qualifying holding and any event by which a shareholder’s interest reaches, exceeds or falls below the statutory thresholds. In addition, the bank must provide the FMA, at least once per year, with an updated list of shareholders holding a qualifying interest, including their names and addresses.

The notification under the ownership control procedure must be submitted in writing and must comply with the catalogue in Section 20b of the BWG. The FMA’s 2016 Regulation on Own Funds and Capital Requirements (*Eigenmittel- und Kapitalvorschriften-Verordnung* EKV 2016) sets out the detailed information and documents to be provided. Typically required are a complete presentation of the ownership and control structure (including beneficial owners), a description of the transaction and the thresholds concerned, a robust account of the source of funds and financing structure, a business plan setting out strategic objectives and the impact on the bank’s governance, and evidence of the reliability and integrity of the acquirer and all key persons. Acquirers acting in concert are assessed on a consolidated basis, and indirect holdings/attributions must be disclosed.

After receiving the notification, the FMA has 60 business days upon receipt of all documents to assess the proposed acquisition and may prohibit it, whereas the FMA may interrupt the assessment period once for a maximum of 20 business days (and in specific cases even for 30 business days). A prohibition can be issued if there are justified reasons or if the file is incomplete. In making its decision, the FMA considers:

- the reliability of the acquirer and of the future management;
- the financial soundness of the acquirer;
- the target bank’s ability to continue meeting prudential requirements (capital, liquidity, governance, risk management);
- AML/CFT risks and compliance; and
- whether there are any obstacles to effective supervision (group transparency, co-operation with third-country authorities).

Based on the submitted documents, the FMA prepares a draft decision and forwards it to the ECB for the final decision in case of CRR credit institutions. If no written prohibition is issued by the FMA and the ECB within the assessment period, the acquisition may be completed. Approvals may be made subject to conditions. If the bank’s shares are listed on an Austrian regulated market, the acquirer must also comply with the Austrian Stock Exchange Act (*Börsegesetz* BörseG) and its disclosure requirements, and the Austrian Takeover Act in case of public takeovers.

4. Governance

4.1 Corporate Governance Requirements

Corporate governance in Austrian banks is primarily grounded in national legislation, including the BWG and, where applicable, the Austrian Stock Corporation Act (*Aktiengesetz* AktG), complemented by EU regulations such as CRD IV and CRD V. These statutory frameworks define the overall responsibilities, organisational structures and oversight mechanisms that banks must maintain to ensure prudent management and regulatory compliance. Banks are expected to implement robust internal governance arrangements covering both operational management and

strategic oversight, ensuring that responsibilities are clearly allocated and decision-making processes are documented and transparent.

Corporate governance also encompasses systems and controls requirements, including comprehensive risk management, compliance, internal audit functions, and the monitoring of outsourced services and ICT arrangements. Banks are expected to implement effective internal control frameworks that allow timely identification and management of risks, support regulatory reporting, and ensure the integrity of financial and operational processes.

In addition to statutory obligations, Austrian banks frequently adhere to voluntary governance codes, most notably the Austrian Corporate Governance Code (*Österreichischer Corporate Governance Kodex* ÖCGK), which provides guidance on best practices for board structure, risk oversight, transparency and stakeholder engagement. These codes help institutions go beyond the minimum legal requirements, promoting sound governance, accountability and trust in the banking system.

Finally, corporate governance also incorporates ethical standards and conduct rules for employees, particularly in critical positions. While Austria does not have a universal “bankers’ oath”, banks adopt binding codes of conduct, aligned with BWG obligations and EBA guidelines, to ensure staff act with integrity, diligence and in the best interest of the institution, while avoiding conflicts of interest.

4.2 Registration and Oversight of Senior Management

Banks are required to ensure the suitability and integrity of their senior management, including members of the management board, the supervisory board and holders of key functions, on an ongoing basis. The primary legal framework for these requirements is provided by the BWG, specifically Sections 5 (1) (6)–(13), 28a, and 30 (7a), which establish the standards for professional competence, reliability and collective suitability of management and supervisory bodies. These provisions are complemented by EU regulations, notably CRD IV and CRD V, which set out harmonised governance and fit-and-proper require-

ments across the European banking sector. Banks are expected to implement internal policies and guidelines to assess, document, and continuously monitor the fitness and propriety of all individuals in senior roles. Additionally, governing bodies and staff in key roles must undergo regular training to maintain knowledge of regulatory obligations, risk management principles and internal governance processes.

Regulatory Approval Process

Appointments of management board members and, where applicable, supervisory board members and other key function holders must be notified to the FMA without delay. The notification includes comprehensive documentation that enables the fit-and-proper assessment, such as professional qualifications and experience, prior roles, additional mandates, potential conflicts of interest, and evidence of integrity and reliability. Within the SMM, such notifications trigger a joint fit-and-proper process co-ordinated between the FMA and the ECB for significant institutions.

Fit and Proper Assessment

The FMA and ECB apply a rigorous fit-and-proper assessment when evaluating candidates. Newly appointed members of governing bodies are typically invited to a hearing to assess their theoretical knowledge and practical understanding of banking operations. The evaluation covers financial expertise, regulatory frameworks (including the BWG, relevant ordinances, and EU-level regulations such as CRR and EBA guidelines), corporate law, and the structure and organisation of the institution. The assessment ensures that directors and senior managers have the competence to manage and oversee the bank’s activities effectively and responsibly.

Screening Requirements

Banks must perform ongoing screening and monitoring of all senior management. This includes verifying the continued suitability, independence, and integrity of directors and key function holders, checking for new legal or regulatory issues, conflicts of interest or changes in personal circumstances that could affect their ability to perform their duties. Screening also covers politically exposed persons (PEPs), sanctions lists and any criminal or regulatory sanctions.

4.3 Remuneration Requirements

Remuneration policies and practices in Austrian banks are primarily governed by Section 39, paragraph 2 and Section 39b of the BWG, including the annex to Section 39b, which implements the provisions of CRD IV and CRD V into national law. These provisions apply to both individual institutions and banking groups and set out the framework for variable sensitive remuneration schemes, ensuring that compensation structures align with the long-term interests of the bank and its stakeholders.

The requirements apply to senior management, key function holders and other material risk takers; that is, members of the management board, heads of risk, compliance and internal audits and any staff whose professional activities may materially affect the institution's risk profile. The framework is designed to ensure that remuneration incentivises prudent risk-taking, discourages excessive short-term risk and promotes sustainable business conduct.

Key remuneration principles include:

- proportionality – compensation structures must be appropriate to the bank's size, internal organisation, risk profile and complexity of operations;
- performance alignment – variable pay should reflect long-term performance rather than short-term gains; and
- risk-adjustment – bonus payments are subject to risk adjustments, including deferred payments and claw-back mechanisms in the event of material losses or misconduct.

The FMA supervises banks' compliance with remuneration. Its oversight covers remuneration policies, internal controls, risk adjustments and the implementation of EBA guidelines. The FMA also monitors CRR disclosure requirements and can require policy changes or impose sanctions for non-compliance.

5. AML/KYC

5.1 AML and CFT Requirements

Austria's banking sector follows a risk-based AML/CFT regime under the FM-GwG, complemented by

the WiEReG and relevant EU legislation, including the 4th and 5th Anti-Money Laundering Directives (AMLDs 4 and 5, respectively), the 6th AML Directive (AMLD 6), and the EU Regulation on Transfers of Funds and Sanctions compliance obligations. Banks are required to implement these measures in line with the EBA guidelines on customer due diligence, transaction monitoring and risk assessment.

Banks must apply customer due diligence before establishing a business relationship and continuously throughout its duration. This includes identifying and verifying customers and beneficial owners, understanding the purpose and intended nature of the relationship, and monitoring transactions on an ongoing basis. Measures are proportionate to each institution's documented risk assessment. Enhanced due diligence is applied where higher risks are identified, for example in relationships with PEPs, non-resident customers or high-risk jurisdictions. Simplified measures are used only where clearly justified by low risk.

In practice, compliance includes screening customers against sanctions lists, implementing targeted transaction monitoring and ensuring the timely escalation of unusual or suspicious activity. Institutions are also obliged to report suspicions of money laundering or terrorist financing to the competent authorities and to retain records for legally prescribed periods. These obligations are supported by internal policies, clear governance structures, regular staff training and independent testing of the control framework, to ensure effectiveness and adherence to both national and EU requirements.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The EU Deposit Guarantee Schemes Directive (DGSD) is implemented in Austria by ESAEG. Every deposit-taking institution authorised in Austria must belong to a statutory deposit guarantee scheme and comply with its organisational, reporting and funding duties. The framework embodies the principle that the costs of payout events are borne by credit institutions rather than the taxpayer. Payouts are financed from a depos-

it guarantee fund built through annual contributions from member institutions.

Administration is decentralised across banking sectors but operates under uniform statutory rules. Credit institutions are assigned to one of three recognised schemes: *Einlagensicherung AUSTRIA GmbH* (covering most joint-stock, co-operative and mortgage banks), the Austrian Raiffeisen Protection Institution (*Österreichische Raiffeisen-Sicherungseinrichtung eGen ÖRS*) for the *Raiffeisen* sector and *Sparkassen-Haftungs GmbH* for the savings banks group. Each scheme maintains its own fund, systems and payout processes, is supervised for compliance with ESAEG and co-ordinates with the FMA in a default event. Membership in the appropriate scheme is a condition for carrying out deposit-taking business. If the FMA determines that a bank's deposits are unavailable, the relevant scheme must initiate repayment to depositors up to the covered amount and complete standard payouts within seven working days.

Coverage is broad and aims to protect households and the real economy while excluding professional financial risk-takers. Natural persons and most non-financial legal entities, including SMEs, are protected for eligible deposits held with an Austrian bank. Deposits of credit institutions and investment firms, certain public authorities and funds linked to criminal activity are excluded. Protection attaches to the balance of current, savings and term-deposit accounts and applies per depositor, per bank. Joint accounts are attributed to the co-holders in equal shares for the purpose of applying the limit. Foreign-currency deposits with Austrian institutions are covered but reimbursed in euros at the applicable rate on the payout date.

The general limit is EUR100,000 per depositor, per bank. If the depositor has several accounts with the same institution, balances are aggregated before the limit is applied; if accounts are held at different institutions, the limit is applied separately for each institution. The regime also recognises temporarily high balances arising from defined life events and provides enhanced protection for a limited period. In particular, deposits arising from real-estate transactions concerning a private principal residence, payments serv-

ing legally stipulated social purposes linked to specific life events (such as marriage, divorce, retirement, dismissal/redundancy, invalidity or death) and payments of insurance benefits or statutory compensation benefit from increased cover of up to EUR500,000 for 12 months from the date of credit, subject to the depositor providing evidence upon request.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Capital Requirements

Austrian banks are subject to prudential own-funds requirements as part of a risk-based supervisory framework, designed to align capital with each institution's risk profile and ensure adequate loss-absorbing capacity. Under Article 92 of the CRR, banks must cover specific risk types, including credit risk, market risk, operational risk, counterparty credit risk, settlement risk and credit valuation adjustment (CVA) risk. The total risk exposure is calculated by summing these components, and the solvency ratio (*Solvabilitätskoeffizient*) is determined by comparing eligible own funds with the aggregate risk (total risk exposure amount; TREA). Article 92 of the CRR also requires banks to maintain, at all times, a Common Equity Tier 1 (CET1) ratio of 4.5%, a Tier 1 ratio of 6% and a total capital ratio of 8% of risk-weighted assets (RWAs).

In addition to these Pillar 1 requirements, Austrian banks are subject to macroprudential capital buffers, which may be set by the FMA. These include the capital conservation buffer (CCoB), the countercyclical capital buffer (CCyB), the systemic risk buffer (SyRB) and buffers for systemically important institutions (O-SII and G-SII) – and, since 1 July 2025, a sectoral systemic risk buffer (sSyRB). These requirements are transposed into Austrian law under Section 23 of the BWG.

The CCoB is a capital buffer amounting to 2.5% of a bank's total exposures. It must be made up of CET1 capital. This buffer is in addition to the 4.5% minimum requirement for CET1 capital. Its objective is to conserve a bank's capital. If a bank's CCoB falls below 2.5%, automatic safeguards apply, which limit the

amount of dividend and bonus payments the bank can make.

The CCyB addresses cyclical risks from excessive credit growth, requiring banks to hold additional CET1 capital during periods of expansion. By increasing own funds during upswings, the CCyB encourages more balanced risk pricing and supports a more sustainable supply of credit. In Austria, the CCyB is implemented under Section 23a BWG, and when early signs of procyclical systemic risk emerge – such as excessive credit growth – the FMA may set a buffer of up to 2.5 percentage points of RWA for domestic exposures.

The SyRB covers structural risks and is implemented under Section 23e of the BWG, while the O-SII buffer applies to highly interconnected and systemically relevant banks under Section 23d of the BWG. The SyRB may be applied broadly across the banking sector or to specific groups of institutions, either at the consolidated level or for particular exposure segments, such as by asset class. The O-SII buffer addresses risks of highly interconnected and complex banks that are systemically important and the associated externalities. In the EU framework, it is established by Article 131 of the CRD as a macroprudential capital buffer for structural risk, to be met in CET1 on top of the minimum and the combined buffer requirement. In Austria, the O-SII buffer is transposed in Austrian law in Section 23d of the BWG.

The G-SII buffer applies to global systemically important institutions under Section 23c of the BWG. The buffer applies in addition to the CCoB and any other applicable macroprudential buffers. G-SII must be met entirely with CET1 and is generally applied at the consolidated level to the EU parent of the G-SII group, although currently no Austrian bank is designated as a G-SII. All buffers are additive to the minimum requirements according to Article 92 CRR, except where structural risks overlap and CRD stacking rules apply.

The sSyRB aims to address systemic risks that are not adequately covered by other capital requirements or macroprudential tools. It is specifically applied to subsets of exposures that are deemed to pose systemic risks, thereby increasing the financial system's resil-

ience to potential shocks in those sectors. The aim of the sSyRB, as a macroprudential tool, is to allow authorities to target specific systemic risks that are inherent in banks' exposures at a sectoral level. The sSyRB is a macroprudential tool designed to enhance the resilience of the financial system against sector-specific risks, particularly in areas like residential or commercial real estate.

The Pillar 2 requirement (P2R) is a bank-specific capital requirement that supplements the minimum capital requirement (known as the Pillar 1 requirement) in cases where the latter underestimates or does not cover certain risks. A bank's P2R is determined as part of the Supervisory Review and Evaluation Process (SREP). It is legally binding, and if banks fail to comply, they could be subject to supervisory measures, including sanctions.

The P2R does not encompass the risk of excessive leverage, which is covered by the leverage ratio Pillar 2 requirement (LR-P2R). In addition to complying with both the P2R and the LR-P2R, banks are expected to follow the Pillar 2 guidance (P2G) and the leverage ratio Pillar 2 guidance (LR-P2G) set by the competent authority. Unlike the P2R, the P2G is not legally binding and merely reflects supervisory expectations.

Liquidity Requirements

Austrian banks must demonstrate short- and long-term liquidity resilience in line with CRR standards. The liquidity coverage ratio (LCR), fully in force since 1 January 2018 and amended by CRR II in June 2021, requires banks to hold sufficient high-quality liquid assets to withstand 30-day net cash outflows under stressed conditions. The net stable funding ratio (NSFR) ensures that available stable funding meets or exceeds required stable funding over a one-year horizon, under both normal and stressed conditions. Binding NSFR requirements apply from 28 June 2021, with a simplified approach permitted for smaller banks with total assets below EUR5 billion.

Furthermore, the Basel III leverage ratio is embedded in the CRR and became binding on 28 June 2021. Banks must maintain a minimum 3% ratio of Tier 1 capital to total exposures. G-SII must maintain a lever-

age ratio buffer that is 50% of the G-SII buffer determined by macroprudential authorities.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Austria has established a comprehensive legal and regulatory framework for dealing with banks that are failing or likely to fail, combining domestic law with EU rules. Under Section 82 of the BWG, certain insolvency procedures, such as reorganisation proceedings (*Sanierungsverfahren*), are not available for credit institutions. However, supervisory or bankruptcy proceedings may be initiated. Importantly, the conclusion of a reorganisation plan is not possible within bankruptcy proceedings, ensuring that banks in distress are handled under specific recovery and resolution rules rather than standard insolvency law.

BaSAG implements the BRRD into Austrian law and provides the legal basis for both recovery planning and resolution. Under this regime, banks are required to prepare recovery plans detailing measures to restore financial soundness if they experience distress. The FMA, as the supervisory authority, may take early intervention measures to correct emerging weaknesses before a bank becomes non-viable. Such measures can include requiring changes in governance, strengthening capital or liquidity, restricting high-risk activities or mandating divestments of certain business lines. Early intervention is designed to prevent the bank from reaching a state where resolution would become necessary.

When a bank cannot be restored to viability, the FMA, acting as the national resolution authority, may employ a range of resolution tools to maintain critical functions and limit systemic impact. These tools include transferring parts of a bank's business to a third-party purchaser, establishing a temporary bridge institution, segregating impaired assets into a separate vehicle, and imposing bail-in measures on creditors and shareholders. The bail-in mechanism allows losses to be absorbed internally, following a predetermined hierarchy, and is a key instrument for avoiding taxpayer-funded rescues.

It is important to distinguish between recovery and resolution measures. Recovery measures are applied while the bank is still viable and focus on restoring financial health, whereas resolution tools are triggered when a bank is deemed non-viable and cannot be restored through recovery actions. This distinction ensures that interventions are proportional to the institution's condition and that systemic stability is maintained.

Insolvency Preferences for Deposits

Austrian law provides specific protections for bank depositors in insolvency situations. Under ESAEG, deposits up to the guaranteed limit benefit from preferential treatment, meaning that covered deposits are repaid before most other unsecured creditors. This aligns with the EU DGSD and aims to protect retail depositors and maintain public confidence in the banking system.

9. ESG

9.1 ESG Requirements

ESG Regulatory Requirements in Austrian Banking

Austrian banks are increasingly subject to regulatory obligations concerning environmental, social and governance (ESG) matters, reflecting both EU-level legislation and national supervisory practices. ESG in banking encompasses the assessment of climate and ESG risks across all business activities, including lending, investment, and operational decisions. Given their central role in allocating capital, banks are well-positioned to support a transition towards a more sustainable and resilient economy, channelling finance towards responsible and impact-oriented projects while mitigating ESG-related risks.

Regulatory Framework

The integration of ESG considerations is anchored in a combination of EU directives and regulations and Austrian supervisory guidance. At the EU level, the Capital Requirements Directive V (CRD V) and the Capital Requirements Regulation II (CRR II) require banks to incorporate ESG-related risks into governance, risk management frameworks and capital planning. The Sustainable Finance Disclosure Regulation (SFDR, EU 2019/2088) mandates transparency on how sustain-

ability risks are considered in investment and lending decisions, covering both pre-contractual disclosures and ongoing reporting. Complementing these requirements, the EU Taxonomy Regulation (EU 2020/852) establishes criteria for environmentally sustainable economic activities and guides banks in evaluating exposures against environmental objectives.

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Transparency Obligations

Banks and financial institutions are required to provide clear, comparable and decision-useful information on sustainability risks, ESG impacts and the characteristics of their financial products. These transparency obligations are designed to help investors, clients and stakeholders understand how ESG considerations are integrated into business and investment decisions. Key requirements include:

- disclosure of ESG and sustainability risk policies, showing how these risks are incorporated into governance, internal controls and risk management frameworks;
- reporting adverse sustainability impacts at both the entity level and for individual financial products, allowing stakeholders to assess potential negative effects on the environment or society;
- explanation of remuneration policies, demonstrating how compensation structures align with ESG risk management and long-term sustainable performance;
- communication on the ESG characteristics of financial products, ensuring that pre-contractual documentation and periodic reports clearly indicate whether products promote environmental or social objectives;
- explicit disclosure when financial products do not meet EU environmental criteria, avoiding misleading statements and supporting informed decision-making; and
- integration of ESG information in non-financial statements and corporate reporting, providing a holistic view of how the institution addresses sustainability across operations and strategic planning.

10. DORA

10.1 DORA Requirements

DORA, effective from 17 January 2025, serves as the core regulation for enhancing digital resilience within the EU banking sector, including in Austria. DORA aims to ensure that banks and financial institutions are prepared to withstand ICT-related disruptions and cyberattacks by setting comprehensive standards for ICT risk management, incident reporting, resilience testing and third-party ICT risk management. The DORA Enforcement Act (DORA-VG) has been introduced to adapt these EU regulations into Austria's legal framework, ensuring that all Austrian credit institutions, as defined under Section 1, paragraph 1 of the BWG, are fully compliant with DORA's provisions. This extends to institutions that might otherwise fall outside DORA's general scope. The alignment of DORA with Austria's national regulations strengthens the overall resilience of the banking sector and ensures consistent application of ICT standards across the EU.

Supervisory Role and Powers of the FMA

The FMA is the competent authority responsible for overseeing compliance with DORA's requirements in Austria. As the central supervisory body, the FMA is equipped with powers to enforce compliance, which includes utilising tools from existing sectoral laws. These tools allow the FMA to immediately halt unlawful actions, exchange information with national and EU authorities and, under strict conditions, access communications metadata in cases where there is a well-founded suspicion of misconduct. Banks that violate DORA can face significant administrative penalties. For individuals responsible, the fines can reach up to EUR150,000, while legal entities may be fined up to EUR500,000 or 1% of their annual net turnover, whichever is higher. In determining penalties, the FMA considers factors such as seriousness, duration, the financial capacity of the violator and whether the institution has previously committed any violations.

Resilience Testing and Third-Party Risk Management

Banks are required to conduct resilience testing according to a risk-based approach. These tests typically include vulnerability scans, failover drills and end-to-end exercises, which focus on critical processes, key business functions and essential third-party dependencies. Banks designated for threat-led penetration testing (TLPT) must perform real-life penetration tests that are intelligence-driven and targeted at their most critical functions. These tests must occur at least once every three years. The test results must be documented and followed by a remediation plan, with subsequent retesting to ensure that any issues identified have been addressed. This proactive approach ensures that banks are better prepared for potential ICT incidents.

In addition to resilience testing, ICT third-party risk management is a crucial component of DORA's framework. Banks must maintain a complete register of all ICT arrangements and assess risks such as concentration risk and substitutability. Enhanced due diligence is required for critical or important ICT services, and contracts with third-party providers must include specific terms addressing service levels, availability, recovery objectives, incident reporting, audit rights, data location, security requirements, patching obliga-

tions and subcontracting controls. This ensures that banks not only manage their internal ICT risks but also effectively mitigate risks arising from their third-party service providers.

11. Horizon Scanning

11.1 Regulatory Developments

Austria's banking sector continues to align with evolving EU standards while maintaining targeted national measures. Over the next 12–24 months, three regulatory priorities are expected to have the most significant impact on banks: prudential reforms under Basel IV and CRD VI, ESG-related regulatory developments and updates to the consumer-credit framework in line with the new EU directive. Each of these areas will require banks to adapt their governance, risk management, capital planning and operational practices to meet both EU and domestic requirements.

In parallel, the FMA has summarised its ongoing supervisory focus. Its priorities are:

- resilience and stability – ie, real estate risks for the financial market, interest change and credit risks, governance, open banking and stress tests, implementation of the Insurance Recovery and Resolution Directive (IRRD);
- digitalisation and new business models – ie, Dora, AI Act, MICAR;
- sustainability – ie, greenwashing and transparency, sustainability risks, conduct of climate stress tests, sustainability reporting;
- collective consumer protection – ie, establishment of a sector-crossing conduct hub, consumer protection with a focus on fund-linked life insurance, claim management for insurance companies, marketing communication, “magnifying glass” for funds;
- “clean marketplace” – ie, sanctions supervision, Financial Action Task Force (FATF) assessment, establishing a link to AMLA; and
- data-driven supervision – ie, implementation of an IT and data strategy, the creation of an innovation lab and a 360-degree-view supervision tool, and agile governance.

Upcoming Prudential Changes Under Basel IV and CRD VI

Austria is implementing the Basel IV package, comprising CRR III (Regulation EU 2024/1623) and CRD VI (Directive EU 2024/1619). CRR III entered into force on 9 July 2024 and applies from 1 January 2025, while CRD VI must be transposed into national law by 11 January 2026. These measures realign Austrian prudential rules with Basel standards and embed stronger governance and ESG-risk requirements. A central feature is the output floor, which limits the benefits from internal models by requiring that modelled RWAs remain above 72.5% of standardised RWA, with phased application through 2030.

The standardised approach to credit risk is now more granular, with risk weights depending on borrower characteristics, collateral, jurisdiction and mortgage-specific factors such as property type, occupancy and loan-to-value ratios. This change increases capital requirements for high-loan-to-value (LTV) and income-producing real-estate exposures. Operational-risk capital is simplified, replacing the advanced measurement approach with a single standardised measurement approach based on business indicators and loss history.

CRD VI also broadens qualitative governance requirements, holding boards accountable for risk culture, ESG oversight, and the approval of plans with measurable ESG risk targets embedded in internal capital and liquidity planning and reflected in ongoing supervisory review. Initial analysis indicates Basel IV implementation could increase RWAs by 5–10% system-wide, with larger effects in corporate and real-estate portfolios. Smaller banks following the standardised approach will see more moderate impacts but must align data, reporting and collateral valuation with the new framework.

Furthermore, the new CRD VI requirements are expected to increase capital intensity, which may compress lending margins and potentially slow new credit growth, particularly in the commercial real estate sector. Nevertheless, authorities regard these reforms as enhancing the resilience of the banking system, reducing variability in internal models and improving cross-border comparability.

CRD VI also introduces a harmonised framework for non-EU banks operating via branches, setting requirements for minimum capital, robust local governance and risk management, and enhanced reporting.

Upcoming ESG-Related Regulatory Developments

Austrian banks are preparing for strengthened ESG-related regulatory requirements, reflecting evolving EU standards. The European Banking Authority (EBA) is issuing updated guidelines on ESG risk management, which are expected to apply from January 2026 for ECB-supervised institutions and from January 2027 for smaller and non-complex banks. These guidelines will require banks to integrate ESG risks into their internal capital adequacy assessment process (ICAAP), SREP and overall risk governance frameworks.

Institutions will need to embed ESG considerations into strategic decision-making, linking identified risks to risk appetite frameworks and governance reporting at board level. Operationalisation will rely on measurable indicators, scenario-based stress testing and transition planning, including assessing potential financial impacts over short-, medium- and long-term horizons. Banks are also expected to enhance data collection, covering counterparty and sectoral exposures, greenhouse gas emissions, energy usage, social standards and corporate governance practices, with particular attention paid to high-emission or high-risk industries. Where data gaps exist, proxies may be used initially, but institutions should develop plans to improve data quality over time.

The guidelines further emphasise alignment with EU disclosure frameworks, including the Corporate Sustainability Reporting Directive (CSRD), the EU Taxonomy and Pillar 3 requirements. Banks will need to demonstrate that ESG risks are considered in credit underwriting, portfolio management and capital planning, ensuring that sustainability objectives are integrated into daily operations and long-term planning.

Regulators will monitor compliance through standard supervisory processes, using ICAAP/internal liquidity adequacy assessment process (ILAAP) assessments, SREP reviews and on-site inspections. The guidance aims to improve transparency, promote board accountability for ESG oversight, and ensure

that ESG risks are consistently factored into decision-making. Austrian banks are expected to adjust policies, processes and governance structures to meet these requirements, strengthening resilience, facilitating alignment with sustainability goals and supporting risk-informed, forward-looking management of ESG exposures.

Upcoming Consumer Credit Regulatory Developments

Austria is transposing the new EU Consumer Credit Directive (Directive EU 2023/2225), which introduces significant reforms to consumer lending. Implementation into national law is required by November 2025, with application to new contracts from 20 November 2026. The directive broadens the scope to include small-value loans, zero-interest financing, limited buy-now-pay-later arrangements and certain rental or leasing contracts with purchase options. These changes address protection gaps in low-value and short-term credit products.

The definition of “credit” is now broader than under current Austrian law, encompassing deferred payments and financing beyond traditional interest-bearing loans. This extends protection to instruments such as credit cards with deferred payments and zero-percent loans. Certain short-term credit cards may be exempt if repaid within 40 days with minimal fees.

Consumer safeguards are strengthened through advertising restrictions, mandatory cost warnings and measures to prevent abuse, including caps on excessive interest or total credit costs. Overdrafts will require monthly disclosure, and explicit consent is needed for credit beyond agreed limits. Early repayment rules now limit reductions to costs owed to the lender, and the standard 14-day withdrawal period is capped at one year and 14 days if pre-contractual information is incomplete.

Overall, the reforms materially enhance consumer protection, expand the regulated credit universe and require substantial updates to the VKrG.

Trends and Developments

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HSP Rechtsanwälte GmbH is an internationally operating business law firm headquartered in Vienna. Since its foundation in 1997, the firm has grown steadily, combining a flexible approach to schedules and venues, close co-operation with one of the largest international networks (GGI Global Alliance) and a work ethic defined by efficiency, commitment and rapid response times. Strengths include providing personal, efficient, flexible and solution-oriented legal services at the highest level. Through its global network, the firm offers legal certainty and representation both nationally and internationally. It advises

domestic and international banks, financial service providers and investors in banking, finance and capital markets law, covering bank establishment, M&A, corporate governance and compliance. The firm represents clients before regulators, prepares compliance due diligence reports, and assists EU and CIS-based clients with KYC and AML matters. Its focus also includes financing, private equity, venture capital, mezzanine financing, and project and real estate financing. Most recently, the firm advised banks and their ICT suppliers on regulatory compliance with DORA and NIS-2.

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Introduction

In 2026, the Austrian finance sector will be shaped by the EU through the increasing digitalisation of the banking sector, EU regulations and geopolitical tensions.

The European legislators are pushing ahead with several projects at the same time: the digital euro is intended to further prepare the ground for a new form of state-backed digital currency, while the comprehensive AML package and the establishment of the Anti-Money Laundering Authority (AMLA) are intended to enable greater transparency, harmonisation and control in the European financial sector. Furthermore, it cannot be ruled out that the crypto market will continue to gain ground in the financial market.

At the same time, there is growing pressure to strengthen security in cyberspace. In view of the technical possibilities offered by artificial intelligence, but also of international conflicts, it is clear that a stable financial system is only possible with digital resilience. The EU has created an important framework for this purpose with the Digital Operational Resilience Act (DORA) (Regulation (EU) 2022/2554).

All these developments point to a financial sector characterised by digitalisation, transparency and security. Politicians, supervisory authorities and financial actors must promote technological innovation without neglecting the protection of privacy and economic freedom.

Cryptocurrencies – Pressure on MiCAR

The Markets in Crypto-Assets Regulation (MiCAR) (Regulation (EU) 2023/1114) established the first harmonised regulatory framework for cryptocurrencies within the EU. Its aim is to support innovation and new business opportunities in the crypto sector while ensuring financial stability and investor protection.

Nine months after MiCAR came fully into force, practical experience has revealed areas for improvement. National supervisory authorities report that significant differences in supervision have emerged between the member states, leading to unequal conditions in the European market. As a result, there are calls for a more effective and uniform supervisory structure to ensure

fair competition, investor protection and smooth functioning of the EU internal market.

In September 2025, the French *Autorité des Marchés Financiers* (AMF), the Austrian Financial Market Authority (FMA) and the Italian *Commissione Nazionale per le Società e la Borsa* (CONSOB) jointly published a proposal to strengthen the MiCAR framework. While the regulation represents an important step forward in providing legal clarity and compliance standards for crypto-asset service providers, the three authorities emphasise that a stronger, more centralised supervisory system is needed to address cross-border and technological risks.

The proposal outlines several key recommendations.

- **Effective supervision through ESMA oversight:** The national supervisory authorities propose that the European Securities and Markets Authority (ESMA) should directly supervise significant crypto-asset service providers operating across multiple countries in the EU. This could reduce regulatory fragmentation and ensure uniform application of MiCAR standards.
- **Stricter rules for non-EU platforms targeting EU investors:** The AMF, FMA and CONSOB note that some third-country platforms continue to reach European clients via MiCAR-authorised EU intermediaries. They therefore propose that any intermediary executing client orders for crypto assets should only do so through platforms subject to MiCAR or an equivalent regulation. This would close current loopholes and strengthen the protection of investors.
- **Improved cybersecurity oversight:** Due to the high cybersecurity risks in the crypto sector, regulators are calling for mandatory independent IT security audits. These should be conducted prior to authorisation and at regular intervals thereafter. These audits should cover asset protection, resilience to cyber-attacks and security incident management. Such measures would improve market integrity and strengthen investor confidence.
- **Centralised process for reviewing crypto-assets with documents:** To ensure greater legal certainty and consistency, the three authorities propose the creation of a central EU mechanism for the submis-

sion and review of white papers for token issuers. This would streamline supervision, reflect the pan-European nature of most offerings and simplify compliance for issuers.

The regulators justify these proposals by arguing that, without stricter supervision, national authorities may have to protect domestic investors from risks arising in other member states. Furthermore, current provisions are insufficient to adequately address important sector-specific risks. Ultimately, the AMF, FMA and CONSOB argue that a strengthened supervisory structure is essential to ensure a level playing field, protect investors and maintain the competitiveness of European market participants in the rapidly evolving global crypto economy.

The year 2026 is likely to be a decisive one for the further development of MiCAR. The European Commission is expected to review the initial experiences of national authorities and market participants and possibly initiate targeted amendments or delegated acts to address the supervisory shortcomings identified by the AMF, FMA and CONSOB. There are already discussions about granting ESMA stronger co-ordination, or even direct supervisory powers, for cross-border crypto-asset service providers. This move would bring MiCAR more in line with the supervisory structures of traditional EU banking and securities regulation.

Overall, 2026 could mark the transition from implementation to consolidation: MiCAR would evolve from a pioneering legal framework into a mature, fully integrated part of the European financial supervisory – one that balances innovation with the stability and confidence that are essential for European financial markets.

Digital Euro – A New Monetary Phase

The introduction of the digital euro has been the subject of intense debate for several years and remains relevant due to its far-reaching implications. Now, the concept seems to be moving towards implementation. This step would further advance the digitalisation of the European banking sector – similar to what has already happened with the increased spreading of crypto currencies. EU banks face challenges as they will be the ones handling the use of the digital euro

and the structures required for its use in daily practice. As the digital euro will be central bank money, it will have an impact on liquidity requirements for EU banks.

The European Central Bank (ECB) repeatedly emphasises that the digital euro is not intended to replace cash, but rather to be a secure, government-guaranteed supplement to support the digital economy. The digital euro is intended to simplify payments within the EU and strengthen confidence in digital payment methods.

First phase: preparation

After a two-year preparatory and research phase and public consultation, this first phase of the project was expected to be completed in October 2025. The focus was on the technical prerequisites and legal framework conditions necessary for the subsequent introduction of the digital euro.

In this phase, the foundations for a possible launch of the digital euro should now be laid. Important milestones in this process include, among others:

- the draft of a Digital Euro Scheme Rulebook, which regulates how the digital euro will work in practice, how users will be protected and how it will be ensured that no one is excluded from using the digital euro;
- incorporating feedback from citizens and experts, particularly on data protection, user-friendliness and social inclusion, to ensure that the digital euro is as inclusive and user-friendly as possible; and
- a tender procedure for selecting private partners for technical infrastructure, security and fraud detection systems.

On 2 October 2025, the ECB published the results of the tender procedure for the selection of private partners. As part of this process, several companies were selected as partners for five key components, namely:

- alias lookup – allows users to send or receive digital euro payments using simple identifiers like phone numbers instead of the international bank account number (IBAN);
- risk management and fraud detection;

- app and software development kit;
- offline solutions; and
- secure exchange of payment information.

The framework agreements that have been concluded do not yet involve any payments but merely serve as preparation for possible future development work. Whether and when the digital euro will actually be issued depends on the final decision of the ECB Governing Council. However, this step appears to be a further indication of the imminent continuation of the introduction process.

The Governing Council of the ECB was expected to decide, in a meeting in October 2025, how to proceed with the technical preparations for the possible introduction of a digital euro – in other words, it will decide on the second phase.

Second phase: market preparation

The market preparation phase, which is expected to begin in November 2025 at the earliest, will focus on developing specific use cases such as online payments, offline functionality and everyday transactions. At the same time, there will be close co-operation with national central banks and EU institutions. Issues such as data protection, money laundering prevention and operational security will be addressed.

Final phase: implementation?

For the digital euro to be introduced, the EU must pass a Digital Euro Regulation. The European Commission already proposed a legislative package in 2023.

Given the timetable and the steps mentioned above, it appears that 2026 will be a decisive year in which the legal foundations could be laid, or even completed. If the basic timetable is adhered to, the digital euro could be officially introduced between 2028 and 2029.

With the increasing digitalisation of the banking sector, Europe is taking an innovative step in line with global technological progress. The introduction of a digital euro marks a decisive point in this process, laying the foundation for a more digitalised and networked financial world.

Nevertheless, it should not be overlooked that a fully digital currency – despite guaranteed data protection standards – brings with it new challenges. It could lead to greater transparency of citizens; even if privacy is technically preserved, the digitisation of payment transactions opens up new avenues for cybercrime and data misuse. Payment data could theoretically allow conclusions to be drawn about almost all areas of a person's life – from consumer behaviour to movement profiles. Experience in recent years has shown that cyber-attacks and data leaks are a real and growing danger that must be considered in the further development of the digital euro.

The digital euro symbolises Europe's pursuit of technological sovereignty and a modern financial infrastructure. It could become a central element of European payments and strengthen the EU's competitiveness in the digital age. At the same time, its introduction requires a delicate balance between innovation, security and the protection of individual freedom.

Between Transparency and Control – The EU Money Laundering Package in the Context of Privacy

Although the EU's comprehensive AML package came into force in the summer of 2024, its ongoing implementation in practice means that it will remain highly relevant in 2026, and not only for banks.

Money Laundering Regulation (Regulation (EU) 2024/1624)

A key component is the Money Laundering Regulation (Regulation (EU) 2024/1624), which will in large part only become applicable from July 2027. Nevertheless, preparations for its implementation will keep banks busy in 2026 in order to ensure full compliance with the new regulations.

The regulation stipulates the precise identification of beneficial owners of legal entities and increased ongoing monitoring of these entities. Suspicious activity reports must also be submitted according to stricter deadlines in future. These requirements will lead to relevant adjustments in the workflows of credit institutions, which will also affect customers – for example through more frequent requests for proof of identity or ownership.

In future, not only the traditional entities subject to money laundering prevention requirements, such as banks, but also crypto service providers will have to comply with money laundering regulations. This will result in greater regulation of digital assets and make this previously somewhat unclear area significantly more transparent.

Another key aspect of the Money Laundering Directive is the introduction of a cash limit of EUR10,000. Member states are allowed to set lower limits, but it remains to be seen whether Austria will make use of this option. The regulation has met with criticism in Austria, as it is perceived as an encroachment on financial autonomy. The cash limit is likely to indirectly influence the behaviour of the population, including their payment habits, as larger transactions will increasingly have to be processed via digital channels.

Against the backdrop of the planned introduction of the digital euro, this development is often seen as a further step towards an increasingly transparent and monitored financial world. It is important to note that this could restrict citizens' privacy, as financial activities are becoming increasingly easy to track. Although the measure serves to combat money laundering and terrorist financing, the protection of sensitive data, such as personal finances, remains an issue of central importance.

6th Money Laundering Directive (Directive (EU) 2024/1640)

To provide a complete list of the components of the AML package, the 6th Anti-Money Laundering Directive (Directive (EU) 2024/1640) must also be mentioned. This directive regulates the organisational and institutional structure within the framework of AML. It must be transposed into national law by mid-2027 and will also require financial institutions to restructure their internal processes.

AMLA Regulation (Regulation (EU) 2024/1620)

The most important part of the money laundering package is the AMLA Regulation (Regulation (EU) 2024/1620), which created the basis for the establishment of the AMLA. This is intended to enable a Union-wide supervisory structure that co-ordinates national authorities and even has direct cross-border powers.

The AMLA has been formally operational since mid-2025, with full operational capacity to be achieved by the end of 2027. The technical and organisational structure, particularly in the IT area, will be completed as early as 2026.

Indirect introduction of an EU-wide asset register?

In recent years, there has also been frequent discussion of an EU-wide asset register in which all assets would be centrally recorded. However, the idea of one EU-wide register as such has not been further pursued for the time being, possibly due to data protection and political concerns. Nevertheless, various current measures are promoting at least an indirect centralisation:

- establishment of the central EU money laundering authority, the AMLA, which will have direct access to national financial and law enforcement information;
- establishment of a central EU bank account register at the AMLA;
- harmonisation of the national transparency registers of the member states;
- linking of commercial and land registers via a common access point;
- cryptocurrency service providers in future being subject to the same money laundering regulations as credit institutions; and
- sellers of luxury and cultural goods having to check and record transactions above a certain value threshold and store customer data.

These developments show a trend towards increasing standardisation and centralisation of financial and property data, even without one single EU-wide asset register. It cannot be ruled out that such a register will become a reality in the context of future legislative initiatives, such as further AML packages.

Cybersecurity – Between Regulation, War and Artificial Intelligence

Geopolitical tensions are evident throughout the world, as well as technological upheavals and hybrid threats to security – developments that also affect the Austrian banking sector.

Advancing digitalisation, for example through the crypto market and the digital euro, as well as rapid developments in the field of artificial intelligence, increase the country's appeal as an attractive business location, but also entail risks. Data and infrastructure are so closely linked today that even minor vulnerabilities can have widespread consequences. That is why cybersecurity is so important, especially in the banking sector.

Cyber-attacks as a tool in geopolitical conflicts

Cyber-attacks are increasingly becoming part of strategies in geopolitical conflicts. Russia's war of aggression against Ukraine has also demonstrated how closely military conflicts are linked to digital attacks and targeted disinformation today. Cyber-attacks are increasingly being used to interfere with critical infrastructure, undermine trust and damage economies.

Companies in all sectors are continuously integrating new digital processes, which provides cyber-attacks with a larger target area. The attacks are also becoming increasingly professional, which is further facilitated by the possibilities offered by artificial intelligence. In the financial sector, too, more and more processes are being digitised, and products and services are being offered digitally. The financial sector in particular is a focus of attention due to the large amount of sensitive data it handles. Payment service providers manage highly sensitive data and are a central pillar of the economy. In Austria, where financial matters are traditionally considered private matters, the protection of this data is essential to maintain public trust.

According to recent studies, one in seven cyber-attacks in Austria is successful. Although it is said to be possible to detect 62% of attacks, the threats are evolving at an ever-increasing pace.

DORA (Regulation (EU) 2022/2554)

A key step towards strengthening digital resilience in Europe is DORA (Regulation (EU) 2022/2554), which has been binding since the beginning of 2025. The aim is to prepare the European financial sector for digital risks and ensure financial stability. This obliges financial institutions in the EU to implement effective technical and organisational measures to combat cyber-attacks.

The year 2026 will provide the first practical experience with the obligations of DORA and, through its review, will offer the opportunity to make regulatory or organisational adjustments where necessary, as well as to evaluate the effectiveness of the regulations in practice in terms of preventing (successful) cyber-attacks; thus, changes can be expected in 2026 in this area.

BAHRAIN

Law and Practice

Contributed by:

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Al Tamimi & Co. is a full-service commercial law firm that combines knowledge, experience and expertise in 17 offices across ten countries to ensure its clients have access to the best commercially sound and cost-effective legal solutions. Its banking and finance team has an unrivalled understanding of the legal landscape across the Middle East and North Africa (MENA). This expert team of multilingual and diverse

lawyers has the extensive knowledge and capacity to handle some of the biggest and most complex MENA banking and finance matters. As its practice and expertise evolve in step with the needs of its clients, it advises international, national and regional banks, as well as corporate entities, ministries and regulators, and an increasing number of fintech companies, non-financial institutions and virtual asset providers.

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1. Legal Framework

1.1 Key Laws and Regulations

The CBB Law and Rulebook

The financial services sector in Bahrain is primarily governed by Decree No 64 of 2006 promulgating the Central Bank of Bahrain (CBB) and Financial Institutions Law, as amended (“CBB Law”).

The CBB is the sole regulator of the financial services sector in Bahrain.

The CBB in its capacity as the regulatory and supervisory authority for all financial institutions in Bahrain, issues regulatory instruments that licensees and other specified persons are legally obliged to comply with. These regulatory instruments are contained in the CBB Rulebook, which is divided into separate volumes, each focusing on a particular category of licence or industry sector as follows:

- volume 1 – conventional banks;
- volume 2 – Islamic banks;
- volume 3 – insurance licensees;
- volume 4 – investment business;
- volume 5 – specialised licensees;
- volume 6 – capital markets; and
- volume 7 – collective investment undertakings (CIUs).

Volume 5 (specialised licensees) covers money changers, financing companies, representative offices, administrators, trust service providers, micro-finance

institutions and providers of ancillary services to the financial sector.

Except for volumes 5, 6 and 7, the basic structure of each CBB Rulebook is the same. Each volume starts with a contents page and user’s guide. Subsequent material is organised underneath the following headings:

- high-level standards;
- business standards;
- prudential requirements;
- reporting requirements;
- enforcement and redress; and, where appropriate,
- sector guides.

In addition, the CBB has the power under the CBB Law to issue regulations, resolutions and directives.

Other Key Legislation

Other key laws relevant to the financial services sector are:

- Law No 12 of 1971 promulgating the civil and commercial procedures law, as amended, that governs litigation in Bahrain’s civil courts;
- Law No 7 of 1987 promulgating the law of commerce, as amended, that governs commercial activities and covers specific provisions pertaining to banking, including bills of exchange, promissory notes and cheques;
- Law No 19 of 2001 promulgating the Civil Code, as amended, which serves as the primary law governing civil and commercial matters and contains

provisions pertaining to security creation, including assignments, guarantees, pledges and mortgages;

- Law No 21 of 2001 promulgating the commercial companies' law, as amended (the "Companies Law"), which is the primary legislation governing the incorporation, operation and dissolution of commercial companies in Bahrain. It establishes the framework for company structures; sets rules for corporate governance, shareholder rights, and financial reporting; and includes provisions for mergers, liquidation, and foreign ownership;
- Law No 6 of 2015 concerning the conflict of laws in civil and commercial matters involving a foreign party, as amended, which provides a framework for determining which law applies to civil and commercial disputes that involve a foreign element;
- Law No 22 of 2018 promulgating the restructuring and insolvency law, as amended (the "Insolvency Law") which sets out the insolvency regime that applies to non-CBB licensed entities; and
- Law No 54 of 2018 promulgating the electronic communications and transactions law, which provides a legal framework for electronic documents and transactions.

2. Authorisation

2.1 Licences and Application Process

Bank Requirements

For a bank to operate in Bahrain, it requires a licence from the CBB.

Banks can be conventional or Islamic. A bank may be incorporated in Bahrain, or it may be incorporated in a jurisdiction outside Bahrain and operate via a branch in Bahrain.

Banks are divided into two categories, namely wholesale and retail banks.

Retail banks

A retail bank may undertake transactions in any currency, with Bahraini residents and non-residents. To qualify as a retail bank, the activity of providing credit or Sharia financing contracts (for conventional and Islamic banks respectively) must account for a significant portion of the institution's business (broadly

defined as over 20% of a conventional retail bank's assets and at least 20% of the total assets of an Islamic retail bank).

Wholesale banks

Conventional wholesale banks may also undertake transactions without restriction, when dealing with the Government of Bahrain and its agencies, CBB bank licensees, and non-residents. However, they may only undertake transactions denominated in Bahraini dinars (BHD) and/or with a resident of Bahrain, if these are wholesale in nature. Wholesale transactions are defined in terms of transaction size (broadly, BHD7 million or more for a credit or deposit transaction, and USD100,000 or more for an investment transaction).

Permitted Activities

Conventional banks

Conventional banks can undertake the following activities:

- deposit-taking;
- providing credit;
- accepting Sharia money placements/deposits;
- managing Sharia profit/loss sharing investment accounts;
- offering Sharia financing contracts;
- dealing in financial instruments as principal;
- dealing in financial instruments as agent;
- managing financial instruments;
- safeguarding financial instruments;
- operating a CIU;
- arranging deals in financial instruments;
- advising on financial instruments;
- providing money exchange/remittance services;
- issuing/administering means of payment;
- providing trust services;
- providing account information services; and
- providing payment initiation services.

Islamic banks

Islamic banks can undertake the following activities:

- accepting Sharia money placements/deposits;
- offering Sharia financing contracts;
- managing unrestricted Sharia profit-sharing investment accounts;

- managing restricted Sharia profit-sharing investment accounts;
- dealing in Sharia-compliant financial instruments as principal;
- dealing in Sharia-compliant financial instruments as agent;
- managing Sharia-compliant financial instruments;
- safeguarding Sharia-compliant financial instruments;
- operating a Sharia-compliant CIU;
- arranging deals in Sharia-compliant financial instruments;
- advising on Sharia-compliant financial instruments;
- providing money exchange/remittance services;
- issuing/administering means of payment;
- providing trust services;
- providing account information services; and
- providing payment initiation services.

Licensing Process

The legal status of a bank must be either a Bahraini joint stock company or a branch of a foreign bank. Incorporating an entity in Bahrain is a two-stage process.

Stage one involves the submission of an electronic application to the Ministry of Industry and Commerce (MOIC) with specific details of the new entity, including the legal form, commercial name (for approval), share capital, and details of the shareholder(s). All relevant supporting documentation will be uploaded to the MOIC system at this stage. The MOIC then verifies the uploaded details. Upon verification of all uploaded details by the MOIC, a provisional inactive commercial registration (CR) is issued. This means that the entity is incorporated, albeit it remains inactive. A provisional inactive CR is valid for one year from the date of issuance.

Stage two involves satisfying the MOIC that all approvals, consents and/or licences, as may be required, have been issued by the relevant government authorities in Bahrain, culminating in the issuance of the final CR and rendering the entity legally operational. For a bank, the key approval will be that of the CBB.

To obtain the CBB's approval, Form 1 (Application for a Licence) must be completed online (available

on the [CBB website](#) under E-services/online forms). The applicant must also upload scanned copies of supporting documents including, without limitation:

- a completed Form 2 (Application for Authorisation of Controller) for each controller of the proposed licensee;
- a completed Form 3 (Application for Approved Person Status) for each approved person of the licensee; and
- the business plan.

The CBB will provide a formal decision on a licence application within 60 calendar days of all required documentation having been submitted in a form acceptable to the CBB.

Applicants are encouraged to approach the CBB to discuss their application at an early stage, so that any specific questions can be dealt with prior to the finalisation of the application.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

The process of acquiring or increasing the control of a bank is subject to stringent regulatory oversight to ensure financial stability, transparency, and competition in the market and is governed by Resolution No 16 of 2021 issuing the Bank Control Regulations.

A controller in a Bahraini bank is defined as:

- a person who, either individually or together with an associate, owns 10% or more of the share capital of a licensed bank or of a "holding company" of a licensed bank (defined as a company that holds more than half of a bank's capital in the Bank Control Regulations);
- a person who, either individually or together with an associate, is able to exercise voting rights determined for whoever owns 10% or more of the share capital of a licensed bank or of a holding company of a licensed bank; or
- a person who, either individually or together with an associate, is able to exercise significant influ-

ence over the management of a licensed bank or a holding company of a licensed bank.

The Bank Control Regulations provide that the following requirements be met for a change of control, namely:

- the incoming shareholder will need to obtain prior written approval from the CBB as the new controller of the bank;
- the outgoing shareholder will need to obtain prior written approval from the CBB as the current controller of the bank; and
- an application will need to be submitted to the CBB by the incoming shareholder as the new controller of the bank. This application will be accompanied by specific documents and/or information, including but not limited to:
 - (a) Form 2 (Application for Authorisation of Controller);
 - (b) the complete CV of the applicant and its associates;
 - (c) a list of companies in which the applicant and its associates hold 10% or more of the capital, and a copy of the latest audited financial statements of such companies and the proposed applicant;
 - (d) credit reference reports from the Credit Information Centres on the applicant and its named associates by the relevant credit reference bureaus;
 - (e) a copy of the passport and identity card of the applicant and its associates if they are natural persons; and
 - (f) a report containing the data of three persons from supervisory institutions or authorities, who/which the CBB can contact to gather information about the applicant and its associates.

Although Form 2 (above) contains the principal elements that are required, should applicants consider additional evidence to be relevant to the application, this should be submitted with this form. It should not be assumed that information is known to the CBB merely because it is in the public domain or has previously been disclosed to the CBB or another regulatory

body. If there is any doubt about the relevance of any information, it should be disclosed.

In addition to obtaining the CBB's approval, the bank will need to submit an application to the MOIC to change its shareholder. This involves the bank updating its constitutional documents and its shareholder registry. If the bank is a listed bank, then relevant disclosures will need to be made to the Bahrain Bourse (ie, the Bahrain Stock Exchange).

4. Governance

4.1 Corporate Governance Requirements

For banks, the principal source of corporate governance and systems-and-controls requirements is the high-level controls module ("HC Module"), complemented by the approved persons ("AU Module"), risk management ("RM Module"), business conduct, operational risk ("OM Module"), outsourcing ("OU Module"), internal audit, compliance and disclosure modules. Islamic banks are additionally subject to the CBB's Sharia governance requirements, including Sharia supervisory board composition, Sharia compliance, and Sharia audit and review.

Composition of the Board and Committees

The HC Module mandates an effective, independent board with clear responsibility for setting strategy and risk appetite, overseeing senior management, and safeguarding the interests of depositors and the financial system. A board must include a sufficient number of independent directors (typically at least one third, and not less than two thirds), and establish key board committees with formal charters, notably audit, risk and nomination/remuneration. The audit committee must be chaired by an independent director and oversee internal and external audit integrity, financial reporting, and internal control effectiveness. The risk committee oversees the bank's risk governance framework, including articulation and monitoring of risk appetite, while the nomination/remuneration committee manages board and senior management succession, fitness and propriety, and pay structures aligned with prudent risk-taking.

Fitness and Propriety Regime

Approved persons requirements embed a fitness and propriety regime covering integrity, competence, experience, and financial soundness for directors, senior managers, and control function heads. The CBB exercises an ex-ante approval and ongoing supervisory review of these individuals, supported by attestations, background checks, and continuing obligations to notify changes. The HC and AU Modules require segregation of duties, avoidance and management of conflicts of interest, and robust policies on related party transactions with enhanced approvals and disclosures.

Systems and Controls

Systems and controls must reflect a “three lines of defence” model comprising business line controls, independent risk management, and an independent internal audit. Banks must maintain an independent, resourced compliance function with direct reporting to the board/audit committee; an independent risk management function responsible for enterprise risk management, the internal capital adequacy assessment process (ICAAP)/internal liquidity adequacy assessment process (ILAAP) co-ordination and stress testing; and an internal audit function with unrestricted access and a risk-based audit plan. The RM Module and OM Module require comprehensive risk frameworks covering credit, market, liquidity, operational, outsourcing, IT/cyber, and conduct risk, supported by policies, limits, scenario analysis, and issue remediation. The OU Module and OM Module impose due diligence, contractual, concentration, and oversight standards on material outsourcing, including cloud. Business conduct requirements address customer interests, fair treatment, suitability, product governance, personal account dealing, inducements, and complaints handling.

Bankers' Rules of Conduct

Bahrain does not have a formal Bankers' Oath. Instead, binding rules of conduct arise from the CBB Rulebook and require banks to adopt codes of ethics, conflicts and gifts policies, whistle-blowing mechanisms, and staff competency and training frameworks, reinforced by disciplinary procedures and regulatory enforcement for breaches.

4.2 Registration and Oversight of Senior Management

CBB Approval

The CBB Rulebook provides that banks must obtain the CBB's prior written approval for any person wishing to undertake a controlled function in a bank. The approval from the CBB must be obtained prior to their appointment.

The CBB Rulebook provides that “controlled functions” are those functions occupied by board members and persons in executive positions and include:

- board members;
- the chief executive officer (CEO) or general manager and their deputies;
- the chief financial officer and/or financial controller;
- the head of risk management;
- the head of internal audits;
- the head of Sharia review or Sharia officer;
- the compliance officer;
- the money-laundering reporting officer (MLRO);
- the deputy MLRO;
- the head of internal Sharia audits; and
- heads of other functions.

The CBB's approval is only granted if the CBB is satisfied that the individual meets the CBB's “fit and proper” requirements.

Requirements of Applicants

Each applicant applying for approved person status, and those individuals occupying approved person positions, must comply with the following conditions:

- they have not previously been convicted of any felony or crime that relates to their honesty and/or integrity unless they have subsequently been restored to good standing;
- they have not been the subject of any adverse finding in a civil action by any court or competent jurisdiction, relating to fraud;
- they have not been adjudged bankrupt by a court unless a period of ten years has passed, during which the person has been able to meet all their obligations and has achieved economic stability;

- they have not been disqualified by a court, regulator or other competent body, as a director or as a manager of a corporation;
- they have not failed to satisfy a judgement debt under a court order resulting from a business relationship;
- they must have personal integrity, good conduct and reputation;
- they have appropriate professional and other qualifications for the controlled function in question; and
- they have sufficient experience to perform the duties of the controlled function.

The CBB reviews each application on a case-by-case basis, taking into account all relevant circumstances. A person may be considered “fit and proper” to undertake one type of controlled function but not another, depending on the function’s job size and required levels of experience and expertise. Similarly, a person approved to undertake a controlled function in one conventional bank licensee may not be considered to have sufficient expertise and experience to undertake nominally the same controlled function in a much bigger licensee.

The CBB will also consider previous professional and personal conduct (in Bahrain or elsewhere) including, but not limited to, the following:

- the propriety of a person’s conduct, whether or not such conduct resulted in a criminal offence being committed, the contravention of a law or regulation, or the institution of legal or disciplinary proceedings;
- a conviction or finding of guilt in respect of any offence, other than a minor traffic offence, by any court or competent jurisdiction;
- any adverse finding in a civil action by any court or competent jurisdiction, relating to misfeasance or other misconduct in connection with the formation or management of a corporation or partnership;
- whether the applicant – or any body corporate, partnership or unincorporated institution with which the applicant has been associated as a director, controller, manager or company secretary – has been the subject of any disciplinary proceeding, investigation or fines by any government

- authority, regulatory agency or professional body or association;
- the contravention of any financial services legislation;
- whether the person has ever been refused a licence, authorisation, registration or other authority;
- whether the person has been dismissed or requested to resign from any office or employment;
- whether the person has been a director, partner or manager of a corporation or partnership which has gone into liquidation or administration, or where one or more partners have been declared bankrupt while the person was connected with that partnership;
- the extent to which the person has been truthful and open with supervisors; and
- whether the person has ever entered into any arrangement with creditors in relation to their inability to pay due debts.

Requirements of Approved Persons

Approved persons undertaking a controlled function must act prudently, and with honesty, integrity, care, skill and due diligence in the performance of their duties. They must avoid conflicts of interest arising while undertaking a controlled function.

In determining whether a conflict of interest may arise, factors that may be considered include whether:

- a person has breached any fiduciary obligations to the company or terms of employment;
- a person has undertaken actions that would be difficult to defend, when looked at objectively, as being in the interest of the licensee; and
- a person has failed to declare a personal interest that has a material impact in terms of the person’s relationship with the licensee.

Oversight of the Board

The board must exercise proper oversight of senior management against formal performance and remuneration standards, consistent with the long-term strategic objectives and the financial soundness of the licensee. In doing so, the board must:

- meet regularly with senior management;

- subject senior management to an annual performance assessment and document such assessments;
- ensure that approved persons' collective knowledge and expertise remain appropriate given the nature of the licensee's business and risk profile;
- ensure that senior management's actions are in full compliance with applicable laws and regulations, and consistent with the strategy, business plan and policies approved by the board, including risk appetite;
- question, challenge and critically review the explanations and information provided by senior management; and
- ensure that appropriate succession plans are in place for all approved persons within senior management (provided that such plans are subject to review in case of any changes to approved persons within senior management).

4.3 Remuneration Requirements

The remuneration framework for banks in Bahrain reflects the CBB emphasis on robust corporate governance, prudent risk management, and alignment between performance and sustainable value creation.

The remuneration provisions in the CBB Rulebook apply to two key groups within Bahraini banks – approved persons and material risk-takers (MRTs).

Approved persons are those whose appointment or continued employment requires prior approval from the CBB. This category typically includes members of the board of directors, the CEO, senior management, and heads of major control or business functions. These individuals are central to the bank's governance and strategic direction, and therefore their compensation arrangements are subject to close regulatory scrutiny.

MRTs encompass employees whose professional activities can materially influence the bank's risk profile. This group may include business-line leaders, traders, or other staff whose decisions affect the institution's exposure to credit, market, or operational risks.

Both categories must be covered by the bank's remuneration policy and related governance framework. While the CBB distinguishes these groups for regulatory purposes, in practice they represent the broader population of senior and risk-sensitive staff whose pay structures must align with prudent risk-taking and long-term performance.

For approved persons and MRTs whose total annual remuneration (including all benefits) is in excess of BHD100,000:

- an appropriate ratio between the fixed and variable components of total remuneration must be set to ensure that the fixed and variable components of the total remuneration are appropriately balanced and paid on the basis of individual, business-unit and bank-wide measures that adequately measure performance; and
- the variable proportion of remuneration must increase significantly along with the level of seniority and/or responsibility. More specifically –
 - (a) at least 40% of the variable remuneration must be payable under deferral arrangements over a period of at least three years; and
 - (b) for the CEO, their deputies and the other five most highly paid business line employees, at least 60% of the variable remuneration must be payable under deferral arrangements over a period of at least three years.

As a minimum, 50% of total variable remuneration (including both the deferred and undeferred portions) must be awarded in shares or share-linked instruments or, where appropriate, other non-cash instruments. The remaining portion of the deferred remuneration can be paid as cash remuneration vested over a minimum three-year period.

Remuneration, based on both quantitative measures and human judgement, must be adjusted for all types and magnitudes of risk, including intangible and other risks managed by the approved person and MRT, and remuneration outcomes must be aligned with risk outcomes.

The mix of cash, equity and other forms of remuneration must be consistent with risk alignment. The mix

will vary depending on the employee's position and role, and the licensee must document the rationale for its mix.

Banks must provide the CBB with details of total remuneration, including the mix of fixed and variable remuneration. The report must be submitted annually and must be provided within three months of the financial year end.

The following qualitative and quantitative information, pertaining to remuneration practices and policies, must be disclosed in the annual report of the bank:

- the name, composition and mandate of the main body overseeing remuneration;
- whether the advice of external consultants has been sought and by whom in the bank, and in what areas of the remuneration process the consultants have been involved;
- the independence of remuneration for staff in risk management, internal audit, operations, financial controls, anti-money laundering, and internal Sharia review/audit and compliance functions;
- the risk adjustment methodologies;
- the link between remuneration and performance;
- the long-term performance measures (deferral, malus, clawback);
- the types of remuneration (cash/equity, fixed/variable);
- whether the remuneration committee has reviewed the bank's remuneration policy during the past year, and if so, an overview of any changes that were made;
- a discussion of how the bank ensures that approved persons engaged in risk management, internal audits, operations, financial controls, anti-money laundering, and internal Sharia review/audit and compliance functions, are remunerated independently of the business units they oversee;
- a description of the ways in which the current and future risks are taken into account in the remuneration processes. Disclosures must include:
 - (a) an overview of the key risks that the bank takes into account when implementing remuneration measures;
 - (b) an overview of the nature and type of the key measures used to take account of these risks, including risks difficult to measure;
- (c) a discussion on the ways in which these measures affect remuneration;
- (d) a discussion of how the nature and type of these measures have changed over the past year and reasons for the change, as well as the impact of changes on remuneration;
- (e) a description of the ways in which the bank seeks to link performance, during a performance assessment period, with levels of remuneration. Disclosures must include:
 - (i) an overview of main performance metrics for banks, top-level business lines and individuals;
 - (ii) a discussion of how individual remuneration is linked to bank-wide and individual performance; and
 - (iii) a discussion of the measures the bank will generally implement to adjust remuneration in the event that performance metrics are weak;
- a description of the ways in which the bank seeks to adjust remuneration to take account of longer-term performance. Disclosures must include:
 - (a) a discussion of the bank's policy on deferral and vesting of variable remuneration and, if the fraction of variable remuneration that is deferred differs across employees or groups of employees, a description of the factors that determine the fraction and their relative importance; and
 - (b) a discussion of the bank's policy and criteria for adjusting deferred remuneration before vesting and after vesting through clawback arrangements;
- description of the different forms of variable remuneration that the bank utilises and the rationale for using these different forms. Disclosures must include:
 - (a) an overview of the forms of variable remuneration offered (i.e. cash, shares and share-linked instruments and other forms); and
 - (b) a discussion of the use of the different forms of variable remuneration and, if the mix of different forms of variable remuneration differs across employees or groups of employees, a description of the factors that determine the mix and their relative importance;

- the number of meetings held by the main body overseeing remuneration during the financial year and the aggregate remuneration paid to its members;
- the number and total amount of remuneration for approved persons and MRTs for the financial year, split into fixed and variable remuneration;
- the number and total amount of variable remuneration awarded during the financial year, split into cash, shares and share-linked instruments, and other;
- the number and total amount of guaranteed bonuses awarded during the financial year;
- the number and total amount of sign-on awards made during the financial year;
- the number and total amount of severance payments made during the financial year, and the highest such award to a single person;
- the total amount of outstanding deferred remuneration, split into cash, shares and share-linked instruments and other forms; and
- the total amount of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments.

The CBB exercises an active and risk-based supervisory approach to the remuneration practices of the banks in Bahrain.

5. AML/KYC

5.1 AML and CFT Requirements

CBB Oversight

Bahrain's anti-money laundering (AML) and countering the financing of terrorism (CFT) regime is grounded in primary legislation prohibiting money laundering and terrorism financing and implemented through the CBB Rulebook, specifically the financial crime module ("FC Module"). Banks are required to adopt a risk-based approach aligned with Financial Action Task Force (FATF) standards, supported by robust governance, customer due diligence (CDD), ongoing monitoring, reporting, record-keeping, sanctions compliance, and staff training. The CBB exercises supervisory oversight through inspections, thematic reviews, and enforcement powers.

Banking

Banks must maintain a board-approved AML/CFT framework proportionate to their risk profile and business model. Governance includes appointment of an independent MLRO at a senior level with direct access to the board or an appropriate committee, clear roles for the compliance and internal audit functions, and documented policies and procedures that address enterprise-wide risk assessment and risk classification, and control design. Banks must conduct periodic enterprise-wide AML/CFT risk assessments covering products, services, delivery channels, geographies, customer types, and emerging threats, with outcomes embedded in CDD standards, transaction monitoring thresholds, and resourcing.

CDD must be performed at onboarding and repeated throughout the relationship on a risk-sensitive basis. Core elements include identifying and verifying the customer and beneficial owner, understanding ownership and control for legal persons and arrangements, and establishing the purpose and intended nature of the relationship. Enhanced due diligence is required for higher-risk situations such as politically exposed persons, complex or opaque structures, cross-border correspondent banking, high-risk jurisdictions, and unusual delivery channels. Where verification cannot be completed satisfactorily, accounts must not be opened or must be exited. Reliance on third parties is permitted only under prescribed conditions and with assurance as to the availability and quality of underlying CDD data.

Banks must monitor business relationships and transactions to detect anomalies, unusual patterns and potential proliferation financing exposure. Monitoring should combine automated and manual controls calibrated to risk, with timely investigation, documentation of alerts and decisions, and escalation to the MLRO. Suspicious transactions or activities must be reported promptly to the competent financial intelligence unit via the MLRO, with appropriate confidentiality safeguards and anti-tipping-off controls. Wire transfer compliance requires the capture and transmission of originator and beneficiary information and risk-based rejection or remediation where required data is missing.

Sanctions screening

Targeted financial sanctions screening is mandatory against United Nations and domestic lists, together with any other lists specified by the CBB. Banks must implement pre and post-transaction screening of customers, beneficial owners, connected parties and transactions, ensure immediate freezing and reporting of matches, and maintain procedures for handling potential, partial and false positives. Proliferation financing risk – particularly in trade finance – must be addressed through documentary scrutiny, red flag controls, dual-use goods risk assessment, and escalation protocols.

Record-keeping

Record-keeping obligations require retention of CDD, transaction records, internal and external reports, and training logs for the minimum statutory period and in a manner enabling prompt retrieval. Staff must receive role-specific, periodic AML/CFT training, including on sanctions, typologies and escalation, with effectiveness testing and senior management attestation. Outsourcing of AML/CFT processes is subject to CBB outsourcing rules and does not diminish the bank's accountability.

Control failures and remediation

The CBB expects timely self-reporting of material control failures and meaningful remediation, including back-book reviews where warranted. Breaches can attract administrative fines, business restrictions, and approved-person consequences. Banks should evidence a proactive compliance culture, including quality management information to the board, auditable decision-making, and continuous enhancement aligned to evolving FATF guidance, national risk assessments, and regulatory circulars.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Bahrain has a depositor protection scheme (the "Scheme") that applies to banks.

The definition of "Deposit" in Resolution No 23 of 2009 is: "A contract that grants the bank the right to possess the deposited money and to dispose thereof

in its ordinary course of business with an obligation to return an equal amount thereof to the depositor. Repayment of the deposit shall be in the same currency of the original deposit."

The following do not constitute a deposit:

- placements by Sharia-compliant banks, where the contract provides that the customer is entitled to a share of the profit generated directly from their placement or the trading activities of the institution as a whole;
- loans; and
- monies placed for *mudaraba*.

The Scheme applies to any deposit account and any other deposits or accounts similar in nature and which have similar characteristics that are approved by the CBB, regardless of currency, with the exception of bearer certificates of deposit ("Eligible Accounts").

An "Eligible Depositor/Investor" is any natural person (resident or non-resident) who holds an Eligible Account(s) with a conventional bank or an Islamic bank in Bahrain. This does not include deposits and unrestricted investment accounts held with a conventional and/or an Islamic bank's foreign branches operating outside Bahrain.

The Scheme does not apply to Deposits which have, in the opinion of the board, been illegally gained and/or relate to illicit or illegal matters. The Scheme also does not apply to:

- accounts of shareholders with 10% or more shareholding (ordinary or preference), board members and senior managers of the defaulting bank; and/or
- accounts of persons whose identity cannot be ascertained.

The Scheme established a board, which is responsible for operating the Scheme, determining eligibility, calculating compensation, calling for contributions, sending certificates, etc. The board may, at its discretion, exclude (in whole or in part) compensation payments to any Eligible Depositor of the defaulting bank in Bahrain who is entitled to claim in a similar scheme established in another jurisdiction, where

such scheme covers the deposit liabilities of the Bahrain offices of such relevant bank.

Each Eligible Depositor/Investor is entitled under the Scheme to claim an amount equivalent to the amount deposited by them/it in an Eligible Account up to a maximum amount of BHD20,000 from all their/its Eligible Accounts in any one bank, regardless of the number of accounts and Deposits held by the Eligible Depositor/Investor in that bank.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Pursuant to the CBB Law, the CBB has issued binding prudential standards that implement the core elements of the Basel III regulatory framework for banks (“Basel III”) across capital, liquidity, leverage, large exposures, and disclosure, and that embed supervisory expectations through the ICAAP, ILAAP, stress testing, and risk governance requirements. The regime is principles-based but prescriptive where necessary to ensure resilience in a small, open financial system, with proportionately heightened expectations for systemically important institutions, consistent with the CBB Law and the CBB Rulebook.

Basel III Pillar 1

The capital framework follows Basel III’s three-pillar structure as transposed in volume 1 (conventional banks) and volume 2 (Islamic banks) of the CBB Rulebook, including the capital adequacy modules. Pursuant to Pillar 1, banks must hold high-quality regulatory capital against credit, market and operational risks, comprising common equity tier 1 (CET1), additional tier 1 (AT1), and tier 2 instruments meeting permanence, loss-absorbency, and subordination criteria set out in the CBB Rulebook. The CBB requires minimum CET1, AT1, and total capital ratios, together with a capital conservation buffer and, where applicable, a counter-cyclical buffer when activated under CBB directives. Domestic systemically important banks (“D-SIBs”), where designated by the CBB pursuant to the CBB Law and CBB Rulebook guidance, are subject to additional loss-absorbing capital in the form of CET1 buffers calibrated to their systemic footprint.

The CBB also enforces a non-risk-based backstop via the leverage ratio requirements contained in the CBB Rulebook’s leverage ratio module to constrain excessive balance sheet growth relative to capital.

Risk-weighted assets are calculated using standardised approaches unless the CBB has expressly approved the use of internal models; in each case, in line with the methodologies prescribed in the CBB Rulebook. For credit risk, the standardised approach applies risk weights to on and off-balance-sheet exposures based on counterparty, collateral, and external ratings where permitted, with recognition of eligible financial collateral and guarantees as defined in the CBB Rulebook. Market risk capital captures interest rate, equity, foreign exchange, and commodity risk in the trading book using standardised charges, with internal models subject to CBB approval, validation, and ongoing performance monitoring where used. Operational risk capital generally follows standardised measurement approaches, with advanced methods permissible only under stringent margining, netting, and collateralisation expectations reflected in the CBB Rulebook and CBB circulars issued under the CBB Law.

Basel III Pillar 2

Supervisory review under Pillar 2 is anchored in the ICAAP and the CBB’s supervisory review and evaluation process (SREP)-style assessment, as required by the CBB Rulebook and under the supervisory powers conferred by the CBB Law. Banks must identify, measure, and hold capital against risks not fully captured in Pillar 1, including interest rate risk in the banking book, concentration risk, liquidity risk, model risk, strategic and conduct risks, and risks arising from business model and macro-financial conditions. The CBB expects credible, board-approved risk appetite frameworks, forward-looking stress testing that is severe yet plausible, and capital planning over multi-year horizons to demonstrate resilience under adverse scenarios. Where the ICAAP evidences heightened risks, the CBB may impose institution-specific Pillar 2 capital add-ons, restrictions on distributions, or remedial actions pursuant to its enforcement powers under the CBB Law.

Liquidity requirements implement the Basel liquidity coverage ratio (LCR) and net stable funding ratio (NSFR) through the liquidity risk management modules of volume 1 (conventional banks) of the CBB Rulebook and volume 2 (Islamic banks) of the CBB Rulebook, complemented by qualitative liquidity risk management standards. Banks must maintain sufficient high-quality liquid assets to withstand acute 30-day stresses (LCR) and a stable funding profile over a one-year horizon (NSFR). The CBB requires robust ILAAPs, with governance, measurement, limits, and contingency funding plans commensurate with the bank's complexity and funding model. Currency mismatches, intraday liquidity, and collateral management are specifically monitored in a market where cross-border and wholesale funding channels are significant. The CBB may also set institution-specific liquidity add-ons or heightened monitoring for banks with concentrated or volatile funding, consistent with the CBB Law and CBB Rulebook guidance.

Stress testing is a core cross-cutting control mandated by the CBB Rulebook. Banks must conduct enterprise-wide stress tests covering capital and liquidity under idiosyncratic, market-wide, and combined scenarios, with reverse stress testing to identify states that would threaten viability. Results must inform risk appetite calibration, buffers, contingency plans, and management actions. The CBB's supervisory review challenges scenario design, modelling assumptions, and the credibility and timeliness of proposed management responses, and the CBB may direct remedial measures under the CBB Law.

Risk management rules impose strong governance expectations under the CBB Rulebook's high-level controls and risk-management modules. Boards are accountable for overall solvency and liquidity resilience, setting risk appetite, and overseeing independent risk and audit functions with sufficient stature and resources. The "three lines of defence" model is expected to operate effectively, supported by comprehensive policies, limit frameworks, and management information systems enabling timely escalation. Model governance must ensure validation, back-testing, and independent challenge, particularly where risk-sensitive internal methodologies influence decisions or regulatory capital.

Basel III Pillar 3

Disclosure requirements under Pillar 3, set out in the CBB Rulebook's public disclosure modules, enhance market discipline. Banks must publish regular, comprehensive disclosures on capital composition, capital ratios, RWA by risk type, leverage ratio, liquidity metrics, encumbrance, credit risk mitigation, and risk governance, using standardised templates and narrative explanations. The objective is to allow stakeholders to assess the quantity and quality of capital and liquidity and the bank's risk profile against regulatory expectations. The CBB monitors timeliness and completeness of disclosures and may require corrective action for deficiencies under the CBB Law.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The CBB Law and the Insolvency Law are the primary pieces of legislation applicable to a corporate entity incorporated under the Companies Law that is subject to insolvency or analogous proceedings in Bahrain. The Insolvency Law applies to any corporate entity that is not licensed by the CBB, and the CBB Law applies to any corporate entity that is licensed by the CBB.

Part 10 (Insolvency of the Licensee and Placing it Under Administration and Compulsory Liquidation) of the CBB Law covers the insolvency of a CBB-licensed entity, which would apply to banks ("Licensees") and the placing of a Licensee under administration and compulsory liquidation.

Article 133 (Insolvency of a Licensee) of the CBB Law provides that a Licensee is deemed to be insolvent if its financial position becomes unstable and it stops paying its due debts other than administrative fines and any applicable tax. Once a Licensee is insolvent, it must immediately cease to undertake any regulated services, make any payments or carry on any business in relation to regulated services in Bahrain, unless otherwise agreed in writing by the CBB (Article 134 (The Effects of Insolvency) of the CBB Law).

Administration

Pursuant to Article 136 (Reasons for Placing a Licensee Under Administration) of the CBB Law, the CBB may assume the administration of a Licensee or appoint an external administrator to conduct the administration of the Licensee on behalf of the CBB, if:

- the Licensee becomes insolvent or appears likely to become insolvent;
- the Licensee's licence is amended or cancelled due to failure to satisfy any of its licence conditions, or failure to start conducting business within six months of the date of the licence; or
- the Licensee continues to provide regulated services, resulting in damage to the financial services industry in Bahrain.

Compulsory Liquidation

Pursuant to Article 144 (Application for Compulsory Liquidation) of the CBB Law, the administrator, the Licensee or any creditor may submit a petition to the courts of Bahrain for compulsory liquidation of the Licensee, and serve such petition at the Licensee's principal place of business. The petition should be made available to the shareholders and creditors of the Licensee and may be requested by any interested party. The entity/individual who submits the petition for compulsory liquidation should advertise the petition in the Official Gazette and in two Arabic and two English-language newspapers at least 15 days before submitting the petition to the Bahraini court. Pursuant to Article 145 (Decision on the Petition of Compulsory Liquidation) of the CBB Law, the court will then appoint a liquidator and determine their fees with the guidance of the CBB. All liquidator fees will be borne by the Licensee.

The CBB Law provides a priority of claims under Article 156 of the CBB Law, determining the rights of interested parties in the property of the Licensee in liquidation namely:

- administrator's fees and expenses incurred during the administration period of the Licensee, and the wages and salaries of officers and employees up to the date of petition for compulsory liquidation filed at the competent court;

- liquidator's fees and expenses incurred during the period of liquidation;
- fees and taxes due to the government, its organisations, agencies and the CBB;
- deposits and loans taken with the approval of the CBB to protect the Licensee from insolvency;
- deposits of value not exceeding BHD20,000 per depositor;
- other deposits that exceed BHD20,000 per depositor, and all other unsecured debts; and
- amounts due to the shareholders in proportion to their respective shares.

The secured debts of the creditors of the Licensee and the current settlements taking place in the clearing house of the stock exchange must be paid first, and without reference to the order of priority above.

9. ESG

9.1 ESG Requirements

The environmental, social and governance (ESG) requirements module ("ESG Module") under the CBB applies to all banks in Bahrain.

The ESG Module is directed at all listed companies, banks, financing companies, insurance firms, and Category 1 and 2 investment firms, providing them with guidelines on the reporting requirements for environmental, social and corporate governance factors.

The objective of the ESG Module is to foster consistency and reliability in ESG reporting, with the goal of facilitating the development of transparent and comparable ESG disclosures that align with both national and international targets and commitments.

From a governance perspective, the CBB Rulebook's HC Module and RM Module require boards and senior management to maintain sound governance, effective internal controls and comprehensive enterprise risk frameworks. These obligations extend to material ESG risk drivers – such as environmental and climate-related financial risks, workforce conduct and data ethics – where these are relevant to safety and soundness. For Islamic banks, volume 2 of the CBB Rulebook adds Sharia governance (including Sha-

ria supervisory boards and Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) standards), reinforcing fiduciary oversight and integrity in product structures and disclosures.

For listed entities and securities offerings, ESG disclosure expectations are driven by the CBB Rulebook volume 6 and Bahrain Bourse Listing Rules. The Bahrain Bourse ESG Reporting Guide (2020) provides a voluntary, reference-aligned framework that issuers are encouraged to use to enhance ESG transparency and comparability. Green, social, sustainability and sustainability-linked bonds or sukuk are offered under existing prospectus and offering rules; there is no separate “green label” regulation. However, anti-misleading and market conduct provisions under the capital markets framework operate as anti-greenwashing guardrails, requiring accurate, balanced disclosure of use of proceeds, KPIs, external reviews and material risks.

In practice, banks should map ESG risks into board oversight, risk appetite and ICAAP/ILAAP processes; align customer conduct and disclosure with CBB conduct rules; ensure Personal Data Protection Law (PDPL)-compliant data governance; and, if listed, consider the ESG Reporting Guide in order to meet evolving investor expectations. Supervisory focus remains on effective governance, risk integration and fair, non-misleading disclosure within the existing framework of the CBB Rulebook.

10. DORA

10.1 DORA Requirements

While there is no direct equivalent to the European Union’s Digital Operational Resilience Act, the CBB imposes a comprehensive, largely harmonised cybersecurity regime on both conventional and Islamic banks through the Operational Risk Management Modules (“OM Module”) in the CBB Rulebook.

Scope and Foundation

The framework applies to all banks (including branches of foreign banks) proportionate to their size, complexity of work and structure, and risk profile, and is risk-based. It is aligned to the National Institute

of Standards and Technology (NIST) Cybersecurity Framework, and integrates governance, prevention, detection, response, recovery, testing, reporting and third-party oversight.

Governance and Organisation

Banks must maintain a board-approved cybersecurity strategy and policy. The board is accountable for setting ownership and oversight, reviewing cyber-issues at each meeting (eg, key risk indicators (KRIs)/key performance indicators (KPIs), maturity, incidents, pen test results), and approving the framework at least every three years or upon material risk changes. An independent cybersecurity risk function led by a suitably qualified Chief Information Security Officer (CISO) must report to a risk function separate from IT. Banks are encouraged to establish a cybersecurity committee chaired by a senior control function leader.

Preventative and Technical Controls

Banks must deploy endpoint protection platform/endpoint detection and response, secure email and web gateways, and anti-spam/anti-spoofing measures. Retail banks must maintain payment card industry data security standard certification. Email to customers must originate from a single unified private domain (no third-party provider domains).

Testing and Assurance

Banks must conduct comprehensive vulnerability assessments and biannual penetration tests using recognised methodologies by qualified internal and external testers rotated at least every two years.

Security Operations

Banks must establish a Security Operations Centre with security information and event management integration, asset inventories, and network diagrams, and continuously tune use cases/rules as threats evolve.

Incident Management and Regulatory Reporting

Upon any incident that compromises customer data or disrupts critical services, banks must notify the CBB by telephone within one hour and submit an initial report within two hours, followed by a comprehensive report within ten calendar days and weekly updates until resolution.

E-Banking and Payments Security

Boards must oversee e-banking risks, including secure authentication, user authorisation, privacy, log retention/time syncing, audit trails, customer awareness for fraud, and robust availability/incident response. Payment controls include Europay, Mastercard, and Visa, controls over contactless and cardless channels, anti-skimming automated teller machine (ATM) measures, secure ATM software/configuration, and geolocation blocking options.

Business Continuity and Recovery

Cyber-recovery must be embedded in business continuity planning/management, with crisis management teams, impact analyses, alternative sites, communications plans (including with regulators), periodic testing, and independent review.

11. Horizon Scanning

11.1 Regulatory Developments

The main upcoming regulatory developments expected to have an impact on banks in Bahrain are as follows.

Secured Transactions Law

The initial draft of the secured transactions law was circulated for consultation on 18 July 2017 and was based upon the UNCITRAL model Secured Transaction Model Law of 2016. On 23 March 2020 the CBB sent out a new draft of the proposed secured transactions law for consultation (the “Draft Law”). The Draft Law will materially change the way in which security is created, perfected and enforced in Bahrain. The Draft Law introduces a registry of security rights as well as the concept of self-help (which is not available under the current regulatory regime). The CBB has yet to announce the outcome of the consultation, but a version of the Draft Law is expected to be issued in due course, in line with a regional push to introduce laws enabling the creation of security over assets.

Netting Law

As part of the CBB’s objective to enhance its regulatory framework, it circulated a revised version of the draft netting law for consultation on 12 December 2024 (the first draft was initially circulated in 2017). The

draft netting law is based on the International Swaps and Derivatives Association (ISDA) Model Netting Act which will supersede Resolution No 44 of 2014 with respect to promulgating a Resolution for Close-Out Netting under a Market Contract.

The implementation of the draft netting law will provide greater legal certainty for financial institutions and market participants in Bahrain. By clearly defining the enforceability of netting agreements and the treatment of collateral, the law should reduce legal risks and enhance confidence in the financial market.

The draft netting law aligns Bahrain’s legal framework with international standards and best practices for netting and collateral management. This will enhance Bahrain’s reputation as a well-regulated financial centre and facilitate its integration into the global financial system. By addressing Sharia compliance, the law will support the growth of Islamic finance in Bahrain. Financial institutions offering Sharia-compliant products will benefit from the legal clarity provided by the law, promoting innovation and development in the Islamic finance sector.

The legal certainty and robust framework provided by the draft netting law will make Bahrain a more attractive destination for foreign investment, giving international investors and financial institutions greater confidence about entering into financial contracts and transactions in Bahrain.

Proposed Sustainable and Sustainability-Linked Debt Securities Regulatory Framework

The CBB has launched a consultation proposing a regulatory framework for Sustainable Debt Securities and Sustainability-Linked Debt Securities (SLDs) under the Offering of Securities (OFS) Module of volume 6 (capital markets) of the CBB Rulebook.

At its core, the proposal introduces new OFS sections that codify eligibility, disclosure, reporting, and verification standards for issuers of sustainable instruments. It aligns closely with international best practice (eg, use of proceeds bonds and International Capital Markets Association-style sustainability-linked structures) and integrates these into Bahrain’s capital markets rulebook.

Contributed by: Natalia Kumar, Gargi Agarwal and Faizan Toor, **Al Tamimi & Co.**

Overall, the consultation indicates that the CBB aims to standardise and elevate sustainable debt issuance practices, unlocking market growth while ensuring integrity, comparability and accountability – a mix that will not only expand opportunities for banks, but also raise the bar on controls, transparency and verification.

Trends and Developments

Contributed by:

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Al Tamimi & Co. is a full-service commercial law firm that combines knowledge, experience and expertise in 17 offices across ten countries to ensure its clients have access to the best commercially sound and cost-effective legal solutions. Its banking and finance team has an unrivalled understanding of the legal landscape across the Middle East and North Africa (MENA). This expert team of multilingual and diverse

lawyers has the extensive knowledge and capacity to handle some of the biggest and most complex MENA banking and finance matters. As its practice and expertise evolve in step with the needs of its clients, it advises international, national and regional banks, as well as corporate entities, ministries and regulators, and an increasing number of fintech companies, non-financial institutions and virtual asset providers.

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Introduction

Bahrain is renowned for being the first financial services hub of the Middle East. The financial services sector is the largest non-oil contributor to Bahrain's economy, accounting for 17% of the country's GDP. Non-oil activities continued to be the main driver of economic growth in 2025, contributing 85.2% of Bahrain's GDP.

Bahrain's financial services sector comprises leading international conventional and Islamic banking institutions alongside new financial players, including crypto-assets, fintech, digital payment providers, liquidity providers and firms specialised in cybersecurity, reg-tech and insure-tech.

The Central Bank of Bahrain (CBB), as the sole regulator of the financial services sector, has implemented various initiatives including those relating to digitalisation and fintech, in order to position Bahrain as a leading fintech hub.

The country has continued to see consolidation in the financial services sector and an increase in trade finance, Islamic finance, project finance, fintech, treasury transactions, and developments in the regulatory framework in 2025.

Fintech

Stablecoin

Bahrain has taken a landmark step in shaping the future of digital finance with the launch of the Gulf Cooperation Council's (GCC's) first comprehensive stablecoin issuance and offering framework, issued by the CBB in July 2025.

These regulations establish a comprehensive framework for licensing, operating and supervising fiat-referenced stablecoin issuers in Bahrain, with strong emphasis on consumer protection, market integrity and financial stability.

The rules apply to any person issuing, offering, minting/burning, controlling supply, or safeguarding reserve assets for stablecoins "within or from" Bahrain. Only single-currency, fully reserved stablecoins are permitted, backed 1:1 in Bahraini dinar, United States dollars (USD), or another fiat pre-approved by

the CBB. The CBB may refuse or condition approvals where market or prudential concerns exist.

Other

Bahrain continues its efforts in repositioning itself as a fintech hub in the region, combining conventional and Sharia-compliant fintech solutions. Bahrain is encouraging digital transformation and the adoption of innovative technology to create a more efficient financial services sector and achieve higher financial inclusion. The CBB seeks to make Bahrain a key player in fintech through the availability of:

- innovative financial solutions;
- highly qualified national talent in finance and banking; and
- access to supportive policies.

The CBB established a dedicated Fintech Unit on 22 October 2017 to ensure the best services could be provided to individual and corporate customers in the financial sector. The CBB continues its fintech initiatives as part of its digital transformation strategy to facilitate a more efficient provision of banking services to customers. As of the end of December 2024, the CBB's regulatory sandbox included 21 companies.

Consolidation in the Financial Services Sector

There are a large number of players in the financial services sector in Bahrain. Local and regional competition, together with the rise of digital banking and new digital entrants, are some of the key drivers of consolidation in the financial services sector. Banks are seeking technological partnerships to improve competitiveness. The expansion of open banking has also influenced M&A strategies, fostering joint ventures between banks, tech companies and telecoms firms.

Bahrain has seen both domestic and regional transactions in recent years, including this year. Key recent examples of domestic transactions include Citibank NA Bahrain branch selling its retail portfolio to Ahli United Bank BSC (C) (AUB); HSBC Bank Middle East Limited, Bahrain branch selling its retail portfolio to the Bank of Bahrain and Kuwait (BBK); and the anticipated BBK and National Bank of Bahrain BSC merger. Kuwait Finance House BSC (C)'s (KFH) takeover of AUB is an example of a regional transaction.

Islamic Finance

Bahrain has long been recognised as a global leader in Islamic finance. It ranks third in the Middle East and North Africa region and sixth globally for Islamic fintech, as per the 2023/24 Global Islamic FinTech Report.

The country is home to the region's largest concentration of Islamic finance institutions that deal in almost every area of Islamic finance and Islamic products. Islamic finance institutions offering a host of Sharia-compliant products and services include six retail banks, six wholesale banks, two wholesale branches of foreign banks, nine Islamic windows of conventional banks, five takaful companies, one re-takaful company and one Islamic financing company. In addition, Bahrain is at the forefront for issuing Islamic securities (sukuk), including short-term government sukuk as well as long-term instruments. The CBB has played a leading role in the introduction of these innovative products.

The growth of Islamic banking has been remarkable, with total assets increasing from USD1.9 billion in 2000 to USD61.7 billion as of June 2024, an increase of over 32 times. The market share of Islamic banks correspondingly increased from 1.8% of total banking assets in 2000 to 25.3% in June 2024. This growth was made possible by a variety of factors, most importantly, the clear vision and approach of the CBB and the conversion of conventional banks to Islamic banks. The most recent and prominent example is the conversion of AUB from a conventional bank to an Islamic bank (subsequently renamed KFH).

The CBB introduced a separate regulatory framework along with a comprehensive prudential and reporting mechanism for the Islamic segment, tailor-made for the specific concepts and needs of Islamic banking and insurance. The rulebook for Islamic banks covers areas such as Sharia governance, licensing requirements, capital adequacy, risk management, business conduct, financial crime and disclosure/reporting requirements. Similarly, the insurance rulebook addresses the specific features of takaful and re-takaful firms. Both rulebooks were the first comprehensive regulatory frameworks that dealt with the Islamic finance industry in the region.

In order to develop the market for Islamic finance and invest in capacity building, the CBB was instrumental in establishing the Waqf Fund in collaboration with the industry. Since 2006, the Waqf Fund has been offering programmes in Islamic finance training, education and research to cater for the various industry needs. These include specialised programmes targeting the board of directors, senior management, Sharia resources, and other staff of its member institutions.

Bahrain also plays host to a number of global organisations central to the development of the Islamic finance industry, including the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the International Islamic Financial Market (IIFM), the General Council for Islamic Banks and Financial Institutions, the Islamic International Rating Agency, and the Bahrain Institute of Banking and Finance – Centre for Islamic Finance.

AAOIFI, established in 1991 and based in Bahrain, is the leading international non-profit organisation primarily responsible for the development and issuance of standards for the global Islamic finance industry. It has issued a total of 117 standards in the areas of Sharia, accounting, auditing, ethics and governance for international Islamic finance. It is supported by a number of institutional members, including central banks and regulatory authorities, financial institutions, accounting and auditing firms, and legal firms, from over 45 countries. Its standards are currently followed by all the leading Islamic finance institutions across the world and they have introduced a progressive degree of harmonisation of international Islamic finance practices.

IIFM is a standard-setting body of the Islamic Financial Services Industry (IFSI), focusing on standardisation of Islamic finance contracts and product templates relating to the capital and money market, corporate finance and trade finance segments of the IFSI.

Trade Finance

Over the last 18 months, there has been a significant increase in trade finance activity in Bahrain. Many local conventional and Islamic finance institutions have started offering trade finance products and services to customers including, without limitation,

invoice discounting, supply chain finance and letters of credit facilities.

Netting

There continues to be an increase in derivative and treasury transactions and related regulatory and advisory work. As part of the CBB's objective to enhance its regulatory framework, in December 2024 it issued a consultation paper on the draft "Netting Law", which is based on the International Swaps and Derivatives Association (ISDA) Model Netting Act. It supersedes Resolution No 44 of 2014 with respect to promulgating a Regulation for Close-Out Netting under a Market Contract, issued by the CBB on 7 December 2014, to align Bahrain with international standards and support the growth of the derivatives market, including Islamic derivatives.

Bahrain's new netting law aims to enhance regulatory certainty by reinforcing the enforceability of netting agreements in the event of a counterparty's insolvency. This is expected to encourage growth in the derivatives market, as it reduces counterparty risk and makes financial transactions more secure.

Funds

Bahrain is host to a thriving mutual funds industry. The first overseas mutual funds started being marketed in Bahrain during the 1980s and the first Bahrain-domiciled scheme was launched in 1984.

The first Collective Investment Undertaking (CIU) rules were issued by the CBB in 1992 and revamped in June 2007 with the launch of the CIU Module as part of volume 6 (capital markets) of the CBB Rulebook. The CIU rules were further revamped in April 2012, under a separate volume of the CBB Rulebook (volume 7). In March 2022, the CBB relaunched the CIU rules under a new CIU module which included regulations pertaining to authorisation/notification processes, as well as the supervision regime of locally domiciled and overseas-domiciled CIUs in Bahrain.

As at the end of September 2025, the number of mutual funds stood at 1,750, of which 62 funds were Bahrain-domiciled, compared to 1,723 funds as of September 2024. The number of Sharia-compliant funds stood at 165 as of September 2025.

The net asset value (NAV) of those funds totalled USD10.915 billion as of the end of June 2025, reflecting a 2.35% decrease compared to USD11.178 billion the previous year. Of the total NAV, USD4.343 billion is invested in locally incorporated funds, and USD2.060 billion in Sharia-compliant funds.

On 1 January 2025, the CBB implemented the Cross-Border Registration Regulation for Investment Funds (the "Funds Passporting Regime") pursuant to the Regulatory Framework for the Cross-Border Registration of Financial Products between the Regulatory Authorities Regulating GCC Capital Markets (the "Regulatory Framework") that was issued in November 2022.

The Regulatory Framework aims to establish a co-ordinated regulatory approach among the GCC member states on passporting of financial products and serves as the legal basis for the individual passporting regulations issued under the Regulatory Framework for each type of financial product. The Funds Passporting Regime is the agreed-upon standards and conditions for the registration and promotion of investment funds across the GCC member states. The Funds Passporting Regime aims to ensure that investment funds adhere to high standards of transparency and governance.

The GCC Funds Passporting Regime is a landmark initiative that reinforces economic integration and fosters a stable, transparent investment landscape in the region. By simplifying fund promotion and enhancing governance, it creates new opportunities for investors and businesses alike. It is hoped that the implementation of the regulations will accelerate economic integration among GCC member states and enhance the region's position as a global investment hub.

Project Finance

Bahrain continued to advance in key infrastructure projects during 2025, recording significant progress across various sectors which has resulted in an increase in project finance work. One key sector is the energy and water infrastructure.

Aligned with Bahrain's target to secure reliable and sustainable energy and water, the Electricity and

Water Authority (EWA) launched an international tender for the Sitra Independent Power and Water Plant (IPWP), one of Bahrain's largest PPP initiatives. The facility will generate up to 1,500 MW of electricity and 30 million gallons of desalinated water per day, using advanced low-emission technologies. Construction is under way, with operations expected to begin in Q2 2028 and full completion expected by Q2 2029. Once operational, the IPWP is expected to enhance national energy and water security, reduce dependency on gas, and provide a reliable supply to meet growing residential, industrial and commercial demand.

In August 2025, the EWA also announced the launch of Bahrain's first large-scale solar power plant in Bilaj Al-Jazayer, developed in partnership with the private sector. The 1.2 square-kilometre plant will have a capacity of up to 150 MW, enough to supply electricity to approximately 6,300 homes and reduce annual carbon emissions by over 100,000 tonnes, contributing to Bahrain's renewable energy goals and its target of net-zero carbon emissions by 2060. A consortium of advisory firms has been appointed to guide project development through to commercial operation in Q3 2027.

Conclusion

Changes in the macroeconomic environment, the performance of financial markets generally, greater policy uncertainty, increased trade tensions driven by a series of new tariff measures announced by the United States, and softer demand momentum could reduce near and long-term growth and could test global resilience to economic shocks. Despite this, Bahrain's financing landscape has shown remarkable resilience and has continued to grow, reinforcing Bahrain's standing as a thriving regional financial hub.

BANGLADESH



Law and Practice

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The Legal Circle

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The Legal Circle is a 360-degree law firm, built on a twofold vision: to deliver premier legal services and to give back to the community. With a team of barristers, advocates and legal consultants specialising in both domestic and international matters in comprehensive practice areas, the firm offers a single-point solution for clients. This holistic approach covers everything from corporate and finance (M&A, debt/equity investments, project finance) and business formation to specialised sectors like power and en-

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THE LEGAL CIRCLE

1. Legal Framework

1.1 Key Laws and Regulations

The banking sector in Bangladesh is governed by a comprehensive regulatory framework anchored by several principal laws and overseen by distinct regulatory bodies as follows.

The supervision of the banking sector is primarily performed by the Bangladesh Bank (BB), the central bank, established under the Bangladesh Bank Order, 1972. The BB serves as the all-encompassing regulator, responsible for the following.

- Monetary authority – Formulating and executing the nation's monetary policy.
- Prudential regulation and supervision – Granting and revoking banking licences, issuing prudential regulations (such as those for capital adequacy, liquidity and risk management), and conducting both on-site and off-site supervision of all scheduled banks and foreign bank branches.
- Resolution – Acting as the statutory resolution authority for failing banks, a power recently reinforced by the Bank Resolution Ordinance, 2025.
- Payment systems – Regulating all payment system operators and digital financial services.

Secondary regulatory bodies provide specialised oversight.

- Financial Institutions Division (FID) – A division of the Ministry of Finance that exercises the ownership and administrative oversight of state-owned commercial banks (SOCBs) to ensure their compliance and monitor their performance.
- Bangladesh Securities and Exchange Commission (BSEC) – Regulates the capital market activities and public disclosures of banks that are listed on the stock exchanges.
- Microcredit Regulatory Authority (MRA) – Supervises and licenses Microfinance Institutions (MFIs), which operate parallel to the formal banking system.

In terms of principal laws and regulations, the legal backbone of the sector is the Bank Company Act,

1991 (BCA 1991). This foundational law covers the following areas.

- Defines banking – Explicitly defines “banking business” as accepting deposits from the public for the purpose of lending or investment, which are repayable on demand.
- Mandates licensing – Stipulates that no entity can conduct banking business without a licence from the Bangladesh Bank (Section 31).
- Prudential rules – Lays down core rules on capital adequacy, cash reserves, liquidity maintenance, corporate governance, director tenure limits, and restrictions on related-party lending.

This core legislation is supplemented by several other principal Acts and Regulations.

- The Finance Company Act, 2023 (recently repealing the Financial Institutions Act, 1993) – Introduced to strengthen the regulatory oversight of Non-Banking Financial Institutions (NBFIs).
- The Foreign Exchange Regulation Act (FERA), 1947 – Governs all foreign exchange transactions.
- The Anti-Money Laundering Act, 2012 – Mandates stringent Know Your Customer (KYC) and transaction monitoring measures to combat financial crime.
- The Offshore Banking Act, 2024 – Provides a dedicated legal and tax-incentivised framework for Offshore Banking Units (OBUs) to attract foreign capital.
- The Payment and Settlement System Act, 2024, along with the Guidelines to Establish Digital Bank – Governs digital finance, creating a new category of non-branch, tech-focused banks with a high minimum capital requirement (BDT300 crore) (1 crore equals 10 million).
- Payment Systems Regulations – This includes the Bangladesh Payment and Settlement Systems Regulations (BPSSR), 2014, which, alongside the Bangladesh Mobile Financial Services (MFS) Regulations, 2022, govern digital finance. Crucially, the BPSSR mandates the licensing of Payment System Operators (PSOs) and Payment Service Providers (PSPs), bringing non-bank digital platforms under direct central bank control.

- The Secured Transactions (Movable Property) Act, 2023 – Facilitates credit access for SMEs by allowing movable assets (eg, inventory, receivables) to be legally used as collateral.

Key enforcement laws also support the framework, including the following.

- The Money Loan Court Act, 2003 (*Artha Rin Adalat Ain*) – Establishes specialised courts for the speedy recovery and resolution of non-performing loans (NPLs).
- The Negotiable Instruments Act, 1881 – Governs instruments central to a bank’s daily functions, such as cheques and bills of exchange.
- The Bankers’ Books Evidence Act, 2021 – Modernises the use of digital records as admissible evidence in legal proceedings, replacing The Bankers’ Books Evidence Act, 1891.

2. Authorisation

2.1 Licences and Application Process

The authorisation regime for financial institutions in Bangladesh differs significantly based on the entity type (eg, banks, NBFIs, MFIs), each being governed by a distinct legal framework. This chapter of the guide is tailored exclusively to the licensing process for Scheduled Banks (Commercial Banks) as regulated under the Bank Company Act, 1991.

The authority to grant bank licences is strictly controlled by Bangladesh Bank, the central bank. The process is centralised, highly discretionary, and focuses heavily on the integrity and financial stability of the applicants.

The Authorisation Requirement

Authorisation is fundamentally required for any entity wishing to conduct the core “banking business” in Bangladesh, which is defined as the accepting of deposits of money from the public for the purpose of lending or investment, which are repayable on demand and withdrawable by instruments like cheques or drafts.

To be eligible for a licence, the applicant must be a public limited company incorporated in Bangladesh under the Companies Act, 1994. The most critical financial requirement is the minimum paid-up capital, which is currently BDT500 crore (BDT5 billion). This capital must be deposited in a liquid, unencumbered form and placed under the lien of Bangladesh Bank. Furthermore, all sponsors, directors and top management must satisfy a rigorous Fit and Proper Test to ensure their competence, integrity, and sound judgment.

The Application Process

The process for obtaining a banking licence in Bangladesh is multi-stage, lengthy and involves substantial engagement with the central bank.

Engagement and stages

- Incorporation – The initial step involves obtaining name clearance and a Certificate of Incorporation as a Public Limited Company from the Registrar of Joint Stock Companies and Firms (RJSC).
- Application to Bangladesh Bank – The applicant then submits a formal application to the BB, accompanied by the proposed Memorandum and Articles of Association, a comprehensive feasibility study detailing the bank’s operational plan, financial projections and the economic rationale for its establishment. A non-refundable application processing fee, historically around BDT1 million, must be included.
- Evaluation and due diligence – The BB conducts an extensive, non-public review of the application. This involves performing thorough background checks on all proposed sponsors and management to verify their suitability (the Fit and Proper Test) and scrutinising the capital sources and future earnings prospects.
- Licence grant and scheduling – If the BB is satisfied that all terms and conditions are met and that the establishment is in the public interest, it grants the final banking licence under Section 31 of the BCA 1991. The new bank is then formally listed, or “scheduled”, under the Bangladesh Bank Order, 1972, granting it full operational status.

Timelines and costs

The process does not follow a statutory timeline; it is highly dependent on the BB's internal review and discretion. Typically, the entire procedure from initial application to final licence grant can take 18 to 24 months or more. Costs primarily include the minimum BDT500 crore paid-up capital (1 crore equals 10 million), the application fee, and professional and legal advisory fees.

Activities Covered and Restrictions

Activities covered

A licensed bank is authorised to conduct the core business of accepting deposits and issuing credit. Ancillary activities explicitly permitted by the BCA 1991 include lending money, dealing in various negotiable instruments (bills of exchange, promissory notes), issuing letters of credit (L/Cs), buying and selling foreign exchange (if specifically authorised), and acting as an agent for government or third parties.

Restrictions on activities

The BCA 1991 imposes clear restrictions to maintain the sector's focus and stability.

- Non-banking business prohibition – Banks are strictly prohibited from engaging in any commercial, industrial or trade business outside the list of permissible activities defined in the BCA 1991.
- Immovable property limit – Banks cannot hold any immovable property, even those acquired through loan recovery, for a period exceeding seven years from the date of acquisition, except for the property required for its own immediate use.
- Corporate governance – Strict limits are placed on ownership, including a maximum 10% shareholding cap for any individual, company or family group. The number of family members serving on the Board of Directors is also restricted. Recent regulation mandates one nominee per corporate shareholder.

Common Ancillary Activities and Additional Approval/Requirements

Banks in Bangladesh routinely undertake several additional activities, each requiring separate regulatory consent.

- Foreign exchange operations – A bank must obtain a specific Authorised Dealer (AD) licence from Bangladesh Bank under the Foreign Exchange Regulation Act, 1947, to buy, sell and deal in foreign currencies.
- Capital market activities – For broker-dealer or merchant banking services, the bank needs a separate licence (such as a Trading Right Entitlement Certificate) from the Bangladesh Securities and Exchange Commission.
- Mobile financial services (MFS) – Providing MFS requires a specific licence from Bangladesh Bank, often structured as a subsidiary where the bank must maintain majority shareholding and control.
- MiFID II and MiCAR – The regulations like the European Union's MiFID II (covering financial instrument markets) and MiCAR (covering crypto-assets) are not applicable in Bangladesh. Domestic regulation covers these areas, where digital financial services and market conduct fall under the BB's specialised guidelines.

Obtaining a European Passport (Branches, Cross-Border Services)

The European concept of a “passport” that allows a licensed financial institution to operate freely across the EU is not relevant to the Bangladeshi jurisdiction. For foreign banks seeking to establish a physical presence in Bangladesh, there are the following two primary routes.

Branch office

The foreign bank must secure dual approval: (i) initial permission from the Bangladesh Investment Development Authority (BIDA) and (ii) a banking licence from Bangladesh Bank. The parent company must demonstrate significant financial strength, including consistent profitability and minimum net assets (typically USD100,000 or more). The branch is then fully subject to local regulatory oversight and compliance.

Locally incorporated subsidiary

The foreign bank can choose to establish a new subsidiary, which must be incorporated as a Bangladeshi public limited company and meet all the same capital (BDT5 billion) and licensing requirements as any domestic bank.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

The acquisition of, or increase in, control over a bank in Bangladesh is strictly governed by the Bank Company Act, 1991, and subsequent directives issued by Bangladesh Bank, the central bank. The regulatory focus is on maintaining financial stability, preventing monopolistic control and ensuring the suitability of controlling persons.

Requirements Governing Change in Control *Shareholding thresholds and restrictions*

Regulatory permission from Bangladesh Bank is required for any transaction that leads to the acquisition or transfer of shares that affects control. The primary restrictions and thresholds are as follows.

- **Maximum shareholding cap** – A fundamental restriction under the BCA 1991 is that an individual, company or family group (defined to include spouse, children, parents and siblings) can hold a maximum of 10% of a bank's total share capital, either personally, jointly or through affiliates.
- **Trigger for filing** – The act of acquiring or transferring any share in a bank, particularly those held by sponsors/directors, requires the prior permission of Bangladesh Bank, as the transfer of a significant block of shares inherently triggers a "change in control" assessment. The sponsors' shares are typically locked up and cannot be transferred for a period of three years without BB's explicit permission.
- **Foreign shareholdings** – The 10% maximum shareholding cap is often relaxed for strategic foreign investors or foreign financial institutions (FFIs) entering into a joint venture, allowing them to acquire larger stakes, potentially up to 100% in certain approved restructuring/merger cases. This is decided on a case-by-case basis by BB to attract institutional investment and bolster capital bases.

Other restrictions

Directors from a single family are typically restricted to a maximum of three members serving concurrently on the board. Furthermore, all incoming directors and

substantial shareholders must satisfy BB's stringent Fit and Proper Test concerning their competence, integrity and lack of loan defaults with any bank or financial institution.

Nature of Regulatory Filings and Obligations

The regulatory obligation for a change in control is the application for prior approval from Bangladesh Bank.

- **Filing requirement** – The acquiring entity and/or the transferring shareholder(s) must submit a formal application to the Banking Regulation and Policy Department (BRPD) of Bangladesh Bank.
- **Content of filings** – The application package typically includes:
 - (a) detailed personal information and declarations of the transferee(s) (Fit and Proper Test documentation);
 - (b) source of funds and evidence of the financial capacity of the acquirer;
 - (c) the resolution of the Board of Directors of the target bank approving the transfer;
 - (d) the proposed instrument of share transfer (Form 117) and a valuation report for unlisted shares (if applicable and if the deal value exceeds BDT1 million) prepared by a BSEC-licensed valuer; and
 - (e) confirmation that the acquisition will not violate the maximum shareholding or board composition limits.

The BB conducts comprehensive due diligence on the acquiring party before granting the No-Objection Certificate (NOC) necessary for the transfer to be registered.

Nature of the Ongoing Requirements

Once the acquisition is approved and the transfer is effected, the bank and its controlling shareholders face several ongoing regulatory requirements.

- **Annual reporting** – Banks must provide BB with an updated list of directors and shareholders holding significant stakes (usually 5% or more) as part of their annual compliance submissions.
- **Corporate governance compliance** – The bank must continuously ensure that its board composition and internal governance structures remain

compliant with BB's directives, including limits on family members on the board and the required number of independent directors.

- CIB reporting – The bank is obligated to regularly report its investments and the liability status of its significant shareholders and affiliated entities to the Credit Information Bureau (CIB) of Bangladesh Bank.
- Director disclosure – Directors are required to provide declarations on an ongoing basis regarding their shareholdings, external affiliations and any potential conflicts of interest to the bank's board and, upon request, to the BB.

4. Governance

4.1 Corporate Governance Requirements

The corporate governance and systems and controls framework for banks in Bangladesh is primarily rooted in the Bank Company Act, 1991, supplemented by numerous circulars and guidelines issued by the central bank, Bangladesh Bank.

Relevant Statutory and Regulatory Requirements

The main requirements are driven by the BCA 1991, and subsequent BB directives, which enforce prudent banking practices and oversight.

- Fit and proper criteria – The BCA 1991 mandates that directors and key executives (like the CEO/MD) must pass a rigorous Fit and Proper Test before appointment, requiring prior approval from Bangladesh Bank. Criteria cover moral integrity, professional experience (typically 10–15 years), and a clean record regarding loan default or criminal conviction (BCA 1991, Section 15).
- Board structure – BB guidelines prescribe minimum and maximum board size and composition. They require the appointment of Independent Directors (IDs), typically at least one fifth of the total board members for listed banks (per BSEC's Code, which applies to listed banks).
- Risk management and controls – Banks are required to establish robust internal control and compliance (ICC) systems. This includes mandatory formation of key board-level subcommittees, such as the Audit Committee and the Risk Man-

agement Committee, to oversee financial reporting, internal controls and overall risk appetite.

Voluntary Codes and Industry Initiatives

While voluntary codes have been foundational, the most significant governance standards in Bangladesh have transitioned from voluntary guidance to mandatory regulation for listed banks.

- Mandatory BSEC Code – The Corporate Governance Code (CGC 2018) issued by the Bangladesh Securities and Exchange Commission is compulsory for all listed banks. This code dictates best practices regarding board independence, committee formation (including Nomination and Remuneration Committee (NRC)) and reporting requirements.
- Industry Role – Industry bodies like the Bangladesh Association of Banks (BAB) often engage in dialogue with the BB regarding regulatory amendments and industry best practices.

Diversity Requirements

Bangladesh Bank encourages board and workforce diversity, primarily through mandatory reporting, rather than specific hard quotas in the BCA 1991.

Gender reporting

Bangladesh Bank's Corporate Social Responsibility (CSR) guidelines require banks to undertake mandatory, half-yearly gender equality performance reporting. This report tracks:

- gender diversity among board members and across all levels of permanent employees (entry, mid and senior); and
- the existence and provisions of the bank's maternity leave policy and facilities for female employees.

This regulatory monitoring acts as a strong incentive for banks to promote gender diversity and inclusion.

Bankers' Oath or Equivalent Binding Rules of Conduct

There is no formal Bankers' Oath defined in the BCA 1991. However, Bangladesh Bank mandates an equivalent set of binding rules of conduct for all bank employees.

- Mandatory code of conduct – BB Circular BRPD No 16 (2017) mandates all banks to adopt a comprehensive Code of Conduct for Banks and Non-Bank Financial Institutions.
- Scope of the code of conduct – The code establishes the highest standards of integrity, ethics, due skill, care and diligence for all directors, employees and management. It explicitly requires staff to comply with all laws, avoid conflicts of interest (including restrictions on gifts and personal gain), and safeguard customer and bank confidentiality.
- Declaration of secrecy – Senior officials, including the CEO/MD, must sign a formal declaration of secrecy as a binding commitment to not disclose any confidential information acquired during their duties.

4.2 Registration and Oversight of Senior Management

The oversight of senior management and directors in banks under the Bank Company Act, 1991 of Bangladesh is strictly governed by the Bangladesh Bank through a mandatory prior approval system based on the Fit and Proper Test.

Directors' and Senior Managers' Designation and Regulatory Approval

Designation and prior approval

The appointment, reappointment or removal of all directors and the chief executive officer (CEO)/managing director (MD) (Section 15) of a bank is contingent upon the prior written approval of the Bangladesh Bank.

Approval process and scrutiny

The process involves the following.

- The bank's Board must submit a detailed proposal, including the candidate's complete resume and offer letter, to the BB.
- The BB conducts a rigorous Fit and Proper Test to assess the individual's competence, integrity and sound judgment.
- The level of detail in the scrutiny is highly granular, with the BB verifying that there is:
 - (a) no criminal conviction (especially for financial crimes);
 - (b) no history of defaulted loans by the individual

or their associated concerns (via CIB report); and

- (c) no record of punishment for violating financial sector rules or regulations.

Screening Requirements

The mandatory screening criteria, derived from the BB's circulars and the BCA 1991, define the minimum standards for eligibility.

Fitness (competence/experience)

The following requirements apply.

- The CEO/MD requires a minimum of 20 years of banking experience and at least two years in a position immediately below the CEO/MD, plus a Master's degree.
- Directors typically require a minimum of ten years of management or professional experience.

Propriety (integrity/moral)

The individual must provide a sworn Declaration confirming they are not:

- a loan defaulter;
- bankrupt;
- convicted of any criminal, fraud or forgery offence; or
- involved with any company whose licence was revoked.

Corporate governance compliance

The BB also screens for compliance with governance limits imposed by the BCA 1991, such as restrictions on the maximum number of directors (eg, typically 20, including independent directors) and constraints on the number of directors from a single family to ensure independence.

4.3 Remuneration Requirements

The Bank Company Act, 1991, coupled with Bangladesh Bank circulars, establishes a strictly controlled and performance-linked remuneration framework, primarily focusing on the highest level of bank management.

Individuals Subject to Remuneration Requirements

The core requirements target top bank officials to mitigate risk and ensure prudential governance.

- The CEO/managing director (MD) is subject to the most rigorous control. The entire package (salary, allowances, and facilities) requires mandatory prior approval from the BB.
- Directors receive fees/honoraria for board meetings. They are strictly prohibited from receiving specific indirect benefits, such as new loan facilities, loan limit enhancements or interest waivers from their own bank during their tenure.
- Regarding employees, CEO bonuses are typically conditional on similar incentives being provided to all staff, promoting a unified approach to rewards.

Relevant Remuneration Principles

The BB's principles ensure that pay is tied to financial health, integrity and regulatory compliance.

- Performance alignment – Compensation must be commensurate with the bank's financial condition, business volume and earning capacity.
- No unearned increments – Annual salary increments for the CEO are contingent upon the bank showing improvement in its major economic indicators (eg, CAMELS rating).
- Exclusion of variable/indirect pay – The CEO is explicitly prohibited from receiving indirect remuneration (such as commission, dividends or club expenses) beyond the approved package.
- Bonus cap – The CEO's annual incentive bonus is subject to a regulatory maximum limit (eg, BDT1.5 million) to discourage excessive risk-taking.
- Tax responsibility – The CEO/MD must personally bear the cost of income tax; the bank is forbidden from paying it.

The Regulators' Supervisory Approach

The Bangladesh Bank employs a direct, ex-ante (before-the-fact) regulatory approach.

- Mandatory prior approval – The BB must sanction all CEO appointments, reappointments and remuneration changes, giving it veto power over compensation levels.

- Transparency and scrutiny – Banks must submit a fully itemised proposal showing all monetary amounts. This allows the BB to conduct a prudential review to ensure the package is justifiable and does not pose a financial risk to the institution.
- Governance enforcement – This control mechanism is used to reinforce corporate governance and ensure that executive pay structures are fair and conservative.

5. AML/KYC

5.1 AML and CFT Requirements

The anti-money laundering (AML) and combating the financing of terrorism (CFT) requirements in Bangladesh's banking sector are primarily dictated by the Anti-Money Laundering Prevention Act, 2012 and the Anti-Terrorism Act, 2009. The Bangladesh Bank, leveraging its authority under Section 45 of the Bank Company Act, 1991, issues binding directives through the Bangladesh Financial Intelligence Unit (BFIU).

Regulatory Framework and Obligations

The compliance regime is comprehensive, centred on preventing banks from being used as conduits for illicit funds.

Customer due diligence (CDD)

Banks must adopt a risk-based approach (RBA) to understand and verify customer identity. This involves the following.

- Know your customer (KYC) – Mandatory verification of a customer's identity must be carried out when establishing a business relationship or conducting transactions above a specified limit.
- Beneficial owner (BO) identification – Banks are obligated to identify and verify the identity of the natural persons who ultimately own or control the customer (the BO).
- Enhanced due diligence (EDD) – This is required for all high-risk customers, including politically exposed persons (PEPs), and for certain cross-border correspondent banking relationships, involving greater scrutiny of the source of funds and wealth.

Reporting requirements

Banks are the frontline institutions responsible for detecting and reporting suspicious activities to the BFIU.

- Suspicious transaction reports (STRs) – These must be filed promptly whenever a bank suspects or has reasonable grounds to suspect that funds are linked to money laundering, terrorist financing, or lack an apparent lawful purpose, regardless of the amount.
- Cash transaction reports (CTRs) – There is a requirement for mandatory reporting of all cash deposits or withdrawals that exceed a specific threshold set by the BFIU.

Internal controls and record keeping

Banks must establish a robust internal compliance infrastructure.

- Compliance officer – A high-level executive must be designated as the Central Anti-Money Laundering Compliance Officer (CAMLCO) to oversee the AML/CFT programme and serve as the main contact point with the BFIU.
- Training and audit – Continuous training for all relevant staff is required, along with regular, independent internal and external audits of the AML/CFT compliance system.
- Record retention – All CDD, KYC documents and transaction records must be preserved for a minimum period of five years following the termination of the customer relationship or the date of the transaction.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The depositor protection regime in Bangladesh is institutionalised through the Deposit Insurance Trust Fund (DITF), primarily governed by the Bank Deposit Insurance Act, 2000, which is currently undergoing legislative amendments to expand its scope and coverage.

DGS Requirements

The DGS in Bangladesh operates as a mandatory, risk-adjusted scheme. Every scheduled bank operating in the country, including branches of foreign banks, are compulsorily required to be a member and contribute premium payments to the DITF. The DITF is a trust fund/account established, preserved, and maintained by the Bangladesh Bank under the provisions of the Bank Deposit Insurance Act, 2000.

The scheme is triggered upon the winding up (liquidation) of an insured bank, at which point the DITF becomes liable to pay the insured amount to the liquidator for distribution to the eligible depositors. The payment process aims to commence within 90 days of receiving the claim list from the liquidator.

Administration of the Scheme

The depositor protection scheme is administered and managed by the Bangladesh Bank.

- Trustee board – The board of directors of the Bangladesh Bank serves as the trustee board for the DITF. The Governor of Bangladesh Bank is the chairman of this board.
- Operational unit – The Deposit Insurance Department (DID) of the Bangladesh Bank is the operational unit entrusted with collecting premiums, managing the fund and processing claims.

Classes of Depositor and Deposits Covered

The DITF provides coverage on a per depositor, per bank basis: this means that all eligible accounts held by one person in the same right and capacity within a single bank are aggregated for calculating the insured amount.

- Covered depositors – The scheme is designed mainly to protect small and unsophisticated individual depositors.
- Covered deposits – Virtually all types of deposits in scheduled banks are insured, including savings accounts, fixed deposits (FDRs), current accounts and recurring deposits. The insured amount covers both the principal and any accrued interest.
- Exclusions (implicit) – Deposits held by other financial institutions (like banks or insurance companies) in the member bank, or deposits held by the

government, are typically excluded or are not the primary beneficiaries of the protection.

Limits Applicable to the Scheme

The maximum coverage limit is relatively low compared to international standards, though it covers a significant percentage of total depositors.

- Current limit – The scheme provides protection of up to a maximum of BDT100,000 per eligible depositor, per insured bank. This ceiling applies to the aggregate of all deposits (principal plus interest) held by that person in that institution.
- Proposed limit – The government has pursued legislation (the proposed Bank and Financial Institution Deposit Protection Act, 2023) to double the coverage limit to BDT200,000 and extend the protection to Non-Bank Financial Institutions, but the BDT100,000 limit remains effective under the existing law.

Funding of the Scheme

The DITF employs a system of pre-funded contributions paid by the member institutions.

- Source of funds – The fund is entirely financed by half-yearly premium contributions paid by all scheduled banks. Banks are forbidden from passing this cost directly to the depositor.
- Premium rate – The premium rate is risk-based, meaning banks with lower CAMELS ratings (indicating higher risk) are required to pay a higher percentage of their total insured deposits into the fund than more financially sound institutions.
- Investment – The collected premiums are deposited into the Deposit Insurance Trust Fund account maintained by the Bangladesh Bank. The funds are prudently invested in government securities (such as treasury bonds/bills), and the income derived from these investments is also credited back to the DITF to ensure the fund's growth and stability.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

The capital, liquidity, and related risk control requirements for banks in Bangladesh are regulated by Bangladesh Bank through a prudential framework that is fully aligned with the Basel III standards.

Adherence to Basel III Standards and Local Implementation

Bangladesh Bank adopted the Basel III framework under its Guidelines on Risk Based Capital Adequacy (RBCA, 1991): Revised Regulatory Capital Framework (BRPD Circular No 18, 2014). The framework, which operates under the three pillars of Minimum Capital Requirements, Supervisory Review Process, and Market Discipline, began its implementation in January 2015, with full compliance, including the Capital Conservation Buffer (CCB), targeted by early 2020. Material departures are limited, mainly revolving around a phased approach for certain deductions from capital and the mandatory use of the standardised approach for calculating capital charges for credit risk and market risk, and the basic indicator approach (BIA) for operational risk. Notably, Bangladesh Bank requires a higher risk weight of 125% for all unrated corporate exposures, reflecting a conservative national discretion.

Risk Management Rules

Risk control requirements are guided by the three pillars and specific risk guidelines. Bangladesh Bank mandates that all banks establish a comprehensive risk management framework.

- Risk governance – This requires a structured approach involving the board of directors for overall risk oversight, supported by dedicated board-level committees like the board risk management committee (BRMC).
- Internal capital adequacy assessment process (ICAAP) – Under Pillar 2 (Supervisory Review Process), banks must develop and submit an ICAAP document, which systematically assesses all material risks (eg, credit, market, operational, liquidity, interest rate risk in the banking book, and strate-

gic/reputation risk) and determines the appropriate internal capital for these risks.

- Stress testing – Regular stress tests must be performed and reported to assess the bank's vulnerability to severe, yet plausible, adverse economic and financial scenarios.

Quantity and Quality of Capital Requirements

The framework mandates that all scheduled banks maintain a high quality and quantity of capital to absorb losses.

- Minimum Capital Adequacy Ratio – Banks must maintain a minimum Total Capital-to-Risk-Weighted Assets Ratio (CRAR) of 10.00%.
- Capital Quality – The core capital is Common Equity Tier 1 (CET1), which must be at least 4.50% of Risk-Weighted Assets (RWA). The minimum Tier 1 Capital Ratio is 6.00% of RWA.
- Capital Buffers – A Capital Conservation Buffer (CCB) of 2.50% of RWA, composed entirely of CET1, must be maintained above the 10.00% minimum CRAR. This brings the effective total minimum CRAR to 12.50%. If a bank's capital falls into this 2.5% buffer range, regulatory restrictions are imposed on discretionary distributions, such as dividends and bonuses, to ensure capital conservation.
- Leverage Ratio (LR) – A non-risk-based backstop measure, the minimum Tier 1 Leverage Ratio is set at 3.00%. However, based on the need to align with international best practices and strengthen stability (BRPD Circular No 18/2021), this requirement is being gradually increased from 2023 onwards, targeting a minimum of 4.00% by 2026. The phased requirement is: 3.25% in 2023, 3.50% in 2024, 3.75% in 2025, and 4.00% in 2026.

Liquidity Requirements

Bangladesh Bank has enforced the two key Basel III liquidity ratios to strengthen funding resilience.

- Liquidity Coverage Ratio (LCR) – Banks must maintain an LCR of $\geq 100\%$. This ratio ensures that a bank holds sufficient High-Quality Liquid Assets (HQLA) to cover net cash outflows over a stressed 30-day period.

- Net Stable Funding Ratio (NSFR) – Banks must maintain an NSFR of $>100\%$. This ratio promotes stable, long-term funding structures by ensuring that the bank has an available amount of stable funding that exceeds its required amount of stable funding over a one-year horizon.

These global standards complement existing local liquidity regulations, including the Cash Reserve Ratio (CRR) and the Statutory Liquidity Ratio (SLR).

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The legal and regulatory framework for bank resolution in Bangladesh has recently been formalised and strengthened by the enactment of the Bank Resolution Ordinance, 2025 (BRO, 2025), which grants comprehensive resolution authority to the central bank, Bangladesh Bank. This Ordinance supersedes general insolvency laws for banks and aligns the domestic regime more closely with international best practices.

Principal Means of Resolving a Failing Bank

The Bank Resolution Ordinance, 2025 empowers Bangladesh Bank to intervene rapidly and employ a range of tools to resolve a failing bank while preserving critical functions and ensuring financial stability.

The principal resolution tools available to the resolution authority (Bangladesh Bank) include the following.

- Open bank resolution (M&A/P&A) – BB can mandate the merger of the failing bank with a financially sound institution or facilitate a purchase and assumption (P&A) transaction. This involves transferring specified assets, liabilities and/or shares to a third-party acquirer.
- Temporary takeover/nationalisation – BB can temporarily assume control of a scheduled bank or financial institution by issuing a share transfer order to a government-owned entity.
- Bridge bank – The creation of a “bridge bank” is explicitly authorised. This allows the central bank to transfer critical assets and deposits of the failing entity into a temporary, state-managed institution

to ensure the continuity of essential banking services before the entity is restructured or sold.

- **Recapitalisation and restructuring** – BB can compel the increase of the bank's capital through existing or new shareholders, or undertake comprehensive restructuring of the bank's operations and balance sheet.
- **Liquidation** – This is the terminal step. If resolution is not viable, BB must petition the court for the bank's licence to be revoked and liquidation proceedings to commence. The Ordinance sets time limits for the appointment of a liquidator and the settlement of liabilities.

Implementation of the FSB Key Attributes

Bangladesh has made significant strides towards implementing the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes.

The Bank Resolution Ordinance, 2025 and the establishment of dedicated institutions within the central bank are direct steps towards formal compliance.

- **Designation of authority** – The Ordinance designates Bangladesh Bank as the exclusive resolution authority, a core key attribute.
- **Resolution tools** – The introduction of modern resolution powers like the bridge bank and comprehensive P&A/transfer powers aligns directly with the resolution toolkit required by the FSB.
- **Institutional framework** – Bangladesh Bank has established a particular department, mandated with implementing the Ordinance, creating standardised resolution procedures, and developing contingency measures.
- **Recovery and resolution planning (RRP)** – The department's functions include formulating optimal resolution strategies and stress testing, which are fundamental components of RRP required by the key attributes.
- **Cross-border co-operation** – The Ordinance includes provisions for information sharing and co-ordination with foreign regulatory authorities regarding resolution measures.

In summary, the legal framework has been substantially overhauled to incorporate the majority of the FSB Key Attributes, providing BB with the necessary legal

powers and tools to conduct orderly resolution without relying on public bailouts.

Insolvency Preference Rules Applicable to Deposits

There are also insolvency preference rules applicable to deposits in Bangladesh's bank resolution framework.

The framework is governed by two main pieces of legislation.

- **Deposit insurance** – The Bank Deposit Insurance Act, 2000, provides immediate protection to depositors. Each depositor is insured up to a maximum of BDT100,000 (principal and interest). The Deposit Insurance Trust Fund (DITF), managed by Bangladesh Bank, is subrogated to the claims of these insured depositors upon payout.
- **Creditor hierarchy** – The Bank Resolution Ordinance, 2025, establishes a specific hierarchy of claims that governs the order in which creditors are paid in the event of liquidation. While the full ranking is detailed in the Ordinance, modern resolution regimes, like the one being implemented in Bangladesh, typically grant super-priority to the following.
 - (a) **Insured deposits** – The DITF's subrogated claim, or the claim of insured depositors, is typically ranked very highly.
 - (b) **Deposits (general)** – In line with international standards, the claims of all depositors (insured and uninsured) generally rank higher than those of general unsecured creditors and bondholders, ensuring depositors bear losses only after shareholders and junior creditors.

The central bank's objective, as stated in the Ordinance, is to prioritise "the interests of the depositors" during any resolution process, which is legally underpinned by this preferential ranking in the hierarchy of claims.

9. ESG

9.1 ESG Requirements

The banking regulatory framework in Bangladesh, spearheaded by Bangladesh Bank, is very proac-

tive regarding the integration of environmental, social and governance (ESG) factors into core banking operations. The requirements have evolved from basic “green banking” to comprehensive “sustainable finance” policies, establishing mandatory duties across risk management, financing targets and disclosure.

The primary regulatory documents governing ESG in the banking sector include the Sustainable Finance Policy, Guidelines on Environmental & Social Risk Management (ESRM), and the Guideline on Sustainability and Climate-related Financial Disclosure.

Environmental and Social Risk Management

The cornerstone of BB’s ESG requirements is the mandate for scheduled banks and finance companies to fully integrate environmental and social risks into their credit risk management (CRM) process.

- **Mandatory environmental and social due diligence (ESDD)** – Banks must conduct ESDD for all lending/investment proposals. The due diligence must assess potential risks related to environmental degradation, pollution, biodiversity impact, occupational health and safety, labour practices, and community displacement.
- **ESDD risk assessment tool** – BB requires the use of an upgraded ESDD risk assessment tool (most recently updated in 2025). This tool automatically generates a quantitative risk rating (high, medium or low) for a project based on responses to a checklist.
- **Exclusion list** – Banks must maintain and screen loan applications against an exclusion list of business activities that are deemed too harmful to be financed, such as certain polluting industries.
- **Post-disbursement monitoring** – For high-risk projects, banks must ensure that client firms comply with national regulations, possess necessary permits (like those from the Department of Environment), and have operational effluent treatment plants (ETP).

Green and Sustainable Finance Targets

BB directly shapes the asset composition of the banking sector through mandatory financing targets and incentives.

- **Minimum green finance target** – All banks and financial institutions are mandated to allocate a minimum of 5% of their total funded loan disbursement/investment to direct green finance.
- **Sustainable finance taxonomy** – The Sustainable Finance Policy established taxonomies to clearly define and categorise eligible projects. The Green Taxonomy focuses on climate change mitigation/adaptation (eg, renewable energy, energy efficiency), while the Sustainable Finance Taxonomy includes broader categories like sustainable agriculture, socially responsible finance, and financing for cottage, micro, small and medium enterprises (CMSMEs).
- **Refinance schemes** – BB operates dedicated refinance schemes (such as the BDT4 billion fund) to encourage lending to green products and projects, allowing banks to offer loans at concessional interest rates.

Governance and Disclosure

The regulatory framework dictates specific requirements for organisational structure and mandatory public reporting to ensure transparency and accountability.

- **Organisational structure** – Banks must establish a dedicated Sustainable Finance Unit (SFU) and a Sustainable Finance Committee to oversee, implement and monitor their ESG strategies.
- **TCFD/IFRS alignment** – BB’s Guideline on Sustainability and Climate-related Financial Disclosure mandates phased adoption of disclosures based on the IFRS Sustainability Disclosure Standards (IFRS S1 and IFRS S2), which incorporate the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).
- **Disclosure requirements** – Banks must report across the four pillars of TCFD/IFRS: Governance (board/management’s role), Strategy (impact of climate/sustainability risks on business model), Risk Management (integration of climate risks into existing systems), and Metrics and Targets (eg, carbon footprint, green finance portfolio size).
- **Supervision and rating** – BB actively supervises compliance through mandatory reports on green banking activities and conducts an annual Sustainability Rating for all banks and financial institutions.

Internal Operational Requirements

BB also requires banks to adopt “in-house” green practices to reduce their own environmental footprint. These include implementing a Green Office Guide, minimising paper and electricity consumption, using energy-efficient equipment, installing solar power panels where feasible, and regularly calculating their carbon footprint.

10. DORA

10.1 DORA Requirements

The European Union’s Digital Operational Resilience Act (DORA) is an EU regulation and does not directly apply in Bangladesh. However, the Bangladesh banking sector, regulated by Bangladesh Bank, has comprehensive, binding guidelines that address the core pillars of DORA: ICT Risk Management, Operational Resilience and Third-Party Risk.

The relevant regulations are primarily the Guideline on ICT Security for Banks and Non-Bank Financial Institutions and the Circulars on outsourcing of activities.

ICT Risk Management and Resilience

Bangladesh Bank’s regulatory framework requires banks to establish a robust and sophisticated information and communication technology (ICT) governance structure that focuses on operational resilience, aligning closely with DORA’s aims.

- **ICT governance** – Banks are required to establish ICT governance and develop an extensive ICT security policy and management approach. The governance framework emphasises the need for senior management oversight of technology-related risks.
- **Risk management framework** – The Guideline on ICT Security mandates a holistic approach to ICT risk management, including the systematic identification, assessment, measurement and mitigation of IT and security risks across the entire organisation.
- **Data centre and recovery** – Banks are required to maintain a resilient ICT infrastructure, including establishing at least a Tier Three Data Centre (DC) and a Disaster Recovery Site (DRS) in a different

seismic zone. This ensures business continuity and system recovery in the event of a failure or disaster.

- **Business continuity planning (BCP)** – The regulations establish a procedure for business impact analysis (BIA) in conjunction with ICT risk management, requiring banks to develop robust BCPs to protect critical business processes and ensure timely resumption of services after a significant failure.
- **Security controls** – The guidelines define minimum control requirements for all financial institutions (including banks, NBFIs, MFS providers and payment system operators), covering areas like network security, application security, and electronic banking infrastructure (ATM, POS, mobile banking).

ICT-Related Incident Management

While not explicitly called “incident reporting” in the DORA sense, BB’s requirements mandate prompt communication and handling of security breaches.

- **Security incident handling** – The framework requires banks to develop a procedure for the timely and effective handling of operation and information security incidents. This includes identifying, classifying, documenting and addressing root causes.
- **Cybersecurity mandates** – Banks must maintain a focus on cyber-resilience and are subject to continuous monitoring by the regulator regarding cyber threats. The requirement for internal and external information system audits ensures that security protocols are regularly verified.

ICT Third-Party Risk Management (Outsourcing)

BB’s circulars on outsourcing enforce strict control over third-party service providers, mirroring DORA’s focus on supply chain risk.

- **Board approval and policy** – Banks must develop a comprehensive outsourcing policy approved by the board of directors. The policy must clearly define the criteria for selecting service providers and delegation of approval authorities based on the risks and materiality of the outsourced activity.
- **Due diligence** – Prior to selecting any service provider, banks must conduct appropriate due diligence on the vendor’s experience, competence,

financial soundness and IT security standards. Regular audits must be conducted to assess the adequacy of the service provider's risk management practices.

- Contractual requirements – All outsourcing relationships must be governed by legally enforceable written contracts that clearly define the rights, responsibilities and expectations of all parties, particularly concerning data confidentiality and security.
- Restricted/critical activities – Banks are prohibited from outsourcing core management functions, certain risk management functions or critical internal control functions (like internal audit, compliance, and treasury).
- Outsourcing abroad – Any outsourcing of activities or data processing outside Bangladesh requires the prior approval of Bangladesh Bank. The request must include a due diligence report, a legal opinion regarding data confidentiality, and a description of the monitoring measures.
- Subcontracting – Subcontracting of material outsourcing arrangements is not allowed without BB's permission.

11. Horizon Scanning

11.1 Regulatory Developments

The regulatory agenda of the Bangladesh Bank for 2025 and 2026 is exceptionally dynamic, driven by a national push for enhanced governance, financial sector stability, and compliance with IMF programme conditions. These developments are broadly focused on structural reforms, governance oversight, modernising supervision, and tackling the high volume of non-performing loans.

Below is an outline of the key regulatory developments.

Governance and Banking Sector Restructuring (Structural Reforms)

The most transformative changes involve the overhaul of legal frameworks to restore institutional integrity and curb undue influence in the banking sector.

Enhancing central bank autonomy

A major initiative is the proposed amendment of the Bangladesh Bank Order, 1972. This aims to grant the central bank full operational and regulatory autonomy. Achieving full regulatory independence is viewed as foundational for the successful implementation of all other reforms, particularly those concerning politically influenced governance issues and the resolution of troubled banks.

Overhaul of the Bank Company Act, 1991

According to reports and analyses published in the major news media, Bangladesh Bank is actively pushing for comprehensive amendments to the Bank Company Act, 1991. The draft amendments focus intensely on corporate governance and include the following:

- proposals to significantly reduce the number of directors from a single family and their affiliates on bank boards (eg, reducing the limit from five to two);
- reducing the maximum continuous term for a director (eg, from 12 years to six years);
- prohibiting specific political figures (such as government ministers, members of parliament and city mayors) from serving as bank directors to mitigate political risk;
- tightening rules to prevent business conglomerates from controlling significant stakes in multiple institutions and preventing the use of representative directors; and

These changes are designed to de-concentrate power, professionalise bank boards, and directly address the long-standing governance failures that have plagued the sector.

Bank resolution and consolidation

The central bank is actively pursuing a roadmap for bank consolidation and resolution to address weak and distressed banks.

- Merger Roadmap – The BB has initiated a policy-driven approach to encourage or enforce the merger and acquisition (M&A) of weaker institutions with stronger ones.
- Banking Resolution Ordinance (2025) – The introduction of this ordinance aims to formalise and

strengthen the framework for the recovery and resolution of ailing banks, providing the BB with clearer tools for timely intervention and minimising systemic risk.

The above will lead to sector consolidation, reducing the total number of scheduled banks, and strengthening the stability of the remaining entities by removing contagion risks.

NPL Management and Asset Quality Modernisation

A core component of the regulatory drive is the systemic change in how non-performing loans are recognised, provisioned and managed.

Adoption of IFRS-9 (ECL model)

Bangladesh Bank is mandating the gradual transition of the banking sector's provisioning system from the traditional incurred loss model to the International Financial Reporting Standard 9 (IFRS-9) Expected Credit Loss (ECL) model.

- **Timeline** – The new system is set for phased roll-out, targeting full implementation by December 2027. Banks are required to establish working teams and report progress well before this deadline.
- **Impact** – This shift requires banks to proactively make provisions based on anticipated losses (forward-looking), rather than waiting for a default to occur. This will enhance the accuracy and transparency of balance sheets but will also place significant, immediate pressure on capital adequacy, especially for banks with weak portfolios.

NPL reduction roadmap

BB has established a concrete roadmap to significantly reduce the gross NPL ratio in the banking system, targeting specific benchmarks by June 2026.

- **Targets** – State-owned commercial banks are targeted to reduce their NPL ratio to 10%, and private commercial banks to below 5%.
- **Write-off policy** – The loan write-off policy has been eased, allowing banks to speed up the process to two years (from the previous three years) to clear old, fully provisioned bad debts from their books.

- **Impact** – This creates stringent compliance metrics for bank performance and will require more aggressive monitoring and recovery efforts.

Supervisory and Risk Modernisation

The regulatory focus is shifting from routine compliance checks to a proactive, risk-focused supervisory model, leveraging technology.

Implementation of risk-based supervision (RBS)

The central bank is in the process of rolling out a comprehensive RBS policy across all scheduled banks.

- **Timeline** – Full implementation is slated for January 2026.
- **Mechanism** – RBS involves restructuring the central bank's supervision departments, developing bank-specific risk assessment teams, and creating a unified supervisory dashboard for data-driven monitoring.
- **Impact** – This qualitative change moves supervision towards real-time monitoring of inherent risks (credit, market, operational, etc), allowing for timely intervention before localised troubles become systemic.

Regulation and licensing of digital banks

In line with the national Smart Bangladesh initiative, the BB has issued comprehensive Guidelines to Establish Digital Banks.

- **Requirements** – Digital Banks (DBs) must be licensed public limited companies with robust ICT governance frameworks, requiring a high minimum paid-up capital (eg, BDT3 billion).
- **Scope** – DBs must offer efficient, innovative and end-to-end tech-based digital financial products, but are restricted from providing over-the-counter services or engaging in trade and guarantee services.
- **Impact** – This introduces a new, technology-heavy banking category, accelerating the adoption of AI and blockchain solutions, and enhancing financial inclusion in traditionally underserved market segments.

Summary

The regulatory horizon in Bangladesh is marked by a decisive move towards higher standards of governance, transparency and prudence. The upcoming period will be defined by the implementation of the new Bank Company Act amendments, the financial restructuring mandated by the NPL roadmap and IFRS-9 adoption, and the institutional strengthening through central bank autonomy and risk-based supervision. These reforms collectively aim to create a more resilient, professionally managed and internationally compliant banking sector.

BOLIVIA



Trends and Developments

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Dentons Guevara & Gutierrez enjoys market-leading reputation for handling complicated project finance deals, having been involved in many of Bolivia's landmark transactions across a wide range of sectors. From lenders and underwriters to sponsors and developers, the firm has advised the full range of clients in this area and, as a pioneering law firm in financial transactions, is adept at advising on the total spectrum of debt and equity financing structures.

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Bolivia's Financial and Regulatory Landscape Amid Economic Turbulence

Bolivia recently underwent a landmark election process aimed at selecting a new president and members of Congress who will serve for the next five years. The results were particularly significant, as the majority of elected officials represent political movements distinct from the left-wing administration that had governed the country for the past two decades.

The prevailing view is that this political shift was largely driven by the ongoing economic crisis. Indeed, there is currently a widespread shortage of fuel, particularly diesel, which has negatively affected all sectors of industry and, naturally, the population at large, as it has triggered a sharp increase in the prices of basic goods across local markets.

However, the fuel shortage appears to be a symptom of a deeper structural issue: the government's excessive spending relative to its income. This imbalance has constrained the state's capacity to meet its financial obligations, particularly those denominated in US dollars. Since Bolivia's government holds a legal monopoly over the fuel supply, and these fuels are largely imported, payment delays in this sector have been especially significant.

In its efforts to secure the much-needed US currency, the government has effectively drained liquidity from the financial system. As a result, banks and other financial institutions have struggled to meet market demand for US dollars, facing challenges in executing international transfers and cash withdrawals. To address these issues, both de facto and formal

restrictions have been imposed by banks and Bolivia's financial regulator.

For instance, banks have implemented de facto limits on withdrawals and intra-bank transfers. Similar restrictions have been applied to the use of debit and credit cards abroad. These measures have heightened tensions between banks and their clients, many of whom argue that such limitations infringe upon their contractual and property rights.

At the same time, Bolivia's financial regulator has introduced market control mechanisms that allow banks to charge transaction fees and rates for international transfers that are partially linked to the price of US dollars in the unregulated (or parallel) market. Naturally, this rate diverges significantly from the official selling exchange rate of BOB6.96 per USD, which remains mandatory for regulated financial institutions.

Impact on the banking sector and financial operations

The current liquidity shortage and regulatory uncertainty in Bolivia have had profound effects on the banking and financial markets. Financial institutions face increasing pressure to manage foreign currency exposure while ensuring compliance with central bank directives and prudential requirements. These challenges have reshaped lending practices, risk management and client relationships across the sector.

Cross-border operations, trade finance and syndicated loans have been particularly affected. Borrowers and lenders frequently seek to renegotiate payment terms or include hardship clauses to mitigate currency risk. For international investors, restrictions on

US dollar withdrawals and transfers, combined with limited convertibility of the Boliviano, have heightened sovereign and transfer risk, prompting more cautious lending policies and stricter due diligence procedures.

From a legal standpoint, disputes have emerged over whether payments can be validly made in local currency when contracts stipulate US dollar obligations, and whether exchange-rate adjustments constitute a breach. These issues have emphasised the critical importance of precise contract drafting, including governing law clauses, arbitration provisions and well-structured force majeure terms.

Banks are also navigating a delicate balance between regulatory compliance and client relations. De facto restrictions imposed without formal regulatory backing have triggered litigation by depositors and corporate clients, raising questions about the scope of banks' duties and their discretionary powers during financial emergencies.

Rise of crypto-assets as alternative means of payment

The shortage of US dollars has led consumers and businesses to seek alternative instruments for cross-border transactions. In practice, this has accelerated the adoption of widely known cryptocurrencies, particularly stablecoins such as USDT (ie, Tether) and USDC, which can be easily converted into US dollars through crypto-friendly accounts, thus enabling the Bolivian public to fulfil payment obligations abroad.

Unsurprisingly, this shift has raised a number of legal and regulatory challenges. To address them, Bolivia has taken steps to explicitly regulate services related to crypto-assets (eg, digital wallet services) and other emerging fintech activities. A dedicated anti-money laundering (AML) framework now applies to entities conducting the following types of activities in Bolivia:

- exchange between cryptocurrencies and fiat currencies;
- exchange between different types of cryptocurrencies;
- transfer of cryptocurrencies;
- custody or administration of crypto-assets or instruments granting control over them; and

- participation in or provision of financial services related to the offer or sale of cryptocurrencies.

In general terms, the framework requires entities to register with the local AML authority and extends its reach even to those conducting cross-border business. It is expected that the regime will include specific reporting and due diligence obligations, which will need to be further clarified through secondary regulations issued by the authority.

Additionally, a licensing regime has been introduced for entities engaging in these and other fintech-related activities (eg, blockchain-based solutions, crowdfunding platforms). Applicants must comply with specific requirements, including minimum capital thresholds, security and data protection protocols, and other operational standards.

However, the scope of this licensing regime remains somewhat unclear, particularly in relation to entities operating on a cross-border basis. While the prevailing interpretation among practitioners is that such provisions do not extend to offshore operators, some have argued that certain elements of the regulation could be construed otherwise, thereby introducing an element of legal uncertainty.

It is worth noting that the law governing the licensing regime expressly recognises the possibility of operating within a regulatory sandbox, which allows for the testing of innovative technological solutions under the supervision of local authorities. Broadly speaking, such framework authorises limited-time operations with predefined user caps, providing a controlled environment for regulatory experimentation.

Moreover, the use of crypto-assets has raised significant challenges in the legal and, particularly, fiscal realms. Questions remain regarding the applicability and impact of taxes such as VAT, the Transaction Tax (IT), and other obligations on the holding, sale and services related to cryptocurrencies. In addition, it is not yet entirely clear which accounting standards should govern the proper recording of these assets, creating further uncertainty for both businesses and financial institutions.

Recent measures by the outgoing government: Credit Deferral Law

In a final move before the change in administration, former President Luis Arce promulgated the Credit Deferral Law, which had been approved by the Legislative Assembly despite strong opposition from both the banking and business sectors. The law was promulgated following protests from social sectors over delays in its enactment.

The legislation mandates an automatic six-month deferral of payments for certain loans, primarily targeting social housing and microenterprise credits. This includes postponement of principal, interest and other related charges. In addition, all judicial actions related to debt collection, such as foreclosures, auctions, dispossessions and other enforcement measures, are suspended nationwide for the same six-month period.

Crucially, the law specifies that the deferral will not result in additional interest, penalties for late payment, compound interest or administrative costs. The government is required to issue a Supreme Decree within ten business days of the law's publication to regulate its implementation.

The banking sector has voiced strong opposition, citing concerns that the measure will strain financial liquidity and limit their ability to extend new credit. Critics have also warned that the law may generate legal uncertainty, given its broad scope and the suspension of enforcement actions. Some political actors have expressed similar concerns, characterising the measure as potentially disruptive to the financial system and announcing intentions to reverse the deferral through future legislation.

Outlook: the financial system and the new administration

The new administration has announced an ambitious set of financial and economic measures aimed at restoring macroeconomic stability while promoting structural transformation and innovation. Chief among these is a proposal to introduce a managed exchange rate band system, which seeks to provide greater predictability to the US dollar market, mitigating the risks of abrupt devaluations while preserving a measure of monetary control.

Complementing this initiative is the creation of a Foreign Exchange Stabilization Fund. This fund would be financed through a combination of freely available resources negotiated with multilateral banks, debt relief mechanisms, and new capital inflows stemming from asset regularisation programmes. The latter would allow individuals to declare and repatriate assets, such as cash, bank accounts, real estate, vehicles, crypto-assets and credits, held domestically or abroad.

Although the new president initially stated that Bolivia would not resort to international credit, particularly from the IMF, to address the crisis, he has already secured a USD3.1 billion loan from the CAF. Government advisers have indicated that they will approach other similar multilateral institutions to complement the country's financing needs.

Another key measure to face the crisis is the establishment of a Decarbonization Fund designed to support the transition towards a more sustainable energy matrix. The fund would finance household energy-efficiency projects, the replacement of urban transport units, and technical training programmes for workers and professionals involved in renewable energy and energy transition sectors. This measure is intended not only to reduce reliance on fossil fuels but also to stimulate new financing channels linked to environmental objectives.

Another notable policy proposal is the creation of a state-backed Mining Bank, aimed at formalising and integrating co-operative mining operations into the formal financial system. By offering direct credit facilities, this institution would reduce the sector's dependence on foreign sources of financing, while broadening the state's capacity for oversight and tax collection.

The government has also suggested a reduction of interest rates on commercial and consumer credit to below 10%, a move that could significantly alter the domestic credit market and the profitability structures of financial institutions.

Key takeaways

Bolivia's recent political realignment reflects widespread public dissatisfaction with the previous administration amid an ongoing economic crisis. The scarcity of US dollars has created operational and legal challenges for banks, financial institutions and businesses. Lending practices have shifted, litigation has increased, and transfer and sovereign risks have grown.

Cross-border operations, trade finance and syndicated lending have been particularly affected. Financial actors are renegotiating terms, incorporating hardship clauses, and placing greater emphasis on precise contract drafting, including arbitration provisions and force majeure clauses. These measures are becoming essential for managing currency and operational risks.

The shortage of dollars has also accelerated the adoption of cryptocurrencies as alternative means of payment. Stablecoins such as USDT and USDC have become important tools for businesses and individuals to meet international obligations. Regulatory responses, including AML frameworks, licensing regimes and regulatory sandboxes, aim to encourage innovation while managing legal uncertainties.

At the same time, the use of crypto-assets has created significant legal and fiscal challenges. Questions remain regarding the applicability of VAT, transaction taxes, taxation on holdings and sales, and the accounting treatment of crypto-assets, which continues to be unclear.

Even traditional banks have been compelled to provide crypto-related services, offering custody, exchange and convertibility guarantees to facilitate international payments. This demonstrates how the crisis has pushed the entire financial sector to adapt and explore alternative instruments beyond conventional banking services.

Recent measures from the outgoing administration, such as the automatic six-month credit deferral for social housing and microenterprise loans, have raised concerns in the banking sector. These measures suspend loan repayments, judicial collections and related enforcement actions, potentially affecting liquidity and the capacity of banks to extend new credit. The financial sector has rejected these mandates, emphasising the operational and legal challenges of implementing such policies.

Looking ahead, the new administration's proposed measures, such as the Foreign Exchange Stabilization Fund, the Decarbonization Fund, the state-backed Mining Bank, reductions in interest rates and a managed exchange rate band, seek to stabilise the economy and promote structural transformation. In addition, although the new administration initially expressed reluctance to rely on international credit, it has secured USD3.1 billion from the CAF and indicated plans to approach other multilateral institutions.

These initiatives present opportunities in fintech, green finance and expanded credit access. At the same time, they require careful risk management, regulatory compliance and proactive contract structuring. Market participants must remain attentive to evolving rules and market conditions to successfully navigate Bolivia's complex and rapidly changing financial landscape.

BRAZIL

Law and Practice

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T Magalhaes Advogados



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T Magalhaes Advogados was established over a decade ago as Magalhães | Advogados and derives its core expertise from the financial system, with a specialisation in providing strategic, highly specialised and legally robust solutions to key stakeholders in this sector. Clients include banks, third-party asset managers, brokerage and securities distribution firms, investment funds and investment clubs, and independent investment advisers. As a “full-service”

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1. Legal Framework

1.1 Key Laws and Regulations

Law No 4,595, of 31 December 1964 (“Law No 4,595/1964”), also called the Banking Reform Law, established the National Financial System (SFN) and outlined the structure and attributions of the National Monetary Council (CMN). The primary purpose of Law No 4,595/1964 is to regulate the activities of the banking sector, seeking to ensure the stability and security of the financial system and to promote transparency and consumer protection. In addition, the legislation seeks to align with international standards and guidelines, reinforcing the commitment to the integrity and efficiency of the financial system.

The Brazilian SFN is composed of a set of institutions, rules and regulations that structure and govern the country’s financial activities. The operation of the SFN is based on the guidelines established by the CMN, the Central Bank of Brazil (BCB) and the Brazilian Securities and Exchange Commission (CVM), aiming to ensure efficiency in the allocation of resources and promote the stability of the financial system.

SFN regulation is applied to financial institutions in a segmented manner, considering the size of their exposure to risks and the relevance of their international operations. Thus, institutions with greater exposure to risks or with significant international operations are subject to a more extensive and complex set of regulations. On the other hand, those with lower exposure to risks or with reduced external performance follow

fewer complex rules, without prejudice to prudential requirements in both cases.

In addition, the rules governing the SFN are established by joint decisions of the CMN, the BCB and the CVM. The proposals submitted to these joint bodies are based on technical studies and recommendations from multilateral entities that formulate financial standards, often through public consultations.

Finally, Law No 4,728, of 14 July 1965 (“Law No 4,728/1965”) stands out, as it is responsible for regulating the capital market in Brazil, establishing rules for its operation.

2. Authorisation

2.1 Licences and Application Process

CMN Resolution No 4,970/2021 establishes the normative guidelines to regulate the authorisation procedures related to the operation of financial institutions that depend on prior authorisation from BCB. This rule outlines the essential requirements for granting authorisation, including:

- the economic and financial capacity of the controllers, individually or jointly, compatible with the capital necessary for the structuring and operation of the institution, as well as the contingencies arising from the market dynamics;

- the lawful origin of the resources used in the payment of the capital stock, in the acquisition of control and qualified interest;
- the economic and financial viability of the enterprise;
- compatibility of the information technology infrastructure with the business complexity and risks;
- the unblemished reputation of holders of positions in statutory or contractual bodies, of controllers and holders of qualified interest, in the case of individuals;
- knowledge, among the administration, of the business line, the segment in which the institution intends to operate, the market dynamics, the sources of operational resources, the management of the activities and risks associated with them;
- technical training of the administrators, compatible with the functions to be exercised during their term in office; and
- compliance with the minimum capital and equity requirements provided for in the regulations in force.

To supplement these guidelines, BCB Normative Ruling No 299/2022 describes the procedures, terms and information necessary to instruct authorisation requests regarding financial institutions governed by CMN Resolution No 4,970/2021.

Requests for authorisation must be filed with BCB, addressed to the Financial System Organisation Department (DEORF), accompanied by the relevant documents and information listed in Article 5 of BCB Normative Ruling No 299/2022.

With regard to terms, BCB Resolution No 317/2023 establishes the maximum term for the administrative decision on requests for public acts for the release of economic activity submitted to BCB. The rule sets a limit of three 360 days for the analysis and decision on the authorisation for the organisation and operation of financial institutions, thus ensuring that a reasonable amount of time is allowed for the examination of requests submitted to the regulatory authority.

Once the authorisation for the institution's operation has been granted, BCB must be informed of the start date of the activities within five days after the com-

mencement of operations, by means of registration in the Central Bank's Information System on Entities of Interest ("Unicad").

Brazil has a diverse range of financial institutions, classified according to the line and type of activity they carry out, namely:

- development agencies;
- savings and loans associations;
- commercial banks;
- foreign exchange banks;
- development banks;
- investment banks;
- multiple banks;
- mortgage companies;
- credit unions;
- leasing companies;
- foreign exchange brokerage companies;
- securities brokerage companies;
- direct credit companies;
- credit, financing and investment companies;
- real estate credit companies;
- micro-entrepreneur and small business credit companies;
- bonds and securities distributing companies;
- inter-personal loan companies; and
- service confederations.

Each of these institutions operates in different segments, fulfilling specific roles in the national financial system, according to the activities and services they are authorised to perform by BCB.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Within the Brazilian legislative framework, Law No 4,595/1964 gives BCB responsibility for granting authorisations for the acquisition and/or change of control of financial institutions. National Monetary Council Resolution No 4,970/21 regulates the authorisation process related to these institutions, especially in matters of control, with the following definitions.

- A controller is a person or group of persons (control group) that holds:
 - (a) in joint-stock companies, the majority of the voting capital; or
 - (b) 75% of the capital stock in limited liability companies.
- A control group is a group of persons (individuals or legal entities) bound by a voting agreement or common control, that have control of the financial institution in a direct or indirect manner.
- A qualified interest holder is a person (individual or legal entity) that is not a controller, but holds 15% of the voting capital or 10% of the non-voting capital of a company that indirectly controls a financial institution, or that holds:
 - (a) direct interest of 15% of the voting capital; or
 - (b) direct interest equivalent to 10% or more of the non-voting capital; or
 - (c) control of a company that holds 15% of the voting capital or 10% of the non-voting capital.

The control of financial institutions may only be exercised by individuals, institutions authorised by BCB, foreign financial institutions or national legal entities whose corporate purpose is exclusively to hold equity interest in financial institutions.

The change of control must be previously authorised by BCB, which has up to 360 days to analyse the feasibility of the change of control, based on the following requirements:

- a demonstration of the economic and financial capacity of the controllers, individually or jointly, compatible with the capital necessary for the structuring and operation of the institution;
- the lawful origin of the resources used in the acquisition of control and qualified interest; and
- the unblemished reputation of the controllers.

In turn, the assumption of the condition of holder of a qualified interest (that is, the direct or indirect acquisition of 15% of the voting capital or 10% of the non-voting capital of the financial institution) does not require prior authorisation from BCB. However, it is necessary to report the act within 15 days after the occurrence. The same applies to any change in the corporate composition of financial institutions, which

must be informed to BCB, which will have up to 180 days to carry out the analysis.

4. Governance

4.1 Corporate Governance Requirements

CMN Resolution No 4,595/2017 establishes that financial institutions authorised by BCB must implement and maintain a compliance policy appropriate to the nature, size, complexity, structure, risk profile and business model of the institution, in order to ensure effective compliance risk management. Such a policy must clearly define the purpose and scope of the compliance function, as well as the responsibilities involved, avoiding conflicts of interest. In addition, it must:

- specify the position of the compliance unit in the organisational structure;
- ensure the independence and authority necessary for the performance of the functions;
- allocate sufficient resources;
- ensure free access to information; and
- provide channels of communication with the executive board, the board of directors and the audit committee, if any.

Those responsible for compliance have a duty to test and assess the institution's adherence to the legal framework, non-constitutional regulations and codes of ethics, in addition to supporting the board of directors and the executive board in the correct application of these regulations. It is also up to these professionals to train employees and outsourced service providers on topics related to compliance, ensuring the dissemination of risk knowledge and mitigation.

BCB Normative Ruling No 299/2022 supplements this framework by requiring that the documents for requesting the institutions' operating authorisation include a business plan or executive summary, which must include the corporate governance standards and structure adopted, duly compatible with the complexity and risks of the business.

The Code of Best Corporate Governance Practices, developed by the Brazilian Institute of Corporate

Governance (IBGC) and currently in its 6th edition, is not mandatory but is widely used as a reference by financial institutions in the improvement of their governance practices. This new edition places ethics at the centre of its guidelines, expanding its application beyond the protection of partners against abuse and fraud to also encompass relationships with stakeholders, including employees, suppliers, customers and society in general, reinforcing the role of institutions in ethical and responsible action at all levels.

Another relevant aspect brought by the 6th edition is the emphasis on the clear definition of the purpose of organisations, which should guide their strategies and culture, focusing on the creation of shared value between partners and other stakeholders. This approach reflects a more comprehensive view of corporate governance, which goes beyond maximising value for shareholders, also seeking to create value for society and the environment.

Finally, the Code introduces expanded diversity and inclusion guidelines, which must now be observed in the appointment of directors and auditors, as well as in the composition of the executive board. In addition to the gender criterion, diversity must cover colour or race, ethnicity, sexual orientation and different professional experiences, reflected in the competency matrix. This approach seeks to foster a plural environment that promotes innovation and sustainability, while ensuring the organisation's sensitivity to the economic, social and environmental impacts of its operations.

4.2 Registration and Oversight of Senior Management

With regard to the registration and supervision of senior management, CMN Resolution No 4,970/2021 establishes that the taking of office and the exercise of elected or appointed positions for the senior management of financial institutions are subject to prior authorisation by BCB. Such authorisation depends on compliance with requirements related to the unblemished reputation of the candidates, as well as the demonstration of technical training compatible with the functions to be performed during the term of office.

For proving an unblemished reputation, factors such as the following are considered:

- the absence of criminal proceedings or police investigations;
- judicial or administrative actions related to SFN or the SPB;
- proceedings concerning insolvency, liquidation, intervention, bankruptcy or judicial reorganisation;
- breach of obligations; and
- other similar situations, occurrences or circumstances.

In the assessment of these situations, the relevance, severity, recurrence and specificities of each case are taken into account.

Regarding the technical training of senior management members, BCB analyses the skills and qualifications required to perform the functions, ensuring that they are compatible with the nature, size, complexity and risks involved in the institution's operations.

The conditions established for the exercise of senior management positions include:

- the obligation to reside in Brazil for management positions;
- the absence of legal impediments, including convictions for bankruptcy crimes, tax evasion, malfeasance, active or passive corruption, bribery, embezzlement, infractions against the economy, forgery, infractions against property or SFN, or even convictions that prohibit access to public positions, even temporarily;
- the non-declaration of disqualification or suspension for the exercise of positions in statutory or contractual bodies of institutions authorised to operate by BCB; and
- the absence of a declaration of bankruptcy or insolvency.

In addition, BCB reserves the right to determine the removal of members of statutory or contractual bodies in the current term of office if circumstances are identified at any time that characterise non-compliance with the unblemished reputation requirements and the other requirements mentioned above.

4.3 Remuneration Requirements

CMN Resolution No 5,177/2024 regulates the compensation policy applicable to the administrators of financial institutions authorised to operate by BCB. The rule establishes that institutions must implement and maintain a compensation policy based on criteria that consider the nature, size, complexity, structure, risk profile and business model of the institution, in order to avoid encouraging behaviours that may increase risk exposure beyond prudent levels. In addition, this policy must be based on transparent criteria that ensure the absence of discrimination.

With regard to the compensation of the administrators responsible for the areas of internal control, risk management, compliance and internal audit specifically, the Resolution determines that it must be structured in such a way as to attract qualified and experienced professionals, without connection to the performance of the business areas, thus avoiding conflicts of interest.

The compensation policy requires approval by the general meeting in credit unions, while in other financial institutions it is up to the board of directors to approve and supervise the policy, including its planning, execution, control and review.

With regard to variable compensation, the Resolution allows it to be paid through various instruments, such as cash, shares or other assets, in proportion to the responsibility and function of the administrator. The rule also emphasises that the ratio of fixed to variable compensation must be balanced.

For the payment of variable compensation, the following criteria, among others, must be observed:

- In determining the overall amount and the allocation of compensation, the current and potential risks, the overall result of the institution, the cash generation capacity, the economic environment and the long-term prospects must be considered.
- In the individual compensation of the administrators, the individual performance, the performance of the business unit and the performance of the institution as a whole, in relation to the risks assumed, must be assessed.

For institutions with shares traded on the stock exchange or that issue stock-based instruments (Stock Options), 50% of the variable compensation must be paid in shares. For other institutions, the compensation must consider the variation in the book value of net equity. In addition, at least 40% of the variable compensation must be deferred for future payment, with a progressive increase of this percentage according to the level of responsibility of the administrator.

Finally, institutions that are registered as publicly held companies and that are leaders of a prudential conglomerate classified in Segments S1, S2 and S3 shall constitute a statutory body called a “compensation committee”. This committee shall prepare a document called “compensation committee report”, on an annual basis, referring to the base date of 31 December.

5. AML/KYC

5.1 AML and CFT Requirements

BCB plays an essential role in the Brazilian System for Preventing and Fighting Money Laundering and Terrorism Financing, contributing significantly to the mitigation of risks and their financial repercussions within the scope of SFN. In addition, BCB is responsible for regulating and supervising the activities of financial institutions and other entities authorised to operate by BCB in the fight against money laundering and terrorist financing (PLD/FT).

In this sense, Circular Letter No 3,978, of 23 January 2020, provides for the policy, procedures and internal controls to be adopted by institutions authorised to operate by BCB, in order to prevent the use of the financial system for the practice of crimes of laundering or concealment of assets, rights and values and terrorist financing. The main requirements to be implemented by the institutions are as follows:

- implementing and maintaining an internal policy based on principles and guidelines that seek to prevent PLD/FT practices, compatible with the risk profiles of customers, the institution, operations, transactions, products, services and employees, partners and outsourced service providers;

- having a governance structure in order to ensure compliance with the policy mentioned above and the PLD/TF internal procedures and controls;
- carrying out internal assessment with the purpose of identifying and measuring the risk of using their products and services in money laundering and terrorist financing;
- implementing procedures aimed at knowing their clients, including procedures that ensure due diligence in their identification, quantification and classification, including for administrators of corporate clients;
- implementing procedures that allow them to qualify their clients as politically exposed persons;
- maintaining records of all operations carried out, products and services contracted, including withdrawals, deposits, contributions, payments, receipts, transfers of funds and transactions in the foreign exchange market;
- implementing procedures for monitoring, selecting and analysing transactions and situations in order to identify and pay special attention to suspicions of money laundering and terrorist financing;
- reporting transactions or suspicious situations of money laundering and terrorist financing to the Council for Financial Activities Control (COAF);
- implementing procedures aimed at knowing their employees, partners and outsourced service providers, including identification and qualification procedures;
- establishing monitoring and control mechanisms, in order to ensure the implementation and adequacy of the policy mentioned in the first point above, the procedures and internal controls; and
- assessing the effectiveness of the policy, procedures and internal controls.

In this context, BCB is also responsible for:

- monitoring and supervising the compliance of supervised entities with the rules in force;
- maintaining the Customer Register of the National Financial System (CCS), which is set out as a system for registering the relations between financial institutions and other entities authorised by BCB and customers;
- communicating:
 - (a) evidence of crimes related to money laundering and terrorist financing to COAF;
 - (b) evidence of crimes of public action identified in the exercise of its duties to the Public Prosecutor's Office; and
 - (c) any irregularities and administrative unlawful acts of which it becomes aware to the competent public agencies;
- applying administrative sanctions when violations of the rules by the supervised entities are identified; and
- participating in relevant national and international forums.

By adequately complying with the regulations established by BCB, the supervised entities promote the effectiveness of the PLD/FT system, through risk management and the implementation of effective policies, procedures and controls, assisting the state in the identification of financial transactions that may present suspicious characteristics and that, therefore, require investigation.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Credit Guarantee Fund (FGC) is a non-profit civil association, established by CMN Resolution No 2,197/1995, with the purpose of guaranteeing credits to customers of financial institutions authorised to operate by BCB and that are associated with FGC. The coverage offered by FGC includes deposits in financial institutions up to the limit of BRL250,000 per individual or legal entity, per institution, observing the ceiling of BRL1 million every four years, considering the total number of institutions in which the customer has funds. FGC is supported by monthly contributions from Brazilian financial institutions, corresponding to 0.0125% of the total amounts traded in products covered by the fund.

Deposits covered by FGC include:

- deposits in cash or deposits withdrawable upon prior notice;
- savings deposits;
- bills of exchange;

- mortgage bills;
- real estate bills of credit;
- agribusiness bills of credit;
- term deposits, with or without the issuance of a certificate, such as the Bank Deposit Receipt (RDB) and the Bank Deposit Certificate (CDB);
- deposits in accounts not operated by checks, intended for the registration and control of the flow of funds for the payment of salaries, maturities, retirements, etc; and
- repurchase transactions that have as their object bonds issued after 8 March 2012 by a related company.

BCB Resolution No 102/2021 regulates the preparation and sending of information related to financial instruments guaranteed by FGC. According to this rule, financial institutions must have systems and controls capable of generating an electronic file, within two business days, containing:

- identification of the holder of the secured credit;
- the type of financial instrument representing the credit;
- an identifier of the financial instrument;
- the acquisition date of the instrument by the credit holder;
- the classification of the credit holder and condition of ownership control of the financial instrument guaranteed by FGC; and
- the amount of the credit held by the holder.

In addition, institutions are required to submit, by the tenth business day of each month, aggregate information on secured credits to FGC, based on the position of the last business day of the previous month. This information must cover the classification of the type of financial instrument guaranteed, the type of credit holder, the ownership control condition and the amount range of the credits held by the holders.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

The Basel III rules were incorporated into the Brazilian legal system in 2013, through four resolutions of

the National Monetary Council (CMN) and 15 circular letters issued by BCB, which established guidelines for their implementation in the national banking system. The adoption of these rules in Brazil occurred before the completion of the Basel II implementation schedule, which was scheduled for the end of 2012. This anticipation resulted from the outbreak of the 2008 global financial crisis, which evidenced the inadequacy of the rules to mitigate systemic risk in force at the time.

In this sense, CMN Resolution No 4,557/2017 aims to regulate the risk management structure and the capital management structure of the institutions authorised to operate by BCB, classified in Segments S1, S2, S3 and S4. The rule obliges these institutions to implement a continuous and integrated risk and capital management structure, as well as a policy for disclosing information on these topics.

According to the rule, institutions shall also prepare a Risk Appetite Statement (RAS) and document risk appetite levels, considering:

- the levels of risks that the institution is willing to assume, broken down by type of risk and, where applicable, by different time horizons;
- the ability of the institution to manage risks effectively and prudently;
- the strategic objectives of the institution; and
- the conditions of competitiveness and the regulatory environment in which the institution operates.

The risk management structure must identify, measure, assess, monitor, report, control and mitigate the following matters:

- the credit risk to which the institution is subject in a material manner;
- the market risk to which the institution is subject in a material manner;
- the risk of interest rate variations for instruments classified in the banking portfolio (IRRBB) to which the institution is subject in a material manner;
- the operational risk;
- the liquidity risk;
- the social risk;
- the environmental risk;

- the climate risk;
- the country risk and the transfer risk to which the institution is subject; and
- other relevant risks, according to criteria defined by the institution, including those not covered in the calculation of the amount of risk-weighted assets.

With regard to the capital amount requirement, CMN Resolution No 2,607/1999 determines the minimum limits of paid-up capital and shareholders' equity that must be permanently observed by the institutions authorised to operate by BCB, namely:

- BRL17.5 million for commercial banks and commercial portfolios of multiple banks;
- BRL12.5 million investment banks, development banks, corresponding portfolios of multiple banks and savings banks;
- BRL7 million for credit, financing and investment companies, real estate credit companies, leasing companies and corresponding multiple bank portfolios;
- BRL3 million for mortgage companies;
- BRL1.5 million for bonds and securities brokerage companies and bonds and securities distributing companies that manage investment funds in the modalities regulated by BCB (except investment funds in units of investment funds) or investment companies that are authorised to carry out repurchase and resale agreements;
- BRL550,000 for bonds and securities brokerage companies and bonds and securities distributing companies that carry out activities not included in the previous item; and
- BRL350,000 for foreign exchange brokerage companies.

For institutions operating in the free rate exchange market, BRL6.5 million shall be added to the amounts of paid-in capital and shareholders' equity established above.

Regarding the quality of capital, under CMN Resolution No 4,577/2017, capital management is carried out with the monitoring and control of the capital maintained by the institution, the assessment of the need for capital to face the risks that the institution is exposed to and the planning of goals and capi-

tal needs, considering the strategic objectives of the institution.

With regard to liquidity, CMN Resolution No 4,557/2017 characterises liquidity risk as the possibility of a financial institution not being able to honour its obligations, whether expected or unexpected, current or future, including those arising from guarantees, without compromising its daily operations and without incurring significant losses. In addition, it covers the risk of the institution being unable to settle a position at market value, due to its volume being significantly high compared to what is normally traded, or as a result of a possible discontinuity in the market.

The risk management structure shall additionally provide for a liquidity contingency plan and for liquidity risk policies, strategies and processes that ensure:

- identification, measurement, assessment, monitoring, reporting, control and mitigation of liquidity risk in different time horizons, including intra-day, in normal or stressful situations, including the daily assessment of transactions with settlement terms of less than 90 days;
- maintenance of an adequate inventory of net assets that can be readily converted into cash in stressful situations;
- maintenance of a fund-raising profile appropriate to the liquidity risk of assets and exposures not accounted for in the institution's balance sheet; and
- adequate diversification of sources of fund-raising.

Liquidity risk management shall consider all operations carried out in the financial and capital markets, as well as possible contingent or unexpected exposures, including those associated with settlement services, the provision of accommodations and guarantees and contracted and unused facilities and liquidity lines. The institution shall also individually consider the liquidity risk in the jurisdictions where it operates and in the currencies to which it is exposed, observing any restrictions on the transfer of liquidity and convertibility between currencies, such as those caused by operational problems or by impositions made by a country.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

In the performance of its institutional mission to ensure that the financial system is sound and efficient, BCB has the power to intervene in the institutions under its jurisdiction through the enactment of prudential and recovery measures and resolution regimes, either in order to restore the normal course of operation or to interrupt its activities in an orderly manner, mitigating the contagion risk.

The legal framework that defines these measures and the performance of BCB as a Resolution Authority comprises the following:

- Law No 6,024/1974, which provides for the intervention and out-of-court liquidation of financial institutions;
- Decree Law No 2,321/1987, which instituted, in defence of public finances, the Temporary Special Administration Regime (RAET) in private and non-federal public financial institutions; and
- Law No 9,447/1997, which provides for the joint and several liability of controllers of institutions subject to the regimes referred to in Law No 6,024/1974 and Decree Law No 2,321/1987, the freezing of their assets, the liability of accounting audit companies or independent accounting auditors, and the privatisation of institutions the shares of which are expropriated.

The preservation of financial stability is the public good that BCB seeks to preserve by analysing the scenarios and defining the moment, strategies and tools to act on an institution whose operational continuity proves to be unfeasible or compromises the health of the financial system.

In view of the potential negative effects on both the financial market and economic activities that are affected by the enactment of a resolution regime, BCB primarily seeks for institutions to adopt market solutions that preserve value and productive activity, without prejudice to sanctioning those responsible for any irregularities that contributed to the institution's non-feasibility.

In this sense, when a financial institution presents a serious impairment of its assets or difficulty in complying with its commitments, BCB may direct its controllers to contribute the necessary resources, transfer control, reorganise the company or adopt recovery measures, also known as market solutions.

In this sense, recovery tools are strategies adopted by the institution while it is still in operation, with the purpose of restoring the feasibility of its transactions. CMN Resolution No 4,502/2016 determines that larger institutions prepare a recovery plan, which consists of a set of information and strategies that can be adopted when any indicator shows a deterioration, present or expected, in the economic or liquidity situation. The recovery plan can be defined, therefore, as the set of actions presented by the institution to restore its solidity and feasibility, in case it faces a situation that jeopardises the continuity of its business.

Without prejudice to the actions taken by the institution itself, CMN Resolution No 4,019/2011 authorises BCB to determine the adoption of preventative prudential measures by the institution, such as:

- the adoption of additional controls and operating procedures;
- a reduction of the degree of exposure risk;
- compliance with additional amounts to PRE;
- compliance with more relative operating limits;
- recomposition of liquidity levels;
- the adoption of management on a co-management basis, in the case of a credit union;
- limitation or suspension of an increase in the compensation of administrators, payments of instalments of variable remuneration of administrators and distribution of results or, in the case of credit unions, of surpluses, in an amount higher than the minimum legal limits;
- limitation or suspension of the practice of operational modalities or certain types of active or passive operations, the exploitation of new lines of business, the acquisition of interest, directly or indirectly, in the capital of other companies, financial or non-financial, and the opening of new premises; and
- disposal of assets.

Depending on the evolution and severity of the problem, BCB may intervene directly in the institution through an out-of-court liquidation, intervention or RAET. When a resolution regime is determined, the controllers lose the management power of the institution, which is then managed by a liquidator, intervenor or managing board, appointed by BCB, according to the type of regime.

The regime to be adopted is in accordance with the problem presented by the institution, the impact on the financial system and other situations analysed on a case-by-case basis. Resolution regimes are guided by public interest, the preservation of financial stability and the non-interruption of critical functions for the real economy.

The following resolution regimes stand out.

- Out-of-court liquidation is the insolvency regime that is intended to interrupt the operation of the institution and promote its withdrawal from SFN. It is adopted when the insolvency situation cannot be recovered and the interruption of the institution's operation does not compromise financial stability.
- Intervention is adopted when there is any possibility of recovery. Activities are temporarily suspended and the intervention lasts up to 12 months. As the case may be, the intervention will cease if there is a resumption of normality or, failing that, if there is a decree of out-of-court liquidation or bankruptcy.
- RAET does not affect the normal activities of the institution and is adopted when the institution performs critical functions for the real economy, due to its size or operational complexity, or when the abrupt stoppage of its operation may cause risks to financial stability. RAET will end if activity is normalised or if there is a market solution for the institution. If there is no market solution, the federal government may take control. If it is possible to adopt measures to preserve critical functions and financial stability, RAET may end by the decree of out-of-court liquidation.

9. ESG

9.1 ESG Requirements

Within the scope of ESG regulation in Brazil, CMN Resolutions No 4,943/2021, No 4,944/2021 and No 4,945/2021 and BCB Resolutions No 139/2021 and No 151/2021 stand out. These rules have the common purpose of providing for social, environmental and climate risks.

CMN Resolution No 4,943/2021 provides for the structure of risk management, capital management and information disclosure policy, and is directed at financial institutions authorised to operate by BCB that fall into the following segments:

- S1 – multiple, commercial, investment, exchange and savings banks that have a size equal to or greater than 10% of GDP or that carry out relevant international activity, regardless of the size of the institution;
- S2 – multiple, commercial, investment, exchange and savings banks that have a size less than 10% and equal to or greater than 1% of GDP, and other institutions with a size equal to or greater than 1% of GDP;
- S3 – institutions with a size less than 1% and equal to or greater than 0.1% of GDP; and
- S4 – institutions with a size less than 0.1% of GDP.

In this sense, CMN Resolution No 4,943/2021 deals with social and environmental risks, and also includes the observance of climate risks. The rule requires the identification, assessment, classification, measurement and establishment of mechanisms to monitor these risks, as well as the establishment of a management structure and minimum prudential requirements to be observed for each type of risk.

CMN Resolution No 4,944/2021 also refers to social, environmental and climate risks for institutions classified in Segment S5 – ie, institutions of less than 0.1% of GDP that use a simplified optional methodology for calculating the minimum requirements of Reference Equity (PR), Level I and Principal Capital, except multiple, commercial, investment, foreign exchange and savings banks and institutions not subject to PR calculation.

CMN Resolution No 4,945/2021 deals with the establishment of the Social, Environmental and Climate Responsibility Policy (PRSAC) by institutions in Segments S1, S2, S3, S4 and S5 authorised to operate by BCB.

This rule establishes the need for institutions to establish and implement actions with a view to effectiveness and to strengthen governance and transparency requirements in relation to PRSAC and the actions implemented. To this end, PRSAC must be disclosed to the external public together with the actions that ensure its effectiveness, and must be implemented according to the profile of each institution, observing its business model, the nature of its operations and the complexity of its products, services, activities and process, in addition to considering the institution's strategic objectives and competitive conditions and the regulatory environment in which the institution operates.

Regarding governance, the rule defines certain functions for different positions. For example, the approval and review of PRSAC is the responsibility of the board of directors, and shall be made at least every three years or when events considered relevant occur. A social, environmental and climate responsibility committee, linked to the board of directors, is mandatory for S1 and S2 and optional for S3, S4 and S5; when not organised, the executive board shall assume the duties of said committee.

Prudential conglomerates shall have a unified PRSAC. One of the participating institutions shall be given responsibility for the policy, and designate a responsible officer and create the committee.

BCB Resolution No 139/2021 provides for the disclosure of the Social, Environmental and Climate Risks and Opportunities Report ("GRSAC Report") by the institutions authorised to operate by BCB that fall under Segments S1, S2, S3 and S4.

The rule is inspired by the recommendations of the Task Force on Climate Related Financial Disclosure (TCFD), which seeks to promote transparency and market discipline, enabling identification of the institutions' commitment to a sustainable and inclusive

economy, in addition to improving the perception of risks and supporting decisions.

The GRSAC Report shall address governance in risk management, its impacts on the institution's strategies and the environmental, social and corporate governance risk management processes.

BCB Resolution No 151/2021 requires financial institutions in Segments S1, S2, S3 and S4 to submit information to BCB on the assessment of social, environmental and climate risks. The submission shall follow what is provided for in PRSAC of each institution and in the risk management rules, and it is not necessary to provide information not required by these regulations.

10. DORA

10.1 DORA Requirements

With regard to digital operational resilience, CMN Resolution No 4,893/2021 establishes that institutions authorised to operate by BCB are required to implement and maintain a cybersecurity policy. This policy must be formulated based on principles and guidelines aimed at ensuring the confidentiality, integrity and availability of the data, as well as the information systems used by these institutions.

In addition, the cybersecurity policy must be aligned with the institution's size, risk profile and business model, considering the nature of the transactions and the complexity of the products, services, activities and processes that the institution develops. The sensitivity of the data and information under the institution's responsibility shall also be assessed in the preparation of the policy, thus ensuring the adequate protection of information.

CMN Resolution No 4,893/2021 also establishes that institutions authorised to operate by BCB must prepare an incident response and action plan, which must include the necessary measures to adapt their organisational and operational structures to the principles and guidelines of the cybersecurity policy. This plan shall include the routines, procedures, controls and technologies to be employed in preventing and

responding to incidents. In addition, the rule obliges institutions to submit, annually, a detailed report on the implementation of the incident response and action plan, with a base date of December 31.

Similarly, CVM Resolution No. 35/2021 establishes rules and procedures to be observed in the intermediation of transactions with securities on regulated markets, and imposes relevant provisions concerning cybersecurity. Such provisions include an obligation for institutions authorised to act as intermediaries in the distribution system, both on their own behalf and on behalf of third parties, in the trading of securities on regulated markets (“Intermediary”), to develop an information security policy. Such policy must cover:

- the processing and control of customer data;
- cybersecurity;
- the guidelines for assessing the relevance of security incidents, including cybersecurity, and the circumstances in which affected customers must be communicated; and
- the contracting of relevant services provided by third parties.

The information security policy must be compatible with the size, risk profile and business model of the Intermediary, as well as the nature of the transactions, the complexity of the products, services, activities and processes and the sensitivity of the data and information under its responsibility.

In addition, such policy must be applicable to employees, agents and service providers, providing for the periodicity with which they must be trained in relation to the rules, procedures and internal controls aimed at ensuring the confidentiality, authenticity, integrity and availability of sensitive data and information.

In the same context, it is worth highlighting Law No 13,709/2019, known as the General Data Protection Law (LGPD), which came into force in September 2020 and represents a regulatory framework for the processing of personal data in Brazil, covering both physical media and digital platforms, applicable to public and private institutions.

LGPD gives the individual (referred to as a “Subject”) a central role in the legal relationships involving the processing of their data, not only by regulating the protection of personal data but, above all, by electing “informative self-determination” as the essential basis, which means that the Subject has the right to decide which data will be used, in addition to determining the limits and term of its use.

Such rights impose a series of duties on those who process data, notably financial institutions, which routinely handle sensitive information of their customers. LGPD thus establishes a series of obligations aimed at ensuring security, privacy and transparency in the use of this information, reinforcing the need for adequate measures for the protection of personal data.

For financial institutions, strict compliance with LGPD and with the aforementioned regulations is not limited to mere legal compliance, but constitutes a fundamental element for the preservation of customer and market trust, in addition to being crucial for mitigating the risks of sanctions and reputational damage.

11. Horizon Scanning

11.1 Regulatory Developments

The Central Bank of Brazil (BCB) annually promotes BC# Agenda, its main regulatory planning tool, which aims to discuss and implement a set of strategic guidelines focused on reducing credit costs, modernising the regulatory framework and promoting greater efficiency in the national financial system. The programme also seeks to foster financial inclusion, increase competitiveness, promote sustainability and strengthen transparency in financial market operations.

The BC# Agenda is structured in thematic axes that reflect the priorities of the BCB Regulation Board, among which the following stand out: foreign exchange and international capital, prudential regulation, sustainability, rural credit, and innovation.

For the 2025/2026 biennium, within the scope of foreign exchange and international capital, the following central themes stand out: (i) the regulation of the

use of virtual assets in foreign exchange and international capital operations; (ii) the simplification and improvement of the efficiency of interbank operations in the foreign exchange market, including by reviewing information requirements; (iii) the development of a normative framework for private offset of credits between residents and non-residents; and (iv) the modernisation of the regulatory treatment applicable to electronic exchange (eFX).

With regard to prudential regulation, the following objectives are highlighted: (i) the completion of the implementation of Basel III, with the introduction of the new framework for market risk (FRTB – Fundamental Review of the Trading Book) and review of the leverage ratio; (ii) the setting of individualised risk management requirements for certain institutions that are part of prudential conglomerates; (iii) the finalisation of the prudential regulation applicable to Payment Institutions; and (iv) the adjustment of the prudential framework to incorporate the treatment of exposure to virtual assets.

In the context of sustainability, the main topics to be discussed include: (i) the inclusion of quantitative inputs in the disclosure of data on Social, Environmental and Climate Risk Management (SECRM) in order to improve the comparability and transparency of information; and (ii) the setting of sustainability information disclosure standards in line with the guidelines of the International Sustainability Standards Board (ISSB) and IFRS S1 (which addresses the general requirements for the disclosure of sustainability-related financial information) and IFRS S2 (focused on climate-related disclosures). Both standards aim to allow investors to evaluate companies from the perspective of the sustainability of their businesses, as well as the climate impacts on their operations and assets, in addition to promoting the integration of this information with the financial statements.

In the innovation axis, the main topics under discussion are: (i) the evolution of Open Finance, with the institution of a new governance structure, expansion of the journey for legal entities and improvement of the consent experience, as well as the regulation of the startup journey without redirection; (ii) the regulation of Virtual Asset Service Providers (VASP); (iii) the regula-

tion of Banking-as-a-Service (BaaS), allowing partnerships between financial and non-financial institutions to offer financial services; (iv) the preparation of a study on the need to regulate the processes of issue, bookkeeping and trading of tokenised assets; (v) a study on the risks and impacts of the use of artificial intelligence by financial institutions, with an emphasis on conduct and model risks; and (vi) the creation of a new payment slip modality aimed at the settlement of financial assets, such as trade bills and receivables.

Also in the field of innovation, the following stand out: (i) the expansion of PIX's functionalities, including PIX by approximation, PIX in instalments and PIX under warranty; (ii) the evolution of the Special Return Mechanism (MED 2.0); (iii) the standardisation of interoperability flows between arrangements and registers; and (iv) the regulation of token applicants in payment arrangements.

In addition, there will be discussions on co-operativism, with the objective of establishing, through regulations, the form of organisation and operation of co-operatives as provided for in Complementary Law No 196/2022, which regulates the National Cooperative Credit System. It is also intended, through rulings, to regulate the edition and approval of a catalogue of financial assets by financial institutions, which will serve as a reference for the authorisation processes related to the provision of registration and deposit services of financial assets. Moreover, implementation of the international accounting standards of IFRS 9 – a standard that introduces new requirements for measuring the deterioration of financial assets – will be sought, as well as a new classification and measurement model.

Finally, the agenda includes advances in topics related to conduct and consumer protection, including: (i) the creation of a national base that allows customers to indicate that they do not wish to open accounts in their name, with mandatory consultation by the institutions; (ii) the revision of bank fee rules; and (iii) the updating of the rites and penalties of the sanctioning administrative process within the scope of BCB, including in relation to payment arrangements.

In summary, Agenda BC# 2025/2026 reinforces the consolidation of a more modern, transparent regulatory framework that adheres to international standards with an emphasis on technological innovation, sustainable finance and improved prudential supervision. These initiatives strengthen Brazil's position as one of the most dynamic and advanced jurisdictions regarding financial regulation, promoting greater legal certainty, competitiveness and efficiency in the national financial system.

Trends and Developments

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T Magalhaes Advogados

T Magalhaes Advogados was established over a decade ago as Magalhães | Advogados and derives its core expertise from the financial system, with a specialisation in providing strategic, highly specialised and legally robust solutions to key stakeholders in this sector. Clients include banks, third-party asset managers, brokerage and securities distribution firms, investment funds and investment clubs, and independent investment advisers. As a “full-service”

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Fintech Market Transformations: The Importance Of E-Financeira and Technology's Effects on Fraud

In recent years, the way human beings relate to money has changed radically in a silent, but significant, revolution. The rapid progress of technology, coupled with the increasing digitalisation of everyday life, has made room for a new player on the financial scene – the financial technology company, or fintech. Created from the convergence between finance and technology, such entities have been challenging the logic of traditional banks by offering more dynamic, accessible and customised services with less bureaucracy and significantly reduced costs.

This transformation did not arise by chance. It is a phenomenon that gained strength with the popularisation of smartphones, easier access to mobile Internet and the growing dissatisfaction with bank fees and the slowness of the traditional financial system. Beyond innovation, fintechs have come to represent a response to the structural flaws in the banking system, fostering financial inclusion for previously overlooked segments of society and creating a more dynamic and democratic ecosystem.

According to the Central Bank of Brazil (BCB), fintechs are companies that are bringing innovation to financial markets through the intensive use of technology with the potential to create new business models. They operate mainly through digital platforms, offering online solutions that are transforming the way financial products and services are designed, distributed and consumed. In Brazil, such institutions are grouped into several categories, such as credit, pay-

ment, financial management, investment, insurance, foreign exchange, debt negotiation and multiservice entities, which emphasises the breadth and versatility of the sector.

These institutions are not only digitising traditional processes but also reshaping the basis of the National Financial System (SFN). By offering more efficient, affordable and customised alternatives, in addition to challenging conventional banking models, they are also bringing about regulatory and behavioural changes that directly affect consumers' daily lives.

However, as fintechs gain space and prominence in the SFN, they also deal with increasingly complex risks. Since they operate exclusively in digital environments, these regulated players are structurally exposed to complex technological risks, as the absence of physical contact and the constant interconnection between platforms and institutions – whilst promoting efficiency – makes them sensitive to failures and cyberattacks.

Against this backdrop, digital security is no longer a competitive advantage but an imperative. A breach in an authentication system, a code error, or even a human error can be enough to compromise sensitive data, divert resources, or stall entire operations. The challenge is even greater among fast-growing fintechs, which often prioritise scalability and user experience over solid control and compliance frameworks.

Over and above protecting systems, it is vital that trust – an indispensable asset in the financial markets – be preserved. This is because, when a fintech fails to

ensure the security of its operations, the impact can extend beyond its customer base, spreading throughout the entire chain of interconnected institutions. For example, in a context in which the PIX (Brazilian Instant Payment System) has been established as the main digital payment method in Brazil, any instability raises doubts about the robustness of the ecosystem. In this scenario, the technology that drives innovation must be backed by the same regulatory strictness applied to the traditional banking system.

Alongside technological weaknesses, the significant increase in digital operations has also expanded the scope for increasingly sophisticated frauds. As the system becomes more accessible, dynamic and interconnected, so do the opportunities for illicit actions, which often use the agile structure of fintechs to circumvent control and inspection mechanisms.

Recent cases demonstrate how these systemic weaknesses can be strategically exploited. In July 2025, for example, an attack directed at a technology company for PIX environment connection exposed critical flaws in the intermediation between fintechs and the Brazilian Payment System (SPB) responsible for processing, among others, transactions via PIX. The incident, initially treated as a hacker intrusion, turned out to be even more serious: the investigation revealed the internal collaboration of an employee of the company, who admitted participation in the criminal scheme.

Also in August 2025, the Hidden Carbon Operation (*Operação Carbono Oculto*), launched by the Brazilian Federal Revenue Service in cooperation with several control agencies, brought to light one of the largest tax evasion and money laundering schemes ever identified in the country, involving the fuel sector. The investigation unveiled the use of a payment fintech as a true “parallel bank” for a criminal organisation, responsible for moving more than USD9.6 billion between 2020 and 2024 out of reach of traditional supervisory mechanisms. Through this structure, the criminal organisation carried out financial transactions in a disguised manner and used investment funds to hide the origin and destination of illicit resources, creating multiple layers of intermediation.

Another emblematic case was seen in the same month of the same year when another banking financial technology company responsible for integrating banks into the PIX system suffered an attack that resulted in the embezzlement of some USD130.8 million based on the use of the legitimate credentials of third-party suppliers allowing access to the company’s PIX environment and unauthorised transactions. Although the BCB managed to block around 83% of the amount, the case exposed the vulnerability of connected environments, even though the central infrastructure of the PIX was not compromised.

Subsequently, in September 2025, the São Paulo Civil Police uncovered a fraudulent scheme involving the misuse of the structure known as “Indirect PIX”, which would have moved approximately USD27.7 million. The scam used a fintech that operated as an indirect participant in the SPI linked to a larger financial institution. By creating multiple accounts and strategically splitting large amounts, the suspects sought to make it difficult to track transactions and give the impression of legality to funds of illicit origin. Although the indirect PIX model is provided for and regulated, its misuse in this case revealed significant weaknesses in the mechanisms of supervising and controlling intermediaries in the payment system.

Beyond isolated incidents, such episodes, rather than being one-off occurrences, unequivocally unveiled the regulatory asymmetry that, until then, made it possible for fintechs to operate in areas of low institutional supervision – for a long time, fintechs were not subject to the same requirements imposed on traditional banks. This gap allowed institutions operating large volumes of digital resources to escape obligations such as periodic reports to the BCB, strict compliance standards and internal controls compatible with the risks of the activities they developed. In practice, this created loopholes used by criminals and made it difficult for regulators to act preventatively.

This gap began to be addressed more incisively as of August 2025, with the publication of Normative Ruling No 2,278/2025 of the Federal Revenue Service, which established the classification of fintechs as financial institutions for tax and regulatory inspection purposes. The rule represented a direct response to

the flaws revealed by recent investigations, reinforcing the need for greater transparency, control and cooperation between supervisory bodies.

With the new regulation, fintechs now have the same legal duties as banks: sending detailed information to the Federal Revenue through e-Financeira reporting suspicious transactions to the Financial Activities Control Council (*Conselho de Controle de Atividades Financeiras*, COAF), and implementing more stringent internal controls. This matching aims not only to protect the digital financial system but also to reinforce institutional trust in the innovation environment, closing historically neglected loopholes.

In addition to Normative Ruling No 2,278/2025 of the Brazilian Federal Revenue Service, BCB has also been reinforcing its regulatory action on the sector. Some examples of this include the recent Resolutions No 494, 496 and 498, issued in September 2025, which update and expand the criteria for the incorporation and operation of Payment Institutions (IPs), including fintechs, within the scope of the National Financial System (SFN). These measures range from requirements for technical accreditation to compliance with operational limits, specific insurance requirements, cybersecurity mechanisms and incident reporting duties. In this sense, although they do not address all structural issues completely, these resolutions mark a relevant regulatory framework in the process of regulatory equivalence between fintechs and traditional financial institutions.

Resolution No 494, for example, regulates the requirements for authorisation to operate IPs, requiring greater clarity as to the operational structure and payment services to be offered. Resolution No 496, in turn, deals with the obligations applicable to payment institutions not authorised to operate by the BCB, but that participate in the PIX arrangement, establishing specific rules for their performance. Finally, Resolution No 498 regulates the accreditation of Information Technology Service Providers (PSTIs), imposing strict governance requirements, technical certifications and contracting of liability and operational risks insurance, including coverage for fraud and cybersecurity incidents.

E-Financeira and the progress of digital inspection

Rounding out this progress, BCB Resolution No 150/2021 – still in force and applicable – deals with payment arrangements, a category that includes several fintechs acting as transaction intermediaries. The rule seeks to ensure greater predictability, liquidity and transparency in digital operations, strengthening confidence in new forms of payment.

In this new normative ecosystem, e-Financeira plays a central role as an instrument of surveillance and transparency. It is a platform for mandatory sharing of financial information with the Federal Revenue Service, also used by the BCB as a monitoring tool. Initially restricted to banks, insurance companies and social security entities, its scope was extended to fintechs from Normative Ruling No 2.278/2025, which represents a structuring element in the regulatory equalisation process of the sector.

E-Financeira requires the periodic submission of data on relevant movements, credit operations, transfers, investments and other transactions. This continuous flow of information contributes significantly to strengthening the prevention of money laundering and terrorist financing, while supporting investigations into tax evasion and other illicit practices.

It is important to highlight that this system is aligned with international commitments, such as the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS), restating Brazil's commitment to tax transparency and combating tax evasion on a global scale. Moreover, the increasing use of artificial intelligence tools in the crossing and analysis of data reported by e-Financeira enhances the performance of supervisory bodies, allowing more agile and assertive responses to suspicious transactions.

The expansion of e-Financeira coverage represents not only a technical advance but a paradigm shift in the supervision of the digital financial market. The structured and systematic sharing of data increases the degree of institutional surveillance boosts integration between regulatory entities and expands the capacity to prevent and respond to fraud, evasion and financial crimes.

One can understand that BCB and the Revenue Service clearly indicate that innovation and regulatory responsibility must go hand in hand. The incorporation of fintechs into the SFN core represents not only a technical or bureaucratic change, but also a structural and institutional reorganisation of how the national financial system is designed and governed.

With this new framework, fintechs no longer occupy a marginal space in regulation and take an active role in consolidating a more integral, transparent and resilient environment. This implies not just meeting stricter rules, but also embracing a culture of compliance, governance and risk management compatible with the size and complexity of the digital operations they carry out.

In summary, the institutional message is clear: innovation will continue to be welcome as long as it is supported by appropriate regulatory maturity. The future of the financial market will be digital, but it will also be regulated, safe and responsible, within an ecosystem in which technology, supervision and trust go hand in hand.

With recent regulatory advances, it is evident that the BCB and the Federal Revenue are promoting a deep transformation in the regulatory treatment of fintechs. The expansion of supervision over these regulated players, through instruments such as e-Financeira, new resolutions and the reinforcement of compliance obligations, constitutes a coordinated institutional response to the growing complexity of the digital financial system. In this new scenario, the control bodies seek not only to contain risks but also to provide legal certainty, predictability and stability to the payment and credit ecosystem in the country.

Brazil is thus moving towards structurally consolidating an environment in which technological advancement goes hand in hand with institutional solidity, fostering a more reliable and secure market that is ready for the challenges of an increasingly digital economy.

BULGARIA



Law and Practice

Contributed by:

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Kinstellar

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Kinstellar is a leading independent law firm across Central and Eastern Europe (CEE), Southeast Europe (SEE) and Central Asia, with offices in Austria, Bulgaria, Croatia, the Czech Republic, Hungary, Kazakhstan, Romania, Serbia, Slovakia, Turkey, Ukraine and Uzbekistan. Launched in 2014, Kinstellar's Sofia office comprises 25 lawyers recognised for their in-depth knowledge of the market. The team focuses on complex, cross-border financings and offers the entire spectrum of financing solutions, including project finance, refinancing, restructuring and acquisi-

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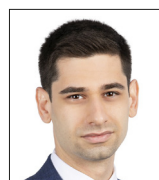
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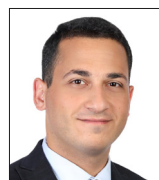
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KINSTELLAR

1. Legal Framework

1.1 Key Laws and Regulations

The Bulgarian banking sector is governed by national legislation harmonised with EU standards. The Bulgarian National Bank (BNB) serves as the supervisory authority for banks in Bulgaria and works in close co-operation with the European Central Bank (ECB) to ensure the soundness and stability of the banking system. The principal laws and regulations governing Bulgaria's banking sector include the following.

- **Bulgarian National Bank Act (BNBA):** This Act establishes the authority of the BNB, which functions as Bulgaria's central bank. It covers areas such as monetary policy, payment system regulation, the supervision of credit institutions, and the functions and responsibilities of the BNB as the central bank of Bulgaria, a new eurozone member state.
- **Credit Institutions Act (CIA):** This Act serves as the core legal framework for the operation of credit institutions in Bulgaria. It defines the procedures for licensing, as well as the requirements for acquiring or increasing control over a bank, corporate governance, capital adequacy, liquidity and risk management. It is transposed into national legislation: Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (the "Capital Requirements Directive"; CRD), and several other EU Directives related to banking.
- **Payment Services and Payment Systems Act:** This legislative Act defines the framework and institutions that enable electronic and cash-based fund transfers within the country, regulated primarily by the BNB. These include banks, payment institutions and fintech companies that operate platforms for credit transfers, direct debits, card payments and instant payments, ensuring secure and efficient financial transactions across Bulgaria and the EU.
- **Introduction of the Euro in the Republic of Bulgaria Act:** As Bulgaria is joining the eurozone on 1 January 2026, this Act regulates various aspects of the introduction of the euro as the lawful currency of the country, including aspects that are relevant for the functioning of banks in Bulgaria.
- **Recovery and Resolution of Credit Institutions and Investment Firms Act (RRCIIFA) –** This Act transposes into national legislation – ie, Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (the "Bank Recovery and Resolution Directive"; BRRD), and regulates the recovery and resolution of banks and investment firms.
- **Insolvency of Banks Act (IBA):** This Act is designed to address the specifics of a bank insolvency and to protect creditors' and depositors' interests in such situations.
- **Measures Against Money Laundering Act (MAMLA) and Measures Against the Financing of Terrorism and of the Proliferation of Weapons of Mass Destruction Act:** These Acts establish obligations for credit institutions and other designated entities

in relation to the prevention of money laundering and financing of terrorism.

- European Union Regulations: As an EU member, Bulgaria complies with European banking rules such as the CRD and the Capital Requirements Regulation (CRR), which establish uniform standards for capital adequacy and liquidity across EU banks.
- Secondary legislation: The BNB has published a range of subordinate legislative acts (mostly Ordinances) to implement, clarify or provide details on how national laws should be applied in practice.

2. Authorisation

2.1 Licences and Application Process

The CIA, in alignment with the CRR, defines a bank (credit institution) as a legal entity the core business activity of which is to receive deposits from the public and grant financing for its own account – at its own risk. Such activity requires a licence.

Bulgarian National Bank and European Central Bank

The licensing procedure starts with an application by the bank applicant being submitted to the BNB, accompanied by various documents including, but not limited to:

- the foundational documents of the bank applicant;
- documents pertaining to the subscribed shares in the capital of the bank applicant;
- a detailed business plan covering at least three years;
- an overview of the management and organisational structure of the bank applicant;
- an overview of the internal audit systems;
- information about the management and supervisory boards (or the board of directors, in case of a one-tier structure); and
- information about the shareholders holding, directly or indirectly, 3% or more of the bank applicant's share capital.

The ECB, in co-operation with the BNB, approves the issuance of a bank licence within three months as of the filing of the application. If the application and the

accompanying documents are incomplete, the three-month term lapses once all documents and information for the application have been provided. In practice, the procedure may take from six to nine months. Communication with the regulators is carried out in the form of official correspondence through the BNB. The fee for processing and reviewing the application for a bank licence is BGN100,000 (approximately EUR51,129).

Restrictions on Licensed Banks' Activities: Ancillary Activities of Banks

Banks (whether local or licensed in another EU state and passported in Bulgaria) may only perform the services covered by their licence. Banks licensed in other EU members states may begin their activity in Bulgaria only after the BNB has been notified by the competent authority that issued the licence. Banks incorporated in countries outside the EU may carry out banking activities in Bulgaria only after establishing a branch and obtaining a licence for such activities from the BNB.

Apart from deposit taking and lending activities, banks can perform ancillary activities, provided that their licence explicitly lists the performance of such ancillary activities. Ancillary services include, among others, payment services, safekeeping of valuables, depository services, issuing of guarantees and letters of credit, financial leasing, investment services, factoring, e-money issuance, issuance of tokens and crypto-assets, etc.

The list of ancillary services that banks may provide, subject to being covered by their licence, is aligned with those listed in Annex I of the CRD. No additional approvals by other regulatory bodies are required once an ancillary service is included under the bank's licence.

Passporting

A bank holding a valid bank licence issued by a regulator in another EU member state may exercise the activities included under its licence in Bulgaria directly, based on the freedom to provide services, through a tied agent or through a branch. For this purpose, the bank should notify the relevant regulator in its host state. Prior to commencing activities in Bulgaria, the

relevant EU member state's regulator that issued the bank's licence shall notify the BNB.

A bank licensed in Bulgaria may carry out the activities included under its licence in another member state through establishing a branch, through a tied agent or directly. The Bulgarian bank should notify the BNB of its intention to operate in another member state. Upon the positive outcome of such notification, the BNB shall send all relevant information to the competent regulator in the accepting member state.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Applicable Thresholds

The acquisition of shares in the capital of Bulgarian banks is subject to prior approval by the BNB and the ECB. There are several relevant thresholds in this respect, including:

- the (direct or indirect) acquisition of 10% or more of the shareholding in a bank by one person or persons acting in concert; and
- a shareholder's (or shareholders acting in concert) participation exceeding 20%, 33% or 50% as a result of a direct or indirect acquisition.

These thresholds also apply in cases of capital increases or the conversion of bonds into shares. In addition, if any of these thresholds are reached as a result of objective circumstances and not due to the actions of the acquirers, such acquisition is still subject to the BNB's approval. Until such approval is granted, the acquirers will not be able to exercise the shareholder rights connected with the newly acquired shares.

Further, if a person acquires 3% or more (but less than the foregoing thresholds) in the capital of a Bulgarian bank, the Bulgarian Central Depository, which serves as a depository for the book-entry shares of all Bulgarian credit institutions, has to notify the BNB of such acquisition.

Regulatory Filings

The regulatory filing for approval of an acquisition of shares contains detailed information not only concerning the acquirer (who can acquire shares in the bank directly or indirectly) but also the entities in its ownership structure up to its beneficial owner, as well as various documents and information pertaining to the financial condition of the applicant, the qualifications and professional experience of the applicant's managing bodies, related parties, the results of similar procedures in other countries, credit rating documents (if any), the acquirer's plan for strategic development of the bank, forecasted financial statements, etc.

When issuing its approval, the BNB considers the financial stability of the applicant and the potential influence it will exercise over the bank in view of assuring stable and sensible management of the bank.

Additional Filing Requirements

A shareholder of a bank disposing of its shareholding (in a percentage that meets the relevant threshold) should notify the BNB of such disposal. Further, the bank itself shall notify the BNB of any transfer of its shares that results in the relevant thresholds being exceeded or fallen below. Banks shall also make quarterly submissions to the BNB containing information on the shareholders of the bank holding 10% or more of the bank's shares.

4. Governance

4.1 Corporate Governance Requirements

Relevant Statutory and Regulatory Requirements

Banks in Bulgaria are subject to strict governance and control requirements. The management board (or in the case of a one-tier management system, the board of directors) of the bank is the main corporate body responsible for the adoption and updating of the bank's corporate governance rules and procedures. The set of rules and procedures shall adhere to internationally recognised good practices in the field and include, among others:

- the management and organisational structure of the bank, with clear, transparent and consistent responsibility levels;

- the rights and responsibilities of the bank's administrators and the allocation of functions across the management and supervisory bodies of the bank;
- the bank's business plan and business strategy;
- the risk management framework, including oversight, control, and mitigation policies and strategies;
- operational control management;
- the internal control framework, which applies to the risk management unit, compliance unit and internal audit unit;
- the policy for selection of management board and supervisory board members;
- the policy on prevention of conflict of interests;
- the policy on outsourcing of activities; and
- the policies on AML/FT prevention.

The policies should be adequate according to the bank's size, the nature and complexity of its activity, and the risks related thereto. The BNB has opted to apply the guidelines of the European Banking Authority (EBA) on internal governance under the CRD (EBA/GL/2021/05). Banks in Bulgaria should comply with these guidelines, together with the requirements under Bulgarian legislation and directly applicable EU regulations.

Diversity Requirements

National law does not contain explicit requirements on aligning board members' appointments with gender targets. However, banks in Bulgaria are obliged to address diversity criteria in their policies on the selection and assessment of the suitability of the management and supervisory boards. This approach is in line with EU legislation and the ECB's efforts to promote diversity. The ECB's fit-and-proper questionnaires, which require information on the compliance of the proposed appointees with the bank's potential diversity policies, have been included by the BNB by way of reference in the set of required documents for the national fit-and-proper assessment of bank board members.

Bank Secrecy and Ethical Codes

Bank employees, members of the management and supervisory boards, as well as liquidators and special administrators of banks (in the cases of winding up of a bank or bank insolvency) and any other person

engaged by the bank, are subject to bank secrecy rules, meaning that they are prohibited from disclosing or taking avail (either personally or to the benefit of family members) of information regarding the available balance and transaction of clients of the bank. The prohibition continues to apply even after the termination of the relationship between the bank and the person in question.

Each bank's policies on the organisation and management thereof shall also include a code of ethics to be adhered to by the bank's employees and administrators.

4.2 Registration and Oversight of Senior Management

The senior management of banks in Bulgaria, including board members and certain key employees, is subject to certain regulatory requirements. Members of a bank's management and supervisory boards (the board of directors in a one-tier management system) are required to have a minimum level of qualification (at least a master's degree) and professional experience (a certain number of years in similar positions) that is appropriate for the activities performed by the bank and the risks it is exposed to. Prior to being appointed, board members need to obtain an approval from the BNB. The fit-and-proper assessment by the regulator ensures compliance with the minimum regulatory requirements but also the suitability of the proposed candidate. This assessment is carried out both on an individual basis (specifically in respect of the applicant) and collectively (with respect to the management body as a whole).

Applicants for managerial positions should also meet, among other things, the following requirements:

- they have not been convicted of a premeditated crime (unless exonerated);
- they have not held positions in a management or supervisory body or have been a general partner in entities that have been dissolved due to insolvency where creditors have been left unsatisfied;
- they have not been members of a management or supervisory body of a bank within two years prior to the date on which such bank was declared insolvent; and

- they have not been deprived of the possibility to hold a position as an accountable person.

Along with the application for approval, candidates are required to provide certain documents, including CVs, copies of relevant diplomas, clear criminal record certificates, and detailed questionnaires on their professional experience and qualification.

When assessing the suitability of management board members and supervisory board members, the BNB also focuses on the proposed member's good reputation and reliability, whether the member in question can invest sufficient time managing or supervising the bank's activities, and how the member fits with and supplements the collective body's competencies.

The BNB should approve (or reject) the candidate within 60 days as of the filing of the application. If the application and the accompanying documents are not complete, the 60-day term starts lapsing once all the documents and information for the application have been provided. In practice, the procedure may take around three months. For significant banks, the fit-and-proper assessment is carried out by the BNB in co-operation with the ECB,

Key position holders – such as the chief financial officer (CFO), branch managers, the internal audit unit directors, the compliance unit directors, the risk management unit directors, etc – are also subject to assessment by the BNB, which is performed post-appointment.

4.3 Remuneration Requirements

Individuals Subject to the Remuneration Requirements

Banks should adopt remuneration policies covering all forms of pay and incentives, including retirement benefits, for several categories of individuals. These include members of the management and supervisory boards, senior management and staff responsible for risk management, compliance, internal audits or material business units. The policies should also apply to employees receiving significant remuneration – defined as at least the BGN equivalent of EUR500,000 and not less than that of management – whose roles materially affect the bank's risk profile.

Remuneration Principles

The remuneration policy must define criteria for both fixed and variable components of the remuneration. Fixed pay should be based on the employee's experience and responsibilities, while variable pay must be linked to sustainable, risk-adjusted performance. Fixed pay must represent a sufficiently large portion of total remuneration to allow flexibility, including the possibility of not paying the variable component.

Variable pay must adhere to several key requirements. It cannot exceed fixed pay and must not compromise the bank's capital adequacy. Guaranteed variable pay is prohibited except for new employees during their first year of employment, provided the bank's capital base remains stable. Additionally, variable pay should depend on multi-year performance appraisals of the individual, the business unit and the bank as a whole, using both financial and non-financial criteria. In cases of negative results, variable pay may be reduced or reclaimed ("claw-back") if an employee causes significant loss or breaches fitness and propriety standards.

Furthermore, at least 50% of variable remuneration must consist of shares or equivalent non-monetary instruments, with retention periods that align incentives with the bank's long-term interests. For members of the management and supervisory boards as well as employees with equivalent remuneration, at least 60% of variable pay must be deferred.

Regulators' Supervisory Approach

The competent regulator does not review or pre-approve the remuneration of the management but may carry out ad hoc or planned audits and inspections to ensure compliance of the remuneration policy and the actual remuneration structures in the bank with the regulatory requirements.

5. AML/KYC

5.1 AML and CFT Requirements Regulatory Framework

The anti-money laundering and counter-terrorist (AML/CTF) framework in Bulgaria is built upon both national laws, EU directives and the guidelines of relevant bodies, providing a comprehensive regulatory

environment for combatting financial crime. Key legislation includes MAMLA and the Measures Against the Financing of Terrorism and of Proliferation of Weapons of Mass Destruction Act (MAFTPWMDA), each addressing different but complementary aspects of financial crime prevention.

MAMLA is the primary legislative instrument, transposing the 4th and 5th EU AML Directives into Bulgarian law. It mandates credit institutions to identify and verify the identities of their customers, including determining the ultimate beneficial owners (UBOs) of corporate clients. In line with evolving international standards, MAMLA is being updated to align with the EU's 6th Anti-Money Laundering Directive. This updated Directive expands the scope of money laundering offences to include new predicate crimes and strengthens co-operation between financial intelligence units across borders.

The MAFTPWMDA complements MAMLA by focusing specifically on the prevention of terrorism financing. It restricts Bulgarian banks from offering services to individuals or entities connected to terrorism, in compliance with sanctions established by the United Nations Security Council and the Bulgarian Council of Ministers. By adhering to the aforementioned regulations, Bulgarian banks are playing an instrumental role in mitigating the risks associated with financial crimes and ensuring compliance with international standards.

Regulatory Authorities

Several authorities play a critical role in overseeing the AML/CTF landscape in Bulgaria. The State Agency for National Security (SANS) is the principal body responsible for monitoring and ensuring compliance with AML/CTF regulations. This includes collecting, analysing and sharing financial intelligence with relevant agencies.

The BNB supervises the banking sector's adherence to AML/CTF obligations, ensuring that domestic and branches of foreign banks operating in Bulgaria follow both national and EU rules. The BNB also holds the power to impose sanctions and penal decrees on banks that violate AML legislation.

As the ECB does not directly regulate national AML matters, the BNB is preparing to work with the European Anti-Money Laundering Authority (AMLA), which is expected to oversee AML supervision across the EU.

Customer Due Diligence Requirements

Customer due diligence (CDD) is an essential aspect of Bulgaria's AML framework, designed to detect and prevent financial crime. Banks must carry out CDD at the start of any business relationship and for transactions that meet certain risk criteria. Standard CDD requires banks to collect basic customer information such as name, address, date of birth and the nature of any business activity. This information helps the bank assess the customer's risk profile and understand their transaction behaviour.

In cases where a customer presents a low risk, simplified CDD procedures may be applied. This allows for less stringent checks, but only in circumstances where MAMLA explicitly permits it. For higher-risk clients, such as politically exposed persons (PEPs) or clients from high-risk jurisdictions, enhanced due diligence (EDD) must be applied. MAMLA specifies that EDD is necessary when transactions involve higher risks, such as those associated with anonymity, large sums of money or complex structures.

For corporate clients, banks are required to verify the UBOs to ensure transparency in ownership structures. This verification typically involves checking public registers and corporate documents, and where information is insufficient, further documentation is requested from the company.

Reporting Obligations

Banks in Bulgaria are subject to stringent reporting obligations aimed at identifying and preventing money laundering and terrorist financing.

Suspicious activity reporting is mandatory for banks, which must report any suspicious transactions to SANS through the goAML system. This platform allows banks to electronically submit reports on suspected illicit activities, including money laundering and terrorism financing.

In addition to suspicious activity reports, threshold reporting is required for certain larger cash transactions, as they may be indicative of money laundering.

Since July 2024, banks must report discrepancies in UBO information to the Registry Agency if the information held by the bank does not match the data in public registers. The entity must resolve these discrepancies within a set period, ensuring that UBO information is accurate. Failure to meet reporting requirements can result in severe penalties, including fines, operational restrictions or criminal charges for significant breaches of AML/CTF legislation.

Risk-Based Approach to AML/CTF

In line with international best practices, Bulgarian banks are required to adopt a risk-based approach to their AML/CTF efforts. This ensures that due diligence measures are tailored to the level of risk posed by each customer or transaction.

Risk assessments must be conducted for each customer and consider factors such as the customer's profile and geographical location, and the nature of their business. Banks must apply a higher level of scrutiny to customers who pose a greater risk of being involved in money laundering or terrorism financing. For high-risk clients, such as PEPs or customers from high-risk jurisdictions, banks must implement EDD measures. Additionally, banks must monitor large, complex or unusual transactions that might indicate illegal activities.

To mitigate money laundering and terrorism financing risks, Bulgarian banks must use advanced transaction monitoring systems, provide ongoing employee training and conduct regular audits to detect suspicious activities promptly.

AML/CTF Compliance Programmes and Internal Controls

To ensure compliance with AML/CTF regulations, Bulgarian banks are required to establish comprehensive internal compliance programmes. Banks must develop and maintain internal policies that define CDD procedures, how suspicious activity reports are handled and how risk assessments are carried out. These policies should be regularly reviewed and updated to

reflect evolving risks and regulatory changes, ensuring compliance across all branches, including those abroad.

A designated AML Officer must be appointed to oversee the bank's compliance programme and ensure that all legal obligations are met. This officer is also responsible for implementing corrective actions when necessary. Ongoing employee training is essential to equip bank staff with the necessary skills to identify suspicious activity, understand the relevant legal frameworks, and know how to report potential cases of money laundering or terrorism financing.

Lastly, record keeping is a critical component of compliance. All records related to CDD and transaction monitoring must be retained for at least five years after the end of the business relationship or transaction, ensuring that they can be accessed for regulatory or law enforcement purposes if required.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Deposit Guarantee Scheme in Bulgaria is established through the legal requirements set out in the Bank Deposit Guarantee Act (BDGA). The BDGA establishes the legislative foundation ensuring the stability and trustworthiness of Bulgaria's deposit protection framework. It defines the legal parameters governing how the bank deposit guarantee system operates, aiming to safeguard depositors' funds in the event of bank insolvency.

The scope of the BDGA extends to all banking institutions authorised under the CIA to accept deposits or other repayable funds from the public. It also covers the branches that these banks establish in other member states of the EU. In addition, the provisions of the BDGA may apply to branches of foreign banks headquartered outside the EU, provided that these entities have obtained a licence from the BNB to conduct banking activities in Bulgaria and meet specific legal requirements. The BDGA further outlines the structure, mission, responsibilities and operational procedures of the Bulgarian Deposit Insurance Fund (BDIF), which serves as the principal body responsi-

ble for administering and maintaining the country's deposit guarantee scheme.

The BDFI's primary purpose is to safeguard depositors by guaranteeing the protection and repayment of insured deposits. In addition, it plays a key role in supporting the effective restructuring of credit institutions. The BDFI also works to uphold the rights and interests of creditors throughout bank insolvency proceedings.

The deposit guarantee scheme covers natural persons and legal entity depositors. Deposits in euros and in foreign currency are guaranteed by the BDIF. Deposits up to a total amount of EUR100,000 are protected by the BDIF, regardless of the number of accounts of deposits maintained with the same bank.

The following categories of deposits are protected up to EUR125,000 for a period of three months from the date the funds are credited to the depositor's account, or from the moment the depositor gains the legal right to access the funds:

- deposits of individuals arising from real estate transactions connected to the purchase or sale of a primary residence;
- deposits of individuals derived from payments related to marriage or divorce settlements, the termination of employment or public service, and cases of disability or death; and
- deposits originating from insurance or social security payouts, or from compensation awarded for criminal injuries or wrongful convictions.

The BDIF exempts coverage and protection of deposits made by banks, financial institutions, insurance companies, investment intermediaries, collective investment schemes, national investment funds, alternative investment and special investment companies, and budgetary organisations. Also, no coverage is provided to any deposits arising out of or relating to any transactions or actions constituting money laundering or terrorist financing.

In the event of a restructuring of two or more banks through merger by the formation of a new bank, or through merger by acquisition, the deposits placed at said banks before said restructuring shall be cal-

culated for the purposes of guaranteed coverage, separately for each bank within the six-month period.

The BDIF's financial resources are derived from several key sources:

- annual and extraordinary premium contributions collected from banks;
- income generated through the investment of the BDIF's accumulated funds;
- the sums received by the BDIF from the property of the bank in the cases of subrogation; and
- additional funding obtained through loans, donations, grants, etc.

The BNB serves as the depository of the funds administered by the BDIF.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Overview

The Bulgarian legal framework dealing with the inherent risks associated with the operations of credit institutions comprises local legal acts and the Basel III regulations.

Bulgarian banks operate within the Basel III framework, made up of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR) and the CRD – the CRR is directly applicable in Bulgaria, and the CRD has been fully transposed in Bulgaria through the CIA without any major deviations in the transposition. The CIA and the legislative acts issued by the BNB, such as the numerous ordinances, instructions and orders of the BNB, form, on the other hand, the local regulatory framework for banks. Together, they make up the set of rules with which banks in Bulgaria must comply to ensure their prudential and risk-averse operation under the supervision of the BNB and the ECB.

Capital

Bulgarian banks need to comply with a multilayered, specific set of capital requirements. Those include

requirements for capital adequacy and capital buffers, aimed at allowing banks access to funds to cover various risks and their obligations to their creditors. Bulgarian banks need to maintain, as a minimum, capital in the amount of EUR5 million. Up to this amount, the capital can be comprised only of monetary contributions and should be paid-up in cash.

The capital of Bulgarian banks is also subject to a specific structure, as follows:

- Common Equity Tier 1 (CET1) capital, including common shares, capital CET1-eligible instruments, reserves and retained earnings;
- Additional Tier 1 (AT1) capital, including certain AT1-eligible capital instruments and share premium accounts related thereto; and
- Tier 2 (T2) capital, including certain T2-eligible capital instruments and share premium accounts related thereto, and subordinated loans.

Not all capital instruments are eligible to be included in the capital structure of a bank, and the BNB exercises supervision (review and approval process) as to what is included in the capital of a Bulgarian bank. Banks should therefore be careful in the structuring of their capital instruments to ensure that each relevant instrument forms part of the capital of the bank, including for the purposes of meeting the various capital ratios mandated under national legislation. These ratios are calculated as a percentage of the total risk exposure as follows:

- a CET1 capital ratio of 4.5%;
- a T1 capital ratio of 6%; and
- a total capital ratio of 8%

An additional capital requirement can be imposed by the BNB if it establishes that it is necessary in the specific circumstances set out under the CIA, including as part of the supervisory review and evaluation process (SREP) of the BNB.

Banks in Bulgaria are also subject to various requirements for capital buffers. These include:

- a capital conservation buffer of CET1, aimed at allowing banks to increase their loss absorption

capacity, set at a rate of 2.5% of the bank's total risk exposure;

- a systemic risk buffer of CET1, aimed at allowing banks to absorb shocks from events that threaten the stability of the banking system, set at a rate of 3% of the bank's total risk exposure;
- a counter-cyclical capital buffer of CET1, aimed at allowing banks to withstand cyclical systematic risks, set at a rate of 2%; and
- a capital buffer for systemically important institutions, aimed at containing contagion risks from stress events by allowing such institutions to absorb losses, set for six banks in Bulgaria (based on size, importance to the economy, cross-border activities and interconnectedness with the financial system) and varying between 0.5% and 1%.

A combined buffer requirement also applies, where the total CET1 necessary to meet the capital conservation buffer is extended by the other relevant applicable buffers.

Liquidity

Banks must maintain a comprehensive liquidity management system, which includes internal rules and procedures, a liquidity management body directly accountable to the competent managing body and an effective management information system. The internal liquidity management rules must specify principles for ongoing operations, liquidity recovery and contingency plans, and methodologies for identifying and controlling funding sources. Banks must also distinguish between pledged and unencumbered assets and ensure that eligible assets are available in emergencies.

In addition, banks must establish adequate liquidity buffers, diversify their funding sources, and regularly perform stress tests and scenario analyses to assess liquidity positions under adverse conditions.

Risk Management Rules

Banks in Bulgaria are required to maintain a comprehensive risk management framework ensuring that the risks that banks face are properly identified, measured, controlled and maintained.

As part of the comprehensive internal control framework that banks in Bulgaria must maintain, banks must form operational controls, a compliance function (including for the prevention of money laundering and terrorist financing) and an independent internal audit service. The internal audit service operates independently to assess the adequacy and effectiveness of governance, risk management and internal control systems. The compliance function must also be independent, adequately resourced and headed by a qualified official. It is tasked with identifying compliance risks, assessing changes in laws, advising the banks on measures to be taken and reporting.

The local framework also provides for specific rules that apply to the specific risks that banks in Bulgaria face. For example:

- with respect to credit and counterparty risks, banks must adopt sound credit approval processes, incorporate internal methodologies to allow banks to assess exposures, have appropriate documentation and diversify credit portfolios;
- with respect to interest and concentration risks, banks must maintain internal systems to manage risks from changes in interest rates and credit spreads, increases in credit concentration and exposures to collateral issuers exceeding 10% of their own funds; and
- with respect to operational risks, banks must maintain policies, processes, and business continuity and contingency plans to ensure resilience during disruptions.

Systemically important banks

Certain additional requirements apply to systemically important banks in Bulgaria. These include:

- in respect of their capital, a requirement for the maintenance of an additional capital buffer, as described in the foregoing;
- in respect of their nomination and risk committees, the majority of the committee members shall be independent;
- in respect of their supervisory board and the non-executive members of board of directors, the independent members must not be less than one-third; and

- in respect of their committees, a requirement to set up a risk committee and a committee for the selection of candidates for members of its management and controlling bodies.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Overview

The Bulgarian legal framework on the insolvency, recovery and resolution of banks encompasses several legal acts, including the CIA, the RRCIIFA and the IBA. Together, they work to guarantee that banks in financial distress can be resolved, stabilised or liquidated in a way that safeguards the financial system and depositors' interests.

The national framework has transposed the BRRD without substantial deviation. It has also substantially implemented the Key Attributes of Effective Resolution Regimes for Financial Institutions of the Financial Stability Board (FSB) through the broad powers of the BNB as the resolution authority, the available resolution tools, the ensured protection of depositors, the co-operation of authorities through the Single Resolution Mechanism (SRM) and dedicated funding options – all of which contribute to systemic stability.

Early Actions

When a bank fails to meet regulatory requirements and thereby shows signs of deteriorating financial health (eg, not being able to meet capital and liquidity obligations), the BNB may apply early supervisory intervention measures aimed at restoring stability. As such, the BNB may require a bank to, among other things, take corrective measures to strengthen its capital or liquidity position and restrict certain actions of the bank.

These measures are complemented by the requirement for each bank to prepare an individual recovery plan, reviewed and approved by the BNB. Recovery plans are unique to each bank. They focus on defining a credible recovery and resolution strategy by identifying the critical functions and issues that may impact the resolution of the bank, as well as planning.

To implement the resolution strategy and ensure that the bank has appropriate loss-absorbing and recapitalisation capacity, the BNB sets a minimum requirement for own funds and eligible liabilities (MREL). The MREL is set for each bank individually, expressed as a percentage of the total risk exposure amount and the percentage of the leverage ratio exposure that the bank must comply with simultaneously. Eligible MREL instruments are certain subordinated financial instruments and liabilities, own funds (CET1, AT1, and T2 instruments) and bail-in-able senior liabilities.

Resolution Procedure

The BNB takes a decision to initiate the resolution of a bank when it is determined that the bank is deemed to be failing or likely to fail, that there are no private sector or early recovery measures that could address the situation, and that the resolution of the bank is necessary in the public interest. Upon making this determination, the BNB may apply one or more of the following resolution tools with the aim of enabling the continuity of the bank's critical functions and safeguarding the public interest:

- the bail-in tool, which allows for a conversion or write-down of equity and debt instruments to absorb losses in a way that avoids the use of public funds for the recovery of the bank;
- the sale-of-business tool, which allows for the total or partial transfer of shares or selected assets, rights and liabilities to a purchaser;
- the bridge institution tool, which allows for a temporary transfer of shares or selected assets, rights and liabilities to a bridge bank to maintain critical services; and/or
- the asset separation tool, which allows for a transfer of impaired or non-performing assets to an asset management vehicle, aiming to maximise their value until their eventual sale or liquidation (this tool can be applied only with another resolution tool).

During the resolution procedure, shareholders and creditors bear losses in accordance with a hierarchy of claims (losses are borne by shareholders first, then creditors), while creditors belonging to the same class are treated equally and must not suffer losses exceeding those they would have borne had ordinary

insolvency proceedings been applied to the bank. The BNB may also decide to suspend the performance of payment or delivery obligations under contracts to which the bank under restructuring is a party. This is done to ensure that the chosen resolution tool is effectively implemented.

Bank Insolvency

Where the BNB concludes that the requirements for resolution are not met and that the bank is no longer solvent (the amount of its own funds is negative), the BNB revokes the banking licence and files a petition before the competent district court to initiate insolvency proceedings under the IBA. The court then declares the bank insolvent, opens insolvency proceedings, appoints a temporary trustee until the BDIF designates permanent trustees, and terminates the activity of the bank's enterprise and the powers of the management bodies of the bank.

The IBA provides for a strictly liquidation-oriented process, excluding the possibility of rehabilitation or restructuring. Upon commencement, all obligations of the bank become immediately due, proceedings against the bank become null and void, and the bank's management loses control as to the management of the assets of the bank. Trustees act under the supervision of the BDIF, which authorises major transactions, approves budgets and oversees asset disposals.

The bankruptcy estate includes all assets of the bank and proceeds from their sale. These are distributed to creditors following a statutory order of priority, beginning with claims secured by a mortgage or pledge, claims for which a lien is exercised, expenses related to the insolvency, claims of depositors who are natural persons for amounts exceeding their aforementioned guaranteed amounts, public claims, unsecured creditors and finally claims under subordinated and capital instruments.

9. ESG

9.1 ESG Requirements

The ESG requirements that banks in Bulgaria should comply with are enshrined in two sets of law. On one

hand, these are the laws and regulations introducing ESG requirements to business entities in general. On the other hand, there are banking regulations and acts that introduce ESG requirements specifically applicable to banks.

ESG Requirements For Business Entities in General

Bulgaria has transposed into its national legislation Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (CSRD) by amendments to the Bulgarian Accounting Act. The amendments introduced sustainability reporting obligations that will be gradually introduced, with banks being among the first wave of affected businesses.

On 19 February 2025, the Bulgarian parliament adopted amendments to the Accountancy Act, postponing the sustainability reporting requirements mandated under the CSRD by one year. Following these amendments, large public-interest entities with more than 500 employees are now required to prepare their first sustainability reports for 2025, instead of 2024. Other large enterprises will prepare their first reports for 2026 (instead of 2025), while small and medium enterprises will prepare their first reports for 2027 (instead of 2026). These amendments were promulgated in the *Bulgarian State Gazette* and came into force on 28 February 2025.

Subsequently, Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025, amending Directives (EU) 2022/2464 and (EU) 2024/1760 concerning the timelines for implementing corporate sustainability reporting and due diligence obligations (the “Stop the Clock Directive”) was adopted. This directive further deferred the reporting obligations. As of now, no legislative measures have been proposed by the Bulgarian authorities to enact the Stop the Clock Directive. Nevertheless, pursuant to Resolution No 541, dated 11 August 2025, the Bulgarian Council of Ministers approved its legislative programme for the latter half of 2025, which includes the implementation of the Stop the Clock Directive.

The legislative process for this implementation is currently scheduled to commence in November 2025.

ESG Requirements Specifically Applicable to Banks

The latest amendments to the EU’s CRR3 and CRD6 establish robust ESG compliance obligations for financial institutions, effective 1 January 2025. Institutions are required to enhance their ESG risk management and disclosure practices as follows.

- Disclosure requirements (CRR3):
 - (a) Expanded applicability – ESG risk disclosure obligations will encompass all financial institutions, irrespective of size or listing status.
 - (b) Risk categorisation – Institutions must report on physical, transition, social and governance risks separately.
 - (c) Fossil fuel exposure transparency – The total exposure to entities in the fossil fuel sector must be disclosed comprehensively.
 - (d) Strategic ESG integration – Institutions are required to detail the incorporation of ESG risks into their business strategies, operational processes and governance structure.
 - (e) Standardised reporting formats – The EBA will establish technical standards to ensure uniformity in ESG reporting.
 - (f) Data collection standards – Institutions are encouraged to gather granular, high-quality ESG data on a “best-effort basis” to meet disclosure expectations.
- Management and risk frameworks (CRD6):
 - (a) Integration of ESG risks – ESG risks must be embedded into institutions’ overall risk management frameworks.
 - (b) Management oversight – Management bodies are responsible for formulating and supervising quantifiable strategies to address ESG risks over short-, medium-, and long-term horizons.
 - (c) Regulatory alignment – ESG strategies must align with EU climate goals, be informed by scientific advice and correspond with transition plans under related regulatory frameworks.
 - (d) Regulatory supervision – Competent authorities will evaluate and monitor institutions’ ESG strategies, risk management practices and transition plans for compliance.

- Additional reforms:
 - (a) Stress testing – ESG factors will be integrated into capital adequacy stress-testing scenarios.
 - (b) Prudential treatment – The EBA will determine the necessity of distinct prudential treatment for ESG risks.
 - (c) Managerial suitability – A harmonised fit-and-proper framework will assess the qualifications of bank managers in light of ESG obligations.

This revised clause consolidates ESG requirements under CRR3 and CRD6, ensuring institutions adopt a comprehensive and standardised approach to ESG compliance and risk management. Separately, the BNB has adopted a decision to apply in Bulgaria, as of 11 January 2026, the guidelines on the management of environmental, social and governance (ESG) risks (EBA/GL/2025/01) adopted by the EBA.

10. DORA

10.1 DORA Requirements

The Digital Operational Resilience Act (DORA) came into effect on 17 January 2025 and is directly applicable in Bulgaria. It sets rules for minimising and addressing information and communication technology (ICT) risks in the financial sector. To that end, the regulation recognises the following key components as the main pillars of the operational resilience framework:

- ICT risk management;
- ICT-related incident reporting;
- digital operational resilience testing;
- ICT third-party risk management, and
- information sharing arrangements.

Explanations of the banking regulatory requirements related to each of the five pillars, as well as the steps and actions for compliance and the potential penalties for non-compliance in Bulgaria, are provided in the following.

ICT Risk Management

Financial institutions shall have a sound, comprehensive and well-documented ICT risk management framework integrated into their overall risk systems.

They should include policies, procedures and tools for identifying, assessing and mitigating ICT risks. Once established, risk management frameworks should be reviewed and documented regularly (at least annually), and any significant changes should undergo risk assessments.

ICT-Related Incident Reporting

Financial entities shall record and report all ICT-related incidents and significant cyber threats. These incidents must be classified according to their priority severity and reported to the relevant national authorities using standardised templates created by the European Supervisory Authorities (ESA).

Operational Resilience Testing

DORA requires that financial institutions test their ICT systems' resilience at least annually to assess their preparedness. The appropriate tests may be vulnerability assessments and scans, open-source analyses, network security assessments and scenario-based tests, among others. Critical financial entities are required to perform threat-led penetration testing every three years to identify weaknesses and ensure business continuity during cyber-attacks or system failures.

Third-Party Risk Management

Before concluding agreements with third-party ICT service providers, financial institutions must conduct mandatory due diligence to verify that these providers comply with necessary security and risk management standards. Contracts with third-party providers should include certain mandatory clauses (eg, termination in case of legal breaches). The ESA will designate certain third-party ICT providers as "critical", requiring heightened regulatory oversight and additional risk management measures.

Cyber Threat Intelligence Sharing

DORA encourages financial entities to exchange cyber threat information and intelligence. Engaging in information-sharing initiatives helps organisations stay informed about emerging risks, raise awareness and enhance collective cybersecurity efforts. Such collaboration improves defences across the sector and allows entities to react more effectively to cyber-attacks.

Steps and Actions for Compliance

To comply with DORA's requirements, financial entities should consider the following actions.

- **Conduct a gap analysis:** The initial step is performing a gap analysis to assess the institution's current practices and identify any gaps in compliance with DORA, as well as potential areas for improvement.
- **Strengthen governance structures:** Financial institutions should strengthen their internal governance frameworks. This includes appointing sufficient personnel or teams dedicated to overseeing ICT risk management with clearly assigned roles and responsibilities.
- **Address third-party risks:** Agreements with third parties should be reviewed and updated to include mandatory security and compliance clauses. Third-party service providers should also undergo regular audits, with a special focus on "critical" providers that require enhanced oversight.
- **Develop incident reporting protocols:** Financial institutions should implement clear and effective protocols for reporting ICT incidents aligned with DORA's reporting requirements. Systems must be in place to detect, classify, and report incidents promptly, ensuring timely notification to competent authorities.
- **Promote cyber threat intelligence sharing:** Financial institutions should participate in cyber threat intelligence-sharing networks with industry peers and national regulators on emerging or potential threats. Regular involvement in such networks helps organisations stay aware of emerging threats and improves collective cybersecurity efforts.
- **Organise ongoing employee and management education:** Financial institutions should regularly train employees and management on DORA's requirements and cybersecurity best practices. This education and informing process should be ongoing to ensure security awareness and compliance.

Sanctions for Non-Compliance

Failure to comply with DORA's operational resilience requirements may result in penalties for both financial institutions and their representatives.

Sanctions for financial institutions

Entities that fail to comply with DORA's requirements can face sanctions ranging from approximately EUR10,000 to 20,000. Second-case violations may result in increased fines of approximately EUR20,000 to 50,000.

Sanctions for individuals

Representatives of financial institutions, such as executives or board members, can be fined in their personal capacity for non-compliance, or for allowing violations. Fines for individuals range from approximately EUR5,000 to 10,000 for first-time violations and from approximately EUR10,000 to 20,000 for second-case violations.

11. Horizon Scanning

11.1 Regulatory Developments

The regulatory landscape of the Bulgarian banking sector is undergoing swift transformation, driven by both domestic developments and broader European integration.

Eurozone Accession

Arguably the most transformative event for Bulgaria's economy – and particularly for its banking industry – is the country's forthcoming entry into the euro area and the adoption of the euro as its official currency. To meet the expected challenges and ensure a smooth transition, Bulgaria implemented a series of substantial legal reforms. The newly adopted Introduction of the Euro in Bulgaria Act plays a crucial role, setting out detailed provisions on dual pricing, phased withdrawal of the Bulgarian lev from circulation and other practical aspects concerning interaction between businesses and the population. Significant amendments were made to the BNBA to align the central bank's responsibilities with those of the European System of Central Banks (ESCB). In addition, key financial law, including the CIA, the Markets in Financial Instruments Act, the Currency Act and the Payment Services and Payment Systems Act, were amended to guarantee legal coherence and operational preparedness for the currency switch.

Although the accession of Bulgaria to the euro area has been expected for some time, and banks have had plenty of time to prepare, the transition to the euro will most likely not be without some “hiccups”, necessitating further regulatory fine-tuning. Apart from this major event, which is specific to Bulgaria, most of the developments expected to have an impact the banking sector will arise from the evolving EU regulatory framework.

Directive (EU) 2024/1619

Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (CRD VI) is the sixth major amendment to the EU’s banking-prudential directive framework in the Capital Requirements Directive (2013/36/EU). The amendment’s aim is to strengthen the regulatory framework for banks in the EU by enhancing supervisory powers, sanctions, governance independence and the management of ESG risks. The CRD VI also introduces a harmonised regime for branches of third-country banks operating in the EU and seeks to deepen the internal banking market, while also aiming to reduce reporting burdens for smaller institutions. Bulgaria and the other EU member states shall transpose the CRD VI into national legislation by 10 January 2026. Bulgaria has yet to implement the measures under the CRD VI into national legislation.

Directive (EU) 2023/2225

Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC (CCD II) modernises and broadens EU rules for consumer credit agreements by responding to digital market developments and filling gaps in the previous regime. The CCD II expands the scope of covered products (including very small loans, certain “buy now, pay later” schemes and loans delivered via digital platforms) and strengthens obligations regarding pre-contractual information, advertising, creditworthiness assessments and conduct of business. Bulgaria and the other EU member states shall transpose the CCD II by 20 November 2025. To date, Bulgaria has not

transposed the provisions of CCD II into the national Consumer Credit Act.

Directive (EU) 2023/2864

Directive (EU) 2023/2864 of the European Parliament and of the Council of 13 December 2023 amending certain Directives as regards the establishment and functioning of the European single access point (the “ESAP Directive”) amends a number of existing EU financial services and corporate governance EU Directives to give effect to the forthcoming European single access point (ESAP), which will provide centralised access to publicly available information in financial services, capital markets and sustainability. The ESAP Directive lists 16 specific Directives (eg, Directive 2004/109/EC on transparency, Directive 2013/34/EU on annual financial statements, Directive 2014/65/EU on markets in financial instruments) to be amended so that the disclosures required under those regimes become accessible via ESAP. The amendments do not impose new disclosure obligations on companies but rather streamline the collection and submission of already-public information to ESAP. Bulgaria and the other EU member states shall transpose the ESAP Directive by 10 July 2025. However, Bulgaria missed the deadline and is still to adopt the relevant national legislation in this respect.

Amendments to the Payment Services Regulations

In June 2023, the European Commission published proposals for a new Directive on payment services and electronic money services (PSD3), and a new regulation on payment services (PSR), which will serve as a new regulatory framework for payment services in the EU. Although trilogues among the European Parliament, the Council of the European Union and the European Commission are still underway, it is expected that the legislation will be finalised in 2026 and apply shortly thereafter.

PSD3 aims to address gaps in PSD2, especially around fraud prevention, consumer protection and regulatory clarity. The key changes that will be introduced include:

- stronger consumer protection and fraud prevention mechanisms;

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- unified rules for payment service providers and e-money institutions;
- higher capital requirements and stricter safeguarding of client funds;
- enhanced transaction security and clearer liability rules; and
- improved access to payment systems for non-bank providers.

PSR will be directly applicable in Bulgaria, whereas PSD3 will most likely be transposed by amendments to the Bulgarian Payment Services and Payment Systems Act and will have an impact on Bulgarian banks and other payment services providers.

Trends and Developments

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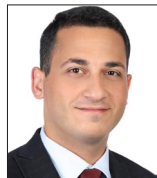
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The regulatory framework for the Bulgarian banking sector is rapidly evolving due to both internal and external factors.

Bulgaria Is Joining the Eurozone

Without a doubt, the most significant change that will affect the Bulgarian economy, and in particular Bulgarian banks, is the accession of Bulgaria to the eurozone and the introduction of the euro as the lawful currency of the country.

Following a formal decision by the Council of the European Union on 8 July 2025, which marked the culmination of its eurozone accession process, Bulgaria will become the 21st member of the euro area. The Council of the European Union approved Bulgaria's entry into the euro area through three legal acts adopted during the Economic and Financial Affairs Council (ECOFIN) meeting in Brussels. These acts confirmed that Bulgaria has met the Maastricht criteria. The conversion rate was fixed at 1.95583 Bulgarian lev per euro, aligning with the central rate in the Exchange Rate Mechanism II (ERM II), which Bulgaria joined in July 2020.

To facilitate the transition, Bulgaria undertook significant legislative reforms. The most critical amendments were made to the laws regulating the functions of the Bulgarian central bank. A new Bulgarian National Bank Act was adopted, which now reflects the euro as the official currency and aligns the central bank's mandate with the European System of Central Banks. Additionally, the Credit Institutions Act, the Currency Act and the Payment Services and Payment Systems Act were revised to ensure legal continuity and operational readiness for euro adoption. The new Introduction of the Euro in Bulgaria Act is also relevant for the banking sector, as it includes provisions for dual display of prices, rounding rules and the timeframe for withdrawal of the Bulgarian lev from circulation.

The impact on the Bulgarian banking system is multifaceted. For bank customers, the transition means that all accounts, loans and deposits denominated in lev will be automatically converted to euros at the fixed rate. Customers will benefit from reduced currency exchange costs and improved transparency in cross-border transactions. Banks are required to

inform clients clearly about the conversion process, including how rounding will be handled and how existing contracts will be adapted.

For internal systems and policies, banks have had to overhaul their IT infrastructure to accommodate euro-denominated operations. This includes updating core banking systems, payment platforms and reporting tools. Staff training programmes have been implemented to ensure smooth customer service and operational continuity. Banks have also had to prepare for the logistical challenge of euro cash distribution, including automated teller machine (ATM) recalibration and secure transport of euro banknotes and coins.

In terms of regulatory and supervisory compliance, Bulgarian banks meeting the significance criteria have been under the direct supervision of the European Central Bank (ECB) since the establishment of the close co-operation framework in 2020. With full eurozone membership, Bulgarian banks are now subject to the Single Supervisory Mechanism (SSM), which harmonises prudential oversight across the euro area. This entails stricter reporting standards, enhanced stress testing and alignment with ECB guidelines on capital adequacy and risk management. The Bulgarian National Bank (BNB) continues to play a role in supervision but now operates in close co-ordination with the ECB.

Overall, Bulgaria's accession to the eurozone represents a major milestone in its European integration, promising increased financial stability, deeper capital market access and stronger investor confidence. The transition has required meticulous legal, technical and institutional preparation, but positions Bulgaria to fully participate in the economic and monetary union of the EU. Nevertheless, banks in Bulgaria must continue to make efforts to address the challenges from both a regulatory and business perspective that they will undoubtedly face in the first months of Bulgaria's accession to the euro area.

Digitalisation and Cybersecurity

The digitalisation of Bulgaria's banking sector is accelerating under pressure from regulatory reforms, evolving customer expectations and disruptive market entrants. A major shift came with the introduction of

the Digital Operational Resilience Act (DORA) and the Markets in Crypto-Assets Regulation (MiCAR), both of which took effect across the EU in January 2025. The DORA requires financial institutions, including banks, insurers and payment service institutions, to implement robust information and communication technology (ICT) risk management frameworks, conduct regular digital resilience tests, and ensure that their third-party ICT providers meet high cybersecurity standards. Preparedness of the banking sector to meet these new requirements has been subject to audits by the BNB.

MiCAR, on the other hand, introduces a harmonised regime for crypto-asset markets, requiring banks and fintechs dealing with digital assets to comply with transparency, governance and consumer protection rules. For Bulgarian banks, aligning with these regulations demands significant investment in compliance infrastructure, cybersecurity capabilities and operational restructuring – posing a challenge for institutions with legacy systems and limited digital maturity.

Simultaneously, the sector faces a surge in phishing, social engineering and malware attacks, which are becoming more sophisticated and frequent. Cybercriminals exploit digital channels to target customers and employees, often using deceptive emails, fake banking portals or mobile app clones. Bulgarian banks must balance tight security controls with frictionless user experiences, as overly complex authentication or transaction processes can frustrate customers and drive them towards more agile competitors. The challenge lies in deploying advanced threat-detection systems, biometric authentication and AI-driven fraud prevention tools without compromising usability. Moreover, banks must invest in continuous customer education to raise awareness about cyber risks, while also ensuring compliance with DORA's incident reporting and threat monitoring requirements.

Adding to the pressure is the entry of challenger banks and fintech companies, which are reshaping the competitive landscape. These digital-native players offer streamlined onboarding, personalised financial services and innovative features like budgeting tools, crypto wallets and instant payments. Their agility and customer-centric design appeal to younger, tech-savvy

users, eroding the market share of traditional banks. In Bulgaria, fintech adoption is rising, supported by EU funding and a growing start-up ecosystem. To stay relevant, incumbent banks must accelerate their digital transformation, adopt open banking application programming interfaces (APIs) and explore partnerships with fintechs. However, integrating new technologies and business models introduces additional cybersecurity risks and regulatory complexities, especially under DORA and MiCAR.

Green Financing and ESG Requirements

Green financing in Bulgaria is gaining momentum, driven by EU regulatory alignment, rising investor interest and national efforts to support sustainable development. Banks in Bulgaria are increasingly required to integrate ESG criteria into their operations and financing decisions, with significant implications for lending, compliance and market positioning.

As of 2025, Bulgaria has begun transposing the EU's Corporate Sustainability Reporting Directive (CSRD) into national law, notably through amendments to the Accounting Act and related legislation. These changes require large companies, including banks, to disclose ESG-related data in their annual reports. The disclosures must cover environmental impact, social responsibility and governance practices and are expected to influence credit risk assessments and investment strategies. Banks must now evaluate borrowers not only on financial metrics but also on sustainability performance, especially for large corporate clients and infrastructure projects.

However, banks in EU member states, including Bulgaria, are grappling with significant uncertainty around ESG regulations due to shifting political priorities. Recent delays and revisions to key directives like the CSRD and the Corporate Sustainability Due Diligence Directive (CSDDD) have created confusion over compliance expectations and long-term planning.

In 2025, the European Banking Authority (EBA) paused enforcement of ESG disclosure rules amid broader regulatory overhauls, reflecting growing concerns about conflicting requirements and disproportionate burdens on smaller institutions. While some political signals suggest a streamlining of ESG mandates,

supervisory bodies like the ECB and EBA continue to push for robust risk management and transparency.

In parallel, the Bulgarian financial sector is adapting to the EU Taxonomy Regulation, which defines what constitutes environmentally sustainable economic activities. This framework is essential for banks to classify and report green loans and investments. Bulgarian banks are expected to align their portfolios with taxonomy-compliant activities, such as renewable energy, energy-efficient buildings, clean transport, and circular economy initiatives. The Bulgarian Development Bank and commercial lenders have already launched green credit lines targeting SMEs and municipalities investing in solar panels, waste management and sustainable agriculture.

The financing of green and sustainable projects in Bulgaria is supported by both EU funds and national programmes. The National Recovery and Resilience Plan allocates substantial resources to climate-related investments, including building renovation, clean energy and digital infrastructure. Banks play a key role in co-financing these projects, often in partnership with international financial institutions like the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD). In addition, ESG-linked financial instruments such as green bonds and sustainability-linked loans are emerging in the Bulgarian market, although these are still at an early stage.

Several trends are expected to shape green financing in Bulgaria. Regulatory pressure will intensify with the EU's Green Deal and Fit for 55 package pushing for deeper decarbonisation across sectors. Banks will need to enhance their ESG risk management, scenario analysis and climate stress-testing capabilities. In addition, digital tools and data analytics will become central to ESG integration, enabling better tracking of environmental impact and compliance. Investor and customer expectations are also expected to rise, especially among younger and international stakeholders who prioritise sustainability.

Moreover, the BNB is expected to issue further guidance on climate-related financial risks, aligning with the ECB's supervisory expectations. This includes

incorporating ESG factors into internal governance, credit risk models and disclosure practices. Banks that proactively adapt to these requirements will benefit from reputational gains, access to green capital and alignment with EU-wide financial stability goals.

Consumer Credits and Consumer Protection

The Bulgarian consumer lending sector in 2025 is marked by rapid expansion in real estate financing, evolving regulatory alignment for consumer goods lending and heightened consumer litigation challenging lending practices.

The Bulgarian consumer lending landscape has seen robust growth, particularly in real estate financing, with housing loans reaching nearly BGN31 billion by September 2025, a 27.6% increase year over year. This surge reflects strong consumer demand and favourable credit conditions but has also raised concerns about overheating in the property market. In response, in the autumn of 2024 the BNB introduced restrictions on lending standard indicators for loans to the household sector, secured by residential real estate, which include:

- up to 85% on the loan-to-value ratio at origination (LTV-O);
- up to 50% on the debt-service-to-income ratio at origination (DSTI-O); and
- up to 30 years on the maturity of the loan at origination.

These limits apply as of 1 October 2024 to all new and renegotiated loans collateralised by residential immovable properties located in Bulgaria, irrespective of the purpose of the loan.

Compliance with the Bulgarian Consumer Credits Related to Immovable Property Act, which transposes Directive 2014/17/EU, remains a cornerstone of responsible lending. This framework includes requirements regarding the provision of transparent pre-contractual information, creditworthiness assessments and other consumer rights protections, ensuring that borrowers are not exposed to unsustainable debt burdens.

In parallel, consumer lending for goods and electronics, especially through buy-now-pay-later (BNPL) schemes, has gained traction among Bulgarian households. Retailers and fintechs increasingly offer instalment-based financing for electronics, furniture and lifestyle products, often with minimal upfront costs. To date, these products often fell outside the scope of the Bulgarian Consumer Credit Act due to the exemption available to interest- and charge-free loans. However, the rise of BNPL has exposed regulatory gaps, prompting legislative efforts to align the Act with Directive (EU) 2023/2225. The expected amendments will introduce stricter disclosure requirements, creditworthiness checks, and standardised contract terms for short-term and deferred payment products. This alignment aims to enhance consumer protection and ensure that BNPL offerings are not exploited to bypass traditional credit safeguards.

Simultaneously, consumer litigation against banks and lending institutions has intensified. Borrowers increasingly challenge unfair contract clauses, opaque fee structures, and ambiguous terms and conditions, particularly in mortgage and personal loan agreements. Bulgarian courts have seen a rise in cases invoking Directive 93/13/EEC on unfair terms in consumer contracts, with several rulings favouring consumers and mandating contract revisions or compensation. The Bulgarian Consumer Protection Commission (CPC) has played a proactive role, conducting market surveillance, issuing fines and publishing guidelines to ensure compliance with consumer rights legislation. The CPC also collaborates with the judiciary and financial regulators to address systemic issues and promote fair lending practices.

Overall, the Bulgarian consumer lending sector is undergoing a dynamic transformation. Regulatory tightening in real estate credit, modernisation of consumer credit laws and active consumer advocacy are reshaping the market towards greater transparency and sustainability. While credit demand remains strong, especially among younger and urban populations, the sector's resilience will depend on balanced growth, regulatory vigilance and institutional accountability. As Bulgaria continues to harmonise its financial regulations with EU directives, stakeholders must

navigate evolving compliance landscapes while safeguarding consumer interests.

Insolvency and Non-Performing Loans

Another new piece of legislation affecting consumer lending, and the banking sector in general, in Bulgaria is the Insolvency of Natural Persons Act (INPA). Adopted in June 2025, this Act introduces a long-awaited legal framework for personal bankruptcy. It allows non-entrepreneurial individuals who are unable to meet their financial obligations for more than 12 months and owe more than the equivalent of ten minimum wages (as determined by the Bulgarian government) to file for insolvency. The process is voluntary and can only be initiated by the debtor. To qualify, individuals must demonstrate good faith and co-operate fully with the court. Once declared insolvent, debtors must fulfil their obligations to creditors to the greatest extent possible, after which they may receive a full discharge of remaining debts.

INPA fills a significant gap in Bulgaria's legal system, as the country was previously the only EU member without comprehensive personal insolvency legislation. It aligns with Bulgaria's commitments under the National Recovery and Resilience Plan and aims to provide a fair and humane solution for over-indebted individuals. The Act entered into force in July 2025, with a nine-month delay for full implementation to allow for the development of the necessary administrative infrastructure.

In 2023, significant amendments to the insolvency and restructuring regime were made in an attempt to achieve greater efficiency and better results. These amendments also transposed into Bulgarian legislation the provisions of the Preventive Restructuring Directive, in an attempt to revive the use of the restructuring (stabilisation) procedure. However, a subsequent 2024 World Bank report highlighted that the process remains overly complex for small businesses. The law does not provide an expedited process to validate a pre-negotiated agreement ("pre-packaged plan") or safeguard, such as out-of-court arrangements, from being contested in court during any potential future insolvency proceedings.

Further developments and amendments to the Bulgarian insolvency regime are expected once the proposal for a new directive harmonising certain aspects of insolvency law moves forward. On 12 June 2025, the Council of the European Union adopted its general approach to the proposal, reaching a consensus on the core provisions of the draft directive. The directive is designed to bring national insolvency regimes closer together, making the EU more attractive for foreign and cross-border investors. Key aspects of the directive include:

- avoidance actions;
- tracing of assets;
- a pre-pack mechanism;
- directors' duties in insolvency;
- creditors' committees; and
- information provided to investors on the main elements of the national insolvency regimes.

Once the directive is adopted, it will have to be transposed into Bulgarian legislation, which will have a major impact on how banks and other creditors seek protection against their debtors.

Finally, it is worth mentioning that, in June 2025, the Bulgarian Parliament adopted the Credit Servicers

and Credit Purchasers Act, introducing a comprehensive framework for managing non-performing loans (NPLs) and introducing the provisions of Directive (EU) 2021/2167. This legislation has significant implications for the banking sector as it aims to facilitate the development of a secondary market for NPLs and improve borrower protection. It defines and regulates the roles of credit servicers (entities managing NPLs on behalf of purchasers) and credit purchasers (entities acquiring NPLs), requiring both to be authorised and supervised by the BNB. Engaging in such activity would entail also compliance with the requirements of the Bulgarian anti-money laundering legislation.

Banks are expected to benefit from easier offloading of NPLs, improving balance sheet health and capital efficiency. The new law is expected to encourage the market entry of specialised NPL investors, increasing competition and liquidity. It also imposes stricter compliance burdens on banks involved in NPL transfers, requiring enhanced due diligence and borrower communication.

Overall, the new law marks a strategic shift towards a more structured and transparent NPL ecosystem in Bulgaria, supporting financial stability and alignment with EU standards.

CZECH REPUBLIC



Trends and Developments

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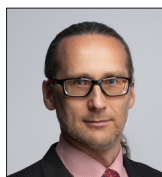
regtech advisory, uniquely combining its expertise in financial regulation, IT/IP, TMT and compliance/corporate governance, further providing professional support and advisory services in the identification of governance and compliance weaknesses, as well as assisting clients and representing them in inspections, administrative and criminal proceedings, and in the preparation and implementation of corrective measures, and communicating with respective authorities.

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Introduction

The Czech financial sector enters 2026 on the back of a strong rebound in lending activity and the continued diversification of financing channels. While banks remain the dominant source of credit, alternative financing through crowdfunding, private credit and non-listed corporate bonds is expected to expand further, giving corporations – particularly mid-sized companies – greater access to capital markets. Mortgage and corporate loan demand is forecast to remain stable or grow moderately, supported by easing rates and recovering investor confidence.

A major focus in 2026 will be on the banking sector regulation, ie, the amended **EU Capital Requirements Directive VI** (CRD VI). This reform will significantly reshape the governance and risk management landscape for Czech banks as well as investment firms. Financial institutions will be required to update internal governance systems, integrate ESG factors into their risk frameworks and meet stricter standards for management suitability. Supervisory convergence with other EU jurisdictions will intensify, and foreign bank branches will face closer scrutiny.

Another anticipated milestone for 2026 is the adoption of the **Digital Economy Act**, which will create a comprehensive legal framework for digital platforms and data governance. By incorporating and expanding upon the Digital Services Act, Data Governance Act and Platform-to-Business Regulation, the Act will impose stricter liability and transparency rules on digital intermediaries. For financial institutions, this will mean that adjustments to digital distribution models will be required, as well as compliance with new

consumer protection and data management requirements.

Overall, 2026 is shaping up to be a transformative year for the Czech banking and finance industry. The combined effect of stricter prudential regulation under CRD VI, enhanced cybersecurity compliance and new digital economy rules will increase regulatory complexity, but also modernise the sector, align it more closely with EU standards and strengthen its resilience to systemic shocks.

Recent Developments in Lending Activities

In 2024, the Czech lending market rebounded strongly, especially in the real estate sector. New mortgage lending surged by approximately 83% year-on-year to CZK228 billion as interest rates eased, with the average mortgage rate falling to around 4.8% by year-end, restoring borrower demand. Corporate loan demand rose more moderately – by 25%, driven by financing needs for real estate development, investment, M&A and restructuring. Credit standards remained broadly stable, with some tightening in bank lending conditions in late 2024.

In early 2025, credit conditions mostly remained stable, although slight easing is expected in corporate lending. Home ownership and household loan demand has increased, supported by improving sentiment, rising property prices and modest decreases in mortgage rates. Consumer credit standards eased slightly, while demand exceeded the banks' forecasts.

However, a structural shift in housing preferences is notable. Elevated prices and affordability constraints are pushing demand towards renting. In 2024, the

Czech Republic ranked among the least affordable EU countries in which to buy property, with prices requiring 13.3 times the average gross annual salary. In Prague and Brno, rents are significantly cheaper than mortgage payments, making renting more accessible.

Regulatory frameworks also evolved. The Czech National Bank implemented minimum requirements for own funds and eligible liabilities (MREL) in 2024, ensuring banks hold sufficient capital and eligible liabilities to absorb losses. However, such measures increased the costs faced by banks, thereby slowing the decrease in loan interest rates.

At the same time, alternative financing channels grew significantly. Crowdfunding financing reached approximately CZK5 billion in 2023 and CZK10 billion in 2024, with further rapid growth expected. Currently, six domestic companies hold authorisation under the Crowdfunding Regulation, alongside 36 foreign entities operating in the Czech market. Local investors tend to favour domestic platforms over foreign ones.

The market for non-listed corporate bonds, especially those issued by mid-sized companies, expanded despite transparency and liquidity challenges. Also, investment funds are increasingly playing a role as direct lenders and bond issuers, adding depth to the financing options beyond traditional bank lending.

Overall, there is a clear trend of diversification in financing methods in the Czech market, reducing the proportion of bank lending while the aggregate volume of commercial financing continually grows. This diversification contributes to the resilience of the Czech financial system, though it remains heavily bank-dominated. Recent geopolitical and economic shocks – such as the war in Ukraine, energy price volatility, inflation and global rate hikes – dampened lending in 2022–2023, but such pressures have eased over time, supporting the recovery in 2024 and early 2025.

In 2025, the Czech lending market continued its recovery. New mortgage lending reached approximately CZK380 billion, with around 93,000 new contracts signed. The average mortgage rate had declined to 4.6% by mid-year, further stimulating borrower

interest. Corporate loan demand remained robust, although some caution was observed due to global economic uncertainties. Alternative financing methods, including crowdfunding and non-listed corporate bonds, continued to grow, reflecting a shift towards more diversified funding sources.

Looking ahead to 2026, lending activity is expected to stabilise and gradually expand, supported by regulatory reforms, digitalisation initiatives and ongoing diversification of funding sources. Banks and non-bank lenders will increasingly integrate ESG considerations, advanced risk management and cybersecurity requirements into their credit processes. Mortgage demand is anticipated to remain steady, while alternative financing options, such as private credit, crowdfunding and non-listed bonds, are likely to capture a larger share of the market. Overall, 2026 is projected to be a year of consolidation and modernisation, strengthening the resilience and competitiveness of the Czech financial sector.

Legislative and Regulatory Changes

Recent amendments to the Act on Bonds, effective from 2024, provide for additional disclosure in bond issuances. For public offerings below EUR1 million, a strict regime was introduced in response to the growing number of defaults of such issuers, negatively impacting retail investors in the local market. In 2026, further amendments are expected as part of the EU Listing Act package implementation.

Further changes in the lending market may result from amendments to the investment fund regulations implementing recent changes to the Alternative Investment Fund Managers Directive (AIFMD 2). The amended bill will authorise alternative investment funds marketed to the public to provide loans and acquire receivables from loans, as well as engage in securitisation. However, the origination of consumer loans by investment funds remains limited, subject to additional consumer credit authorisation by the Czech National Bank.

The new **Cybersecurity Act**, effective from November 2025, expands the regulatory remit of the previous Cybersecurity Act to a significant number of firms and institutions and represents a major overhaul of the current regulatory framework. Obligations will apply

not only to large financial institutions but also to key service providers and third-party suppliers, making supply-chain security a central issue.

The new Act provides for a certain transitional period, as part of which all regulated entities must implement a plethora of governance and security measures in 2026.

Also, a new Act governing the Critical Infrastructure Resilience regulation has been effective since November 2025, thereby transposing the EU directive on critical infrastructure resilience. The law provides enhanced incident reporting obligations, stricter deadlines for notifying supervisory authorities, and the mandatory adoption of advanced technical and organisational security measures. A number of financial institutions are covered by this strategic infrastructure regime.

The Act also strengthens the supervisory powers of the National Cyber and Information Security Agency (NÚKIB), which will gain more robust enforcement tools, including higher penalties for non-compliance. For the financial sector, this means closer co-operation between the NÚKIB and the Czech National Bank, ensuring that prudential regulation and cybersecurity oversight go hand in hand.

In addition, a draft bill of the **AI Act** adopting the EU regulation of AI is being drafted. This law provides for AI governance and numerous duties of entities (private as well as public), while devising new AI tools for platforms as well as for entities deploying AI tools in their products and services.

The Act will provide for the supervision of AI by the NÚKIB as well as the Czech Telecommunication Office, which will also gain more robust enforcement tools, while the Ministry of Trade and Industry will have a crucial co-ordination and methodological role.

In addition, the Czech government has presented a **draft Act on the Digital Economy**, a landmark legislative initiative to establish a comprehensive legal framework for digital activities in the country.

The proposal not only transposes key EU regulations, such as the Digital Services Act, the Data Governance Act and the Platform-to-Business Regulation, but also further develops national rules to ensure a coherent framework for digital platforms, online services and data intermediaries.

The Act introduces clearer liability rules for digital platforms, strengthens transparency obligations and provides for stricter consumer protection in online transactions. For financial institutions, this will mean adapting digital distribution channels and online services to meet new compliance requirements, particularly in the areas of platform governance and user data management.

If enacted, the Digital Economy Act will represent a decisive step towards harmonising the Czech digital market with EU standards, while also addressing local challenges, such as consumer trust, fair competition and the supervision of digital platforms.

The Act will also strengthen the supervisory powers of the NÚKIB as well as the Czech Telecommunication Office, which, again, will gain more robust enforcement tools.

Five-Year Trends and Outlook

Over the past five years, the Czech lending market has diversified far beyond traditional bank loans, while banks still dominate. Real estate developers and mid-sized corporates have increasingly used bond issuances and debt and mezzanine financing, often via online platforms such as Ronda Invest or Upvest, akin to crowdfunding. These allow larger as well as retail investors to participate in financing businesses alongside banks. Regulated crowdfunding platforms have also gained significant traction, particularly for smaller deals.

Public offerings of unlisted corporate bonds surged from CZK22.1 billion in 2021 to CZK37.4 billion in 2023. Strong interest in corporate bond issuances continued in 2024, reaching a total volume of CZK113.8 billion.

Looking ahead to 2026–2030, non-bank credit and debt financing is expected to expand further. The launch of an amended European long-term invest-

ment fund (ELTIF) regime will likely encourage Czech asset managers to create long-term investment funds focused on infrastructure and real estate lending, easing access to such investment opportunities for a number of investors, including retail.

Private credit is rapidly emerging as a leading alternative asset class, offering higher risk-adjusted returns and active investor involvement through a closer alignment with company management and greater influence over value creation. Private debt and direct lending funds – whose activity has tripled in recent years – are set to play a more prominent role in corporate and project finance, co-lending alongside banks rather than replacing them.

Tokenised debt instruments using blockchain technology, facilitated by the Markets in Crypto-Assets Regulation (MiCA), may also enter the market, providing an additional financing channel for businesses.

Anticipated Market and Legal Events

An amendment to the Act on Investment Companies and Investment Funds is being prepared. In addition, a forthcoming government subsidy programme will support the acquisition of residential heat pumps, rooftop photovoltaics and energy-efficiency retrofits. These measures are expected to drive both consumer lending and project finance.

Significant infrastructure projects (eg, highways, railways, energy) are also currently under consideration, which are likely to impact the lending market. Their scope and timing will depend on parliamentary approvals, budgetary allocations, and the priorities of the incoming government following the October 2025 general election.

There is also a general expectation that the regulatory, corporate and ethics restrictions imposed or self-imposed on banks and financial institutions in respect of financing in the defence industry will be reduced. As a result, the volume of funds directed into this sector is expected to increase.

Recent Successful Lending Transactions

One of the largest recent local corporate bond issuances was the EUR400 million bond offering by Czechoslovak Group a.s., the largest defence industry player in the Czech Republic. The successful issuance of the bonds demonstrates a significant change in the mindset of Czech investors, who are now prepared to finance the defence industry. At the same time, it shows that banks and financial institutions are gradually adapting by participating in arranging such offerings, though still keeping some distance from direct lending.

Another notable transaction was the EUR1.5 billion umbrella facility extended to Škoda Transportation by a syndicate of banks led by ČSOB. The borrower and its affiliates were allowed to draw from a combination of term, revolving and corporate guarantee facilities. This umbrella structure ranks among the largest in the Czech market.

Finally, a EUR1.1 billion certain funds facility was extended to Tanemo a.s. (a PPF group SPV) by a syndicate of banks led by ING to finance the acquisition of Moneta Money Bank listed shares via a voluntary takeover bid. This transaction was the first in the Czech Republic structured as a certain funds loan for a voluntary takeover bid. It also features a unique collateral structure combining an option on the Moneta shares and a triggered guarantee to cover any pricing delta, shifting the credit risk from the borrower acquiring the shares to the credit standing of the sponsor, PPF Group N.V.

A notable recent development in the Czech market was Air Bank's introduction of a new investment offering that enables retail clients to invest directly in companies within the PPF Group. The first opportunity made available to investors was participation in the TV Nova EUR40 million bond issuance, which was structured under a bond programme approved by the Czech National Bank. This initiative marks an important step in broadening access to investment opportunities that were previously reserved primarily for private banking clients, thereby deepening retail participation in the Czech capital markets.



Law and Practice

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1. Legal Framework

1.1 Key Laws and Regulations

In European Union (EU) law and supervision, the term “bank” is largely a colloquial and non-technical shorthand, while the legally operative term is “credit institution”. For regulatory, supervisory, resolution and deposit as well as consumer protection purposes, it is the credit institution definition that determines the applicable regime and competent authorities.

Under EU prudential law, a credit institution is the legally defined category of firm that the banking regime applies to. In simple terms, it is an undertaking that both (i) accepts deposits or other repayable funds from the public, and (ii) grants credits for its own account. This two-pronged test is the cornerstone of the EU perimeter. If an entity does not take deposits/other repayable funds from the public or does not grant credit on its own balance sheet, it is generally outside the credit institution regime.

More fundamentally, the authorisation is for the credit institution; the law does not issue a separate “bank” licence. Firms commonly referred to as banks are legally authorised as credit institutions. Accordingly, commercial banks, savings banks, co-operative banks and building societies (depending on national law) generally meet the two-pronged test and are credit institutions. Moreover, banking groups may include financial holding companies and mixed activity holding companies subject to consolidated supervision around credit institutions.

The following firms, while regulated, are generally outside the perimeter of a credit institution:

- Investment firms under the dedicated Investment Firms Regulation (IFR)/Investment Firms Directive (IFD) regime (Markets in Financial Instruments Directive (MiFID) investment services) are not credit institutions unless they also conduct deposit taking; the prudential regime differs materially.
- Payment institutions and electronic money institutions (Payment Services Directive 2 (PSD2) and E Money regime) do not accept deposits/repayable funds in the banking sense and therefore are not credit institutions. Client funds are safeguarded but

not treated as deposits subject to the EU’s Depositor Guarantee Schemes Directive.

- Credit providers that do not take deposits, such as certain consumer lenders or mortgage lenders funded via capital markets, are not credit institutions under EU banking law (though they may be licensed under national consumer credit or mortgage credit regimes).

2. Authorisation

2.1 Licences and Application Process

The EU banking framework rests on a layered structure combining EU primary law, harmonised secondary legislation (regulations and directives) and extensive Level 2 rules and Level 3 standards generated by EU institutions and agencies.

In parallel, the Banking Union overlays this architecture in participating member states with two existing pillars: (i) centralised supervision in the form of the Banking Union’s Single Supervisory Mechanism (SSM) with the European Central Bank (ECB) at its helm; and (ii) centralised resolution planning and execution by the Single Resolution Board (SRB) at the helm of the Banking Union’s Single Resolution Mechanism (SRM). A proposed third pillar to complete the Banking Union is the European Deposit Insurance Scheme (EDIS) which would act as a common EU-level system to protect bank deposits of eligible depositors.

The principle of maximum harmonisation governs many EU banking rules, but the architecture still permits narrow national discretions, gold-plating in particular areas and differing supervisory intensity. Examples include the calibration of macroprudential buffers, national fit-and-proper criteria details, enforcement practices and conduct supervision priorities. Banks operating in multiple jurisdictions must navigate these nuances while adhering to central EU standards.

Within the Banking Union, supervisory intensity is typically higher for SIs due to centralised, risk-based approaches and enhanced data requirements. Resolution planning is more integrated and expectations regarding resolvability, the Minimum Requirement for Own Funds and Eligible Liabilities (MREL) stacking

and loss-absorbing capacity are scrutinised centrally. Nonetheless, legal obligations on prudential ratios, liquidity, governance and reporting are the same across the EU; the divergence lies in execution modalities and supervisory oversight structures.

Principal Laws and Regulations

The EU's prudential and supervisory architecture for banks and systemically important investment firms rests on two core instruments – both applicable EU-wide – and an integrated crisis-management regime. This is built on the following principal laws (each as amended and supplemented):

- Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD) (specifically CRD IV, as amended by CRD V and CRD VI): The CRR, directly applicable, sets detailed Pillar 1 requirements for own funds, risk-weighted capital, leverage, liquidity (Liquidity Coverage Ratio (LCR), Net Stable Funding Ratio (NSFR), large exposures, reporting and Pillar 3 disclosures. The CRD complements the CRR by establishing authorisation standards, governance and remuneration, Pillar 2 supervisory powers and processes (Supervisory Review and Evaluation Procedure (SREP), Internal Capital Adequacy Assessment Process (ICAAP), Internal Liquidity Adequacy Assessment Process (ILAAP), macroprudential buffers (Capital Conservation Buffer (CCoB), Countercyclical Capital Buffer (CCyB), buffers for global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs) and Systemic Risk Buffer (SyRB)) and passporting for Annex I activities. Recent CRD VI amendments also introduce a harmonised framework for third-country branches (TCBs) and reinforce environmental social governance (ESG) integration.
- Bank Recovery and Resolution Directive (BRRD) (EU-wide): This underpins recovery planning, early intervention, resolution tools (sale of business, bridge bank, asset separation, bail-in) and MREL, with national resolution funds and cross-border arrangements aligning to Financial Stability Board (FSB) Key Attributes.
- Recent Reforms: CRR II/CRD V introduced leverage ratio and NSFR, refined large exposures and market/CCR, plus governance and Intermediate

EU Parent Undertaking (IPU) measures. CRR III/CRD VI implement the final Basel standards (Basel 3.1), notably by introducing the output floor, and add EU-specific reforms on enhanced ESG integration, expanded supervisory powers, updated fit-and-proper requirements and a harmonised regime for TCBs with core obligations applying from January 2027.

- Banking Union-Specific Instruments for Participating States: the SSM Regulation centralises supervision for those credit institutions that are categorised for Banking Union purposes as (i) significant institutions (SIs) or (ii) as less significant institutions (LSIs) – both categories defined by size, cross-border activity and risk. The term “institution” in this context means credit institution per the prudential definition. The SSM Regulation is complemented by several rule-making instruments and communications issued by the European Central Bank – Single Supervisory Mechanism (ECB-SSM). Concurrently, the SRM Regulation centralises resolution decision-making at the Single Resolution Board (SRB) with the Single Resolution Fund (SRF).

The use of EU Regulations – directly applicable and uniform across the EU – ensures a high degree of harmonisation in critical prudential and market integrity areas, while EU Directives require transposition, allowing calibrated national discretion in limited respects. Technical standards, guidelines and supervisory handbooks developed by the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the ECB (in its SSM capacity) operationalise uniform application and promote consistent supervision. Taken together, these rule-making instruments constitute a Single Rulebook as applied across the EU (subject to modifications for use in the Banking Union), heavily operationalised via EBA regulatory and implementing technical standards and guidelines and ECB-SSM as well as SRB supervisory guidelines and other communications.

Banking Regulators

From an institutional standpoint, EU-level actors include the European Commission, the Council and the European Parliament (as co-legislators), as well as (i) the European Systemic Risk Board (ESRB) (macroprudential co-ordination) and (ii) the European

supervisory authorities (ESAs) comprised of the EBA, ESMA and the European Insurance and Occupational Pensions Authority (EIOPA.) Each of the ESAs, including when acting in their role as the Joint Committee, is responsible for regulatory technical standards and supervisory convergence.

In the Banking Union:

- the ECB-SSM exercises prudential supervisory tasks (i) directly for those credit institutions categorised as SIs – these are supervised directly by joint supervisory teams (JSTs) composed of staff from the ECB and the national competent authorities (NCAs); and (ii) indirectly for those credit institutions categorised as LSIs which remain under day-to-day NCA oversight subject to ECB-SSM co-ordination and methodology; and
- the SRB, which acts as the central resolution authority for Banking Union “institutions” falling within its remit – ie, credit institutions and certain systemically important investment firms.

The NCAs and national resolution authorities (NRAs) execute EU-derived powers domestically, including for member states outside the Banking Union.

It is essential to distinguish EU-wide prudential pillars, which bind all member states, from mechanisms that operate only within the Banking Union. The EU-wide rulebook comprises the core prudential requirements for credit institutions and investment firms under:

- the CRR/CRD framework;
- recovery and resolution standards under the BRRD;
- harmonised deposit guarantee requirements under the Deposit Guarantee Schemes Directive (DGSD);
- the AML/CFT legislative suite;
- consumer credit and mortgage frameworks;
- payments and market infrastructure rules;
- digital operational resilience requirements under the Digital Operational Resilience Act (DORA);
- sustainability disclosure and taxonomy rules; and
- data protection legislation.

These instruments apply across the entire EU.

The CRR/CRD and BRRD apply EU-wide. By contrast, the SSM and the SRM operate only in the Banking Union, which comprises the euro area and any non-euro member states that have entered into close co-operation as participating states.

For institutions within the Banking Union, compliance integrates ECB-SSM supervisory methodologies and SRB resolution planning. Within the SSM, the ECB-SSM is responsible for licensing and the direct, ongoing supervision of significant institutions, conducting the SREP, thematic reviews and direct supervisory measures, performing fit and proper assessments and issuing supervisory and enforcement decisions. LSIs are overseen on a day-to-day basis by national authorities under ECB-SSM oversight.

On the resolution side, the SRM centralises resolution planning and execution at the SRB for SSM SIs and Banking Union cross-border groups, with resolution strategies determined by the SRB, including co-ordination of national execution and access to the SRF under strict conditions.

For institutions in non-Banking Union member states, EU-wide regimes are implemented through national supervisory structures, aligned by EBA standards and peer mechanisms. Outside the SSM, these authorisation, supervisory and enforcement functions are performed by NCAs, guided by EBA convergence tools.

Cross-border groups must co-ordinate compliance and reporting across multiple NCAs and resolution authorities, relying on colleges of supervisors and resolution colleges to manage group-level oversight.

For institutions outside the Banking Union, the BRRD framework governs resolution at national level, co-ordinated through EU directives and EBA-led convergence rather than SRB direction.

In addition, EU rules on state aid and competition shape the financial sector’s operating environment, restricting anti-competitive practices, conditioning public support to banks under resolution or restructuring and requiring market discipline. Banks must adhere to market abuse and insider trading rules for traded instruments, comply with short-selling restric-

tions where applicable and maintain robust compliance frameworks for market integrity. These requirements apply uniformly across the EU and are enforced by the European Commission, ESMA and national authorities. Banking Union participation does not alter substantive competition or state aid law, though resolution decisions co-ordinated by the SRB intersect with state aid assessments.

Macroprudential overlay

Macroprudential oversight is co-ordinated at EU level through the ESRB, supported by harmonised processes for the activation, reciprocation and communication of measures across member states. Macroprudential authorities may calibrate capital buffers, risk weights and sectoral requirements to mitigate systemic risks and address credit cycles. In particular, the systemic risk buffer, the countercyclical capital buffer and, where applicable, buffers for other systemically important institutions operate as supplements to the core prudential regime.

Within the Banking Union, macroprudential policymaking remains primarily national. However, the ECB has a designated “top-up” role and, within limits of EU law, may apply higher capital buffer rates or adopt more stringent macroprudential measures than those set domestically. This provides an overlay that promotes financial stability and deeper harmonisation within the Banking Union. This overlay coexists with member states’ own macroprudential toolkits, ensuring a consistent EU-wide baseline. Outside the Banking Union, national authorities exercise macroprudential powers within the framework of EU law. The EBA promotes information-sharing and consistent implementation, co-ordinated by the ESRB.

Deposit protection

A fully mutualised EDIS, if adopted, would establish a common liquidity support mechanism for Banking Union DGSSs. The legislative progress for EDIS remains uncertain; until then, the DGSD remains the operative framework across the EU, with national DGSSs harmonised on coverage and payout. Deposit insurance has not been centralised and funding arrangements for deposit insurance are set at national level, including within the Banking Union.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Authorisation Requirements

The authorisation of credit institutions is governed by an EU-wide harmonised framework. Applicants must satisfy the governance, capital, organisational and suitability standards set out in the CRD, as complemented by national implementing measures.

- **Credit Institution Authorisation (EU-Wide):** Applicants must meet CRD requirements on initial capital (typically at least EUR5 million), programme of operations, governance (sound management body, effective risk control and compliance functions, fit and proper management), risk management frameworks (including ICAAP and ILAAP), remuneration policies aligned to prudent risk-taking and adequate organisation and systems (data aggregation, reporting, ICT and security).
- **Authorisation Perimeter:** “Credit institution” captures those undertakings whose business is to take deposits or other repayable funds from the public and to grant credits for its own account, as defined in the CRR. Since 2021, certain systemically important investment firms that meet quantitative thresholds for dealing on own account and underwriting/placing on a firm commitment basis (CRR Article 4 (1)(1)(b)), reflecting a bank-like risk profile, are subject to the same authorisation standards as credit institutions.

Licensing Process

EU-wide mechanics relevant to the licensing process are anchored in the CRD and EBA regulatory technical and implementing technical standards, which specify information templates, procedural steps and indicative timelines. Whether in SSM or non-SSM states, the assessment focuses on governance arrangements, ownership structure and qualifying holdings, the programme of operations, risk management and internal control frameworks and the adequacy of capital and liquidity resources.

For SSM licence applications, the ECB’s licensing guides set additional expectations, including for fin-

tech business models and the design and effectiveness of internal control functions.

EU-wide baseline

Under the CRD/CRR single market framework, authorisation requirements and passporting mechanics are harmonised across all member states. In non-participating (non-SSM) states, banking licences are granted by the NCA and, once authorised, institutions may exercise passporting rights for branches and services throughout the EU.

Approval is required for financial holding companies (FHCs) and mixed financial holding companies (MFHCs) to ensure effective consolidated supervision. Third-country groups (TCGs) that meet specified thresholds must establish an EU-domiciled IPU to facilitate supervision and resolution planning. That IPU may be constituted as an EU credit institution or as an FHC or MFHC, enabling coherent oversight of the EU group and its risks.

Separate to the considerations on IPUs, third-country entities (TCEs), including those that are equally TCGs, encounter a fragmented EU landscape. Equivalence frameworks exist for certain market segments but do not confer bank licensing rights. Prior to the harmonised framework under CRD VI, TCBs were authorised under host member state law and supervised by the local NCA, with cross-border services by non-EU firms constrained by national regimes in the absence of an EU-wide passport. While under the new regime TCBs will remain under NCA supervision for so-called Class 1 branches co-ordinated through colleges, for Banking Union TCBs of material systemic relevance, the SSM will provide risk-based supervisory co-ordination.

Banking Union specifics

In Banking Union participating states, the authorisation process is conducted within the SSM. Applications are submitted to the relevant NCA, which manages the file and prepares a draft decision; the ECB-SSM is the competent authority that adopts the final licensing decision. The ECB's authorisation remit does not extend outside the Banking Union.

Activities and Services

Authorised activities for credit institutions are those listed in CRD Annex I, including taking deposits, lending, payment services, guarantees and commitments, trading for own account, underwriting/placing and custody services.

Ancillary services are permitted in line with CRD and national transposition.

Territorial scope and the definition of cross-border services follow EU interpretations and Commission communications on “where services are provided”.

EU Passport

Once authorised in a member state, a credit institution benefits from an EU-wide passport, permitting the exercise of Annex I activities across the single market either through freedom of establishment (by way of branches) or under the freedom to provide services, in each case following the CRD notification and co-ordination procedures between home and host competent authorities, including the applicable Regulatory Technical Standards (RTS)/Implementing Technical Standards (ITS) on forms and information. The passport rests on mutual recognition of authorisations and prudential supervision and applies throughout the Union irrespective of participation in the Banking Union. While the host state may impose conduct-of-business and general good requirements consistent with EU law, the prudential regime remains the responsibility of the home state authority.

4. Governance

4.1 Corporate Governance Requirements **Qualifying Holding**

A “qualifying holding” is a direct or indirect holding in an institution representing 10% or more of capital or voting rights or otherwise enabling significant influence over management. The CRD requires prior notification and no-objection by the competent authority before acquiring or increasing a qualifying holding, including through concerted action or control structures.

Notification Thresholds

Acquisitions (and disposals) at or above 10%, 20%, 30% and 50% of capital or voting rights and the crossing of control thresholds (becoming or ceasing to be a subsidiary) trigger notification and assessment. Intra-group restructurings may still fall in scope depending on the structure and prudential impact.

Authorisation Process

Competent authorities assess the proposed acquirer and transaction against harmonised criteria: reputation and financial soundness of the acquirer; reputation, experience and governance of proposed appointees; financial soundness of the target post-transaction; compliance with prudential requirements (including resolution and AML/CFT considerations); and risks of money laundering/terrorist financing. Joint ESA guidelines provide a common assessment methodology. Authorities may oppose, attach conditions, or clear the transaction.

Decreasing Control Over a Credit Institution

Disposals crossing the same percentage thresholds must be notified. Authorities monitor whether the disposal compromises the institution's sound and prudent management or group supervision arrangements. In certain cases, approval may be required for de-mergers, material asset transfers, mergers or divisions (expanded under CRD VI).

4.2 Registration and Oversight of Senior Management

EU governance standards for credit institutions emphasise robust management bodies; clear segregation of management and supervisory functions; comprehensive risk management and internal control frameworks; and clear lines of responsibility. Fit and proper requirements apply to members of the management body and key function holders, with suitability assessed on integrity, competence, experience and time commitment. Supervisory authorities maintain notification and assessment processes for appointments and EBA guidelines guide uniform application across the EU.

Regulatory Requirements

A credit institution's governance framework should:

- establish a clear and coherent organisational structure with well-defined, transparent and consistent lines of responsibility;
- ensure effective and independent risk management, compliance and internal audit functions;
- support robust risk data aggregation and reporting; and
- embed comprehensive policies on conflicts of interest, outsourcing and ICT/security, together with remuneration arrangements aligned to prudent risk-taking.

These policies and frameworks should be formally documented, approved by the management body and subject to periodic review and challenge.

Management Functions

The management body must collectively possess adequate knowledge, skills and experience to understand the institution's activities, risks and impacts over relevant horizons, including ESG risk dimensions. Individual members must be of good repute, act with integrity, commit sufficient time and avoid conflicts. Key function holders (heads of control functions, CFO) are within scope for suitability assessment, a requirement reinforced by CRD VI.

Governance Arrangements

Institutions must ensure effective segregation of duties, independent risk and compliance, robust outsourcing oversight (including third-party and intra-group), sound product governance and strong internal control over financial and regulatory reporting. Risk culture and conduct expectations should be embedded throughout the organisation.

EU supervisory expectations further require that control functions are independent, adequately resourced and vested with sufficient authority and stature, operating under formal charters with direct and unfettered reporting lines to the board or its relevant committees and able to challenge management and escalate issues. Internal audit should maintain a risk-based, entity-wide audit plan covering prudential, conduct, AML/CFT, ICT and third-party risk domains and must track and verify timely remediation of findings. The compliance function should monitor regulatory change, oversee the risk of regulatory breach and

maintain appropriate training and awareness programmes across the firm. These expectations apply EU-wide; within the SSM, banks may be assessed against supervisory benchmarks for the effectiveness and independence of control functions, including comparative reviews across peer institutions.

In terms of firms and their disclosures, Pillar 3 disclosures, sustainability reporting and public communications demand consistency, reliability and non-misleading presentation. Banks should maintain controlled disclosure processes, ensure that prudential and sustainability metrics are subject to internal verification and, where applicable, external assurance, and avoid greenwashing and mis-selling risks. These obligations apply across the EU, with enforcement based on national regimes and supervisory monitoring. Banking Union institutions may face heightened scrutiny of models and disclosures through ECB reviews, but the legal framework remains common to the EU.

Diversity

EU supervisory expectations emphasise that boards of regulated institutions demonstrate genuine independence, a balanced diversity of skills and perspectives and a culture of robust challenge. Institutions should maintain clear segregation of roles, undertake periodic evaluations of board effectiveness and implement comprehensive policies on conflicts of interest and ethical conduct. Diversity is not merely an aspiration but a governance tool that enhances decision-making and risk oversight; it should be embedded in recruitment, succession planning and ongoing training frameworks to ensure the management body remains fit for purpose over time.

Supervisors across the EU actively assess board composition, independence and effectiveness and will intervene where deficiencies persist. Within the Banking Union, the ECB-SSM's fit and proper assessments for SIs add a layer of centralised scrutiny aligned with EU-wide criteria. In parallel, the CRD requires institutions to adopt and disclose diversity policies for the management body, addressing dimensions such as age, gender, geographical provenance and educational and professional background. EBA guidelines and benchmarking exercises provide reference points

for sound diversity practices and gender pay gap disclosures and supervisory authorities monitor progress against these benchmarks, setting clear expectations for remediation and improvement where warranted.

Voluntary Codes and Industry Initiatives on Corporate Governance and Conduct of Business Standards

Many institutions adhere to national corporate governance codes and international best practices (eg, FSB governance principles, Basel Committee on Banking Supervision (BCBS) corporate governance standards). Within the SSM, ECB expectations on governance and risk culture complement CRD/EBA guidance and are reflected in SREP.

Bankers' Oath

Where a national "bankers' oath" exists (even where such concept is not EU-harmonised), it remains a domestic overlay. It does not displace CRD governance requirements and applies in parallel as a matter of national law and conduct supervision.

4.3 Remuneration Requirements Fitness and Propriety Requirements

Fit and proper assessments cover reputation, honesty and integrity; knowledge, skills and experience; independence of mind; time commitment; and potential conflicts. CRD VI extends coverage to key function holders (such as heads of control functions and chief financial officers (CFOs)) and introduces governance body independence rules, including staff trading prohibitions and cooling-off periods.

Suitability Assessment Requirements

Institutions must have policies and procedures for selection, appointment, succession planning and ongoing suitability assessment. Joint EBA/ESMA guidelines provide a common methodology. Supervisors may object to appointments, require remedial actions, or remove members in defined cases, including where money laundering/terrorism financing (ML/TF) concerns arise.

5. AML/KYC

5.1 AML and CFT Requirements

Remuneration rules require institutions to adopt policies that align incentives with risk appetite and prudential objectives. Identified staff and material risk-takers are subject to proportionality-based constraints, including caps on variable remuneration relative to fixed pay, deferral and payout in instruments and malus/claw-back mechanisms. Shareholders' oversight of remuneration frameworks, policy documentation and disclosure obligations underpin governance accountability. While the legal baseline applies EU-wide via CRD/CRR implementation, SSM banks may be subject to more intensive supervisory scrutiny, including thematic reviews and benchmarking exercises co-ordinated by the ECB, without altering the underlying legal standards that apply across the EU.

Staff Subject to the Remuneration Requirements

CRD remuneration rules apply to staff whose professional activities have a material impact on the institution's risk profile identified under EBA RTS (material risk-takers), and to certain categories specified by regulation.

Remuneration Principles

Policies must promote sound and effective risk management and not encourage risk-taking beyond the institution's risk appetite. Variable remuneration is subject to malus/clawback, deferral and payout in instruments; proportionality may relax certain requirements for small and non-complex institutions and staff with low variable pay. Institutions must disclose remuneration practices under Pillar 3 and participate in EBA benchmarking.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The EU's AML/CFT regime, while primarily set out in sectoral AML/CFT legislation rather than in CRR/CRD, operates in close concert with prudential regulation and supervision. Institutions must comply with the new EU AML/CFT measures, comprising Directive No 2024/1640 (AMLD VI), Regulation No 2024/1624

(AMLR) and Regulation No 2024/1620 establishing the AMLA. This new architecture replaces key elements of the existing directives and establishes a dedicated EU AML Authority. In practice, money laundering and terrorist financing risks must be embedded within governance, the internal control framework and enterprise-wide risk management and are assessed as part of the SREP; material AML/CFT deficiencies may be treated as governance failings with prudential consequences.

Customer Due Diligence and Ongoing Monitoring

Institutions are required to operate risk-sensitive customer due diligence (CDD)/KYC processes at onboarding and throughout the relationship life cycle. This includes identifying and verifying customers and, where applicable, ultimate beneficial owners; assessing and documenting ownership and control structures; screening against relevant sanctions and watchlists; and conducting ongoing transaction monitoring calibrated to the customer's risk profile. Enhanced due diligence must be applied in higher-risk situations, including for politically exposed persons (PEPs), complex or unusual transactions and higher-risk jurisdictions, with measures proportionate to the identified risks.

Group-wide AML/CFT policies and controls must ensure consistent standards across EU and non-EU branches and subsidiaries, including TCBs, with appropriate information-sharing and oversight arrangements.

Reporting, Record-keeping and Supervisory Co-Operation

Suspicious transaction and activity reports must be filed promptly with the relevant national Financial Intelligence Unit (FIU) in accordance with local rules implementing EU AML/CFT legislation. Credit institutions must maintain comprehensive records, ensure data quality and retrievability and provide timely, accurate information to competent authorities upon request. Effective co-operation with FIUs, prudential supervisors and, where relevant, law enforcement is integral to the EU's co-ordinated AML/CFT architecture.

Internal Control, Resourcing and Accountability

Credit institutions must appoint a designated AML/CFT compliance officer with adequate authority and independence, ensure proportionate staffing, training and technological resources and adopt risk-based policies and procedures that are regularly reviewed and validated. AML/CFT considerations should be integrated into the three lines of defence, with clear management body accountability, periodic independent testing and escalation protocols. Supervisors assess the adequacy of these arrangements as part of broader governance evaluations; persistent weaknesses may trigger supervisory measures and enforcement.

Sanctions and Restrictive Measures

EU-level sanctions and restrictive measures are directly binding and must be fully reflected in screening, onboarding, payment filtering and asset control processes. Institutions must implement asset freezes and transaction prohibitions for designated persons and entities, maintain audit trails and ensure rapid updates to lists and controls to reflect evolving measures, including those adopted on an urgent basis.

Supervisory Architecture and Convergence

The AML/CFT framework applies EU-wide, with national FIUs, competent authorities and law enforcement implementing and enforcing requirements in coordination. The EU's newly established Anti-Money Laundering Authority (AMLA) is intended to enhance convergence, strengthen direct and indirect supervision and promote uniform application across Banking Union and non-Banking Union jurisdictions, including through supervisory oversight, regulatory powers and enforcement. EU-level standards, supported by EBA guidelines and supervisory handbooks, guide expectations. Ultimate compliance outcomes, including enforcement and governance accountability, remain the responsibility of national authorities and sectoral supervisors, subject to the emerging EU-level oversight model.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

The Deposit Guarantee Schemes Directive (DGSD) establishes uniform coverage levels for eligible deposits per depositor per institution across the EU, harmonises payout timeframes and information obligations and mandates DGS membership and funding arrangements. It preserves national administration of schemes, including contributions, target funding levels and governance structures. EU credit institutions must participate in national DGSs in their home member state, and branches in host states are covered by the home scheme under home/host co-operation.

Within the Banking Union, depositor protection follows the same harmonised yet national scheme model. While the SRM delivers centralised resolution decision-making and common resolution funding, deposit insurance has not been centralised and proposed mutualisation options remain politically unsettled. Consequently, depositor protection is an EU-wide framework administered domestically, and Banking Union participation does not alter scheme administration, even though supervisory and resolution aspects may be centralised.

EDIS

A proposal for an EDIS would, if adopted, provide a common liquidity support mechanism for Banking Union DGSs. Legislative progress remains uncertain; until then, DGSD remains the operative framework across the EU.

DGS Organisation

National DGSs are designated and supervised under member state law implementing DGSD. Eligible deposits held by branches of EU credit institutions are covered by the home state DGS; third-country branches must disclose applicable protection.

DGS Funding

National DGSs are funded ex ante through risk-based contributions by member institutions, with back-up financing arrangements ex post as needed. Target levels and financing instruments are set by the DGSD and national law.

Covered Depositors and Deposits

Coverage generally extends to natural persons and SMEs, with exclusions for certain financial institutions and public sector entities. Temporary high balances may enjoy special protection subject to national transposition.

Limits of Coverage

Standard coverage is up to EUR100,000 per depositor per bank across the EU, harmonised under the DGSD.

Other Guarantee Schemes

Sector-specific or national schemes may exist (eg, investor compensation schemes) in parallel; they do not affect DGSD coverage but can interact in specific cases.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Basel III Standards Implementation

Although Basel III standards do not have direct legal effect in the EU, their substance has been progressively incorporated into EU law through the CRR and the CRD. As a result, the prudential regime applicable to EU credit institutions broadly reflects the Basel Framework, adapted to EU-specific objectives and applied across the entire EU banking sector. Within the Banking Union, certain additional specific supervisory expectations apply.

Legislative Waves of Implementation

The EU has implemented Basel III through three principal legislative waves, each extending and refining the prudential framework:

- June 2013: CRR and CRD IV introduced the core Basel III capital, leverage and liquidity standards into EU law and established the single rulebook format, with the CRR directly applicable and the CRD transposed at member state level.
- May 2019: CRR II and CRD V largely completed implementation of the initial Basel III package, enhancing the leverage and liquidity regimes, revising counterparty credit risk and market risk elements and advancing supervisory harmonisation.

- May 2024: CRR III and CRD VI finalised the reforms in the “Basel 3.1 package” in EU law, introducing the output floor and revising Pillar 1 methodologies for credit risk, operational risk, market risk (including the Fundamental Review of the Trading Book (FRTB)) and Credit Valuation Adjustment (CVA).

Scope and Core Content of the CRR/CRD Framework

The CRR/CRD framework implements Basel standards across Pillar 1, the leverage ratio and liquidity requirements, culminating in CRR III’s completion of the Basel 3.1 package. CRR III and CRD VI, in particular, are designed to finalise the EU’s implementation of Basel III and introduce EU-specific reforms by:

- introducing an output floor on risk-weighted assets to constrain model variability and improve comparability across institutions using internal models;
- overhauling market risk requirements through the FRTB framework, coupled with related adjustments to internal model permissions and standardised approaches;
- revising standardised and internal ratings-based approaches to credit risk, including recalibrations and new treatments for specific asset classes;
- replacing legacy operational risk approaches with the new standardised approach;
- strengthening the prudential treatment of CVA risk, while maintaining defined exemptions and enhancing supervisory monitoring of exempted positions; and
- establishing a harmonised regulatory and supervisory framework for TCBs under CRD VI, covering authorisation, classification, minimum capital endowment, liquidity requirements, governance, booking standards, periodic reporting, systemic importance assessments and subsidiarisation powers.

These measures sit alongside the existing leverage ratio and liquidity standards and collectively align the EU’s prudential architecture with the final elements of the Basel III framework.

EU-Specific Calibrations and Policy Choices

While implementing Basel standards, the EU has exercised targeted discretions and calibrated certain

measures (importantly, within the Banking Union any national options and discretions exercised by NCAs in respective EU member states have been streamlined) to reflect its broader scope of application and policy priorities. Notable EU-specific elements include:

- application to all EU credit institutions, not solely to internationally active banks, thereby reinforcing a consistent single rulebook and level playing field across the Single Market;
- enhanced ESG-related governance and disclosure expectations and supervisory tools, reflecting the integration of environmental and broader sustainability risks within prudential supervision; and
- transitional and targeted treatments in areas with particular EU relevance, such as unrated corporates and strategic equity investments, as well as interim prudential treatments for certain crypto-asset exposures are pending the full implementation of the Basel standard.

These adjustments operate within the boundaries of the international framework while addressing European market specificities and financial stability considerations.

Consolidation of the EU Prudential Regime and TCBs under CRD VI

With CRR II and CRD V, the EU effectively completed the implementation of the original Basel III reforms. The subsequent adoption of CRR III and CRD VI finalises the Basel 3.1 package in EU law, consolidating the prudential regime in line with international standards and complementing it with EU-specific policy choices, including market access for TCGs, TCEs and more importantly TCBs. The result is a comprehensive, risk-sensitive and more harmonised prudential framework, implemented directly via the CRR and through national transposition of the CRD, and designed to support resilience, comparability and supervisory convergence across the EU banking sector.

CRD VI introduces an EU-wide, harmonised regime for TCBs in the EU:

- Authorisation and classification require branch authorisation in the host member state and intro-

duce classification of TCBs by size/risk profile, with proportionate prudential expectations.

- Minimum prudential standards establish EU standards for local endowment, governance, risk management, reporting and booking controls (including local management of material risks and limits on back-to-back or remote booking), aiming to ensure that risks generated in the EU are appropriately managed and overseen locally.
- Supervisory powers and subsidiarisation enhance host authorities' powers to restrict activities or require subsidiarisation where the TCB's scale or risk profile warrants EU incorporation, or where supervisory co-operation with the third-country home authority is inadequate.
- Macroprudential co-ordination provides mechanisms for co-ordination across member states and, within the Banking Union, with the ECB/SSM on systemic risk issues affecting TCBs, while preserving the principle that supervision remains with national competent authorities.
- Transitional arrangements include transitional provisions for existing branches to migrate into the harmonised regime following national transposition and EU application timelines.

This new framework does not convert TCBs into EU credit institutions, nor does it subject them to CRR Pillar 1 capital or leverage ratios. Instead, it creates branch-specific prudential, governance and reporting obligations at EU level, while preserving the application of CRR/CRD requirements to EU-authorised institutions and their subsidiaries.

Risk Management Rules

Risk management is anchored in the ICAAP and the ILAAP, with supervisory authorities conducting Pillar 2 reviews to set institution-specific capital and liquidity add-ons that reflect the firm's business model risks and the quality of its governance, risk management and control framework. Consistent with the principle of proportionality, Pillar 2 requires that ICAAP and ILAAP be calibrated to the institution's risk profile and rigorously address concentration risks, interest rate risk in the banking book (IRRBB), model risk, outsourcing and other third-party risks, and information and communication technology (ICT) and security risks, and that they incorporate robust stress testing,

clear risk appetite metrics and recovery indicators. These expectations are articulated in detail in the EBA and ECB supervisory guides, which are applied with particular granularity within the SSM, while Pillar 3 disclosures reinforce market discipline and transparency by providing stakeholders with consistent, decision-useful information on risk and capital adequacy.

For Banking Union institutions using internal models, ECB approval and ongoing monitoring apply under the ECB Guide to Internal Models. Banks should maintain comprehensive model inventories, validation and governance standards that meet targeted review of internal models (TRIM)-style benchmarks, with clear evidence of representativeness, data quality, prudent parameterisation and back-testing. Remediation plans must be time-bound and resourced, recognising that SSM scrutiny of credit risk, market risk/FRTB and IRRBB models is intensive and may result in measures, add-ons or permissions withdrawal. Disclosure narratives should explain output floor bindingness and model changes through the lens of SSM supervisory dialogue.

Equally, in terms of data governance generally as well as for risk management specifically, data governance has heightened importance in the Banking Union given ECB reliance on granular datasets. Institutions should strengthen data lineage, reconciliation and controls to meet analytical credit datasets (AnaCredit) and financial reporting quality benchmarks while preparing for the integration of the Integrated Reporting Framework (IReF). Programmes should prioritise supervisory data accuracy, timeliness and explainability, with independent assurance over key metrics and alignment to BCBS 239 principles as operationalised by the SSM.

Capital and Liquidity Requirements

EU capital and liquidity requirements distinguish between (i) EU credit institutions (including EU-authorised institutions and EU subsidiaries of TCGs) and (ii) non EU credit institutions active in the EU via TCBs or other non-authorised establishments, and clarify the split between EU-wide rules (CRR/CRD and related Delegated Acts, including the new CRD VI regime for TCBs) and Banking Union overlays (SSM/SRM policies applicable in the euro area).

In summary:

- **Initial Capital (EU-Wide v TCBs in the EU):** EU credit institutions must maintain a minimum amount of paid-up initial capital of EUR5 million to obtain EU authorisation. EU subsidiaries of third-country groups are treated as EU credit institutions for authorisation and prudential purposes. By contrast, TCBs are not authorised as EU credit institutions but, under CRD VI, will be subject to a harmonised EU authorisation and prudential framework. That framework introduces EU-level rules on branch authorisation, local endowment requirements, governance and reporting, replacing the prior patchwork of purely member state-specific regimes.
- **Risk-Based Capital Ratios (EU-Wide):** For EU credit institutions (including EU subsidiaries of third-country groups), the EU-wide Pillar 1 minima apply: a total capital ratio of 8% of RWA, including at least 6% Tier 1, of which 4.5% must be Common Equity Tier 1 (CET1). On top of these minima, institutions must meet the combined buffer requirement: the CCoB of 2.5% CET1, any applicable CCyB, and institution-specific systemic buffers such as the G SII buffer, O SII buffer, and any SyRB set by national authorities under CRD. TCBs are not subject to the EU CRR Pillar 1 capital ratios as branches; instead, CRD VI establishes branch-level prudential standards (including endowment, governance and booking controls) and enhanced supervisory powers, with capital requirements continuing to apply at the head office/third-country group level under home country rules.
- **Leverage Requirements (EU-Wide):** EU credit institutions are subject to the leverage ratio minimum, with an additional leverage buffer for G SIIs. These non-risk-based standards operate alongside the risk-based framework and are calibrated under the CRR and Delegated Regulations. TCBs remain outside the scope of the EU leverage ratio regime; CRD VI does not extend CRR leverage requirements to branches, although member states may impose branch-specific constraints consistent with the EU framework.
- **Liquidity Standards (EU-Wide):** EU credit institutions must comply with the LCR and the NSFR. The LCR requires sufficient high-quality liquid assets to withstand a severe 30-day stress; the

NSFR promotes stable funding over a longer horizon relative to assets and off-balance sheet activities. Detailed calibrations, asset eligibility and treatments of collateral and securities financing transactions (SFTs) are set out in the CRR/CRR II/III and relevant Delegated Regulations. TCBs are not directly in scope of LCR/NSFR under CRR; under CRD VI, branches will face harmonised EU liquidity governance and booking requirements (eg, local liquidity risk management and reporting), while quantitative LCR/NSFR metrics continue to apply to EU credit institutions.

- **Systemic Institutions and Loss Absorbency (EU-Wide v Banking Union):** EU-wide, G SII are subject to heightened capital via a CET1 G SII buffer and parallel non-risk-based leverage buffers and must meet loss absorbency and recapitalisation standards (eg, Total Loss Absorbing Capital (TLAC)/MREL requirements) in tandem with supervisory Pillar 2 requirements. Within the Banking Union, ECB-led SSM supervision applies to significant institutions, including setting Pillar 2 Requirements (P2R) and Pillar 2 Guidance (P2G) through the SREP process, and the SRB implements MREL policies under the SRM. The ECB may also apply top-up macroprudential measures (eg, buffers) over national decisions. TCBs are supervised by national competent authorities under CRD VI; they are not brought into SSM as EU credit institutions, though co-ordination mechanisms with the ECB may operate in the Banking Union for systemic risk considerations. Non-Banking Union EU members remain under NCAs/EBA frameworks for these overlays.
- **Large Exposures (EU-Wide v Branches):** EU credit institutions are subject to the CRR large exposure regime, which caps exposures relative to Tier 1 capital and applies connected client aggregation principles, with special limits for certain counterparties and consolidation across groups where applicable. Under CRD VI, TCBs will be subject to harmonised EU constraints on concentration risk and exposures, aligned with CRD/CRR concepts, while full CRR large exposure rules continue to apply to EU credit institutions.

9. ESG

9.1 ESG Requirements

The EU's crisis management architecture hinges on credible recovery planning, resolvability assessments and resolute execution of resolution tools. Recovery plans set out escalation triggers, recovery measures and critical business function protections; resolution plans determine preferred strategies and MREL to ensure loss-absorbing capacity and facilitate orderly resolution without taxpayer bailouts. The BRRD provides the toolkit – bail-in, sale of business, bridge institution and asset separation – and establishes procedural safeguards and creditor hierarchy.

Within the Banking Union, the SRM centralises resolution planning and decisions for SIs and cross-border groups falling within its competence, with the SRB in the lead and NRAs implementing measures domestically. The SRF supports resolution financing in Banking Union states under strict conditions.

In summary, resolvability is assessed centrally by the SRB. Banks are expected to evidence credible bail-in execution capability, including liabilities data, instrument terms alignment, communications playbooks and agent bank arrangements. Separability analysis and transferability of critical functions must be supported by operational blueprints. Continuity of access to financial market infrastructures (FMIs) and payment/settlement systems should be demonstrated through tested contingency arrangements, recognising SRB's focus on operational continuity, governance and third-party dependencies.

A further SRB priority is operationalising liquidity in resolution. Institutions are expected to maintain SRB-aligned liquidity in resolution playbooks covering collateral mobilisation, central bank facilities access mechanics, FMI margin and settlement obligations, and intercompany flows. Pre-positioning strategies (resolution liquidity adequacy and positioning (RLAP)/resolution liquidity adequacy capacity (RLAC)) should be documented, with legal and operational arrangements enabling rapid liquidity execution under stress. Dry runs and simulation exercises with NRAs/SRB should be reflected in remediation plans and board oversight.

Outside the Banking Union, the BRRD and national resolution authorities operate the same toolkit, but without centralised SRB oversight or access to the SRF. Non-Banking Union institutions co-ordinate with national resolution authorities and cross-border colleges to ensure consistency, acknowledging that resolution execution will be national but aligned to EU standards. Co-operation amongst NRAs is maintained via cross-border resolution colleges and EBA mediation powers.

Insolvency

Outside regulator-led bank resolution intervention, national law-governed bank insolvency/liquidation regimes apply, subject to EU law constraints (state aid; BRRD hierarchy alignment). CRD VI clarifies supervisory withdrawal of authorisation where “failing or likely to fail” (FOLTF) and “no alternative” conditions exist but public interest for resolution is not met.

Recovery

Firms must prepare recovery plans with options to restore viability under stress and defined indicators for escalation. Authorities can apply early intervention measures where deterioration threatens viability, including business restrictions and governance changes. Resolvability assessments focus on separability, valuation preparedness, bail-in execution and operational continuity of critical functions.

Resolution

Resolution planning identifies critical functions, preferred resolution strategies (single point of entry (SPE)/multiple point of entry (MPE)), MREL calibration and internal TLAC and resolvability deliverables (bail-in playbooks, valuation, separability, continuity of access). In the Banking Union, SRB policies and the SRF overlay apply; elsewhere, NRAs implement BRRD transposition, co-ordinated via EBA and cross-border colleges. The Commission’s proposed Crisis Management and Deposit Insurance (CMDI) reforms are expected to refine resolution triggers, public purchase and assumption (P&A) financing for resolution and interactions with deposit guarantee schemes.

10. DORA

10.1 DORA Requirements EU Requirements

EU sustainability frameworks for banks serve two principal purposes: transparency and alignment. Transparency is driven by cross-cutting disclosure regimes that enable market discipline and comparability. Alignment is achieved through harmonised definitions, prudential integration of ESG risks and supervisory expectations that embed climate and environmental considerations into banks’ strategies and risk frameworks.

CRR III introduces harmonised definitions of ESG risks, specifically in CRR Article 4 (1)(52d-52i), and strengthens quantitative and qualitative disclosure, including enhanced Pillar 3 disclosures for large institutions. CRD VI embeds ESG into governance, risk management and supervision, including board composition and oversight (Article 91), risk management frameworks (Article 87a), the Supervisory Review and Evaluation Process (Article 98) and prudential transition planning (Article 76). The European supervisory authorities have a mandate to develop joint guidelines on ESG stress testing (Article 100) and the EBA has issued guidelines on ESG risk management, further operationalising expectations for identification, measurement, monitoring and control of climate-related and environmental risks.

The Sustainable Finance Disclosure Regulation (SFDR) requires entity- and product-level sustainability disclosures from financial market participants, including banks, when they provide investment services or offer in-scope products, thereby enhancing consistency and comparability of information for clients and investors. The Taxonomy Regulation supplies the common classification of environmentally sustainable economic activities, informing both disclosure and investment decision-making and anchoring target-setting and reporting against a harmonised benchmark. Corporate sustainability reporting standards apply to large companies and listed entities, requiring comprehensive reporting on sustainability matters, which in turn enriches banks’ counterparty data and supports portfolio-level assessments.

Banks must incorporate sustainability considerations across their internal frameworks. This includes board-level oversight and expertise, risk identification and appetite calibration, scenario analysis and stress testing, data governance and metrics and internal control functions. Product governance and client-facing processes must reflect sustainability factors, including assessment of client sustainability preferences where relevant, with corresponding disclosures that are clear, fair and not misleading. These requirements operate alongside public commitments – such as net zero trajectories, interim sectoral targets and engagement strategies – which, while often voluntary in origin, create supervisory and market expectations that reinforce prudential objectives.

The ECB and national supervisors have intensified scrutiny through thematic reviews, on-site inspections, climate risk assessments and stress tests, leading to more granular expectations on integration timelines, data remediation and risk quantification. Within the SSM, the ECB's climate-related expectations function as a convergence baseline and a Banking Union-specific supervisory overlay for institutions in the Banking Union. Outside the Banking Union, supervisory execution is guided by the EBA and national prudential authorities, but the underlying legal obligations remain EU-wide, supporting a consistent level of resilience and disclosure.

International Banking Industry's Initiatives

Industry bodies and coalitions – such as the United Nations Environment Programme Finance Initiative (UNEP FI) Principles for Responsible Banking and the Net Zero Banking Alliance – complement EU rules by informing strategy, target-setting methodologies, sectoral pathways and disclosure practices. While voluntary, these frameworks shape market norms, interact with prudential transition planning and can influence supervisory dialogue where banks' public commitments imply measurable implementation trajectories.

National Requirements

Member states may introduce supervisory expectations or disclosure overlays, provided they remain consistent with EU law and do not fragment the single rulebook. In practice, national competent authorities have used guidance, “comply or explain” expecta-

tions and targeted reviews to accelerate implementation, while SSM-level co-ordination promotes convergence for cross-border groups.

11. Horizon Scanning

11.1 Regulatory Developments

EU-Wide Developments

The main upcoming regulatory developments expected to have an impact on banks operating in the EU are outlined below.

Retail conduct and market reforms (MiFID/Markets in Financial Instruments Regulation (MiFIR)); Retail Investment Strategy (RIS))

The EU's retail and markets conduct framework is undergoing significant recalibration that will materially affect banks' distribution, product governance and inducement models. The MiFIR review and associated MiFID amendments advance consolidated tape, market structure and transparency changes; in parallel, the Commission's RIS proposes tighter value-for-money expectations, enhanced disclosure simplification and targeted curbs on inducements in certain retail contexts. Banks providing investment services should anticipate revisions to product oversight, suitability/appropriateness processes, client communications and remuneration structures for sales staff, ensuring alignment across prudential governance, conduct controls and ESG preference assessments where relevant. Supervisory scrutiny of mis-selling risks is expected to intensify, with convergence tools deployed by ESMA and national authorities to promote consistent outcomes.

Payments overhaul (PSD3, Payment Services Regulation, instant payments)

EU payments law is being modernised through a two-pillar approach comprising a new Payment Services Directive 3 (PSD3) and a directly applicable Payment Services Regulation (PSR). Together with the instant payments regulation mandating 24/7 euro credit transfers, these measures strengthen fraud prevention (including International Bank Account Number (IBAN)/name check), refine strong customer authentication, reinforce access to account/RTS on strong customer authentication (SCA)/common and secure open

standards of communication (CSC) and recalibrate authorisation and supervision of payment institutions. Banks must integrate real-time sanctions screening, AML/CFT monitoring and operational resilience for instant payments, update contractual arrangements with third-party providers (TPPs) and ensure coherent implementation of SCA across channels. Host state conduct overlays remain applicable, but prudential impacts – including operational risk and ICT resilience under DORA – should be embedded into the control framework.

Derivatives and market infrastructure (EMIR 3.0, CSDR refit)

The European Market Infrastructure Regulation (EMIR) reforms further develop central counterparty (CCP) supervision and EU clearing resilience, including the “active account” requirement for certain euro-denominated derivatives, strengthened margin and collateral transparency and enhancements to reporting and data quality. Banks with derivatives books should reassess clearing strategies, counterparty risk management, collateral transformation practices and operational readiness for reporting changes, recognising overlaps with DORA (ICT/data integrity) and CRR market risk/CVA adjustments. In post-trade, the Central Securities Depositories Regulation (CSDR) refit eases settlement discipline while reinforcing supervisory oversight and operational continuity at central securities depositories (CSDs) – relevant for custody, issuance and securities financing businesses.

Data, AI and cybersecurity overlays (General Data Protection Regulation (GDPR), Data Act, AI Act, Network and Information Security Systems 2 (NIS2))

Beyond DORA, EU horizontal regimes shape banks’ data governance and technology deployment. GDPR enforcement and cross-border data transfer constraints – now framed by the EU-US Data Privacy Framework (DPF) – necessitate sustained controls over lawful processing, minimisation, and vendor oversight. The Data Act introduces rights and obligations around access to and sharing of data generated by products and services, including in financial services ecosystems. The AI Act classifies certain AI use cases – such as credit scoring and risk assessment – as high risk, requiring risk management, data gov-

ernance, transparency and human oversight; banks should inventory AI systems, document conformity and adjust model governance accordingly. NIS2 extends cybersecurity obligations for essential entities; banks must ensure consistency across DORA ICT controls, NIS2 cyber obligations and GDPR security of processing.

Sanctions and restrictive measures: operationalisation and circumvention risk

EU restrictive measures have expanded rapidly and are directly applicable; banks must maintain agile list management, comprehensive ownership/control look-through and robust circumvention detection (eg, trade flows, transshipment routes, complex corporate structures). Controls should cover onboarding, payment filtering, asset freeze administration and exit strategies for sanctioned exposures. Governance should document escalation and decision-making, with periodic independent testing of sanctions screening effectiveness and remediation tracking, recognising that sanctions failings frequently trigger both conduct and prudential consequences.

Sectoral asset class regimes: securitisation and covered bonds

The EU securitisation framework embeds due diligence, risk retention and transparency requirements, with short-term business statistics (STS) providing preferential regulatory treatment subject to strict criteria. Banks acting as originators, sponsors or investors must maintain documented verification of compliance and integrate securitisation risks into ICAAP and model risk oversight. The covered bonds directive harmonises structural features and supervision; issuance programmes should evidence asset quality, cover pool management, liquidity buffers and investor disclosure, aligning prudential and resolution separability expectations.

Resolution liquidity and CMDI refinements

The CMDI package is expected to enhance early intervention measures, improve interaction with the CGSs and refine the public financing of transfer tools. Additionally, it aims to clarify the withdrawal of authorisation when FOLTF conditions are met but there is no public interest in resolution. A critical operational dimension – liquidity in resolution – requires banks to

develop playbooks, collateral mobilisation strategies and FMI access continuity plans that demonstrate credible liquidity execution under stress. Institutions should align recovery and resolution plans with SRB expectations on separability, bail-in execution, valuation readiness and continuity of access to payment/settlement systems.

MREL/TLAC and capital stack interactions (MDA constraints and buffers)

Loss-absorbing capacity expectations continue to tighten. Banks should articulate internal TLAC/MREL frameworks, subordination strategies and issuance plans and model interactions between combined buffer requirements, P2R/P2G and MREL breaches, including management of maximum distributable amount (MDA) constraints for distributions, Additional Tier 1 (AT1)/Additional Tier 2 (AT2) coupons and variable remuneration. Disclosure of stack resilience and contingency measures enhances market discipline and supervisory dialogue.

Third-country market access: services, branches and booking

While CRD VI harmonises TCB authorisation, classification and prudential expectations, market access for non-EU banks remains constrained in the absence of an EU-wide services passport. Banks should assume a strict reading of the perimeter: cross-border services into the EU are generally limited, with reverse solicitation narrowly construed. Booking models must ensure that risks generated in the EU are managed locally, with clear governance over back-to-back transactions and remote booking to prevent supervisory arbitrage. Colleges and co-operation arrangements will be pivotal, but host authorities retain enhanced powers to require subsidiarisation where warranted.

Consumer credit and mortgage frameworks: CCD recast and mortgage conduct

The consumer credit directive recast expands scope and strengthens advertising, pre-contractual disclosure and affordability assessments, with digital channels explicitly addressed. Mortgage credit rules continue to emphasise responsible lending and appraisal standards; banks should align product governance, affordability metrics and vulnerable customer frameworks, integrating ESG and energy efficiency consid-

erations where they intersect with collateral values and lending policies.

Competition/technology interface (DMA, card payments, wallets)

Digital platform regulation – particularly the Digital Markets Act (DMA) – affects payments initiation, wallet interoperability and default settings that shape consumer journeys. Banks should monitor gatekeeper obligations, ensure fair access and preserve competitive neutrality in digital payments ecosystems. Interchange fee constraints and evolving card network rules require pricing and conduct alignment; consumer protection authorities increasingly co-ordinate with competition enforcement in retail payments.

RTS/ITS roll-out under CRR III/CRD VI

CRR III/CRD VI mandates extensive secondary legislation. Institutions should track and implement EBA/ESMA/ECB technical standards on credit risk (including real estate exposures), FRTB market risk permissions and reporting, operational risk, CVA, ESG Pillar 3 templates and TCB governance/reporting. Transitional arrangements and phase-ins will affect model approvals, output floor bindingness across portfolios and disclosure sequencing; the supervisory calendar should be integrated into programme plans with board oversight.

Banking Union-Specific Developments

Regarding the Banking Union's framework, many regulations and directives are expected to affect credit institutions in the coming year.

CMDI alignment within the SRM and interactions with national DGSs

CMDI reforms will refine the use of transfer tools and public financing in bank crises and clarify supervisory withdrawal of authorisation where FOLTF is met but public interest for resolution is absent. Banking Union institutions should update recovery and resolution plans to reflect SRB guidance on purchase and assumption financing, DGS contribution mechanics and early intervention triggers, with explicit documentation of governance escalation, valuation readiness and creditor hierarchy application under the SRM Regulation.

Third-country branches in the Banking Union: SSM co-ordination and booking controls

While third-country branches remain supervised by host NCAs under CRD VI, the Banking Union introduces SSM co-ordination for systemic risk considerations. TCEs and TCGs operating TCBs in Banking Union states should implement robust local governance, liquidity risk management and booking controls, ensuring that risks generated in the euro area are managed locally, and document co-operation arrangements with the SSM, SRB and NRAs for colleges and crisis management. Group booking models must preclude supervisory arbitrage and preserve resolvability.

Cross-border waivers and intragroup flows within the Banking Union

Capital and liquidity waivers and intragroup financial support arrangements may be facilitated within the SSM/SRM framework subject to supervisory approvals and safeguards. Institutions should assess the feasibility and benefits of waivers for Banking Union entities, design support agreements consistent with resolution strategies and ensure that intragroup exposures, guarantees and operational services are structured to enhance resilience and resolvability rather than create impediments.

ECB climate supervisory expectations and Banking Union stress testing

Banking Union institutions should explicitly integrate ECB climate expectations and SSM stress testing methodologies into risk management. This includes board oversight, scenario analysis, transition and physical risk quantification, and remediation plans for data gaps. Pillar 2 engagement should demonstrate credible timelines and resource allocations, with internal audit validating integration and controls consistent with SSM guidance.

Trends and Developments

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EU Banking Regulation: Key Trends and Developments for 2026

The EU financial regulatory landscape has entered a period of intense consolidation and recalibration, with 2026 marking a critical juncture for several key initiatives. The European Commission's legislative pipeline from the last mandate is crystallising into Level 1 measures accompanied by an ambitious programme of technical standards and supervisory convergence, notably driven by the European Supervisory Authorities' (ESAs) Annual Work Programmes. Firms are simultaneously responding to new prudential requirements, market structure reforms, digital finance initiatives, an evolving sustainability disclosure framework and the operationalisation of new authorities such as the Anti-Money Laundering Authority (AMLA). This article sets out the most consequential developments for 2026 and their practical impact across markets, distribution, prudential policy, market infrastructure, digital assets, payments and sustainable finance, while also considering the simplification and burden reduction agendas.

Markets and Distribution: From MiFID II Review to Retail Strategy

EU policymakers are pursuing a twin track: improving investor outcomes while tightening product governance and distribution discipline. The MiFID II/MiFIR review, the Retail Investment Strategy and refinements to the Packaged Retail and Insurance-based Investment Products (PRIIPs) and European Long-Term Investment Fund (ELTIF) regimes are together reshaping retail access, inducements, disclosures and suitability.

The MiFIR review advances market structure changes that are primarily wholesale in character, yet they indirectly influence retail distribution through impacts on liquidity, transparency and best execution. The review's recalibration of consolidated tape architecture and the authorisation and supervision of the first Consolidated Tape Providers for bonds and equities will be major developments designed to enhance price formation and routing quality across instruments. For distributors, enhanced transparency tools will increase the evidentiary burden around best execution monitoring and the calibration of distribution strategies for packaged products, with the European

Securities and Markets Authority (ESMA) continuing to supervise market transparency infrastructures, with a focus on data quality and operational resilience.

In parallel, the Retail Investment Strategy reflects a policy intention to improve net returns for retail investors, curtail poor-value products, and strengthen the suitability and appropriateness regimes. The debate on inducements – whether to prohibit, restrict or further condition them – signals a steady move towards greater scrutiny of conflicts of interest and the economics of distribution chains. Even without an outright ban, firms should anticipate more granular product governance obligations, stricter value-for-money assessments, and enhanced disclosures around costs and charges, with supervisors increasingly using thematic reviews to test outcomes rather than conformity alone. Conduct-focused supervisory convergence and sanctions reporting will increasingly inform risk-based targeting, making consistency and clarity in consumer-facing materials more critical.

The PRIIPs regime continues to evolve with a view to simplifying Key Information Document (KID) disclosures and aligning performance narratives with real-world outcomes. The ESAs expect to draft Regulatory Technical Standards (RTS) to streamline the PRIIPs KID – particularly performance and cost disclosures – while continuing supervisory convergence work and providing guidance on practical application. In anticipation of potential RTS, firms should plan for methodology recalibrations, template updates and end-to-end governance approvals, alongside clear distributor communications. The direction of travel is towards fewer inconsistencies between UCITS and PRIIPs, less reliance on modelled performance for complex products, and a stronger link to product target market and distribution constraints. Distributors should expect more prescriptive expectations around how the KID is used in the advice and sales process, not merely delivered.

ELTIF 2.0 has materially broadened the regime's usability for both institutional and retail channels by easing eligible asset criteria, improving liquidity options and simplifying portfolio composition rules. It is now a viable wrapper for long-term strategies, with the potential to channel retail capital into private

markets under controlled conditions. Nonetheless, national supervisors retain a cautious stance: firms must demonstrate that liquidity management tools, valuation governance and retail suitability are robust in practice, not merely compliant on paper.

Funds and Asset Management: AIFMD II and the Changing Perimeter

AIFMD II tightens the governance and oversight of delegation, liquidity risk management and loan-originating funds, while broadening the toolkit for cross-border activities. The regime does not prohibit delegation to third countries, but it does raise the supervisory bar for substance, oversight and reporting. Managers should anticipate more searching questions from supervisors around headcount, decision-making locus and the quality of oversight mechanisms, with a focus on the demonstrable capacity to manage risk and liquidity in stressed markets.

Loan-originating AIFs face more prescriptive risk retention, concentration and leverage requirements. The intent is to ensure that non-bank credit intermediation can expand safely, particularly as banks adjust to higher capital requirements under CRR3/CRD6. Managers operating club-deal structures or bespoke co-investment vehicles must remain vigilant on the “other AIF” perimeter: even sophisticated structures can fall within the AIF definition where investors lack direct operational control and act passively. National competent authorities have shown willingness to look beyond form to substance, challenging structures that appear engineered to avoid fund regulation while offering fund-like exposure and governance.

Prudential Policy: CRR3/CRD6 and the Non-Bank Interface

The finalisation of the Basel III implementation via CRR3/CRD6 introduces revised credit, market and operational risk frameworks together with output floors. Banks and insurers will need to align climate and broader ESG stress-testing frameworks to the ESAs’ joint guidelines, including scenario design, model risk governance and board oversight. Banks and insurers should also monitor capital impacts from External Credit Assessment Institution mapping changes, ensuring timely policy/system updates and maintaining robust change-management and valida-

tion routines. Firms will need to recalibrate risk-weighted assets, with potential consequences for financing costs across the real economy, including structured products, project finance and private credit intermediation. Supervisors will expect credible capital planning, model change management and a coherent approach to risk transfer. For non-banks, the shift may open opportunities as banks rebalance asset mixes; however, the spotlight on systemic non-bank leverage and liquidity risk will intensify, prompting closer monitoring of margining, collateral and liquidity tools.

The ongoing work on the Crisis Management and Deposit Insurance (CMDI) framework aims to strengthen resolution planning for medium-sized institutions and reduce the reliance on ad hoc solutions. The European Banking Authority (EBA) will prioritise mandates under the CMDI package, including new requirements for deposit guarantee schemes and early intervention measures. Although politically sensitive, the direction is towards greater predictability of resolution outcomes, more disciplined use of national tools and clearer depositor communications. From a client perspective, this should support confidence; from a market perspective, it underscores the value of resolvability as a competitive differentiator.

Market Infrastructure: EMIR 3.0, CSDR Refit and Settlement Discipline

EMIR 3.0’s most consequential feature is the “active account” requirement at EU Central Counterparty Clearing Houses (CCPs) for systemically important asset classes. Derivatives participants must enhance initial margin model governance and validation pipelines in light of EMIR 3, ensuring comprehensive documentation, back-testing and change controls. While the calibration of thresholds and metrics remains under supervisory scrutiny, firms should not treat the requirement as a box-ticking exercise: the expectation is for meaningful, risk-relevant activity to be maintained at EU CCPs, supported by risk management, collateralisation and operational readiness equal to that at third-country CCPs. This will require careful client communications to manage clearing splits, execution strategies that accommodate multiple netting sets, and thoughtful capital and margin impact analysis. ESMA’s supervision of CCPs will be shaped by

the implementation of EMIR 3, focusing on resilience, governance and risk management.

The Central Securities Depositories Regulation (CSDR) Refit continues to evolve settlement discipline through a more proportionate framework. The mandatory buy-in regime has been reshaped to avoid procyclicality and unintended consequences, with a renewed emphasis on penalties, fails reporting and operational enhancements. ESMA's supervision of Central Securities Depositories (CSDs) will be shaped by the CSDR Refit, focusing on their resilience, governance and risk management. CSDs should expect new or revised technical standards, guidelines and reporting requirements. Firms should anticipate deeper supervisory use of settlement metrics as indicators of control effectiveness, particularly for hard-to-borrow securities, securities financing transactions and corporate actions. The overarching supervisory narrative is outcomes-based: fewer fails, better inventory management and robust fails remediation are the ultimate yardsticks.

Digital Assets and Digital Finance: MiCA, DLT and DORA

MiCA's operationalisation is one of the defining milestones of the current cycle. Crypto-asset service providers (CASPs) face an authorisation and conduct regime emphasising prudential soundness, safeguarding of client assets, organisational resilience and market integrity. ESMA will provide guidance on the authorisation and supervision of CASPs. Asset-referenced tokens and e-money tokens carry heightened obligations, including reserve asset governance, redemption mechanics and stringent disclosure obligations, with the EBA directly supervising significant asset-referenced and e-money token issuers. The broad policy thrust is to normalise high-quality crypto intermediation while squeezing out lightly governed business models. Firms operating cross-border should carefully map passporting routes, interactions with anti-money laundering (AML) obligations, and the interplay between MiCA and payment/e-money regimes. The EBA will also expand its peer reviews to include MiCAR white papers, supporting convergence in MiCAR implementation.

The DLT Pilot Regime offers a controlled sandbox for trading and settlement systems based on distributed ledger technology. Early participants are learning that the regulatory reliefs are meaningful but not limitless: interaction with CSDR, MiFID II and EMIR remains complex, and supervisors expect genuine risk mitigation rather than novelty. Governance, cyber resilience and end-to-end control frameworks are the differentiators; proof of concept is no longer sufficient.

The Digital Operational Resilience Act (DORA) establishes a horizontal framework for ICT risk management across financial entities. 2026 will see DORA enter a maturity phase with tangible oversight of systemic ICT dependencies via critical third-party provider (CTPP) examinations, formal oversight plans, and EU-level incident and crisis co-ordination under the Pan-European Systemic Cyber Incident Coordination Framework (EU-SCICF). The implementation challenge is not merely compliance with new policies and testing requirements but the harmonisation of third-party risk management, incident reporting and threat-led penetration testing across group structures and multiple national regimes. CTPPs face direct oversight, with a lead overseer and Joint Examination Teams undertaking risk assessments, setting oversight plans and issuing recommendations. Implications for firms include more robust demands on ICT concentration risk management, exit/substitutability planning, and incident classification and root-cause analysis aligned with supervisory taxonomies. Contractual repapering pressures may arise as CTPP recommendations cascade down to access, audit, data portability, sub-outsourcing and termination/exit provisions. Boards should be prepared for a new cadence of supervisory engagement focused on operational resilience rather than traditional prudential metrics.

Payments and Open Finance: PSD3/PSR, Instant Payments and the Emerging Data Perimeter

The EU's payments package – the revised Payment Services Directive (PSD3) and the accompanying Payment Services Regulation (PSR) – seeks to modernise the framework for strong customer authentication, tackle fraud more assertively, and streamline authorisation and supervision. The EBA anticipates over 50 new mandates under PSD3, PSR and the Financial Data Access Regulation (FIDAR), and will develop a

roadmap to manage these efficiently. The regulatory push is towards higher consistency, clearer liability allocation in fraud scenarios and better consumer redress. For incumbents, the package will drive investment in authentication journeys that are both secure and user-friendly, while for fintechs it codifies obligations that may raise barriers for low-margin models.

The Instant Payments Regulation mandates SEPA instant payment capabilities and limits pricing differentials relative to standard credit transfers, reshaping liquidity and treasury expectations across retail and wholesale segments. Institutions must manage intra-day liquidity, sanction screening at speed and fraud monitoring with minimal false positives. As instant payment becomes the default, the line between payments and credit risk management blurs, with implications for prudential liquidity buffers and contingent funding strategies.

A broader open finance framework is emerging through the combination of data access rights, consumer control and interoperability standards across financial products beyond payment accounts. Although the legislative contours are still forming, the direction is towards standardised interfaces, clear consent requirements and an ecosystem where data-driven advice and product switching are easier. Distributors should anticipate a future where client data portability increases competitive churn and where robust data governance is both a compliance requirement and a commercial imperative.

AML/CFT and Supervisory Architecture: The AML Package and AMLA

The AML package advances a single rulebook and centralised supervision for certain high-risk entities. The establishment of AMLA will change the supervisory dynamic, with direct oversight of selected institutions and a co-ordinating role over national competent authorities. The EBA will transfer its existing AML and countering the financing of terrorism functions to AMLA. Expect more intrusive supervisory practices, harmonised risk assessments and increased data requests. For cross-border groups, the immediate task is to rationalise divergent national interpretations into a single, consistently applied group-wide programme, with technology and data lineage at its

core. The tolerance for fragmented approaches is diminishing rapidly.

Sustainable Finance: SFDR Recalibration, CSRD, ESG Ratings and Green Labels

The EU's sustainable finance architecture is moving from high-level disclosure mandates to a more refined suite that emphasises clarity, comparability and credibility. The Sustainable Finance Disclosure Regulation (SFDR) remains central but is undergoing recalibration to address classification ambiguity, greenwashing risk and data quality challenges. Firms should sustain current SFDR controls while preparing for definitional or template changes following the Level 1 review. Rather than a wholesale retreat from Article 8/9 labelling, they should prepare for tighter criteria, more explicit use of the Taxonomy in product design, and clearer expectations around stewardship, engagement and transition finance. Where ESG ratings are referenced in marketing, firms should establish standardised, well-governed website disclosures with robust oversight of rating use and update processes.

The Corporate Sustainability Reporting Directive (CSRD) expands corporate sustainability reporting and will gradually improve the investment chain's data supply. However, the near-term effect is a two-speed market: large issuers provide more granular data, while SMEs lag. Asset managers must maintain robust estimation methodologies, disclose limitations candidly and demonstrate progressive data quality improvement over time. Supervisors are increasingly focused on whether sustainability claims are matched by governance, data and portfolio construction discipline.

An EU regulation on ESG ratings is advancing with the aim of improving transparency of methodologies, managing conflicts of interest, and ensuring that users understand scope and limitations. From mid-2026, ESMA will begin the registration and direct supervision of ESG rating providers, which will be subject to new authorisation, reporting and compliance requirements. For product governance, the implication is straightforward: do not rely on ratings as a single source of truth; triangulate multiple inputs, document judgements, and link ESG integration to investment outcomes rather than labels alone. Firms in these categories should

engage early with ESMA's processes and ensure their methodologies, governance and disclosure practices are robust and transparent.

Finally, the EU Green Bond Standard provides a high-quality, voluntary label aligned with the Taxonomy. From mid-2026, ESMA will also begin the direct supervision of external reviewers of European Green Bonds. Issuers and underwriters should treat it as a premium market segment: compliance costs are higher but so are signalling benefits, particularly where investor mandates favour taxonomy-aligned expenditure. Expect supervisors to look at processes underpinning allocation, impact reporting and external verification with the same seriousness as financial reporting controls.

Crypto, Securities Financing and Benchmark Reforms: Secondary Effects and Interlocks

MiCAR's implementation interacts with securities financing and collateral markets in subtle ways. As crypto-asset exposures flow into regulated firms, risk management models must adapt to asset class idiosyncrasies, including liquidity fragmentation across venues and idiosyncratic stress dynamics. Policies around rehypothecation, client asset segregation and collateral eligibility will face renewed scrutiny, particularly where crypto exposures intersect with traditional financing activities.

Benchmark Regulation reforms continue to support orderly transition away from vulnerable benchmarks and ensure robust governance for critical and significant benchmarks. ESMA's direct supervision of benchmark administrators, particularly those providing critical or third-country benchmarks, will intensify, focusing on robustness and resilience of methodologies, transparency and governance. A stable end-state is near, but firms should not underestimate legacy exposures in structured notes, retail-linked products and internal models. Supervisory expectations emphasise proactive remediation and client communications that are timely and comprehensible.

Insurance and Market Conduct: Solvency II and Cross-Sectoral Alignment

The Solvency II review seeks to enable long-term investment by insurers while preserving prudential

soundness. Calibrations to the risk margin and volatility adjustment are designed to free balance sheet capacity, particularly for infrastructure and green investments. By January 2026, the ESAs will deliver joint guidelines setting high-level principles for ESG risk stress testing under Solvency II, to foster consistent approaches across sectors. With ELTIF 2.0 and the Green Bond Standard, the policy rationale is to align insurance asset allocation with strategic EU financing needs. In parallel, market conduct rules – particularly for insurance-based investment products – are converging with MiFID-inspired disciplines on conflicts, value for money and product oversight. Insurers distributing unit-linked products should expect tighter expectations around transparency of costs, performance illustrations and suitability processes for retail customers.

Operational and Cyber Resilience: Beyond Compliance to End-to-End Assurance

DORA is the headline instrument, but the supervisory conversation has broadened. Firms should expect a holistic assessment of resilience, integrating ICT risk, third-party dependencies, incident response and data recovery with business continuity and crisis communications. The ESAs will focus on digital operational resilience, including full CTPP oversight and crisis playbooks, ramping up incident reporting analytics culminating in an annual report on major ICT incidents. A major operational priority is the EU-SCICF, with 2026 focusing on operationalising and testing procedures. Firms should also expect heightened expectations around participation in cross-border cyber exercises and timely situation reporting. Boards will be judged on how resilience is embedded in strategic decisions, including cloud concentration risk, vendor lock-in and cross-border data flows. In practice, this shifts audit and assurance functions towards continuous control validation, purple-teaming, and scenario testing that includes payment outages, market infrastructure disruptions and coercive cyber events.

Enforcement, Supervision and the Rise of Outcomes-Based Regulation

A notable trend across EU regulators is the shift from process compliance to outcome verification, increasingly supported by active, data-driven scrutiny. Three

themes recur in enforcement and supervisory messaging:

- Consumer protection and fair value: Products that are legally compliant but poor value or mis-targeted will draw challenge.
- Governance and accountability: Senior management must evidence oversight with clear decision trails and metrics.
- Data accuracy and controls: Whether in SFDR reporting, PRIIPs KIDs or transaction reporting, firms are expected to demonstrate completeness, accuracy and timely remediation.

ESMA's supervisory approach is increasingly risk-based and data-driven, leveraging large volumes of regulatory data and AI-powered tools to identify emerging risks, detect anomalies and prevent market abuse.

Cross-border groups should plan for more frequent joint supervisory actions and information requests co-ordinated at the ESAs' level. Market participants should expect greater consistency in supervisory approaches, more structured cross-border coordination and a clearer "signal function" from joint risk assessments. Divergences in national transposition are narrowing as Level 3 guidance becomes more prescriptive and "soft law" gains de facto binding force through supervisory practice. Firms operating multi-hub models must continually align policies to the highest common denominator across their footprint.

Outlook

Looking across the regulatory arc, several priorities stand out for management agendas. First, codify an integrated distribution and product governance framework that can satisfy evolving retail investor rules, inducement scrutiny and value-for-money

expectations. Second, complete a DORA implementation that goes beyond policy updates to demonstrable resilience, including critical third-party oversight and threat-led testing, and preparedness for the EU-SCICF. Third, recalibrate capital and liquidity plans under CRR3/CRD6 and EMIR 3, and align ESG stress-testing frameworks with the ESAs' joint guidelines, assessing second-order effects on customer pricing and product shelf design. Fourth, deliver MiCAR-ready operating models with robust safeguarding, conduct controls and clear passporting strategies. Fifth, strengthen sustainability governance: tie SFDR claims to investment process reality, prepare for CSRD-driven data improvements and manage greenwashing risk through conservative, well-evidenced disclosures, particularly concerning ESG ratings and the Green Bond Standard.

Regulatory monitoring and engagement will be increasingly data-driven and co-ordinated. Firms should track the ESA joint committee's annual Risks and Vulnerabilities report and regular Economic and Financial Committee/Financial Stability Table presentations as early indicators of thematic supervisory priorities. The institutions that fare best in this period will be those that engage early, provide high-quality data and demonstrate through action – rather than assertion – that their controls produce the outcomes regulators seek: fair customer treatment, resilient operations, transparent markets and credible sustainability claims. Boards and senior management should reinforce governance over operational resilience, sustainability risk and cross-sector risk themes, ensuring DORA implementation, forthcoming ESG stress-testing principles and emerging macro-financial risks are embedded in board agendas, risk appetite statements and clearly owned management action plans. The next year will test not only technical compliance, but the coherence, agility and integrity of firms' governance.

GERMANY



Law and Practice

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SULLIVAN & CROMWELL

1. Legal Framework

1.1 Key Laws and Regulations

Principal Laws and Regulations

Banking activity in Germany is governed by a combination of national and European legislation. Germany participates in the European Banking Union, which has established a common legal framework (known as the “Single Rulebook”) and a supervisory framework (known as the “Single Supervisory Mechanism”, SSM) for all participating EU member states of the euro area. Consequently, the national legislation is overlaid, supplemented and, in certain areas, replaced by European law.

The core national statute is the German Banking Act (*Gesetz über das Kreditwesen*, KWG). At the European level, the prudential framework is set by Directive (EU) 2013/36 on the prudential supervision of credit institutions and investment firms (CRD, last amended by Directive (EU) 2019/878 (“CRD V”) and Directive (EU) 2024/1619 (“CRD VI”), which needs to be transposed into national legislation by 10 January 2026), as well as the Capital Requirements Regulation (EU) 575/2013 (CRR, last amended by Regulation (EU) 2024/1623, “CRR III”). The Bank Recovery and Resolution Directive (EU) 2014/59 (BRRD), amended by Directive (EU) 2019/879 (“BRRD II”), has been transposed into national law mainly through the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*, SAG).

Further national laws relevant for the German banking sector – also shaped by EU requirements – include:

- the German Securities Trading Act (*Wertpapierhandelsgesetz*, WpHG), which transposes (inter alia) Directive (EU) 2014/65 (“MiFID II”) into German law;
- the German Money Laundering Act (*Geldwäschegesetz*, GWG);
- the German Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*, ZAG); and
- the relevant sections of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) and the German Commercial Code (*Handelsgesetzbuch*, HGB).

Regulators

Under the SSM, the European Central Bank (ECB) is the principal regulator for all credit institutions of participating EU member states of the euro area and shares its supervisory powers with the national competent authorities (NCAs). In Germany, this is the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, BaFin) supported by the German Federal Bank (*Deutsche Bundesbank*) (the “Bundesbank”).

The split of responsibilities between the ECB at the European level and BaFin as the German NCA works as follows: The ECB directly supervises “significant” German credit institutions, based on criteria such as size, economic importance or cross-border activities, as set out in the SSM Regulation (EU) 1024/2013, and BaFin directly supervises “less significant” German credit institutions. The ECB retains an overarching role, setting the supervisory standards to be applied, overseeing BaFin’s supervisory practices, and retaining the power to assume direct supervision of a less significant institution where necessary to ensure consistent application of supervisory standards across the euro area.

In connection with the ongoing supervision of credit institutions, the Bundesbank is designated in the KWG as the competent authority for certain sub-areas (eg, the Bundesbank evaluates, among other things, the reports and notifications that credit institutions must submit regularly), unless the competence lies with the ECB.

2. Authorisation

2.1 Licences and Application Process

Authorisation Requirements

Under the KWG, any person wishing to conduct banking business in Germany on a commercial basis, or on a scale requiring a commercially organised business undertaking, must obtain prior written authorisation from the competent authority. To obtain such authorisation, an applicant must demonstrate, inter alia:

- sufficient initial capital – for CRR credit institutions, at least EUR5 million;

- management – at least two reliable, professionally qualified managing directors, with sufficient time availability;
- qualifying shareholders – reliable holders of significant shareholdings meeting sound and prudent management standards;
- registered office – a main office or registered seat in Germany; and
- proper business organisation – including adequate risk management, internal controls and governance arrangements.

Authorising Authority

Under the SSM, the responsibility for granting an authorisation is shared between the ECB and BaFin. If the application covers both deposit-taking and lending activities, the institution qualifies as a “CRR credit institution” subject to the prudential requirements of the CRR. For such institutions, the ECB is responsible for granting the authorisation in co-operation with BaFin. In all other cases of regulated banking activity under the KWG, BaFin alone acts as the competent licensing authority.

Authorisation Process

The process typically begins with an initial meeting between BaFin and the applicant to discuss the documentation, the initial capital, and the suitability of the proposed managing directors. The purpose is to align expectations and to ensure the preparation of a complete, compliant and high-quality application.

The application must include a detailed business plan and supporting documentation, such as CVs, declarations of reliability and criminal-record certificates. Once a complete file is received, BaFin has six months to decide on the authorisation. In practice, the duration depends on the complexity of the business model and the completeness of the submission. If the application is incomplete, BaFin may request additional information. The six-month period starts only once the file is deemed complete.

If the applicant qualifies as a CRR credit institution, BaFin prepares a draft decision for the ECB, which issues the final decision. For non-CRR institutions, BaFin itself grants or denies the authorisation.

Throughout the process, BaFin acts as the sole point of contact for the applicant, even where the ECB is the final decision-maker. After authorisation, the credit institution is subject to supervisory fees payable to the ECB, determined primarily by the institution’s size and risk profile. The licensing procedure itself is also subject to administrative fees, irrespective of the outcome.

Activities and Services Covered

Once authorised, the credit institution may conduct, within the licence scope, banking activities under the KWG. These include, for example:

- acceptance of deposits or repayable funds from the public (*deposit business*);
- granting of loans and acceptance of credits (*lending business*);
- safe custody and administration of securities for others (*custody business*);
- assumption of guarantees, sureties and other warranties (*guarantee business*); and
- acquisition of financial instruments for own risk for placement or assumption of equivalent guarantees (*underwriting business*).

In addition, certain financial services – such as investment brokerage, investment advice, placement business or portfolio management – also require authorisation under the KWG and/or WpHG. Further approvals may be required in certain cases – for example, where an institution provides insurance brokerage services or, in the case of non-CRR institutions, offers payment services under the ZAG.

Passporting

Based on the European “single passport” regime, credit institutions authorised in Germany are entitled to operate throughout the European Economic Area (EEA) without requiring a new licence in each host country. Such cross-border business may be carried out either by setting up a local branch (freedom of establishment) or by offering services from the home country (freedom to provide services).

Requirements for Establishing a Branch

To establish a branch in another EEA member state, the institution must notify BaFin and the relevant

regional office of the Bundesbank, which in turn inform the ECB. For significant institutions, the ECB processes the notification and, if the conditions are met, forwards it to the host-state supervisory authority within three months. For less significant institutions, the notification is handled jointly by BaFin and the Bundesbank, which transmit the documents directly to the competent authority of the host state.

Requirement for Cross-Border Services

For the provision of cross-border services without establishing a branch, institutions must submit a notification describing the activities to be performed to BaFin and the Bundesbank, which then review the completeness of the submission, the institution's financial soundness and the adequacy of its organisational structure. If the assessment is positive, the notification is forwarded to the host-state supervisory authority within one month.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Notification and Approval Requirement

The acquisition of control or a qualifying holding (*bedeutende Beteiligung*) in a German financial institution requires prior notification and approval under Section 2c of the KWG, commonly referred to as the owner control procedure (*Inhaberkontrollverfahren*).

A qualifying holding exists where a person, alone or acting in concert with others, directly or indirectly holds at least 10% of the capital or voting rights, or is otherwise able to exercise "significant influence" over the management of the institution. Further notifications are required if the holding reaches or exceeds 20%, 30% or 50%, or if control is acquired. These thresholds apply irrespective of the acquisition form and the nationality of the acquirer. There is no general restriction on foreign ownership (but foreign acquirers may be subject to the German general FDI screening regime).

Indirect capital participations are determined by applying the multiplication method across the holding chain (eg, a 30% interest in an entity holding 30%

in the institution results in an indirect 9% capital participation, not exceeding the 10% threshold). Indirect voting rights are attributed to the acquirer where any of the criteria under Section 34 of the WpHG are met, such as in parent–subsidiary relationships or through trust or proxy arrangements.

Approval Process

The notification procedure is further governed by the German Owner Control Regulation (*Inhaberkontrollverordnung*), which specifies the information and documentation to be submitted, including details of the acquirer's identity, financial soundness and reputation and the strategic purpose of the acquisition.

Following its review, BaFin determines whether the notification is complete and issues formal confirmation of receipt. From that date, BaFin generally has 60 working days to assess the acquisition, extendable once by up to 20 working days (or 30 for non-EU or unregulated acquirers). Because the statutory review period begins only once BaFin deems the notification complete, review time and additional information requests often extend the overall timetable in practice.

The acquirer may only close the acquisition after approval has been granted or the statutory review period has expired without objection. BaFin may object to the acquisition if the proposed acquirer or its managers are deemed unreliable or unqualified, if there are indications of money-laundering or terrorist-financing risks, or if the transaction would otherwise endanger sound and prudent management of the institution.

Under the SSM, the ECB decides on all notifications of qualifying holdings in CRR credit institutions. BaFin acts as the national contact point, receives and reviews notifications, prepares a draft proposal and submits it to the ECB, which then issues the final decision – approval, conditional approval or rejection – in line with SSM procedures.

If an acquisition occurs without the required notification or despite an objection, BaFin may suspend the voting rights attached to the shares and order their disposal within a specified period.

4. Governance

4.1 Corporate Governance Requirements

Overview of General Corporate Governance

Corporate governance in German banks is governed by corporate laws, eg, the German Stock Corporation Act (*Aktiengesetz*) or the German Liability Companies Act (*GmbH-Gesetz*), and by the KWG. Under the common two-tier board system, the management board (*Vorstand* or *Geschäftsführung*) is responsible for conducting the institution's business, while the supervisory board (*Aufsichtsrat*) appoints, supervises and advises it. For significant institutions, the supervisory board must establish dedicated committees – namely, risk, nomination, remuneration and audit committees.

The KWG requires all credit institutions to maintain a “proper business organisation”, with clear responsibility lines, effective internal-control and internal-audit functions, independent risk control and compliance units, and contingency planning for critical and IT-related functions. BaFin specifies these expectations through circulars, particularly the *Guidance Paper on Minimum Requirements for Risk Management*, which elaborate on governance, risk-control processes, outsourcing and high-risk activities.

Voluntary Codes and Industry Initiatives

Industry bodies such as the Association of German Banks (*Bundesverband deutscher Banken*, BdB) and the German Savings Banks Association (*Deutscher Sparkassen- und Giroverband*, DSGV) issue sectoral principles on governance, sustainability and consumer protection.

Listed financial institutions must observe the German Corporate Governance Code (*Deutscher Corporate Governance Kodex*, DCGK) with recommendations on transparency, shareholder rights, remuneration and board diversity (but which is not banking-specific). The DCGK operates on a “comply or explain” basis. Privately held banks may reference or apply the DCGK on a voluntary basis.

Diversity Requirements

German and EU supervisory frameworks emphasise diversity in management and oversight bodies. The KWG requires collective suitability and a broad range

of knowledge, skills and experience across board members. The *Guidelines on Suitability Assessment* from the European Banking Authority (EBA) and the European Securities and Market Authority (ESMA) recommend considering gender, age, geographical provenance, and educational and professional background to avoid “groupthink”. In addition, the KWG requires boards to perform at least annual assessments of their composition and performance.

Under the CRD and EBA guidance, significant institutions must set gender targets and adopt a diversity policy; in Germany, BaFin's 2025 General Ruling on Diversity Disclosures (*Allgemeinverfügung bezüglich Diversitätsanzeigen*) implements the *Guidelines on Diversity* (EBA/GL/2023/08) from the EBA and requires significant German CRR institutions to report diversity data to the authorities (including quantitative targets).

Codes of Conduct and Bankers' Oath

Germany imposes no statutory bankers' oath akin to the Dutch model. Instead, bank employees are bound by professional-conduct and integrity duties under civil and supervisory law. The KWG obliges institutions to promote a risk-aware and integrity-based governance culture.

Voluntary industry codes – such as the Consumer Credit Code of Conduct (*Kodex für Verbraucher-kredite*) issued by the *Deutsche Kreditwirtschaft* – set standards for fair dealing, data protection and ethical compliance.

The general banking secrecy obligation (*Bankgeheimnis*) arises primarily from contract and data-protection law rather than a separate statutory privilege, and is subject to statutory exceptions (eg, anti-money-laundering, tax or criminal-law disclosures).

4.2 Registration and Oversight of Senior Management

German credit institutions are typically organised under a two-tier governance system consisting of a management board (*Vorstand* or *Geschäftsführung*) and a supervisory board (*Aufsichtsrat*). The management board is responsible for conducting the institution's business and ensuring a proper and effective risk-management and compliance framework, while

the supervisory board appoints and oversees the management board but does not engage in executive management itself.

Beyond corporate law requirements, EU and German banking regulation together establish a prudential governance framework derived from the CRD, which sets minimum standards for the suitability and integrity of members of management and supervisory bodies. These rules are implemented in Germany primarily through the KWG, supplemented by guidance from the ECB (*Fit-and-Proper Guide*), the EBA (*Guidelines on Suitability Assessment*) and BaFin (*Guidance Notices on Managing Directors and Supervisory Board Members as well as Key Function Holders*).

Management Board

Under the KWG, a member of the management board (*Geschäftsleiter*) of credit institutions must:

- be professionally qualified, reliable, and able to devote sufficient time to their duties (professional qualification requires both theoretical and practical knowledge in relevant business areas as well as management experience);
- collectively possess a sufficiently broad range of knowledge, skills and experience to understand the institution's activities, including its main risks; and
- comply with limits on the number of management and supervisory mandates.

The knowledge, skills and experience of the members of the management board, as well as the collective suitability of the entire body, must be reviewed at least annually to ensure continuing relevance and accuracy.

Key Function Holders

Similar requirements apply to “key function holders” of an institution, meaning persons with significant influence over the direction of the bank who are not members of the management body (eg, heads of internal control functions, the CFO, where not part of the management board, and other persons identified on a risk-based basis by the institution), subject to supervisory review by BaFin or the ECB. Key function holders must be of good repute, act with honesty and integrity, and have the knowledge, skills and experience appropriate to their functions.

Supervisory Board

Corresponding prudential standards also apply to the supervisory board (*Aufsichtsrat*). Under the KWG, supervisory board members must be individually reliable and collectively possess the expertise necessary to supervise and assess the institution's management effectively. They must dedicate sufficient time to their duties and ensure compliance of the management board with regulatory obligations. The supervisory board's oversight responsibilities extend to strategy, risk management, internal control functions and the remuneration framework.

Regulatory Approval and Screening

Under the SSM, the ECB assesses members of the management and supervisory bodies of “significant” institutions, while BaFin performs these assessments for “less significant” institutions.

The intention to appoint a member of the management board or to authorise a sole representative of the institution must be reported to the Bundesbank and BaFin (or to the ECB, for significant institutions). Appointment in significant institutions require prior ECB approval. Notifications must specify all facts relevant for assessing reliability, professional qualification and time availability, along with the institution's own assessment. Similar duties apply to the appointment, removal or change of supervisory board members and to any new facts affecting previous assessments.

Assessments typically involve a review of employment and education history, reference and integrity checks, evaluation of risk and governance experience, and verification of professional qualifications. Documentation must include a CV, certificate of good conduct, declarations of reliability and time availability, and other supporting evidence. Screening also covers criminal and financial record checks, review of any previous regulatory findings, and an assessment of independence and potential conflicts of interest.

4.3 Remuneration Requirements

Legal Framework and Covered Individuals

The main legal framework governing remuneration in German credit institutions is set out in the KWG and a distinct German Institutions Remuneration Regulation (*Institutsvergütungsverordnung*, *InstitutsVergV*).

These laws implement the remuneration provisions of the CRD.

The remuneration requirements of the KWG and the InstitutsVergV apply to all employees of credit institutions, including those whose professional activities have a material impact on the institution's risk profile ("material risk takers", MRTs), as well as members of the management board and supervisory board and the heads of control functions.

Remuneration Principles

Under the KWG and InstitutsVergV, credit institutions must maintain remuneration systems that are appropriate, gender-neutral (no pay discrimination) and transparent, and that support sustainable development of the institution. They must align with the bank's strategy, promote sound and effective risk management and avoid incentives for excessive risk-taking.

Fixed and variable remuneration must be proportionate: the variable component must not exceed 100% of fixed remuneration (bonus cap), unless the shareholders' meeting of an institution approves an increase of the cap up to 200%.

For MRTs, at least 50% of variable remuneration must consist of non-cash instruments (eg shares, equivalent ownership interests or instruments linked to the long-term performance of the institution). A minimum of 40% (or 60% for higher variable amounts) must be deferred for at least four to five years and remain subject to malus and claw-back arrangements in cases of misconduct or negative performance.

Supervisory board remuneration must avoid conflicts of interest; variable remuneration is not permitted, in order to ensure the board's independence.

Supervisory Approach

The ECB and BaFin monitor compliance with the remuneration requirements within the annual Supervisory Review and Evaluation Process (SREP). Institutions must document their remuneration systems, identify MRTs annually, and submit remuneration reports to BaFin. If deficiencies are identified, supervisory authorities may require adjustments to policies or restrict variable remuneration.

5. AML/KYC

5.1 AML and CFT Requirements

The prevention of money laundering and terrorist financing is a central pillar of both European and German financial regulation.

Regulatory Framework

The current German AML/CFT framework is primarily set out in the GwG and the KWG. In May 2024, the EU adopted a new AML/CFT package which represents a comprehensive reform of the European anti-money-laundering framework, introducing for the first time a directly applicable Single Rulebook and a new EU-level supervisory authority. The legislative package comprises, among others, Regulation (EU) 2024/1620 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) and Regulation (EU) 2024/1624, which lays down a Single Rulebook for AML/CFT and introduces harmonised customer-due-diligence (CDD) and internal-control obligations.

- AMLA commenced operations on 1 July 2025, with the aim to reach full staffing in 2027 and begin direct supervision in 2028.
- AMLA's mandate is to co-ordinate and strengthen supervisory practices across EU member states, promote consistency in enforcement and, for high-risk cross-border groups, exercise direct supervisory powers.
- The Single Rulebook will apply from 10 July 2027, at which point national rules will be largely superseded. Until then, the existing national law implementing the EU AML Directives and other EU instruments continues to apply.

Specific Obligations

Under the GwG, a credit institution is required to identify and assess the risks of money laundering and terrorist financing that arise from its business activities. In addition, the institution must establish internal safeguards related to its operations and customer relationships in order to manage and mitigate these risks. The effectiveness of such safeguards must be reviewed and updated regularly. For institutions that form part of a group, these safeguards must also include group-wide procedures.

KYC

Credit institutions are subject to extensive CDD obligations. They must:

- identify their contractual partners (and persons acting on their behalf);
- obtain and assess information about the purpose and intended nature of the business relationship; and
- determine whether the customer or the beneficial owner is a politically exposed person (PEP), a family member of a PEP, or a person known to be closely associated with a PEP.

Furthermore, institutions must continuously monitor business relationships. As part of this ongoing monitoring, credit institutions must keep customer data and documentation up to date at intervals appropriate to the identified risk.

The scope of measures must correspond to the specific risk of money laundering or terrorist financing, taking into account factors such as the purpose of the relationship, amounts involved, transaction volume, and duration and frequency of the business relationship. These obligations apply not only when establishing a relationship but also to certain occasional transactions or when relevant circumstances change.

Simplified and Enhanced Due Diligence

Credit institutions may apply simplified due diligence (SDD) if, based on the GwG risk factors, they determine that a low risk of money laundering or terrorist financing exists for specific customers, products, services or transactions.

Where a higher risk of money laundering or terrorist financing is identified – either through the institution's risk analysis or specific circumstances – enhanced due diligence (EDD) must be applied. A higher risk exists in particular when:

- the customer or beneficial owner is a PEP, a family member or close associate of a PEP;
- the relationship or transaction involves a high-risk third country identified under EU law; or
- the transaction is unusually large or complex, or lacks an apparent economic or lawful purpose.

In such cases, the GwG prescribes a set of minimum EDD measures, such as senior management approval or enhanced verification of source of wealth and funds.

Reporting Obligations

Credit institutions must report suspicious activities and transactions to the German Financial Intelligence Unit (*Zentralstelle für Finanztransaktionsuntersuchungen*, FIU) whenever facts indicate a possible link to money laundering or terrorist financing. A reported transaction may only be executed once the FIU or the public prosecutor has given consent, or after three working days have passed since submission without a prohibition being issued.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS) Statutory Deposit Protection and Investor Compensation

Germany maintains a comprehensive, EU-harmonised framework for depositor and investor protection based on the Deposit Guarantee Schemes Directive (EU) 2014/49 (DGSD) and the Investor Compensation Schemes Directive 97/9/EC, implemented through the German Deposit Protection Act (*Einlagensicherungsgesetz*, EinSiG) and the German Investor Compensation Act (*Anlegerentschädigungsgesetz*, AnlEntG).

The mandatory statutory deposit protection for private-sector credit institutions is operated by the Compensation Scheme of German Banks (*Entschädigungseinrichtung deutscher Banken*, EdB). The EdB collects and administers member contributions, manages the compensation fund and processes depositor claims in accordance with the EinSiG. Covered deposits comprise all eligible liabilities arising from deposits – generally up to EUR100,000 per depositor and per bank. Certain categories of depositors, such as other credit institutions, insurance companies, investment funds and public authorities, are excluded. In line with the DGSD, deposits arising from exceptional events – such as sale of a primary residence, inheritance or insurance payouts – are protected beyond the EUR100,000 limit for up to six months (“temporary

high balances”). Compensation must be paid within seven working days of deposit unavailability.

Funding is provided through annual contributions by participating banks, calculated on a risk basis considering the amount of covered deposits and the relevant institution’s risk profile. The scheme’s target level of 0.8% of total covered deposits was reached in July 2024. Where necessary, the EdB may levy special contributions or borrow funds to meet compensation obligations.

In the context of bank resolution, the EdB may be required to contribute to the financing of resolution measures. Its contribution is capped at the amount it would have been obliged to pay in a normal insolvency scenario. Under certain circumstances, it may also provide temporary financial support to prevent a member’s failure. In addition, where BaFin determines a compensation case under the AnlEntG, the EdB compensates 90% of an investor’s claims arising from securities transactions (denominated in euros or in another EU currency), up to an equivalent of EUR20,000 per investor.

Voluntary Deposit Protection Scheme

Deposits at private sector banks exceeding the statutory coverage, or otherwise excluded from the EdB scheme, may be protected by the Deposit Protection Fund (*Einlagensicherungsfonds*, ESF), a voluntary scheme administered by the BdB.

Following reforms to strengthen proportionality and sustainability, the protection limits of the ESF are being gradually reduced: after 1 January 2023, deposits of private individuals were protected up to EUR5 million, reduced to EUR3 million as of 1 January 2025, and reducing to EUR1 million by 2030. For companies and institutional clients, protection was reduced to EUR50 million in 2023 and to EUR30 million in 2025, and will fall to EUR10 million in 2030.

The ESF is funded through risk-weighted contributions from participating banks, supplemented, where necessary, by extraordinary levies. The ESF may also provide preventive support measures to avert member bank distress, subject to supervisory approval.

Institutional Protection Schemes

In addition to these statutory and voluntary schemes, public sector savings banks, state banks, building and loan associations, and co-operative banks participate in institutional protection systems that safeguard both member institutions and depositors:

- The DSGV administers the protection system for the public savings banks (*Sparkassen*) and regional state banks (*Landesbanken*).
- The National Association of German Cooperative Banks (*Bundesverband der Volksbanken und Raiffeisenbanken*, BVR) operates the co-operative banks’ mutual protection scheme.

Public-law institutions affiliated with the Association of German Public Banks (*Bundesverband Öffentlicher Banken Deutschlands e.V.*, VÖB) may benefit from an additional voluntary Deposit Protection Fund (*Einlagensicherungsfonds des VÖB*).

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Credit institutions in Germany are subject to a wide range of capital, liquidity and risk-control requirements under the EU regulatory framework (CRD/CRR) and the KWG. Together, these implement the Basel III framework – and, from 2025 with phase-in to 2030, the final Basel III standards (in Europe commonly referred to as “Basel IV”) – into EU and German law.

While the EU implementation is broadly consistent with the Basel standards, it includes certain structural and transitional deviations, notably the application of the SME and infrastructure supporting factors (which reduce capital requirements for qualifying exposures), extended phase-in arrangements for the output floor and market-risk framework, and retention of selected internal model approaches not foreseen under Basel III. These EU-wide deviations apply equally in Germany through direct application of the CRR.

Minimum Capital (“Own Funds”) Requirements

Under the CRR, banks must maintain at least:

- 4.5% of risk-weighted assets (RWA) in Common Equity Tier 1 (CET1) capital;
- 6% of RWA in CET1 and Additional Tier 1 capital (Tier 1); and
- 8% of RWA in total own funds (Tier 1 + Tier 2).

A minimum leverage ratio of 3% of total exposure also applies to all CRR credit institutions. For a global systemically important institution (G-SII), an additional leverage buffer equal to the G-SII's total exposure measure under the CRR multiplied by 50% of its risk-based G-SII capital buffer rate applies.

Loss-Absorbing Capacity Standards (MREL and TLAC)

In addition to prudential capital requirements, banks are subject to minimum loss-absorbing capacity standards designed to ensure orderly resolution in the event of failure. In this respect, the BRRD (and the SAG as German national implementing law) contains rules on the minimum requirement for own funds and eligible liabilities (MREL). The relevant resolution authority – BaFin for smaller institutions or the Single Resolution Board (SRB) for significant ones – sets MREL individually each year, depending on the institution's resolution strategy.

For G-SIIs, the MREL requirement must also meet the internationally agreed Total Loss-Absorbing Capacity (TLAC) standard, ensuring sufficient liabilities can be written down or converted in resolution.

Capital Buffer

German banks must further hold supplementary capital buffers that strengthen resilience against cyclical and systemic risks:

- **Capital Conservation Buffer (CCoB):** Universally applicable; ensures that banks maintain additional CET1 capital to absorb losses during financial and economic stress periods. Banks in the EU are required to maintain a mandatory capital conservation buffer of CET1 capital amounting to 2.5% of RWA.
- **Countercyclical Buffer (CCyB):** Designed to increase the resilience of the banking sector during periods of excessive credit growth and to be

released during downturns to support lending activity; set by BaFin for Germany at 0.75%.

- **Systemic Risk Buffer (SyRB):** Addresses structural or sector-specific risks that may threaten the stability of the financial system as a whole or specific segments such as real estate lending. BaFin may require banks to build up a systemic risk buffer of CET1 capital of between 0.5% and 3% of the total risk exposure amount and – under additional requirements – up to 5% and above 5% (above 5% only with authorisation from the European Commission). Effective from 1 May 2025, BaFin lowered the systemic risk buffer for loans secured by residential property from 2.0% to 1.0% (and at the same time kept the general CCyB at 0.75%).
- **G-SIIs and O-SIIs:** Additional institution-specific capital buffers apply to globally and domestically systemically important institutions to reflect the potential impact of their distress or failure on the wider financial system. The G-SII buffer ranges from 1% to 3.5% of risk-weighted assets depending on the institution's systemic importance, while the other systemically important institution (O-SII) buffer may be set at up to 3% – and, with the European Commission's authorisation, above this level.

Pillar 2 Requirements

The minimum capital ratios and buffers described above constitute the “Pillar 1” requirements of the Basel framework, which address quantifiable risks such as credit, market and operational risk. “Pillar 2” complements this by allowing supervisors to address institution-specific or unquantified risks, such as governance risks, through additional capital or qualitative requirements.

“Pillar 2 Requirements” (P2R) are legally binding for an institution and must be met with at least 56.25% CET1 capital. The ECB and BaFin may also issue “Pillar 2 Guidance” (P2G), which is not binding but indicates the additional capital expected to ensure resilience of the institution under stress scenarios.

Liquidity Requirements

In addition to capital requirements, credit institutions must maintain sufficient liquidity to withstand short-term and long-term funding stress. Banks must comply with two Basel III liquidity standards:

- **Liquidity Coverage Ratio (LCR):** High-quality liquid assets must equal or exceed 100% of net cash outflows over 30 days.
- **Net Stable Funding Ratio (NSFR):** Stable funding sources must at least equal 100% of required stable funding, measured over a one-year horizon.

Risk Management Rules

At EU level, the CRD and the *EBA Guidelines on Internal Governance* establish harmonised principles for banks' risk-management and internal-control frameworks. These provisions require institutions to maintain robust governance arrangements and effective processes for identifying, managing and monitoring risks, forming the foundation for the annual Supervisory Review and Evaluation Process (SREP) conducted by the ECB and BaFin.

In Germany, these requirements are implemented in the KWG, which requires every institution to maintain a proper business organisation, including an adequate and effective risk-management system proportionate to its nature, scale and complexity. BaFin's *Guidance Paper on Minimum Requirements for Risk Management* (MaRisk) provides a detailed framework.

The risk-control function must report at least quarterly to management on the adequacy of capital resources, current and projected capital and liquidity ratios, and refinancing positions. Forecasts and early-warning indicators must be included, and the internal audit must independently review the effectiveness of all risk-management components.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework Recovery and Resolution Framework

Germany's bank recovery and resolution regime forms part of the SRM, the framework governing the orderly resolution of banks in EU member states participating in the European Banking Union. The SRM is built on two key legislative pillars: the BRRD, amended as BRRD II, and the Single Resolution Mechanism Regulation (Regulation (EU) 806/2014, SRMR). In Germany, the BRRD has been implemented through the SAG.

The SAG and SRMR fully reflect the "Key Attributes of Effective Resolution Regimes" issued by the Financial Stability Board (FSB), the international standard developed to ensure that authorities can resolve failing financial institutions in an orderly manner, maintaining critical functions, protecting depositors and financial stability, and avoiding the use of public funds.

Under the SAG, among other things:

- credit institutions are obliged to draw up recovery plans describing how they would address situations of financial stress;
- the competent resolution authority must, in alignment with the supervisory authority, prepare resolution plans;
- competent supervisory authorities may take early-intervention measures (as described below);
- a set of resolution tools has been introduced that resolution authorities can apply to preserve critical functions without resorting to public support, such as the bail-in tool to write down or convert a bank's liabilities into equity; and
- resolution funds have been established to finance and facilitate the orderly resolution of credit institutions.

Competent Authorities

The SRMR establishes the institutional and procedural framework for the resolution of banks within the euro area. It creates the SRB as the central resolution authority responsible for significant institutions under the direct supervision of the ECB and for cross-border banking groups, while national resolution authorities (NRAs), such as BaFin in Germany, implement SRB decisions and are responsible for less significant institutions. The SRMR also governs the operation of the Single Resolution Fund (SRF), which is financed by contributions from the banking sector and can be used to support resolution actions in the Banking Union. The Bundesbank supports both the SRB and BaFin through data collection and technical analysis.

Own-Funds Requirements and MREL

A key feature of the European resolution regime is the MREL, which ensures that institutions maintain sufficient capital and loss-absorbing instruments to support an orderly resolution without recourse to pub-

lic funds. MREL complements the prudential capital requirements under the CRR and CRD and is conceptually aligned with the TLAC standard for global systemically important banks.

The SRB (for significant institutions) and BaFin (for less significant institutions) determine the applicable MREL level for each institution, reviewing it annually based on factors such as the preferred resolution strategy, the bank's business model and risk profile, and its systemic relevance. The requirement is tailored to each institution to ensure that it can absorb losses and be recapitalised to continue critical functions in resolution.

In 2024, the EU adopted Directive (EU) 2024/1174 (the so-called "daisy-chains" amendment), which grants resolution authorities more flexibility in setting internal MREL in banking groups to ensure sufficient loss-absorbing capacity, and provides for a specific MREL treatment for liquidation entities.

Failure, or imminent risk of failure, to meet own-funds, MREL or liquidity requirements may trigger supervisory or resolution powers. Authorities can require remedial actions to restore compliance, restrict business operations or, as a last resort, withdraw the banking licence and initiate resolution proceedings.

Recovery and Early-Intervention Measures

Pursuant to the SAG, all credit institutions must prepare and maintain recovery plans setting out measures to restore viability in periods of financial stress. The competent resolution authority, in co-operation with the supervisory authority, prepares resolution plans describing the preferred resolution strategy and assessing resolvability.

Before resolution conditions are met, early-intervention powers under the SAG and the KWG allow BaFin to take proportionate measures, including:

- requiring changes to legal or operational structures or to business strategy;
- ordering the execution of options identified in the recovery plan;
- requiring improvements in capital or liquidity positions, or reductions in risk exposure; and

- demanding the replacement of management where necessary.

These preventive tools are complemented by crisis management powers, such as writing down or converting relevant capital instruments when viability is at risk.

Resolution Tools

If an institution is failing or likely to fail, and no private or supervisory measures can prevent that outcome within a reasonable timeframe, the SRB (for significant institutions) or BaFin (for less significant institutions) may place it into resolution. Resolution aims to preserve critical functions, maintain financial stability and protect covered depositors, while minimising reliance on public funds.

The principal resolution tools available under the SRMR and SAG are:

- sale of business – transfer of shares or assets to a private purchaser;
- bridge institution – transfer of critical functions to a temporary bridge bank pending sale;
- asset separation – transfer of impaired assets to a management vehicle; and
- bail-in – write-down or conversion of eligible liabilities into equity.

Certain liabilities are excluded from bail-in, notably covered deposits up to EUR100,000, secured liabilities, client assets and liabilities to employees or tax authorities.

Valuation and Creditor Safeguards

Following any resolution action, an independent expert must perform a "no creditor worse off" assessment to determine whether shareholders and creditors would have received better treatment in normal insolvency proceedings. If so, they are entitled to compensation from the SRF or, for less significant institutions, from the national restructuring fund (*Restrukturierungsfonds*).

Non-CRR Institutions and Insolvency

The SRM and the SAG only apply to CRR credit institutions. For non-CRR institutions, insolvency and liq-

liquidation are governed at the national level by special bank insolvency provisions of the KWG, which supplement the general rules of the German Insolvency Code (*Insolvenzordnung*).

In cases of over-indebtedness (*Überschuldung*) or illiquidity (*Zahlungsunfähigkeit*), the institution's management must immediately notify BaFin, which is then required to petition the competent court to open insolvency proceedings. Creditors are subsequently informed, and if the institution is part of an EEA group, BaFin must also notify the relevant authorities in the other EEA member states.

Depositor Preference

In accordance with the BRRD, Germany applies the EU-wide general depositor preference in order to ensure that retail and SME depositors are protected ahead of other unsecured creditors in both resolution and insolvency proceedings. Deposits rank above ordinary unsecured claims, in a two-tier hierarchy:

- Tier 1 – covered deposits up to EUR100,000 and deposits of individuals and SMEs above that limit; and
- Tier 2 – other eligible deposits of large corporate clients.

9. ESG

9.1 ESG Requirements

German banks are increasingly affected by the expanding legal framework on environmental, social and governance (ESG) regulation.

EU Prudential Framework

The ECB has made the management of climate-related and environmental risks a core supervisory priority for 2025–2027 and expects significant institutions to demonstrate full alignment with its *Guide on Climate-related and Environmental Risks* and related EBA standards.

ESG metrics have been incorporated into the SREP, assessing whether a bank's governance, data quality and internal models adequately capture climate-related and environmental risks. Deficiencies can result

in qualitative measures or additional Pillar 2 capital guidance.

This prudential focus on ESG is further reinforced by the newest legislative reforms. As part of the “second banking package”, the new CRD VI, which must be transposed into German law by 10 January 2026, introduces explicit provisions on ESG risk management. Credit institutions will be required to:

- integrate ESG risks into their governance arrangements, risk strategies and internal capital-adequacy assessment process (ICAAP);
- perform forward-looking scenario analyses and stress tests addressing physical and transition climate risks;
- consider ESG exposures when setting remuneration policies and variable-pay structures; and
- disclose information on transition planning and the management of ESG risks in accordance with detailed EBA technical standards.

Disclosure and Due Diligence

The Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD) has been applicable from financial year 2024 to large publicly-listed credit institutions. In February 2025, the European Commission's Omnibus Simplification Package (“Omnibus Package”) postponed the application of the CSRD to other in-scope institutions until 2028 to allow additional time for implementation of the European Sustainability Reporting Standards. The CSRD substantially broadens the scope and depth of ESG disclosures, requiring detailed information on sustainability strategy, governance, risk-management processes and key performance indicators.

The Corporate Sustainability Due Diligence Directive (EU) 2024/1760 (CSDDD), whose effective date has likewise been deferred to 2028, will additionally oblige larger credit institutions to conduct due diligence on human-rights and environmental impacts in their value chains and to adopt climate-transition plans. The Omnibus Package also proposes targeted amendments to narrow the CSDDD's scope and clarify proportionality for financial-sector entities.

The Taxonomy Regulation (EU) 2020/852 defines environmentally sustainable activities and requires banks to report the share of taxonomy-aligned assets, including the Green Asset Ratio for exposures on their banking book.

National Supervisory Practice

At the German national level, BaFin and the Bundesbank have embedded ESG supervision within the existing risk-management framework. BaFin's *Guidance Notice on Dealing with Sustainability Risks* obliges credit institutions to analyse climate-related and broader ESG risks within their overall risk strategy and inventory, to integrate these into MaRisk processes and to ensure active management oversight.

In 2024, BaFin launched a consultation to update the MaRisk and Banking Supervisory Requirements for IT (BAIT) to reflect ESG considerations and to align with CRD VI and the new *EBA Guidelines on the Management of ESG Risks* (EBA/GL/2024/01). In supervisory practice, BaFin and the Bundesbank review ESG governance, scenario analyses and disclosure quality as part of on-site inspections and the SREP.

ESG competence has also become a fit-and-proper (FAP) criterion. The ECB and BaFin expect management and supervisory boards to collectively possess adequate knowledge to oversee ESG and climate risks. Institutions must evidence such expertise in their FAP notifications.

Further, BaFin's Sustainable Finance Strategy 2025 and its *Guidance on the Prevention of Greenwashing* (2024) confirm that ESG supervision in Germany increasingly covers not only prudential and governance aspects but also conduct and disclosure risks.

Sector Initiatives

German banking associations – including the BdB, the DSGV and the VÖB – have issued sector-specific ESG frameworks, such as the *BdB Leitfaden für nachhaltige Kreditvergabe* (2023), the *DSGV Nachhaltigkeitsstrategie der Sparkassen-Finanzgruppe* (2021) and the *VÖB Leitfaden Nachhaltiges Banking* (2021). These guidelines promote sustainable lending, green-bond issuance and the integration of climate risks into credit decisions.

10. DORA

10.1 DORA Requirements

Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (DORA) has been applicable to all EU financial entities, including German credit institutions, since 17 January 2025. DORA strengthens operational continuity in the face of cyber and information and communication technology (ICT) disruptions and establishes a harmonised European framework for managing ICT risks. Significant institutions must conduct advanced threat-led penetration tests to assess their security against sophisticated threats at least every three years, in line with DORA technical standards.

DORA has made ICT governance and cyber-resilience a core element of prudential supervision in Germany. BaFin and the Bundesbank are responsible for national supervision and implementation, working in close co-operation with the ECB. BaFin has issued interpretative guidance and DORA-readiness questionnaires, and treats digital resilience as a supervisory priority. Expectations derived from DORA are now integrated into IT-risk reviews and on-site inspections, as well as in the regular SREP.

BaFin's *IT Audit Guide (IT-Prüfungsleitfaden)* sets detailed examination standards for auditors and supervisors. The Bundesbank performs dedicated IT audits as part of its ongoing prudential inspections, and the findings directly influence an institution's risk profile and capital assessment under the SREP.

Alongside DORA, German banks must continue to comply with domestic supervisory rules under MaRisk and the BAIT. Both BaFin circulars remain applicable but are currently being revised to align with the new EU framework.

ICT risks have also gained greater weight in FAP assessments of management board and supervisory board members. BaFin and the ECB now assess the technological competence of individuals. Management and supervisory bodies must collectively demonstrate adequate knowledge on ICT, outsourcing and cybersecurity risks.

DORA further complements existing German ICT-security and data-protection regimes. Credit institutions remain subject to the Federal Data Protection Act (*Bundesdatenschutzgesetz*, BDSG) and the General Data Protection Regulation (*Datenschutz-Grundverordnung*, DSGVO); DORA reinforces these frameworks by requiring governance and technical controls that ensure the confidentiality, integrity, and availability of data and systems.

In addition, large credit institutions that meet the thresholds for “critical infrastructure” (*Kritische Infrastruktur*, KRITIS) under the BSI Act (BSIG) and the BSI-Kritis Regulation (BSI-KritisV) are supervised by the Federal Office for Information Security (BSI) with respect to their IT systems. Obligations include maintaining state-of-the-art security measures, designating a 24/7 contact point, reporting serious IT incidents to the BSI and periodically demonstrating compliance. DORA and the KRITIS regime apply cumulatively. DORA governs the prudential resilience of ICT systems under banking supervision, while the BSIG and KRITIS laws regulate national cybersecurity and public security aspects.

In 2025, the German Federal Cabinet (*Bundeskabinett*) approved a draft KRITIS Umbrella Act (*KRITIS-Dachgesetz*), enhancing co-ordination between BaFin, the BSI and the Federal Office for Civil Protection and Disaster Assistance (BBK). The new framework introduces a national register of critical-infrastructure operators and harmonised incident reporting. Consequently, a major cyber incident may trigger parallel notifications to the ECB, BaFin and the BSI.

In parallel, the NIS2 Directive (EU) 2022/2555 – to be transposed into German law by late 2025 through the *NIS2-Umsetzungs- und Cybersicherheitsstärkungsgesetz* – expands cybersecurity obligations for all “essential” and “important” entities across critical sectors, including banking. While DORA acts as the *lex specialis* for financial entities, NIS2 complements it by establishing cross-sector co-ordination and incident-reporting mechanisms under the Federal Office for Information Security (BSI).

11. Horizon Scanning

11.1 Regulatory Developments

Capital Requirements and Basel IV Implementation

Capital regulation continues to evolve, with Basel IV remaining a core focus. CRD VI must be transposed into national legislation by 10 January 2026 and, according to a draft law published on 22 August 2025 by the German Federal Ministry of Finance, the draft Banking Directive Implementation and Bureaucracy Reduction Act (*Bankenrichtlinienumsetzungs- und Bürokratieentlastungsgesetz*, BRUBEG), a full transposition is envisaged.

At the same time, the EU has postponed the implementation of the Fundamental Review of the Trading Book by one additional year to 1 January 2027, citing competitive concerns with respect to the USA and other major jurisdictions, where deregulatory trends persist. While this delay offers short-term relief, it adds complexity to banks’ medium-term planning.

The output floor, which limits capital relief from internal models by requiring total RWA (used for the calculation of own-funds and capital buffer requirements) to be no lower than 72.5% of the amount calculated under the standardised approaches, will be phased in from 2025 to 2030, requiring banks to use internal models to recalibrate portfolios and data systems.

CRD VI further introduces explicit supervisory expectations for integrating ESG risks into risk-management frameworks and the ICAAP. BaFin and the Bundesbank are preparing guidance to align national supervisory reviews with forthcoming EBA standards on climate-related stress testing and transition-plan assessment. In 2026, the ECB will conduct a thematic stress test examining banks’ resilience to geopolitical shocks.

In addition, under a new regime of the CRD VI for third-country branches, third-country institutions providing core banking services will be required to establish an authorised branch or subsidiary in Germany unless an exemption applies. Existing cross-border exemptions under the KWG will be curtailed for such activities, and new procedures and notification requirements are introduced for bank M&A and reorganisations.

Crisis Management and Bank Resolution

In June 2025, the European Parliament and Council reached a political agreement to overhaul the EU's Crisis Management and Deposit Insurance (CMDI) framework for banks. The reform aims to make resolution tools applicable to a wider spectrum of institutions, including smaller and medium-sized banks, and to reduce reliance on taxpayer-funded bail-outs by strengthening industry-funded safety nets (national resolution funds and the SRF). Implementation is expected from 2026 and will amend the BRRD, SRMR and DGSD. For German banks, this will entail closer co-ordination between BaFin and the SRB in resolution planning and funding arrangements.

The CMDI package also clarifies the interplay between national deposit-guarantee schemes and the SRF, strengthening depositor preference and introducing more consistent triggers for resolution and liquidation.

Regulatory Simplification and Proportionality

Alongside the tightening of prudential standards, the authorities are also seeking to reduce unnecessary administrative complexity. Recognising the cumulative burden of existing requirements, the ECB launched a "High-Level Task Force on Simplification" in April 2025 to identify redundant or overlapping obligations, notably in reporting and supervisory processes.

In parallel, BaFin issued a Supervisory Notice in November 2024 introducing proportionality measures for small and very small institutions – simplified risk-management and capital-planning approaches, lighter internal reporting and greater flexibility in outsourcing through group frameworks. Around three-quarters of German banks are expected to benefit from these simplifications.

Digital Transformation and Artificial Intelligence (AI)

Digitalisation remains central to the EU's financial services agenda. The German government supports the rollout of the European Digital Identity (EUDI) Wallet and preparations for the Digital Euro.

The Market in Crypto-Assets Regulation (MiCAR) is progressing through its implementation phase. Level 2 and 3 technical standards being prepared by ESMA and the EBA will specify detailed prudential and conduct obligations for crypto-asset service providers and stablecoin issuers. Banks offering custody or token-issuance services must integrate these standards into their risk and compliance frameworks.

The EU Artificial Intelligence Act ("AI Act") entered into force on 1 August 2024 and is expected to be fully effective by 2027. It imposes strict compliance obligations on AI systems. Credit institutions using AI for credit scoring, trading or AML monitoring will fall under the "high-risk" category, requiring model-governance, documentation and testing obligations. The ECB and BaFin are assessing how to integrate AI governance into existing risk-management reviews to ensure alignment with DORA and data protection standards. On 10 July 2025, the European Commission published the voluntary General-Purpose AI (GPAI) Code of Practice, which provides guidelines for compliance with the AI Act.

Retail Banking, Payments and AML Reform

On the consumer side, Germany's 2025 coalition agreement places renewed emphasis on fairness and market access. Planned reforms include fee caps on overdrafts and basic accounts, as well as measures to channel venture-capital investment into growth sectors.

Germany is also preparing to implement the Consumer Credit Directive (EU) 2023/2225 by 20 November 2025, with application from 20 November 2026, expanding its scope to new retail-credit products such as "buy now, pay later" and short-term digital lending. In parallel, EU legislators are finalising the Payment Services Directive and Regulation (PSD3/PSR) package together with the Instant Payments Regulation, which will make instant payments mandatory across the EU and introduce name-matching of recipients (the "verification of payee" check). These rules are phasing in from 2025 and are expected to substantially modernise the EU retail payments landscape.

Trends and Developments

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PwC Legal

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Banking Regulation in Germany: Key Trends and Developments for 2026

Germany's financial services landscape is undergoing a measured but meaningful recalibration. While EU-level reforms continue to set the perimeter for prudential standards, market infrastructure and cross-border conduct, the German debate in the past 12 to 18 months has centred on distinctly national concerns: the stability of interest rate-sensitive balance sheets, the suitability of retail distribution practices in a volatile rate and liquidity environment, the steady integration of digital instruments into mainstream capital markets under German law, and the tightening of supervisory expectations on governance, AML/CTF and greenwashing. The result is a market that remains conservative in ethos yet more permissive in structure, with new avenues for issuance and intermediation opening in parallel with sharper expectations for accountability and investor protection.

Retail distribution under strain: suitability, disclosure and product governance

German retail distribution is in the midst of an incremental tightening cycle, driven primarily by a renewed focus on advice quality, product governance and the management of conflicts in vertically integrated value chains. Two themes dominate the supervisory dialogue. First, firms are expected to demonstrate a rigorously evidenced suitability process that is both client-specific and outcome-oriented, particularly for complex or illiquid instruments offered to mass affluent segments. The expectation is no longer satisfied by formulaic questionnaires and generic risk profiles: distributors should be in a position to evidence the bridge between specific client objectives, time horizons and loss-bearing capacity on the one hand, and precise product features, liquidity constraints and downside asymmetries on the other. This is changing sales documentation, internal approvals and after-sales monitoring in noticeable ways.

Second, product governance has moved from a static paper exercise to a supervisory focal point with real commercial bite. Target market definitions are expected to be realistic and granular, negative target markets must be taken seriously, and distributors are expected to demonstrate credible controls to prevent "target market drift" under commercial pressure. German

practice has become more disciplined in documenting distribution strategy, selecting appropriate channels and calibrating inducement structures to avoid sales patterns that cannot be reconciled with the stated target market. Vendors of complex notes, leveraged and structured products, and closed-ended alternative investment fund (AIF) interests have experienced renewed supervisory scrutiny of their product oversight and governance arrangements, with attention to whether product bundles and wrappers obscure costs, risk and liquidity.

Firms should anticipate more thematic work on the boundary between advice and pure execution, and the use of streamlined digital journeys for complex instruments. While digital onboarding has improved auditability, supervisors are sensitive to "explainability gaps" where automation compresses disclosures, defaults or risk warnings. German practice increasingly favours layered disclosures with mandatory "break points" for higher-risk features and clear records of client-led choices that depart from recommended pathways. The cumulative effect is an operational retooling of distribution – less about headline rule changes and more about elevated evidentiary standards.

The "grey market" under the Vermögensanlagegesetz: pressure towards professionalisation

Germany's regime for non-securitised investment assets under the Capital Investment Act (*Vermögensanlagegesetz*, *VermAnlG*) continues to occupy a delicate space between fostering SME funding and protecting retail investors from asymmetric information and governance risks. Supervisory experience over multiple cycles has reinforced three messages:

- First, documentation quality and the credibility of issuer projections are under sharper scrutiny; statements of risk and return must withstand plausibility testing that is recorded and reproducible.
- Second, intermediaries who intermediate *Vermögensanlagen* must avoid the appearance of "manufactured suitability", particularly where the product economics rely on serial retail issuance rather than cash-generative assets.
- Third, distribution channels are undergoing a quiet consolidation: lower-quality networks are exiting,

and the remaining intermediaries are investing in compliance functions, product approval commitments and ongoing product monitoring that more closely resemble MiFID-standard governance.

For providers relying on VermAnIG instruments as a funding channel, the practical upshot is a higher fixed cost of compliance and a reduced tolerance for optimistic projections, complex subordination structures or implicit maturity transformation. Where issuers are unable to meet the evidentiary bar, the German market increasingly steers them towards professional-only placements or AIF structures governed by the German Investment Code (*Kapitalanlagegesetzbuch*, KAGB), notwithstanding the additional governance load those routes entail.

Investment intermediaries and the boundary of permitted services

Germany's dual system for investment intermediation – MiFID-authorized firms under the WpIG/KWG on the one hand and § 34f GewO intermediaries on the other – remains viable but more policed at the seams. Three recurring issues persist in practice:

- First, reception and transmission of orders must be mapped carefully: the line between informal facilitation and a regulated RTO service is policed with reference to substance, not labels. Intermediaries that “help the subscription along” by collecting or channelling client orders risk crossing into unauthorised territory.
- Second, classification manoeuvres to widen access to professional-only products face closer scrutiny. German supervisors expect that professional client opt-up criteria are applied strictly by authorised firms; intermediaries without authorisation cannot cure their status by piggybacking on a producer's categorisation in the absence of the requisite contractual nexus and client-level diligence.
- Third, when non-authorized intermediaries participate in distribution chains, manufacturers are expected to evidence adequate control over downstream sales practices. This has produced more robust manufacturer-distributor agreements with explicit obligations on target market adherence, client data-sharing for monitoring, complaint handling

and remediation triggers. The trend is towards formalising the entire chain; informal networks without clear allocation of responsibilities are increasingly seen as a supervisory risk.

Electronic securities, crypto custody and the normalisation of digital issuance

Germany's framework for electronic securities continues to migrate from early-stage novelty to practical mainstreaming. The Electronic Securities Act (*Gesetz über elektronische Wertpapiere*, eWpG) established a viable substrate for electronic bearer bonds and fund units, with scope now widening through subsequent legislative steps to include additional categories of instruments and registries. While EU-level crypto-asset rules set the overarching categories and licensing pathways, the German experience is defined by two national features: the crypto custody licence as a KWG-regulated financial service, and the coexistence of centralised and decentralised registers under the eWpG. Together, these features have created an environment in which established institutions can enter the market in controlled steps – initially through custody, white-label issuance and intra-group pilots – before expanding into client-facing products.

Two implementation realities stand out. First, governance and IT risk management expectations for custody are at the higher end of the spectrum, reflecting the irreversibility of on-chain movements and the vulnerability of key management. Firms are expected to demonstrate not just technical controls but robust segregation, multi-signature policies, independent change management and clear incident response that anticipates cross-jurisdictional implications. Second, AML/CTF expectations are not optional. German practice expects travel rule compliance, blockchain analytics integration and rigorous customer risk scoring calibrated to on-chain behaviours. Institutions that approach digital assets as purely technical deployments without a compliance-first architecture encounter delays and supervisory friction.

More broadly, the eWpG's allowance for blockchain-based registers has encouraged structured issuers and fund sponsors to explore electronic formats where operational savings and settlement efficiencies outweigh initial setup costs. Where firms proceed, they

are doing so with a view to standardisation and secondary liquidity, carefully aligning the register choice with custody and settlement capabilities at their target distributors. In short, the direction of travel is steady normalisation; the pace depends on a firm's ability to integrate digital issuance into existing middle- and back-office architecture without compromising control frameworks.

Loan origination by funds and private credit: risk controls over labels

Germany's willingness to permit loan origination by AIFs subject to KAGB and supervisory conditions has supported the maturation of a domestic private credit market. While EU-level texts shape the broader contour, the German practice has evolved around three supervisory expectations:

- Coherent credit risk governance: Origination must sit within a documented risk framework that addresses underwriting standards, collateral policies, valuation, workout and restructuring. Merely outsourcing expertise without retaining oversight is viewed as insufficient.
- Liquidity management and investor fairness: Closed-ended structures should match asset maturity, and any liquidity offered must be credible and supported by mechanisms that do not transfer first-loss risk to incoming investors.
- Conflicts and delegation: Where managers rely on related-party servicers or origination partners, conflict identification and mitigation must be demonstrably effective, and fee structures should be transparent with respect to borrower- and fund-level economics.

As the cost of capital environment stabilises at a higher plateau, German supervisors remain attentive to covenant-light exposures, layered security packages and borrower resilience in cyclical sectors. Managers can expect continued interest in pipeline selection discipline, sector concentration and stress testing that reflects realistic refinancing scenarios rather than generic macro shocks. The theme is consistent: substance over form, prudence over pace.

Interest rate risk, deposit stability and conduct in a high-rate plateau

The transition from a prolonged low-rate environment to a higher-for-longer regime has sharpened supervisory focus on traditional banking risks. Interest rate risk in the banking book, hedging effectiveness and deposit stability under rate competition are standard themes – but in Germany they are intimately linked to conduct. Promotional campaigns for time deposits, structured savings and yield-enhancing notes are expected to meet the same suitability and fair presentation standards as investment products. In practice, this means rigorous clarity on conditionality, reinvestment risk and early termination terms. Marketing that emphasises headline rates without balancing risk statements is a perennial source of complaints and supervisory queries.

At the treasury level, supervisors expect that ALM models reflect realistic client behaviour under rate competition, including the cannibalisation of low-yield sight deposits. Hedging programmes must be aligned with balance sheet realities, not accounting cosmetics. For smaller and mid-sized institutions, model risk management and the independence of the risk function have moved from good practice to necessity; embedded complacency from the prior decade is no longer an acceptable explanation for model underperformance.

Sustainability, greenwashing and the maturing of German expectations

Germany's sustainability agenda in financial services is now less about general statements of principle and more about the integrity of product claims and risk integration. Firms should assume two parallel expectations:

- The prudent integration of sustainability risks into lending, investment and underwriting processes: The expectation is not merely that ESG is “considered”, but that there is a documented and explainable link between sustainability factors and credit, market or operational risk where material.
- Precision in marketing: Sustainability-related communications must be substantiated by the product's actual asset composition, stewardship approach and exclusions, and must be consistent

across KIIDs, prospectuses, factsheets and web content. German supervisory messaging has been clear that labels, colours and imagery implying a level of sustainability performance that the product cannot substantiate will be treated as misleading.

In practical terms, firms are tightening internal approval processes for sustainability claims, adopting “claims registers” that map each assertion to underlying evidence, and conducting periodic sampling of portfolio holdings against stated exclusions or targets. Where discretionary mandates or funds commit to engagement strategies, records of engagement activity and outcomes are increasingly viewed as quasi-regulatory artefacts: if it is part of the pitch, it must be evidenced.

AML/CTF, governance and the hardening of operational expectations

AML/CTF supervision in Germany continues to harden around real-world efficacy. The direction of travel is clear: beyond policy quality and formal governance, supervisors want to see detection and escalation that works in practice. This has several operational consequences. Customer risk models are being recalibrated to reflect typologies that are specific to product and channel. Transaction monitoring is expected to produce “useful alerts”, not just many alerts. Quality assurance functions are being beefed up with genuine independence, and SAR filing practices are expected to demonstrate consistency and timeliness. For cross-border models, source-of-wealth corroboration and intermediated business pose heightened expectations; firms must be prepared to justify reliance on introducers with concrete due diligence and periodic testing.

Governance more generally is in the spotlight. Boards and senior management are expected to own the compliance agenda, not outsource it to second-line functions. Documentation of challenge, trade-offs and risk appetite decisions should be of a standard that can be disclosed to supervisors without reconstruction. In the investment firm sector, remuneration governance aligned to risk remains a live topic, particularly for firms transitioning between proportionality categories or growing into more complex structures. The message is familiar, but the threshold for what counts as “effective” has moved upwards.

Insurance-based investments: advice quality and the transparency imperative

Germany’s life insurance and bancassurance channels are being asked to reconcile robust retail protection with commercial realities in a rate environment that has altered product attractiveness. Unit-linked policies, hybrid guarantees and structured features must be explained with unusual clarity. Supervisory focus has coalesced around three issues:

- Cost transparency in a setting where layered charges can erode the benefits of compounding.
- The presentation of guarantees and loss asymmetries in products that embed complex mechanisms or conditional benefits.
- After-sales service and monitoring, especially where long-term products are sold to clients with low financial literacy.

Distributors are responding with enhanced training, better “point of advice” materials, and outcome testing on sample client files. In practice, firms are running periodic reviews to test whether ongoing advice and portfolio rebalancing within insurance wrappers remain aligned with documented objectives and risk appetite. The dialogue with supervisors in this space is co-operative but firm: choice architecture that nudges clients towards more expensive options without a defensible rationale is no longer tolerated.

Consolidation, alliances and the professionalisation of distribution

Market dynamics are driving consolidation in distribution networks and the emergence of platform-style alliances between manufacturers, brokers and fintech facilitators. This consolidation is motivated as much by regulatory economies of scale as by commercial logic. Product approval committees, surveillance tooling, client file quality assurance and remediation frameworks carry fixed costs that smaller players struggle to absorb. As a result, larger networks are absorbing boutique intermediaries and offering standardised compliance infrastructure in exchange for distribution reach.

From a supervisory perspective, this is welcome insofar as it raises the floor on governance. It also creates new conflict risks: ownership links between

manufacturers and distributors must be managed transparently, with clear disclosures, oversight over incentive structures and demonstrable protection of clients' best interests. Expect closer attention to how platforms curate product shelves, manage negative target market constraints and handle manufacturer due diligence. Firms should assume that the audit trail for product inclusion and removal decisions will be reviewed in thematic work.

Outlook

The broader narrative is not one of abrupt regulatory overhaul but of incremental elevation. Germany remains a jurisdiction that prefers stable frameworks and expects market participants to internalise high standards of governance and documentation. Those

who respond by investing in evidencing, rationalising distribution chains and aligning product features to client needs will find a supervisory environment that rewards substance and transparency. Those who seek growth through complexity without control will find the environment progressively unforgiving.

In short, the German market in the coming period will likely be defined by professionalisation, not proliferation. The opening of new issuance avenues under electronic securities law, the continued institutionalisation of private credit and the digitalisation of intermediation will provide opportunities – but only for those prepared to meet the elevated bar for investor protection, operational resilience and honest marketing that German supervisors now expect as a baseline.

GREECE

Law and Practice

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Zepos & Yannopoulos is one the longest-established law firms in Greece. With more than 144 lawyers and economists and 87 business professionals, it is also one of the country's largest law firms and the only firm offering comprehensive legal and tax and accounting services. Its finance and capital markets team has rapidly grown into one of the largest finance-only desks in the market. The firm has established a well-founded reputation for ground-breaking, "first-of-a-kind" transactions, with a steady emphasis on financial institutions and cross-border deals. Its work,

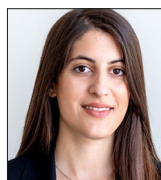
whether transactional or regulatory, covers all areas of finance, from debt and equity capital markets to general bank lending (corporate, infrastructure, real estate, restructuring and export), and from distressed debt investments to asset management. Zepos & Yannopoulos is renowned for its structured finance practice, and its lawyers have an impressive track record in securitisation and covered bond transactions in terms of volume, asset class diversity and structural innovation.

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ZEPOS & YANNOPOULOS

1. Legal Framework

1.1 Key Laws and Regulations

The principal laws and regulations governing the Greek banking sector are the following.

- Law 4261/2014 (Law 4261), implementing in Greece Directive 2013/36/EU (CRD IV), and Regulation (EU) 575/2013 (CRR), as amended, among others, by Regulation (EU) 2019/876 (CRR 2) and Regulation (EU) 2024/1623 (CRR 3). CRD IV has been amended by Directive (EU) 2024/1619 (CRD VI), which is to be transposed into Greek law by 10 January 2026. Law 4261 has been amended, among others, by Law 4799/2021, which transposed Directive 2019/878/EU (CRD V) into Greek law. Law 4261 sets out, inter alia, the provisions as regards:
 - the establishment, authorisation and operation of credit institutions;
 - the EU passport procedure and the licensing requirements in relation to third-country credit institutions providing banking services in Greece;
 - the prudential supervision rules applicable to credit institutions established in Greece;
 - the powers of supervisory authorities and the administrative penalties they may impose on credit institutions;
 - the corporate governance of credit institutions; and
 - the introduction of certain capital buffers to be maintained by credit institutions (in addition to the requirements of CRR as in force). Law 4335/2015, as amended (Law 4335), implementing in Greece Directive 2014/59/EU (BRRD) on the recovery and resolution of credit institutions and investment firms. Law 4335 has been amended by law 4799/2021, which transposed, among others, Directive 2019/879/EU (BRRD II) into Greek law.
- Law 4557/2018, as amended by Law 4734/2020 and Law 4816/2021 (the “AML Law”) setting out the anti-money laundering and countering the financing of terrorism (AML/CFT) framework. The AML Law implements Directives 2015/849/EU (“4th AML Directive”), 2018/843/EU (“5th AML Directive”) and 2018/1673/EU in Greece. On 19 June 2024, the EU introduced a new legislative toolkit comprising Regulation (EU) 2024/1620, Regulation (EU)

2024/1624 (AMLR) and Directive (EU) 2024/1640 (“6th AML Directive”), aiming to harmonise AML/CFT rules across EU member states. The 4th AML Directive will be repealed by the 6th AML Directive. The majority of new rules under the 6th AML Directive (as the measures will be transposed into Greek law) and under AMLR will apply as of 10 July 2027.

- Law 4370/2016, as amended, transposed into Greek law, among others, Directive 2014/49/EU (the “Directive on Deposit Guarantee Schemes”).
- Law 2251/1994 on consumer protection, as amended and codified by Ministerial Decision 5338/2018, as currently in force (the “Consumer Protection Law”).

Depending on the type of services offered to clients, credit institutions should also comply with other laws of the financial sector, including the following.

- Regulation (EU) 600/2014 (MiFIR), as amended, among others, by Regulation (EU) 2024/791 and Law 4514/2018, as amended, transposing Directive 2014/65/EU, as amended (MiFID II) in Greece as regards the provision of investment services.
- Law 4537/2018 transposing Directive 2015/2366/EU (“PSD2”) in Greece as regards the provision of payment services. Regulation (EU) 2024/886 as regards instant credit transfers in euros amends PSD2 and requires member states to adopt, publish and apply supplementing measures by 9 April 2025, while we are still anticipating the local supplementing measures to be adopted.
- Regulation (EU) 2023/1114 (“Markets in Crypto-Assets Regulation”, or MiCAR) and Law 5193/2025, as well as the delegated and implementing acts as regards the provision of crypto-asset services.

In addition to the laws of the banking sector, Greek credit institutions should also comply with other laws, including Law 4548/2018 on *sociétés anonymes*, Law 4706/2020 on corporate governance of listed entities, as applicable, as well as Regulation (EU) 2016/679 (“General Data Protection Regulation”) and Law 3471/2006.

The above laws are supplemented by Acts passed by the Bank of Greece (BoG), including the following:

- BoG Governor's Act 2501/2002, as amended and currently in force, on the information that credit institutions must provide to their customers;
- BoG Act 392/31.05.2021 on the revision of the Code of Conduct under Greek Law 4224/2013;
- BoG Act 243/2/07.07.2025 endorsing the European Banking Authority's (EBA) guidelines on internal governance (EBA/GL/2021/05). In brief, BoG Act 243 replaces the previous governance provisions set out in BoG Governor's Act 2577/2006 and introduces a new comprehensive internal governance framework aligned with EU requirements;
- BoG Executive Committee Act 178/2020 as regards the outsourcing of activities;
- BoG Executive Committee Act 229/10.05.2024 on the determination of the initial capital structure for the issuance of an incorporation and operation license; and
- guidelines issued by the European Central Bank (ECB), the European Banking Authority (EBA) and other EU authorities.

The BoG is the national competent authority supervising the banking sector and exercising prudential supervision over Greek credit institutions. However, within the Single Supervisory Mechanism (SSM), the ECB directly supervises the following significant credit institutions authorised in Greece:

- Alpha Bank SA;
- Eurobank SA;
- National Bank of Greece SA; and
- Piraeus Bank SA.

Less significant credit institutions are supervised directly by the BoG, which is the competent authority for overseeing entities of the financial sector, including payment institutions, credit companies and credit servicing firms. The ECB may also collect data from certain less significant credit institutions as per Regulation (EU) 2015/534 on the reporting of supervisory financial information, as amended by, among others, Regulation (EU) 2025/1958.

The BoG is also the national resolution authority and, along with the Single Resolution Board (SRB), is established within the Single Resolution Mechanism to exercise the resolution powers. The SRB is com-

petent for the credit institutions supervised directly by the ECB.

In addition, the BoG is responsible for supervising the compliance of credit institutions with the AML/CFT framework.

Further, the BoG is, in principle, the competent authority under MiCAR with respect to credit institutions offering crypto-asset services or issuing certain crypto-assets as per Law 5193/2025.

The Hellenic Capital Market Commission (HCMC) is the competent authority for monitoring the compliance of credit institutions with Law 4514/2018 with respect to investment services – with the exception of certain areas which remain under the authority of the BoG.

The HCMC is also responsible for monitoring compliance with market abuse legislation, including Regulation (EU) 596/2014 ("MAR") and Law 4443/2016, which supplements the MAR in Greece.

2. Authorisation

2.1 Licences and Application Process

Credit institutions established and operating in Greece must be authorised by the ECB, which co-operates closely with the BoG. The authorisation of credit institutions in Greece is one of the "common procedures", as defined in Regulation (EU) 468/2014 ("SSM Framework Regulation") (ECB/2014/17), on which the final decision lies with the ECB.

Greek credit institutions may be established and may operate in Greece as:

- *sociétés anonymes* (which is the most common legal type);
- pure credit co-operatives under Law 1667/1986;
- European Societies (SE) under Regulation (EU) 2157/2001; or
- European Co-operative Societies under Regulation (EU) 1435/2003.

Greek credit institutions may be licensed to perform all banking activities listed in Annex I of CRD IV (“universal licence”), namely:

- the acceptance of deposits and other repayable funds;
- lending including, inter alia, consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting);
- financial leasing;
- payment services as defined in Article 4 (3) of the PSD2;
- issuing and administering other means of payment (ie, travellers’ cheques and bankers’ drafts) insofar as such activity is not covered by the above point;
- guarantees and commitments;
- trading for own account or for the account of customers in any of the following:
 - (a) money market instruments (cheques, bills, certificates of deposit, etc);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments; and
 - (e) transferable securities;
- participation in securities issues and the provision of services relating to such issues, particularly underwriting;
- advice to undertakings on capital structure, industrial strategy and related questions, and on services relating to mergers and the purchase of undertakings;
- money broking;
- portfolio management or advice;
- safekeeping and administration of securities;
- credit reference services, including customer credit rating;
- safe custody services;
- issuing electronic money including electronic-money tokens as defined in article 3 (1), point (7) of MiCAR;
- investment services and activities as well as ancillary services provided for in Law 4514/2018 (MiFID II services);
- issuance of asset-referenced tokens as defined in article 3 (1), point (6), of MiCAR; and
- crypto-asset services as defined in article 3 (1), point (16), of MiCAR.

As regards MiFID II services, credit institutions may also provide these in relation to DLT financial instruments, ie, financial instruments (under Law 4514/2018), which are issued by means of distributed ledger technology.

Greek licensed credit institutions intending to offer crypto-asset services must notify the BoG according to the procedure set out in MiCAR.

In addition to the above, the BoG may allow credit institutions to carry out other financial or ancillary activities, provided that the relevant risks are fully hedged.

Natural persons or legal entities that are not licensed credit institutions are prohibited from taking deposits or other repayable funds from the public. Moreover, the provision of credit/financing, in a professional capacity, is a regulated activity in Greece, which is allowed only to duly licensed credit institutions or certain financial institutions (such as Greek authorised credit companies).

EU licensed credit institutions may perform banking activities in Greece on the basis of the EU passport – ie, through their right to establishment or on a cross-border basis, provided that the EU licensed credit institution notifies the home member state’s authority that, in turn, transmits the notification to the BoG. If the EU credit institution wishes to establish a branch in Greece, the branch will be subject to certain local requirements (including the Greek AML framework).

Authorisation Process

The authorisation of a credit institution in Greece by the ECB/BoG is subject to the requirements set out in Law 4261 as supplemented by the BoG Act 244/3/25.07.2025 in conjunction with BoG Act 142/11.6.2018, as amended and in force, as well as other BoG Acts.

The BoG recently introduced an optional pre-application procedure (ie, prior to the submission of the formal application for authorisation) to assist candidates intending to establish a credit institution. This optional procedure aims to enable such parties to understand supervisory expectations and highlight issues where

more preparation by candidates is needed. The pre-application process involves two meetings between interested parties and BoG officers, which can be held in person, online or on a hybrid basis. However, a final decision at the official authorisation procedure will be taken by the ECB.

A legal entity (which must already be established) must comply with at least the following when seeking authorisation as a credit institution in Greece.

- It must have fully paid-up initial capital equal to EUR18 million (for credit co-operatives, an amount of EUR6 million, and for the branches of third-country credit institutions EUR9 million) in accordance with the requirements of BoG Act 201/1/1.3.2022 and BoG Act 229/2/10.05.2024, as well as pay any additional funds that may be required in order to ensure that, during the first three years of operation, the own funds of the new credit institution will meet the expected capital requirements and the minimum initial capital requirement on a continuous basis.
- The calculation of any additional capital must take into account the forecasts in the business plan submitted and, in particular, the expected losses and risks to be incurred by the new credit institution. The relevant amount shall be deposited with the Bank of Greece prior to the granting of the operating licence.

The application must be submitted electronically via the dedicated web portal of the ECB, and must include:

- the information provided for in the provisions of Delegated Regulation (EU) 2022/2580 in conjunction with Law 4261, which sets out the requirements applicable in a uniform way through the EU, including:
- a programme of activities;
- financial information, including the funding sources and forecast information for three years (balance sheet, income statement and cash flow statement) as well as statutory financial statements (where applicable), a summary of the internal liquidity adequacy assessment and the risk management framework;

- a programme of operations (business plan), the structural organisation of the credit institution (including an indication of the parent undertakings, financial holding companies and mixed financial holding companies within the group) and the internal control systems and the auditors; the programme of operation must include a three-year business plan with the scope of work, the timetable for achieving the objectives of the credit institution, the structure of the group to which it belongs and the framework of the internal control functions, including the internal audit, risk management and compliance functions and procedures required for compliance with its organisational obligations; and
- a set of policies and procedures (such as an AML policy, conflict of interest policy, outsourcing policy, business continuity plan and policy, IT/ICT policies, etc); the “fit and proper” questionnaires completed by the Board of Directors (BoD) and key function holders as per BoG Act 224/1/21.12.2023, who are subject to fit and proper assessment; the applicant must ensure that at least two persons who effectively direct the business will be employed on a full-time basis and be executive directors subject to fit and proper assessment;
- the qualifying holding questionnaires completed by persons/entities holding, indirectly, ownership or control; if no person or other entity has a qualifying holding, the application must include a list of the 20 largest shareholders; and
- the additional local information as set out in the BoG Act 244/3/25.07.2025.

Participation in the Deposit Guarantee Scheme is also required.

Following the official submission of the application and the initial BoG assessment of the licensing application, the BoG proceeds to the submission of a proposal (ie, a draft decision) to the ECB, which makes the final decision. If the BoG considers that requirements have not been met, it will reject the licensing request.

Timing and Cost Estimates

According to Law 4261 the BoG/ECB must revert to the applicant with a decision (ie, to grant or refuse the

licensing application) within six months from receipt of the application, which may be extended to within 12 months of receipt of the application. This assessment period commences following the official submission of the complete application and thus the pre-application procedure does not affect the above timeline.

Until 2025, no fees were required to be paid by applicants for the submission of the application to the BoG. However, the BoG introduced supervisory fees as by virtue of BoG Act 238/2/10.1.2025, which will apply as of 1 January 2026. As of that date, applicants seeking authorisation as credit institutions will have to pay an initial supervisory fee of EUR20,000 to the BoG, while credit institutions will be also subject to on-going fees to the bank.

In addition, applicants should take into account the fees paid to legal counsel and financial/technical advisers, as well as their participation in the deposit guarantee scheme.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Requirement to Notify the BoG

Any natural person or legal entity (or persons acting in concert) that has decided either to acquire, directly or indirectly, a qualifying holding in a credit institution (ie, at least 10% of the share capital or of the voting rights) or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 33.33% (one-third), or 50%, or so that the credit institution would become its subsidiary, must notify the BoG in advance in accordance with the qualifying holding process set out in Law 4261.

Documents Required

The proposed acquirer must submit a notification to the BoG accompanied by certain questionnaires and required supporting documents in relation to the persons/entities that will acquire (directly or indirectly) a qualifying holding in the credit institution. In certain cases, a (3 years) business plan that must contain a

minimum set of information should also be submitted by the proposed acquirer.

Assessment by the BoG

The BoG will assess whether the potential acquisition complies with all regulatory conditions and will prepare a draft decision which is submitted to the ECB. The ECB will thereafter decide whether or not to oppose the acquisition on the basis of its assessment of the proposed acquisition and the BoG's draft decision. In terms of timing, the regulators will assess the proposed acquisition within 60 business days from the date of the written acknowledgement of receipt of a complete file. This can be extended up to 90 business days from the receipt of a complete file without prejudice to the BoG's right to extend the whole procedure further if necessary.

Other Qualifying Holdings

A person may be deemed to be acquiring a qualifying holding even in circumstances where they acquire less than 10% of the shares and voting rights, since the definition of qualifying holding also includes cases where a proposed acquirer is deemed to exercise a "significant influence" over the management of a credit institution. Under Law 4261, a prior notification to the BoG is also required with respect to the acquisition or increase of a holding that would reach or exceed 5% in the share capital or voting rights of a Greek credit institution. The BoG will, thereafter, conduct an ad hoc assessment and decide, within five business days, whether such acquisition or increase will constitute a significant influence, and if so, it will notify the proposed acquirer and carry out an assessment in light of the qualifying holding process.

Credit institutions are also subject to reporting requirements to the BoG (on becoming aware of any acquisitions or disposals of holdings which cause holdings to exceed or fall below the relevant thresholds, or where a change occurs, as well as on a regular basis within the context of reporting obligations).

Transparency and Other Disclosure Requirements

In addition to the aforementioned qualifying holding approval process, notification requirements under Law 3556/2007, as amended and in force (Law 3556), implementing the Transparency Directive (Direc-

tive 2004/109) in Greece, might also be triggered as regards the acquisition of significant shareholdings in entities whose shares are traded on a regulated market (noting that the majority of the significant Greek credit institutions are wholly owned by financial holding companies listed on ATHEX or are themselves listed on ATHEX). The shareholders should notify the issuer and the HCMC of the percentage of voting rights held by them if they directly or indirectly acquire or dispose of the shares of the issuer carrying voting rights and if, as a result of that acquisition or disposal, the percentage of their voting rights reaches or exceeds or falls below the applicable thresholds (ie, 5%, 10%, 15%, 20%, 25%, 33.33 % (one-third), 50% and 66.66% (two-thirds)) or reaches, exceeds or falls below the aforementioned applicable threshold as a result of corporate events changing the breakdown of voting rights or on the basis of information disclosed by an issuer. A notification obligation also lies with any shareholder who holds voting rights exceeding 10%, if such percentage changes by 3% or more, following acquisition or disposal of voting rights or other corporate events altering the breakdown of voting rights. New changes exceeding 3% create a new notification obligation.

Additional requirements may be also triggered under the competition law.

4. Governance

4.1 Corporate Governance Requirements

Credit institutions are subject to corporate governance requirements stemming from Law 4261, supplemented by BoG Act 243/2/07.07.2025 endorsing the EBA's guidelines on internal governance (EBA/GL/2021/05) and replacing the previous governance provisions set out in BoG Governor's Act 2577/2006 (BoG Act 243).

Other BoG Acts must also be taken into account for specific requirements (such as outsourcing, information and technology security arrangements, etc).

BoG Act 243 introduces a new, comprehensive and robust internal organisation and corporate governance framework aligned with the EU requirements that all Greek credit institutions must comply with on

the basis of the proportionality principle (taking into account the nature, scale and complexity of the business and activities of the institution). The Act entered into force as of 14 July 2025 and provides for a transitional implementation period – ie credit institutions must adjust their internal governance arrangements no later than 1 October 2025.

The Board of Directors (BoD) of credit institutions is responsible for the implementation of corporate governance arrangements. In summary, BoG Act 243:

- establishes the clear roles and responsibilities of the BoD of credit institutions and their committees, including specific composition requirements for the BoD, with a particular focus on independent non-executive members; the Act makes a clear distinction between the executive and supervisory functions of the BoD and introduces detailed provisions on the roles of executive, non-executive and independent non-executive members;
- clearly defines the role of independent internal control functions (risk management, compliance and internal audit) and specifies the related responsibilities and independence requirements;
- promotes the development of a robust internal control framework and a holistic risk management framework (including management of risks such as all types of AML/CFT risks, ESG risks, and operational risks);
- fosters the development of a strong risk culture, the promotion of high ethical and professional standards through the establishment of a code of conduct, and the obligation to establish conflict-of-interest policies and whistle-blowing procedures; and
- redefines and provides for comprehensive reporting requirements towards the BoG with specific deadlines, taking into account their use for supervisory purposes.

Under BoG Act 243, Greek credit institutions must establish comprehensive internal governance arrangements, including organisational and substantive requirements as follows.

- A BoD bears ultimate and general responsibility for the credit institution, defines, oversees and is

accountable for the implementation of governance arrangements ensuring effective and prudent management. At least two of the executive BoD members will be responsible for effectively directing the business of the institution. The BoD must clearly distinguish between executive and supervisory functions, including the separation of the duties of the chairman from the executive duties of the CEO. The role of the chairman is defined in BoG Act 243. It is recommended that the chairman be an independent, non-executive BoD member, and, in all cases, a non-executive BoD member. Significant institutions (being a G-SII or O-SII, or listed on ATHEX) must comply with the requirements set out in Law 4706/2020 as regards independent, non-executive members, while other institutions must have at least two independent non-executive members. The BoD must monitor and periodically assess the effectiveness of the credit institution's governance arrangements and take appropriate steps to address any deficiencies.

- BoD Committees must be established. Significant institutions must establish, on an individual basis, a Risk Management Committee, a Nomination Committee and Remuneration Committee to make proposals for approval to the BoD. Credit institutions that are not deemed significant must establish a Risk Management Committee and may be required to establish other committees. All credit institutions must establish an Audit Committee in accordance with Law 4449/2017.
- Independent internal control functions comprising risk management, compliance and internal audit functions must be established, each with adequate powers, authority and resources, and organisationally independent from the business areas they monitor and control.
- An AML/CFT function is required that ensures compliance with AML/CFT conditions and may be established as part of the compliance function or as a separate organisational function, with a designated executive BoD member responsible for AML/CFT compliance as required by Law 4557/2018.
- Additional key function holders must be nominated, including chief financial officer, heads of internal control functions, and other designated persons in key roles; business continuity management arrangements; and comprehensive policies

covering new products approval, outsourcing, IT/ICT systems, and conflict of interest management must be in place.

Code of Conduct Under Greek Law 4224/2013

Greek credit institutions must also comply with the requirements (including organisation requirements) stemming from the BoG Act 392/31.05.2021 on the revision of the Code of Conduct under Greek Law 4224/2013 when granting credit to customers.

Hellenic Corporate Governance Code

In addition, Greek credit institutions that are listed on the ATHEX must also comply with the corporate governance requirements of Greek law 4706/2020. In June 2021, a new Hellenic Corporate Governance Code ("the Code") was issued by the Hellenic Corporate Governance Council for listed companies. The Code is voluntary and facilitates the formulation of corporate governance policies and practices, which listed companies must follow depending on the characteristics of each company.

Code of Ethical Conduct

The BoD shall develop, establish, maintain, and promote high ethical and professional standards, taking into account the specific needs and characteristics of the credit institution, and ensure the implementation of these standards (eg, through a code of conduct or other similar means). More specifically, the BoD must adopt a code of conduct to be applied by the BoD members, senior management, and all staff of the institution on the basis of generally accepted principles (such as diligence, effectiveness, responsibility, professional secrecy, etc). In addition, it supervises compliance with these standards by staff.

4.2 Registration and Oversight of Senior Management

The members of the BoD and senior management are proposed by the nomination committee to the BoD or the shareholders' general meeting, respectively, on the basis of suitability assessment carried out taking into account the suitability criteria including their honesty, integrity and independence of mind promoting the diversity of the management bodies. If no nomination committee has been established, such duties are undertaken by the non-executive member of the

BoD. Senior management (including the key function holders) is finally appointed by the BoD, and directors are elected by the shareholders' general meeting. A suitability policy (including the selection, nomination and appointment) for BoD members and key function holders must be adopted in accordance with BoG Act 224/1/21.12.2023.

“Fit and Proper” Assessment

The BoD members and the senior managers of Greek credit institutions must meet specific suitability requirements and are subject to “fit and proper” assessment by the BoG/ECB (as the case may be) to assess that the BoD members and senior managers are of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties and act with honesty, integrity and independence of mind, according to Law 4261 and BoG Act 224/1/21.12.2023.

The BoD must also possess adequate collective knowledge, skills and experience to be able to understand the credit institution's activities, including main risks. The overall composition of the BoD will need to reflect an adequately broad range of experience.

The key function holders – namely, the head of internal audit, head of risk management, head of compliance, chief financial officer, internal audit committee's members and money laundering reporting officer (MLRO) – are also subject to the above criteria and the fit and proper assessment by the BoG/ECB (as the case may be). The fit and proper assessment must be carried out in accordance with BoG Act 224/1/21.12.2023.

More specifically, the persons appointed to hold any of the above positions must submit to the BoG, through the credit institution, a completed questionnaire on the fit and proper assessment of the BoD members and key function holders.

BoD Roles and Responsibilities

The BoD bears the ultimate and general responsibility for the credit institution, defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the credit institution, including the segregation of duties in the organisation and the preven-

tion of conflicts of interest. The duties of the BoD are clearly defined to distinguish between its executive and supervisory functions, including the separation of the duties of the Chairman of the BoD from the executive duties of the CEO. In summary, the BoD:

- has overall responsibility for the credit institution and approves and oversees the implementation of the credit institution's strategic objectives, overall business strategy, risk strategy, risk appetite;
- establishes an adequate and effective internal governance framework and internal control framework that includes a clear organisational structure and ensures the proper functioning of independent risk management, compliance and internal audit functions and adopts key policies in accordance with the applicable legal framework, taking into account the long-term financial interests and solvency of the credit institution;
- ensures the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;
- oversees the process of disclosure and communications to third parties and the Bank of Greece; and
- is responsible for providing effective oversight of senior management, including monitoring and controlling their performance at individual and collective level, as well as the implementation of the institution's strategy and objectives.

The new BoG Act provides for specific duties and responsibilities of BoD members, distinguishing between the executive and non-executive members.

4.3 Remuneration Requirements

The remuneration requirements applicable to Greek credit institutions are in line with the provisions of CRD IV (as amended), which have been transposed into Law 4261.

According to Law 4261, when establishing and applying the remuneration policies for categories of staff whose professional activities have a material impact on the credit institution's risk profile, credit institutions should apply the requirements in a manner that

is appropriate to their size, internal organisation and the nature, scope and complexity of their activities.

The staff whose professional activities have a material impact are the following:

- all members of the BoD and senior managers;
- staff members with managerial responsibility over the credit institution's control functions or material business units; and
- staff members entitled to significant remuneration in the preceding financial year, provided that the following conditions are met:
 - (a) the staff member's annual remuneration is equal to or greater than EUR500,000 and equal to or greater than the average remuneration awarded to the institution's BoD members and senior managers; and
 - (b) the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile.

In addition, credit institutions should conduct a self-assessment each year in order to identify all staff whose professional activities have or may have a material impact on the credit institution's risk profile.

The requirements under Law 4261 are supplemented by Greek Law 4548/2018 on *sociétés anonymes* and BoG Act 231/1/15.07.2024 transposing in Greece EBA Guidelines on sound remuneration policies along with the governance requirements set out in the BoG Act 243.

Credit institutions must adopt remuneration policies and practices that promote sound and effective risk management and do not encourage risk-taking that exceeds the level of tolerated risk of the institution. More specifically, credit institutions must adopt remuneration policies for all staff as part of their internal governance arrangements and remuneration policies for identified staff (ie, staff whose professional activities have a material impact on the credit institution's risk profile). In particular, for identified staff, the alignment of remuneration incentives with the credit institution's risk profile is crucial. Credit institutions should operate a gender-neutral remuneration policy.

The remuneration policy should specify all components of remuneration and also include the pension policy, covering, where relevant, the framework for early retirement, as well as the ratio between fixed and variable pay. In addition, credit institutions should consider which requirements of the remuneration policy on variable remuneration for identified staff should be included in the remuneration policy for all staff; the policy must be consistent with the objectives of the institution's business and risk strategy, including ESG related objectives.

The non-executive BoD members must adopt and periodically review the remuneration policy and are responsible for overseeing its implementation.

Credit institutions are also subject to reporting obligations toward the BoG.

5. AML/KYC

5.1 AML and CFT Requirements

Greek credit institutions are subject to Greek AML/CFT legislation, which is in line with the EU AML/CFT legislation. More specifically, the main legal basis is Greek Law 4557/2018 on "prevention and combating of money laundering and terrorist financing and other provisions", as amended and in force ("the AML Law"). This implements the following in Greece: Directives 2015/849/EU (4th AML Directive), 2018/843/EU (5th AML Directive) and 2018/1673/EU. The AML Law is supplemented by Decision No 281/5/17.3.2009 of the BoG's Banking and Credit Committee specifying the obligations of credit, financial and payment institutions under the AML Law, as amended and in force ("the AML Decision") and by other BoG acts as well as by-laws and guidelines adopted at EU level (such as EBA Guidelines on ML/TF risk factors and customer due diligence).

More specifically, Greek credit institutions are required to adopt AML policy and procedures in accordance with the Greek AML/CFT legislation. These include risk-based assessment and risk management practices, customer due diligence, suspicious transactions reporting, sanctions screening, employees' training, record-keeping, internal control and compliance

management, such as the appointment of an MLRO (and their deputy) on the basis of their integrity, status, academic background, experience in the relevant field and credit institution's operations. One executive BoD member must also be designated as the member responsible for the credit institution's compliance with the applicable AML/CFT framework.

Greek credit institutions must carry out customer due diligence (CDD) measures at least when:

- establishing a business relationship;
- carrying out occasional transactions exceeding certain thresholds; and
- there is a suspicion of money laundering or terrorism financing, as well as when there are doubts about the identification data previously obtained.

CDD also involves the ongoing monitoring of the business relationship.

In the context of the CDD measures, the verification of the relevant data of natural persons may be carried out either on the basis of original documents issued by reliable and independent authorities, or, with the explicit and special consent of the natural person, through the transmission of such documents via the electronic platform "eGov-KYC" of the Single Digital Portal of Public Administration. Similarly, a new electronic platform "eGov-Know Your Business" was set up with respect to the verification of data of legal entities, and the verification of the relevant data of legal entities may now be carried out either on the basis of original documents issued by reliable and independent authorities or, with the explicit and special consent of their legal representative, through the transmission of such documents via this platform.

In addition, BoG Act 172/1/29.05.2020, which takes into account the European Supervisory Authority's joint opinion on the use of innovative solutions in the CDD process, sets out the terms and conditions for remote electronic identification of natural persons establishing a business relationship with credit institutions in the context of the application of CDD measures provided for in the AML framework. The above Act is amended by BoG Act 244/5/25.07.2025, which introduced the unattended video-call with asynchronous

human review in addition to the previously adopted methods of videoconference and dynamic-selfies.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Hellenic Deposit and Investment Guarantee Fund (HDIGF or, in Greek, TEKE) is the operator of three distinct schemes:

- the deposit guarantee scheme;
- the investment compensation scheme; and
- the resolution scheme of Greek credit institutions.

TEKE is governed by Greek Law 4370/2016, as amended (Law 4370), which transposes into Greek law, among others, the Directive on Deposit Guarantee Schemes (Directive 2014/49/EU). TEKE is supervised by the Ministry of Finance.

According to Law 4370, all Greek credit institutions (including their foreign branches) and Greek branches of credit institutions incorporated outside the EU must become members of the deposit coverage scheme held with TEKE. Such participation automatically activates the participation of credit institutions in the TEKE resolution scheme.

Branches of credit institutions incorporated in another EU member state do not participate in TEKE, as they are covered by the Deposit Guarantee Scheme of the respective member state where their registered office is located (home member state). Participation in the investor compensation scheme, which is another department of TEKE, is also mandatory for Greek credit institutions. However, Greek branches of EU member states' credit institutions may also request to participate in the investor compensation scheme of TEKE for supplementary coverage.

Covered Deposits

TEKE covers deposits held by natural persons or legal entities, irrespective of the currency (eg, deposits in savings accounts, current accounts and time deposits). However, certain deposits are not eligible and are therefore excluded from the coverage protection, namely:

- deposits made by other credit institutions or investment firms on their own behalf and for their own account;
- credit institutions' own funds;
- deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering;
- deposits by financial institutions, (re-)insurance undertakings, collective investment undertakings, social security funds and occupational pension funds, public authorities and by TEKE;
- debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes; and
- deposits where the holder or beneficiary has never been identified.

The maximum level of coverage is set to EUR100,000 per depositor, per credit institution (irrespective of the number of deposit accounts held in the credit institutions, the currency of such deposits and the location of such deposit accounts) with certain limited exemptions where the compensation may be up to EUR300,000 (eg, for sale or expropriation of private residential property, payment of a lump-sum retirement benefit or periodical pension benefits, compensation due to termination of employment, etc).

Funding of Scheme

An initial contribution must be paid by credit institutions joining the Deposit Compensation Scheme (DCS) of TEKE, within one month from the date on which they become members, which is calculated on the basis of Law 4370 and in any case cannot be higher than 8% of the credit institution's own funds. New members pay the initial contribution in three annual instalments by crediting the dedicated DCS account with the BoG. Regular contributions are paid by credit institutions on an annual basis. The key factors to be considered for calculating the annual regular contributions are the amount of covered deposits and the degree of risk assumed by each credit institution. Within 20 calendar days from the beginning of every year, each credit institution must transmit to TEKE an annual list with the amount of its covered deposits as at the last day of each calendar quarter of the preceding year. By 30 September every year, credit institutions must also submit to TEKE the data specified by TEKE and refer

to the last day of the preceding year, for the purpose of determining the degree of risk assumed by that credit institution. Extraordinary contributions are paid if the available funds of the DCS are not sufficient to compensate depositors. Extraordinary contributions must not exceed 0.5% of the covered deposits of each credit institution per calendar year. Higher contributions may be specified by a decision of TEKE's BoD, with the consent of the BoG.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Capital Adequacy Requirements

The CRR and CRD IV (transposed into Law 4261) set out the capital adequacy requirements for credit institutions implementing, to some extent, the respective Basel III standards. Law 4799/2021 has transposed CRD V and BRRD II in Greece. As set out above in **1.1 Key Laws and Regulations**, the EU Commission adopted the latest banking package in relation to the capital and prudential regime for credit institutions (CRR 3 and CRD VI), in order to be fully aligned with the Basel III framework and we still anticipate the transposition of CRD VI into Greek law.

Greece-based credit institutions are required to have a minimum paid-up initial capital of EUR18 million. The initial capital, which consists of the minimum initial capital required and any additional capital contributed in the authorisation process, may be covered by cash contributions and contributions in kind as per BoG Act 229/2/10.05.2024. The initial capital required must be entirely paid in cash.

The capital resources that a credit institution is required to maintain may be constituted by a mixture of common equity Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital. The CRR contains detailed legal and technical requirements for eligibility of capital instruments. As regards liquidity requirements, the CRD IV and CRR, as amended, provide for quantitative liquidity standards, including the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR).

In particular, credit institutions must at all times satisfy the following own-funds requirements (which are expressed as a percentage of the credit institutions' total risk exposure):

- a common equity Tier 1 Capital ratio of 4.5%;
- a Tier 1 capital ratio of 6%;
- total capital ratio of 8%; and
- a leverage ratio of 3%.

Buffer Requirements

The CRR 2 also introduced a leverage ratio buffer requirement for institutions identified as global systemically important institutions (G-SIIs) applicable as of 1 January 2023. The EU Commission was mandated (under Article 513 (e) CRR) to assess whether such a buffer should be extended to other systemically important institutions (O-SIIs). On 16 February 2021, the EU Commission issued a report concluding that it does not consider it appropriate to introduce a leverage ratio surcharge for O-SIIs for the time being.

The combined buffer requirement includes the capital conservation buffer, the counter-cyclical capital buffer, the G-SIIs buffer, the O-SIIs buffer and the systemic risk buffer. A capital conservation buffer of 2.5% of a credit institution's total exposures should be maintained so that credit institutions are able to avoid breaches of minimum capital requirements during periods of stress. Within the context of its macro-prudential supervision, the BoG is responsible for setting the counter-cyclical capital buffer rate for Greece on a quarterly basis.

From 1 January 2016 until 2024, the BoG kept the counter-cyclical capital buffer rate for Greece at 0% (ie, at the lowest end of the permissible range), thus not affecting the capital requirements of credit institutions. However, in 2024 the BoG adopted Act 235/2/7.10.2024 providing that the counter-cyclical capital buffer rate would be set at 0.25% as of 1 October 2025. The counter-cyclical capital buffer rate will be set at 0.5% as of 1 October 2026 by virtue of BoG Act 248/1/06.10.2025.

The O-SII buffer consists of common equity Tier 1 Capital. Its rate is set by the BoG at a level of up to 2% of the total risk exposure amount and is reviewed

at least once a year. The BoG has defined that the four Greek systemic credit institutions qualify as O-SIIs and set the applicable O-SII buffer rates (1.25% for Eurobank Ergasias Services and Holdings S.A. at consolidated level and 1% for all O-SIIs for 2026). The BoG has decided not to activate the systemic risk buffer and the global systemic institutions buffer. It has additional macro-prudential tools to apply towards credit institutions. In this respect, in March 2024, the Bank of Greece enacted binding borrower-based measures (BBMs) for loans and other credit to natural persons secured by residential real estate (RRE) located in Greece, which have been applicable as of 1 January 2025.

Supervisory Review and Evaluation Process

Credit institutions are required to assess the adequacy of their own capital through the Internal Capital Adequacy Assessment Process, which is then subject to review by the regulator in the context of the Supervisory Review and Evaluation Process (SREP) where the results from the stress tests are also assessed. The competent authorities will review the arrangements, strategies, processes and mechanisms implemented by the credit institutions to comply with Law 4261 and CRR and evaluate: (a) risks to which the credit institutions are or might be exposed; (b) risks revealed by stress testing taking into account the nature, scale and complexity of a credit institution's activities; and (c) risks revealed by digital operational resilience testing in accordance with Chapter IV of DORA.

The BoG or the ECB may impose additional capital requirements in the context of the SREP assessment, if such evaluation reveals major deficiencies or in other cases provided by law. In particular, the Pillar Two requirement (P2R), which is determined on the basis of the SREP, is a credit institution-specific capital requirement which applies additionally in order to cover risks that are underestimated or not covered by the minimum capital requirement. The SREP underwent significant reform in 2024, which will be fully implemented by 2026. The P2R methodology is under review for further simplification and transparency. The capital the ECB or BoG asks credit institutions to keep based on the SREP also includes the Pillar Two Guidance (P2G), which indicates to credit institutions the adequate level of capital to be maintained to provide

a sufficient buffer to withstand stressed situations. Unlike the P2R, the P2G is not legally binding.

Additional Own Funds Requirements

Following the transposition of the CRD V into Greek law, the competent authority may impose additional own funds requirements in accordance with Articles 104a et seq of CRD VI (and respective Articles 96A et seq. of Law 4261). In addition, credit institutions are obliged to set their internal capital at an adequate level of own funds sufficient to cover all the risks expected to be covered by a credit institution, and to ensure that the credit institution's own funds can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress test. Guidance on additional own funds is provided to credit institutions by the competent authorities. The quantitative capital requirements under CRD IV and CRR are supplemented by the obligation under the BRRD as amended by BRRD II for credit institutions to satisfy at all times a minimum requirement for own funds and eligible liabilities ("MREL"), which is determined by the competent resolution authority on an annual basis (on a credit institution-specific basis). The target for the MREL requirement (as determined under the BRRD II by the resolution authority) is composed of a loss-absorption amount (LAA), which includes the sum of the Pillar One requirement and the Pillar Two requirement as determined by the competent authority, and any requirement in relation to the leverage ratio and a recapitalisation amount (RCA). Greek credit institutions have already taken initiatives to meet the MREL by the end of 2025 (ie, they have issued in recent years Additional Tier 1 capital instruments (AT1) and Tier 2 capital and senior unsecured bonds, which are also an additional source of funding).

By way of update, Law 4335/2025 was amended in 2025 by virtue of Law 5193/2025 that transposed in Greece Directive (EU) 2024/1174 amending BRRD as regards certain aspects of the minimum requirement for own funds and eligible liabilities (eg, to ensure that the possibility to comply with the internal MREL on a consolidated basis is available only in relevant cases and does not lead to a shortage of internal MREL eligible resources across the resolution group, the power to set the internal MREL on a consolidated basis for intermediate entities should be a discretionary power

of the resolution authority subject to certain conditions set out thereunder).

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Resolving a Failing Credit Institution – Resolution Measures

Greek Law 4335/2015, as amended (Law 4335), incorporated the provisions of Directive 2014/59/EU (BRRD) into Greek legislation and set out the legal framework for the recovery and resolution of credit institutions. This was amended in 2021 by Law 4799/2021, transposing the BRRD II into Greek law, and further updated in 2025 by Law 5193/2025, which transposed Directive (EU) 2024/1174 amending BRRD as regards certain aspects of the minimum requirement for own funds and eligible liabilities. The BRRD (as amended by BRRD II and Directive (EU) 2024/1174) is, in general, in line with the FSB Key Attributes of Effective Resolution regime, which is a soft law.

In the case of a credit institution failure, the provisions of Law 4335 are applicable. More specifically, the credit institution's BoD, which considers the credit institution to be failing or likely to fail on the basis of certain objective criteria, must notify, without undue delay, the BoG in accordance with Law 4335 and the Bank of Greece Act No 111/2017.

At an earlier stage in the deterioration of a credit institution's financial conditions, the resolution authorities may adopt one of the early intervention measures provided in Law 4335 (eg, to require the BoD of the credit institution to implement one or more of the arrangements or measures set out in the recovery plan or to require one or more members of the management body to be removed or replaced). The BoG has already endorsed the EBA guidelines on recovery plan indicators (BoG 222/1/2.11.2023). In addition, the competent resolution authority may take a resolution action where all the following conditions are met, regardless of whether an early intervention measure has been adopted:

- the credit institution is failing or likely to fail;

- there is no reasonable prospect that any alternative private sector measures or supervisory action would prevent the failure of such credit institution within a reasonable timeframe; and
- a resolution action is necessary in the public interest.

In particular, the resolution authorities may use one or more of the following resolution tools:

- the power to transfer to a purchaser shares or other instruments of ownership issued by (or all of any assets, rights or liabilities of) the credit institution under resolution (the “sale of business” tool);
- the power to transfer to a bridge institution, which shall be a legal person that is wholly or partially owned by one or more public authorities and controlled by the resolution authority, shares or other instruments of ownership issued by (or all of any assets, rights or liabilities of) the credit institution under resolution (the “bridge institution” tool);
- the power to transfer the assets, rights or liabilities of the credit institution under resolution or of a bridge institution to one or more asset management vehicles (the “asset separation” tool); or
- the write-down and conversion powers in relation to the liabilities of a credit institution under resolution (“bail-in” tool).

Other measures can be used to the extent that they conform to the principles and objectives of the resolution set out under the BRRD. In circumstances of extraordinary systemic crisis, the credit institution’s resolution may, as a last resort, involve government financial stabilisation tools consisting of public equity support and temporary public ownership tools. These measures would nonetheless only become available if certain conditions are met, including that the credit institution’s shareholders and creditors bear losses equivalent to 8% of the credit institution’s liabilities.

A special commissioner may be appointed by the resolution authorities to replace the BoD of the credit institution under resolution.

Principles – Protection of Depositors

When applying the resolution tools and exercising the resolution powers, the resolution authorities should

take into account certain principles provided under the BRRD, including that:

- the shareholders of the credit institution under resolution bear first losses;
- the creditors of the credit institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in Law 4335;
- the creditors of the same class are treated in an equitable manner (unless otherwise provided);
- no creditor shall incur greater losses than would have been incurred if the credit institution had been wound up under normal insolvency proceedings; and
- the covered deposits are fully protected.

In any case, the eligible deposits held with the credit institutions will be protected up to EUR100,000 (covered deposits) and are therefore excluded from the scope of application of the bail-in tool.

If the credit institution’s authorisation is revoked, the credit institution will be mandatorily placed under a special liquidation in accordance with Law 4261. The provisions of the Greek Bankruptcy Code (Law 4738/2020, as amended) may apply additionally to the provisions of the special liquidation of a credit institution, to the extent that they do not contradict Article 145 et seq of Law 4261 or any delegated BoG acts. Article 145a of Law 4261, as amended, among others, by Law 5193/2025, provides the hierarchy of claims in the special liquidation of credit institutions. Law 3458/2006, as amended, incorporates Directive 2001/24/EC in Greece and provides for the special liquidation procedure applicable to credit institutions.

Law 5193/2025 introduced important clarifications to the resolution framework, including the distinction between the term “resolution entities” (ie, the entities for which the resolution plan provides for resolution measures) vis-à-vis “liquidation entities” (ie, the entities intended to be liquidated under normal insolvency proceedings).

9. ESG

9.1 ESG Requirements

The shift towards a greener and more sustainable economy has become a key priority at a global and EU level. Following the publication of the 2030 Agenda for Sustainable Development by the UN General Assembly (in 2015), setting out the core sustainable development goals (SDGs), the EU Commission took these SDGs into account in the next steps towards a sustainable EU future, and presented the European Green Deal in 2019, part of which is a European green investment plan that aims to establish a framework to facilitate the public and private investments needed for the transition to a climate-neutral, green, competitive and inclusive economy. A series of legislation and other initiatives in relation to sustainable finance and environmental, social and corporate governance (ESG) factors have also been published at EU level.

ESG has evolved and moved from the sidelines to the forefront of decision-making for an increasing number of credit institutions and investors when making investment decisions in the financial sector, which leads to increased longer-term investments into sustainable economic activities and projects.

In the banking sector, the main regulatory and legislative initiatives are the following at EU and local level.

EU Level

After setting sustainable development as a key pillar of its strategy, the EU is aiming to become the first climate-neutral continent. It is already developing a strategy to achieve this goal, while aligning its funding framework with the global SDGs. The EU has developed a targeted framework of actions to finance sustainable growth (EU Action Plan on Financing Sustainable Growth) structured around three main pillars (with ten sub-actions), namely: reorienting capital flows towards a more sustainable economy; mainstreaming sustainability into risk management; and fostering transparency and “long-termism”.

In the framework of the European Green Deal, the EU urges businesses, and public authorities to orient themselves towards economic activities that have a lasting positive impact on the environment and that

are either environmentally sustainable or contribute to the transformation of activities to become environmentally sustainable. In this respect, companies (including credit institutions) are already subject to extensive non-financial disclosure requirements and need (or will need) to comply with additional disclosure and organisational requirements in light of Regulation (EU) 2020/852 (“Taxonomy Regulation”) and include in their non-financial disclosures information on how and to what extent their activities are associated with economic activities that qualify as environmentally sustainable. The Taxonomy Regulation has been supplemented, inter alia, by Delegated Regulation (EU) 2021/2139, which established, inter alia, the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing to climate change mitigation. In addition, Regulation (EU) 2019/2088, as amended by the Taxonomy Regulation (“Sustainable Finance Disclosures Regulation”), Regulation (EU) 2019/2089 on sustainability benchmarks, Regulation (EU) 2023/2631 on European Green Bonds (EUGBS), Directive (EU) 2022/2464 on corporate sustainability reporting (CSRD), and the recently adopted Directive (EU) 2024/1760 on corporate sustainability due diligence (CSDDD), frame the main ESG framework in the EU. EU credit institutions must disclose information on ESG issues in accordance with the aforementioned legislation (including the EBA technical standards). The adoption of the EU Omnibus Directive, which aims to modify and simplify the CSRD and other sustainability legislation, is also anticipated.

Credit institutions, like other financial sector participants, are therefore required to adjust their business models and develop plans to align their balance sheets with this transition to the sustainable economy, as well as to monitor and comply with the ESG legislative developments taking into account the legislative developments.

As of 2024, credit institutions have to disclose their green asset ratio as an indication of their degree of alignment with the EU Taxonomy. Regular climate stress tests are expected to take place on the basis of guidelines on institutions’ ESG risks stress testing. In January 2024, the ECB announced plans to enhance its climate initiatives during 2024 and 2025. Under its

2024–2025 climate and nature plan, the ECB concentrated on addressing nature-related risks, implementing a greener monetary policy and assessing the implications and challenges associated with transitioning to a green economy, which includes evaluating investment requirements and transition costs. The ECB has also intensified its supervisory expectations regarding credit institutions' climate and environmental risk management frameworks, requiring more granular reporting on transition risks and physical climate risks.

One of the most significant legislative initiatives at EU level is the EU banking package implementing the Basel III framework, and, more specifically, CRR III and CRD VI adopted by the European Parliament in May 2024 to fully apply the Basel III standards. This banking package includes provisions going beyond Basel III, such as credit institutions' obligations to identify, disclose and manage ESG risks at individual level. The transposition of CRD VI in Greece is thus expected in the coming months. ESG risks are a pivotal aspect to be monitored in line with the newly introduced risk management framework.

National Level

In general, Greece follows the path adopted by the EU, since the majority of EU provisions are adopted in the form of regulations which are directly applicable throughout the EU. In the same way, in 2021, the BoG established the Climate Change and Sustainability Centre (CCSC) to build on the work initiated by the previous Climate Change Impacts Study Committee (CCISC). The focus of the BoG is turning towards the compliance of credit institutions with the ESG principles and requirements, taking into account the reports and guidelines of EU regulators. The implementation of relevant directives, such as the Corporate Sustainability Reporting Directive, is expected to happen soon in Greece.

In investment services, the Bank of Greece Executive Committee Act 234/3/23.9.2024 updates the national legal provisions transposed by Commission Delegated Directive (EU) 2017/593 on the safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits,

as amended by Commission Delegated Directive (EU) 2021/1269 with respect to the integration of sustainability factors into product governance obligations.

In addition, Greece's first climate law (Law 4936/2022) was enacted in May 2022 by the Hellenic parliament with the aim of establishing a coherent framework for improving climate resilience in Greece. Under this law, many undertakings, including credit institutions, are bound by carbon reporting obligations. The reports are to be uploaded to a publicly accessible electronic database operated by the Organisation of Natural Environment and Climate Change. In addition, the CSRD was transposed into Greek law in December 2024 with increased non-financial reporting obligations.

10. DORA

10.1 DORA Requirements

In December 2022, Regulation (EU) 2022/2554 (Digital Operational Resilience Act, DORA) was adopted and applies as of 17 January 2025. Law 5193/2025 on strengthening of capital markets and other provisions was published provided for the supplementing measures relating to DORA.

Through the creation of a unified regulatory framework, DORA aims to boost credit and other institutions' resilience against cyber threats through the implementation of stringent cybersecurity measures, regular risk assessments, the reporting of cyber incidents to the relevant authorities, and by addressing operational failures and IT disruptions. The key pillars of DORA that should be observed by credit institutions include the following:

- **Governance:** Credit institutions' BoD will have ultimate responsibility for managing ICT (Information and Communication Technology) risk and adopting policies to maintain high standards of data availability, authenticity, integrity, and confidentiality. They are responsible for defining roles and governance structures, and ensuring effective communication within ICT functions. The BoD will approve the digital operational resilience strategy, including risk tolerance levels, and oversee ICT business

continuity and recovery plans. Management bodies will review ICT audits, allocate the necessary budget for resilience needs, including staff training, and approve policies related to ICT third-party service providers. Finally, credit institutions must establish reporting channels to monitor changes or incidents.

- **ICT Risk Management:** Credit institutions need to implement a sound, comprehensive and well-documented ICT risk management framework. In this respect, they must adopt plans, policies, procedures, protocols and tools to identify any potential ICT threat, protect both their digital and physical infrastructure, detect incidents in a timely manner, respond effectively, and recover without major disruptions.
- **Testing:** A digital operational resilience testing programme is required as part of the ICT risk management framework to assess readiness for handling ICT-related incidents, and must include tests such as vulnerability assessments, penetration checks and scenario-based evaluations. These will be performed by independent parties, and identified issues will be prioritised, remedied, and validated. Critical functions must be tested at least annually, while advanced testing must be conducted every three years, covering critical ICT functions, including outsourced services.
- **ICT-Related Incidents Management and Reporting:** DORA further outlines the requirements for reporting major ICT-related incidents (which must be classified as per the criteria provided thereunder) by using the relevant templates. Credit institutions must report such incidents to the relevant competent authority. The reports of significant credit institutions must be immediately transmitted by the national competent authorities to the ECB. Outsourcing reporting will be allowed, but responsibility will remain with the credit institution. Voluntary notification of significant threats to cybersecurity is provided under DORA.
- **ICT Third-Party Risk Management:** DORA also governs the management of ICT third-party risk, emphasising that credit institutions must integrate ICT third-party risk management into their overall ICT risk management framework. When outsourcing services to ICT third-party service providers, the institution remains fully responsible for compli-

ance with DORA requirements. In addition, credit institutions must maintain a register of all ICT contracts, assess risks before entering into such agreements, ensure service providers meet high security standards, and have audit and inspection rights. Therefore, their outsourcing arrangements will need to be re-assessed on this basis. Outsourcing agreements should include specific provisions under DORA (including clear service descriptions, security requirements, and exit strategies to minimise disruptions in the event of termination) in addition to existing outsourcing requirements. Additionally, concentration risks and subcontracting must be carefully evaluated, particularly when dealing with providers in third countries.

In summary, DORA represents a significant shift in how credit and financial institutions manage their digital operations and risks in an increasingly tech-driven environment. It aims to ensure that institutions are better prepared to handle disruptions and cyber threats, while holding them more accountable for their ICT systems' resilience and third-party dependencies. Therefore, credit institutions need to implement the appropriate policies, procedures and measures to ensure compliance with the new requirements.

The BoG was designated as the DORA competent authority for (less significant) credit institutions established in Greece, and was granted the necessary supervisory and investigative powers (including on-site inspections) for ensuring credit institutions' compliance with DORA and its delegated acts. In this regard, the BoG may impose administrative sanctions, including fines of up to 10% of total net turnover, including gross income, for supervised financial sector entities, or up to EUR5,000,000 for natural persons, or up to twice the amount of the benefit derived from the infringement, as well as revocation of the supervised institution's licence. The BoG may also impose the removal or dismissal of the board members or key function holders from the position held within the credit institution.

11. Horizon Scanning

11.1 Regulatory Developments

At national level, the most significant changes that took place in 2025 were as follows:

BoG Supervisory Fees

The BoG passed a large number of Acts that change the regulatory landscape and must be complied with by credit institutions. Most importantly, for the first time, the BoG decided to introduce (initial and ongoing) supervisory fees applicable to credit institutions as of 1 January 2026.

Corporate Governance

The BoG has also reshaped the corporate governance requirements of credit institutions. These are now subject to more robust internal organisation and corporate governance requirements, in line with the EBA Guidelines. BoG Act 243, replacing BoG Governor's Act 2577/2006, entered into force as of 14 July 2025 and provides for a transitional implementation period, with credit institutions having to adjust their internal governance arrangements no later than 1 October 2025, with less significant institutions obliged to comply with the minimum number of independent non-executive BoD members until 1 January 2026. Credit institutions should therefore already have performed a gap analysis of the new requirements against their current governance, risk management, and internal control frameworks in order to update their policies and procedures and ensure that the BoD composition (particularly independent non-executive members) and committee structures comply with mandatory requirements by the relevant deadlines.

It is worth mentioning that the EBA has completed a consultation on proposed revisions to its guidelines on internal governance under the Capital Requirements Directive (CRD) that were recently endorsed by the BoG. The revisions form part of the EBA's broader roadmap for implementing the EU Banking Package and reflect changes introduced by CRD VI, DORA and other legal texts.

Law 5193/2025

Law 5193/2025 on strengthening the capital markets legal framework brought significant changes for

Greece with the aim of making its capital market more attractive to investors.

The law also established the national legislative framework necessary to supplement DORA and MiCAR, including the designation of competent authorities and the attribution of relevant powers to such authorities.

The following legal developments are expected at national level in the next few months:

Consumer Credit

In October 2023, Directive (EU) 2023/2225 (Consumer Credit Directive 2) was published to reform the existing consumer credit regime which applies to credit institutions and other financial institutions providing consumer loans. Creditors (and especially Buy-Now-Pay-Later (BNPL) providers and leasing providers), as well as credit intermediaries that did not previously fall within the scope of the consumer credit regime under Directive (EU) 2008/48, will have to re-assess their model, since Consumer Credit Directive 2 provides for a broader scope of application and types of credit previously exempt (such as BNPL, as well as leasing agreements where an obligation or an option to purchase the object of the agreement is laid down) will be brought into the scope of the new regime. This may trigger licensing/registration as well as disclosure and transparency requirements towards such entities.

In Greece, the granting of any type of credit in a professional capacity is already a regulated activity and thus licensing requirements are, in principle, triggered by the persons offering such activities. However, market participants must re-assess their business operations and identify any new requirements stemming from the new legal framework that must be complied with.

EU member states were required to transpose Consumer Credit Directive 2 into their national law by 20 November 2025, with the new measures taking effect from 20 November 2026. In Greece, a working group was established, and the preliminary lawmaking procedure was completed in summer 2025. The Ministry of Development is expected to approve the final draft law before its publication to open consultation and adoption of the law by the Hellenic Parliament.

Financial Services Contracts Concluded at a Distance

The transposition into Greek law of Directive (EU) 2023/2673 is also expected, which will repeal Directive 2002/65/EC concerning the distance marketing of consumer financial services and amend Directive 2011/83/EU by extending its scope to cover financial services contracts concluded at a distance. The changes introduced by Directive (EU) 2023/2673 will affect the terms and conditions of credit institutions that should be revised and adjusted to the new requirements.

EU member states must transpose Directive (EU) 2023/2673 into their national law by 19 December 2025, with the new measures taking effect from 19 June 2026. In Greece, a working group was set up, and the preliminary lawmaking procedure was completed; we are expecting the draft law to be published soon for consultation.

Instant Payments Regulation

Regulation (EU) 2024/886 amending, inter alia, Regulations (EU) 260/2012 and (EU) 2021/1230 as regards instant credit transfers in euros was adopted in order to force credit institutions to offer instant payments in euros at no extra cost and enable the speedy transfer of money at any time (24 hours a day).

In addition, as of 9 October 2025, payment service providers in the EU have been required to offer payers a “Verification of Payee” (VoP) service (free of charge) prior to authorising a credit transfer. Payers who do not qualify as consumers may waive this VoP service.

We are anticipating the adoption of local laws and administrative provisions to supplement such Regulation.

Notwithstanding the above, Greek law 4446/2016, as recently amended, with the aim of fighting tax evasion, requires merchants accepting cards to enter into contracts with duly licensed payment service providers. In addition, as of 1 December 2025, legal entities acting as payees, in the context of transactions with payers (acting outside their trade, business or profession), are required to accept payments through an instant payment service (which is a payment service that

allows a credit transfer to be executed immediately, 24 hours a day, on any calendar day, with immediate or almost-immediate settlement). This is linked with the promotion of instant payment service of IRIS offered currently in Greece by payment services providers that cooperate with DIAS SA (the Greek automated clearing house).

The EU Banking Package

One of the most significant legislative initiatives at EU level is the adopted EU banking package implementing the Basel III framework, and, more specifically, CRR III and CRD VI adopted by the European Parliament in May 2024 to fully apply Basel III standards.

The new provisions aim to ensure that EU credit institutions become more resilient to potential future economic shocks, while also contributing to the EU’s recovery from the COVID-19 pandemic and the transition to climate neutrality. There are also provisions going beyond Basel III, such as credit institutions’ obligations to identify, disclose and manage ESG risks at individual level, the harmonised framework in relation to fit and proper assessment of key function holders, and a new common framework in relation to third-country institutions’ branches due to their material footprint in the EU. It is important to note that third-country undertakings wishing to offer “core banking services” in an EU member state will need to assess their model of operation and seek legal advice in order to evaluate whether they will trigger a third-country branch authorisation requirement under CRD VI.

CRD VI introduces stricter notification and approval requirements for certain transactions relating to mergers and acquisitions of credit institutions and financial holding companies. It is interesting to see whether and how the above will affect the existing local legal framework, since Greek law 2515/1997, as recently amended, among others, by law 5222/2025, includes a procedure and requires the Bank of Greece’s approval for any type of corporate transformation (mergers and, under certain thresholds, demergers/spin-offs) according to the provisions of law 2515/1997, for the credit institutions and financial institutions supervised by the BoG.

CRD VI must be transposed into Greek law by 10 January 2026, and it will be generally applicable from 11 January 2026. However, the provisions on third-country branches will be applicable one year later, on 11 January 2027.

In addition, credit institutions must closely monitor the following legal developments at EU level.

Payment Services

The completion of the legislative procedure for the adoption of the Payment Services Directive (PSD3), Payment Services Regulation (PSR) and Regulation on a Framework for Financial Data Access (FIDA) is envisaged to take place in the next couple of months. The package aims, inter alia, to contribute to further harmonisation and the consistent application of legal requirements, avoiding regulatory arbitrage and ensuring a level playing field between the different types of payment-service providers.

AML/CFT Rules

On 19 June 2024, the EU introduced new legislation to strengthen its AML/CFT framework through an ambitious legislative package comprising Regulation (EU) 2024/1620 (“AMLA Regulation”), Regulation (EU) 2024/1624 (“AML Regulation”) and Directive (EU) 2024/1640 (“6th AML Directive”), with the aim of harmonising AML/CFT rules across EU member states, enhancing supervision and enforcement, and increasing transparency in financial transactions. In summary, a new EU authority dedicated to AML/CFT (AMLA) was established, anti-money laundering rules were for the first time thoroughly harmonised throughout the EU, new obliged entities and stricter due diligence measures were introduced, and clearer rules were set on how financial intelligence units (FIUs) and supervisors work together. The majority of the new AML measures will apply as of 10 July 2027.

Savings and Investment Union

Finally, one important EU strategic objective that must be monitored is around the savings and investment union, a horizontal enabler that will create a financing ecosystem to benefit investments.

In this respect, credit institutions have a central role in financing economic activity in the EU, although this proved to be a disadvantage in the aftermath of the financial and sovereign debt crisis where the need for a more diversified financial system was highlighted. To address such deficiencies, the SIU will allow EU businesses and the economy to have access to more capital and more financing options. Retail savers will have the opportunity, if they wish, to hold more of their savings in higher-yielding capital-market instruments including in view of retirement.

EU credit institutions will be on the forefront of this development, since strong credit institutions operating across borders are necessary for key capital market services, such as listing and trading. They can also play a pivotal role in encouraging retail investor participation to capital markets, mobilising their savings, and ensuring financing for businesses.

Trends and Developments

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Zepos & Yannopoulos is one of the longest-established law firms in Greece. With more than 144 lawyers and economists and 87 business professionals, it is also one of the country's largest law firms and the only firm offering comprehensive legal and tax and accounting services. Its finance and capital markets team has rapidly grown into one of the largest finance-only desks in the market. The firm has established a well-founded reputation for ground-breaking, "first-of-a-kind" transactions, with a steady emphasis on financial institutions and cross-border deals. Its work,

whether transactional or regulatory, covers all areas of finance, from debt and equity capital markets to general bank lending (corporate, infrastructure, real estate, restructuring and export), and from distressed debt investments to asset management. Zepos & Yannopoulos is renowned for its structured finance practice, and its lawyers have an impressive track record in securitisation and covered bond transactions in terms of volume, asset class diversity and structural innovation.

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Z E P O S & Y A N N O P O U L O S

Greece's Banking Sector After the Reset: From Repair to Regulated Normality

The Greek banking system entered 2025 in a position that would have been almost unthinkable a decade ago. The era of emergency capital raisings, supervisory forbearance and experimental NPL “mega-deals” has given way to something approaching normality: solid profitability, investment-grade sovereign status, and banks that are finally being assessed on strategy rather than mere survival.

However, this normality is not a static one. The year 2025 has been pivotal, with three things converging in the banking sector: the near-total withdrawal of the state as shareholder, the arrival of long-term foreign strategic capital, and a regulatory pivot from prudential supervision to forward-looking conduct and digital and capital-markets revamped rules. Meanwhile, intense political scrutiny of retail fees and housing conditions has reminded banks that profitability is now a public policy issue.

For sponsors, investors and financial institutions, this new landscape creates opportunities but, at the same time, a more intrusive and complex regulatory perimeter. As counsel to several transactions and regulatory projects in this space, six main themes could shape Greek banking and finance mandates in 2026 and beyond.

Asset quality, profitability and the end of the temporary profitability uplift

The most visible achievement of the last decade is the transformation of Greek banks' balance sheets. From a peak of over EUR107 billion in March 2016, non-performing loans (NPLs) in the Greek banking system were reduced by more than 94% to roughly EUR6 billion at the end of 2024. The NPL ratio was at 3.6% in June 2025, slightly lower than 3.8% in December 2024 and at its lowest level since Greece joined the Eurozone. This is no longer a story of NPLs as a systemic risk; it has become a story of asset quality being managed as part of ordinary credit risk, not as an existential question for the system.

The implications for funding and capital are profound. Greek banks now access the markets not as distressed issuers but as regular users of senior

preferred, covered and green bonds to meet MREL (Minimum Requirement for Own Funds and Eligible Liabilities) and ESG (Environmental, Social, and Governance) objectives deriving from the EU regulatory framework. Indicative transactions clearly showcasing this trend are the repeated green bond issues by Piraeus Bank and the green senior preferred issuance by the National Bank of Greece in the summer of 2025.

Meanwhile, the profitability model is clearly evolving. The post-pandemic period gave banks a temporary profitability uplift in the form of exceptionally high net interest income, mostly due to the rising ECB rates coinciding with low deposit rates offered by the banks to depositors. That tide is turning. The 2025 half-year results of the systemic banks show a consistent new pattern: net interest income beginning to decline, offset by robust growth in net fee and commissions income. At Alpha Bank, net fee and commission income increased by over 16% year-on-year in the first half of 2025, while net interest income declined by around 5%, reflecting narrowing margins as ECB rates began to fall. Eurobank also reported robust momentum in H1 2025, with net interest income up about 12% and fees surging by almost 30% year-on-year, driven by payments, asset management and international operations. National Bank of Greece posted fee income growth of roughly 8% despite a near 10% drop in net interest income, also highlighting a diversified income base. Piraeus Bank, meanwhile, delivered a 15% year-on-year expansion in performing loans and achieved fee income equivalent to roughly one-quarter of total net revenues, showcasing a balanced, fee-driven business model.

This has two main consequences. First, banks are more willing to engage in capital-light, fee-generating activities, such as structured finance, capital-markets intermediation, asset management and bancassurance. Second, the supervisory dialogue is increasingly focused not on balance-sheet repair but on the sustainability and quality of earnings. Transactions are expected to be scrutinised through the lens of operational resilience, conduct risk and long-term capital consumption.

From state to strategic: ownership, governance and the end of the HFSF era

The second major trend of 2025 was the completion in substance - if not yet in purely formal terms - of the State's exit from the systemic banking system. The Hellenic Financial Stability Fund (HFSF), created at the height of the crisis to recapitalise and stabilise the systemic banks, adopted a divestment strategy targeting full disposal of its holdings by the end of 2025. In practice, the heavy lifting was done over 2023–24: the HFSF sold its stakes in Eurobank, Alpha Bank and Piraeus Bank, and significantly reduced its holding in National Bank of Greece, with residual positions (about 8.39%) migrating to the newly established Growthfund (the Greek sovereign fund) following the abolition of HFSF.

2025 has therefore been the first full year in which the “HFSF shareholder” is no longer a daily reality in the boardroom for the Greek systemic banks. Banks are less constrained by the political optics of state ownership, but they are subject to a different kind of pressure: the expectations of the private long-term institutional and strategic investors.

The most characteristic example of this new reality of things is UniCredit's investment in Alpha Bank. In 2023, UniCredit acquired a significant minority stake; by late 2025, it had obtained ECB approval to increase its holding (up to 29.9%) and had raised its shareholding to roughly 29.5%. This is a strategic, long-term investment by a major European banking group, accompanied by cooperation in corporate and investment banking and other areas. Similar, although more indirect, dynamics are present in other banks' shareholder registers, where international institutional ownership has deepened.

This transition from state shareholder to strategic partner has two legal and regulatory consequences. First, governance frameworks must reconcile domestic supervisory expectations (including the Bank of Greece's new internal governance act, in force from July 2025, with which the local credit institutions had to fully comply by October 2025) with the group-wide policies of foreign strategic investors. Issues such as board composition, fit-and-proper assessments, risk culture, ESG oversight and remuneration become

more complex when viewed through a consolidated EU group lens.

Second, change-of-control and qualifying-holding assessments by the ECB and the Bank of Greece are expected to be no longer exceptional and, rather, crisis-driven events due to the inexistence of deals; they will form part of a broader pattern of strategic stake-building and disposals. Investors contemplating significant positions in Greek banks must plan for a more nuanced supervisory dialogue, where the business plan, risk management capabilities and governance enhancements they bring to the table will be closely scrutinised.

Regional consolidation and adjacent-business M&A: Greek banks as outbound players

One of the most interesting developments in 2025 has been the extent to which Greek banks have become consolidators rather than targets in regional M&A. Eurobank's progressive acquisition of Hellenic Bank in Cyprus is the clearest example: by early 2025, it had increased its stake to over 93% and subsequently moved to full ownership through a squeeze-out process. The transaction has created a very large banking group in Cyprus and is expected to generate synergies, turning Eurobank into a regional player with profits generated outside Greece.

Alpha Bank has followed a similar outward-looking strategy. After divesting non-core assets in previous years, it has moved to build a regional and capital-markets “franchise”. In 2025, Alpha concluded the acquisition of AstroBank's banking operations in Cyprus, making its subsidiary one of the country's largest banks by assets, and further acquired Axia Ventures to strengthen its investment banking and capital-markets capabilities. These moves reflect a regulatory environment that now treats such expansion as a normal part of risk-diversification and business-model optimisation, rather than as a distraction from balance-sheet repair.

Piraeus Bank's strategy has focused more on adjacent businesses than on cross-border expansion. The definitive agreement signed in March 2025 to acquire approximately 90% of Ethniki Asfaltistiki (Ethniki Insurance) from CVC, cleared by the Hellenic Competi-

tion Commission in August 2025, is fundamentally a bancassurance and fee-generation play. The bank's objective is to materially increase the share of fees in total revenues by integrating insurance distribution and product manufacturing more closely into its banking franchise.

From a legal and regulatory standpoint, these transactions are not simply a return to pre-crisis M&A. They involve a complex overlay of prudential requirements (including the treatment of insurance participations and intangible assets under CRR III), conduct and consumer-protection rules as well as cross-border governance considerations. Regulators will assess not only the immediate impact on capital ratios and risk-weighted assets but also whether integration plans are credible and whether operational resilience (particularly in IT/ICT and outsourcing chains) is preserved.

For sponsors and investors looking at Greek banking assets, the takeaway is clear: the market is no longer a forced seller's auction of distressed portfolios, but a more conventional European landscape where strategic combinations, acquisitions and capital-efficient structures – such as synthetic securitisations (still seen in the form of SRT transactions on performing portfolios) – are the tools of choice.

Regulatory Big-Bang I: capital markets, MiCA, DORA and governance

The legislative highlight of 2025 for financial services practitioners has been Law 5193/2025 on the “strengthening of the capital market”, a substantial and dense statute that serves multiple purposes. On one level, it modernises Greek capital markets law in ways that are designed to make the Greek regulated market (Athens Stock Exchange) a more attractive venue for listings and securities issuances: (i) raising the prospectus exemption for issuances threshold from EUR5 million to EUR8 million; (ii) simplifying the decision-making framework for bond loans listed on a regulated market or a multilateral trading facility; (iii) updating market-abuse and transparency rules in line with the EU Listing Act; and (iii) facilitating the transfer of listed shares from the regulated market of the ATHEX to the multilateral trading facility (EN.A).

On another level, it is the primary legislative vehicle for implementing a series of major EU regulatory packages in Greece, such as the Markets in Crypto-Assets Regulation (MiCA), the Digital Operational Resilience Act (DORA), the revised Funds Transfer Regulation including provisions for crypto-assets, and elements of the latest banking and investment services framework. It formally designates the Bank of Greece and the Hellenic Capital Market Commission as competent authorities for crypto-asset service providers and for supervised entities under DORA (including the less significant banks that are supervised by the Bank of Greece for DORA purposes), and lays the foundations of a supervisory regime that has started to take concrete shape through secondary legislation and regulatory acts.

For banks and other financial institutions, MiCA and DORA implementation is not a theoretical exercise. Many have already built, or are building, internal frameworks for classifying products and services under MiCA, assessing whether existing activities fall within the regulated perimeter and designing governance and control structures for crypto-related offerings. DORA, in turn, forces a much more rigorous approach to ICT risk management, incident reporting and third-party oversight, particularly for cloud providers and outsourcing chains.

In parallel, the Bank of Greece has adopted a new, comprehensive internal-governance framework for credit institutions, replacing older scattered provisions with a single act that addresses board structure, risk culture, conflicts of interest and ESG integration. Combined with the designation of all four systemic groups and their main banking entities as “other systemically important institutions” (O-SIIs), with associated capital buffers, this reflects a supervisory regime that is becoming more intrusive and more expectations-driven.

Regulatory Big-Bang II: retail fees, housing and the politics of profitability

If Law 5193/2025 is the driver of the technocratic regulatory agenda, the package of measures on banking retail fees and housing measures introduced through the 2025 state budget and subsequent decisions is the flagship of the political agenda. It reflects an

explicit policy choice: in an environment where banks are again profitable and paying dividends, they must also be seen to contribute to social policy goals.

From January 2025, bank charges for domestic money transfers up to EUR5,000 daily have been capped at EUR0.50 for the payer and EUR0.50 for the payee, bringing the fees applicable to outgoing and incoming transfers into line with the revised EU cross-border payments regime and significantly reducing fees in many common use cases. The same package abolished charges for a range of transactions involving the state and utility providers, and subsequent measures in August 2025 eliminated ATM withdrawal fees on the networks of Greek banks, with a modest cap for third-party ATMs.

These changes underscore a broader point: for the first time in years, the political debate around banks is not about whether they are solvent but about whether their profitability is fair. The Greek government's decision to double (effective though from 2026 following the issuance of an inter-ministerial decision which is currently pending) the main property tax (ENFIA) on the unutilised residential properties held on the balance sheets of credit institutions, credit purchasers and/or credit servicers is similarly symbolic; it is designed to incentivise disposals into the housing market, thereby increasing supply and easing rental pressures.

Digital transformation and operational resilience: regulation catches up

The final theme that deserves attention is the way in which regulation is finally catching up with the digital reality of Greek banking. Over the past decade, Greece has gone from being a predominantly cash-based economy to one with a very high penetration of e-banking users and POS terminals when compared to the euro area. For many customers, the bank branch has become an exception; the mobile app or online portal is the default door to their bank.

This digitalisation has brought efficiency gains and has enabled banks to restructure their physical networks and cost base. But it has also created new vulnerabilities. Cyber-risk, ICT outages and third-party failures are now key systemic concerns, and regulators are no longer willing to treat them as operational details.

This is where DORA, as supplemented through Law 5193/2025 and subsequent delegated and implementing acts, becomes important for one to follow. Banks will need to demonstrate not only that they have robust internal ICT risk-management frameworks, but also that they understand and manage the aggregate risk posed by their external providers. Contracts with cloud services, core-banking vendors and fintech partners will need to be closely monitored to ensure they include appropriate service-level, audit and exit provisions. Incident-management procedures must be capable of handling not just technical remediation but also regulatory notification and customer communication within tight deadlines.

In parallel, the broader digital-transformation agenda (AI-driven credit scoring, open-banking APIs, instant payments, embedded finance etc) will increasingly intersect with conduct and data-protection concerns. The same tools that allow banks to personalise offerings and automate decisions can, if improperly designed or tested, give rise to discrimination, unfair treatment, or opaque product features that draw the attention of supervisors and consumer-protection bodies.

For Greek banks and their partners, this implies a shift in how digital projects are governed. Legal and compliance teams need to be integrated into technology and product-development processes at a much earlier stage, not simply brought in for end-of-process sign-off. Boards and their committees will have to understand technology and data issues in sufficient depth to discharge their responsibilities under the new governance framework. Transactional work – whether an outsourcing, a joint venture with a fintech, or the digital component of an M&A deal – will need to be framed with DORA and related expectations in mind from the very beginning of each process.

Conclusion: a new normal, but not a simple one

By late 2025, Greece's banking sector has, in several key respects, completed its journey from crisis patient to fully integrated European peer. NPLs are at historical lows, capital and liquidity are robust, the sovereign is firmly back in investment-grade territory, and state ownership is receding into history. Banks are no longer consumed by survival; they are engaged in strategic

discussions about regional expansion, balance-sheet optimisation and business-model diversification.

Meanwhile, “normality” does not mean simplicity. The combination of an ambitious regulatory agenda (capital markets, MiCA, DORA, corporate governance), an assertive political stance on retail fees and housing issues, and the structural transition from interest-income-driven to fee profitability model creates a challenging environment. Supervisors and policymakers are simultaneously demanding that banks support growth, help implement EU-funded programmes such as the Recovery and Resilience Facility, advance the green and digital transition, and restrain retail fees, all these while maintaining strong capital buffer and resilience.

For legal practitioners and market participants, the message is rather clear. The Greek banking and finance sector in 2026 will not be one that is reactive to crises but one that proactively seeks ways to achieve ambitious new targets:

- structuring regional M&A that satisfies prudential and competition concerns;
- designing capital-markets and securitisation transactions that optimise regulatory capital;
- crafting products and digital processes that are commercially attractive, whilst, at the same time, are compliant and politically defensible; and
- building governance frameworks that satisfy both domestic supervisors and foreign strategic shareholders.

In other words, the era of emergency has closed, but the era of sophisticated, regulation-aware structuring has fully arrived. Those who treat Greece simply as a “post-crisis recovery story” will miss the point. The country is now an integrated part of the European banking and regulatory ecosystem that offers significant opportunities – and one should be well prepared to engage with a new, and increasingly demanding, normal.

INDONESIA



Law and Practice

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ABNR is Indonesia's longest-established law firm and has played a pivotal role in shaping the development of international commercial law in the country, particularly during Indonesia's economic reopening to foreign investment in the 1960s. Today, with a team of around 120 legal professionals (including 20 partners and three foreign counsels), **ABNR** stands as Indonesia's largest independent, full-service law firm and is proud to have female partners at the part-

nership level, reflecting its commitment to diversity and inclusion. **ABNR** has consistently maintained its position as a top-tier law firm since its establishment in 1967. As the exclusive Indonesian member of Lex Mundi – the world's leading network of independent law firms, with representation in more than 100 countries – since 1991, the firm provides seamless global reach for its clients.

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COUNSELLORS AT LAW

1. Legal Framework

1.1 Key Laws and Regulations

Indonesian banking law is generally governed under Law No 7 of 1992 on Banking as lastly amended by Law No 4 of 2023 on the Development and Strengthening of Financial Sectors (“Law 4/2023”) (the “Banking Law”). The Banking Law essentially governs:

- types of banks (ie, commercial bank and rural bank) and their activities;
- licensing, form of entity, and ownership;
- supervision of banks;
- management and employment; and
- sanctions for the violation of Banking Law.

As banking is a heavily regulated sector, more detailed regulations – for example, with regard to establishment, licensing requirements, and liquidation – are further stipulated under the regulation of its supervisory bodies, which will be elaborated on later in this section. Several key regulations governing the banking sector are:

- Law 4/2023 (also known as the Omnibus Law of the Financial Sector, which amended various banking and financial sector regulations);
- general provisions:
 - (a) OJK Regulation No 12/POJK.03/2021 on Commercial Banks;
 - (b) OJK Regulation No 16/POJK.03/2022 on Commercial Sharia Banks, as lastly amended by Law 4/2023; and
 - (c) OJK Regulation No 7 of 2024 on Rural Banks

- and Sharia Rural Banks;
- with regard to good governance:
 - (a) OJK Regulation No 17 of 2023 on the Good Governance of Commercial Banks;
 - (b) OJK Regulation No 2 of 2024 on the Implementation of Governance for Sharia Commercial Banks and Sharia Business Units;
 - (c) OJK Regulation No 9 of 2024 on Good Governance Implementation for Rural Banks and Sharia Rural Banks; and
 - (d) OJK Regulation No 25 of 2024 on the Implementation of Sharia Governance for Sharia Rural Banks; and
- with regard to digital services offered by banks – OJK Regulation No 21 of 2023 on Digital Services by Commercial Banks.

Financial Services Authority

According to Law No 21 of 2011 on the Financial Services Authority as amended by Law 4/2023, banking activities in Indonesia are supervised and regulated by an independent institution called the Financial Services Authority (*Otoritas Jasa Keuangan*, or OJK). In the banking sector, the OJK is authorised to regulate and supervise the following:

- institutional aspects, such as licensing requirements and activities;
- soundness aspects, such as liquidity and assets quality, reporting, debtor information, credit testing, and standard accounting;
- prudential aspects, such as risk management, governance, KYC and AML, as well as the prevention of terrorism financing and banking crimes; and

- bank examination.

Bank Indonesia

Bank Indonesia (BI), as Indonesia's central bank, supervises and regulates the monetary, payment system and macro-prudential policies in Indonesia in accordance with Law No 23 of 1999 on Bank Indonesia as lastly amended by Law 4/2023. Its authority includes supervision of and regulating several matters such as interest rates, liquidity (including in the banking sector), and foreign exchange transactions. BI initially had the duty and authority to regulate and supervise the Indonesian banking industry, which has since been shifted to the OJK (as previously mentioned).

Deposit Insurance Corporation

Banking resolution is handled by the Deposit Insurance Corporation (*Lembaga Penjamin Simpanan*, or LPS) in accordance with Law No 24 of 2004 on the Deposit Insurance Corporation as lastly amended by Law 4/2023 (the "LPS Law"). The LPS aims to insure and protect the public funds stored in banks. For banks with financial problems, LPS conducts resolution by way of:

- transferring a bank's assets and/or obligations, either partially or in whole, to the receiving bank;
- transferring a bank's assets and/or obligations, either partially or in whole, to the mediating bank;
- conducting temporary capital participation; or
- conducting liquidation.

More about the LPS will be explained in **6.1 Deposit Guarantee Scheme (DGS)**.

2. Authorisation

2.1 Licences and Application Process Requirements and Procedure

Obtaining authorisation to operate as a bank is done in two steps, as follows.

In-principle approval

The request for approval must be submitted at least by one of the prospective owners or controlling share-

holders (*pemegang saham pengendali*, or PSPs) and must include:

- the draft of the deed of establishment and the articles of association;
- details of the prospective shareholders and shareholding composition;
- details of the prospective board of directors and board of commissioners, with administrative documents for "fit and proper" test (FPT) approval;
- organisational structure, feasibility study, and corporate plan;
- guidelines on risk management, internal control, IT system, and good governance;
- system and work procedure;
- proof of capital injection;
- statement letters from shareholders; and
- structure of the business group related to the legal entity as a prospective PSP up to the last owner and controller.

After the complete application, the OJK will conduct:

- an investigation into the completeness and conformity of the documents;
- analysis on healthy competition between banks, density level, and equitable distribution of economic development in Indonesia; and
- an FPT on the prospective PSPs, board of directors and board of commissioners.

In-principle approval is processed within 60 business days of a complete application. If granted, it remains valid for six months and will expire if the bank does not apply for a business licence.

Business licence

The application for a business licence is submitted to the OJK by the person who has obtained the in-principle approval. The application must include:

- the deed of establishment and the articles of association;
- documents pertaining to certain requirements for the in-principle approval, if there is any amendment – namely, with regard to:
 - (a) prospective shareholders and shareholding composition;

- (b) prospective board of directors and board of commissioners (with administrative documents for FPT approval);
- (c) organisational structure, feasibility study and corporate plan; and
- (d) guidelines on risk management, internal control, IT system, and good governance;
- proof of full payment of paid-up capital;
- proof of operational readiness; and
- statement letter from shareholders that the paid-up capital does not originate from any loan from and for the purpose of money laundering.

After receiving the complete application, the OJK will conduct:

- an investigation into the completeness and conformity of the documents; and
- an FPT if there are any changes to the prospective PSP, board of directors and/or board of commissioners since the in-principle approval process.

Applications for business licences are processed within 60 business days of receipt of a complete application. If granted, the bank must commence business activities within 60 business days following the issuance of a business licence, at the latest.

The OJK also imposes levies on the application for a business licence (per company), as follows:

- for a commercial bank – IDR100 million;
- for a Sharia commercial bank – IDR60 million;
- for a rural bank – IDR50 million; and
- for a Sharia rural bank – IDR30 million.

Permitted and Prohibited Activities and Services

According to the Banking Law, commercial banks may carry out the following activities/services.

- Per Article 6 (1) of the Banking Law, commercial banks may:
 - (a) collect funds from public in the form of deposit, savings and/or other equivalent forms;
 - (b) provide credit or financing;
 - (c) conduct payment system activities;
 - (d) place funds in, borrow funds from, or lend funds to other banks;

- (e) issue and/or conduct transactions of negotiable instruments (*surat berharga*);
- (f) provide a place to store valuable goods and securities;
- (g) conduct foreign currency activities;
- (h) carry out receivables transfer activities;
- (i) conduct custodial activities; and
- (j) conduct other activities with the approval of the OJK.
- Per Article 7 (1) of the Banking Law, commercial banks may:
 - (a) conduct capital participation activities in financial services institutions (*lembaga jasa keuangan*, or LJKs) and/or other companies supporting the banking industry (eg, clearing agencies);
 - (b) conduct temporary capital participation in non-LJKs;
 - (c) act as the founder and administrator of a pension fund; and/or
 - (d) collaborate with other LJKs and non-LJKs in providing financial services (eg, marketing insurance or mutual funds products).

Commercial banks are not allowed to perform the following activities:

- conduct capital participation in non-LJKs, except as referred to in Article 7 (1)(a) and (b) of the Banking Law (ie, only temporarily or in other companies supporting the banking agency);
- engage in insurance business, except the marketing of insurance products as per Article 7 (1)(d) of the Banking Law (ie, in collaboration with other LJKs and non-LJKs to provide financial services); and
- conduct other business outside the business activities referred to in Article 6 and 7 of the Banking Law.

To carry out other activities – such as activities within the payment services, either as card-based payment-related activities, e-money-related activities, payment gateways, or e-wallets (generally classified as payment services provider activities) – banks need to apply for a licence from BI.

OJK Regulation No 26 of 2024 on Expansion of Banking Business Activities (“OJK Regulation 26/2024”),

which has been in effect since 13 December 2024, allows commercial banks and rural banks to perform the following activities:

- transfer of receivables;
- grant warranty/guarantee services;
- conduct foreign exchange business;
- conduct business as *waqf* managers (only for Sharia commercial banks and Sharia rural banks).

Capital Participation by Commercial Banks

Other than in LJKs, commercial banks may only invest in companies supporting the banking industry, as further classified under OJK Regulation 26/2024:

- companies established or operating to support commercial banks and/or their subsidiaries (ie, banking IT service providers);
- companies utilising IT to produce financial products as their primary business (ie, e-money providers, fintech companies);
- operators of business aimed at supporting the business of the banking industry (ie, switching and clearing companies); and
- companies outside Indonesia that meet the following criteria:
 - (a) the company is categorised as financial services institution by the authorised authority; and
 - (b) the company's business activities can be equated with the business activities of LJKs in accordance with the law of the OJK.

The same rules are applicable for Sharia commercial banks. However, the investees must operate in accordance with and/or not in conflict with the Sharia principles.

Capital Participation by Rural Banks

Rural banks or Sharia rural banks are prohibited from making investments other than in supporting institutions of rural banks and Sharia rural banks domiciled in the territory of Indonesia. Supporting institutions consist of:

- companies established or primarily engaged in business activities supporting the operations of rural banks and Sharia rural banks; and

- companies with business characteristics that are specifically aimed at supporting the business activities of the rural banks and Sharia rural banks.

Obtaining a European Passport

Given the territorial effect of Indonesian laws, Indonesian banking laws can only:

- govern banking activities conducted onshore;
- be enforced onshore; and
- apply to entities legally established or factually doing business in Indonesia.

Indonesia does not recognise the concept of European passport. Foreign banks may operate in Indonesia by establishing an OJK-licensed representative office and branch office. Indonesian banks may also establish offices abroad, subject to obtaining a licence from the OJK and from the local authority in such foreign country.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Bank acquisitions in Indonesia are governed by OJK Regulation No 41/POJK.03/2019 of 2019 on the Merger, Consolidation, Acquisition, Integration, and Conversion of Commercial Banks ("OJK Regulation 41/2019"). This defines an acquisition as the takeover of a bank's shares by an entity or individual, resulting in a transfer of control.

The ownership of a bank by foreign individuals and/or legal entities is capped at 99% of the bank's paid-up capital. Accordingly, any acquisition by foreign individuals and/or legal entities must not cause this limit to be exceeded.

Pre-Acquisition Requirements

The target bank and acquiring party must prepare an acquisition plan, approved by their respective boards of commissioners (or equivalent). The plan must include:

- details of the parties;
- information regarding the acquisition plan; and

- the bank's post-acquisition details.

The target bank and the acquiring party must also submit to the OJK:

- the draft acquisition plan;
- the draft acquisition deed; and
- required administrative documents for the FPT of the prospective PSP.

A summary of the acquisition plan must be announced in a nationally circulated Indonesian-language newspaper and on the bank's website. The announcement must include at least a summary of the acquisition plan and a statement that the acquisition plan has not yet obtained approval from the general meeting of shareholders (GMS). The acquisition plan must be announced no later than:

- two working days after receiving notification from the OJK that the acquisition process may proceed based on the OJK's review of the submitted documents; and
- 30 days before the GMS invite.

Proof of the announcement must be submitted to the OJK within two working days. Employees must also be notified of the summary of the acquisition plan simultaneously and in writing.

GMS approval and acquisition permit application

The target bank and acquiring party must obtain approval from the GMS (or equivalent) for:

- the proposed acquisition;
- the acquisition plan; and
- the draft acquisition deed.

Within three working days once the GMS approval has been obtained, the target bank must apply for an acquisition permit from the OJK by submitting:

- notarial deed of GMS minutes approving the acquisition;
- the acquisition plan and the draft acquisition deed as approved by the GMS;

- proposed amendments to the target bank's articles of association related to the acquisition (if applicable); and
- the latest financial statements and financial performance report of both the target bank and the acquiring party if the application is submitted six months or more after the public announcement.

The OJK has the discretionary power to request additional documents or information and will decide on the acquisition permit application within 14 working days after receiving all required documents. If approved, the OJK will also finalise the FPT results.

Post-Acquisition Obligations

A bank that has obtained an acquisition permit must:

- announce the acquisition's completion within 30 days in a nationally circulated Indonesian-language newspaper and on its website; and
- submit a report to the OJK within five working days on the acquisition's implementation, including required supporting documents.

4. Governance

4.1 Corporate Governance Requirements

The implementation of corporate governance for banks is regulated under OJK Regulation No 17 of 2023 on the Application of Governance for Commercial Banks ("OJK Regulation 17/2023"). Banks are required to implement sound corporate governance in their business operations, which must at least encompass the principles of transparency, accountability, responsibility, independence and fairness.

Board of Directors

Banks must have at least three members on their board of directors – all of whom must be domiciled in Indonesia. The majority of directors must have at least five years of experience in operational roles as bank executives. The bank's articles of association must stipulate the term of office for directors, with a maximum tenure of five years per term, commencing from the effective date of their appointment by the GMS. Directors are also subject to the applicable restrictions

on concurrent positions and share ownership in other companies.

Board of Commissioners

Banks must have at least three members on their board of commissioners, with the total number not exceeding the number of directors. At least one commissioner must be domiciled in Indonesia. Similar to the board of directors, the bank's articles of association must specify the maximum tenure of five years per term, commencing from the effective date of their appointment by the GMS. At least 50% of the board of commissioners must be independent commissioners. Commissioners are also subject to the applicable restrictions on concurrent positions.

Diversity Considerations

The appointment and/or replacement of members of the board of directors and members of the board of commissioners must prioritise professional composition, independence, and competency alignment, while also considering diversity as an essential factor in carrying out their duties and responsibilities. Diversity considerations include career background, experience, educational history, and gender.

Internal Policies

Banks are required to establish internal policies and procedures to ensure effective corporate governance in their business operations. These policies may take the form of the articles of association, decrees, manuals, bank policies or guidelines (standard operating procedures), corporate charters, or other operational documents. They must be formulated in compliance with prevailing laws and aligned with the bank's business processes and approval mechanisms. The board of directors must communicate strategic internal policies – particularly those related to HR – to the bank's employees, who are expected to uphold them as part of their professional responsibilities.

4.2 Registration and Oversight of Senior Management

OJK Regulation No 27/POJK.03/2016 of 2016 on the Fit and Proper Test for Main Parties in Financial Services Institutions ("OJK Regulation 27/2016") governs the registration requirements for prospective senior management (or "main parties") in banks. This regu-

lation defines "main parties" as individuals or entities that own, manage, supervise, and/or have significant influence over financial services institutions. In banks, a "main party" includes:

- controlling shareholders; and
- members of the board of directors and members of the board of commissioners.

Prohibition of Acting as a Main Party Without OJK Approval

A prospective controlling shareholder who acquires shares in a bank without OJK approval cannot exercise shareholder rights and responsibilities. Likewise, a prospective director or commissioner appointed by the GMS cannot perform their duties until they have obtained OJK approval.

FPT (General)

To obtain OJK approval, prospective main parties must undergo an FPT administered by the OJK. The application must include the required administrative documents. If the documentation is incomplete, the OJK may return the application for revision.

The FPT assesses whether a prospective main party meets the following criteria.

- Integrity requirements – all main parties must have:
 - (a) legal capacity for legal acts;
 - (b) good character and moral standing, including compliance with applicable laws and no prior criminal convictions within a specified period before nomination;
 - (c) commitment to regulatory compliance and alignment with OJK policies;
 - (d) commitment to the development of a sound banking system; and
 - (e) not been listed among the parties prohibited from becoming a main party.
- Financial reputation requirements – directors and commissioners must have:
 - (a) no history of non-performing loans; and
 - (b) no history of bankruptcy, nor prior conviction as a shareholder, controlling party, director, or commissioner for causing a company's bankruptcy within the preceding five years before nomination.

- Financial capability requirements – controlling shareholders must demonstrate:
 - (a) sound financial reputation;
 - (b) adequate financial capacity to support the bank's business growth; and
 - (c) commitment to financial support if the bank encounters financial difficulties.
- Competence requirements – directors and commissioners must have relevant banking knowledge and experience.

FPT (Controlling Shareholder)

Prospective controlling shareholders must conduct a presentation on:

- their plans for the development of the bank; and
- their strategies for financial difficulties should the bank encounter such challenges.

If the controlling shareholder is a legal entity, the FPT extends to:

- the legal entity itself;
- its board of directors and board of commissioners; and
- any ultimate shareholders identified by the OJK.

FPT (Board of Directors and Board of Commissioners)

Banks must first perform self-assessments to ensure the prospective main party meets integrity, competence and financial reputation requirements and complies with the applicable laws and regulations. The self-assessment results must be submitted to the OJK along with the required administrative documents.

FPT Results

The OJK will issue a decision within 30 business days of receiving a complete application – although the timeline might vary in practice. Results will be communicated in writing to the bank and may also be shared with relevant authorities as required by law.

4.3 Remuneration Requirements

Remuneration requirements for banks in Indonesia are governed by OJK Regulation No 45/POJK.03/2015 of 2015 on Implementation of Governance in the Provision of Remuneration for Commercial Banks

("OJK Regulation 45/2015"). OJK Regulation 45/2015 defines remuneration as rewards granted to members of the board of directors, members of the board of commissioners, and employees – whether fixed or variable and in cash or non-cash form – in accordance with their duties, authority and responsibilities.

Remuneration Policy

Banks, through their board of directors, must establish a remuneration policy covering:

- remuneration structure, including a scale based on level and position and components; and
- methods and mechanisms for determining remuneration.

Remuneration Committee

The board of commissioners is responsible for forming a remuneration committee to oversee the implementation and conduct periodic evaluations of the remuneration policy. The remuneration committee must include at least:

- an independent commissioner (as chair);
- a commissioner; and
- an HR executive or employee representative.

Members of the board of directors cannot be part of the remuneration committee. If there are more than three members, at least two must be independent commissioners.

Principle of Prudence

Banks must apply prudential principles in the provision of both fixed remuneration (ie, remuneration that is not linked to performance and risk, including basic salary, facilities, housing allowance, health allowance, education allowance, holiday allowance, and pension) and variable remuneration (ie, remuneration that is linked to performance and risk, including bonuses or similar forms).

Regulatory Oversight and Disclosure

Banks are required to disclose information related to their remuneration policies in their annual report on governance implementation. If the OJK determines that a bank has not properly implemented its remuneration

neration policy, it may require the bank to take corrective measures.

5. AML/KYC

5.1 AML and CFT Requirements

AML/CFT requirements in the banking sector are provided for by OJK Regulation No 8 of 2023 on the Implementation of Anti-Money Laundering, Counter-Terrorist Financing, and Counter-Proliferation Financing of Weapons of Mass Destruction (CPF) Programmes in the Financial Services Sector (“OJK Regulation 8/2023”).

The following financial services providers (*penyedia jasa keuangan*) (FSPs) are obliged to comply with the provisions stipulated in OJK Regulation 8/2023 related to AML, CFT and CPF:

- banks;
- financing companies;
- securities companies;
- venture capital companies;
- investment managers;
- infrastructure financing companies;
- custodians;
- Indonesian export financing institutions;
- trustees;
- pawnshop companies;
- organisers of securities offerings through IT-based crowdfunding services;
- microfinance institutions;
- insurance companies;
- organisers of IT-based crowdfunding services;
- insurance brokerage companies;
- organisers of IT-based transaction services and financial sector technology innovation;
- financial institution pension funds; and
- other financial services institutions and/or parties conducting business activities related to fund collection, fund distribution and fund management in the financial services sector supervised by the OJK.

Implementation of AML/CFT Programmes

FSPs must effectively implement AML, CFT and CPF programmes by considering the risks of money laun-

dering, terrorism-financing crime, and weapons of mass destruction proliferation financing (WMDPF) in terms of their activities, business scale, business complexity and/or business characteristics, as follows.

- Active supervision by the board of directors – this must consist, at least, of:
 - (a) proposing written policies and procedures on the application of AML, CFT and CPF programmes to the board of commissioners;
 - (b) ensuring that the application of AML, CFT and CPF programmes is carried out in accordance with the established written policies and procedures;
 - (c) establishing a special work unit and/or appointing an official who is responsible for the application of AML, CFT and CPF programmes;
 - (d) supervising compliance of the special work unit in implementing AML, CFT and CPF programmes;
 - (e) ensuring that written policies and procedures on the application of AML, CFT and CPF programmes are in line with changes and developments in products, services, and technology within the financial services sector and in accordance with the development of AML, CFT and/or CPF modes;
 - (f) ensuring officials and/or employees – specifically, employees of the relevant work unit, as well as new employees – have attended training in relation to the application of AML, CFT and CPF programmes once a year; and
 - (g) ensuring that the application of AML, CFT and CPF programmes is discussed in meetings of the board of directors.
- Active supervision by the board of commissioners – this must consist, at least, of:
 - (a) ensuring that the FSP owns policies and procedures for the application of AML, CFT and CPF programmes;
 - (b) approving the policies and procedures for the application of AML, CFT and CPF programmes proposed by the board of directors;
 - (c) evaluating the policies and procedures for the application of AML, CFT and CPF programmes;
 - (d) supervising the board of directors in taking responsibility for the implementation of AML,

- CFT and CPF programmes; and
- (e) ensuring that the application of AML, CFT and CPF programmes is discussed in meetings of the board of directors and the board of commissioners.
- Policies and procedures – FSPs must have policies and procedures to manage and mitigate the risks of AML, CFT and CPF. In addition, FSPs must also have compliance management arrangements for the application of AML, CFT and CPF programmes, including the appointment of a compliance officer at the management level. As part of the compliance management arrangements, FSPs must establish a special work unit and/or appoint an official as the person in charge of the application of AML, CFT and CPF programmes at the head office and branch offices.
- Internal control – FSPs must have an effective and independent internal control system. The implementation of such system is evidenced by:
 - (a) having adequate policies, procedures, and internal monitoring;
 - (b) imposing limitations on the authority and responsibility of the special work unit in relation to the application of AML, CFT and CPF programmes; and
 - (c) conducting an independent examination to ensure the effectiveness of the application of AML, CFT and CPF programmes.
- Management information system – FSPs must have a management information system that is able to effectively identify, analyse, monitor, and provide a report on the characteristics or transaction pattern habits made by a customer. Besides, FSPs must also have and maintain a single customer identification file, along with a walk-in customer profile. If FSPs are subsidiaries of a financial conglomerate, FSPs may use the information system owned by the holding company of the financial conglomerate or by FSPs in said financial conglomerate to implement AML, CTF and CPF programmes in an integrated manner.
- HR and training – to prevent FSPs from being used as a medium or destination for money laundering, terrorism financing, and WMDPF involving internal party of FSPs, FSPs must conduct:
 - (a) pre-employment screening procedures to ensure high standards in the acceptance of

new employees – both permanent and non-permanent, including senior officials and experts – from the lowest level up to one level below the board of directors and the board of commissioners; and

- (b) recognition and monitoring of employees' profiles ("know your employee") – both of permanent employees and non-permanent employees, including experts – from the lowest level up to the board of directors and the board of commissioners.

In addition to the foregoing, FSPs are also obliged to comply with the relevant reporting requirements and submit reports to the relevant government agencies, including the OJK, the Indonesian Financial Transaction Report and Analysis Centre, and the Indonesian National Police.

Failure to Comply With AML/CFT Requirements

Failure to comply with the provisions contained in the OJK Regulation 8/2023 may subject the FSP to administrative sanctions imposed by the OJK, which range from:

- a written warning or reprimand accompanied by an order to perform certain actions;
- fines;
- restriction of certain business activities;
- downgrading of the health/risk assessment – companies may be assessed as less safe/healthy;
- suspension of certain business activities; and/or
- prohibition as a main party.

The OJK may also announce the imposition of administrative sanctions to the public.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The depositor protection regime in Indonesia is carried out through the LPS pursuant to the LPS Law. The LPS guarantees bank customer deposits in the form of giro, certificates of deposit, savings, and/or other equivalent forms of deposits. Every bank (other than the Village Credit Agency (*Badan Kredit Desa*)) that conducts business activities within the territory

of the Republic of Indonesia must participate in the guarantee scheme implemented by the LPS in respect of the deposits of the bank's customers.

Banks are obligated to submit customer-based deposit data to the LPS to determine eligible deposits and are responsible for the accuracy and completeness of the customer-based deposit data submitted to the LPS. To carry out this task, the LPS may conduct an examination of customer-based deposit data.

The LPS guarantee covers deposits if the following conditions are met:

- the customer's personal data and deposit information are properly recorded in the bank's books;
- the interest rate paid on the deposit does not exceed the maximum interest rate set by the LPS; and
- there is no indication or proof that fraud has been committed in relation to the deposit.

The value of deposits guaranteed for each customer at one bank is a maximum of IDR100 million. The guaranteed deposit value can be changed if one or more of the following criteria are met:

- there is a simultaneous withdrawal of large amounts of banking funds;
- there is considerable inflation over several years;
- the number of customers whose deposits are guaranteed becomes less than 90% of the total number of the entire bank's depositors; or
- there is a threat of crisis that has the potential to cause a decline in public confidence in banking and endanger the stability of the financial system (in the event that the situation has been resolved, the amount of guaranteed savings can be readjusted).

The LPS is obliged to pay guarantee claims to a bank's depositors even if the bank's business licence is revoked. In connection with the calculation and payment of guarantee claims, the LPS is entitled to obtain data from a bank on its depositor customers (*nasabah penyimpan*) and other necessary information as of the date on which the bank's business licence is revoked. In the event that the LPS deems it necessary, recon-

ciliation and verification are conducted based on data and information obtained from other parties.

The LPS is further obliged to determine which deposits are eligible for payment after reconciling and verifying the data no later than 90 working days from the date on which the bank's business licence was revoked and must start paying the eligible deposits no later than five working days following the verification. The LPS will announce the commencement date of the submitted guarantee claim in at least two widely circulated daily newspapers. The period of claim payment is five years from the date on which bank's business licence was revoked.

Guarantee claims are declared not eligible for payment if, based on the results of reconciliation and/or verification:

- the customer's deposit data is not recorded at the bank;
- the depositor customer will receive unreasonable financial benefits; and/or
- the depositor customer's actions have negatively impacted the bank's financial stability.

Depositor customers who object to the LPS' decision determining the status of their deposits can submit objections to the LPS by submitting real and clear evidence no later than 180 calendar days from the date of the announcement.

The payment of guarantee claims can be made in cash and/or by other equivalent means of payment. The payment of each guarantee claim is made in Indonesian currency (rupiah). However, guarantee claim payments tied to deposits denominated in foreign currencies will be converted to the equivalent amount in Indonesian rupiah based on the exchange rate set by BI.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Basel III Standards have been implemented in the Indonesian banking sector through the following local regulations:

- risk management rules stipulated in OJK Regulation No 18/POJK.03/2016 of 2016 on Implementation of Risk Management for Commercial Banks as partially revoked by OJK Regulation No 13/POJK.03/2021 of 2021 on the Organisation of Commercial Bank Products;
- capital adequacy requirements set out in OJK Regulation No 11/POJK.03/2016 of 2016 as lastly amended by OJK Regulation No 27 of 2022 on Mandatory Minimum Capital Requirements for Commercial Banks; and
- liquidity requirements governed by OJK Regulation No 42/POJK.03/2015 of 2015 as lastly amended by OJK Regulation No 19 of 2024 on Mandatory Liquidity Coverage Ratio for Commercial Banks and OJK Regulation No 50/POJK.03/2017 of 2017 as lastly amended by OJK Regulation No 20 of 2024 on the Obligation to Fulfil the Net Stable Funding Ratio for Commercial Banks.

Risk Management Rules

The implementation of risk management in commercial banks is conducted through:

- active supervision by the board of directors and the board of commissioners;
- enforcement of risk management policies and procedures;
- establishment of risk limits;
- adequacy in the process of identifying, measuring, monitoring and controlling risks; and
- risk management information systems.

Bank risk profiles are categorised into five grades, with Grade 5 indicating the highest level of risk and Grade 1 representing the lowest.

Capital Adequacy Requirements

In Indonesia, banks are required to hold a minimum amount of capital, depending on their risk profile

grade. This amount is calculated based on the bank's risk-weighted assets. Such minimum capital requirements are as follows:

- banks with a Grade 1 risk profile – 8% of the bank's risk-weighted assets;
- banks with a Grade 2 risk profile – 9%–<10% of the bank's risk-weighted assets;
- banks with a Grade 3 risk profile – 10%–<11% of the bank's risk-weighted assets; and
- banks with a Grade 4 or Grade 5 risk profile – 11%–14% of the bank's risk-weighted assets.

To determine capital adequacy according to the bank's risk profile, banks must have an Internal Capital Adequacy Assessment Process (ICAAP). The ICAAP is a method of a self-assessment for banks, which covers:

- active supervision by the board of commissioners and the board of directors;
- capital adequacy assessment;
- monitoring and reporting; and
- internal control.

After the banks carry out an ICAAP, the OJK will evaluate the ICAAP result in what is known as the Supervisory Review and Evaluation Process (SREP).

Indonesian commercial banks must meet the minimum threshold for first-tier and second-tier capital, with first-tier common equity (paid-up capital and disclosed reserves) being 4.5% of the bank's risk-weighted assets and first-tier capital being 6% of the bank's risk-weighted assets. Second-tier capital is limited to a maximum of 100% of first-tier capital, either individually or when consolidated with the bank's subsidiaries.

Banks must also set aside additional capital as a buffer against variations in economic and financial risk, as follows:

- a capital conservation buffer of 2.5% of the bank's risk-weighted assets for banks with core capital of more than IDR6 trillion;

- a counter-cyclical buffer of 0% to 2.5% of the bank's risk-weighted assets, which applies to all banks; and/or
- capital surcharge for systemic banks of 1% to 2.5% of the bank's risk-weighted assets, which only applies to banks that may have systematic financial impact due to various elements, including the amount in assets owned by the bank, the bank's capital levels, the obligations that the bank holds, the bank's networks or relationships with other sectors, and the complexity of the bank's transactions or services.

As regards foreign banks' branch offices, they must satisfy the Capital Equivalency Maintained Assets (CEMA) requirement. CEMA is the fund that must be allocated to the bank's financial assets and must be maintained at a minimum of IDR1 trillion.

Liquidity Requirements

Indonesia has implemented both the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR), forming part of its bank liquidity risk policy.

The LCR aims to preserve a bank's short-term liquidity stability by ensuring that it has sufficient high-quality liquid assets (HQLA) to cover estimated total net cash outflows during a 30-day stress scenario. Fulfilment of a minimum LCR of 100% indicates that banks have adequate liquidity.

Commercial banks are required to maintain their liquidity adequacy using the NSFR, which is set at a minimum of 100%. The value of the NSFR is obtained by comparing the value of available stable funding (ASF) with the value of required stable funding (RSF). A bank's ASF refers to the amount in stable liabilities and equity that remains in the bank within one year, whereas RSF refers to the total assets and off-balance sheet exposure.

OJK has recently imposed the same requirements for the Sharia commercial banks and Sharia business units under OJK Regulation No 20 of 2025 on Obligation to Fulfil the Liquidity Coverage Ratio and Net Stable Funding Ratio for Sharia Commercial Banks and Sharia Business Units. Under the new regulation,

the Sharia banks and units must meet a 100% liquidity adequacy ratio by 30 June 2028.

Leverage Ratio

Pursuant to the OJK Regulation No 31/POJK.03/2019 of 2019 on Mandatory Leverage Ratio Fulfilment for Commercial Bank and OJK Regulation No 21 of 2025 on Mandatory Leverage Ratio Fulfilment for Sharia Commercial Bank, conventional and Sharia commercial banks are required to always maintain a leverage ratio of at least 3%, which will be used to calculate the adequate core capital that must be provided by each bank based on its recorded total exposure.

Additional Requirements

Banks are required to submit reports to the OJK concerning their compliance with risk management, capital adequacy, and liquidity requirements. The reporting intervals can differ and may include daily, monthly, quarterly, semi-annual or annual submissions, in accordance with the structured report formats stipulated under OJK Regulation No 63/POJK.03/2020 on Commercial Banks Reporting Through the OJK Reporting System.

The OJK has enacted OJK Regulation No 18 of 2025 on Transparency and Publication of Bank Reports since 4 August 2025, yet it will come into force on 8 February 2026. The regulation has re-compiled all mandatory reporting of banks regulated under the banking regulations and has grouped the reports according to the type of the banks as well as their reporting period and deadlines. This regulation aims to provide banks with easier guidance on navigating their relevant reporting obligations.

The regulation emphasises that each of the bank reports must be prepared thoroughly, accurately, currently, fully, on time, and comparably. Additionally, the OJK requires the bank's board of directors to appoint an executive officer with the integrity and relevant competence to prepare the bank's financial statements. Such an executive officer must have a good track record and must sign and submit to the OJK a statement letter of integrity and compliance with the applicable laws and regulations as well as the OJK's directives. The executive officer must have knowledge and/or experience in the field of accounting.

Banks are required to appoint the executive officer as referred to in the preceding paragraph or – at a minimum – designate one member of the team as responsible for preparing the bank’s financial statements, ensuring that this person possesses the following competencies:

- has successfully passed the chartered accountant certification examination at a level at least one tier above the minimum (in the case of banks classified within the core capital 4, core capital 3, or branches of banks domiciled overseas); or
- has successfully passed chartered accountant certification exam at the lowest level (in the case of banks classified within the core capital 2 and core capital 1).

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Indonesia is a member of the Financial Stability Board (FSB) and implemented the FSB Key Attributes of Effective Resolution Regimes by enacting Law No 9 of 2016 on the Prevention and Resolution of Financial System Crisis in 2016 as amended by Law 4/2023 (“Law 9/2016”). The law clarifies the responsibilities of the agencies involved in crisis management and specifies the resolution procedure for non-systemic and systemic banks. According to the regulation, banking resolution is jointly handled by the LPS in co-ordination with the OJK and BI as well as the Committee on Financial System Stability (*Komite Stabilitas Sistem Keuangan*, or KSSK).

If a bank encounters difficulties that jeopardise its business continuity, the OJK is authorised to:

- restrict the authority of the bank’s shareholders and management personnel;
- instruct shareholders to inject additional capital to the bank, replace members of the board of commissioners and/or the board of directors, divest their ownership in the bank to a buyer, provide loans to the bank, and/or support the implementation of the duties of the OJK and the LPS in resolving the bank’s issues;

- instruct the bank to write off non-performing loans or problematic fund disbursements and account for the bank’s losses against its capital;
- request the bank to merge or consolidate with another bank;
- instruct the bank to transfer the management of all or part of its operations to another party;
- instruct the bank to sell part or all of its assets and/or liabilities to another party;
- appoint a statutory manager and instruct the bank to facilitate the statutory manager’s duties within the bank;
- instruct the bank to refrain from conducting specific transactions with related parties and/or other parties as determined by the OJK;
- restrict certain business activities of the bank;
- issue written instructions to the bank and/or certain parties; and/or
- instruct the bank to take any other necessary measures as deemed appropriate by the OJK.

As stipulated in Law 9/2016, the systemic bank should develop a recovery plan that comprises the obligation of the ultimate shareholders to conduct bail-in (eg, convert the debt to equity). In order to implement this law, the OJK has enacted OJK Regulation No 5 of 2024 on the Determination of the Status of Supervision and Problem Handling of Commercial Banks (“OJK Regulation 5/2024”). The regulations mainly govern recovery actions taken by banks while facing crisis related to capital, liquidity, profitability, and asset quality.

To overcome capital deficiencies, banks must pursue the following recovery options.

- Injection of bank capital by the controlling shareholder and/or the ultimate beneficial owner of the bank - banks must first implement this recovery option before implementing any of the other options mentioned here.
- Conversion of certain types of obligations into bank capital - this measure maybe imposed by the regulator of the bank or by involving other parties. Eligible converted obligations comprise deposits and/or debt or investment instruments that possess capital characteristics. Conversion can be

done by converting the liabilities into ordinary shares or writing down the liabilities.

- Injection of bank capital by other parties – this could involve investments from other investors, strategic partners, or government entities to bolster the bank's capital.

Recovery options for banks facing liquidity problems include:

- application to BI for short-term liquidity loans or short-term liquidity financing based on Islamic finance principles;
- request for fund placement to the LPS; and/or
- other recovery options, such as owning a credit line in the money market.

Failure in profitability aspects can be addressed through cost-efficiency programmes, sale of fixed assets, and/or other recovery options, such as increasing collection activity. Meanwhile, issues caused by low asset quality can be resolved through credit restructuring, productive asset write-offs, and/or other recovery options, such as the transfer of credit collection rights (*cessie*).

If those measures are implemented and the bank continues to face challenges that threaten its business continuity and cannot be restored to a stable condition by the OJK within the latter's authority, the OJK will designate the bank as a bank under resolution. Written notification of this designation will be provided by the OJK to the bank, the LPS, and BI accordingly.

In accordance with OJK Regulation 5/2024, the OJK will classify a bank as being under resolution if it cannot be restructured and meets the following criteria:

- the bank has not exceeded the one-year restructuring period set by the OJK, but the bank's condition has worsened and:
 - (a) the minimum capital ratio requirement reaches below 8%, making restructuring impossible; and/or
 - (b) the minimum required balance (*giro wajib minimum*, or GWM) ratio in Indonesian rupiah is equal to 0% and is deemed impossible to resolve in accordance with provisions of the

laws and regulations;

- the one-year restructuring period ends and:
 - (a) the bank's minimum capital adequacy ratio is less than the minimum capital adequacy requirement that corresponds to the bank's risk profile; and/or
 - (b) the GWM ratio in Indonesian rupiah is less than the required ratio that must be fulfilled by the bank and/or the bank has not been able to resolve fundamental liquidity problems; or
- the banks cannot return deposits from the LPS.

During the bank resolution, the clients' deposits will be protected by the LPS. It will insure bank deposits in the form of current accounts, term deposits, certificates of deposit, saving accounts, or other equivalent forms of deposit. Currently, the number of deposits insured by the LPS for each customer in a bank is set at IDR2 billion. Meanwhile, deposits exceeding IDR2 billion will be settled by the liquidation team based on the results of the bank's asset liquidation. The LPS guarantees various types of deposits, including conventional banking products such as demand deposits, time deposits, certificates of deposit, savings, and other equivalent forms, as well as deposit products governed by Islamic finance principles.

9. ESG

9.1 ESG Requirements Sustainability Regulation

Indonesia has implemented regulations that govern the broader concept of sustainability within the banking sector. However, there are no specific regulations that explicitly focus on ESG matters. The existing regulation – namely, OJK Regulation No 51/POJK.03/2017 on the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies (“OJK Regulation 51/2017”) – requires banks to adopt sustainable practices, but it primarily refers to sustainability in terms of economic, social and environmental factors, rather than the more specific ESG framework.

Under OJK Regulation 51/2017, banks in Indonesia are mandated to practise sustainable finance in their operations, so as to create sustainable economic

growth by aligning economic, social and environmental interests. In practising sustainable finance, banks are required to prepare and implement the following.

- Sustainable Finance Action Plan - banks are required to prepare and submit a Sustainable Finance Action Plan annually to the OJK. The Sustainable Finance Action Plan must at least include a plan to develop sustainable products, a plan to develop internal capacity or organisational adjustment to align with sustainable finance practices, and the target deadline by which to implement the plan.
- Sustainability report - banks must prepare a sustainability report, which can be a separate or integral part of the annual report, and publish the report annually (by April 30th at the latest). The sustainability report must be prepared in Bahasa Indonesia (the official national language of Indonesia) and at least include the bank's sustainability strategy, a summary of sustainability aspects (economic, social and environmental), a profile of the bank, an explanation from the board of directors, sustainability governance, sustainability performance, written verification from an independent party, a feedback sheet for readers, and a response to feedback on the previous year's report.
- Sustainable finance funds allocation - banks that are required to conduct social and environmental responsibility measures must allocate a portion of their funds for social and environmental responsibility to the implementation of sustainable finance. This fund allocation must be included in the Sustainable Finance Action Plan.

The OJK may impose administrative sanctions for any non-compliances with the foregoing. Conversely, if the banks have performed sustainable finance effectively, the OJK may provide an incentive to the banks by involving the banks in HR competency development programmes, granting the Sustainable Finance Award, or other kinds of incentives.

Specific Regulations on Governance

While OJK Regulation 51/2017 does not specifically covers the “governance” aspect of ESG, the governance of banks has been regulated in several other

OJK regulations as discussed in **1.1 Key Laws and Regulations**, such as:

- OJK Regulation No 17 of 2023 on the Implementation of Governance for Commercial Banks;
- OJK Regulation No 2 of 2024 on the Implementation of Governance for Sharia Commercial Banks and Sharia Business Units;
- OJK Regulation No 9 of 2024 on the Implementation of Governance for Rural Banks and Sharia Rural Banks; and
- OJK Regulation No 25 of 2024 on the Implementation of Sharia Governance for Sharia Rural Banks.

The above-mentioned regulations require banks to implement good governance and provide detailed guidelines on the implementation of good governance tailored for each type of bank in Indonesia. The regulations cover the duties and responsibilities of the board of directors and the board of commissioners, the formation and duties of committees, the handling of conflicts of interest, the implementation of compliance and audits, risk management, remuneration, the provision of funds to related parties and large funds, the integrity of reporting and IT systems, banks' strategic plans, and shareholder aspects, as well as the implementation of anti-fraud measures, sustainable finance, and governance within banks' business groups.

For Sharia banks, the regulations have also covered good governance in the Sharia context, such as the duties and responsibilities of the Sharia Supervisory Board, Sharia compliance and Sharia risk management.

10. DORA

10.1 DORA Requirements

The OJK has established regulations regarding risk management in the use of IT within the banking sector, which encompass several matters addressed under Regulation (EU) 2022/2554 (the “Digital Operational Resilience Act” (DORA)), including requirements for managing banks' IT risks, incident reporting, and managing third-party IT risks. These are regulated under OJK Regulation No 11/POJK.03/2022 on the

Organisation of IT by Commercial Banks (“OJK Regulation 11/2022”) and its implementing regulations, OJK Circular Letter No 24/SEOJK.03/2023 on the Assessment of Digital Maturity of Commercial Banks, and OJK Circular Letter No 29/SEOJK.03/2022 on Cyber-Resilience and Cybersecurity for Commercial Banks.

IT Governance

Pursuant to OJK Reg 11/2022, banks are required to implement good IT governance. This is conducted by making clear the duties and responsibilities of the board of directors, the board of commissioners, and officials at all levels in the implementation of IT governance. In addition, banks are also required to establish:

- an IT steering committee, which will be responsible for providing recommendations to the board of directors on the bank’s IT strategic plan, IT policies, allocation of IT resources, and IT issues resolution efforts; and
- an IT management unit, which will be responsible for managing IT activities.

IT Risk Management

Banks must implement risk management measures effectively by at least conducting risk identification, risk measurement, risk monitoring, and risk control. Information security must be implemented effectively and efficiently in every aspect, and communication networks provided by the banks must adhere to the principles of confidentiality, integrity and availability. Further, banks must have a disaster recovery plan in place to ensure the operation of the banks in the event of a disaster of IT disruption.

Cyber-Resilience and Cybersecurity

In maintaining cyber-resilience, banks must – with the support of adequate cyber-resilience information systems – conduct identification of assets, threats and vulnerability, as well as conducting asset protection, cyber-incident detection, and cyber-incident response and recovery. Banks must conduct self-evaluation on their cybersecurity maturity level annually and submit the evaluation report to the OJK.

In addition, cybersecurity tests must be conducted periodically - at least once a year - on a vulnerabil-

ity analysis basis and scenario basis. To handle their cyber-resilience and cybersecurity, banks are required to establish a special unit or function responsible for these matters.

Co-Operation With Third-Party IT Services Providers

If a bank co-operates with a third-party IT services provider, the bank must be able to supervise the bank’s activities conducted by the IT services provider. Banks must establish policies and procedures in utilising the services of IT services providers, including with regard to:

- the process of identification of the need for an IT services provider;
- the selection process;
- guidelines on co-operating with the IT services provider;
- the risk management process; and
- guidelines on evaluating the performance and compliance of the IT services provider.

When the selected IT services provider experiences significant organisational changes, banks are required to conduct a materiality reassessment of the IT services provider.

Banks must report to the OJK and decide the next step to address issues – including the termination of the IT services provider - if the following conditions occur:

- the results of the materiality reassessment indicate that the performance of the IT services provider may not be effective;
- the deteriorating performance of the IT services provided by the IT services provider could cause or lead to significant impacts on the bank’s business and/or operations;
- the IT services provider becomes insolvent, is in the process of liquidation, or is declared bankrupt by the court;
- the IT services provider violates regulations regarding bank secrecy and/or customer personal data;
- banks are unable to provide the data needed for supervision by the OJK; and/or

- there are other conditions that disrupt or halt the provision of IT services by the IT service provider to the bank.

Reporting

Banks must submit several periodical reports to the OJK, including the IT development plan, a report on the current condition of IT operations, and an IT operations implementation report. In the event of an IT incident that has the potential to or has caused significant loss and/or disrupted the bank's operational continuity, banks are required to submit an initial notification within 24 hours, as well as an IT incident report no later than five working days after the IT incident is discovered.

11. Horizon Scanning

11.1 Regulatory Developments

The OJK is currently in the process of preparing several regulations in the banking sector. Those expected to be implemented next are as follows.

Draft OJK Regulation on the Utilisation of Foreign Workers and the Knowledge Transfer Programme by Commercial Banks

This draft regulation is expected to replace OJK Regulation No 37/POJK.03/2017 of 2017 on the Employment of Foreign Workers and the Transfer of Knowledge Program Within the Banking Sector. The draft is expected to stipulate that a commercial bank with 25% of its shares owned by foreign parties may employ foreign workers only for the following positions:

- members of the board of directors;
- members of the board of commissioners;
- executive officers who report directly to the board of directors or have significant influence over the bank's policies and/or operations;
- certain positions that:
 - (a) provide specialised expertise for the development of banking systems, technology, and innovation; and/or
 - (b) require an understanding of the language, culture, and legal system of a particular country in order to effectively serve foreign customers;

and/or

- experts or consultants.

The above-mentioned restrictions do not apply to the branches of offshore bank (*Kantor Cabang Bank Luar Negeri*, or KCBLN) and banks that operate as digital banks. Banks that employ the foreign workers as directors, commissioners, and executive officers must fulfil the following requirements:

- the majority (more than 50%) of the members of the board of directors must be Indonesian citizens;
- the majority of executive officers must be Indonesian citizens;
- at least 50% of the members of the board of commissioners must be Indonesian citizens.

Aside from the positions of directors and commissioners, foreign nationals may only be employed by banks to carry out functions or tasks related to treasury, risk management, IT, credit or financing, investor relations, marketing, finance, operational, and/or internal audit. Banks are prohibited from employing foreign workers in the areas of HR and compliance.

A bank with less than 25% of its shares owned by foreign parties may only employ foreign workers for expert or consultant positions. A bank may be exempted from this limitation if the following criteria are met:

- the ownership of the bank by foreign individuals and/or foreign legal entities is less than 25% – however, the foreign individual(s) and/or foreign legal entity(ies) acts and are acknowledged by the OJK as the bank's controlling shareholder; or
- there is an element of control exercised by foreign individual(s) and/or foreign legal entity(ies) over the bank.

A bank that employs foreign workers as executive officers or in the above-mentioned certain positions or as experts or consultants is required to conduct knowledge transfer, which must be carried out through:

- the assignment of at least two Indonesian workers as companions for each foreign worker;

- education and job training for the companions in accordance with the qualifications of the position held by the foreign worker; and
- training or teaching programmes by the foreign worker within a specified period, through seminars, trainings, short courses and/or other programmes conducted online and/or offline for the bank's employees.

Trends and Developments

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ABNR

ABNR is Indonesia's longest-established law firm and has played a pivotal role in shaping the development of international commercial law in the country, particularly during Indonesia's economic reopening to foreign investment in the 1960s. Today, with a team of around 120 legal professionals (including 20 partners and three foreign counsels), ABNR stands as Indonesia's largest independent, full-service law firm and is proud to have female partners at the part-

nership level, reflecting its commitment to diversity and inclusion. ABNR has consistently maintained its position as a top-tier law firm since its establishment in 1967. As the exclusive Indonesian member of Lex Mundi – the world's leading network of independent law firms, with representation in more than 100 countries – since 1991, the firm provides seamless global reach for its clients.

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COUNSELLORS AT LAW

The Legal Responsibilities of Indonesian Banks in the Implementation of Green Banking

The evolving discourse on sustainable finance has positioned banking institutions as key actors in advancing environmental and climate objectives. In Indonesia, the concept of “green banking” has been incorporated into the regulatory landscape through the sustainable finance frameworks of the Financial Services Authority (*Otoritas Jasa Keuangan*, or OJK) and Bank Indonesia. However, the operational translation of these frameworks into measurable decarbonisation outcomes remains limited. The aim of this article is to compare the legal basis of Indonesian banks’ environmental responsibilities, the current performance of the sector in implementing policies, and the implications that arise from these gaps. It shall be argued that – while Indonesian regulations establish a foundation for green banking – enforcement remains weak and banks face increasing exposure to governance, disclosure and reputational risks.

Legal framework for green banking in Indonesia

Financial institutions occupy a central role in the green transition, functioning not only as providers of capital but also as gatekeepers for environmentally responsible economic activities. In Indonesia, the banking sector has become an essential instrument for achieving the State’s sustainable development goals, including commitments under the Paris Agreement and the country’s Net Zero Emission (NZE) target by 2060.

The regulatory push for green banking seeks to ensure that banks incorporate ESG principles into credit and investment decisions. Yet, despite the proliferation of

sustainability-related policies, recent assessments by Asia Research and Engagement (ARE) in September 2025 reveal that Indonesia’s banks remain laggards in decarbonisation and fossil-fuel exit commitments compared to its South-East Asian peers. Such assessments, which include four major banks in Indonesia, indicate – among other findings – that these banks have not established specific timelines for discontinuing new coal power financing and have yet to adopt public policies containing restrictions on the financing of other high-carbon industries.

Indonesia’s legal framework for sustainable finance is anchored in several key regulatory instruments. However, these remain broadly applicable to the financial services sector as a whole and have yet to specifically address the core operations of the banking industry. As a starter, the OJK issued Regulation No 51/POJK.03/2017 on the Implementation of Sustainable Finance for Financial Service Institutions, Issuers, and Public Companies (“POJK 51/2017”). This regulation mandates the integration of sustainability principles into business strategy, risk management, and reporting. Under POJK 51/2017, banks must prepare a Sustainable Finance Action Plan (*Rencana Aksi Keuangan Berkelanjutan*, or RAKB) and disclose progress through a sustainability report. These obligations are supported by OJK Regulation No 14 of 2023 on Carbon Trading through Carbon Exchanges (“POJK 14/2023”) and OJK Regulation No 18 of 2023 on the Issuance of and Requirements for Sustainability-Based Debt Securities and Sharia Bonds (“POJK 18/2023”), which establish financing mechanisms for

environmentally sustainable projects applicable to financial services institutions, including banks.

Additionally, the environmental law regime under Law No 32 of 2009 on Environmental Protection and Management as amended by Government Regulation in Lieu of Law of the Republic of Indonesia No 2 of 2022 on Job Creation (“Law 32/2009”) imposes obligations on all business actors (including banks) to ensure that financed activities comply with environmental standards. Banks are therefore expected to assess the adequacy of environmental impact analyses (*Analisis Mengenai Dampak Lingkungan*, or AMDAL) as part of their due diligence in lending decisions. Banks’ failure to perform environmental due diligence may give rise to the proliferation of financing linked to environmentally harmful projects. This regulatory framework demonstrates that the intersection of environmental and banking regimes collectively forms the legal and prudential basis for requiring Indonesian banks to integrate environmental risk management into their fiduciary duties and compliance obligations.

Assessment of Indonesian green banking and decarbonisation policy

Despite the existence of these legal instruments, empirical findings demonstrate a substantial implementation gap. Reports by ARE in 2025 have shown Indonesian banks’ moderate progress in governance and risk management in relation to climate change but that they remain notably weak when it comes to policy commitment and fossil-fuel phase-out strategies. The study found that Indonesian banks scored an average of 53% across key decarbonisation dimensions, with governance at 50%, risk management at 83%, opportunity at 75%, but policy commitment only at 17%. While the policy assessment focuses on evaluating efforts to reduce banks’ exposure to high-carbon industries, the governance dimension primarily examines the extent of management board accountability in implementing green banking and decarbonisation policies. The risk management dimension concerns the adequacy of risk mitigation measures undertaken prior to lending decisions, whereas the opportunity aspect pertains to the enhancement of banks’ disclosure of sustainable finance targets.

Among the four Indonesian banks assessed in the study, only one had publicly committed to a formal net-zero target, while none had established specific timelines for phasing out financing of new coal-fired power projects. This limited progress reflects both institutional and regulatory challenges. While the OJK encourages sustainable finance through POJK 51/2017, POJK 14/2023, and POJK 18/2023, it has yet to impose explicit prohibitions or mandatory transition timelines for high-carbon financing. Consequently, between 2016 and 2024, Indonesian banks accounted for 12% of coal project financing across South-East Asia.

In conclusion, although the current legal framework promotes green banking, the lack of enforceable measures allows carbon-intensive financing to persist. This suggests that Indonesia’s regulatory regime still relies heavily on voluntary compliance and reputational incentives rather than binding legal obligations.

Enforcement challenge

Under POJK 51/2017, banks must disclose sustainability performance indicators. However, the regulation lacks explicit sanctions for inaccurate or incomplete reporting, reducing its deterrent effect. The absence of a standardised disclosure framework comparable to the Task Force on Climate-related Financial Disclosures (TCFD) in the Indonesian regulatory framework also limits its cross-jurisdictional comparability and overall transparency.

The OJK’s current supervisory approach is largely principle-based, emphasising persuasion and guidance rather than enforcement. Although this fosters flexibility, it may weaken compliance incentives, particularly for large banks with fossil-heavy portfolios. From a legal perspective, banks may face the following consequences:

- administrative liability for non-compliance with the OJK’s sustainability reporting or environmental due diligence obligations; and
- reputational and market risk arising from ESG-related scrutiny by investors and stakeholders (ie, ESG rating system for listed companies).

It is questionable whether Law 32/2009 allows for the possibility of indirect liability where financial institutions knowingly fund environmentally destructive activities. However, the dispute settlement provisions under the regulation are sufficiently broad in interpretation to allow for the imposition of indirect liability on financial institutions that knowingly finance environmentally destructive activities. Nevertheless, such provision has rarely been tested in Indonesian courts and enforcement challenges remain a central obstacle.

Indonesia Sustainable Finance Taxonomy

The lack of detailed implementing regulations specifying sanctions for unsustainable financing renders existing obligations largely aspirational. Supervisory bodies have yet to establish clear methodologies for assessing climate-related financial risk in stress-testing or prudential evaluations. In an effort to close this gap, the OJK launched a consultative paper on the third version of Indonesia Sustainable Finance Taxonomy (*Taksonomi untuk Keuangan Berkelanjutan Indonesia*, or “TKBI Version 3”) on 16 October 2025. It is a classification system for economic activities that support Indonesia’s Sustainable Development Goals, encompassing economic, environmental and social dimensions. The taxonomy serves as a reference framework to enhance capital allocation and sustainable financing, thereby contributing to the achievement of Indonesia’s net-zero emission target.

The TKBI is developed through a progressive approach covering all Nationally Determined Contribution (NDC)-related sectors as well as relevant enabling sectors. The first version, TKBI Version 1 (issued in February 2024), established the core framework and technical criteria for activities in the energy sector. The subsequent TKBI Version 2 introduced technical criteria for three NDC sectors, such as construction and real estate, transportation and storage, and parts of the agriculture, forestry and fishing (AFF) sectors, particularly forestry and palm oil plantations.

In alignment with the ongoing development of the ASEAN (Association of Southeast Asian Nations) Taxonomy for Sustainable Finance (ATSF) Version 4 by the ASEAN Taxonomy Board (ATB), the OJK continues the formulation of TKBI Version 3. This version

will include Technical Screening Criteria (TSC) for three NDC sectors – namely, AFF (covering agriculture, plantation, fisheries and marine, social forestry, and species conservation), manufacturing/industrial processes and product use (IPPU), and water supply, sewerage, and waste management (WSSWM) – as well as two enabling sectors, which are:

- information and communication; and
- professional, scientific and technical (PST) activities.

The preparation of TKBI is carried out through close collaboration between the OJK, relevant ministries/agencies, and various national and international stakeholders. The development of TKBI Version 3 is currently in the public consultation stage – related consultative papers regarding which are published on the OJK’s homepage. The consultation includes written submissions and in-person meetings, which took place between 11 October 2025 and 21 November 2025, with focus group discussions on 30 October 2025 and 31 October 2025.

With regard to sustainable financing provided by the banks and other financial institutions, TKBI Version 3 introduces the following features.

- Green certification for businesses operating within NDC-related sectors is anticipated to become one of the key prerequisites for financing recipients to qualify for lending facilities from banks. Some of the applicable criteria for green certification in TKBI Version 3 are:
 - (a) businesses within the AFF sector must have implemented measures to ensure resilience against climate change, adopted practices aimed at enhancing environmental sustainability, and minimised or eliminated adverse impacts on biodiversity;
 - (b) businesses within the IPPU sector must demonstrate a focus on product design to enable practical reuse and recycling, minimising product loss and waste throughout the value chain, optimising production efficiency, and extending the product’s lifespan to the greatest extent possible – business must also prioritise the use of recycled and/or renewable raw materials to

reduce dependence on high-impact resources and enhance resource resilience;

- (c) businesses within the WSSWM sector must have implemented measures to promote waste segregation, maximised the recovery and reuse of materials and resources, and reduced disposal to landfills;
 - (d) businesses within the PST sector must have implemented reduction of greenhouse gas emissions based on a science-based and credible pathway; and
 - (e) business activities within the information and communication sectors must comprise programming, broadcasting, and software development that promotes greenhouse gas emission reduction through the development and implementation of innovative technologies that enhance energy efficiency, minimise waste, and facilitate the transition to renewable energy sources.
- The financial services institution is required to assess the alignment of business actors with TKBI Version 3, either in relation to the overall organisational system (entity-level assessment) and its business portfolio (portfolio-level assessment). These assessments should take into account the entity's contribution to sustainable business activities, measured by the percentage of its total revenue, capital expenditure, and operational expenditure allocated towards achieving sustainable objectives.

The publication of TKBI Version 3 consultative papers reflects the Indonesian regulator's efforts to establish practical mechanisms for financial institutions to implement green banking and decarbonisation. Nevertheless, it remains uncertain whether these soft laws (ie, requirements for green certification and the assessment of businesses' alignment with the sustainable business taxonomy) will eventually be formalised into binding and enforceable instruments, such as OJK regulations.

Outlook and recommendations

Indonesia's regulatory landscape for green banking and decarbonisation represents an important step towards aligning financial practices with sustainability principles. However, the current framework falls short of establishing binding mandates or robust enforcement mechanisms. Consequently, Indonesian banks are increasingly exposed to reputational and legal risks arising from their continued financing of high-emission projects, which stands in contrast to the rapid advancement of global and regional sustainability standards.

The Indonesian regulators are encouraged to strengthen regulatory enforcement, align disclosure standards for the financing targets, and enhance national inter-agency co-ordination. Once the issue of enforceability is addressed, banks will inherently bear legal accountability in fulfilling their role in supporting the nation's transition towards a low-carbon economy.

While awaiting the formal adoption or incorporation of international standards into the binding regulatory framework for green banking and decarbonisation, Indonesian banks are encouraged to implement the OJK's carbon trading guidelines (*Mengenal dan Memahami Perdagangan Karbon Bagi Sektor Jasa Keuangan*) – the first edition of which was published in July 2025. In line with POJK 51/2017, the guidelines encourage banks to provide blended financing to the small carbon project developers, allocate financing related to the improvement of human resources capacity through manpower training in carbon projects, and act as intermediaries in carbon trading.



Law and Practice

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Cleary Gottlieb Steen & Hamilton LLP opened its Rome office in 1998 after decades of representing Italian companies and multinationals doing business in the country. Along with its Milan office, which opened in 2001, its Italian offices have nearly 100 lawyers who provide clients with integrated Italian, pan-European, and global legal services by offering a wide range of transactional and regulatory advice and representing clients in domestic and international litigation and arbitration proceedings. All of its law-

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1. Legal Framework

1.1 Key Laws and Regulations

The Italian banking sector is primarily governed by Legislative Decree No 385/1993 (the “Consolidated Law on Banking”), which, among other things, regulates:

- the authorisation regime for banking activity;
- banks’ branches and cross-border services;
- banks’ and banking groups’ supervision;
- transparency and conduct requirements in connection with the provision of banking services and payment services;
- deposit guarantee schemes;
- recovery and administration proceedings; and
- sanctions.

The Consolidated Law on Banking, together with the Bank of Italy’s Circular No 285/2013, transposes the EU bank regulatory framework, including the EU Capital Requirements Directive (the “CRD IV” and the “CRD V”) into Italian law and incorporates the options and discretions provided in the EU Capital Requirements Regulation (the “CRR”, “CRR II” and “CRR III”) into Italian law.

Other key Italian laws and regulations in the banking sector are:

- Legislative Decree No 11/2010, which has implemented the EU Payment Services Directive (the “PSD” and the “PSD II”);
- Legislative Decree No 231/2007, which has implemented the EU Anti-Money Laundering Directive (the “AMLD IV” and the “AMLD V”);
- Legislative Decree No 180/2015, which has implemented the EU Bank Recovery and Resolution Directive (the “BRRD” and the “BRRD II”);
- Legislative Decree No 129/2024, which has aligned the national framework to the Markets in Crypto-Assets Regulation (Regulation (EU) 2023/1114) (the “MICAR”); and
- Legislative Decree No 58/1998 (the “Consolidated Law on Finance”) and the *Commissione Nazionale per le Società e la Borsa* (CONSOB) Intermediaries Regulation, which have implemented the EU Mar-

kets in Financial Instruments Directive (the “MiFID II”).

Banking supervision is jointly conducted by two main Italian regulators and the European Central Bank (ECB) as follows.

- The Bank of Italy carries out the prudential supervision of banks in co-ordination with the ECB. In particular:
 - (a) the ECB directly supervises “significant” Italian banks and banking groups, identified according to the criteria set out in Article 6 (4) of EU Regulation 1024/2013 (the “SSM Regulation”); and
 - (b) the Bank of Italy directly supervises other “less significant” Italian banks and banking groups.
- CONSOB is responsible for the transparency and fairness of banks’ conduct towards investors in the provision of investment services and activities.

Banking supervision in Italy also involves the *Unità di Informazione Finanziaria* (UIF), which is Italy’s financial intelligence unit. It focuses on preventing and detecting money laundering and terrorist financing. It operates independently of the Bank of Italy.

Secondary national legislation consists of:

- resolutions of the Interministerial Committee for Credit and Savings (CICR), which, upon proposals from the Bank of Italy, provides supervisory guidelines through ministerial regulations;
- circulars, regulations and supervisory rules issued by the Bank of Italy; and
- CONSOB’s regulations.

2. Authorisation

2.1 Licences and Application Process Authorisation Requirements

“Banking activity” is defined under Italian law as collecting savings from the public and granting loans. The exercise of “banking activity” is exclusively reserved for banks. Financial intermediaries are only authorised to carry out lending activities.

The ECB – together with the Bank of Italy – is the competent authority for granting banking authorisations to Italian banks.

Applicants for banking licences in Italy must meet the following requirements.

- Be a joint stock company (*società per azioni*) or mutual limited liability company (*società cooperativa a responsabilità limitata*).
- Have an established registered office and headquarters in Italy.
- Have a minimum initial share capital of:
 - (a) EUR10 million for joint stock companies, *banche popolari*, and mutual loan guarantee banks (*banche di garanzia collettiva*); or
 - (b) EUR5 million, for mutual credit banks (*banche di credito cooperativo*).
- Have an initial business plan that focuses on capital and organisational structure, along with the memorandum of incorporation and articles of association.
- Comply with the qualifying shareholders' requirements.
- Have completed a fitness and propriety assessment for members of the bank's board of directors, board of statutory auditors and, if appointed, general manager.
- Have no close links with a bank or any entity within or outside the group which could undermine effective supervision.

Authorisation Process

The licensing application must be submitted via the European Information Management System (IMAS) Portal.

The Bank of Italy, in co-operation with the ECB, will then carry out a preliminary assessment of the application.

Based on the preliminary assessment, the Bank of Italy:

- in the case of a positive outcome, will forward a draft authorisation decision to the ECB for its approval; or

- in the case of a negative outcome, will reject the application.

If the preliminary assessment is positive, the ECB will make the final decision within 180 days of receiving the completed application, subject to any suspension or interruption and, in any case, within 12 months.

Before applying, applicants may request a meeting with the Bank of Italy.

During its assessment, the Bank of Italy may request additional information and certifications, conduct investigations and seek the opinion of other national or foreign competent authorities.

Applicants are not required to pay any fee or to use a specific submission form. However, licensed banks are required to pay supervisory fees to the ECB to cover the costs related to banking supervision, the amount of which depends on the bank's size and risk profile.

Activities Covered by the Banking Authorisation

The banking authorisation covers a wide range of activities and services that must be carried out in compliance with the relevant rules under Italian law. They are:

- taking deposits or other repayable funds from the public and granting of loans;
- payment services;
- electronic money issuance;
- all other financial activities; and
- related or ancillary activities.

Services Requiring Additional Authorisations

In order to provide certain financial services, Italian banks will need additional authorisations. They are as follows.

- For investment services and activities under the MiFID II framework, an authorisation from the Bank of Italy, following consultation with CONSOB, is required.
- For issuing, offering to the public (and/or seeking admission to trading of) asset-referenced tokens

under MiCAR, a notification to the Bank of Italy is required at least 90 business days in advance.

- For issuing, offering to the public (and/or seeking admission to trading of) electronic money tokens under MiCAR, a notification to the Bank of Italy is required at least 40 business days in advance.
- For carrying out crypto-asset services under MiCAR, a notification to the Bank of Italy is required at least 40 business days in advance.
- For acting as a depositary bank of collective investment undertakings, an additional Bank of Italy authorisation is required, and the authorisation must be granted or refused within 120 days from the date of receipt of a complete application.

EU Passporting

The exercise of banking activities in other EU member states by Italian banks requires:

in the case of establishment, an advance notice to the Bank of Italy, which will inform the ECB (in case of “significant” banks). If no contrary decision is made by the Bank of Italy or the ECB within two months of the receipt of such notification, the branch may be established and start its activities; and

in the case of cross-border service provision, Italian banks must notify the Bank of Italy, which will give advance notice to the ECB and the host country’s authority.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Prior Approval Requirements

A prior ECB approval, upon a proposal by the Bank of Italy, is required when a prospective acquirer, or more prospective acquirers acting in concert, intends to:

- acquire a direct or indirect holding in a bank which represents 10% or more of the capital or the voting rights or which makes it possible to exercise significant influence or control over the bank’s management (“qualifying holding”);
- increase an existing “qualifying holding”, when the voting rights or share capital reaches or exceeds

20%, 30% or 50%, or when the increase results in control over the bank; and

- acquire, in any form, without purchasing shares (including through an agreement with the bank or a provision in its articles of association) control or significant influence over the bank, or a percentage of voting rights or capital of at least 10%, 20%, 30% or 50%, taking shares already owned into account.

Required Regulatory Filings

For the acquisition of a “qualifying holding” in an Italian bank, the proposed acquirer must submit an advance application to the Bank of Italy and the ECB via the IMAS Portal.

The information and documentation to be provided include:

- a description of the transaction and any other authorisations required in connection thereto;
- information on the proposed acquirer, including its business, the individuals who effectively direct its business, qualifying shareholders, reputation and group;
- information on the persons who will direct the business of the target bank;
- information on the financial soundness and compliance with regulatory requirements, including information on the financing of the transaction and its impact on the supervision of the target bank;
- information on compliance with AML/CFT legislation; and
- additional information depending on the amount of the shareholding to be acquired, including a business plan in case the shareholding reaches or exceeds 20%.

Foreign applicants may also be required to:

- file a separate notification to the Italian government under the foreign direct investments regime; and
- provide additional documentation concerning their group, shareholders, and financial soundness, especially when incorporated in non-EU jurisdictions that are not considered equivalent to Italy in terms of AML and tax treatment.

Approval Process

The Bank of Italy assesses the proposed acquirer and then submits a draft decision to the ECB, either approving or refusing the acquisition.

The approval process lasts 60 working days from the date of the Bank of Italy's acknowledgement of receipt of a complete application. The term may be suspended only once for up to 30 working days if the acquirer is a non-EU person or a non-regulated EU entity, or for 20 working days in all other cases.

Post-Acquisition Filings

The acquirer(s) must inform the Bank of Italy of the completion of the proposed acquisition within ten days. They must file an advance notice with the Bank of Italy in case they intend to reduce their "qualifying holding" below a relevant threshold.

4. Governance

4.1 Corporate Governance Requirements

Alternative Corporate Governance Systems

Italian corporate law contemplates three different governance and supervision systems that stock corporations, including banks, may choose to adopt. These are as follows.

- The traditional and most common Italian model comprises:
 - (a) a board of directors, which is responsible for the bank's management;
 - (b) a board of statutory auditors, composed of independent members monitoring the board of directors' operations; and
 - (c) a shareholders' meeting, which is primarily responsible for the appointment of corporate bodies and for the approval of the financial statements.
- A one-tier model, only consisting of a board of directors, which includes a management audit committee (*comitato per il controllo sulla gestione*) composed of a majority of independent directors.
- A two-tier model comprising:
 - (a) a supervisory board (*consiglio di sorveglianza*); and
 - (b) a management board (*consiglio di gestione*).

Banks must select the most suitable corporate governance model to enhance operational efficiency and ensure effective controls, while considering the associated costs of each model.

Italian banks adopting the two-tier model are required to set up an "internal controls committee" if the supervisory board is responsible for strategic supervision or has a broad composition.

Italian banks adopting the one-tier model are required to set up a "management control committee", which is primarily responsible for ensuring compliance with laws, regulations, and the bank's articles of association, as well as for proper governance and for ensuring the bank has an adequate organisational and accounting framework.

Board Committees

Banks that are large or operationally complex are required to set up:

- a nomination committee (*comitato nomine*);
- a risks committee (*comitato rischi*); and
- a remuneration committee (*comitato remunerazioni*).

Composition of Corporate Bodies

Italian banks must comply with limits on the number of board members, with specific thresholds for traditional models (up to a maximum of 15), one-tier models (up to a maximum of 19), and two-tier models (up to a maximum of 22), which can only be exceeded in exceptional cases.

The management body must include an adequate number of non-executive members. The body with strategic supervisory functions must also include independent members.

Banks must identify and assess over time an optimal qualitative-quantitative composition for their governing bodies and define ideal profiles for candidates in terms of professionalism and independence.

The composition of corporate bodies must reflect an appropriate degree of diversity in terms of skills, experience, age, gender and international background.

Members of the underrepresented gender in bodies with strategic supervision and control functions must represent at least 33% of the total number.

Internal Control Functions

Banks must establish three lines of defence as follows.

- Business line controls (first line of defence), intended to ensure the proper execution of operations and conduct by the same operational structures.
- Compliance and risk management controls (second line of defence), intended to ensure:
 - (a) the proper implementation of the risk management process; and
 - (b) the compliance of business operations with laws and regulations, including self-regulation standards to avoid penalties, losses and reputational damage.
- Internal audit controls (third line of defence), intended to detect violations of procedures and regulations and periodically assess the completeness, adequacy, functionality and reliability of the internal control and the ICT system.

4.2 Registration and Oversight of Senior Management

Key Suitability Requirements

In order to ensure the sound and prudent management of an Italian bank, all members of its corporate bodies and the general manager (if appointed) must satisfy the following suitability requirements:

- professional experience;
- integrity;
- independence;
- competence;
- fairness; and
- time commitment.

The same requirements and criteria also apply to members of the senior management of listed banks and larger banks.

The remit of each requirement is defined and specified in Italian Ministerial Decree No 169/2020.

- “Professional experience” means:

- (a) for executive members, relevant experience of at least three years;

- (b) for the chairman, the chief executive officer and the general manager, relevant experience of at least five years; and

- (c) for non-executive directors, experience of at least three years in university or professional activities across the financial sector.

- “Integrity” refers to the absence of convictions for specific offences or disqualification measures.
- “Independence” (required for independent directors) means the absence of personal or professional relationships with the relevant banking group. Other members must satisfy the independence of judgment requirements.
- “Competence” means having adequate knowledge and practical experience in bank-related matters.
- “Fairness” refers to the absence of situations that could compromise the bank’s sound and prudent management (eg, convictions for certain offences, administrative sanctions or debarment from professional registers management).
- “Time commitment” refers to the requirement that all members of a bank’s corporate body dedicate sufficient time to their offices. For positions at large or operationally complex banks, the following alternative limits apply:
 - (a) one executive and two non-executive positions; or
 - (b) four non-executive positions.

Interlocking Directorates Prohibition

Members of the corporate bodies and general managers of Italian banks are subject to the prohibition on interlocking directorates under Italian law. This prohibition prevents individuals from holding board or senior management positions in competing companies within the Italian banking, financial and insurance sectors to avoid conflicts of interest and ensure fair competition.

Suitability Assessment Process

The suitability of new members of corporate bodies and general managers of “less significant” banks must be assessed by the competent corporate body (either in advance, if appointed by the board, or within 30 days from the appointment, if appointed by the general meeting).

Under Law No 91/2025 (*Legge di delegazione europea 2024*) and the draft legislative decree implementing CRD VI, the Italian legislator opted for the exercise of the discretion set out under CRD VI, according to which in case of replacement of the majority of the members of a corporate body the suitability assessment must be carried out *ex post*, to avoid a situation of potential conflict of interests, where the outgoing members would carry out an *ex ante* assessment of the incoming members.

The relevant assessment must be formalised in detail in the minutes of the meeting of the relevant corporate body and then submitted to the Bank of Italy within 30 days. Within the next 120 days, the Bank of Italy may require the corporate body to take appropriate measures, such as training, to improve the skills necessary to perform the role effectively. It also has the power to initiate an administrative proceeding to remove members found to be unsuitable or in breach of the interlocking prohibition.

The suitability assessment must be carried out by the ECB where the bank is “significant”, which may exercise its powers in line with the SSM Regulation.

4.3 Remuneration Requirements

The remuneration rules in the CRD V and the EBA Guidelines on Sound Remuneration Policies are transposed into Italian law by Articles 53 and 67 of the Consolidated Banking Act, and by the Bank of Italy’s rules on remuneration and incentive policies and practices in banks and banking groups, as set out in Circular No 285/2013.

Scope of Remuneration Requirements

Sound remuneration policies that avoid excessive risk-taking and are gender-neutral must be applied to all staff members of Italian banks and banking groups.

They must be approved by the bank’s shareholders’ meeting upon a proposal from the strategic supervision body.

Remuneration requirements vary depending on whether:

- staff members are members of corporate bodies;

- staff members carry out professional activities that have a substantial impact on the bank’s risk profile (ie, so-called “material risk takers”);
- staff members are assigned to control functions;
- staff members are not qualified as so-called “material risk takers”; and
- staff members are other collaborators (eg, financial advisors and agents).

Fixed and Variable Remuneration

For all bank staff, the ratio between the fixed and variable component cannot exceed 100%, although an increase up to 200% is allowed if expressly provided in the articles of association and approved by shareholders’ resolution with a supermajority.

For “material risk takers”, however:

- at least 50% of the variable component must be paid in shares or an equivalent ownership interest;
- a minimum retention period of one year applies to remuneration paid in instruments; and
- the variable remuneration must be deferred for at least 40% or, in the case of particularly high amounts of variable remuneration, for at least 60% over five years.

Bank of Italy’s Supervisory Approach

The Bank of Italy has ample investigation and enforcement powers to ensure compliance with bank remuneration requirements. In practice, it is particularly focused on circumvention of remuneration requirements.

5. AML/KYC

5.1 AML and CFT Requirements

Legislative Decree No 231/2007 (the “AML Decree”) (as subsequently amended) sets out Italian rules implementing the AMLD IV and the AMLD V. With respect to credit and financial institutions, the requirements set out in the AML Decree are further specified and clarified in the Bank of Italy’s implementing regulations (the “BoI Regulation”) (collectively known as the “AML Rules”).

Under the AML Rules, certain obliged entities (including credit and financial institutions) are required to comply, among other things, with:

- customer due diligence (or know your customer (KYC)) requirements
- when, among other things, they establish a business relationship; carry out an occasional transaction that amounts to EUR15,000 or more (whether in a single transaction or in several transactions which appear to be linked); and/or make a transfer of funds, as defined in Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets), exceeding EUR1,000;
- record-keeping requirements; and
- suspicious transaction reporting requirements.

Customer Due Diligence Requirements

Under the AML Rules, obliged entities are required to:

- identify the customer and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- identify the beneficial owner (ie, the natural person(s), other than the client, on whose behalf the business relationship is being opened, the activity is being conducted, or the transaction is being carried out, if any) and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is;
- obtain and assess information on the purpose and intended nature of the business relationship, as well as, if appropriate, based on the relevant risk, additional information, including on the customer's source of wealth and source of funds; and
- conduct ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions are consistent with the obliged entity's knowledge of the customer, the business and risk profile (including, where necessary, the source of funds) and ensuring that the documents, data or information held are kept up-to-date.

While obliged entities are required to comply with customer due diligence requirements with respect to all their customers, they may determine the extent of these measures (standard, simplified or enhanced due diligence) on a risk-sensitive basis.

Record-Keeping Requirements

Obliged entities must retain copies of the documents and information necessary to comply with customer due diligence duties, as well as the original documents (or copies admissible in judicial proceedings) relating to transactions. This obligation applies for ten years after the end of a business relationship with the customer or after the date of an occasional transaction.

Suspicious Transaction Reporting

Where they know, suspect, or have reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, obliged entities must file a suspicious transaction report with the UIF at the Bank of Italy. Obliged entities must refrain from carrying out the specific transaction before filing the report with the UIF and must keep the filing of a report with the UIF strictly confidential.

Finally, the AML Decree provides that all Italian companies and entities (including credit and financial institutions) must obtain information on their beneficial owners and disclose it in public registers (for example, the Companies House (*Registro delle Imprese*)). On 11 March 2022, the Italian Ministry of Economic Affairs, in consultation with the Ministry of Enterprises and Made in Italy (formerly the Ministry of Economic Development), adopted a decree implementing this requirement, introducing an ultimate beneficial owner register, and providing for the adoption of further implementing decrees. The overall framework was:

- declared to have been fully implemented by Decree dated 29 September 2023; and
- supposed to become effective as of 11 December 2023.

However, the requirement for Italian companies and entities to disclose information on their beneficial ownership in the register was suspended by the Administrative Court of Rome in an order issued on

7 December 2023 and, subsequently, the Council of State in an order issued on 17 May 2024. The suspension by the Council of State is still in effect, pending a decision of the European Court of Justice (in cases C-684/24 and C-685/24) on a preliminary ruling request by the Council of State on the compatibility of the provisions that allow access to information on the beneficial ownership to anyone showing a “legitimate interest”, with EU fundamental rights.

In the meantime, the European Commission has opened an infringement procedure against Italy (and the other 10 Member States) for the lack of transposition of the AMLD VI provisions requiring Member States to guarantee access to national beneficial ownership registries, which had to be transposed by 10 July 2025.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Deposit guarantee schemes (DGSs) aim to avoid, or at least reduce, the systemic impacts of banking crises by either preventing the failure of credit institutions or providing a post-crisis reimbursement function.

In Italy, DGSs are mainly governed by Article 96 et seq of the Consolidated Banking Act (as amended to transpose Directive 2014/49/EU on deposit guarantee schemes (the “DGSD”) into Italian Law), as well as by the supervisory provisions on DGSs issued by the Bank of Italy on 12 November 2024.

Participation Requirements

In line with EU law, Italian law requires credit institutions to be part of a recognised DGS. Specifically, except for mutual credit institutions, which are members of the Depositors’ Guarantee Fund of mutual banks (*Fondo di garanzia dei depositanti del credito cooperativo* (FGDCC)), all Italian banks, as well as branches of non-EU banks authorised in Italy which are not part of an equivalent deposit protection scheme (DGS), are required to participate in the Interbank Deposit Protection Fund (*Fondo Interbancario di tutela dei depositanti* (FITD)), which is a private law consortium. Italian branches of EU banks can also join the FITD in order to supplement the guarantee provid-

ed by their home DGSs. The Bank of Italy supervises both the FITD and the FGDCC.

Banks are also free to participate in other DGSs set up on a voluntary basis and the rules on mandatory DGSs do not apply to them. The Voluntary Intervention Scheme (*Schema Volontario di Intervento* (SVI)) was established to overcome the uncertainty under the state aid framework regarding the asserted public nature of the FITD’s resources. The uncertainty was finally resolved in the Tercas case, which clarified that the FITD’s resources are private in nature.

Depositor Guarantee

Italian mandatory DGSs guarantee deposits of up to EUR100,000 per depositor. The limit is valid for each depositor, per individual bank. The protection applies to repayable funds deposited at banks, not only in the form of deposits, but also in other forms (eg, deposit certificates), and regardless of currency. Financial instruments are not included in the guarantee.

Interventions

DGSs intervene to protect deposits in the following ways.

- Where the member bank is in liquidation:
 - (a) by reimbursing depositors within seven working days from the date on which the unavailability of deposits or compulsory administrative liquidation of the bank takes effect; or
 - (b) giving support for the transfer of assets and liabilities, including deposits, to another bank, provided that the cost for the intervention does not exceed the costs of reimbursing depositors (so-called “alternative measures”, such as those in favour of Banca Popolare delle Province Calabre in 2016).
- Preventing bank crises, for example by providing loans or purchasing shares so that a bank can carry on its activities, provided that the cost for the intervention does not exceed the costs of other possible interventions in line with the applicable framework (the so called “preventive measures”, such as those in favour of Banca Carige in 2022 and Banca Popolare di Bari in 2020).

- Where the bank is placed into resolution, the resolution will be financed in accordance with applicable rules.

Contributions to DGSs

Member banks are required to make ex ante contributions at least annually, which may include payment commitments, with the total share not exceeding 30% of total resources. Contributions have to be proportionate to the amount of member banks' covered deposits and to their risk profile, in order, among other things, to encourage banks to reduce risks linked to their business models. The amount to be contributed by each member bank is determined by the scheme using appropriate models, which can also take into account the EBA Guidelines on Methods for Calculating Contributions to DGS, and must be approved by the Bank of Italy.

If ex ante contributions are insufficient for the DGS to fulfil its reimbursement obligations, it may require members to make extraordinary ex post contributions not exceeding 0.5% of covered deposits per calendar year. Italian DGSs, like all mandatory DGSs, must maintain available financial resources in a segregated financial endowment that is at least 0.8% of their members' covered deposits. Provided that certain conditions are met, the Italian Ministry of Economy and Finance is allowed, upon approval of the European Commission, to authorise a lower minimum target level (which may not fall below 0.5% of covered deposits).

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Legal Framework

As Italy is part of the EU, Italian banks are subject to the capital and liquidity requirements established in the CRR (as amended), which is directly applicable, and in Directive 2013/36/UE (as amended) (the "CRD IV"), which is transposed into Italian law by the Consolidated Banking Act and Bank of Italy Circular No 285/2013 (as amended). The CRR has been amended by the CRR III to implement the Basel 3.1 standards, which apply from January 2025, with certain phase-in periods.

Minimum "Own Funds Requirements"

The minimum "own funds requirements" (expressed as a percentage of an institution's risk weighted assets (RWAs) after deductions) are equal to:

- 4.5% Common Equity Tier 1 (CET1);
- 6% including Additional Tier 1; and
- 8% total capital, including Tier 2 capital instruments.

Pillar Two Capital Requirements and Guidance

Pillar Two capital requirements refer to additional capital that banks must hold to address risks not fully covered by Pillar One capital requirements, as determined by the Bank of Italy or the ECB through the Supervisory Review and Evaluation Process (SREP). Pillar Two guidance is non-binding advice on the capital a bank should hold to maintain resilience during stressful scenarios.

Capital Buffers

In addition to the minimum capital requirements, the following prudential capital buffers must be met with CET1 capital:

- a capital conservation buffer: equal to 2.5% of a bank's total exposures;
- a countercyclical buffer: up to 2.5% of RWAs to be determined by the Bank of Italy based on macro-economic indicators (the buffer is currently set at 0%); and
- global systemic institution buffer: additional CET1 capital requirement ranging from 1% to 2.5% depending on a bank's systemic importance.

Liquidity Requirements

Banks must comply with two liquidity ratios:

- the liquidity coverage ratio (LCR) is intended to measure whether banks hold an adequate level of unencumbered, high-quality liquid assets to meet net cash outflows under a stress scenario lasting for 30 days (its purpose is to improve short-term resilience); and
- the net stable funding ratio (NSFR) measures the amount of stable funding available to a bank to support its assets and activities over a one-year

period (its purpose is to improve resilience in the medium term).

TLAC

Under the CRR, the total loss-absorbing capacity (TLAC) applies to EU banks identified as globally systemically important institutions (G-SIIs). These banks are required to maintain sufficient liabilities and own funds to absorb losses and facilitate recapitalisation during resolution, ensuring financial stability and minimising risks to public funds. The CRR (as amended) integrates TLAC into the existing minimum requirement for own funds and eligible liabilities (MREL), ensuring alignment while accommodating EU-specific resolution frameworks.

Output Floor

The output floor under CRR III, in alignment with the Basel 3.1 framework, establishes a minimum level for risk-weighted assets (RWAs) calculated using internal models at 72.5% of the RWAs determined by the standardised approach. This measure aims to limit excessive variability in capital requirements across banks. The output floor is being phased in gradually, starting at 50% in 2025 and increasing annually by five percentage points until it reaches 72.5% in 2030. Following public consultation, on 27 August 2025, the Bank of Italy updated the Bank of Italy Circular No 285/2013 in order to exercise the option to apply a preferential treatment to low-risk residential mortgages for the purposes of the output floor.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Origin and Purpose of the Bank Recovery and Resolution Framework

The Italian legal framework on banking crises underwent a significant reform process in 2015 in order to implement the EU harmonised rules set out in response to the financial crisis of 2008-2009 and also in light of the principles envisaged by the Financial Stability Board (FSB) in its 12 Key Attributes of Effective Resolution Regimes of 2011 (as revised in 2014). The EU package included:

- the BRRD;

- the DGSD;
- the SSM Regulation;
- Regulation (EU) 806/2014 (the Single Resolution Mechanism Regulation or SRM); and
- the rules on state aid.

The BRRD has also been amended by the BRRD II, which includes updates on the hierarchy of claims and introduced a general depositor preference.

Ordinary bankruptcy procedures have never been applied to Italian credit institutions, considering the “public service” provided by banks. Indeed, banking crises in Italy were originally managed through a pre-insolvency and an insolvency procedure set out in the Consolidated Banking Act, namely:

- special administration (*amministrazione straordinaria*), which was aimed at avoiding the crisis by means of the replacement of the main bodies of the credit institution; and
- compulsory administrative liquidation (*liquidazione coatta amministrativa*), which was aimed at winding up the credit institution, possibly through the sale of the business, while the bank was still active. The sale of a business or branch of a failing bank was usually financed by the State, which would step in to pay the difference between the assets and the liabilities taken on by the purchaser. Depositor protection was therefore ensured.

The European recovery and resolution framework intends to:

- prevent the crisis; and
- where this is not feasible, ensure that the crisis is managed in an orderly way, without interrupting the essential activities of the bank (such as granting loans or taking deposits), restoring the viability of the healthy part of the bank, and liquidating the remaining parts.

This framework aims to avoid public interventions in order to protect taxpayers. In particular, to reduce moral hazard, only shareholders (first) and creditors (after shareholders, in accordance with the insolvency creditor hierarchy) bear losses. To achieve these goals, the BRRD has established “bank resolution”

as a standardised administrative procedure. This procedure applies to banks that are either failing or likely to fail, but where there is a public interest in resolving the bank rather than liquidating it.

Italian Transposition of the BRRD

The BRRD and the BRRD II have been transposed into Italian law through:

- Legislative Decree No 180 of 2015 of 16 November 2015 that designates the Bank of Italy as the national resolution authority with powers to adopt regulatory measures and includes provisions concerning, among other things, the preparation of resolution plans, resolution powers and tools and the crisis management of cross-border groups. It also establishes a national resolution fund (*Fondo di Risoluzione Nazionale*), which is funded by the Italian banking sector and managed by the Bank of Italy; and
- Legislative Decree No 181 of 2015 of 16 December 2015 that sets out rules on recovery plans, intra-group financial support, early intervention measures and hierarchy of creditors.

A new Resolution and Crisis Management Unit (*Unità di risoluzione e gestione delle crisi*) within the Bank of Italy has been entrusted with the resolution powers and functions performed by the Bank of Italy as the national resolution authority. It may apply the following resolution tools (either on a standalone basis or in combination):

- sell the business to a private buyer;
- temporarily transfer the assets and liabilities to a “bridge” institution that continues to carry out critical functions, with the objective of selling them on the market;
- separate the assets or transfer non-performing loans (NPLs) to a vehicle that manages their liquidation; and
- write down equity and other liabilities and convert them into shares to absorb losses and recapitalise the bank, provided that the “no-creditor-worse-off” principle is complied with. This principle states that creditors should not incur greater losses than would have been incurred if the resolution entity had been wound up under normal insolvency proceedings (so-called “bail-in”).

Depositor Preference

The BRRD II introduced a general depositor preference across the EU. This means that all deposits, whether covered (up to EUR100,000) or non-covered by DGS, rank above ordinary unsecured claims in insolvency or resolution proceedings.

Deposits are divided into two categories for ranking purposes, where Tier 1 deposits rank higher than Tier 2 deposits.

Tier 1 includes DGS-covered deposits (up to EUR100,000) and deposits by individuals, microenterprises and SMEs above the amount covered by the DGS.

Tier 2 includes other eligible deposits (eg, those held by large corporate clients).

Even prior to the BRRD II, Italian law provided for an extended depositor preference regime, which prioritises “other deposits” (including those held by corporate clients) over ordinary unsecured claims.

9. ESG

9.1 ESG Requirements

Italian banks are subject to a growing body of ESG requirements driven by EU regulations. These obligations aim to align the banking sector with sustainable finance goals and address climate-related risks. However, compliance with ESG requirements is expected to become less burdensome thanks to the EU Omnibus Package, a set of legislative proposals adopted by the European Commission on 26 February 2025, aimed at streamlining the EU’s ESG framework through significant simplification of existing legislation (the “Omnibus Package”).

Key ESG-Related Requirements

Sustainable Finance Disclosure Regulation (SFDR)

While primarily targeting asset managers, the SFDR, which is directly applicable in Italy, affects EU banks offering investment products, requiring disclosures on sustainability risks and adverse impacts.

Corporate Sustainability Reporting Directive (CSRD)

Large corporations and small and medium-sized listed corporations (including banks) must adhere to detailed ESG reporting requirements under the CSRD, which is transposed into Italian law by Legislative Decree No 125/2024. Such requirements already apply to banks and other public interest entities that have (or are parent companies of groups that, on a consolidated basis, have) an average of 500 employees per year and a balance sheet total of EUR200 million or a net turnover of EUR40 million (so-called “wave one companies”). Following the transposition of the so-called “Stop the Clock” directive issued by the EU legislator in the context of the Omnibus Package, the application of ESG reporting requirements has been postponed:

- From 2026 (FY 2025) to 2028 (FY 2027) for companies that (or parent companies of groups that, on a consolidated basis) meet two of the following thresholds:
 - (a) 250 employees over the financial year;
 - (b) net annual revenue of EUR40 million; or
 - (c) a balance sheet total of EUR20 million.
- From 2027 (FY 2026) to 2029 (FY 2028) for SMEs that are listed on an EU-regulated market and small and non-complex institutions (under the CRR), as well as captive insurance undertakings meeting certain criteria.

Sustainability reports will have to comply with detailed European Sustainability Reporting Standards (ESRS), which include general requirements as well as sector-specific requirements.

CSRD disclosures must consider a “double materiality” perspective, meaning that a company must report how sustainability risks and opportunities affect its financial performance, position and development (so-called “outside-in”) as well as how the company’s performance, position and development affect people and the environment (so-called “inside-out”).

Exemptions apply to individual sustainability reporting requirements if information on a company and its subsidiaries is included in the consolidated sustainability reporting requirements of its parent undertaking.

The Omnibus Package includes, among others, a proposal for a Directive amending the CSRD aimed at reducing the scope of entities subject to CSRD requirements by increasing the existing thresholds. Negotiations between the European Parliament and the Council are still ongoing.

Taxonomy Regulation

Companies under the CSRD must disclose the extent to which their activities align with the taxonomy using specific KPIs in their sustainability reports. Simplified requirements are expected to be adopted under the Omnibus Package.

ECB Guidelines on climate risks

Under the SSM Regulation, Italian banks are subject to the ECB’s expectations regarding climate-related and environmental risks. They must integrate these risks into governance, strategy and risk management frameworks.

Bank of Italy guidance

The Bank of Italy has issued recommendations for banks to:

- integrate ESG factors into risk management and credit policies;
- enhance transparency through robust non-financial disclosures; and
- support green and social projects through sustainable lending practices.

ESG governance and risk management requirements under the CRD VI

The CRD VI requires banks to integrate robust strategies, policies, processes and systems into their governance and risk management frameworks to identify, measure, manage and monitor ESG risks across short, medium and long-term horizons, conduct resilience testing using credible scenarios and align ESG practices with regulatory objectives. The competent authorities must assess these efforts. The EBA issued *ad hoc* Guidelines in January 2025, which apply from 11 January 2026 to credit institutions other than small and non-complex institutions (to which they will apply at the latest from 11 January 2027).

ESG risks disclosure under the CRR III

The CRR III mandates banks to disclose information on ESG risks, clearly differentiating between environmental, social, and governance risks, as well as distinguishing between physical risks and transition risks related to environmental factors.

10. DORA

10.1 DORA Requirements

Key DORA Requirements

DORA entered into force on 16 January 2023 and applies from 17 January 2025. It requires financial entities, including banks, to increase the digital operational resilience in relation to “ICT services” by:

- establishing an effective ICT risk management framework within their overall risk management system (ICT risk management pillar). This framework must address risk identification, mitigation and monitoring as well as reporting processes to ensure resilience against both internal and external threats;
- implementing comprehensive systems for the detection and reporting of ICT-related incidents (incident reporting pillar). Specifically, any significant ICT-related incidents must be reported to the competent authority within specified timeframes to enable prompt response and co-ordination;
- regularly testing their own ICT systems to evaluate the related operational resilience (testing pillar). This implies conducting vulnerability assessments, penetration testing and scenario-based exercises. These tests enable systems to be robust enough to handle cyber-attacks and other ICT-related disruptions;
- ensuring that relevant ICT third-party service providers meet high operational resilience standards, carrying out audits on a regular basis and maintaining adequate oversight on them (ICT third-party risk management pillar);
- developing detailed crisis management plans which ensure the delivery of critical services during ICT-related disruptions (business continuity and crisis management pillar). These plans must address, among other things, data recovery, communication strategies and established escalation procedures; and
- establishing processes for sharing information about ICT-related threats, vulnerabilities and

incidents, both within the organisation and with relevant external stakeholders (ICT information sharing pillar).

In order to prepare for complying with DORA, Italian banks should:

- conduct a gap analysis against current ICT incident reporting and risk management requirements under Italian law, to assess their current level of preparedness for DORA;
- establish a cross-functional team (IT, risk management, compliance, legal and operations) to develop an integrated approach in relation to digital operational resilience; and
- invest in cybersecurity technology and related training to ensure that all bank staff are aware of their respective roles and responsibilities under DORA.

ICT Third-Party Risk

In relation to any ICT third-party services, banks must:

- conduct a pre-contractual analysis to assess the suitability of the prospective provider, including an assessment of its substitutability; and
- ensure that the relevant contract, in the form of a written document, includes all the key provisions expressly mentioned by DORA.

In relation to ICT third-party services supporting a bank’s “critical or important” function, meaning any function the disruption of which would materially impair its financial performance, banks must also:

- adopt an internal policy focusing on ex ante risk assessment, due diligence, management of conflict of interest, exit strategies and monitoring of contractual arrangements;
- inform the competent authority about any planned contractual arrangements on the use of these ICT services;
- ensure that the relevant contract, in the form of a written document, includes all the additional key provisions expressly mentioned by DORA; and
- include all the contracts on the use of these ICT third-party services in a dedicated section of a register specifically designed for ICT third-party services arrangements.

Sanctions for Non-Compliance With DORA

In cases of non-compliance with DORA, the related administrative sanctions can consist of:

- monetary fines (up to 10% of a bank's annual turnover or EUR10 million, whichever is higher); and
- operational restrictions imposed by the competent supervisory authority.

11. Horizon Scanning

11.1 Regulatory Developments

EU and national regulatory developments impacting Italian banks are expected in the following areas.

Updated Capital and Prudential Requirements

The CRD VI is scheduled to take effect in January 2026, save for the provisions on third-country branches, which will apply from January 2027. The transposition process is currently ongoing.

AML Package

The transposition of the AML legislative package is currently ongoing. Transposition must be completed by July 2027, while the new European AML authority (AMLA) is preparing to assume direct supervision over a selected number of entities starting in 2027.

Retail Investment Strategy

The European Commission Proposal on the Retail Investment Strategy, which aims to make amendments to the MiFID Directive, the PRIIPs Regulation, the AIFMD, the UCITS Directive, the Insurance Distribution Directive and the Solvency II Directive on important investor-protection topics (such as inducements and product governance), is still being negotiated between the European Parliament and the Council and is expected to be finalised and adopted in 2025.

Review of the Consolidated Law on Finance

The Italian government is delegated to undertake a comprehensive and systematic review of the Consolidated Law on Finance, which has governed Italy's

financial markets and investment services for over 25 years. The review is aimed at reforming the legislation to modernise and streamline the legislative framework and address the demands of market changes. This ambitious reform, of which the Italian Government preliminarily approved a first draft in October 2025, should be completed in the first part of 2026.

Alignment of Existing Italian Cybersecurity and ICT Services Requirements to DORA

Efforts are being made to align Italy's national cybersecurity and ICT service requirements with DORA, aiming to prevent inconsistencies and overlaps with existing frameworks.

MiCAR

The Italian transitional period for existing virtual asset service providers (VASPs) expires on 30 June 2026, after having been extended in June 2025. Italian VASPs have to apply for authorisation as crypto-asset service providers (CASPs) by 30 December 2025.

PSD3/PSR Negotiations

Following the European Commission's initial proposal in June 2023, negotiations on the new PSD3/PSR package are still ongoing. The agreement on the Council's negotiating mandate reached on 18 June 2025 allowed the presidency to start the so-called "trilogue negotiations" on the final text.

FIDA

The Financial Data Access Regulation ("FIDA"), proposed by the European Commission in June 2023, seeks to promote open finance by allowing consumers and businesses to securely share financial data with other financial institutions, fostering innovation and competition while ensuring GDPR compliance. However, the proposal has proven politically sensitive, raising concerns over privacy, liability, and interoperability. After the Commission considered withdrawing the proposal in early 2025, FIDA entered the trilogue phase, which is currently being negotiated.

Trends and Developments

Contributed by:

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Cleary Gottlieb Steen & Hamilton LLP opened its Rome office in 1998 after decades of representing Italian companies and multinationals doing business in the country. Along with its Milan office that opened in 2001, its Italian offices have nearly 100 lawyers who provide clients with integrated Italian, pan-European and global legal services by offering a wide range of transactional and regulatory advice, and representing clients in domestic and international litigation and arbitration proceedings. All of its law-

yers handle a wide variety of assignments and work co-operatively to share abilities across practices and jurisdictions. In particular, over the past 12 months, its financial regulatory practice has expanded its client base considerably, with the addition of several high-profile clients, including one Italian listed bank, several EU and US financial institutions, two major Italian companies that are active in financial markets and two global digital assets platforms.

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The Capital Markets Reform, Implementation of the Capital Requirements Directive VI, MiCAR, and the Consumer Credit Directive II

The Capital Markets Reform

On 8 October 2025, the Italian Council of Ministers approved, on a preliminary basis, a draft legislative decree introducing a comprehensive reform of the rules governing capital markets contained in Legislative Decree No 58 of 1998 (“Financial Markets Act”) and the governance provisions contained in the Italian Civil Code (“Capital Markets Reform”). Final adoption is expected within the first months of 2026.

The Capital Markets Reform is part of a broader policy initiative aimed at fostering the development of Italian capital markets and more effectively channeling private investments into Italian listed companies. While the reform applies across all listed issuers, it is expected to also have a notable impact in the banking sector as Italy has a relatively high number of listed banks (15 Italian banks are currently listed, including nine out of the 11 Italian significant institutions directly supervised by the ECB). In addition, the Capital Markets Reform arrives during an extraordinary wave of takeover bids in the Italian banking industry, including major transactions such as *Banca Monte dei Paschi di Siena*’s takeover of Mediobanca and UniCredit’s bid for Banco BPM (withdrawn following the exercise by the government of its golden power), which have brought renewed attention to the legal framework governing takeover bids.

This summary focuses on the elements of the Capital Markets Reform that are most relevant for banks and other listed financial institutions, namely the provisions relating to interlocking directorates, tender offers and governance rules for listed companies. The reform also includes a substantial overhaul of the asset management regulatory framework, which is outside the scope of this note.

Interlocking directorates

Currently, under Article 36 of Decree-Law No 201/2011, members of the boards of directors, supervisory boards or boards of statutory auditors, as well as “top managers” of an Italian company or group of companies operating in the banking, insurance and financial sectors shall not accept or hold any such

offices in a competing Italian company or group of companies. A materiality threshold based on the net turnover or the companies or groups involved and the competitive relationship must be assessed at the level of the financial groups, regardless of if the interlocked companies are direct competitors.

The Capital Markets Reform proposes a revision of the prohibition on “interlocking directorates” aimed at rationalising the regime and reducing the burdens on operators.

- First, members of the board of statutory auditors are excluded from the scope of the prohibition, given the nature of the information they can acquire and their functions, which is considered not to allow them to influence the strategic choices of the companies in which they hold office.
- Second, the scope of the prohibition is restricted to “competing companies” and to “parent companies of groups to which competing companies belong”, eliminating the relevance of scenarios where the prohibition would apply to companies operating in different sectors but belonging to groups with competing entities, thus maintaining the notion of competition at the level of individual companies rather than groups.
- Finally, a revised size threshold is introduced, whereby the interlocking prohibition applies only where at least two of the companies in which the relevant person holds offices each have an Italian turnover exceeding ten times the turnover threshold identified for merger control purposes under the Italian Antitrust Law.

Tender and exchange offers

Among other matters, the Capital Markets Reform significantly changes the rules on tender and exchange offers, including with respect to the following.

- Change of the mandatory tender offer threshold – the Capital Markets Reform provides for a single threshold of 30% of the share capital or voting rights triggering an obligation to launch a mandatory tender offer (MTO), thereby repealing (i) the previous 25% threshold and (ii) the possibility for SMEs to set alternative thresholds between 25% and 40% in their by-laws. The single 30% thresh-

old is in line with the standards adopted by several other European jurisdictions, as well as with Directive 2004/25/EC on takeover bids. This change may have an impact also in the banking and financial sectors, with respect to banking groups holding stakes in other listed banks or financial entities.

- Incremental MTO – the Capital Market Reform raises the threshold applicable to the so-called “incremental” MTO. Specifically, shareholders holding between 30% and 50% of the voting rights will be permitted to increase their voting rights by up to 10% (instead of the current 5%) within a rolling 12-month period, without triggering an MTO.
- Voluntary offers – shareholders exceeding the MTO threshold as a result of a voluntary public tender or exchange offer targeting at least 50% (instead of 60%) are exempted from the obligation to launch a subsequent MTO on the issuer’s entire share capital.
- Squeeze out and sell out mechanisms – the squeeze-out threshold triggering the bidders’ right to buy out the remaining minorities is reduced from 95% to 90% and the scope of the squeeze out mechanism is extended to financial instruments other than voting shares (including non-voting preferred shares). In sell-out cases, the obligation to provide a cash alternative will be limited to cases where the consideration consists of financial instruments other than securities admitted to trading on an EU regulated market.
- “Full buyout” mechanism – the most significant innovation concerns the inclusion of a new “full buyout” mechanism (with consequent delisting) subject to shareholder approval, as an alternative to the traditional takeover bid regime. This new mechanism, inspired by the scheme of arrangement typical of certain common law jurisdictions, enables a third party to purchase for cash all the shares of an issuer (without launching a takeover bid), subject to approval by the issuer’s extraordinary shareholders’ meeting, subject to a white-washing mechanism.
- “Put up or shut up” – in case of rumors regarding the potential launch of a takeover bid, the *Commissione Nazionale per le Società e la Borsa* (Consob) will have the power to set a deadline by which the potential offeror must disclose its decision to launch an offer or a “full buyout”, failing which the

offeror will be prohibited from making an offer for the following 12 months in case of takeover bids (or six months in case of “full buyout”).

Shareholders’ meetings and corporate governance

As to other amendments to the Financial Markets Act, the Capital Markets Reform proposes significant amendments to the procedures for convening and holding shareholders’ meetings of listed companies as well as to corporate governance rules.

The Capital Markets Reform proposes to repeal the requirement to publish the notice of call in national newspapers, eliminating a gold-plating requirement that was perceived as costly and unnecessary to meet transparency requirements. The reform also facilitates the use of English in communicating regulated information by issuers to reduce the burden associated with listing.

The management body will be empowered to decide, in compliance with certain protective measures, how the shareholders’ meeting will be held (in person, remotely, through a designated representative, or by electronic voting), although the by-laws may provide that the meeting may be held exclusively through a designated representative, through voting by correspondence or electronically. In any event, shareholder(s) holding one-twentieth of the share capital with voting rights for the matters on the agenda may request, within five days of publication of the notice of call, that the meeting be held in person.

To limit “mere disturbance” interventions, the articles of association or the regulations adopted by the board of directors may set a threshold (that cannot be higher than one thousandth of the share capital under the current proposal, which is being debated and could ultimately be increased for larger listed companies) below which shareholders will not be allowed to participate in the discussion at the meeting. In addition, the right to submit resolution proposals directly at the meeting on agenda items will be limited to qualified minorities (ie, 2.5% of the share capital).

The Capital Markets Reform also revises the three governance systems of Italian joint-stock companies, with the aim of attributing equal relevance to each of

them and ultimately strengthening the attractiveness of Italian companies, making their governance more easily recognisable by foreign investors as well.

The Italian implementation of CRD VI

On 8 October 2025, the Italian government approved, on a preliminary basis, a draft legislative decree amending Legislative Decree No 385 of 1 September 1993 (“Italian Banking Act”) and the Financial Markets Act, to implement Directive (EU) 2024/1619 (Capital Requirements Directive (CRD) VI), and align national law with Regulation (EU) 2024/1623 (Capital Requirements Regulation (CRR) III). The Decree is expected to be adopted by the end of 2025.

Third-country branches (TCBs)

The reform implements the CRD VI regime that limits cross-border activities by third-country banks and banking groups, by requiring third-country banks and banking groups to establish a so-called third-country branch (TCB) in Italy, to take deposits or other repayable funds from the public and/or perform lending activities or issuance of guarantees in Italy.

In continuity with the regulatory and supervisory framework currently in force in Italy, which does not allow for cross-border banking activities by third-country institutions unless they establish an authorised branch or subsidiary in Italy, the draft decree opts for a two-tier regime based on the European equivalence criterion, whereby: (i) qualifying branches – ie, those whose country of origin benefits from the European Commission’s equivalence declarations of the supervisory system and is not included in the European Commission’s list of high-risk countries for AML purposes – will be subject to a lighter regime envisaged by TCBs under CRD VI; and (ii) non-qualifying TCBs will be subject to the regime applicable to Italian banks (so-called subsidiary-like approach).

The new rules on TCBs are expected to apply from 11 January 2027, except for reporting requirements, which apply from 10 January 2026. As an exception, branches of third-country banks that are already authorised to operate in Italy may continue to operate after 11 January 2027, provided that they submit a new application for authorisation as a TCB by that date.

Corporate officers and key function holders

CRD VI has modified Article 91 of the CRD to update certain procedural rules for the assessment of the suitability of corporate officers. In particular, it establishes that the suitability assessment of officers must be conducted by banks before the officer assumes the position (so-called ex ante assessment). Member states have the option to provide for a derogation (so-called ex post assessment) in the case of renewal of the majority of the members of the body. The draft decree provides for the exercise of this option, as mandated by the relevant European Delegation Law, by amending Article 26 of the Italian Banking Act accordingly. In ex ante assessment cases, the relevant director’s appointment is suspended until completion of the suitability assessment.

CRD VI also introduced Article 91a of the CRD, which provides for the obligation for all banks to assess the suitability of the heads of the key business functions, while requiring that the assessment also be conducted by the supervisory authority in the case of banks of greater significance. The draft decree also amends Article 26 of the Italian Banking Act to transpose this provision.

Mergers and demergers

CRD VI has introduced an obligation for banks and (mixed) financial holding companies, regardless of any threshold of relevance, to notify in advance and obtain the authority’s prior positive opinion on all merger or demerger projects.

While mergers and demergers involving Italian banks are already subject to regulatory approval in Italy, there had been uncertainty as to the competent authority in case of cross-border mergers, leading in many cases to applications to the supervisory authorities of both entities. To this end, Article 57 of the Italian Banking Act will be amended to identify the cases where the Bank of Italy is the competent authority to authorise mergers and demergers, as well as to regulate the assessment criteria for the granting of authorisation. In particular, the Bank of Italy is competent to authorise: (i) mergers in which the acquiring company is an Italian bank; and (ii) demergers in which the demerged company is an Italian bank.

Regarding the assessment criteria, the proposed changes will specify that authorisation is granted only if the post-transaction entity remains prudentially sound. The assessment focuses on:

- the reputation and financial solidity of the entities involved;
- the ability of the resulting group to meet prudential and regulatory requirements;
- the credibility and prudential robustness of the transaction's implementation plan; and
- the absence of concerns that the transaction involves, or could increase, AML risk.

Significant shareholdings

Article 27-bis et seq of CRD VI introduces a regime of prior authorisation for transactions for the acquisition – by banks and (mixed) financial holding companies – of significant shareholdings, ie, equal to or greater than the threshold of 15% of the eligible capital of the acquirer, applicable on an individual and consolidated basis. An obligation of prior notification to the competent supervisory authority for disposals of significant shareholdings has also been introduced.

These provisions require some amendments to Chapters I (Supervision of banks) and II (Consolidated supervision) of Title III of the Italian Banking Act, to introduce the obligation of prior authorisation for the acquisition, direct or indirect, of significant shareholdings by banks (Article 57-bis) and by (mixed) financial holding companies that are parent companies of banking groups (Article 61-bis). With reference to banks, Article 57-bis, paragraph 2 establishes that authorisation is granted in the presence of conditions that guarantee the sound and prudent management of the acquiring bank; authorisation is granted by the Bank of Italy and, in the case where the relevant threshold is also exceeded on a consolidated basis, by the consolidating supervisory authority (if different from the Bank of Italy).

For transactions involving the disposal of significant shareholdings, a prior notification to the competent supervisory authority is instead required.

Sanctions and administrative measures

CRD VI has introduced periodic penalty payments – ie, payments that the supervisory authority can impose in case of violation – on a continuous basis, of national provisions transposing the CRD, the CRR or decisions taken by the authority.

A new Article 144-ter.1 of the Italian Banking Act provides for the possibility of applying periodic penalty payments to banks and (mixed) financial holding companies, as well as their personnel, persons to whom business functions have been outsourced, auditors and natural and legal persons holding qualifying shareholdings, for the continued non-compliance with the provisions or measures referred to in certain articles of the Italian Banking Act and until the cessation of the non-compliance itself.

Moreover, in implementation of the provisions of CRD VI regarding the cumulation of proceedings and sanctions of a criminal and administrative nature, Article 145.3 of the Italian Banking Act will regulate collaboration and information exchange between the Bank of Italy and the judicial authority to calibrate the overall sanctioning response to the same violation and thus ensure that the cumulation of proceedings and sanctions is strictly necessary and proportionate.

MiCAR – Markets in Crypto-Assets Regulation

The deadline for virtual-asset service providers (VASP) that provided services in Italy prior to the entry into force of Regulation (EU) 2023/1114 (MiCAR) to submit an application with the Italian competent authorities to be authorised as crypto-asset service providers (CASP) is 30 December 2025, if they intend to benefit and continue to operate under the transitional period pursuant to MiCAR.

Pursuant to Article 143 (3) of MiCAR, CASPs that provided their services in accordance with applicable national law before 30 December 2024 may continue to do so until the earlier of 1 July 2026 or the date on which they are granted or refused an authorisation under MiCAR. However, within the 1 July 2026 final deadline, MiCAR granted member states the option to regulate the transitional regime as they saw fit (and possibly even to exclude it altogether).

Initially, Italy provided that VASPs could continue to operate under the transitional regime until 30 December 2025, provided that they (i) were already registered with the Italian *Organismo Agenti e Mediatori* (OAM) as of 30 December 2024, and (ii) applied to the Italian authorities by 30 June 2025. Via Law Decree No 95 dated 30 June 2025, the Italian government granted an additional six months to VASPs by (i) postponing the deadline for filing the application to 30 December 2025 and (ii) allowing VASPs that file an application before the deadline to continue to operate until 30 June 2026. Moreover, the Italian government extended the scope of the transitional regime by allowing Italian VASPs to also rely on the application submitted by affiliates belonging to the same group, either in Italy or in another EU jurisdiction.

In preparation for the expiration of the deadline, Consob and the Bank of Italy took several joint initiatives, including the following.

- Publishing a joint warning on 2 July 2025, reminding VASPs of the importance of submitting complete and accurate applications (also inviting them to reach out in advance of filing the formal application to discuss its content, if needed).
- Hosting a dedicated workshop on 22 October 2025, to share their “initial insights regarding the ongoing authorization campaign and to outline supervisory expectations to market participants” (as part of a broader effort to engage with the crypto industry) and reaffirm “their commitment to continue bilateral consultations with firms intending to submit an application”, while at the same time reiterating “the importance of an open yet rigorous approach, aimed at ensuring sound risk management practices”.

In the absence of an application, VASPs will have to cease their regulated activities in Italy by 30 December 2025 (and failure to do so may trigger both criminal and administrative consequences, including Consob’s power to adopt the measures set out under Article 94 of MiCAR).

Before and in preparation for the 30 December 2025 deadline, Italian law required VASPs to communicate to their customers and disclose on their websites how they intended to (i) comply with MiCAR, or (ii) to liqui-

date in an orderly manner, in case they did not intend to apply for a MiCAR licence. VASPs were initially required to do so by 30 May 2025 – this deadline was also postponed, to 30 September 2025.

As of November 2025, none of the CASPs listed in the Interim MiCAR Register kept by the European Securities and Markets Authority (ESMA) have been authorised in Italy.

The implementation of the Consumer Credit Directive II (CCD2)

Status of legislative process

Member states are required to implement Directive (EU) 2023/2225 (CCD2) by 20 November 2025. Among other things, CCD2: (i) broadens the scope of application of consumer credit rules beyond the original scope of Directive 2008/48/EC (CCD1) to cover additional credit agreements such as credit agreements whose amount is below the EUR200 threshold and “buy-now-pay-later” products; (ii) provides more detailed rules on advertisement, as well as on the information to be provided to consumers in both marketing and pre-contractual materials; and (iii) strengthens the protection and support to consumers (especially those in financial hardship) by introducing stricter requirements on creditworthiness assessments, regulating debt advisory services, as well as introducing specific requirements for lenders in connection with potential forbearance and/or support measures to be considered before initiating enforcement proceedings.

Via Law No 91 of 13 June 2025 (“2024 EU Delegation Law”), the Italian Parliament conferred upon the government the mandate to implement the CCD2 via a Legislative Decree. In doing so, parliament devolved to the government the decision as to the options under the CCD2, except for the option under Article 2 (8) thereof, which the government has been required to exercise. Article 2 (8) allows member states not to apply certain requirements relating to information to be included in advertisements, pre-contractual and contractual documentation, and credit agreements (i) whose amount is below the EUR200 threshold, (ii) where the credit is granted free of interest and without any other charges, and/or (iii) under the terms of which credit has to be repaid within three months and only insignificant charges are payable.

In July 2025, the Italian government launched a public consultation on a draft implementing decree, which ran until 4 September 2025. A revised version of the implementing decree was approved by the Council of Ministers on 8 October 2025, and submitted to the relevant parliamentary committees for their assessment and evaluation prior to its final approval.

Options

Based on the latest draft available, Italy will exercise several options, including the following.

- Exemption for deferred debit cards – pursuant to Article 2 (5) of the CCD2, member states are allowed to exempt deferred debit cards from the scope of consumer credit rules. Consistent with the currently applicable framework, Italy will continue to exempt deferred debit cards from consumer credit rules, provided that the relevant credit has to be repaid within 40 days and they provide for interest and only limited charges for the provision of the payment service.
- Simplified regime for certain credit agreements – Italy will adopt the simplified regime set forth in Article 2 (7) of the CCD2 for credit agreements between the lender and the consumer in respect of deferred payment or of repayment methods, where the consumer is already in default or is likely to default on the initial credit agreement, provided that the relevant requirements set forth thereunder are met.
- Tying practices – Italy will allow lenders to require the consumer to hold a relevant insurance policy related to the credit agreement, taking into account proportionality considerations (provided that the lender will be required to accept the insurance policy from a supplier different to his or her preferred supplier where such insurance policy has a level of guarantee equivalent to the one the lender has proposed, without modifying the conditions of the credit offered to the consumer), as provided for under Article 14 (3) of the CCD2. On the contrary, Italy will not exercise the option set forth under Article 14 (2) of the CCD2 (enabling member states to allow lenders to request the consumer to open or maintain a payment or savings account under certain circumstances).
- Overdraft facilities and overrunning – Italy will maintain the more stringent provisions currently

provided for under the Italian Banking Act in connection with unilateral amendments and termination of open-ended overdraft facility agreements and overruns, requiring, among other things, (i) a two-month advance notice for termination, and (ii) a two-month advance notice and the existence of a justified reason for unilateral amendments by the lender. On the contrary, Italy will not exercise the option under Article 2 (4)(b) of the CCD2, whereby overruns may be excluded from the rules on creditworthiness assessment.

- Early repayment – in case of early repayment, lenders will only be entitled to compensation if the amount of the early repayment corresponds to the full debt outstanding and exceeds the threshold set out in national law, as per Article 29 (4)(a) of the CCD2. Lenders will, however, not be entitled to claim higher compensation as per Article 29 (4)(b) of the CCD2 (that is, in case they can prove that the loss suffered due to early repayment exceeds the amount determined pursuant to Article 29 (2) thereof).
- Credit intermediaries – Italy will exempt suppliers of goods or providers of services qualifying as micro, small and medium-sized enterprises from the admission, registration and supervision requirements set out in Article 37 of the CCD2.

Further implementing rules by banking authorities

Finally, the draft decree delegates the CICR (Inter-ministerial Committee for Credit and Savings) and the Bank of Italy to adopt further implementing rules, some of which concern relevant aspects such as the identification of prohibited advertising under Article 8 (8) of the CCD2, as well as the creditworthiness assessment.

As of the time of writing, neither the CICR nor the Bank of Italy have published drafts of the implementing rules.

Entry into force

In line with Article 48 (1) of the CCD2, the implementation decree provides that Italian implementing rules shall generally apply from 20 November 2026 (or 90 days from the entry into force of the Bank of Italy's implementing rules, if later).

JAPAN



Law and Practice

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1. Legal Framework

1.1 Key Laws and Regulations

Banking Act

The principal legislation regulating local banks in Japan, including bank holding companies and foreign bank branches in Japan, is the Banking Act (Act No 59 of 1981, as amended; “the Banking Act”). The Banking Act, among others, governs the following matters in respect of local banks: licensing; organisation and governance; business scope; customer protection; prohibited acts; capital adequacy; business scope of subsidiaries and shareholders; accounting; disclosure; and procedures of mergers and acquisitions.

The Financial Services Agency of Japan (FSA), which is the regulator of local banks in Japan, issues various guidelines (“the Guidelines”) concerning banking activities. Local banks are, in practice, required to comply with the Guidelines and may be subject to administrative actions in cases of non-compliance.

Financial Instruments and Exchange Act

Local banks in Japan may engage in securities-related services within the prescribed scope. Local banks in Japan are, in principle, required to obtain a licence from the FSA if they wish to provide securities-related services in the country. This licensing requirement is an addition to the banking licence that banks in Japan must obtain to provide banking services. Registered banks are permitted to provide a wide range of securities-related services, including brokerage of government bonds. However, they are not permitted to conduct certain categories of securities-related business, including underwriting of corporate bonds and stocks, but must have a securities firm as their subsidiary to engage in these types of operations. The key legislation regulating banks’ provision of securities-related services is the Financial Instruments and Exchange Act (Act No 25 of 1948, as amended; “the FIEA”).

Regulatory Body

The principal regulator that exercises oversight of local banks in Japan is the FSA, and its authority to supervise local banks is delegated to it by the Prime Minister. The FSA supervises banking activities (including the securities-related businesses), issues banking licences, and imposes administrative adviso-

ries (eg, business improvement orders and business suspension orders) on local banks for wrongdoing, lack of adequate internal control systems and/or lack of adequate capital.

Off-site monitoring and on-site inspections of local banks in Japan are also primarily performed by the FSA. Inspections of banks’ securities-related services, on the other hand, are conducted by the Securities and Exchange Surveillance Commission of Japan.

2. Authorisation

2.1 Licences and Application Process

No person is allowed to engage in “banking business” in Japan or with a person in Japan without having first obtained a banking licence from the FSA. Such business refers to: (i) the acceptance of deposits and lending of funds (including discounting of bills or notes); or (ii) the conduct of fund remittance transactions. Registration as a money lender under the Money Lending Business Act (Act No 32 of 1983) would suffice in the case of a person who engages only in the lending of funds. Registration as a fund service under the Payment Services Act (Act No 59 of 2009) would also suffice for person who only engages in fund remittance transactions subject to certain limitations.

With regard to foreign banks, there are two ways by which a foreign bank may engage in the Banking Business in Japan. The first is to establish a local subsidiary or a local affiliate in the form of a stock company (*Kabushiki kaisha*). The second is to establish a foreign bank branch in Japan, obtaining a banking licence for it.

As mentioned above, local banks in Japan are, in principle, required to obtain a licence from the FSA if they wish to provide securities-related services in Japan in addition to the usual banking licence that they are required to hold, and are required to have a subsidiary securities firm to engage in securities-related business because the scope of securities-related businesses in which they can engage is restricted.

The Banking Act is premised upon the separation of “banking” and “commerce”. Under the Banking Act,

banks are only permitted to engage in core banking activities (ie, deposit-taking, lending and funds remittance), a limited scope of businesses ancillary to banking activities, and certain securities-related businesses specified in the Banking Act. Under the Banking Act, such businesses, which are considered ancillary to banking activities, include, among others, guaranteeing obligations, securities lending, and acquiring and transferring monetary claims. Further, the scope of such ancillary business has been expanded following amendments to the Banking Act and relevant regulations, including the Guidelines. Recent amendments have made to the Banking Act to clarify that the following constitute ancillary business: (i) services that support the livelihood of customers; (ii) IT systems and applications originally developed by banks for internal use; (iii) data analysis, marketing and advertising services; (iv) temporary staffing services; and (v) consulting and business-matching services.

Anyone seeking a banking license must apply and submit supporting materials (such as articles of incorporation and a certificate of registered information in respect of the company) to the Prime Minister through the Commissioner of the FSA.

The Prime Minister will endeavour to decide on the application within one month from receipt of the official application. In practice, however, a preliminary consultation with the FSA and a review of the draft application will be conducted before submission of the application. During the preliminary consultation and review process, the government will scrutinise the application for the purposes of determining whether it meets the relevant requirements. There is no stated statutory period for the duration of the preliminary consultation and review.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Shareholders of local banks may be subject to regulation pursuant to the Banking Act if they qualify as “principal shareholders” or “bank holding companies”.

A principal shareholder is defined in the Banking Act as a shareholder who has obtained the approval from the regulator to acquire and hold 20% (or, if certain conditions apply, 15%) or more of the voting rights of a local bank. A bank holding company is defined in the Banking Act as a company that has obtained the approval from the regulator for: (i) acquiring and holding shares in its Japanese subsidiaries for a price exceeding 50% of the total assets of the company itself; and (ii) that holds more than 50% of the voting rights in a local bank. A shareholder that constitutes a bank holding company will be subject to regulations applicable to a bank holding company rather than a principal shareholder.

Any legal entity that wishes to become a bank holding company must obtain the prior approval of the FSA. Approval as a bank holding company is granted at the sole discretion of the FSA.

In principle, the criteria required to be met to obtain approval as a bank holding company include the following:

- the ability to generate income and pay for its own and its subsidiaries’ operating expenditure;
- capital adequacy;
- sufficient knowledge and experience among relevant personnel; and
- sufficient social credibility.

A bank holding company is subject to strict regulations compared to those applicable to a bank “major shareholder”. Pursuant to the Banking Act, the regulations applicable to a bank holding company include, among others:

- restrictions on the permitted scope of the business of a bank holding company and its subsidiaries;
- governance requirements;
- capital adequacy requirements; and
- disclosure requirements.

Any person wishing to be a principal shareholder must obtain prior approval from the FSA. Additionally, the following criteria must also be satisfied:

- (in light of matters concerning funds for the acquisition of shares, the purpose of holding shares in the local bank, or other matters concerning the holding of shares) there must be no risk of impairment to the sound and appropriate management of the business of the local bank;
- (in light of the property, income and expenditure of the person and his or her subsidiaries) there must be no risk of impairment to the sound and appropriate management of the business of the local bank; and
- the person must have sufficient understanding of the public nature of the local bank's business and must also have sufficient social credibility.

A principal shareholder may be required by the FSA to submit reports or materials, be inspected by the FSA at its offices, be required to respond to questions put by the relevant FSA officer, and be required to present its accounting books and other documents to the FSA for inspection. A principal shareholder that fails to meet any of the conditions imposed by the FSA may be subject to any action that the FSA may order the bank's principal shareholder to take as it deems necessary. Furthermore, a principal shareholder with more than 50% of the voting shares of a local bank may be ordered by the FSA to submit an improvement plan, or otherwise take such measures as the FSA deems necessary to ensure the sound and appropriate management and operation of the local bank.

Other than the above, pursuant to the Foreign Exchange and Foreign Trade Act, foreign investors that acquire shares in a local bank may be subject to certain requirements, such as notification requirements.

4. Governance

4.1 Corporate Governance Requirements

Under the Banking Act, a local bank must have a board of directors and accounting auditors. Additionally, pursuant to the Companies Act, a local bank must have: (a) a board of corporate auditors; or (b) a subcommittee of the board of directors (comprising either: (i) an audit and supervisory committee; or

(ii) an audit committee, remuneration committee and appointment committee).

Pursuant to the Banking Act, directors and executive officers engaging in the ordinary operations of a local bank must have the knowledge and experience to be able to manage and operate the bank appropriately, fairly and efficiently. Additionally, they must have sufficient social credibility. Furthermore, the Guidelines stipulate the appropriate governance system for local banks. For example, representative directors of local banks with a board of corporate auditors must:

- take command of the establishment and maintenance of the bank's internal compliance framework;
- make risk management a primary concern;
- establish an adequate internal control framework for proper disclosure of the bank's corporate information to the public; and
- ensure that appropriate internal audits are performed on the bank.

The Board of Directors of a local bank must:

- proactively oversee the performance of the bank's representative directors;
- establish and review the bank's business management plans in line with the bank's business objectives;
- establish a clear risk management policy by taking certain objectives into consideration; and
- ensure appropriate performance and review of internal audits of the local bank.

The Guidelines also require listed banks or listed bank holding companies comply with Japan's Corporate Governance Code published by the Tokyo Stock Exchange. In light of this, listed banks should appoint at least two independent outside directors who are able to contribute to the bank's sustainable corporate growth and corporate value.

4.2 Registration and Oversight of Senior Management

Pursuant to the Banking Act, a local bank must file a notification with the Prime Minister when a director representing the local bank or a director engaging in

the ordinary business of the local bank is appointed or resigns. As mentioned above, pursuant to the Banking Act, directors and executive officers engaging in the ordinary operation of a local bank must have both sufficient social credibility and the requisite knowledge and experience to manage and operate the bank appropriately, fairly and efficiently.

Under the Banking Act, a director who is engaged in the ordinary operation of a local bank may not engage in the ordinary operation of any other company without the authorisation of the Prime Minister. Such authorisation will not be granted unless the Prime Minister is of the view that such double-hatting is unlikely to interfere with the sound and appropriate management of the local bank.

4.3 Remuneration Requirements

The Banking Act does not contain express stipulations with respect to matters of remuneration. Nevertheless, in line with discussions at the Financial Stability Board (FSB), the Guidelines impose general requirements on local banks established in Japan and branches of foreign banks to establish systems that ensure appropriate remuneration of management and employees in light of the need to avoid excessive risk-taking.

Further, pursuant to the Banking Act, all local banks must disclose matters concerning remuneration in their business reports, including:

- the internal committee or governance body that determines or otherwise supervises the determination of remuneration;
- matters concerning the evaluation of remuneration systems and the operation of such systems;
- consistency between remuneration systems and risk management, and performance-linked remuneration; and
- other matters concerning remuneration systems.

A listed bank is required under the FIEA to publicly disclose the remuneration given to each of its directors if the aggregate annual remuneration of directors exceeds JPY100 million.

5. AML/KYC

5.1 AML and CFT Requirements

The Act on Prevention of Transfer of Criminal Proceeds (“APTCP”), which is the primary legislation regulating AML and CFT, requires local banks to conduct the following due diligence on customers.

Verification at the Time of Transaction

The APTCP requires local banks to verify the following items at the time of specific transactions:

- identity of customers, including their names, domiciles, dates of birth documents;
- the purpose of the relevant transaction;
- customers’ occupations (in case of natural persons) and the nature of their businesses (in case of juridical persons); and
- information on the beneficial owner(s) of customers (in case of juridical persons) by verification methods such as asking customers to present documents of identification.

This verification is required at the time of specific transactions, which include, among others, the opening of deposit accounts, cash transfers of more than JPY100,000 and money-lending.

Pursuant to the APTCP, local banks are required to prepare and preserve records of the verified information collected at the time of transactions and the measures taken to verify customers for seven years from the day of termination of the relevant transactions. Local banks are also required to prepare and preserve the records of transactions for seven years from the day of commencement of the relevant transactions.

Local banks must determine whether property accepted from a customer is suspected to have come from criminal proceeds in light of the results of verification at the time of a transaction and other circumstances, considering the recommendations of the National Risk Assessment of Money Laundering and Terrorism Financing Report published by the National Public Safety Commission every year. If property accepted from a customer is suspected, based on the results of verification at the time of transaction and other cir-

cumstances, to have come from criminal proceeds, or the customer is suspected of committing a certain crime, local banks must promptly report the transaction to the FSA. The FSA, upon receipt of the report, will promptly notify the National Safety Commission. If the National Safety Commission believes such information to be useful for investigation of criminal cases conducted by public prosecutors, the police or other investigators, it will disseminate such information to the investigators.

The FSA published the Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism (“AML/CFT Guidelines”) to clarify the Japanese government’s basic stance on risk management practices against money laundering and terrorism financing to encourage financial institutions to improve their internal systems for prevention of money laundering and terrorism financing. Based on the risk-based approach recommended by the Financial Action Task Force (FATF), the AML/CFT Guidelines clarify “required actions”, which, if not taken, may result in administrative actions being imposed by the FSA, such as the issuance of reporting orders and business improvement orders against offenders. The AML/CFT Guidelines also stipulate the management systems and actions expected to be implemented by each financial institution, such as formulation of “plan-do-check-act” (or PDCA) procedures. This is to ensure the involvement and understanding of management in such prevention measures, and to define the respective roles and responsibilities of the business, system control and internal audit divisions. The FSA has additionally provided clarification on the manner in which it will monitor the implementation of such actions. In this connection, the FSA has also provided examples of best practices based on its monitoring activities or from the experience of financial institutions overseas.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Japan has a deposit insurance system that protects depositors in the event of a systemic failure in the bank sector. The Deposit Insurance Act (Act No 34 of 1971, as amended) provides for an insurance framework in respect of bank deposits in Japan. The Deposit Insur-

ance Corporation, which was established under the Deposit Insurance Act, provides a public safety net to protect depositors. Local banks headquartered in Japan are protected under this system. Annual insurance premium payments are made by insured banks to the Deposit Insurance Corporation.

The insurance coverage is subject to certain limitations, including the following:

- the deposit insurance system primarily covers ordinary deposits and does not cover foreign currency or derivative deposits; and
- while deposit accounts for settlement purposes generally receive full coverage, other insured deposit accounts are generally covered up to JPY10 million per person and per bank.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

The framework for regulating local banks’ capital adequacy under the Banking Act has been amended to be in line with the implementation of Basel III.

Local banks with international operations are required to maintain a minimum Common Equity Tier I ratio (CET1) of 4.5%, a minimum Tier I ratio (including AT1) of 6% and a capital adequacy ratio (including Tier II ratio) of 8.0%, pursuant to the administrative notice published by the FSA, which is in line with the Basel III regulatory framework.

Meanwhile, local banks without international operations are required to maintain a core capital ratio of 4% (on both a non-consolidated and consolidated basis), and those banks employing the IRB approach are required to have a core capital ratio of 4.5%.

The leverage ratio of local banks with international operations must be kept at 3.15% (or 3.20% in case of G-SIBs) or higher following the amendments to the relevant regulations that came into force in April 2024. Further, a leverage buffer (of about 0.5-0.75% for Japanese G-SIBs) has been applicable to G-SIBs since 2023. When a local bank’s ratio falls below this level,

the FSA can issue an early corrective action order to the local bank.

Liquidity requirements concerning the Liquidity Coverage Ratio and Net Stable Funding Ratio have been introduced in line with the implementation of Basel III. Both the Liquidity Coverage Ratio and Net Stable Funding Ratio must be kept at 100% or higher. These requirements apply only to local banks with international operations.

Further, the capital conservation buffer (2.5%), the countercyclical buffer (2.5% maximum, 0% in Japan at present) and the G-SIBs/D-SIBs buffer (3.5% maximum, and 0.5 to 1.5% for each local bank (G-SIBs/D-SIBs) selected in Japan at present) have been phased in for local banks with international operations. G-SIBs are also required to meet the total loss-absorbing capacity requirement.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The legal framework for the liquidation of banks is provided in the Deposit Insurance Act, which classifies liquidation procedures into the following three categories:

- ordinary procedures, which are resolution regimes;
- procedures for financial crisis management, which are essentially bail-out regimes for the protection of bank deposits; and
- procedures under an orderly resolution regime, based on the “Key Attributes of Effective Resolution Regimes for Financial Institutions” adopted by the FSB, involving an arrangement which largely parallels a bail-in scheme.

The Deposit Insurance Corporation performs the main role of protecting depositors and the entire financial system in the process for liquidation of banks.

Ordinary Procedures

In principle, an ordinary liquidation procedure should apply unless failure of the local bank is systemically important. Under ordinary procedures, only a certain amount of deposits (usually JPY10 million per deposi-

tor) is protected under the deposit insurance system. Ordinary procedures fall under two categories, as follows.

- **Payout Method:** This is where deposits are paid off directly to depositors through the Deposit Insurance Corporation’s deposit insurance funds. The failed local bank is subject to bankruptcy procedures, such as civil rehabilitation proceedings or corporate reorganisation proceedings.
- **Purchase and Assumption Method:** This is where all or part of the business operations of a failed local bank are transferred to an assuming financial institution. Under this method, a financial administrator is appointed to manage the failed local bank until its operations are transferred. The Deposit Insurance Corporation provides financial assistance (including monetary grants) within the scope of payout costs to ensure the smooth transfer of the local bank’s business.

Generally, the purchase and assumption method is preferred over the payout method, as the former would generally be better equipped to address the concerns of depositors and to avoid financial turmoil.

Procedures for Financial Crisis Management

The Deposit Insurance Act provides certain measures in cases where serious problems arise in maintaining the stability of the financial systems in Japan or in regions where a bank operates its business. These measures, which include capital injection, full deposit protection and temporary nationalisation, may be initiated subject to deliberation by the Financial System Management Council.

Capital injection is designed to allow a bank with positive net worth to increase the amount of its capital through subscription by the Deposit Insurance Corporation of shares in the local bank. Full deposit protection is provided for banks with a negative net worth coupled with suspension or possible suspension of repayment of deposits. Temporary nationalisation is used for banks with negative net worth coupled with suspension or possible suspension of repayment of deposits.

Orderly Resolution Regime

The “Orderly Resolution Regime” was introduced by amendments to the Deposit Insurance Act in 2014. The purpose of such amendments is to implement the “Key Attributes of Effective Resolution Regimes for Financial Institutions” adopted by the Financial Stability Board. Under this regime, the Prime Minister can implement certain measures to prevent serious financial turmoil.

Under the Orderly Resolution Regime, the Prime Minister may, subject to consultation with the Financial System Management Council, take the following actions for financial institutions that are not experiencing a deficit in funds:

- impose oversight of the local bank’s management by the Deposit Insurance Corporation;
- provide liquidity support to fulfil the obligations of the financial institution; and
- order a capital injection.

For financial institutions experiencing a deficit in funds, the Prime Minister may:

- impose oversight of the local bank’s management by the Deposit Insurance Corporation;
- take over the management of the local banks’ business and assets under those circumstances specified in the Deposit Insurance Act; and
- transfer contracts that are necessary to maintain the stability of the financial system to a bridging bank, and provide financial assistance to the bridging bank to enable the performance of its the obligations under those contracts.

The Orderly Resolution Regime is generally in line with the “FSB Key Attributes”, including recovery and resolution planning, temporary stay of early termination rights and implementation of a contractual bail-in mechanism.

9. ESG

9.1 ESG Requirements

The Banking Act does not require the satisfaction of ESG requirements by local banks. However, as not-

ed above, under the Guidelines, a listed local bank is required to comply with Japan’s Corporate Governance Code issued by the Tokyo Stock Exchange. Under the Corporate Governance Code, listed companies are required to establish a basic policy for and make disclosures regarding their sustainability initiatives.

Further, the FIEA was amended in 2023 to require listed companies to disclose certain sustainability-related matters in their annual securities reports and other disclosure materials. Accordingly, listed local banks are required, as a practical matter, to take ESG requirements into consideration in their disclosure documents.

In 2022, the FSA also published its “Supervisory Guidance on Climate-Related Risk Management and Client Engagement”. The guidance, which was published to enhance the development of initiatives to be taken by local banks, requires the management of climate-related risks by local banks as well as the support they should provide to their clients on the climate-related risks and opportunities relating to climate change.

10. DORA

10.1 DORA Requirements

The FSA has amended the Guidelines in efforts to strengthen the cybersecurity management of local banks and, as part of such efforts, also published the Guidelines for Cybersecurity in the Financial Sector in October 2024.

These Guidelines stipulate, among other things, that local banks should take the following measures:

- maintain a management system dedicated to cybersecurity;
- identify, evaluate and control cybersecurity risks;
- ensure the security measures of their internal systems;
- prepare contingency plans in anticipation of cybersecurity incidents; investigate cybersecurity incidents and prepare post-incident reports for the prevention of similar incidents; and
- control third-party risks.

11. Horizon Scanning

11.1 Regulatory Developments

Regulations regarding AML/Sanctions have been tightened following the Fourth Round Mutual Evaluation of Japan by FATF, which was published in 2021, in which Japan was rated as a country requiring enhanced follow-up. Following the evaluation report, the deadline for full compliance with the FSA's AML/CFT Guidelines was set for the end of March 2024. According to a report published by the FSA in June 2024, 99% of financial institutions have completed their compliance with the AML/CFT guidelines based on reports from the financial institutions. However, as the on-site monitoring of the Fifth Round Mutual Evaluation of Japan by the FATF is planned in 2028, the Japanese government (including the FSA and the MOF) plans to ensure that the AML/CFT management systems of local banks are appropriate, and to enhance the AML/CFT initiatives taken by local banks. To this end, the FSA may also provide updates to the AML/CFT Guidelines as it deems necessary.

Tightened regulations and engagement of the FSA may result in increased burdens on local banks to develop frameworks and personnel structures, or to invest in systems relating to AML/CFT. Local banks that fail to adapt to these tightened regulations will be exposed to regulatory risks, such as receipt of business improvement orders from the FSA.

Trends and Developments

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Anderson Mori & Tomotsune is a full-service law firm formed by the combination of three leading law firms in Japan: Anderson Mori (one of the largest international firms in Japan, well known for serving overseas companies doing business in Japan since the early 1950s), Tomotsune & Kimura (well known for its expertise in international finance transactions), and Bingham Sakai Mimura Aizawa (a premier international insolvency/restructuring and crisis manage-

ment firm). The firm is proud of its long tradition of serving the international business community, and of its reputation as one of the largest law firms in Japan. Its combined expertise enables the firm to deliver comprehensive advice on virtually all legal issues related to corporate transactions. The majority of its lawyers are bilingual and experienced in drafting and negotiating across borders and around the globe.

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Recent Developments in the Legal Framework for Stablecoins (Enforcement of the 2025 Amended Payment Services Act)

On 6 June 2025, the Act to Amend the Payment Services Act (the “PSA”, or the “amended PSA”) was brought into force. The amendment was proposed in response to the advancement of digitalisation in finance, and aims to promote innovation while ensuring user protection through revisions to: (i) regulations governing fund transfer and payment services; and (ii) regulations related to crypto-assets (Article 2, paragraph 14 of the PSA) and “Electronic Payment Instruments”, hereafter “EPIs” (so-called “stablecoins”; Article 2, paragraph 5 of the PSA). The enforcement date of the amended PSA must be specified by cabinet order within a period not exceeding one year from 13 June 2025.

This article focuses on the parts of the amendment concerning stablecoins, outlining the key changes, their impact on practice, and potential practical responses.

Stablecoins in Japan

The PSA defines an EPI as a property value that functions as a means of settlement and whose issuer promises redemption or performance in legal currency. Accordingly, stablecoins are treated as EPIs under the PSA.

EPIs are further classified into the following four types, depending on the issuer and the manner of issuance (each item of paragraph 5, Article 2 of the PSA):

- Category I EPIs – a property value (limited to currency-denominated assets which are recorded on an electronic device or any other object by electronic means, and excluding securities, electronically recorded monetary claims specified in Article 2, paragraph 1 of the Electronically Recorded Monetary Claims Act, prepaid payment instruments and other instruments specified in cabinet office ordinances as being equivalent to the foregoing items (except those specified in the cabinet office ordinances taking into account their transferability and other factors)) which can be used in relation to unspecified persons for the purpose of paying consideration for the purchase or leasing of goods or the receipt of provision of services, and can also be purchased from and sold to unspecified persons acting as counterparties, and which can be transferred by means of an electronic data processing system (except those that fall under the third bullet point below);
- Category II EPIs – a property value which can be mutually exchanged with those set forth in the preceding item with unspecified persons acting as counterparties, and which can be transferred by means of an electronic data processing system;
- Category III EPIs – specified trust beneficial interests; and
- Category IV EPIs – those specified by cabinet office ordinances as being equivalent to those listed in the preceding three bullet points.

As of the time of writing, no stablecoin falling under any of the four categories of EPIs has yet been issued in Japan.

However, with respect to the first EPI category, JPYC Inc., which was registered as a Type II Fund Transfer Service Provider (the “Type II FTSP”) in August 2025, was preparing for new issuance in 2025. For stablecoins issued by a Type II FTSP such as JPYC Inc., the following restrictions apply:

- the maximum amount per transfer must not exceed JPY1 million; and
- where the balance of EPIs held by a user exceeds JPY1 million, the issuer must establish a system to prevent the accumulation or retention of non-remittance funds (the so-called “funds retention regulation”) in accordance with Article 51 of the PSA and paragraph 2, Articles 30-2 of the Cabinet Office Ordinance on FTSPs.

In addition, certain trust banks in Japan are also preparing for issuance in connection with Category III EPIs. Unlike Category I EPIs, issued by a Type II FTSP, Category III EPIs can be issued without being subject to the transfer cap of JPY1 million or the funds retention regulation, and are therefore recognised as a more convenient and flexible.

Those who conduct any of the following activities involving EPIs as a business are required to obtain registration as service provider for EPIs (“EPIESP”) with respect to the following.

- the sale, purchase and exchange of EPIs.
- serving as an intermediary, brokerage or agency for the sale, purchase and exchange of EPIs.
- the management of EPIs. As of this publication, only one entity has been registered as an EPIESP in Japan, and the only EPI handled by this entity is the USDC. The USDC is defined separately from the above four categories of EPIs as a “Foreign Electronic Payment Instrument” (Article 30, paragraph 1, item (v) of the Cabinet Office Ordinance on Electronic Payment Instruments Exchange Service Providers).

Additional regulations apply to such instruments, including the funds retention regulation and transfer cap of JPY1 million per transaction (Item (vi)(b), paragraph 1, Article 30 of the same Ordinance).

Establishing a new intermediary business for stablecoins

As described above, under the current PSA, business operators that provide web-based services such as game applications or unhosted wallets, and that direct users to the services of EPIESPs or Crypto Asset Exchange Service Providers (“CAESPs”, or, collectively “EPIESPs, etc”) may, depending on the manner of their involvement, be deemed to be engaged in “intermediation” under the PSA. Intermediation is generally understood to be the factual act of standing between parties and facilitating the formation of a legal act between them (Item (ii), paragraph 10, Article 2; Article 62-3; item (ii), paragraph 15, Article 2; and Article 63-2 of the PSA). If a business operator’s conduct constitutes “intermediation” under the PSA, the operator is required to obtain registration as an EPIESP.

In addition to the PSA’s requirement that EPIESPs, etc segregate users’ assets, the Act on Prevention of Transfer of Criminal Proceeds (the “APTCP”) also imposes obligations for the purpose of AML/CFT, including verifying customer identity at the time of transaction and filing reports on suspicious transactions. However, where a business operator’s conduct constitutes only intermediation in relation to EPIs or crypto-assets (collectively “EPIs, etc”) under the PSA, the operator does not become a party to the sale or exchange of the EPIs, etc, nor does it receive custody of users’ assets, such as funds or crypto-assets. Nevertheless, these operators are subject to the same obligations regarding safeguarding user assets and AML/CFT compliance, which can impose excessive burdens on their operations.

In response to the growing demand from business operators wishing to engage solely in the intermediation of sales or exchanges of EPIs, etc, the amended PSA introduces a new regulatory framework – the Electronic Payment Instruments and Crypto Asset Service Intermediary Business (the “Intermediary Business” or “Intermediary Business Operator”) – designed to balance the promotion of innovation with the protection of users.

Under this new framework, business operators who solely intermediate the sale or exchange of EPIs, etc

are only required to obtain an Intermediary Business Operator license, which is separate from the existing licenses of EPIESPs or CAESPs, and will be subject to more relaxed regulations. The key elements of the regulations applicable to the Intermediary Business Providers are as follows.

- Adoption of the Affiliation System (Item (vii), Paragraph 1, Article 63-22-3 of the Amended PSA, etc): An Intermediary Business Provider must be entrusted by a specific EPIESP, etc, and act on behalf of that entity to intermediate between users and the EPIESP, etc. The affiliated EPIESP, etc is required to: (i) supervise and guide the Intermediary Business Provider (Articles 62-11 and 63-9 of the PSA); and (ii) bear liability for compensation for damages caused to users by the Intermediary Business Provider (Article 63-22-14 of the amended PSA).
- Entry Regulation (Article 63-22-5 of the Amended PSA): No financial requirement is prescribed as a condition for registration as an Intermediary Business Operator. This is because the risk of compensation liability arising from the mismanagement of users' assets is limited for the Intermediary Business Operators. Furthermore, under the affiliation system, the affiliated EPIESP, etc is principally responsible for compensating users for any losses.
- AML/CFT: Obligations related to AML/CFT are imposed on the affiliated EPIESP, etc under the APTCP (items 32-2 and 32-3, paragraph 2, Article 2 of the APTCP). Accordingly, the Intermediary Business Providers themselves are not subject to AML/CFT obligations.

Relaxed restrictions on the management and operation of reserve assets for trust-type stablecoins

Under the current PSA, for Electronic Payment Instrument III, the issuer is responsible for redemption only to the extent of the trust assets. Accordingly, if the value of the trust assets decreases, the amount redeemable by holders will also decline. To ensure that the value of the relevant trust beneficial interests remains linked to legal tender, and that redemption at face value is secured, the PSA requires that the entire amount of the reserve assets backing the specified trust beneficial interests be managed in demand

deposits (Article 3 of the Cabinet Office Ordinance on Electronic Payment Instruments Service Providers).

However, since Japan introduced its regulatory framework for EPIs, other major jurisdictions such as the US and the EU have adopted regulatory systems that allow reserve assets of stablecoins to be managed in instruments other than deposits, including government bonds. Consequently, Japan's approach has been criticised as lacking balance relative to international standards.

Considering these international developments, the amendment to the PSA allows reserve assets backing the specified trust beneficial interests to be managed, within a certain scope, in government bonds and other securities prescribed by the relevant cabinet office ordinance (paragraph 9, Article 2 of the amended PSA).

The specific requirements — such as the types of bonds that may be used, the upper limit of the proportion of such assets, and other detailed standards — are delegated to the relevant cabinet office ordinance under the PSA. According to the contents indicated in the Explanatory Material for the Bill to Amend the PSA (the “Explanatory Material”) issued by the Financial Services Agency of Japan (the “FSA”), it is expected that up to 50% of the total amount of issued stablecoins may be managed through: (i) Japanese and US government bonds with maturities or remaining terms of three months or less, or (ii) time deposits that can be terminated prior to maturity.

Furthermore, to ensure the preservation of principal, the relevant cabinet office ordinance is expected to provide that: (i) for Japanese and US government bonds with maturities or remaining terms of three months or less, the entrustor (EPIESP, etc) will be obliged to make additional contributions in cases where the value of the reserve assets decreases; and (ii) for time deposits that can be terminated before maturity, such management will be limited to cases where early termination fees do not reduce the value of the reserve assets.

Applying the travel rule to Category III EPIs

When an EPIESP transfers an EPI at the request of a customer, it must notify another EPIESP or a foreign EPIESP of the identifying information of both the originating customer and the receiving customer (paragraph 1, Article 10-3 of the Organized Crime Proceeds Act – the so-called “Travel Rule”).

However, specified trust beneficial interests (Category III EPIs) are excluded from the scope of EPIs subject to the Travel Rule, and, therefore, the Travel Rule does not apply to such interests under the current provision (chapeau of paragraph 1, Article 10-2 of the APTCP). This exclusion stems from the legislative assumption made at the time of the 2022 amendment to the APTCP – namely that specified trust beneficial interests would be issued only through schemes utilising existing beneficiary certificate issuing trusts, in which the transfer of rights is carried out through amendments to the beneficiary register (ie, a permissioned blockchain structure). Under this model, the issuer can identify each holder’s name and address based on the beneficiary register, and therefore application of the Travel Rule to specified trust beneficial interests was deemed unnecessary.

However, following the enforcement of the 2022 amendment to the APTCP, projects have emerged seeking to issue specified trust beneficial interests without relying on beneficiary certificate issuing trusts – ie, using permissionless blockchains. From the perspective of money laundering and related risks, this has created a need to apply the Travel Rule to specified trust beneficial interests, in the same manner as Category I EPIs.

Accordingly, when transferring specified trust beneficial interests not based on beneficiary certificate issuing trusts, it is recommended that the sending and receiving of customer information be conducted by EPIESPs, etc through the application of the Travel Rule or similar mechanisms, and that authorities conduct appropriate supervision of such transfers.

Issuance of Category I EPIs by banks

The FSA has expressed concern that the involvement of banks in stablecoins utilising permissionless blockchains could pose significant risks related to money laundering and the sound and proper operation of their businesses. Accordingly, the FSA’s position is that the issuance of EPIs by such entities requires cautious consideration.

Under the current legal framework, it is virtually impossible for any deposit-taking institution (mainly referring to banks) to issue Category I EPIs.

In addition, internationally, there are almost no examples of stablecoins issued by banks, and various risks, including money laundering and fraudulent use, have been identified.

Given the lack of market demand in Japan and the absence of concrete initiatives toward developing issuance schemes, the current policy taken by the regulator is to refrain from amending relevant laws for the time being, while closely monitoring domestic and international developments.

LIECHTENSTEIN



Law and Practice

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1. Legal Framework

1.1 Key Laws and Regulations

Laws and Regulations

Liechtenstein has been part of the European Economic Area (EEA) since 1995 and therefore has implemented the same regulatory standards and frameworks as other EU and EEA member states. This regulatory framework has been significantly expanded since Liechtenstein's accession to the EEA through the implementation of numerous EEA legal acts. While its content has evolved, its structure and systematics have largely remained unchanged, resulting in increasing heterogeneity and complexity for practitioners. This gap has been closed through a recent revision of the Liechtenstein Banking Act (*Bankengesetz*) as well as the passing of new acts, which align the Liechtenstein banking and investment firm supervision law more closely with the structure of EEA law, distinguishing between prudential supervision of banks (CRD/CRR) and investment firms (IFD/IFR), as well as between prudential supervision and conduct regulation (MiFID II/MiFIR). This adjustment required a full revision of the BankG, separating its various elements into distinct, self-contained laws. The new framework comprises, in particular, the following laws and regulations:

- The Banking Act (*Bankengesetz* BankG) and the Banking Ordinance (*Bankenverordnung* BankV) transpose, inter alia, Directive 2013/36/EU (CRD) and Directive 2014/65 (MiFID II) into Liechtenstein law. The revised BankG focuses exclusively on the prudential supervision of banks and financial holding companies, adopting the systematics, concepts, and terminology of EEA law to ensure

legal clarity, regulatory certainty, and continued full access to the EEA internal market for Liechtenstein banks. It is therefore the core legislation applicable to banks and governs the licensing process (including the “passporting” framework), the own funds requirements, the liquidity and reserve requirements, the risk management and corporate governance and the supervision through the Liechtenstein Financial Market Authority (FMA) as well as the liquidation, restructuring and insolvency of a bank.

- The Investment Firm Act (*Wertpapierfirmengesetz* WPFG) and the Investment Firm Ordinance (*Wertpapierfirmenverordnung* WPFV) represent the new core legislation for investment firms (previously regulated in the BankG) and transpose, inter alia, Directive 2014/65 (MiFID II) into Liechtenstein law. It governs the licensing process (including the “passporting” framework), the corporate governance, capital requirements, investor protection and the supervision through the FMA as well as the liquidation, restructuring and insolvency of investment firms.
- The Investment Services Act (*Wertpapierdienstleistungsgesetz* WPDG) and the Investment Services Ordinance (*Wertpapierdienstleistungsverordnung* WPDV) regulate the MiFID II conduct rules for banks providing investment services or investment activities, as well as for investment firms.
- The Asset Management Act (*Vermögensverwaltungsgesetz* VVG) and the Asset Management Ordinance (*Vermögensverwaltungsverordnung* VVV) transpose, inter alia, Directive 2014/65 (MiFID II) into Liechtenstein law. Given the importance of asset management services for the Liechtenstein financial market and the high threshold for

obtaining a banking or investment firm licence, Liechtenstein decided to implement a more accessible licence for the following investment services: portfolio management, investment advice, reception and transmission of client orders and execution of client orders. Similar to the Banking Act, the Asset Management Act stipulates the requirements for obtaining the licence (including passporting), own funds, liquidity, risk management and corporate governance requirements and the supervision through the FMA.

- The Payment Services Act (*Zahlungsdienstegesetz* ZDG) and the Payment Services Ordinance (*Zahlungsdiensteverordnung* ZDV) transpose Directive 2015/2366 (PSD II) into Liechtenstein law, and provide for, inter alia, the licensing requirements for payment institutions.
- The E-Money Act (*E-Geldgesetz* EGG) and the E-Money Ordinance (*E-Geldverordnung* EVV) transpose Directive 2009/110/EC (E-Money Directive) into national law, and provide for the regulatory framework for electronic money institutions.
- The Token and Trusted Technology Service Provider Act (*Token- und VT-Dienstleister-Gesetz* TVTG) and the Token and Trusted Technology Service Provider Ordinance (*Token- und VT-Dienstleister-Verordnung* TVTV) govern the use of blockchain technology and the token economy in Liechtenstein.
- The Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* SAG) and the Recovery and Resolution Ordinance (*Sanierungs- und Abwicklungsverordnung* SAV) transpose Directive 2014/59/EU (BRRD) into Liechtenstein law, and implement, inter alia, resolution tools and requiring banks and investment firms to prepare restructuring plans laying out the actions to be taken to restore the financial stability of an institution in the event of a significant deterioration in its financial position.
- The EEA Securities Prospectus Implementation Act (*EWR-Wertpapierprospekt-Durchführungsgesetz* EWR-WPPDG) facilitates the implementation of Regulation (EU) 2017/1129 (Prospectus Regulation), and establishes the framework for drawing up prospectuses and for offering securities to the public in Liechtenstein.

- The Trading Venue and Stock Exchange Act (*Handelsplatz- und Börsegesetz* HPBG) and the Trading Venue and Stock Exchange Ordinance (*Handelsplatz- und Börseverordnung* HPBV) implement MiFID II rules on authorisation and supervision of trading venue operators, while also providing additional provisions on stock exchange operations, admission of securities to official listing, certain data service providers, and algorithmic trading.
- The Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz* FMAG) lays out the internal organisation of the FMA, the supervisory instruments available to the FMA, and its competencies.

As mentioned above, Liechtenstein is a member of the EEA so many EU regulations are directly applicable in Liechtenstein – eg, Regulation (EU) No 575/2013 (CRR), Regulation (EU) No 648/2012 (EMIR), Regulation (EU) 2017/1129 (Prospectus Regulation) and (once it has been added to the EEA acquis) Regulation (EU) 2023/1114 (MiCAR).

Authorities

The Liechtenstein Financial Market Authority (FMA) is an independent institution under public law that supervises financial market participants in Liechtenstein. Liechtenstein does not participate in the Single Supervisory Mechanism (SSM), so no institution in Liechtenstein is subject to supervision by the European Central Bank (ECB). However, as Liechtenstein is part of the Swiss franc monetary area, the Swiss National Bank (SNB) acts as the national bank of Liechtenstein, which means that financial institutions in Liechtenstein must comply with certain reporting requirements vis-à-vis the SNB.

2. Authorisation

2.1 Licences and Application Process Authorisation Requirements

Banks and investment firms require a licence from the FMA in order to commence their business activities (see below for the scope of regulated activities). Additionally, if a bank is part of a foreign group active in the financial sector, a licence will only be granted if the group is subject to consolidated supervision comparable to Liechtenstein supervision and if the home

country supervisory authority raises no objections to the establishment of a subsidiary. The operation of a domiciliary bank – ie, a Liechtenstein-licensed bank that has no physical presence in Liechtenstein is prohibited.

A banking or investment firm licence will be granted if the applicant meets the following requirements:

- The applicant is a company limited by shares (*Aktiengesellschaft AG*) or a European Company (*Europäische Gesellschaft SE*).
- The seat and headquarters are in Liechtenstein.
- The members of the board of directors and the executive board as well as the head of the internal audit department warrant the proper conduct of business at all times (fit and proper test), both professionally and personally.
- The statutes and regulations of a bank precisely define the material and geographical scope of business of the bank or investment firm.
- A three-year business plan is required, including forecasts, organisational details, and information about internal systems and capital adequacy.
- The applicant is organised in an appropriate manner for its business activities and has at least a board of directors (*Verwaltungsrat*) (minimum three members for banks and two members for investment firms) responsible for overall management, supervision and control, an executive management (*Geschäftsleitung*) (minimum two members for banks and investment firms) responsible for operations, and (in the case of investment firms, depending on the nature, scope, and complexity of its business activities) internal audit department, a risk management department, compliance department, an AML officer, customer complaint department as well as appropriate procedures for employees to report potential or actual violations of the Banking Act or Investment Firm Act through a dedicated, independent and autonomous channel.
- Any qualified shareholder (ie, a shareholder that holds directly or indirectly $\geq 10\%$ or otherwise controls the bank or investment firm) must be “fit and proper” and financially sound.
- The applicant has a minimum statutory capital of CHF10,000,000 in the case of banks or between CHF75,000 and CHF750,000 (depending on the

type of investment services to be provided) in the case of investment firms. In practice, however, the FMA typically requires a statutory capital that exceeds the minimum requirements depending, *inter alia*, on the institution’s business model.

Process

Upon receipt of the application, the FMA will send the applicant an acknowledgement of receipt. If facts relevant to the licence change during the authorisation procedure, the applicant must immediately submit updated documents or documents adapted to the new situation. All information provided by the applicant will be treated confidentially and is subject to official secrecy in accordance with Article 142 of the Banking Act and Article 56 of the Investment Firm Act. The duration of the authorisation procedure depends primarily on the conclusiveness and completeness of the information and documents provided in the application. The FMA shall decide on an application for a licence within six months of receipt of the complete application.

Prior to submitting the application for a banking licence, a draft version of the definitive banking licence application (application for preliminary review) can be submitted to the FMA. The preliminary review application must be structured in the same way, but its content must be limited to the most important aspects. During the informal preliminary review, the FMA will assess the material aspects in relation to their non-approvability and any potential “red flags”. This primary application/assessment has proven to be an invaluable tool in the past, particularly given that the FMA in this informal process views itself as a supporting service provider and sparring partner.

Fees

The administrative charges for the application process amount to CHF100,000 in the case of a banking licence and CHF35,000 in the case of an investment firm licence. Additional charges will accrue for filings with the Liechtenstein Commercial Register and legal and notary services.

Regulated Activities

Banks are companies that carry out one or more of the following transactions on a commercial basis:

- the acceptance of deposits and other repayable funds;
- the lending of third-party funds to an undefined group of borrowers;
- the custody business;
- the assumption of sureties, guarantees and other liabilities for others, provided that the obligation assumed is for monetary payments;
- the issuance, administration, and collection of bills of exchange, checks, or traveller's checks, provided that this does not constitute a payment service pursuant to the Payment Services Act;
- the purchase of bills of exchange and checks;
- trading in foreign exchange, checks, or bills of exchange for its own account or for the account of third parties;
- the purchase of receivables based on framework agreements with or without recourse;
- the execution of bankable off-balance sheet transactions; and
- the issue of covered bonds in accordance with the law on European Covered Bonds (*Gesetz über Europäische gedeckte Schuldverschreibungen* EuGSVG).

Banks duly licensed to carry out the deposit and lending business are also permitted to provide, inter alia, investment services and ancillary investment services (see below) and payment services within the meaning of the Payment Service Act (*Zahlungsdienstegesetz* ZDG) and also to issue e-money within the meaning of the E-Money Act (*E-Geldgesetz* EGG).

Investment firms are companies that carry out one or more of the following transactions on a commercial basis:

- investment services, namely:
 - (a) the reception and transmission of orders in relation to one or more financial instruments;
 - (a) the execution of orders on behalf of clients;
 - (b) dealing on own account;
 - (c) portfolio management;
 - (d) investment advice;
 - (e) the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
 - (f) the placing of financial instruments without a

- firm commitment basis;
- (g) the operation of a multilateral trading facility (MTF); and/or
- (h) the operation of an organised trading facility (OTF);
- ancillary services, namely:
 - (a) the safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management, but excluding the maintenance of securities accounts at the top-tier level;
 - (b) the granting of credits or loans to an investor to allow him/her to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
 - (c) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
 - (d) foreign exchange services, where these are connected to the provision of investment services;
 - (e) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
 - (f) services related to underwriting; and/or
 - (g) investment services and ancillary services related to the underlying assets of certain derivatives, where these are connected to the provision of investment or ancillary services.

Passporting

Any bank or investment firm duly licensed in another EU/EEA member state may carry out banking and/or investment services in Liechtenstein on the back of the freedom to provide services or the freedom of establishment, meaning that the licence obtained in the home member state is notified or “passport” to Liechtenstein as the host member state by the supervisory authority of the respective home member state.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Any intended direct or indirect acquisition or disposal of a participation of 10% or more in a Liechtenstein bank or investment firm or any intended direct or indirect increase or reduction of a qualifying holding with the result that the capital or voting rights in a bank or investment firm would reach, exceed or fall below the thresholds of 20%, 30% or 50% or that the bank or investment firm would become a subsidiary of an acquirer or would no longer be a subsidiary of a seller must be notified to the FMA in writing without delay by the person or persons interested in the acquisition or disposal.

Acting in Concert and Significant Influence

In accordance with the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01), the FMA also takes into account:

- “acting in concert”, where multiple persons act in concert in relation to an intended acquisition resulting in the aggregation of their holdings in order to determine whether such persons acquire a qualifying holding or cross any relevant threshold; and
- “significant influence”, where a proposed acquisition not reaching the 10% threshold does trigger reporting obligations if such holding would enable the proposed acquirer to exercise a significant influence over the target undertaking – eg, the acquirer is also a member of the management board of the target.

Filing Documentation

The scope of information and documentation to be filed with the FMA is determined in Commission Delegated Regulation (EU) 2017/1946 (Ownership Control Regulation) and covers, inter alia:

- information on the identity of the proposed acquirer – eg, registered address, legal form, persons who effectively direct the business and ultimate beneficial owners;
- information on any proceedings and investigations – eg, criminal records, criminal, civil or enforcement

procedures and refusal of registrations, authorisations or licences;

- information on financial interests and non-financial interests or relationships of the proposed acquirer with current shareholders, members of the management or supervisory board or the target undertaking itself;
- information on the group of the proposed acquirer – eg, structure chart of the group, relationships between financial and non-financial entities within the group; and
- information on the acquisition itself – eg, intention of acquisition, acquisition price, financing of acquisition.

Reduced information requirements apply for certain acquirers who are authorised and supervised within the European Union/European Economic Area.

Process

The FMA has to confirm the completeness of the required documentation within two business days. Once confirmed, the FMA has 60 business days to evaluate the intended acquisition. If the FMA does not raise a written objection within the assessment period, the acquisition shall be deemed authorised. The FMA may also attach conditions and requirements to the acquisition and set a deadline for the completion of the intended acquisition.

4. Governance

4.1 Corporate Governance Requirements

The corporate governance requirements for Liechtenstein banks are laid out in the Banking Act (*Bankengesetz*) and the Banking Ordinance (*Bankenverordnung*), supplemented by various guidelines issued by the FMA. These rules are designed to promote effective supervision of a bank’s business activities, from the definition of the necessary bodies within a bank to the requirements to be met by the staff performing these functions.

Board of Directors and Management Responsibilities

The senior management of a Liechtenstein bank consists of the members of the board of directors (*Ver-*

waltungsrat) and the members of the executive management (*Geschäftsleitung*). The board of directors, comprising a minimum of three members, holds the primary responsibility for the bank's governance. It ensures that the bank's strategic goals are in compliance with regulatory standards and reflect the interests of its stakeholders. The board of directors is also responsible for establishing a sound organisational framework and overseeing the bank's risk management system. The executive management of a Liechtenstein bank must consist of at least two members, distinct from the members of the board of directors, to ensure that operational decisions are free from supervisory conflicts. This structure enforces a strict division between management and oversight roles, which helps maintain objectivity and reduce potential conflicts of interest.

The FMA assesses both management and board members by means of a so-called fit and proper test, which ensures that persons in these key positions have the required qualifications, experience and integrity (see 4.2 **Registration and Oversight of Senior Management**).

Risk Governance and Internal Audit

Liechtenstein banks are required to have a comprehensive risk management framework, which sets forth in regulations or internal policies the basic principles of risk management as well as the responsibilities and procedures for the approval of risky transactions. In particular, they must identify, limit, and monitor market, credit, default, residual, settlement, liquidity, concentration, securitisation, counterparty, interest rate, reputational, operational, legal, and over-indebtedness risks. This includes the appointment of an independent risk officer (a member of senior management) who heads the risk department and is responsible for ensuring the integrity of the risk management framework. The risk department is overseen by the board of directors and, if the institution is of significant importance, by a risk committee composed of members of the board of directors.

The internal audit function must review the effectiveness and adequacy of the internal control system and the propriety of all activities and processes of entities within the same group, whether outsourced or not.

Banks and investment firms must ensure that any deficiencies identified by the internal audit function are rectified in a timely manner. The internal audit function must report directly to the board of directors and operate independently from the day-to-day business of the bank.

Outsourcing

When a bank outsources critical functions, it remains fully responsible for ensuring that these services comply with applicable regulations. The outsourcing agreement must include provisions for the monitoring and control of outsourced activities to ensure that they are subject to the same risk management and compliance framework. The guidelines on outsourcing arrangements (EBA/GL/2019/02) of the European Banking Authority (EBA) are applicable.

Liechtenstein Bankers Association

The Liechtenstein banking industry has organised itself through the establishment of the Liechtenstein Bankers Association (*Liechtensteinischer Bankenverband*), whose objectives are to protect and represent the rights and interests of the banking industry, to engage in self-regulation, to preserve and promote Liechtenstein as a banking and financial centre, and to promote professional education and training in the banking industry. To this end, the Liechtenstein Bankers Association has issued a code of conduct and guidelines for its members.

4.2 Registration and Oversight of Senior Management

In Liechtenstein, the registration and oversight of senior management of banks are governed by the Banking Act (*Bankengesetz*), the Banking Ordinance (*Bankenverordnung*), and guidelines issued by the FMA. These rules ensure that senior managers are fit and proper, able to manage risk effectively and comply with governance standards. The key requirements are set out below:

Fit and Proper Requirements

The FMA requires banks' senior management to meet strict fit and proper criteria to ensure that they have the necessary professional skills and experience, as well as personal integrity, to fulfil their duties. The fit and proper assessment covers three main areas:

Professional qualifications

Senior managers must demonstrate that they have the necessary education, qualifications and professional experience relevant to the banking sector. This includes experience in managerial positions in financial institutions or similar positions. The FMA assesses whether the candidate has the ability to perform the specific responsibilities associated with the position, such as risk management, compliance, or general management functions.

Personal integrity

A key component of the fit and proper assessment is the assessment of a manager's integrity and reputation. Individuals must demonstrate impeccable conduct and ethical behaviour. The FMA examines their personal and professional history, including any involvement in criminal activities, regulatory breaches or financial mismanagement. A clean record of fraud, money laundering, insider trading and other financial crimes is essential.

Time commitment

Senior managers must devote sufficient time to their duties. The FMA requires that senior managers have sufficient availability to perform their duties effectively. They should not hold excessive external directorships or engagements that could impair their ability to perform their banking duties. The Banking Ordinance stipulates a maximum number of other mandates that a member of the board of directors or executive management may hold at the same time. In banks of significant importance, the number of executive or board mandates a member may hold simultaneously depends on the individual case and the nature, scope, and complexity of the bank's business. In banks of significant importance, members of the board of directors or the executive management may hold only one of the following combinations: (i) one executive directorship and two board directorships, or (ii) four board directorships.

Registration with the FMA

All members of senior management must be registered and approved by the FMA prior to assuming office. The bank must submit a detailed application to the FMA, providing information on the individual's professional background, qualifications and clean

criminal record. Potential conflicts of interest must also be disclosed. The FMA then conducts a thorough assessment of the person's suitability. The regulator reserves the right to reject an appointment if the individual does not meet the required standards. Once approved, senior managers are officially registered with the FMA and their details are maintained in regulatory records for ongoing supervision.

4.3 Remuneration Requirements

In Liechtenstein, the remuneration rules applicable to banks are designed to promote prudent risk management, to align incentives with long-term performance and to avoid excessive risk-taking. These rules focus on aligning remuneration structures with risk management and sustainable performance. Banks must ensure that their remuneration policies are consistent with sound and effective risk management, do not encourage excessive risk-taking that could jeopardise the financial stability of the bank, are gender neutral and align the interests of management, staff and shareholders with the long-term health of the institution. These principles apply to all employees whose professional activities have a material impact on the institution's risk profile, but with particular emphasis on senior management and staff in control functions such as compliance, risk management and internal audit.

Fixed and Variable Remuneration

The bank must ensure that fixed and variable remuneration components of risk-taking personnel are well balanced to avoid excessive risk-taking to bolster bonus payments.

Fixed remuneration

Fixed remuneration is the guaranteed, regular salary that employees receive. It must reflect the individual's role, responsibilities and skills. This component should be sufficient to ensure that employees do not become overly dependent on variable pay, thereby reducing the incentive for short-term risk-taking.

Variable remuneration

The performance-related variable remuneration components may include bonus payments, stock options or other incentives and must not exceed 100% or, in certain cases, 200%, of fixed compensation. The

determination of the variable component must be based on a combination of individual, business unit and overall bank performance, whereby also non-financial factors (risk management, compliance and adherence to ethical standards, etc) should be factored in. In order to align variable compensation with the long-term development of the bank, a certain portion (at least 40%) of the remuneration must be deferred for a period of at least four to five years. In addition, banks must implement clawback and malus arrangements of up to 100% of the variable remuneration, which allow the bank to withhold or claw back variable remuneration if the recipient's performance deteriorates or if there are adverse developments such as misconduct, regulatory breaches or poor financial results that occur after payment.

5. AML/KYC

5.1 AML and CFT Requirements

Liechtenstein's anti-money laundering (AML) and counter-terrorist financing (CTF) laws comply with and implement international standards, particularly those set by the Financial Action Task Force (FATF) and the European Union. Given Liechtenstein's strong focus on international clients and business, often acting as a financial hub and gateway to the European Economic Area (EEA), Liechtenstein has implemented stringent AML/CTF measures to ensure that its banking sector operates transparently and securely, minimising the risk of illicit activities. The aforementioned rules have been implemented in the Liechtenstein Due Diligence Act (*Sorgfaltspflichtgesetz* SPG) and the Due Diligence Ordinance (*Sorgfaltspflichtverordnung* SPV), which apply to banks and other financial institutions.

Risk-Based Approach

Liechtenstein's AML/CTF regime follows a risk-based approach (RBA), which requires banks to identify, assess, and manage risks related to money laundering and terrorist financing. This approach is in line with the recommendations of the FATF and EU directives, in particular the EU anti-money laundering directives. Banks must allocate resources and implement measures commensurate with the risk profile of their customers, products and services.

Customer Due Diligence (CDD)

Banks in Liechtenstein must carry out comprehensive customer due diligence (CDD) at the start of a business relationship and on an ongoing basis throughout its duration. CDD requirements include:

- identification and verification of clients – ie, name, date of birth, address and nationality in the case of natural persons and corporate structure, legal form and persons authorised to represent the entity in the case of legal entities;
- identification of ultimate beneficial owners, focusing on the prevention of the concealment of funds through complex legal structures; and
- ongoing monitoring, which requires banks to monitor transactions on an ongoing basis to ensure that they are consistent with the customer's profile and risk level.

Enhanced due diligence requirements apply in relation to clients, transactions or situations that pose a higher risk, such as:

- relationships with politically exposed persons (PEPs) – ie, individuals who hold prominent public positions and are more susceptible to corruption;
- business relationships or transactions involving high-risk countries, particularly those identified by the FATF as having strategic AML/CTF deficiencies; and
- complex or unusually large transactions with no apparent economic or legal purpose.

Suspicious Activity Reporting (SAR)

If a Liechtenstein bank identifies suspicious activity, a report must be filed with the Liechtenstein Financial Intelligence Unit (FIU), the central authority responsible for receiving and analysing reports of suspected money laundering or terrorist financing in Liechtenstein. Suspicious activity reports (SARs) must be submitted without informing the client in order to ensure confidentiality and to avoid tipping off the potential perpetrator.

Record-Keeping

The information and documents collected by a Liechtenstein bank in the course of carrying out its due diligence requirements have to be retained for at least ten

years after the end of the relationship or the execution of a transaction. These records must be accessible to regulators and law enforcement authorities upon request, ensuring transparency and traceability.

Internal Controls and Training

Given the complexity of the AML/CTF regulations, banks must implement internal policies and controls to ensure compliance with the AML/CTF requirements. These policies and controls include:

- the appointment of a compliance officer responsible for overseeing the implementation of AML/CTF measures and liaising with the FMA and the FIU;
- regular staff training to ensure that employees are properly trained on AML/CTF requirements, in particular on how to detect suspicious activities; and
- independent audits.

Cross-Border Co-operation and Information Sharing

As mentioned above, Liechtenstein's financial market has a strong emphasis on international business, so cross-border co-operation is key for Liechtenstein. As a result, Liechtenstein works closely with other EEA and FATF countries to ensure a co-ordinated approach to financial crime – eg, by exchanging information with foreign counterparts when investigating cross-border money laundering or terrorist financing activities. It is also a member of the Egmont Group, which further promotes co-operation between FIUs worldwide.

Virtual Assets and Fintech Regulation

In line with EU and FATF guidelines, Liechtenstein has also extended its AML/CTF requirements to the virtual asset sector. Virtual asset service providers, which are subject to the Token and Trusted Technology Service Provider Act, must comply with the same AML/CTF rules as traditional financial institutions. This includes customer identification, transaction monitoring and suspicious activity reporting. Given Liechtenstein's progressive stance on fintech and blockchain technology, these regulations ensure that the growing sector operates transparently and mitigates the risk of abuse for illicit purposes.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Liechtenstein's deposit guarantee scheme is governed by the Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz* EAG) and the Deposit Guarantee and Investor Compensation Ordinance (*Einlagensicherungs- und Anlegerentschädigungsverordnung* EAV) transposing Directive 2014/49/EU (Deposit Guarantee Scheme Directive) and Directive 97/9/EC (Investor-Compensation Scheme Directive) into national law.

Protection Scheme

The protection scheme has two legs, namely the deposit guarantee scheme and the investor compensation scheme.

Deposit guarantee scheme (DGS)

The DGS covers deposits up to CHF100,000 per depositor and bank. For joint accounts, the deposit guarantee limit is CHF100,000 per depositor. This means that each holder of a joint account is entitled to protection up to the maximum limit independently. It covers almost all deposits of natural or legal persons, with a few exceptions such as deposits of other financial institutions, deposits of public authorities and government bodies and deposits of certain investment vehicles such as funds (UCITS and AIF).

In certain cases, temporary high balances in excess of CHF100,000 are also covered for a certain period of time. For example, deposits resulting from the sale of private property, insurance payments or pension capital can be protected up to CHF750,000 for a maximum of six months from the occurrence of the compensation event.

Investor compensation scheme (ICS)

The ICS protects clients of investment firms in case of financial failure. This protection is limited to CHF30,000 per investor. The scheme covers securities and other financial instruments held by banks or investment firms that are lost due to insolvency or mismanagement.

Administration and Structure

Both schemes are administered by the *Einlagensicherungs- und Anlegerentschädigungs-Stiftung SV*, which operates as a Protected Cell Company (PCC), a unique legal structure that allows assets and liabilities to be segregated into separate “cells” within a single legal entity. This means that the foundation can handle different types of insolvency events or compensation claims separately, ensuring that funds earmarked for one purpose cannot be used for another. Each participating financial institution is required to contribute to the fund, ensuring that the necessary financial resources are available in the event of insolvency.

In the event of a bank failure or insolvency, the EAS activates its compensation mechanism. There is no need for depositors to file claims as the compensation process is usually automatic. The EAS aims to compensate depositors within seven working days, ensuring quick access to protected funds. This fast payout time is in line with EU standards and reflects the importance of maintaining financial stability and public confidence in the banking system.

Funding Mechanism

The DGS and the ICS are financed by contributions from banks and investment firms operating in Liechtenstein. These institutions are required to pay an annual contribution based on the size of their deposit base, which is calculated in proportion to the total amount of deposits they hold. In addition, the Foundation may collect extraordinary contributions if necessary, should the funds fall below a threshold necessary to cover a major insolvency event. The funding mechanism is designed to be robust and sufficient to meet potential claims, with an emphasis on ensuring that funds are readily available to compensate depositors in a timely manner.

Supervisory and Regulatory Oversight

The FMA supervises the EAS and ensures that it complies with national and EEA-wide rules, and also co-operates with other EEA supervisory authorities to ensure cross-border co-ordination, particularly in view of the presence of foreign banks in Liechtenstein. This co-operation is important in the context of the home-host principle, under which the home supervisor has primary responsibility, but the host country

(Liechtenstein) also supervises institutions operating within its borders.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

As a member of the European Economic Area (EEA), the Basel III framework has been implemented in Liechtenstein through the Regulation (EU) No 575/2013 (Capital Requirements Regulation; CRR) and Directive 2013/36/EU (Capital Requirements Directive; CRD IV) so that Liechtenstein banks are subject to strict capital, liquidity, and risk control requirements. These regulations are incorporated into Liechtenstein’s financial regulatory framework under the Banking Act (*Bankengesetz*) and Banking Ordinance (*Bankenverordnung*), and are enforced by the FMA.

Capital Requirements

Minimum capital requirements

In relation to minimum capital requirements, Liechtenstein law fully adheres to Basel III – ie, a Common Equity Tier 1 (CET1) capital ratio of 4.5%, a Tier 1 capital ratio of 6% and a total capital ratio of 8%, in each case expressed as a percentage of the total risk exposure amount.

Capital buffers

In addition to the minimum capital requirements, banks in Liechtenstein must maintain various capital buffers:

- **Capital Conservation Buffer:** In order to ensure that Liechtenstein banks do not breach the minimum capital requirements during periods of economic stress, an additional 2.5% of the total risk exposure is required as CET1 capital to absorb potential losses during such periods.
- **Countercyclical Capital Buffer:** This buffer, ranging between 0% and 2.5% of the total risk exposure, aims to protect the resilience of the Liechtenstein banking system in times of excessive credit growth so that additional capital is built up when cyclical systemic risks are increasing.
- **Systemic Risk Buffer:** The systemic risk buffer is designed to cover risks not falling within the scope

of the aforementioned buffers, addressing potential serious adverse effects on the financial system and the real economy.

Liquidity Requirements

Liquidity coverage ratio (LCR)

The LCR requires banks to hold a sufficient buffer of high-quality liquid assets (HQLA) to cover net cash outflows over a 30-day stress period. The minimum LCR is 100%, meaning that the value of the bank's HQLA must be at least equal to or greater than its estimated net cash outflows over this period. High-quality liquid assets are assets that can be easily converted into cash with little or no loss in value during a crisis – eg, central bank reserves, government bonds and certain corporate bonds. The LCR ensures that banks are resilient to short-term liquidity shocks.

Net stable funding ratio (NSFR)

The NSFR is a long-term liquidity metric that requires banks to maintain a stable funding profile relative to their asset and off-balance sheet activities. It sets the available stable funding in relation to the required stable funding, which cannot be less than 100%. The NSFR requires banks to maintain sufficient stable funding to cover the required stable funding over a one-year period. Sources of stable funding include equity, long-term debt and retail and corporate deposits. The NSFR ensures that banks are less reliant on short-term, variable funding sources and can withstand long-term liquidity disruptions.

Risk Control Requirements

Internal Capital Adequacy Assessment Process (ICAAP)

ICAAP requires banks to assess their capital needs in relation to their risk profile. Banks must identify and measure all material risks (including risks not covered by regulatory minimum capital requirements) and ensure that they hold sufficient capital to cover these risks. Banks must document their ICAAP in a comprehensive report and submit it to the FMA. The regulator assesses the adequacy of the bank's capital and risk management practices as part of its supervisory review process.

Internal Liquidity Adequacy Assessment Process (ILAAP)

ILAAP is similar to ICAAP but focuses on liquidity risk. Banks must assess their liquidity needs under both normal and stressed conditions and ensure that they maintain sufficient liquid assets to meet their obligations. Like the ICAAP, the ILAAP must be submitted to the FMA, and the adequacy of the bank's liquidity risk management framework is reviewed as part of the supervisory process.

Supervisory Review and Evaluation Process (SREP)

The Supervisory Review and Evaluation Process (*Aufsichtlicher Überprüfungs- und Bewertungsprozess* SREP) is a key component of the FMA's supervision of banks in Liechtenstein. The SREP involves a thorough review of the bank's capital adequacy, liquidity position, and risk management practices. With the SREP, the FMA assesses whether a bank's internal risk controls are sufficient and whether it holds adequate capital and liquidity in relation to its risks. Under the SREP, the FMA may impose Pillar 2 capital requirements on banks, requiring them to hold additional capital above the regulatory minimum if their risk profile warrants it. These Pillar 2 requirements are based on the bank's individual risk assessment and are intended to address risks that are not fully covered by the standard Pillar 1 requirements.

Stress Testing

The FMA conducts stress tests to assess the resilience of Liechtenstein banks to adverse economic scenarios. These stress tests simulate the impact of various macroeconomic and financial shocks on the capital and liquidity positions of the bank. The results of the stress tests help the banks and the FMA to identify potential vulnerabilities and take preventive measures to strengthen the bank's risk profile.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Liechtenstein's legal and regulatory framework for bank insolvency, recovery and resolution is primarily shaped by national legislation and EU directives, ensuring that the country's regulatory framework is

compatible with European standards while incorporating the specific needs and characteristics of its own financial market.

Resolution Regime

The Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* SAG) and the Recovery and Resolution Ordinance (*Sanierungs- und Abwicklungsverordnung* SAV) transpose Directive 2014/59/EU (BRRD) into Liechtenstein law and require banks and investment firms to prepare restructuring plans laying out the actions to be taken to restore the financial stability of the institution in the event of a significant deterioration in its financial position. The SAG also foresees that the FMA has to draw up a resolution plan for each bank and investment firm and respective early intervention mechanism and resolution tools (ie, sale of business, bridge institution, asset separation and bail-in).

While Liechtenstein is not part of the Eurozone and thus not a member of the Single Resolution Mechanism (SRM), it mirrors its principles in its national framework. The SRM ensures that if a major bank fails, it can be wound down efficiently with minimal impact on the broader financial system and economy. The SAG provides for the following resolution mechanisms:

Early intervention measures

The FMA can take early intervention measures if a bank shows signs of financial distress. These include requiring the bank to implement its recovery plan, to take measures to restore its financial situation, or to restructure its business. The goal of early intervention is to address problems before they escalate into full-blown insolvency.

Resolution tools

In the event of a bank's failure, the FMA can deploy a variety of resolution tools to ensure an orderly wind-down while preserving critical banking functions. These tools include:

- bail-in: allowing the bank's creditors to absorb losses, reducing the need for public funds;

- bridge institution: the creation of a temporary institution to take over the critical functions of the failed bank;
- asset separation: the transfer of non-performing loans or high-risk assets to a separate entity to isolate them from the banking system; and
- sale of business: selling parts of the bank or its entire business to a solvent institution.

Insolvency Procedures

The Liechtenstein insolvency law provides for two different types of proceedings, namely a bankruptcy proceeding (*Konkursverfahren*) focusing on the liquidation of a company, and a restructuring proceeding (*Sanierungsverfahren*) aiming at restoring the debtor's financial viability and allowing it to continue operating, while providing creditors with better recovery prospects than they would receive in a liquidation scenario.

Given the importance of banks and the consequences of their failure, the procedures described above are only subsidiary, so that banks are not subject to restructuring proceedings at all, and bankruptcy proceedings only with the prior consent of the FMA. Bankruptcy proceedings can be initiated if a bank is either over-indebted (*überschuldet*) or unable to pay its debts (*zahlungsunfähig*).

9. ESG

9.1 ESG Requirements

Liechtenstein, which ratified the Paris Agreement on climate change on 9 June 2017, has identified and declared climate risks as a core risk for the financial sector. As a member of the European Economic Area (EEA), Liechtenstein is participating in the EU-wide transformation of the financial sector towards a more long-term thinking and sustainable industry. This trend can also be found in Liechtenstein financing, where ESG-related margin grids or reporting and compliance obligations linked to environmental, social and/or governance (ESG) indicators and metrics are commonly used.

The main pillars of the remodelling process are the following EU regulations, which have been approved

by the Joint EEA Committee and are therefore directly applicable in Liechtenstein:

Regulation (EU) 2019/876 (ESG Disclosure)

This regulation amends the Capital Requirement Regulation (Regulation (EU) No 575/2013) and introduces an obligation to disclose ESG risks applicable to large financial institutions that have issued securities admitted to trading on a regulated market in the EEA.

Regulation (EU) 2019/2088 (Sustainability-Related Disclosures)

This regulation establishes rules as to how market participants and advisers have to integrate and consider ESG risk factors in their decision-making and investment advice processes. It also foresees additional disclosure requirements for financial advisers with a view to company-related as well as product-related information and with a special emphasis on sustainability risks and adverse effects of investment decisions in that regard.

Regulation (EU) 2019/2089 (ESG Benchmarks)

This regulation requires all providers of benchmarks or indices used to measure the performance of financial instruments or investment funds to disclose whether and how ESG factors are taken into account. It focuses on increasing transparency and uniformity when it comes to indices and also introduces two new categories of benchmarks, namely the EU climate transition benchmarks and the EU Paris-aligned benchmarks.

Regulation (EU) 2020/852 (Taxonomy)

This regulation embodies the main pillar of the EU sustainability strategy and the so-called Green Deal. It provides an investment tool and classification system – the so-called green list – that facilitates sustainable investments by identifying to what degree commercial activities can be considered environmentally sustainable. It provides for additional disclosure requirements (eg, on the alignment of financial products with the taxonomy), aims to further strengthen investor protection and to avoid so-called greenwashing.

The FMA indicated in its latest report on supervisory matters relating to sustainable finance that sustainability remains a priority, and that, in view of the topic's significant relevance, its broad range of subjects, and

the vast detail applicable to these, it has set supervision priorities. It is thus placing particular emphasis on the environmental aspects of ESG factors, transparency and disclosure requirements, practices in relation to identifying investors' sustainability preferences, greenwashing and the integration of ESG into risk management and business strategy.

10. DORA

10.1 DORA Requirements

Regulation (EU) 2022/2554 (Digital Operational Resilience Act; DORA) aims to strengthen the digital operational resilience of financial institutions, including banks, in the European Economic Area (EEA), which includes Liechtenstein. In particular, DORA focuses on ensuring that banks and other financial institutions can withstand, respond to and recover from information and communications technology (ICT)-related disruptions, which is critical in an era of increasing digital threats and cybersecurity risks.

DORA introduces a consistent and comprehensive framework for addressing digital risks in the financial sector, covering areas such as risk management, ICT incident reporting, testing, third-party risk management and information sharing. It aims to ensure that banks have robust systems and controls in place to protect their operations from technology failures, cyber-attacks and other digital threats.

Key Pillars of DORA

DORA focuses on several core areas that banks in Liechtenstein must address to ensure compliance and enhance their digital resilience.

ICT risk management and reporting

One of the key elements of DORA is the requirement for banks to establish a robust ICT risk management framework. Banks must adopt policies and procedures to identify, assess and mitigate the risks associated with the use of technology and digital services. This includes ensuring that ICT risks are integrated into the bank's broader risk management strategy, that banks identify potential vulnerabilities and threats to their ICT systems, including cyber threats and system failures, and that banks develop contingency plans to

ensure business continuity in the event of ICT disruptions. Risk management under DORA extends beyond internal systems and requires banks to consider risks from third-party service providers and cloud-based services. Banks must ensure that any external ICT services on which they rely meet the same standards of operational resilience.

DORA also imposes requirements on banks for the reporting of ICT-related incidents. Any significant disruption or cyber-attack affecting the bank's digital infrastructure must be reported to the relevant supervisory authority, in this case the FMA.

ICT testing and resilience

DORA requires banks to regularly test the resilience of their ICT systems to ensure they can withstand digital disruption. This includes:

- **Vulnerability Assessments:** Banks must regularly test their systems for potential vulnerabilities, such as outdated software, unpatched systems or poorly configured networks.
- **Penetration Testing:** Banks are required to conduct threat-led penetration tests (TLPT) at least every three years, using simulated attacks to identify and exploit vulnerabilities in their ICT systems.
- **Operational Resilience Testing:** Banks must conduct stress tests that simulate extreme scenarios, such as large-scale cyber-attacks or ICT failures, to assess the operational impact and recovery capabilities.

Information sharing

Banks are encouraged to participate in information-sharing arrangements under DORA, particularly in the area of cybersecurity. Sharing information on emerging threats, cyber-attack methods and successful defences can help banks improve their overall resilience to digital risks. Banks are expected to participate in industry-wide initiatives, such as sector-specific information-sharing platforms, to stay ahead of evolving digital threats.

Proportionality Principle

DORA applies the principle of proportionality, meaning that smaller banks or those with less complex digital infrastructures may be subject to less stringent

requirements than larger, more systemically important institutions. The FMA ensures that the regulatory burden is appropriately scaled to the size, complexity and risk profile of each bank, allowing for a flexible approach while maintaining the overarching goal of digital resilience.

11. Horizon Scanning

11.1 Regulatory Developments

The banking sector in Liechtenstein is closely linked to European and global regulatory developments, as the country is a member of the European Economic Area (EEA). This membership requires Liechtenstein to adopt much of the regulatory framework established by the European Union (EU), particularly in the area of financial services. As the global regulatory landscape continues to evolve, a number of upcoming developments are expected to impact banks in Liechtenstein in the short to medium term. These developments are aimed at strengthening financial stability, enhancing digital resilience, promoting sustainable finance, and increasing transparency in the banking sector.

New Legal Framework

On 1 February 2025, Liechtenstein introduced a revised regulatory framework for banks and investment firms, bringing it more in line with EEA standards. It now remains to be seen how the FMA will interpret and apply the new legal provisions (in particular the new licensing requirements) and incorporate them into guidelines.

Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT)

AML and CFT regulations continue to evolve across Europe, and Liechtenstein is expected to further strengthen its AML/CFT framework in line with international standards set by the Financial Action Task Force (FATF) and EU directives.

Sixth Anti-Money Laundering Directive (Directive (EU) 2024/1640; AMLD VI)

The Sixth Anti-Money Laundering Directive (AMLD VI) is the latest update to the EU's AML framework, and Liechtenstein will need to incorporate its provisions into national law within the next three years. Key

changes include the introduction of the concept of corporate criminal liability for AML offences, which means that banks themselves can be held liable for money laundering activities in addition to individuals. AMLD VI also increases the penalties for AML violations, with higher fines and longer prison sentences for those involved in money laundering. The AMLD VI is still under scrutiny by the EEA Joint Committee and is therefore not yet applicable in Liechtenstein.

EU AML Authority Regulation (Regulation (EU) 2024/1620; AMLAR)

The EU's AML Action Plan aims to create a single regulatory framework for AML across the EU and EEA. This includes the establishment of a new European Anti-Money Laundering Authority (AMLA), which will have direct supervisory powers over certain high-risk entities and provide centralised oversight of the AML regime. Liechtenstein banks will be affected by the centralisation of AML supervision, and the FMA Liechtenstein will need to coordinate closely with the new AMLA to ensure compliance. The AMLA is still under scrutiny by the EEA Joint Committee and is therefore not yet applicable in Liechtenstein.

Single Rulebook Regulation (Regulation (EU) 2024/1624; AMLR)

This regulation, which will come into force in July 2027, aims to streamline and standardise anti-money laundering rules across the EU/EEA by moving from a directive-based approach to a regulation-based approach, which will be directly applicable in all EU and EEA member states. This Regulation complements the other two components of the EU AML package described above. The AMLR shall apply from 10 July 2027.

Crypto-Assets

Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR) has been fully applicable in Liechtenstein since 24 June 2025 and has been transposed into Liechtenstein law through the Act on the Implementation of Regulation (EU) 2023/1114 on Markets in Crypto Assets (*EWR-MiCAR-Durchführungsgesetz*, EWR-MiCAR-DG). However, no licences have been granted yet, so it remains to be seen how the Liechtenstein financial market will respond to this new business area.

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Law and Practice

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Luther S.A. is a leading business law firm established in 2010 in Luxembourg. Relying on its international network, the firm's multilingual professionals advise domestic and international clients across seven practice areas. The clients of the firm, ranging from multinational corporations, investment funds, financial institutions to private equity firms, have placed their trust in its interdisciplinary legal advice. The firm has 29 legal advisers, including eight partners, and

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1. Legal Framework

1.1 Key Laws and Regulations

Key Laws and Regulations

The banking sector in Luxembourg operates under a comprehensive legal and regulatory framework that integrates both national legislation and European Union directives and regulations. The backbone of Luxembourg's banking framework is the Law of 5 April 1993 on the Financial Sector (LFS), as amended, which governs authorisation, prudential supervision, conduct of business, and organisational requirements for credit institutions established in Luxembourg. In addition, the banking regulatory web is also based on the following major legal texts:

- Directive 2013/36/EU (CRD IV), as amended, and Regulation (EU) No 575/2013 (CRR), as amended, establishing prudential requirements for credit institutions and investment firms; CRD IV is implemented through the LFS, while the CRR is directly applicable;
- Directive 2014/59/EU (BRRD) – transposed into Luxembourg law by the Law of 18 December 2015 on the failure of credit institutions and certain investment firms (the 2015 Law), establishing recovery and resolution planning requirements; together with the Single Resolution Mechanism Regulation (Regulation (EU) No 806/2014), it forms the EU bank resolution framework;
- Directive (EU) 2015/849 (AMLD IV), as amended – implemented through the Law of 12 November 2004 on the fight against money laundering and terrorist financing; the new AML package adopted in 2024, comprising the EU AML Regulation, Directive (EU) 2024/1640 (AMLD VI) and the establishment of a pan-European AML authority (AMLA), will overhaul the regime by July 2027;
- Directive 2014/49/EU (DGSD) – transposed by the 2015 Law, ensuring depositor protection up to EUR100,000 per depositor;
- Regulation (EU) 2022/2554 (DORA) – applicable from January 2025, introducing harmonised rules on ICT risk management, operational resilience and third-party service oversight;
- Directive 2014/65/EU (MiFID II) – implemented through the LFS, setting conduct of business and investor protection standards for investment

services, complemented by Regulation (EU) No 600/2014 (MiFIR);

- Regulation (EU) 2023/1114 (MiCA) – directly applicable from June 2024 for stablecoin issuers and from December 2024 for crypto-asset service providers, introducing the EU's first harmonised framework for crypto-assets;
- Regulation (EU) 2016/679 (GDPR) – directly applicable, imposing strict data protection, privacy and governance requirements;
- Directive (EU) 2015/2366 (PSD II) – transposed by the Law of 20 July 2018 amending the Law of 10 November 2009 on payment services, regulating payment services, e-money and strong customer authentication (the 2009 Law); and
- Regulation (EU) No 648/2012 (EMIR) – directly applicable, setting out requirements for derivatives clearing, risk mitigation and reporting.

The Luxembourg regulatory regime is further supported through CSSF regulations and circulars and guidelines issued by the European Banking Authority, which complement the laws and regulations and specify the application thereof.

Supervisory Authorities

The *Commission de Surveillance du Secteur Financier* (CSSF) and the European Central Bank (ECB) are the principal supervisory authorities responsible for licensing and overseeing credit institutions in Luxembourg. Under the Single Supervisory Mechanism (SSM), significant credit institutions are directly supervised by the ECB, while less significant institutions remain under the direct supervision of the CSSF within a harmonised European framework. The *Banque Centrale du Luxembourg* (BCL) contributes to monetary policy implementation, liquidity monitoring, and macroprudential oversight as part of the European System of Central Banks (ESCB), working in close co-operation with both the ECB and the CSSF. The BCL also coordinates with the Ministry of Finance on matters relating to financial stability and macroprudential policy.

2. Authorisation

2.1 Licences and Application Process

Authorisation Requirement

A legal entity intending to carry out the business activity of a credit institution in Luxembourg must first obtain written authorisation pursuant to the LFS and the SSM conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (the Single Supervisory Mechanism Regulation or SSM). Under the LFS, a credit institution is defined as an undertaking whose business consists in receiving deposits or other repayable funds from the public and granting credits for its own account.

Institutions incorporated outside the European Economic Area (EEA) are required to obtain a licence from the competent Luxembourg authorities before commencing operations in Luxembourg. In contrast, credit institutions authorised in another EEA member state may provide banking services in Luxembourg by exercising their passporting rights under Directive 2013/36/EU (the Capital Requirements Directive), subject to compliance with applicable notification procedures.

Operating as a credit institution without proper authorisation constitutes a criminal offence under Luxembourg law and may give rise to both administrative sanctions (including fines) and criminal prosecution. The authorisation process ensures that only entities meeting stringent prudential, governance, and conduct requirements – set forth in the LFS and relevant EU legislation – are permitted to operate as banks in Luxembourg.

Application Process, Timeline and Regulator Engagement

Potential applicants seeking a banking licence in Luxembourg must submit their application to the CSSF. The CSSF conducts an initial assessment under national law and, in the case of significant credit institutions within the meaning of the SSM, submits a draft decision to the ECB. If the ECB raises no objections or approves the draft decision, authorisation is granted to the applicant. For less significant institutions,

authorisation is granted directly by the CSSF following notification to the ECB.

The application must include, among other things:

- detailed information on the legal form and structure of the applicant;
- a programme of activities and business plan;
- evidence of central administration and infrastructure in Luxembourg, including robust risk management policies, governance arrangements, and adequate internal control mechanisms;
- details regarding shareholding structure and qualifying holdings;
- documentation demonstrating the professional reputation and experience of members of the management body (fit and proper assessments);
- information on capital structure together with evidence of paid-up initial capital (minimum EUR8.7 million); and
- annual accounts audited by an approved statutory auditor.

Timeline

Upon receipt of an application, the CSSF first conducts a completeness check. Once deemed complete, a full review follows, which typically involves iterative engagement with applicants through requests for clarifications or additional documentation. As per the LFS, the CSSF must reach a decision within six months from submission of a complete file – ie, when all required information has been provided – but not later than twelve months from initial submission. In practice, straightforward applications are generally processed within six to nine months; more complex cases may take up to 12 months.

Activities Covered and Restrictions

A bank granted a banking licence in Luxembourg is authorised to provide typical banking services such as deposit-taking, lending, financial leasing, guarantees, money market operations, and other financial services as enumerated in Annex I of the LFS. In addition to these core activities, a licensed bank may also offer payment services, issue electronic money and provide investment services; however, it must comply with all applicable provisions set out in sector-specific legislation (for example, the 2009 Law, the Law of 30 May

2018 on markets in financial instruments, and any relevant laws governing crypto-assets). Where required by law or regulation – particularly for novel or high-risk activities – additional registration or notification obligations may apply.

Each service offered by a bank must form part of its business plan as communicated to the CSSF at the time of authorisation or subsequently updated if new activities are contemplated. Any material change or extension to the range of permitted activities generally requires prior notification to or approval by the CSSF.

Banks are prohibited from engaging in non-financial commercial and industrial business activities as well as insurance services except where such activities are strictly ancillary to their financial business (for example, acquisition or management of collateral). This prohibition serves to safeguard prudential soundness and prevent conflicts between banking operations and unrelated commercial interests.

Ancillary and Complementary Activities

Banks in Luxembourg are permitted to offer a range of ancillary activities in connection with their provision of investment services, as defined under the LFS and relevant EU legislation. These ancillary activities include:

- safekeeping and administration of financial instruments for clients;
- granting credits or loans to investors for the purpose of carrying out transactions involving one or more financial instruments, where the bank is involved in the transaction;
- advice to undertakings on capital structure, industrial strategy, and related matters, as well as advice and services relating to mergers and acquisitions;
- foreign exchange services where these are connected with the provision of investment services;
- investment research and financial analysis concerning transactions in financial instruments; and
- services related to underwriting and placement of financial instruments on a firm commitment or best efforts basis.

All such ancillary services may only be offered insofar as they are directly related to the investment services provided by the bank.

Passporting and Cross-Border Activities

Luxembourg banks benefit from the European passport regime under CRD IV, which enables them to provide banking services across the EEA either on a cross-border basis or through the establishment of branches, without requiring separate local licences or incorporation of new entities in host countries. A Luxembourg-authorised bank intending to provide cross-border services or establish a branch in another EEA member state must notify the CSSF of its intentions. The CSSF is then required to notify the competent authority of the host member state within one month; activities may commence following this notification process, subject to any additional requirements imposed by host authorities – particularly in cases involving branch establishments.

The establishment of branches or subsidiaries outside the EEA requires prior approval from the CSSF before operations can begin.

Non-EEA credit institutions wishing to offer banking services in Luxembourg must obtain full authorisation from the CSSF, whether operating through a branch or by establishing a subsidiary. A subsidiary incorporated in Luxembourg is treated as a separate legal entity and is subject to all authorisation requirements applicable to domestic credit institutions. A branch does not constitute a distinct legal entity but must nevertheless receive a banking licence from the CSSF; this process includes an assessment of both the foreign parent institution and its group structure. In such cases, close co-operation between the CSSF and the relevant foreign supervisory authority is expected, particularly with respect to prudential standards and ongoing supervision.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Requirements Governing Change in Control

The acquisition, direct or indirect, of a qualifying holding in a Luxembourg credit institution or any further increase in such a holding is subject to prior notification and approval by the CSSF. Notification must be made for any transaction that would result in:

- acquiring or reaching or exceeding the 10%, 20%, 33 1/3%, or 50% thresholds of capital or voting rights; or
- the credit institution becoming a subsidiary of the acquirer.

Any person intending to reduce their participation below these thresholds must notify the CSSF in advance, without approval.

These thresholds apply to both direct and indirect holdings (including concerted action), and the CSSF examines the entire shareholding structure up to the ultimate beneficial owner(s). For indirect holdings, the CSSF applies the control criterion and the multiplication criterion to determine the participation percentages.

There are no blanket prohibitions on the acquisition of qualifying holdings; however, all acquirers, regardless of nationality, must satisfy the CSSF's prudential requirements.

Regulatory Filings and Assessment Procedure

Any person intending to acquire, increase, or decrease a qualifying holding in a Luxembourg credit institution must submit a formal notification to the CSSF in accordance with the LFS, relevant EU legislation, and supporting CSSF circulars. Notification is effected by submitting a notification letter to the CSSF accompanied by all relevant documentation and information supporting the transaction. The notification must include, among other things:

- identification of the proposed acquirer(s);
- structure of the transaction;
- detailed information on the acquirer's financial situation, business reputation, and fitness;
- the source and proof of funds used for the acquisition;
- information on future strategic plans, including any intended changes in governance arrangements, business model, or risk profile; and
- fit and proper assessments for shareholders and directors.

The CSSF acknowledges receipt of the notification within two working days from receipt. The assess-

ment period is sixty working days commencing from acknowledgement that the file is complete; this period may be extended once by up to thirty additional working days if further information is requested from the applicant. To avoid delays, especially in complex transactions, pre-filing discussions with the CSSF are strongly recommended.

The examination of a notification focuses on five key assessment criteria:

- the reputation (integrity and professional competence) of the proposed acquirer;
- the reputation and experience of those who will direct the business;
- the financial soundness of the acquirer;
- compliance with prudential requirements; and
- the absence of suspicion regarding money laundering or terrorist financing.

The CSSF may object to a proposed acquisition if any of these conditions are not met; otherwise, approval will be granted. For significant institutions under the SSM, following its review, the CSSF communicates its proposal together with all relevant documentation to the ECB, which retains final authority to object or approve.

Post-Approval and Ongoing Requirements

Once a proposed acquisition is approved, ongoing requirements include:

- notification to the CSSF of any subsequent changes affecting control or qualifying holdings (for example, further increases or decreases crossing regulatory thresholds), whether direct or indirect;
- prompt disclosure to the CSSF of any material changes in ownership structure, governance arrangements, financial condition, or reputation that could affect the institution's stability or prudent management; and
- ongoing compliance with supervisory requirements such as anti-money laundering and counter-terrorist financing (AML/CTF) obligations, as well as continued adherence to fit and proper standards for shareholders and directors under applicable national law and EU regulations.

If control is acquired without prior approval from the CSSF (and where applicable, the ECB), the authorities may take appropriate measures as provided by law. Such measures may include suspension of voting rights attached to the shares concerned, orders requiring divestment of shares acquired unlawfully, imposition of administrative sanctions or fines, or other remedial actions necessary to safeguard the sound management and stability of the credit institution.

4. Governance

4.1 Corporate Governance Requirements Statutory and Regulatory Requirements

Credit institutions in Luxembourg are required to maintain a clear organisational structure with well-defined, transparent, and consistent lines of responsibility; effective procedures for identifying, managing, monitoring, and reporting risks; as well as adequate internal control mechanisms. These requirements are established by the LFS and further detailed in CSSF Circular 12/552 on central administration, internal governance, and risk management (Circular 12/552). Both the LFS and Circular 12/552 require the permanent existence of robust internal control mechanisms based on the three-lines-of-defence model: operational management as the first line; independent risk management and compliance functions as the second line; and an independent internal audit function as the third line.

The management body – which includes both the board of directors and authorised management – must collectively possess the necessary knowledge, skills, experience, integrity, and professional competence to ensure sound and prudent management at all times. The CSSF assesses both individual members' integrity ("fit and proper" criteria) as well as collective suitability before appointment; it may object to proposed changes in board composition if these could impair effective governance or prudent oversight.

Furthermore, credit institutions must establish a documented risk appetite framework approved by their management body; implement remuneration policies aligned with long-term institutional interests that do not encourage excessive risk-taking, and adopt

comprehensive policies for identifying, preventing, or managing conflicts of interest.

Voluntary Codes and Industry Initiatives

While there is no single national voluntary code specifically applicable to credit institutions in Luxembourg, many institutions – particularly those belonging to international banking groups – adopt group-wide governance frameworks established by their parent entities. These frameworks frequently incorporate international best practices relating to environmental, social, and governance (ESG) criteria and sustainability standards. In addition, the Luxembourg Bankers' Association (ABBL) promotes ESG and sustainability best practices through recommendations and guidelines which, although not legally binding, encourage member institutions to pursue higher standards of transparency, stakeholder engagement, and ethical conduct beyond minimum legal requirements. Adoption of such voluntary codes remains at the discretion of each institution but can serve as an important tool for enhancing market reputation and stakeholder confidence.

Diversity Requirements

Recent amendments to the LFS, as well as updates to Circular 12/552, have significantly strengthened provisions regarding diversity, independence, and gender balance within the management bodies of Luxembourg credit institutions. These changes implement requirements from Directive (EU) 2019/878 (CRD V), as transposed into Luxembourg law through the LFS.

Credit institutions are now required to adopt a formal diversity policy applicable to their management bodies – including both supervisory and management functions – which must address factors such as gender, professional background, age, and geographical origin. The objective is to ensure a broad range of perspectives and experiences in strategic decision-making processes.

In addition, enhanced independence requirements mandate that a sufficient number of independent members serve on management bodies – particularly in significant institutions – to promote effective oversight and robust governance.

The gender-neutral remuneration principle introduced by CRD V – and implemented in the LFS – applies across all staff whose professional activities have a material impact on the institution’s risk profile (“identified staff”). This principle requires that remuneration policies ensure equal pay for equal work or work of equal value regardless of gender.

Bankers’ Oath or Equivalent Binding Rules of Conduct

Luxembourg does not impose a statutory “Bankers’ Oath” or any equivalent formal pledge of professional conduct akin to those required in some other jurisdictions. However, all employees of credit institutions – including both management and staff – are subject to strict professional conduct rules under the LFS, which are enforced by the CSSF. These rules encompass duties of integrity, confidentiality, diligence, avoidance of conflicts of interest, and compliance with anti-money laundering (AML) obligations. Breaches of these duties may result in disciplinary action or regulatory sanctions.

In addition to statutory requirements, many banks require their employees to adhere to internal codes of ethics or conduct. These internal codes often reinforce legal obligations and may also address broader issues such as ethical behaviour, whistle-blowing procedures, and corporate social responsibility.

4.2 Registration and Oversight of Senior Management

Statutory and Regulatory Requirements

In Luxembourg, the appointment of directors and managers (“senior management”) of credit institutions is subject to stringent regulatory scrutiny by the CSSF, pursuant to the LFS and detailed guidance set out in relevant CSSF circulars, such as Circular 12/552 on internal governance. Senior management encompasses members of the management body in both its supervisory and managerial functions – including executive and non-executive directors, board members, chief executive officer, chief risk officer, chief compliance officer – among others. Credit institutions are required to clearly define roles, responsibilities, and reporting lines for each designated individual as part of their internal governance framework.

The process for appointing members of senior management is as follows:

- **Prior Notification:** Any proposed appointment or change in senior management must be notified to the CSSF before taking effect; in certain cases prior approval may be required.
- **Submission Requirements:** The notification must include a comprehensive file for each candidate comprising:
 - (a) a detailed curriculum vitae with evidence of professional qualifications and experience;
 - (a) criminal record extracts from all relevant jurisdictions;
 - (b) a declaration of honour including information on other mandates or directorships held;
 - (c) details regarding professional references; and
 - (d) disclosure of any potential conflicts of interest.
- **Assessment:** The CSSF conducts a thorough fit and proper assessment evaluating integrity, reputation, competence, experience, time commitment (including an assessment as to whether sufficient time can be devoted to duties), independence, and any potential conflicts of interest.
- **Additional Information:** The CSSF may request interviews with candidates or seek further documentation or clarification as deemed necessary to complete its assessment.

Screening and Ongoing Suitability

The bank is responsible for conducting comprehensive initial due diligence on all candidates for management positions before submitting them to the CSSF. This due diligence must address all aspects of the fit and proper criteria – including integrity, professional competence, experience, time commitment, independence, and absence of conflicts of interest – as set out in the LFS and relevant CSSF circulars.

Ongoing monitoring is required to ensure continued compliance with suitability standards throughout each manager’s tenure. This includes periodic reassessment – such as during annual reviews or following significant events – and prompt action if any concerns arise regarding a manager’s fitness or propriety.

Any change that may affect a manager’s suitability – whether arising from changes in role or function or

from new circumstances such as criminal proceedings or loss of professional qualifications – must be promptly notified to the CSSF. The CSSF may then reassess the individual's suitability and, if necessary, order their removal or replacement.

All persons participating in the management of a credit institution must satisfy fit and proper standards continuously throughout their tenure. Banks are also required to maintain an up-to-date register of key function holders and authorised managers at all times; this register must be available for inspection by the CSSF upon request.

The CSSF regularly reviews institutions' governance arrangements and fit and proper frameworks during on-site inspections and thematic reviews. Any deficiencies identified during these supervisory activities may result in remedial measures or sanctions imposed by the CSSF.

4.3 Remuneration Requirements

Individuals Subject to the Remuneration Requirements

Remuneration in Luxembourg credit institutions is governed by the LFS, relevant CSSF circulars, and the European Banking Authority (EBA) Guidelines on sound remuneration policies (EBA/GL/2021/04). These rules implement requirements from CRD V, as transposed into Luxembourg law through the LFS.

The remuneration framework applies to:

- members of the management body (including both executive and non-executive directors);
- senior management responsible for day-to-day operations; and
- identified staff – namely employees whose professional activities have a material impact on the institution's risk profile ("material risk takers"), as defined in Commission Delegated Regulation (EU) 2021/923.

CRD V introduced flexibility, allowing remuneration rules to be applied on a solo, sub-consolidated, or consolidated basis depending on the group's organisational structure and risk profile; this determination is subject to regulatory assessment by the CSSF.

The principle of gender-neutral remuneration – formally enshrined by CRD V – requires equal pay for equal work or work of equal value as well as transparent pay structures. Institutions must document their approach to ensuring gender neutrality within their remuneration policies.

Smaller and non-complex institutions may benefit from proportionality waivers with respect to certain deferral requirements and pay-in-instruments obligations; eligibility for such waivers is determined according to specific criteria set out in EU law and detailed further in CSSF guidance.

Relevant Remuneration Principles

Remuneration policies in Luxembourg credit institutions must promote sound and effective risk management, align pay with long-term performance, and discourage excessive risk-taking. These requirements are set out in the LFS, relevant CSSF circulars, EU directives (notably CRD IV/CRD V), and EBA Guidelines on sound remuneration policies. Key requirements include:

- **Balance Between Fixed and Variable Pay:** Variable remuneration for identified staff – employees whose professional activities have a material impact on the institution's risk profile – must be appropriately capped relative to fixed pay; it may not exceed 100% of fixed remuneration (or up to 200% with explicit shareholder approval).
- **Deferral and Instruments:** At least 40% (rising to at least 60% for senior management or higher-risk categories) of variable pay must be deferred over a period of three to five years; at least half of both deferred and non-deferred variable remuneration must consist of shares or equivalent instruments.
- **Risk Adjustment and Clawback:** Remuneration must be subject to both ex ante (before award) and ex post (after award) risk assessment mechanisms – including malus (downward adjustment before vesting) or clawback (recovery after payment) – where there is evidence of misconduct or significant deterioration in financial performance.
- **Governance Oversight:** The remuneration policy must be approved by the management body, reviewed annually, and monitored by an independ-

ent remuneration committee composed primarily of non-executive or independent directors.

- **Gender Neutrality:** Pay structures must ensure equal treatment irrespective of gender; this principle is enshrined in CRD V and implemented under Luxembourg law.

Looking ahead, CRD VI is expected to introduce stricter deferral rules, enhanced transparency regarding ESG-linked metrics in remuneration frameworks, and a broader scope for identifying material risk takers; however, these changes are not yet in force.

Regulators' Supervisory Approach

The CSSF oversees compliance with remuneration requirements in Luxembourg credit institutions. For significant institutions under the SSM, this oversight is exercised in co-ordination with the ECB, which holds direct supervisory authority; for less significant institutions, primary responsibility remains with the CSSF.

Supervisory focus areas include:

- the governance and independence of remuneration committees, ensuring effective oversight and avoidance of conflicts of interest;
- the identification of material risk takers based on both qualitative and quantitative criteria in accordance with Commission Delegated Regulation (EU) 2021/923, as well as the application of proportionality principles for smaller or less complex institutions;
- the implementation of deferral arrangements, malus and clawback mechanisms to ensure alignment between risk outcomes and variable pay; and
- the integration of gender-neutral remuneration principles and ESG-linked policies into overall remuneration frameworks.

If deficiencies are identified during supervisory reviews or inspections, the CSSF may require remediation – including changes to remuneration policies or practices – restrict or suspend variable pay awards, or impose administrative sanctions such as fines or other measures provided by law.

5. AML/KYC

5.1 AML and CFT Requirements

Legal and Regulatory Framework

Luxembourg's anti-money laundering and counter-terrorist financing (AML/CTF) regime is primarily governed by the Law of 12 November 2004 on the Fight Against Money Laundering and Terrorist Financing, as amended (AML Law). The AML transposes the Fourth and Fifth AML Directives into national law and incorporates provisions of the Sixth AML Directive (Directive (EU) 2018/1673). The AML Law is regularly updated to reflect evolving EU requirements as well as international standards such as those set by the Financial Action Task Force (FATF). It is complemented by CSSF Regulation 12-02 and several CSSF circulars, which provide detailed guidance on governance arrangements, internal controls, customer due diligence obligations, reporting requirements, staff training, and risk-based supervision for credit institutions.

As mentioned, in June 2024 the European Union adopted a new AML package consisting of:

- Regulation (EU) 2024/1624 (AMLR), establishing a Single Rulebook for anti-money laundering;
- Regulation (EU) 2024/1620 (AMLA Regulation) creating EU Anti-Money Laundering Authority (AMLA); and
- Directive (EU) 2024/1640 (AMLD6) which will replace the existing directive-based framework by 2027.

These measures aim to harmonise AML/CTF standards across member states through directly applicable regulations, and introduce direct EU-level supervision through the AMLA. The directive will require national transposition within a specified timeframe.

Luxembourg has also implemented robust beneficial ownership transparency measures. The Register of Beneficial Owners (RBE) for companies has been effective since March 2019; the Register of Fiduciaries and Trusts (RFT) has been effective since July 2020. Companies, trustees, and fiduciary agents are required to collect accurate, adequate, and up-to-date beneficial ownership information for filing with these registers. These registers are accessible to competent

authorities and, under certain conditions, to members of the public. Non-compliance with these obligations may trigger administrative measures or criminal sanctions.

Core Obligations for Banks

Banks qualify as obliged entities under the AML Law and must apply a risk-based approach proportionate to their size, activities and customer profile. Their principal duties include:

- customer due diligence: identify and verify customers and beneficial owners before entering a business relationship or executing significant transactions;
- enhanced due diligence: apply stricter controls for politically exposed persons (PEPs), high-risk jurisdictions and correspondent banking relationships;
- ongoing monitoring: continuously review transactions and client behaviour to detect unusual or suspicious activity and update KYC information;
- reporting obligations: promptly file suspicious activity reports; failure to report may lead to criminal liability; and
- internal governance: establish sound internal policies, appoint a compliance officer and a person responsible for AML oversight, provide regular staff training, and maintain comprehensive records for at least five years.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Deposit Guarantee Scheme (DGS) Requirements

Luxembourg's depositor protection regime is governed by the 2015 Law, which transposes DGSD into national law. This framework establishes two distinct but complementary mechanisms:

- the
- *Fonds de Garantie des Dépôts Luxembourg* (FGDL), which serves as Luxembourg's recognised Deposit Guarantee Scheme (DGS) and covers eligible deposits up to EUR100,000 per depositor per institution; and
- the *Système d'Indemnisation des Investisseurs Luxembourg* (SIIL), which implements Directive

97/9/EC as the Investor Compensation Scheme for claims arising from investment business.

The law aims to protect eligible depositors and investors by ensuring timely repayment of covered deposits and assets when a credit institution or investment firm becomes insolvent or unable to meet its obligations.

All credit institutions authorised in Luxembourg are required to participate in the FGDL. Branches of third-country banks operating in Luxembourg must also be members, whereas branches of EEA banks remain covered by their home-country deposit guarantee schemes under DGSD's home-host framework.

Credit institutions must:

- clearly inform depositors – both pre-contractually and on an ongoing basis – of DGS coverage and applicable limits;
- maintain accurate depositor data at all times to facilitate swift payouts by the DGS; and
- implement robust internal procedures to identify eligible versus non-eligible deposits consistently.

Administration and Governance

The FGDL is an independent legal entity governed by public law, established under the 2015 Law. The FGDL collects annual risk-based contributions from participating credit institutions, manages its financial resources prudently, and ensures reimbursement of depositors when a credit institution in Luxembourg fails.

Operational oversight and co-ordination are exercised through the *Conseil de protection des déposants et des investisseurs* (CPDI), an internal executive body within the CSSF. The CPDI manages and administers both the FGDL and the SIIL, instructing payouts when relevant conditions are met.

The FGDL's intervention is triggered when either:

- the CSSF determines that a credit institution is unable to repay deposits that are due and payable; or
- a court declares the institution insolvent.

Once activated, the FGDL must reimburse covered depositors within seven working days, in accordance with EU standards set by DGSD.

Classes of Depositors and Deposits Covered

Coverage under Luxembourg's deposit guarantee scheme extends to most natural persons and a wide range of legal entities – including small and medium-sized enterprises (SMEs), non-profit organisations, and certain public authorities – as set out in the 2015 Law. Excluded from coverage are financial institutions, investment firms, insurance undertakings, collective investment schemes, pension funds, and government bodies; these exclusions apply irrespective of whether such entities hold accounts directly or as intermediaries.

The scheme protects cash deposits held in any currency – including current accounts, savings accounts, and term deposits – provided they are repayable by a credit institution participating in the FGDL. Excluded from protection are bearer deposits (due to lack of traceability), deposits arising from money-laundering offences or other criminal activities, and all deposits held by excluded entities.

Special rules

- **Temporary High Balances:** Certain life events – such as the sale of a primary residence, insurance payouts, or inheritance settlements – are protected up to EUR2,500,000 per depositor per institution for a period of twelve months following the qualifying event.
- **Joint Accounts:** Each account holder benefits separately from coverage up to the standard limit (EUR100,000).
- **Cross-Border Deposits:** Deposits at branches of Luxembourg banks located in other EEA countries are protected by the host country's deposit guarantee scheme; conversely, Luxembourg branches of EEA banks are covered by their respective home-country schemes under the DGSD's home-host framework.

Coverage Limits and Payout

The standard coverage limit under Luxembourg's deposit guarantee scheme is EUR100,000 per depositor per credit institution, irrespective of the number

or type of accounts held. This limit applies on an individual basis and is aggregated across all eligible deposits and accounts maintained by a depositor at the same bank – including joint accounts, where each account holder benefits separately from coverage up to this amount.

The FGDL pays out compensation in euros (EUR), even for deposits denominated in other currencies; conversion is made using the official exchange rate applicable on the date when unavailability of deposits is determined – either by CSSF decision or court declaration of insolvency. Payments are made within seven working days in accordance with EU standards; in exceptional circumstances where this deadline cannot be met, mechanisms exist to ensure rapid access to funds through partial or advance payments.

For investment-related claims, the SILL provides protection up to EUR20,000 per investor. This covers client assets – such as securities or other financial instruments – held or administered by failed institutions but does not extend to losses arising from market fluctuations or poor investment performance.

Funding of the Scheme

The FGDL is funded through annual risk-based contributions collected from all member institutions. These contributions are calculated based on each institution's amount of covered deposits and its individual risk profile, in accordance with Commission Delegated Regulation (EU) 2015/63.

If necessary – when available financial resources fall below the required target level of 0.8% of covered deposits as set by EU law – the FGDL may impose ex post contributions on its members or access back-up financing arrangements. Such arrangements may include borrowing from other deposit guarantee schemes or establishing credit lines with commercial banks to ensure sufficient liquidity.

The FGDL's assets are strictly segregated from those of its member institutions and are invested conservatively in order to maintain high liquidity and capital preservation, thereby ensuring prompt availability of funds for depositor reimbursement within the statutory payout period.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Basel III Adherence and Implementation

Luxembourg implements the Basel III framework through the CRR, which is directly applicable across the EU, and the Capital Requirements Directive V (CRD V), as transposed into national law by the LFS and complemented by CSSF regulations and circulars. Together, these instruments form part of the Single Rulebook governing prudential standards, internal governance requirements, and disclosure obligations for credit institutions in Luxembourg; this harmonised framework ensures consistency in prudential supervision across all EU member states.

The forthcoming EU banking package – comprising CRR III and CRD VI – will complete implementation of the final Basel III reforms. Key features include the introduction of an output floor (limiting capital benefits from internal models relative to standardised approaches), revised methodologies for calculating credit risk, market risk, and operational risk in line with Basel III standards, enhanced integration of ESG risks into risk management frameworks, stricter conditions for third-country bank access to EU markets, and broader reporting requirements aimed at increasing transparency for both supervisors and market participants. These reforms are expected to be phased in over several years following their adoption at EU level.

Risk-Management Framework

Banks in Luxembourg must operate sound risk-management and governance systems in accordance with the LFS, CRD V as transposed into national law, EBA/GL/2021/05, relevant CSSF circulars – including Circular 12/552 – and CSSF supervisory expectations. Key features include:

- **Board and Senior Management Responsibility:** The board of directors and senior management are responsible for establishing a robust risk culture, setting strategy, approving a documented risk appetite framework, and ensuring effective internal controls – at all times observing the “four-eyes” principle requiring at least two persons to direct business operations.

- **Independent Control Functions:** Banks must maintain independent control functions for risk management, compliance, and internal audit; these functions must have sufficient authority, unrestricted access to information, freedom from conflicts of interest, and direct reporting lines to the board.
- **ICAAP/ILAAP Processes:** Institutions must implement Internal Capital Adequacy Assessment Processes (ICAAP) and Internal Liquidity Adequacy Assessment Processes (ILAAP) to demonstrate ongoing capital and liquidity adequacy; these processes should be forward-looking, regularly reviewed by management bodies, independently validated where appropriate, supported by rigorous stress testing covering severe but plausible scenarios as well as recovery indicators and contingency funding plans.
- **Comprehensive Risk Coverage:** Risk frameworks must address:
 - (a) credit risk;
 - (b) market risk;
 - (c) liquidity risk;
 - (d) interest rate risk in the banking book (IRRBB);
 - (e) credit spread risk in the banking book (CRRBB);
 - (f) operational risk;
 - (g) ICT/cybersecurity risks;
 - (h) outsourcing risks; and
 - (i) third-party dependencies.
- **Operational Resilience Under DORA:** With the entry into force of DORA, banks will face mandatory requirements for ICT risk management frameworks, including regular resilience testing procedures for digital systems; incident-reporting standards; oversight of critical third-party service providers; and enhanced operational resilience expectations.
- **Supervisory Review Through SREP:** Through the Supervisory Review and Evaluation Process (SREP), the CSSF and – for significant institutions under direct ECB supervision – the ECB may impose additional capital requirements or qualitative measures based on an assessment of business models, governance arrangements, risks to capital/liquidity adequacy, internal controls or other supervisory concerns.

Quantity and Quality of Capital

Initial capital

Luxembourg credit institutions must hold a minimum paid-up share capital of EUR8.7 million, which cannot fall below the authorised capital level as set out in the LFS and aligned with Article 12 (1) CRR.

Pillar 1 requirements

In addition to the minimum capital requirement, institutions must maintain:

- a total capital ratio of at least 8% of risk-weighted assets (RWAs), composed of eligible own funds (CET1, AT1, T2); and
- a leverage ratio of at least 3%.

Pillar 2 requirements

Under Pillar 2, following SREP, the CSSF may impose institution-specific capital add-ons to address risks not fully reflected under Pillar 1 requirements.

Additional capital buffers (to be met in CET1)

- Capital Conservation Buffer (CCoB) – currently 2.5% of total risk exposures;
- Countercyclical Buffer (CCyB) – set quarterly by the CSSF; for Luxembourg in Q4 2025 currently 0.5%;
- Systemic Buffers:
 - (a) Global Systemically Important Institutions (G-SII) Buffer – between 1% and 3.5%;
 - (b) Other Systemically Important Institutions (O-SII) Buffer – up to 3%; and
 - (c) Systemic Risk Buffer (SyRB) – minimum 1%, applicable to exposures posing systemic risk; no statutory maximum.

These buffers are cumulative where applicable.

Breaching the combined buffer requirement automatically triggers Maximum Distributable Amount (MDA) restrictions on dividends, Additional Tier One coupon payments, and variable remuneration in accordance with CRD/CRR rules.

Liquidity Requirements

To strengthen both short- and long-term funding resilience, Luxembourg applies the Basel liquidity ratios as set out in the CRR, which is directly applicable in

Luxembourg and further detailed by EBA guide-lines and CSSF circulars:

- Liquidity Coverage Ratio (LCR) $\geq 100\%$: This requires banks to maintain sufficient high-quality liquid assets (HQLA) to cover total net cash outflows over a 30-day period of severe stress, thereby ensuring short-term liquidity resilience.
- Net Stable Funding Ratio (NSFR) $\geq 100\%$: This promotes stable, longer-term funding by requiring institutions to maintain an amount of available stable funding at least equal to required stable funding over a one-year horizon.

In addition to meeting these quantitative ratios, banks must implement robust qualitative liquidity-risk governance frameworks – including early-warning indicators, comprehensive stress testing covering both idiosyncratic and market-wide scenarios, actionable contingency funding plans, and ongoing monitoring of asset encumbrance as well as intraday liquidity positions – in accordance with CRR requirements and EBA/CSSF guidance.

Systemically Important Banks and Supervisory Intensity

Luxembourg banks fall under the SSM:

- Significant institutions (SIs) are directly supervised by the ECB pursuant to the SSM.
- Less-significant institutions (LSIs) remain under the supervision of the CSSF, subject to overarching ECB oversight.

Systemically important banks face heightened supervisory expectations:

- Higher Capital Buffers: O-SII/G-SII buffers – and where applicable, a Systemic Risk Buffer (SyRB) – must be maintained in accordance with CRD V/ CRR II requirements.
- Enhanced Pillar 2 Requirements and Data Quality: These institutions are subject to institution-specific capital add-ons determined through SREP, elevated data-quality standards, and must align their risk-data aggregation processes with the Basel Committee on Banking Supervision's Principles for

Effective Risk Data Aggregation and Risk Reporting (BCBS 239).

- MREL/TLAC Obligations: Minimum Requirement for Own Funds and Eligible Liabilities (MREL)/Total Loss-Absorbing Capacity (TLAC) requirements often necessitate issuance of senior non-preferred debt, Tier 2 or Additional Tier 1 instruments; compliance is monitored by the Single Resolution Board for cross-border groups.
- Recovery and Resolution Planning: Robust recovery and resolution plans must be maintained, periodically tested, and integrated into SREP findings to ensure credible options for restoring viability or facilitating orderly resolution in stress scenarios.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Luxembourg's regime for the recovery, resolution, and insolvency of banks is primarily governed by the 2015 Law, which transposes the BRRD into national law. This legislation establishes a comprehensive framework covering recovery planning, early intervention powers, resolution measures – including depositor protection – and insolvency proceedings.

At EU level, this framework operates within the Single Resolution Mechanism (SRM), created by Regulation (EU) No 806/2014. Under this mechanism:

- The Single Resolution Board (SRB) acts as the central resolution authority for significant institutions and cross-border banking groups.
- The CSSF serves as Luxembourg's national resolution authority responsible for less significant institutions (LSIs) as well as local implementation of SRB decisions.

Once an institution is deemed “failing or likely to fail”, and where neither private nor supervisory measures can restore viability, the relevant resolution authority may apply one or more statutory resolution tools:

- sale of business tool – transfer all or part of a failing bank's business to a private-sector purchaser;

- bridge institution tool – transfer assets/rights/liabilities to a temporary bridge bank established by the authority;
- asset separation tool – transfer impaired/non-performing assets to an asset management vehicle (“bad bank”) to isolate risk; and/or
- bail-in tool – write down or convert into equity certain unsecured liabilities so shareholders/creditors absorb losses before public funds are used.

All banks are required to prepare detailed recovery plans setting out measures to restore financial soundness under stress scenarios; these plans are reviewed annually by the CSSF (or ECB for significant institutions). Supervisors may also exercise early-intervention powers – such as requiring management changes or restricting certain business activities – to stabilise an institution before insolvency becomes inevitable.

Resolution is initiated when:

- the institution is failing or likely to fail;
- there is no reasonable prospect that private/supervisory measures will prevent failure; and
- resolution is necessary in the public interest – notably to safeguard financial stability and protect depositors/investors.

9. ESG

9.1 ESG Requirements

Legal and Regulatory Framework

ESG regulation in Luxembourg banking is driven primarily by EU law, with national implementation and supervision by the CSSF. Key instruments include:

- Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR);
- Regulation (EU) 2020/852 establishing the EU Taxonomy for environmentally sustainable activities; and
- Directive (EU) 2022/2464 on corporate sustainability reporting (CSRD) – relevant bill 8370 to transpose this directive into Luxembourg.

Integration of ESG Risks

Banks must identify, measure and manage ESG risks within their existing risk frameworks. In practice this requires:

- incorporating environmental and social factors into credit and investment risk assessments;
- performing scenario analysis and climate stress tests, covering both physical and transition risks;
- embedding ESG considerations within the Internal Capital Adequacy Assessment Process (ICAAP) and Internal Liquidity Adequacy Assessment Process (ILAAP); and
- demonstrating board-level oversight and documented governance of sustainability risks.

The CSSF's supervisory reviews increasingly test how ESG risks are integrated into ICAAP/ILAAP methodologies and whether quantitative data support those assessments.

Disclosure and Reporting Obligations

Pillar 3 ESG disclosures

Article 449a CRR and the EBA ITS on ESG disclosures (EBA/ITS/2022/01) require large institutions to publish quantitative data on:

- exposure to carbon-intensive sectors;
- alignment with the EU Taxonomy (eg, Green Asset Ratio); and
- financed emissions and transition plans.

These disclosures are increasingly assessed during SREP reviews and may influence Pillar 2 capital expectations.

CSRD and sustainability reporting

The CSRD, once transposed into national law, extends non-financial reporting to large companies and listed SMEs, including banks. Reports must follow the European Sustainability Reporting Standards (ESRS), use digital tagging (XBRL), and provide double-materiality analysis – covering both how sustainability issues affect the bank and how the bank affects society and the environment. The CSSF has designated CSRD compliance as a supervisory priority.

10. DORA

10.1 DORA Requirements

Legal and Regulatory Framework

From January 2025 onwards – with full application of DORA – Luxembourg credit institutions must comply with enhanced digital operational resilience requirements.

Incident reporting

Institutions must classify ICT incidents by severity; major incidents must be reported promptly to the CSSF using standardised templates with follow-up submissions including root-cause analysis/remediation plans. Minor incidents must still be logged internally for audit purposes.

Digital operational resilience testing

Regular testing – including threat-led penetration testing at least every three years for critical/systemically important institutions – is mandatory; all vulnerabilities identified through such testing must be remediated/ documented for supervisory review.

ICT third-party risk management

Outsourcing arrangements involving ICT services require enhanced due diligence/contractual oversight: maintaining a register of all arrangements; ensuring contracts include mandatory clauses on access/ audit/termination; preparing contingency/exit strategies; with certain providers designated as critical ICT service providers subject to direct EU-level oversight under DORA.

Information sharing

Banks may participate in cyber-threat intelligence-sharing networks – provided confidentiality obligations/competition safeguards are respected – to strengthen sector-wide resilience against emerging threats such as cyber-attacks.

CSSF Supervisory Approach

The CSSF will supervise compliance with DORA through thematic reviews, incident-reporting assessments, and on-site inspections in accordance with both DORA requirements and established supervisory practices.

Initial focus areas include:

- governance arrangements and board-level awareness of ICT risks, including the board's responsibility for setting digital operational resilience strategy and ensuring effective oversight;
- the quality, accuracy, and timeliness of ICT-related incident notifications as required by DORA;
- ongoing monitoring, due diligence, contractual compliance, and risk assessment relating to critical third-party service providers.

Where weaknesses are detected during supervisory activities, the CSSF may impose remedial actions or – where warranted – administrative sanctions such as fines or other measures provided under DORA and national law. The authority also co-ordinates with other EU regulators through the Joint Oversight Forum established by DORA to ensure consistent cross-border enforcement.

Luxembourg's existing ICT risk management standards under CSSF Circular 20/750 (on information and communication technology (ICT) and security risk management) and outsourcing standards under CSSF Circular 22/806 (on outsourcing arrangements), as amended following the entry into force of DORA, remain important sources of regulatory obligations for all relevant institutions.

11. Horizon Scanning

11.1 Regulatory Developments

Banking regulatory updates in Luxembourg are predominantly steered at the EU level. CSSF and the BCL are actively aligning domestic requirements with new EU rulebooks while modernising their supervisory approach through increased use of data analytics ("SupTech"), enhanced data collection processes, risk-based thematic reviews, and targeted inspections.

Going forward, banks in Luxembourg will need to implement several important reforms in laws and regulations, including, but not limited to, the following outlined below.

- **Prudential Reforms Under CRD VI and CRR III:** These measures will complete implementation of final Basel III standards in the EU – introducing an output floor for internal models, revised methodologies for credit/market/operational risk calculations, stricter third-country access conditions for non-EU banks, as well as expanded reporting obligations.
- **ESG Integration Into Prudential and Disclosure Frameworks:** ESG factors will become embedded within both prudential regulation (including risk management practices and capital planning) and disclosure requirements – reflecting evolving EBA guidelines as well as broader EU sustainable finance initiatives.
- **AML Package and Creation of AMLA:** The adoption of AMLR, AMLA Regulation, and AMLD6 will harmonise anti-money laundering standards across member states, establish AMLA, and fundamentally reshape financial crime compliance as well as cross-border supervision.
- **Amendments to the EU Securitisation Regulation and Payments Legal Framework:** Changes to securitisation rules will impact due diligence obligations, risk retention requirements, and transparency standards. Parallel reforms to payments law – currently under PSD2 – are expected to address open banking developments, consumer protection enhancements, fraud prevention measures, and operational resilience expectations.

The CSSF's supervisory strategy remains pragmatic; however, expectations regarding documentation quality and data integrity continue to rise across all risk disciplines. Institutions should anticipate more granular data requests from supervisors alongside heightened scrutiny of internal controls, governance arrangements, and compliance documentation.

CRD VI/CRR III Implementation

The CRD VI and the CRR III, published in July 2024, will fundamentally reshape the EU prudential landscape from 2026 onwards. In Luxembourg, the process of transposing CRD VI commenced in October 2025 with Bill No 8627, which will amend the LFS. By contrast, CRR III is directly applicable across all member states without further national implementation measures.

The main policy shifts introduced by these instruments are described below.

- **Governance and Suitability:** Expanded fit-and-proper requirements mandate more detailed suitability assessments for members of management bodies and key function holders – including ongoing monitoring – together with reinforced diversity objectives and mandatory documentation of individual responsibilities within management bodies.
- **ESG Risk Integration:** Boards are now required to incorporate environmental and social risk factors into their overall business strategy, risk appetite statements, internal governance arrangements, and control functions; this includes explicit integration of climate-related risks into risk management processes.
- **Third-Country Branches:** Foreign banks wishing to offer banking services in any EEA country will generally be required to establish a supervised branch within that country – subject to host state authorisation and ongoing supervision – replacing previous models based on cross-border service provision or passporting.

Member states must transpose CRD VI by 1 January 2026; its provisions will apply from 10 January 2026 except for those relating to third-country branches – which become applicable from 11 January 2027. Transitional measures may apply for certain requirements; institutions should closely monitor both national legislative developments (including Bill No 8627) and CSSF guidance regarding implementation timelines.

ESG and CSRD Integration

The Corporate Sustainability Reporting Directive (CSRD – Directive (EU) 2022/2464) is being transposed in Luxembourg via Bill No 8370, tabled in March 2024. The CSRD replaces and significantly expands upon the Non-Financial Reporting Directive by introducing more detailed sustainability reporting obligations for a broader range of entities. The first reporting cycle for large public-interest entities commenced with the 2025 financial year, requiring use of the European Sustainability Reporting Standards (ESRS) – which set out comprehensive disclosure requirements on ESG matters – and digital XBRL tagging from 2026 to enhance comparability across the EU.

For banks, ESG considerations have evolved beyond mere disclosure obligations to become integral components of risk management frameworks. The EBA's forthcoming 2025 Guidelines on ESG Risk Management and Supervision will formalise expectations that institutions integrate climate-related and environmental risks into their governance structures, business strategies, credit policies, and ICAAP processes; these guidelines will apply to both significant institutions under ECB supervision and less significant institutions overseen by national authorities such as the CSSF.

The CSSF has already begun incorporating ESG elements into SREP assessments, including thematic reviews assessing:

- the robustness of climate scenario analysis;
- the consistency between CSRD reports, Pillar 3 disclosures under CRR/CRD V, and internal risk frameworks; and
- board-level understanding of both transition risks (arising from policy or technological changes towards a low-carbon economy) and physical risk exposures (stemming from climate-related events).

EU AML Package and AML Authority

The EU's new Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) package – comprising AMLR, AMLD6, and the AMLA Regulation, which establishes the pan-European AMLA, will introduce a single rulebook and a centralised supervision model across the European Union. AMLA, headquartered in Frankfurt, will co-ordinate national authorities and directly supervise selected high-risk or systemically important cross-border institutions from 2026 onwards. National authorities will continue to supervise most domestic entities under harmonised standards with enhanced co-ordination.

Luxembourg will amend the Law of 12 November 2004 on AML/CFT to align with this new regime. The CSSF is expected to update its sectoral AML Handbook, risk-factor guidance, and reporting templates once relevant EU secondary legislation is finalised; transitional arrangements may apply during implementation.

Key innovations include:

- harmonised customer due diligence standards across member states;
- enhanced beneficial ownership transparency through stricter register requirements;
- common sanctions lists facilitating uniform application of restrictive measures; and
- new reporting channels for suspicious transaction data designed to streamline communication with Financial Intelligence Units (FIUs) and AMLA.

For Luxembourg banks, this package signals more intensive cross-border co-operation among supervisors and a greater reliance on data-driven monitoring techniques. Institutions will need to modernise screening tools, update group-wide policies and procedures, enhance data quality controls, and ensure their compliance frameworks are robust enough to meet heightened regulatory expectations across all jurisdictions in which they operate.

Securitisation Refit – Streamlining Private Transactions

The EU Securitisation Regulation (Regulation (EU) 2017/2402) is undergoing significant revision as part of the “Securitisation Refit” – a reform initiative aimed at simplifying the regulatory framework and revitalising European securitisation markets within the broader context of capital markets union. Luxembourg, as one of the EU’s key jurisdictions for securitisation activity, is expected to be significantly impacted by these changes.

Key amendments proposed for private securitisations include:

- a simplified, principles-based due diligence process designed to reduce prescriptive requirements while ensuring robust risk assessment by institutional investors;
- reduced transparency requirements for private securitisations, distinguishing them from public transactions but retaining core disclosures necessary for investor protection;
- adjusted criteria for Simple, Transparent and Standardised (STS) securitisations – including syn-

- thetic on-balance-sheet deals – to facilitate their use as effective capital management tools; and
- appointment of a lead supervisor for cross-border securitisations in order to streamline supervision and reduce regulatory fragmentation.

The reform aims to strike an appropriate balance between investor protection and market efficiency, acknowledging the operational burden imposed by previous disclosure templates. Its overarching objective is to enhance securitisation transactions within the European Union as an essential tool for deploying more funds into the real economy – particularly supporting SME financing – and improving secondary market liquidity.

Luxembourg-originated securitisations – especially private and synthetic structures – are expected to benefit from reduced administrative friction, faster execution timelines, and better alignment with capital-relief objectives. Nevertheless, strict compliance with STS standards and due diligence criteria remains critical in order to preserve investor confidence and ensure continued regulatory recognition.

The relevant legislative proposal was released in June 2025; amendments are expected to be implemented in 2026 subject to completion of the EU legislative process. Transitional measures may apply depending on final adoption timelines.

PSD3 and PSR – The New Payments Architecture

The European Commission’s proposals for a new Payment Services Directive (PSD3) and a directly applicable Payment Services Regulation (PSR) are set to modernise Europe’s payments framework by replacing PSD2 (Directive (EU) 2015/2366). This reform aims to strengthen consumer protection, enhance fraud prevention measures, improve open-banking security, and level the regulatory playing field between banks and fintechs.

The package introduces clearer rules on access-to-account interfaces (APIs), expands data-sharing obligations for authorised third-party providers while safeguarding customer privacy, and establishes consistent standards for instant payments as well as strong customer authentication (SCA). Once adopted, the PSR

will have direct effect across all member states; PSD3 will require transposition into Luxembourg law – likely through amendments to the 2009 Law.

The CSSF – which supervises payment institutions and e-money institutions – is preparing to adapt its licensing regime and safeguarding requirements once final texts are approved. The CSSF is also assessing alignment between PSR requirements and DORA due to overlapping cyber risk management and incident-reporting obligations.

Implementation of PSD3/PSR will have several impacts on payment operations:

- Banks and payment institutions will face tighter fraud-reporting obligations as well as stronger reimbursement rights for victims of payment fraud – including mandatory refund timelines in certain scenarios.
- Open banking rules will be clarified; participants must enhance interface reliability, authentication processes, and compliance with new API standards.
- Providers offering Buy Now, Pay Later (BNPL) or embedded-finance products must co-ordinate with Consumer Credit Directive II (Directive (EU) 2023/2225), which extends conduct-of-business rules – including pre-contractual information provision – to short-term digital credit products.

Adoption of the final texts of the PSD3/PSR package is expected in late 2025 or early 2026.

EBA SREP and Stress-Testing Framework Update

The EBA launched consultations in October 2025 on revised Guidelines for SREP as well as on supervisory stress-testing methodologies. These reforms reflect both the CRD VI package and DORA's operational resilience concepts by integrating ESG, ICT, and governance risk factors more explicitly into prudential assessments. SREP remains a cornerstone of EU banking supervision; EBA Guidelines are binding on national authorities such as the CSSF through the “comply or explain” mechanism.

The updated SREP will:

- standardise the treatment of ESG risk drivers across credit, market, and operational risk categories to ensure consistent integration into banks' risk management frameworks;
- incorporate digital operational resilience metrics to assess banks' preparedness for severe ICT disruptions in line with DORA requirements; and
- strengthen links between qualitative findings – such as governance or risk management weaknesses – and Pillar 2 capital guidance (P2G), with increased emphasis on board-level engagement with ESG and ICT risks.

For supervisory stress testing, the EBA will move toward a more forward-looking, scenario-based approach requiring granular data on climate transition risks, physical risks from environmental events, and cyber-incident losses. Scenario calibration must be robustly documented and subject to board-level oversight.

Luxembourg institutions should prepare for more detailed requests under ICAAP and ILAAP processes – including comprehensive documentation of model assumptions, scenario calibration methodologies, data sources used in stress testing, and evidence of board-level oversight over stress-test governance. While smaller banks will continue to benefit from proportionality in supervisory expectations, all entities must demonstrate clear traceability between their internal risk frameworks and reported ESG/ICT metrics.

The CSSF plans to apply this new framework in its 2026 supervisory cycle – complementing macroprudential assessments conducted by the BCL.

Regulatory Outlook 2026-2027

Luxembourg's banking regulatory environment is entering one of its most dynamic periods in recent years, characterised by multiple amendments, new legislative packages – including CRD VI/CRR III, DORA, CSRD, the AML package with AMLA establishment, and the Securitisation Refit – and evolving supervisory expectations. Most of these reforms are EU-driven as part of a broader effort to strengthen the resilience, transparency, and competitiveness of Europe's financial sector. Banks are now expected to

adapt their operations to a framework that emphasises sustainability integration, digital-by-design supervision, and co-ordinated evidence-based governance.

Three themes will define the coming regulatory cycle:

- **Sustainability:** ESG considerations are becoming embedded in prudential supervision, risk management frameworks (including ICAAP), disclosure obligations (CSRD/ESRS; Pillar 3), and board-level accountability. Supervisors expect robust climate scenario analysis, consistency between sustainability disclosures and internal risk frameworks, and clear board responsibility for managing ESG risks.
- **Digital-By-Design:** Reporting and compliance processes are shifting toward structured, automated, technology-enabled formats – driven by initiatives such as DORA and PSR – requiring significant upgrades to information systems architecture, real-time data pipelines, cyber-resilience measures, and incident-reporting capabilities.
- **Integrated Risk Perspective:** Prudential (capital/liquidity), ESG (climate/transition/physical), operational (ICT/cyber), and conduct risks are increasingly treated as interdependent elements within banks' overall governance strategies. Supervisors assess how these risks interact through processes such as SREP – which now explicitly links qualitative findings across domains to capital guidance.

In practice, success will depend on institutions' ability to align risk management, finance, and ESG compliance functions around shared data architectures and control frameworks. While the CSSF continues to apply a proportionate approach tailored to institution size or complexity, it expects demonstrable readiness for change initiatives, credible project governance, robust documentation, and consistent implementation across all business lines.

The years ahead will focus less on introducing new obligations than on proving that governance structures, systems integration efforts, and high-quality data can deliver regulatory outcomes efficiently and transparently within the EU's modern supervisory model. Institutions achieving this integration early will be best placed to maintain regulatory confidence – and operational resilience – in an increasingly complex European landscape.

Trends and Developments

Contributed by:

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Luther Rechtsanwaltsgesellschaft mbH is a leading business law firm established in 2010 in Luxembourg. Relying on its international network, the firm's multilingual professionals advise domestic and international clients across seven practice areas. The clients of the firm, ranging from multinational corporations, investment funds, financial institutions to private equity firms, have placed their trust in its interdisciplinary legal advice. The firm has 29 legal advisers, including

eight partners, and is ranked by leading international directories such as Chambers and Partners. Luther employs over 420+ lawyers and tax advisers internationally and is present in ten German economic centres and has 11 offices in Europe and Asia. Luther is a founding member of unyer (www.unyer.com), a global organisation of leading professional services firms that co-operate exclusively with each other.

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Introduction

Luxembourg's banking sector is navigating a period of significant change driven by twin pressures: rapid digitalisation and an increasing focus on sustainability. These are two of the principal objectives underpinning current European Union strategies – such as the Digital Finance Strategy and the European Green Deal – for the coming years. Digital transformation has become imperative for credit institutions seeking to simplify operations, enhance efficiency, and improve customer experience; this ranges from automating processes with artificial intelligence to providing round-the-clock mobile banking services. At the same time, sustainable finance imperatives are fundamentally reshaping banking strategies: banks are increasingly required – by evolving regulatory frameworks and market expectations – to integrate environmental, social, and governance (ESG) criteria into their operations, risk assessments, and financial products. This dual transition is expected to drive further evolution in Luxembourg's banking industry by blending its traditional strengths in cross-border finance – namely efficiency, speed, and pragmatism – with new technology-driven services such as advanced data governance frameworks and artificial intelligence-based process automation.

Regulatory authorities in Luxembourg have responded with a balanced approach that promotes innovation while preserving stability and investor confidence. The *Commission de Surveillance du Secteur Financier* (CSSF), for example, has actively encouraged fintech developments by establishing frameworks for crypto-asset issuances while maintaining robust oversight mechanisms designed to ensure effective risk management. Overall, Luxembourg's regulatory initiatives aim to maintain the jurisdiction's long-standing resilience as a trusted financial centre and to harness new technological solutions that increase operational efficiency.

Tokenisation and Blockchain Enter the Financial Mainstream

A significant legislative initiative has recently been undertaken in Luxembourg's financial sector, enabling the integration of distributed ledger technologies (DLTs), primarily blockchain, into traditional finance through asset tokenisation. This development pro-

vides a robust yet forward-looking legal framework for the use of such technologies within capital markets. Between 2023 and 2024, the Luxembourg legislature enacted the fourth instalment in a series of blockchain-friendly laws (known as the “Blockchain IV Law”), which explicitly permits the issuance and circulation of securities, including equities and fund units, on DLT platforms. In practical terms, companies can now maintain their statutory registers on blockchain platforms, and these records have the same legal status as those maintained via traditional registration methods.

Another innovation introduced by the Blockchain IV Law is the establishment of the “control agent” – a regulated entity overseen by the CSSF – which bridges on-chain and off-chain systems. The control agent maintains official issuance accounts for tokens while validating or reconciling transactions, effectively replacing conventional central securities depositories within DLT-based issuances. Essentially, Luxembourg combines the operational efficiency enabled by decentralisation with the strong legal certainty provided by regulatory oversight through control agents.

These developments are expected to accelerate the convergence of digital assets and traditional finance – a domain where distinctions are increasingly blurred. Banks operating in Luxembourg have already begun experimenting with tokenised products based on DLT. Together with other regulatory frameworks, such as the EU's Markets in Crypto-Assets Regulation (MiCA), tokenised instruments can now be more readily integrated into established legal structures and business operations. The overarching aim is for blockchain technology to deliver enhanced cost-effectiveness and time efficiency for traditional financial products by facilitating immediate settlements and reducing dependence on intermediaries, such as central securities depositories. Through these measures, Luxembourg continues to position itself as an international hub where the innovative fusion of traditional finance and decentralised solutions can thrive without compromising trust or certainty.

MiCA Establishes a Regulated Digital-Asset Market

The introduction of the EU's Markets in Crypto-Assets Regulation (MiCA) is a significant milestone for Europe's crypto sector, including in Luxembourg, by establishing harmonised rules designed to foster innovation while protecting investors. In Luxembourg, where digital asset markets are already well developed, the authorities have issued some of the first crypto-asset service provider (CASP) licences in Europe under MiCA. This new regime replaces an unregulated environment with a comprehensive framework ensuring prudential oversight comparable to that of other fintech sectors.

Luxembourg responded swiftly by adapting its national legislation. The CSSF has been designated the competent authority responsible for monitoring compliance with MiCA requirements, and other legal texts are being updated accordingly. For example, crypto-related activities are being added to those regulated under Luxembourg's Law on the Financial Sector (LFS), enabling banks to offer crypto services within their existing licences. Further amendments ensure that anti-money laundering obligations now explicitly cover virtual asset transactions.

The CSSF retains broad supervisory powers, including conducting on-site inspections and imposing sanctions where necessary, while co-ordination with other authorities is becoming increasingly important. The Central Bank of Luxembourg is monitoring potential stablecoin issuances ("asset-referenced tokens" or "e-money tokens"), as these could have implications for monetary policy or payment systems if large euro-backed stablecoins emerge.

Established financial institutions, such as private banks and fund managers, are closely observing these developments; many may become more active participants as regulatory certainty increases. Thanks to its longstanding expertise in supervising innovative finance, the CSSF can ensure that this rapidly evolving market develops efficiently within robust regulatory parameters, thereby reinforcing Luxembourg's reputation as a jurisdiction that is innovation-friendly and prudent.

With full implementation scheduled for 2025, following the expiration of transitional arrangements by 2026, the rapid development of a regulated crypto market in Luxembourg can be anticipated.

FIDA and Digital Identity to enable Connected Finance

The next phase of data sharing, open finance, is imminent in the European Union, prompting Luxembourg's credit institutions to prepare for its anticipated impact. The proposed Financial Data Access Regulation (FIDA), which is still being negotiated as of 2025, aims to extend the core principles established under the Second Payment Services Directive (PSD2) – and the expected refinements under PSD3/Payment Services Regulation – to encompass a much broader array of financial data, not just payment accounts. Under this regime, banks, investment firms, insurance companies and payment institutions would be required to share customer information with licensed third-party providers upon obtaining explicit customer consent.

This expanded access will enable the development of innovative solutions: customers' various financial accounts, including loans, investments, pensions and mortgages, can be aggregated into unified platforms providing a holistic overview or consolidated credit scoring services. Once adopted, which is anticipated between late 2025 and early 2026, with implementation likely to be scheduled for 2027, financial institutions will need to invest significantly in secure data-sharing technologies, such as application programming interfaces (APIs). As this ecosystem matures, competitive pressures within the sector are expected to intensify.

Alongside these open finance developments, the European Union is updating its Electronic Identification, Authentication and Trust Services Regulation (eIDAS 2.0). This update introduces a "European Digital Identity Wallet", which will allow individuals across member states to prove their identity online and securely share verified personal attributes for both public and private sector interactions and transactions. For example, banking customers may soon be able to open accounts remotely at any EU-based institution using government-backed digital identification, rather than submitting physical documentation manually.

Financial institutions – including those based in Luxembourg – will thus be able to rely on official digital identities both during onboarding procedures and subsequent authentication steps. This will streamline cross-border client acquisition without undermining KYC obligations or anti-money laundering controls. However, explicit client consent remains paramount, and robust internal processes must ensure full compliance with all applicable data protection requirements whenever personal information is processed or shared.

Taken together, these initiatives – open finance via FIDA and secure digital identification via eIDAS 2.0 – are considered complementary pillars underpinning Luxembourg's forward-looking approach to digital finance. They promise consumers greater convenience, efficiency and transparency, while ensuring rigorous safeguards around privacy protection, security and integrity remain firmly in place.

Digital Lending and Robo-Advice in the “Click Era”

Following the adoption of the recast EU Consumer Credit Directive (CCD) in 2023, retail lending within the European Union is undergoing significant reform, with the directive having to be transposed into Luxembourg law by 2026. The revised directive broadens consumer credit regulation to encompass modern lending models such as microcredit facilities and buy-now-pay-later (BNPL) products, as well as traditional loans. It also introduces strengthened protections for borrowers operating within increasingly digitalised environments. Key changes include harmonised requirements for a thorough assessment of each customer's ability to repay, using all available relevant data, as well as enhanced transparency obligations covering marketing practices, pre-contractual disclosures and ongoing communications throughout a loan's lifecycle.

The overarching objective is responsible lending: banks across Europe, including those based in Luxembourg, must adapt their mechanisms for offering digital credit products so that consumer protection remains uncompromised, irrespective of the distribution channel. Information on fees, advice provision or support delivered via apps or websites must be just as clear, accessible and comprehensive as that provided

through traditional face-to-face interactions, ensuring that consumers can make fully informed decisions at every stage.

Digitalisation, and particularly artificial intelligence, has also been increasingly integrated into investment services. Robo-advisory platforms now offer algorithm-driven investment recommendations or portfolio management solutions designed to increase efficiency, reduce costs and broaden access among retail clients. In Luxembourg, these automated advisory tools are regulated in the same way as human advisers: providers must ensure full compliance with the suitability and appropriateness assessments mandated by the Markets in Financial Instruments Directive II (MiFID II). Regular validation, testing and transparency around service operation remain essential obligations.

Looking ahead, market participants should closely monitor further regulatory developments under Europe's Retail Investment Strategy, which seeks to provide even greater levels of protection and transparency for retail investors. Robo-advisers active within Luxembourg will be expected to promptly align with any new rules arising from this initiative.

Instant Payments and Digital Euro: Refreshing the Payments Architecture

As of October 2025, preparatory work for the introduction of a digital euro – a central bank digital currency (CBDC) for the eurozone – was finalised. A decision on whether to proceed with the project is expected in the coming months. If approved by EU policymakers, the relevant regulations could be adopted as early as 2026, with implementation potentially scheduled for 2029. In such an event, retail distribution would occur via banks and payment service providers, meaning that financial institutions in Luxembourg would be responsible for offering customers access to digital euro wallets alongside traditional accounts. Banks are currently assessing the technical integration requirements and compliance obligations necessary to ensure that transactions involving the digital euro can be processed instantly and securely, in line with existing electronic payment standards. This will require substantial upgrades or adjustments to their current infrastructures.

Meanwhile, the European Union has mandated that instant payments become standard practice: since early 2025, all banks operating in Luxembourg and across Europe have been obliged to provide customers with access to euro credit transfers that settle within ten seconds at low or no cost. While most institutions had previously offered such services voluntarily, these new rules guarantee the universal availability and affordability of real-time payments throughout SEPA. The ongoing implementation by Luxembourg's banking sector is making electronic transactions faster, safer and more user-friendly than ever before.

Together, these developments – the potential launch of a retail digital euro alongside enhancements to conventional payment systems – signal that cashless payments in Luxembourg have entered an era of unprecedented innovation, supported by robust regulatory oversight.

Convergence of the Agendas

Luxembourg's 2026 agenda is fully aligned with the European Union's established priorities: digital transformation, data-centric innovation, operational resilience and sustainable finance. Previously independent regulatory initiatives are now converging into an integrated framework for banking regulation. For instance, initiatives aimed at improving data integrity and transparency are advancing both prudential supervision objectives and ESG goals simultaneously. Digital tools such as artificial intelligence (AI) and blockchain technology are being used to address sustainability challenges and improve the efficiency and compliance of financial institutions.

Banks will be required to demonstrate not only their capacity for innovation, but also their ability to innovate securely, ethically and consistently with broader societal objectives. As one of Europe's core finan-

cial centres, Luxembourg has taken significant steps towards implementing these goals through proactive policy measures. The CSSF continues to take a pragmatic yet responsive approach, combining robust supervisory oversight with commercial pragmatism, and has signalled clear intentions to embrace transformative technologies such as AI without compromising its fundamental mission of balancing technological advancement with regulatory trust.

As new EU regulations emerge relating to AI applications in finance, open access frameworks for financial data, or enhanced requirements for sustainable finance reporting, Luxembourg is expected to judiciously implement these measures. In particular, the CSSF is likely to place increased emphasis on ensuring high standards of data quality, promoting interoperability among diverse digital systems, upholding rigorous AI ethics standards, guaranteeing reliable regulatory reporting foundations, facilitating seamless platform integration, and ensuring the responsible deployment of advanced technologies across all relevant domains.

Drawing upon its extensive experience as an international, cross-border financial hub, Luxembourg possesses unique strengths that will enable it to successfully navigate this evolving landscape. The jurisdiction has repeatedly demonstrated that sustained innovation can coexist harmoniously alongside enduring stability – a formula it intends to preserve and advance in future years. Through continued collaboration between regulators and industry stakeholders, Luxembourg remains exceptionally well positioned to retain its status as a European leader in financial sector innovation – one which embraces the ongoing digital revolution and channels these developments towards supporting long-term sustainable economic growth.

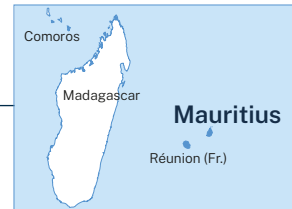
MAURITIUS

Law and Practice

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1. Legal Framework

1.1 Key Laws and Regulations

The banking sector in Mauritius is primarily regulated by:

- the Bank of Mauritius Act 2004;
- the Banking Act 2004 (the “Banking Act”); and
- regulations/guidelines issued by the Bank of Mauritius (BoM) under those Acts.

The Bank of Mauritius Act 2004 establishes the BoM as the central bank of Mauritius and provides for its objects, powers and functions.

The Banking Act sets out the framework for the licensing, operation, regulation and supervision of banks and other financial institutions (non-bank deposit-taking institutions and cash dealers). Under the Banking Act, the BoM has wide discretion and powers to issue instructions or guidelines or to impose requirements relating to the operations, activities and standards to be maintained by banks and other financial institutions. To date, several guidelines have been issued – these are regularly updated and cover various topics, such as (among others):

- licensing conditions and description of business activities;
- use of cloud services;
- environmental, social and governance (ESG);
- capital adequacy, outsourcing, liquidity risk management and other prudential measures;
- application of Basel III;
- anti-money laundering and countering the financing of terrorism (AML/CFT);
- cybersecurity; and
- virtual assets-related activities.

The banking sector is also subject to other legislation, which is described as “banking laws” under the Banking Act and is related to AML/CFT under the supervision of the BoM – namely:

- the Convention for the Suppression of the Financing of Terrorism Act 2003;
- the Financial Intelligence and Anti-Money Laundering Act 2002;

- the Prevention of Terrorism Act 2002;
- the Prevention of Terrorism (International Obligations) Act 2008; and
- the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019, and the regulations and guidelines made thereunder.

In addition to the general pieces of legislation (such as the Companies Act 2001, the Insolvency Act 2009 and the Income Tax 1995), other legislation is also relevant to the banking sector, as set out below.

The National Payment Systems Act 2018 regulates and places under the BoM’s supervision the national payment systems and payment systems operated in Mauritius, primarily for the purpose of ensuring their safe, secure, efficient and effective operation and accessibility to the public.

Pursuant to the Public Debt Management Act 2008, the BoM can issue and manage loans issued by the government.

The Mauritius Deposit Insurance Scheme Act 2019 provides for a scheme to:

- protect insured depositors of a bank or non-bank deposit-taking institution by providing insurance against the loss of insured deposits; and
- contribute to the stability of the financial system in Mauritius by ensuring that depositors have prompt access to their insured deposits, in the event of failure by a bank or non-bank deposit-taking institution.

The Financial Services Act 2007 provides for the establishment of the Office of the Ombudsperson for Financial Services to receive and deal with complaints from consumers of financial services against financial institutions.

Following the enactment of the Virtual Asset and Initial Token Offering Services Act 2021, which establishes a comprehensive legislative framework for regulating the business activities of virtual assets service providers and initial token offerings, the BoM issued a Guideline for Virtual Asset-Related Activities. In this guideline, the BoM recognises that banks may be

exposed to various risks, including liquidity, credit, market, operational (such as fraud and cyber risks), money laundering, terrorist financing and proliferation risks. The Guideline outlines the principles that banks should adhere to when conducting virtual asset-related activities, in order to mitigate risks and maintain a sound and stable financial ecosystem. It is aligned with the Basel Committee on Banking Supervision's standards on exposures to crypto-assets.

2. Authorisation

2.1 Licences and Application Process

In Mauritius, “banking business” (as defined below) is a regulated activity, and an entity intending to conduct such business activities must be licensed to do so by the BoM.

An applicant may engage either in banking business, Islamic banking business, digital banking business or private banking business.

“Banking business” means the following.

- The business of accepting sums of money, in the form of deposits or other funds, whether such deposits or funds involve the issuance of securities or other obligations howsoever described, withdrawable or repayable on demand or after a fixed period or after notice.
- The use of such deposits or funds, either in whole or in part, for:
 - (a) loans, advances or investments, on the own account and at the risk of the person carrying on such business; and
 - (b) the business of acquiring, under an agreement with a person, an asset from a supplier for the purpose of letting out the asset to the person, subject to payment of instalments together with an option to retain ownership of the asset at the end of the contractual period.
- Paying and collecting cheques drawn by or paid in by customers and making other payment instruments available to customers – this includes such services as are incidental and necessary to banking.

“Islamic banking business” means any financial business, the aims and operations of which are – in addition to the conventional good governance and risk management rules – in consonance with the ethos and value system of Islam.

“Digital banking business” is defined under the Banking Act as “banking business carried on exclusively through digital means or electronically”.

“Private banking business” means the business of offering banking and financial services and products to high net worth customers, including, but not limited to, an all-inclusive money-management relationship.

A bank licensed to carry on exclusively private banking business or exclusively Islamic banking business may apply to the BoM to conduct its licensed activities solely through digital means or through electronic delivery channels. Following recent amendments to the Banking Act, banks licensed to carry on exclusively private banking business are now permitted to purchase gold, silver and other precious metals in their own name. Previously, these institutions were only authorised to hold, store or sell such metals as part of managing their clients' investment portfolios. Furthermore, clients may now open and maintain accounts denominated in gold, silver and other precious metals.

Accordingly, an applicant may be granted with either:

- a banking licence;
- an Islamic banking licence;
- a digital banking licence; or
- a private banking licence.

Application Process

An applicant for a banking licence must be a body corporate and, in this context, it may take different forms. The applicant may be a standalone entity, a branch or a subsidiary of a foreign bank. Depending on the form it wishes to take, the BoM may specify additional requirements to, or exemptions from, the legal, regulatory and supervisory framework applicable to that applicant.

Every application for a banking licence, irrespective of the category, is made by submitting a duly filled-out and prescribed application form to the BoM together with a non-refundable processing fee, or MUR1 million.

The application will be reviewed and approved by the BoM. It is therefore recommended that the applicant engages with the BoM to ensure that it is provided with all the information it requires.

The BoM also has wide discretionary powers to request any information it deems necessary to determine whether the applicant is eligible for a banking licence, and this would normally include extensive information about the applicant's expertise and ability to meet the applicable licensing criteria. Among others, an applicant must provide a business plan giving the nature of the planned business, organisational structure and internal control, as well as projected financial statements (including projected cash flow statements).

In terms of administration, the applicant must demonstrate that it has at least ten suitably qualified full-time officers, including the CEO, the deputy CEO and key functional heads. The applicant must also have a principal place of business in Mauritius, and its annual operating costs should not be less than MUR25 million.

A successful applicant will have to demonstrate that it has the required policies, procedures and controls in place to meet its licensing criteria, including the prescribed minimum capital and liquidity ratio and other regulatory, statutory and prudential requirements as may be prescribed by the BoM.

Pending the final determination of the application, the BoM may grant an in-principle approval, subject to such terms and conditions as it may determine. However, an in-principle approval must not be construed by the applicant as an authorisation to conduct banking business or to have any legitimate expectation of a positive final determination of the application. The in-principle approval will automatically lapse if the applicant does not satisfy the terms and conditions attached to such approval.

Activities and Services Covered

A bank licensed under the Banking Act may conduct banking business as described above. It may also carry out the following services:

- investment and wealth management services;
- custody services;
- foreign exchange;
- credit and loans;
- payment processing;
- cash management; and
- merchant services.

However, Section 30 of the Banking Act sets out restrictions on investments and non-banking operations for banks. Specifically, it limits the types of investments that banks can make. It also prohibits them from engaging in non-banking operations (except in the course of the satisfaction of debts due to them by default of a debtor) that could pose a conflict of interest or distract from their primary functions. Non-banking operations include trading on the bank's own account or on the basis of a commission, in the wholesale or retail trade (such as the import or export trade) or in any business other than the business for which the bank is licensed under the Banking Act.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Under Section 31 of the Banking Act, anyone seeking to acquire or increase control in a bank to the level (directly or indirectly) of a "significant interest" must seek the BoM's prior approval.

A "significant interest" means:

- owning, directly or indirectly, alone or together with a related party, or otherwise having a beneficial interest amounting to, 10% or more of the capital or of the voting rights of a financial institution;
- having the ability, directly or indirectly, alone or together with a related party, or having the power, to appoint 20% or more of the members of the board of a financial institution; or

- directly or indirectly exercising a significant influence over the management of a financial institution as the BoM may determine.

Prospective acquirers of significant interest over a bank must give 30 days' prior notice to the BoM, including (among other things):

- the acquirer's name, personal history, business background and experience and that of any other person by whom or on whose behalf the acquisition is to be made – this must also be accompanied by a certificate of good conduct issued by a competent authority (or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy, in respect of each of the persons);
- the financial position of that person and any other person by whom or on whose behalf the acquisition is to be made;
- the terms and conditions of the proposed acquisition;
- the identity, source and amount of the funds or other consideration used or to be used in making the acquisition; and
- any plans of the acquirer regarding liquidation, asset sale or merger with any company, or regarding making any other major change in its business, corporate structure or management.

The BoM may request additional information at its discretion. Approval from the BoM depends on factors such as:

- whether the proposed acquisition would create undue influence or a monopoly, or would substantially lessen competition;
- whether the financial condition of any acquiring person might jeopardise the financial stability of the financial institution or prejudice the interests of its depositors;
- whether the competence, experience or integrity of any acquirer, or of any proposed director, chief executive officer or other senior officer, indicates that it would not be in the interest of the depositors of the financial institution or in the interest of the

public to permit such person to acquire a significant interest in the financial institution;

- whether the proposed acquisition will not be conducive to the convenience and needs of the community or market to be served; or
- whether any acquiring person fails to furnish the BoM with all the information that it requires.

There are no restrictions on foreign shareholders in Mauritius.

Any acquisition in contravention of Section 31 of the Banking Act will be deemed null and void and not entitled to any voting rights or payment of dividends. The BoM Guideline on Corporate Governance requires that banks regularly review and update the BoM on their ownership structures, especially regarding changes to significant shareholders or other influential parties.

4. Governance

4.1 Corporate Governance Requirements

The Banking Act contains general provisions relating to (among other things):

- supervision;
- establishment of committees;
- board of directors;
- audit;
- remuneration;
- senior officers; and
- disclosure of interests.

In its supervisory role, the BoM issued a Guideline on Corporate Governance, most recently updated in 2017 (the "Guideline"), to provide further guidance on the implementation provisions set out in the Banking Act. The Guideline provides for principles and related requirements that aim at placing reliance on an institution's internal processes and controls by:

- an effective board of directors' oversight;
- strong risk management;
- directors' relationship with the senior management;
- effective internal and external controls;
- transparency; and
- compliance.

The Guideline provides for some exemptions applicable to banks that are subsidiaries or branches of foreign banks – these exemptions have not been listed in this guide.

The main features of the Guideline are as follows.

Board of Directors

The board of directors has a central role in proper governance, as it is responsible for the safety and soundness of the bank; it oversees the business strategy, organisation and governance structure, risk management, compliance and key officers. Some of the salient requirements are set out below.

Composition

As a matter of principle, a board must collectively possess the necessary qualification and background for a balance of expertise, skills, and adequate knowledge of its business/structure and strengths of the industry, as well as of the regulatory framework.

The board should consist of at least five natural persons, 40% of whom must be independent directors (the Guideline defines the term “independent director”). If the chairperson is a non-executive director, the board must be 50% composed of independent directors.

Except with the prior approval of the BoM, a non-executive director may serve for a maximum of six years.

The chairperson should be an independent director or a non-executive director.

The CEO must be a board member but must not be the chairperson.

Responsibilities (non-exhaustive list)

The board is responsible for the bank’s corporate plan in the short and long term, and for the related strategy of the bank (in respect of its business objective, policies, risk management, capital adequacy, liquidity, compliance, controls, communication, staff compensation policies, operation budget) and the related supervision.

It is also responsible for the appointment, monitoring and assessment of the CEO, senior management, subcommittees and/or individual directors in their performance, to achieve the corporate objectives.

It ensures that policies, practices, controls and systems are in place and are effective, reviewed and assessed periodically, to:

- achieve a prudential balance between risk and return to shareholders; and
- be compliant with the regulatory framework.

It should be independent from the management, with a clear demarcation of responsibilities.

It implements policies and procedures to identify, redress and perform ultimate decision-making in respect of conflict-of-interest situations at all levels of the organisation.

It protects the interests of the bank, and ensures that decisions of a holding company or head office are not detrimental to the sound and prudent management of the bank and the financial health and legal interests of its stakeholders.

Board subcommittees

The Banking Act requires the boards of directors of banks to establish committees to effectively discharge their responsibilities. The mandates of each committee must be clearly set out and be publicly available. Proceedings of the subcommittees must be reported periodically to the board. The committees should cover at least the following areas:

- audit;
- conduct review;
- risk management; and
- nomination and remuneration.

Senior Management

The CEO is responsible for day-to-day operations and for the implementation of the corporate objectives approved by the board of directors through the senior management. The board sets criteria for measuring the CEO’s performance in achieving the approved objectives on an annual basis. The CEO is in

turn responsible for implementing a performance and accountability regime for senior management.

The senior management should implement business strategies, risk management systems, and risk culture, processes and controls for managing the risks to which the financial institution is exposed and concerning which it is responsible for complying with laws, regulations and internal policies. This includes comprehensive and independent risk management, compliance and audit functions, and an effective overall system of internal controls. Senior management should recognise and respect the independent duties of the risk management, compliance and internal audit functions and should not interfere in their exercising of such duties.

Senior management is responsible for delegating duties to staff. It should establish a management structure that promotes accountability and transparency throughout the financial institution.

Compliance

While the board has the ultimate responsibility for ensuring compliance, the management must establish the parameters of the compliance policy and its *modus operandi*. This would include identification of compliance risks and how these must be managed throughout the organisation. The compliance function must be independent from the management to avoid any undue influence or obstruction. To be effective, the compliance function must have adequate authority, resources, independence and importance in the organisation. The compliance function should report directly to the board of directors or to a committee of the board. To help the boards of financial institutions, the BoM recently issued a Guideline on Compliance Risk Management and Governance Framework. The Guideline outlines the minimum requirements to help financial institutions establish a robust compliance culture and implement an effective governance and risk management framework for compliance risk. It is based on the guiding principles set out by the Basel Committee on Banking Supervision in its publication “Compliance and the Compliance Function in Banks” and aligns with international best practices.

Internal Audit

Every financial institution should set out the mandate of internal audit. The purpose of the internal audit is to provide independent assurance to the board and senior management on:

- whether the internal control system is effective and adequately mitigates risks; and
- whether the organisational goals are met and corporate governance processes are efficient.

The head of the internal audit department should not be responsible for any other function within the bank.

External Auditors

Banks must appoint a firm of auditors (approved by the BoM) at each annual meeting. The firm of auditors must be independent, experienced in the auditing of financial institutions and have the adequate resources to carry out its duties. A firm of auditors cannot be responsible for the auditing of a bank for more than five continuous years. The firm of auditors must prepare an annual report. The board of directors should ensure that the external auditors:

- maintain high standards of professional conduct;
- have complete independence from the management, with no possible influence;
- have no conflicts of interest with the bank or a related party; and
- bring to its attention any matters that require urgent action.

Transparency

Governance practices must be adequately transparent to shareholders, depositors and other market participants. They need complete and timely information on significant activities to hold a financial institution’s board and senior management accountable for the trust placed in them to achieve corporate objectives. The level of disclosure will vary depending on the size, structure, complexity of operations, economic significance and risk profile of a financial institution.

However, as a minimum, a financial institution must disclose the board selection process, including the skills, background and experience essential to guiding the financial institution’s affairs and to protecting

the interests of shareholders. It should also disclose the financial institution's management infrastructure, including the board committees, their mandates and the number of times they have met.

Other information for disclosure includes:

- a description of a financial institution's objectives;
- governance structure and policies;
- major shareholdings and voting rights;
- related-party transactions;
- remuneration and compensation policy, including criteria for performance measurement; and
- remuneration/fees of directors, senior executives and key employees.

The BoM Guideline on Public Disclosure of Information further provides that a financial institution should disclose its approach to corporate governance in accordance with the requirements of the Guideline on Corporate Governance in its annual report. The financial institution should outline the processes in place for receiving shareholder feedback on its activities and for dealing with shareholder concerns.

Voluntary Codes and Other Initiatives

The National Code of Corporate Governance 2016

The new National Code of Corporate Governance 2016 (the "Code"), issued by the Ministry of Financial Services, Good Governance and Institutional Reforms, is another tool that reinforces Mauritius's commitment to upholding its standards and ranking in respect of corporate governance across the African continent. The Code has been designed to guide boards of directors in complying with governance practices. Compliance with concepts of accountability, fairness, transparency and reporting (among others) helps to minimise risks within companies. It also gives an indication of the company's reputation and reassures stakeholders.

The Code applies to public interest entities, which include banks and non-banking financial institutions, and is in line with the requirements of the BoM's Guideline. The Code provides for eight principles and guidance that can be uniformly applied and adapted by each organisation concerned. As opposed to the check-box approach used by the previous code, the

new methodology allows for more flexibility and enables corporations to adapt each of the principles to their business model and internal structure. The Code recommends that boards have directors from both genders as members of the board – ie, at least one male and one female director. All boards are encouraged to have a non-discrimination policy that covers their senior governance positions, including disability, gender, sexual orientation, gender realignment, race, religion and belief, and age.

The Code of Ethics and the Code of Banking Practice

The Code of Ethics and the Code of Banking Practice were issued by the Mauritius Bankers Association (MBA), the association regrouping all banks registered in Mauritius. The professional codes that have been issued by the MBA aim at more transparency, respectively by:

- setting out a common set of universally acclaimed principles pertinent to all banks, over and above those that they subscribe to as part of their internal Code of Ethics, with a view to further developing the commitment of the banking industry to its customers and the community at large through best ethical standards, and with the aim of continuing to improve bank-customer relationships; and
- fostering good banking practices and enhancing the relationship and communication between banks and customers.

The Codes include a statement of adherence by all members of the MBA to the underlying principles relating to corporate governance in line with the Code of Corporate Governance for Mauritius and the BoM Guidelines. In addition, Section 64 (1) of the Banking Act requires senior officers and directors of banks to be bound by an oath of confidentiality in a form prescribed in the Schedule of the Banking Act.

4.2 Registration and Oversight of Senior Management

The Banking Act provides for the requirements applicable to the appointment and supervision of directors and of senior officers of banks, as well as to their disqualification. Senior officers include:

- the CEO;
- the deputy CEO;
- the chief operating officer;
- the chief financial officer;
- the secretary;
- the treasurer;
- the chief internal auditor; and
- managers of a significant business unit of the bank, or persons with similar positions and responsibilities.

The Banking Act sets out the principles of a fit and proper person, which the BoM must be satisfied with at the time of approving the appointment and re-appointment of directors and senior officers. The BoM must be notified and its approval requested at least 20 days before the date of appointment or re-appointment of the person. The notice must be accompanied by a certificate of good conduct, and the BoM must be satisfied of the fitness and probity of the proposed candidate.

The BoM issued a Guideline detailing the fit and proper criteria for the assessment of the fitness and probity of directors, senior officers and shareholders holding a significant interest. The Guideline contains a questionnaire, which must be completed by any applicant and submitted to the BoM for its assessment prior to obtaining approval.

According to the Guideline, a fit and proper person is a person who, when subjected to the criteria of the Guideline together with any other criteria prescribed by the board of directors, presents the likelihood of their being in a position to discharge their responsibilities in a competent, honest and correct manner in the best interests of the institution.

The key criteria (further detailed in the Guideline) that should apply and be demonstrated over time to the BoM are:

- competence and capability;
- honesty, integrity, diligence, fairness, reputation and good character; and
- financial soundness

The criteria outlined in the Guideline are to be applied individually, but it is their cumulative effect that will determine whether a person meets the test. A failure to meet one criterion will not, of its own, necessarily mean failure to meet the fit-and-proper-person test. The process will involve a good measure of judgement, which must be exercised in a fair and judicious manner, always in the best interests of the institution and the sound conduct of its business.

The application of fitness and probity tests may vary depending on the degree of a person's influence and on the person's responsibilities in the affairs of the financial institution.

The Banking Act and the fit and proper criteria contained in the Guideline further set out the responsibilities of the board, the CEO, the persons subject to the tests and external auditors.

The board of directors must establish a fit-and-proper-person policy as well as implementation processes in line with the Guideline, and must apply the policy to directors, senior officers and shareholders that can exercise significant influence on the institution. The board's further responsibilities include ensuring that nominations, initiated by the board, of persons for election to the board of directors/senior officer must meet the test of the fit and proper person as set out in the Guideline before such nominations are placed before the shareholders' meeting or the board of directors.

In the event of the acquisition of shares by persons who are likely to exercise significant influence on the financial institution, they must meet the test of fit and proper persons before their shares are registered in the register of shareholders, and the BoM must be advised if events have occurred that put into question their ability to meet the test.

Providing the requirements of the Banking Act are complied with, including those with respect to prior notice to the Central Bank for the appointment of a senior officer, the notice should be accompanied by a completed questionnaire outlined and annexed to the Guideline along with complete information on any objections or contrary views expressed by any direc-

tor. It remains the board's responsibility to keep the fitness and probity of all persons covered under the Guideline under constant review. The board should, on a priority basis, take a decision in the case and initiate whatever action is necessary. The board's proceedings should be properly documented, and the board should advise the BoM of the relevant matter and its decision.

The CEO applies the fit-and-proper-person test to other management positions below the senior officer level and reports to the board periodically on the result achieved.

It is the individual responsibility of senior officers, directors and shareholders with significant influence to demonstrate that they are fit and proper persons. They must, accordingly, complete the fit-and-proper-person questionnaire and provide any additional information that the board of directors may require to complete its investigation. They are further obliged to notify the board of any events or circumstances that have occurred after their initial fit-and-proper-person assessment that might change the assessment or at least have a material bearing on it. The board should investigate the information, on a priority basis, and decide on the individual's fit-and-proper-person status.

Should the external auditors become aware of information that points to non-compliance or potential non-compliance by a person with the fit-and-proper-person requirements of the Guideline, they should forthwith advise the board of directors of the matter and provide all relevant information.

4.3 Remuneration Requirements

Section 18 of Banking Act states that no financial institution should employ any person whose remuneration is linked to the income of the financial institution or to the level of activities on customers' accounts.

Except for those financial institutions that have been granted a dispensation from the BoM, every financial institution must appoint a Nomination and Remuneration Committee, the majority of which should be non-executive directors. Their role will consist of:

- recommending to the board candidates for board positions, including the chair of the board and chairs of the board committees;
- recommending criteria for the selection of board members and criteria for the evaluation of their performance;
- preparing, for the approval of the board, the remuneration and compensation package for directors, senior managers and other key personnel, taking into account the soundness of risk-taking and risk outcomes as well as any relevant information available on industry norms;
- recommending to the board an incentive package, as necessary, to enhance staff performance, while ensuring that incentives embedded within remuneration structures do not incentivise staff to take excessive risk;
- recommending nominees for board committees; and
- commenting on the contribution of individual directors to the achievement of corporate objectives as well as on the regularity of their attendance at the board and committee meetings.

Financial institutions are encouraged to consider the use of contractual provisions to allow them to reclaim incentive components of remuneration from executive directors and key management personnel in exceptional circumstances of misstatement of financial results or of misconduct resulting in financial loss to the financial institution.

With a view towards promoting transparency to shareholders, depositors and other market participants, the board of directors of a financial institution is recommended to disclose the remuneration/fees of directors, senior executives and key employees; the disclosure should be timely, accurate, clear and easily understandable to inform all stakeholders effectively.

5. AML/KYC

5.1 AML and CFT Requirements

Mauritius is a founding member of the Eastern and Southern Africa Anti-Money Laundering Group, which is an associate member of the Financial Action Task Force (FATF). Mauritius has also ratified and acceded

to numerous international conventions, protocols and treaties to express its commitment towards the international community in combating money laundering and terrorist financing (ML/TF).

Mauritius' AML/CFT framework is spread across several pieces of legislation, namely:

- the Financial Intelligence and Anti-Money Laundering Act 2002;
- the Financial Intelligence and Anti-Money Laundering Regulations 2018;
- the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019;
- the Prevention of Terrorism Act 2002;
- the Convention for Suppression of the Financing of Terrorism Act 2003;
- the Financial Services Act 2007; and
- Part VIIIA of the Banking Act.

The BoM is the designated AML/CFT supervisory authority over financial institutions under its purview, and is required to supervise financial institutions with respect to the AML/CFT requirements set out under the banking laws.

To provide guidance and assist banks in complying with their AML/CFT requirements, the BoM has issued a Guideline on Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation (the "BOM Guideline").

The BOM Guideline sets out the broad parameters within which financial institutions (including their branches and subsidiaries), members of their boards of directors, management and employees should operate to counter and prevent ML/TF.

The BOM Guideline stresses that financial institutions and their senior management are required to design and implement their own policies, procedures and controls to meet the relevant AML/CFT statutory and regulatory requirements.

To mention a few measures, banks are required to conduct risk assessments and to apply a risk-based approach to their customer due diligence protocols,

controls and procedures, in order to mitigate and effectively manage the risks of ML/TF.

The nature and extent of any assessment of ML/TF risks must be appropriate to the nature and size of the business of the bank and the type of transaction or product offered, and must consider all other relevant risk factors such as the nature, scale and location of the customer.

Banks are also required to report any transactions that give rise to a reasonable suspicion of ML/TF to the Financial Intelligence Unit (established under the Financial Intelligence and Anti-Money Laundering Act 2002).

In terms of corporate governance, banks are also statutorily required to appoint a compliance officer and a money laundering reporting officer (MLRO). The BOM Guideline recommends that the compliance officer and the MLRO be two distinct persons. However, it is left to the financial institutions to decide whether the compliance officer may also assume the functions of the MLRO.

Non-compliance with the BOM Guideline is punishable, on conviction, with a fine not exceeding MUR1 million and, if not remedied, with a further fine of MUR100,000 for every day or part of a day during which the offence continues.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Mauritius Deposit Insurance Scheme was established under the Mauritius Deposit Insurance Scheme Act 2019 to provide protection, up to a certain level, to depositors in the event that one of the licensed banks or non-bank deposit-taking institutions fails.

The scheme is administered and managed by Mauritius Deposit Insurance Corporation Ltd, known as the "agency". The agency's powers and functions include (among others):

- the control and management of funds deposited into the deposit insurance fund;

- collecting premium contributions; and
- making payments of compensation in respect of insured deposits or otherwise providing depositors with access to their insured deposits.

The depositor protection scheme extends to any individual who is a resident of Mauritius and who is eligible to compensation for an insured deposit in the event of failure of a deposit-taking institution. All deposit-taking institutions are members of the depositor protection scheme.

Both local and foreign currency deposits are eligible, up to a certain level, to protection under the scheme. They must, however, fall under the following categories:

- deposits in savings accounts both in Mauritian currency and in foreign currencies;
- deposits in a current account both in Mauritian currency and in foreign currencies;
- time deposits both in Mauritian currency and in foreign currencies; and
- such other deposits or amounts as the board of the agency may determine.

Deposits not granted protection under the scheme include:

- where there is a contractual set-off agreement between a deposit-taking institution and a depositor, any deposit up to the amount of any debt owed by a depositor to the deposit-taking institution if such debt is matured or past due, or the maximum amount that would otherwise be eligible for compensation (whichever is lower);
- any deposit of a related party;
- any deposit that is frozen by a court order; and
- such other deposits or amounts as the board may determine.

The coverage limit per insured depositor is MUR300,000 or such other amount as may be prescribed. If sufficient funds are recovered following the sale of the failing deposit-taking institution's assets, the insured depositor may recover deposits of more than the coverage limited/insured amount.

Payments of insured deposits in foreign currency are made in Mauritian currency, and the rate of exchange is determined by the agency.

The scheme is primarily funded by the premium contributions paid by banks and non-bank deposit-taking institutions. These financial institutions are required to pay into the fund a premium of 20 cents per MUR100 on their insurable deposits or such premium amount as may be prescribed. It also derives funding from interests or other income through investments made from the fund. Any investment made from the fund must fall within the scheme's investment policy, which is approved by the agency's board. The investment policy strictly prohibits investments in deposit-taking institutions and high-risk instruments.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

In Mauritius, the transition to Basel III (introduced in 2014) has been a gradual process. Prior to its implementation, banks had to maintain a 10% minimum capital adequacy ratio, consisting of 5% each in Tier 1 and Tier 2 capital.

The BoM implemented Basel III in June 2014 through publication of the Guideline on the scope of application of Basel III and eligible capital. When the Guideline was issued, banks faced minimal disruption, as 90% of the banks' capital base was already Tier 1. Alongside capital adequacy requirements, the BoM introduced a capital conservation buffer, starting at 0.625% in 2017 and increasing annually until reaching 2.5% by 2020.

To control risk in certain high-growth economic sectors, the BoM replaced the Basel III counter-cyclical capital buffer with macro-prudential measures, including additional portfolio provisions, higher risk weights, debt-to-income limits and loan-to-value ratios. Since July 2018, the loan-to-value ratio requirement has been removed.

Under Section 100 of the Banking Act, all banks are required to adhere to the BoM's Basel III Guidelines, with the most recent revision in June 2021.

Risk Management Rules

In Mauritius, the board of directors holds ultimate responsibility for a bank's soundness, overseeing its capital adequacy, risk management, liquidity and internal controls. Section 18 (6) of the Banking Act mandates that boards establish committees for effective governance, including a risk management committee with a publicly accessible mandate.

The risk committee advises the board on risk appetite, oversees its framework's implementation and reports on the institution's risk culture.

The BoM considers robust risk management crucial to corporate governance, addressing potential exposures from direct investments or affiliates. To manage risks, banks must establish a board-approved risk appetite framework, aligning with the institution's strategic goals and setting benchmarks for acceptable risk limits. All corporate policies should support this forward-looking framework, which is critical to the bank's risk tolerance and long-term objectives.

With the exception of the CEO, the committee members should be non-executive, with familiarity in bank risk management. The committee should have a clear mandate from the board. The board chairperson can be part of the committee, but only as its chairperson. The chairperson of the committee should ideally be an independent director, or, in the case of a subsidiary of a foreign bank, a non-executive director.

The risk committee's duties include:

- identifying major risks;
- appointing a chief risk officer (CRO) independent from revenue-generating operations; and
- ensuring that the CRO reports regularly to senior management and the board.

The committee also reviews risk exposure reports and makes recommendations on risk issues to the board.

Quantity and Quality of Capital Requirements, Including Rules on Capital Buffers

Banks licensed in Mauritius must meet capital ratio requirements set out in the BoM Guideline at two levels:

- the bank standalone ("solo") level, which measures a bank's capital adequacy based on its own capital and risk profile; and
- the consolidated ("group") level, which includes the bank's subsidiaries but excludes insurance or non-financial activities.

The framework will also apply, on a fully consolidated basis, to any holding company that is the parent entity within a banking group to ensure that it captures the risk of the whole banking group.

For capital adequacy, banks must maintain:

- 6.5% of risk-weighted assets as common equity Tier 1;
- 8% of risk-weighted assets as Tier 1 capital; and
- 10% total capital (Tier 1 plus Tier 2), exclusive of the capital conservation buffer.

The capital conservation buffer, set at 2.5% of common equity Tier 1, ensures capital availability during stress periods. Banks are expected to maintain capital above the minimum requirement, utilising the buffer only in periods of stress. If a bank's buffer drops below the required level, it may continue operations but cannot distribute dividends, buy back shares or make discretionary payments until it regains compliance.

Liquidity Requirements

All banks licensed by the BoM are required to comply with its Guideline on liquidity risk management (the "LCR Guideline"), which includes maintaining a liquidity coverage ratio (LCR). The LCR ensures that banks hold sufficient high-quality liquid assets (HQLA) that consist of cash or assets convertible into cash at little or no loss of value in the market, in order to meet their liquidity requirements for a 30-day liquidity stress period – by which time, banks and the BoM will be able to take appropriate corrective action to resolve the stress situation in an orderly manner. The liquidity coverage ratio has two components:

- the value of HQLA under stressed conditions; and
- total net outflows, as defined by the BoM's parameters outlined in the Guideline.

If a bank's LCR falls below 100% during financial stress, it must notify the BoM within one business day, justifying the HQLA use and outlining corrective steps. The LCR helps banks monitor and control liquidity risk, requiring bimonthly reporting to the BoM. During stress, banks must be able to increase reporting frequency to weekly or daily if necessary. Banks must also submit a maturity mismatch profile of assets and liabilities to the BoM and disclose liquidity data through their financial reports, website or regulatory publications. LCR disclosures must follow a common template, including bimonthly averages, number of data points, and daily HQLA averages over the quarter. Qualitative analysis is also required to contextualise the LCR data.

To complement its LCR Guideline, the BoM introduced the Net Stable Funding Ratio (NSFR) Guideline. This guideline requires that banks maintain an NSFR of at least 100% to promote long-term financial stability. It ensures that banks have adequate stable funding relative to their assets, minimising dependence on short-term funding and mitigating liquidity risks. The NSFR Guideline outlines the methodology for calculating and monitoring the NSFR, specifying requirements for various types of liabilities and assets.

Systemically Important Banks

The BoM's Domestic-Systemically Important Banks (D-SIB) Framework, aligned with the Basel Committee on Banking Supervision, aims to assess a bank's impact on the domestic economy. The BoM evaluates a bank's systemic importance through indicators such as size, interconnectedness, substitutability, financial infrastructure and complexity. Given Mauritius's unique economic environment, the BoM includes "exposure to large groups" as an additional indicator. The BoM assesses banks whose Segment A assets represent at least 3.5% of GDP.

In line with the recommendations of the Basel Committee on Banking Supervision, the additional loss absorbency requirement of D-SIBs must be met with common equity Tier 1. This additional capital takes

the form of a surcharge for D-SIBs. The level of capital surcharge applicable to each D-SIB is then calibrated depending on the category in which that D-SIB is placed. The BoM periodically reviews the list of banks that are determined to be systemically important for Mauritius, with the last review being undertaken in June 2021.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Mauritius has not yet implemented the Financial Stability Board's "Key Attributes of Effective Resolution Regimes for Financial Institutions".

Under the current legal regime, conservatorship is the principal means of resolving a failing or a likely-to-fail bank.

Conservatorship

Under Section 65 of the Banking Act, the BoM may – in order to protect the assets of a financial institution for the benefit of its customers and other creditors – appoint a conservator, if it has reasonable cause to suspect that:

- the capital of the bank is impaired or there is threat of such impairment;
- the financial institution has, or its directors have engaged in, practices detrimental to the interest of its depositors or that the financial institution or its senior management officers have violated any provision of the banking laws, AML/CFT obligations or guidelines; and
- the assets of the financial institution are not sufficient to provide adequate protection to the bank's depositors or creditors.

When a conservator is appointed, the latter takes full control of the bank and has all powers necessary to preserve, protect and recover any assets of the financial institution, and to collect all sums of money and debts due to the bank. The conservator also has the power to suspend, in whole or in part, the repayment or withdrawal of any liabilities and pre-existing deposits of the financial institution.

Unless the BoM determines otherwise, there is a time constraint of 180 days on the conservator to rehabilitate the financial institution.

Compulsory Liquidation

The BoM will appoint a receiver to manage and control a bank where it has evidence that the bank's:

- capital is impaired or unsound;
- capital-to-assets ratio is less than 2%;
- business is unlawful or unsafe;
- continuance is detrimental to the interests of its customers; or
- licence has been revoked.

Duties of the Receiver

Under Section 77 of the Banking Act, the receiver must commence proceedings leading to the compulsory liquidation of the assets of the financial institution or take such other measures necessary in respect of the financial institution within a period of not more than 30 days, or must terminate the taking of possession.

Powers of the Receiver

During the receivership period, the receiver has a wide array of powers to:

- manage, control or discontinue the financial institutions' operation;
- stop or limit the financial institution's payment obligations;
- initiate, defend and conduct any proceedings;
- suspend, in whole or in part, the repayment or withdrawal of deposits and other liabilities of the financial institution; and
- suspend or reduce the right of creditors to claim or receive interest on any money owed to them.

Priority of Claims

Claims against the assets of a financial institution during compulsory liquidation are settled in the following order of priority:

- necessary and reasonable costs, charges and expenses incurred by the receiver, including their remuneration;

- wages and salaries of officers and employees of the financial institution in liquidation for the three-month period preceding the taking of possession of the financial institution;
- taxes, rates and deposits owed to the government of Mauritius;
- savings and time deposits not exceeding, in amount, MUR100,000 per account;
- other deposits; and
- other liabilities.

Winding-Up of Financial Institutions

A financial institution may also be wound up in accordance with the provisions of Sub-Part II of Part III of the Insolvency Act 2009 (the "Insolvency Act").

Section 100 of the Insolvency Act states that the winding-up of a company may be:

- by way of a winding-up order made by the court;
- by way of a voluntary winding-up commenced by a resolution passed by the company; or
- by way of a resolution of creditors passed at the watershed meeting.

Voluntary winding-up may be:

- a shareholders' voluntary winding-up where the company is solvent, and where the liquidator is appointed at a shareholders' meeting; or
- a creditors' voluntary winding-up where the company is insolvent, and where the liquidator is appointed by a meeting of creditors.

With effect from the commencement of a voluntary winding-up, a liquidator is appointed and has custody and control of the financial institution's assets.

Priority of Claims

Section 91 of the Banking Act provides that, in the event of the winding-up of a financial institution, all assets of the financial institution must be made available to meet all deposit liabilities of the financial institution in the following order of priority:

- deposit liabilities incurred by the financial institution with its customers;

- deposit liabilities incurred by the financial institution with other financial institutions; and
- other liabilities of the financial institution.

9. ESG

9.1 ESG Requirements

Since early 2020, the BoM has taken several initiatives relating to the financial risks associated with climate change and environmental degradation, including the following.

The BoM has joined the Network of Central Banks and Supervisors for Greening the Financial System (NGFS).

In 2021, it released a Guide for the Issue of Sustainable Bonds. This Guide was published to provide an overview of the requirements and processes for the issuance of sustainable bonds and the listing of these bonds on exchanges licensed in Mauritius. Along the same lines, in 2021 the Guidelines for the Issue of Corporate and Green Bonds in Mauritius, issued by the Financial Services Commission, further supplemented the Guide by elaborating on various regulatory requirements to be adopted by the issuers in line with international best practices for the issuance of green bonds.

The BoM launched its Climate Change Centre. The Centre is composed of a main committee, under the chairmanship of the second deputy governor, with four task forces. The objectives are:

- to integrate climate-related and environmental financial risks into the BoM's regulatory, supervisory and monetary policy frameworks;
- to review the BoM's internal operations in view of reducing its carbon footprint and becoming a more sustainable organisation;
- to look into enhancing disclosures on climate-related and environmental financial risks;
- to support the development of sustainable finance;
- to build capacity and raise awareness for climate-related and environmental financial risks; and
- to bridge data gaps in relation to climate-related and environmental financial risks.

Guideline on Climate-Related and Environmental Financial Risk Management

In 2022, the BoM released a Guideline on Climate-Related and Environmental Financial Risk Management, which took into consideration the recommendations of the NGFS in its Guide for Supervisors, "Integrating climate-related and environmental risks into prudential supervision" (issued in May 2020) as well as other related guidance issued by the NGFS, the Financial Stability Board, the Basel Committee on Banking Supervision and other regulators.

The Guideline sets out the expectations of a prudent approach to climate-related and environmental financial risks with a view to enhancing the resilience of the banking sector against these risks. It is intended to assist financial institutions in embedding sound governance and risk management frameworks for climate-related and environmental financial risks within their existing risk management frameworks. Banks will also be in a better position to identify the risks and opportunities arising from the transition to a low-carbon and more circular economy and to consider them in their strategy, engagement with their counterparts and other decision-making processes.

The Guideline further outlines the broad principles that banks may use to develop their climate-related and environmental financial disclosures. The Guideline requirements apply to various areas of the organisation and operation of banks – namely to:

- business model and strategy;
- governance;
- internal control framework and risk management;
- implementation of scenario analysis and stress testing; and
- disclosure of information on climate-related and environmental financial risks to which they are exposed, the potential impact of material risks and their approach to managing these risks.

The disclosure requirement is effective from the financial year ending 31 December 2023.

10. DORA

10.1 DORA Requirements

The BoM introduced the Guideline on Cyber and Technology Risk Management in 2023, which sets out specific regulatory requirements that financial institutions must meet to enhance their cyber and technology risk management. The Guideline sets out the minimum requirements that banks and payment service providers are expected to implement with respect to cyber and technology risk management, to ensure that the risks are well understood and managed appropriately. The key regulatory requirements within the Guideline that banks and payment service providers should be aware of – as they align with broader cyber-resilience standards in the financial sector – are as follows.

Governance Framework for Cyber-Resilience

Financial institutions must establish a cyber and technology risk governance structure that includes oversight by their board and senior management.

The board of directors of each financial institution is responsible for approving cyber and technology risk strategies and for ensuring that these align with the institution's overall business objectives.

Financial institutions must designate a chief information security officer (CISO) or equivalent to oversee cyber-risk and report regularly to senior management and the board on cyber-resilience.

Identification of Critical Assets and Dependencies

The Guideline requires entities to conduct regular risk assessments to identify potential cyber and technology risks across their operations, and to identify and document critical assets, processes and third-party dependencies that are essential to their operations.

Key requirements for managing third-party risk include:

- conducting thorough due diligence on potential service providers;
- establishing contractual agreements that include security standards, incident notification obligations and compliance with the financial institution's cybersecurity requirements; and

- monitoring third parties for compliance with agreed cybersecurity measures, and conducting periodic reviews or audits.

The assessments should cover:

- identification of critical assets and systems;
- evaluation of potential threats and vulnerabilities; and
- impact analysis to understand how cyber incidents could affect business continuity.

This assessment includes creating and maintaining an inventory of ICT assets that, if compromised, could affect the entity's ability to deliver critical services. The assessment should also include the maintenance of an inventory of third-party service providers that have access to the information assets of the financial institution together with their critical rating.

Risk and Threat Intelligence Capabilities

Financial institutions are expected to develop and maintain comprehensive threat intelligence and risk assessment capabilities, enabling them to stay informed about potential cyber threats and vulnerabilities.

Regular risk assessments help identify and address potential weaknesses, with a focus on new and emerging threats.

Financial institutions are required to engage in threat intelligence-sharing with the BoM.

Protection of Systems and Data

The Guideline mandates controls to protect critical assets and sensitive information from unauthorised access, disruption or destruction. It emphasises that entities should implement protective measures to ensure the confidentiality, integrity and availability of critical systems and data.

This includes strong access controls, encryption standards and secure coding practices.

Financial institutions should secure their systems against cyber threats through firewalls, antivirus soft-

ware, intrusion detection/prevention systems and regular updates to protect against vulnerabilities.

Detection Capabilities

Financial institutions are expected to implement advanced monitoring and detection capabilities to identify cyber incidents as early as possible.

Continuous network monitoring and anomaly detection help to identify unusual behaviour that could indicate a cyber threat.

Financial institutions should employ automated systems, such as Security Information and Event Management (SIEM) systems and real-time logging of network activities to detect potential incidents promptly.

Incident Response and Recovery

The Guideline mandates that financial institutions establish robust cyber incident response and recovery plans to minimise the impact of cyber incidents and resume operations quickly.

The incident response plan should:

- outline procedures for identifying, containing, mitigating and recovering from cyber incidents; and
- be regularly tested, including through simulation exercises.

Similarly, financial institutions should develop and test business continuity and disaster recovery plans specifically tailored to address cyber incidents.

Testing

The Guideline emphasises the importance of regular testing of cyber-resilience capabilities.

This includes penetration testing, vulnerability assessments and scenario-based testing exercises that simulate cyber threats and measure the institution's response.

Financial institutions are expected to conduct post-incident reviews to learn from incidents and to adjust their response plans accordingly.

Situational Awareness and Continuous Improvement

Financial institutions are expected to continuously monitor the evolving cyber landscape and to adapt their cyber-resilience strategies accordingly.

The Guideline encourages entities to conduct post-incident reviews to identify lessons learned and to make improvements.

Financial institutions are expected to continually enhance their resilience frameworks by integrating feedback from incidents, simulations and new threat intelligence.

11. Horizon Scanning

11.1 Regulatory Developments

In the dynamic landscape of global banking, Mauritius has recognised the growing importance of digital transformation, ESG initiatives and cybersecurity enhancements. Recent efforts by parliament, the BoM and the Financial Services Commission of Mauritius (FSC) have focused on enhancing frameworks for fintech, digital banking, ESG and sustainable finance. These initiatives aim to modernise the banking sector in line with evolving customer expectations, market demands and international standards.

To define the path forward for the banking sector, the BoM partnered with the Mauritius Bankers Association and an international consulting firm to produce the “Future of Banking in Mauritius” report. This forward-looking vision prioritises:

- innovative products and services;
- advanced technology and new business models;
- compliance with international standards and regulations;
- commitment to ESG principles; and
- human capital development.

The BoM envisions creating a modern, secure ecosystem that positions Mauritius as a leader in banking services across the region. To foster this vision, the BoM has actively sought innovative approaches and explored new growth opportunities.

One major initiative was the launch of the Sustainable Finance Framework. Developed in collaboration with the government and other stakeholders, this framework governs the issuance of green, social and thematic bonds by the Ministry of Finance, Economic Planning and Development. Its purpose is to solidify Mauritius's reputation as a key international financial hub in the ESG domain. In line with the objectives of the framework, the FSC introduced new guidelines for ESG funds in March 2025. These guidelines aim at combating greenwashing and promoting informed decision-making.

The BoM is also focused on advancing digital finance by piloting a retail Central Bank Digital Currency (CBDC), known as the Digital Rupee. The Digital Rupee will aim to encourage digital payments and decrease reliance on cash. Having made significant progress in its research phase, the BoM has now initiated a pilot project in collaboration with one commercial bank.

Further to the Virtual Asset and Initial Token Offering Services Act, the BoM has issued a guideline on virtual assets-related activities. This initiative reflects the BoM's commitment to staying at the forefront of international developments while ensuring that global standards are effectively implemented, thereby maintaining Mauritius's reputation as a stable, innovative and secure international financial centre.

In 2025, regulators and industry stakeholders held consultations aimed at reinforcing the competitiveness and resilience of Mauritius's global business sector, with an emphasis on innovation. Further initiatives can be expected from the BoM and the FSC to facilitate digital transformation, foster fintech collaboration and modernise compliance processes. These measures will aim to attract global players and ensure that financial institutions operating in Mauritius remain competitive within a fast-changing international environment.

MEXICO



Law and Practice

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Ritch, Mueller y Nicolau, S.C. is a top-tier multidisciplinary transactional firm committed to offering high-value legal advice to national and international clients engaged in structuring, developing and financing private businesses and public-sector projects in Mexico. The firm represents Mexican, international and multi-lateral banks, as well as other financial intermediaries in secured and unsecured, bilateral and syndicated lending transactions of different levels of complexity involving Mexican obligors or assets. With a consistent presence in the market, Ritch Mueller has actively

participated in all phases of the credit cycle, including origination in bull markets as well as restructuring in the context of regional or global crises. The firm has played a pivotal role in advising the majority of foreign financial institutions that have established subsidiaries in Mexico, guiding them through the authorisation processes. Additionally, Ritch Mueller extends advisory services to industry organisations such as ISDA and the Mexican Banking Association, particularly in derivatives transactions within the Mexican market.

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1. Legal Framework

1.1 Key Laws and Regulations

The main laws and regulations applicable to Mexican banks are as follows.

Laws

- *Ley de Instituciones de Crédito* (the “Banking Law”) – this is the primary law applicable to Mexican banks and foreign branches of banks (*filiales*) in Mexico. It outlines the requirements for the establishment, operation, and supervision of banks in Mexico. It also includes, among others, provisions on allowed and forbidden transactions, as well as corporate governance, risk management, and consumer protection provisions applicable to banks.
- *Ley del Banco de México* (the “Banco de México Law”) – this law governs the operation, supervision and regulatory activities of Banco de México (the Central Bank of Mexico). It defines the central bank’s roles and responsibilities, including monetary policy, financial stability, and the regulation of payment systems. Additionally, this law provides that Banco de México might issue regulations regarding the deposit, lending and services transactions of banks.
- *Ley para Regular las Agrupaciones Financieras* (the “Financial Groups Law”) – this law provides for the establishment of financial groups in Mexico. Financial groups are formed by a financial holding company and its subsidiaries, which are regulated financial companies. Financial groups are regulated and supervised by different authorities in Mexico, depending on the entities that comprise them.

- *Ley de Protección y Defensa al Usuario de Servicios Financieros* (the “Financial Services Users Protection Law”) – this law focuses on the protection of financial service users. It establishes the rights of consumers and the obligations of financial institutions, including transparency and fair treatment.

Regulations

- *Disposiciones de Carácter General Aplicables a las Instituciones de Crédito or Circular Única de Bancos* (the CUB or the “Banking Regulations”) – these regulations are issued by the *Comisión Nacional Bancaria y de Valores* (the “National Banking and Securities Commission” or the CNBV) and it conglomerates most of the regulatory requirements applicable to banks in Mexico, including, among others, capital and liquidity requirements, corporate governance and duties of the senior management, and financial reporting.
- Circular 3/2012, issued by Banco de México, regulates transactions between banks and other financial institutions, including credit transactions, deposits and other services/banking operations, as well as provisions related to the use of diverse interest rates.
- Circular 4/2012, issued by Banco de México, regulates the operational aspects and obligations related to derivatives transactions entered into between financial institutions in Mexico.
- *Reglas a las que Deberán Sujetarse las Instituciones de Crédito; Casas de Bolsa; Sociedades de Inversión, Sociedades de Inversión Especializadas de Fondos Para el Retiro y la Financiera Rural en sus Operaciones de Reporto* (the “Reporto Regulations” – ie, Repurchase Regulations), issued by

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Banco de México, regulate repurchase agreement (“repo”) transactions entered into between financial institutions in Mexico.

- *Reglas a las que Deberán Sujetarse las Instituciones de Crédito; Casas de Bolsa; Sociedades de Inversión, Sociedades de Inversión Especializadas de Fondos Para el Retiro y la Financiera Rural en sus Operaciones de Préstamo de Valores* (the “Securities Lending Regulations”), issued by Banco de México, regulate securities lending transactions entered into between financial institutions in Mexico.
- Circular 14/2007, issued by Banco de México, sets forth the requirements with which the interest rates that banks use in small to medium loans need to comply.
- *Reglas para el Establecimiento de Filiales de Instituciones Financieras del Exterior* (the Rules for the Incorporation of Affiliates of Foreign Financial Entities) set forth the rules that govern the conditions and procedures for foreign financial institutions to establish subsidiaries in Mexico, ensuring compliance with local regulations and promoting healthy competition in the financial market.

Authorities

Regarding the supervisory authorities of banks, the Ministry of Finance bears the primary supervisory responsibility and is supported by an autonomous agency functionally attached to it, the CNBV, that regulates, among others, banks, broker-dealers and investment funds. Banco de México, in addition to managing its normal central bank operations, also regulates deposit, lending and funding transactions of banks, as well as the foreign exchange and derivatives markets in Mexico.

Two other decentralised public agencies involved with operations of Mexican banks are the *Instituto para la Protección al Ahorro Bancario*, or IPAB, which is in charge of the banking deposit system and managing a formal deposit insurance system, and the *Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financiero* (the National Commission for the Defense of Financial Service Users, or CONDUSEF).

2. Authorisation

2.1 Licences and Application Process

Bank Authorisation Regime in Mexico

Obtaining a banking licence in Mexico is a very lengthy regulatory process, governed primarily by the Banking Law and applicable provisions of the CUB. Below is a summary of the key aspects of the authorisation regime.

Authorisation requirement and activities covered

To establish and operate a bank in Mexico, an entity must obtain authorisation from the CNBV, with a favourable opinion from Banco de México. Mexican banks may engage in all activities permitted under the Banking Law or opt to perform only specific transactions under a catalogue. Adjustments to these activities (adding or eliminating allowed activities) require prior CNBV approval.

Foreign banks cannot establish branches in Mexico for general banking activities, and representative offices are restricted from conducting active banking transactions.

Application process and requirements

The application process involves filing an application in triplicate (ie, three copies), along with its exhibits, to the CNBV. The documentation must be submitted in Spanish, translated by a certified translator. From 2021 to the present time, the filing has been and can be conducted through an official email account of the CNBV.

The timeline for obtaining approval ranges from six to nine months following submission of a complete application. Key steps include the following.

1. Filing and deposit guarantee

A deposit equivalent to 10% of the minimum required capital must be made with *Banco del Bienestar* in favour of the *Tesorería de la Federación* (the “Mexican Treasury”). This deposit ensures the seriousness of the application and is refundable upon the successful incorporation and operation of the bank. However, it may be forfeited if the terms of authorisation are breached, such as failure to incorporate within three

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months or commence operations within six months of authorisation.

2. Minimum capital requirements

The required capital depends on the bank's activities. Banks conducting all permitted activities must hold a minimum of 90 million *Unidades de Inversión* (UDIs or indexed units) – approximately USD42 million. For banks engaging in limited activities, the minimum capital may range between 36 and 54 million UDIs (approximately USD16.7–25 million).

3. Incorporation requirements

The bank must be incorporated in Mexico as a *sociedad anónima* (corporation with limited liability) for an indefinite duration, as a Mexican domicile, and with at least two shareholders.

4. Operational readiness

The application must include manuals and systems for approval, covering critical areas such as internal operations, anti-money laundering, risk management, credit approvals, ethics, compliance, accounting, and systems.

5. Officers and directors

The names, résumés as well as financial and suitability information of directors, officers and members of the board of directors, must be submitted to the CNBV for approval, ensuring they meet the required qualifications.

Approval process

The process involves two key stages.

1. Favourable opinion (preliminary authorisation)

Once the application is filed and reviewed, the CNBV may issue a favourable opinion. Normally this step would imply several follow-ups (*alcances*) from the CNBV requesting additional information. This preliminary authorisation allows the entity to incorporate as a bank and complete required procedures with authorities and third parties but does not permit banking activities.

2. Final authorisation and operational approval

The final authorisation is issued only after all operational aspects are approved, including the testing

and inspection of systems and procedures. The bank must have established links to local and international payment systems. Without operational readiness, the CNBV will not grant final approval.

Restrictions and ancillary activities

Licensed banks in Mexico are limited to the scope of activities specified in their authorisation. Any changes require CNBV approval. Ancillary activities, such as providing payment services or offering financial advice, are subject to separate approvals under applicable regulations.

Costs and engagement with regulators

The cost of obtaining a banking licence includes the deposit with *Banco del Bienestar* and operational expenses associated with meeting the CNBV's rigorous requirements. Entities seeking authorisation must maintain active engagement with the CNBV throughout the process to address any regulatory queries or adjustments.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

In Mexico, banks are subject to strict regulatory oversight regarding ownership and changes in control, with specific obligations for shareholders to inform or seek authorisation from the CNBV. The requirements vary based on the level of direct or indirect participation in a bank's capital.

Regulations Governing Changes in Control

General obligations during authorisation

During the authorisation process to establish a bank, potential shareholders must provide the CNBV with detailed information about their identity and financial resources.

Shareholding disclosure obligations

Once the bank is operational, shareholders – not the bank itself – are responsible for notifying or obtaining approval from the CNBV regarding any acquisitions or transfers of shares, in accordance with the applicable thresholds.

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- 2% to less than 5% ownership – shareholders acquiring or transferring ordinary shares representing 2% or more but less than 5% of the bank's paid-in capital must notify the CNBV within three business days.
- 5% or more ownership – for direct or indirect acquisitions of 5% or more of the bank's ordinary paid-in capital, or granting guarantees over such shares, prior authorisation from the CNBV is required. This process includes consultation with Banco de México.
- 20% or more ownership or control – any individual or group intending to acquire 20% or more of the bank's shares, or seeking to gain control over the bank, must obtain prior authorisation from the CNBV as stipulated in Article 17 of the Banking Law.

Regulatory Filings and Obligations

Pursuant to Articles 336 and 337 of the CUB, shareholders subject to the thresholds above must submit specific documentation, including identification, origin of the funds, suitability, and financial statements, as part of their notification or authorisation request to the CNBV.

Banks are required to ensure compliance with these obligations by refraining from registering non-compliant share transfers in their shareholder registry. Additionally, banks must notify the CNBV of such unauthorised transfers within five business days of becoming aware of them.

Consequences of Non-Compliance

If shareholders fail to notify or obtain the required authorisations, the equity and corporate rights associated with their shares will be suspended until the CNBV's authorisation is granted, and all requirements under the Banking Law are fulfilled.

Ongoing Requirements

Shareholders must maintain transparency in their ownership structure and ensure timely compliance with all reporting and approval requirements. Banks are obligated to monitor share transfers and report irregularities to the CNBV, fostering continued regulatory oversight and compliance.

4. Governance

4.1 Corporate Governance Requirements

Mexican banks are subject to various corporate governance and regulatory requirements under the Banking Law and the CUB. These requirements aim to ensure sound management, operational efficiency, and compliance with legal and ethical standards.

Statutory and Regulatory Requirements

Board of directors

- Banks must have a board comprising a minimum of five and a maximum of 15 directors.
- A majority of directors must be Mexican residents, though not necessarily Mexican nationals.
- At least 25% of board members must qualify as independent directors.

Organisational structure

While Mexican law does not mandate specific positions or bodies other than the CEO, Compliance Officer, and other technical positions, the CNBV expects certain roles to appear in a bank's organisational chart. These positions, which support operational and compliance obligations, typically include the following.

- Chief Executive Officer (CEO) – appointed by the board of directors, the CEO oversees operations and establishes administrative units;
- Chief Financial Officer (CFO), Chief Legal Officer, and Human Resources Manager – key roles supporting financial, legal, and personnel management;
- Credit Manager – presides over the Credit Committee and ensures compliance with credit origination protocols;
- Head of Credit Control Area – oversees independent credit control functions to guarantee proper credit origination processes;
- Chief Accountant and Financial Comptroller – signs financial statements and fulfils accounting obligations;
- Head of the Integrated Risk Management Unit (UAIR) – appointed by the Risk Committee, responsible for managing the bank's risk exposure;
- Internal Auditor and Director of Internal Control – ensure independent and effective internal audits and controls;

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- Anti-Money Laundering Compliance Officer – manages and enforces regulatory mechanisms to prevent money laundering;
- SPEI Compliance Officer – required for participation in the Mexican Payments System (SPEI);
- Chief Information Security Officer (CISO) – responds to information security requirements set by authorities; and
- Derivatives Brokers – banks trading financial derivatives must have at least two trained brokers.

Qualifications for Key Positions

Persons appointed to key roles must have strict qualifications, including:

- being a resident of Mexico;
- having at least five years of experience in high-level decision-making in financial or administrative matters;
- having integrity, creditworthiness, and compliance with credit obligations;
- having no involvement in inspection or oversight functions, pending litigation against the bank, or bankruptcy proceedings; and
- having awareness of rights and obligations tied to the role.

Diversity and Voluntary Codes

While there are no formal diversity quotas in Mexican banking regulation, the inclusion of independent directors fosters a balance of perspectives on the board. Many banks voluntarily implement diversity and inclusion initiatives to align with global corporate governance trends.

Binding Rules of Conduct

Bank employees are not subject to a formal Bankers' Oath; however, internal codes of ethics and conduct, often required as part of corporate governance practices, ensure that employees adhere to the highest professional and ethical standards.

4.2 Registration and Oversight of Senior Management

Refer to 4.1 Corporate Governance Requirements.

4.3 Remuneration Requirements

In Mexico, banks are required to implement, maintain, and continuously review a “Remuneration System” that encompasses all forms of compensation, whether monetary or otherwise. These requirements, established under the CUB, aim to align remuneration practices with prudent risk management and long-term stability.

Individuals Subject to the Remuneration Requirements

The Remuneration System applies to all individuals whose roles significantly impact the bank's risk profile, including members of the board of directors, senior management, and employees in administrative, control, and business units. The system must account for the risks inherent to the activities performed by each role.

Relevant Remuneration Principles

Banks must design their Remuneration Systems based on the following principles.

- Responsibilities and Governance: Banks must:
 - (a) define the roles of corporate bodies, such as the Remuneration Committee, responsible for implementing remuneration schemes; and
 - (b) ensure that the board of directors approves the Remuneration System and oversees its proper functioning, ensuring that the Remuneration Committee exercises independent judgement.
- Policies and Risk Alignment: Banks must:
 - (a) establish policies and procedures governing ordinary and extraordinary remuneration in line with reasonable risk-taking;
 - (b) consider risks faced by the bank, including liquidity, solvency, stability, and reputational risks, while making compensation decisions; and
 - (c) tailor remuneration schemes to each job profile, with adjustments for the specific risks associated with their activities.
- Performance and Extraordinary Remuneration:
 - (a) Performance evaluations for extraordinary remuneration must account for results observed over a reasonable period, not solely the financial year, to ensure alignment with long-term risk outcomes.

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- (b) Methods to mitigate risk include adjusting remuneration through risk-related factors, deferring payments, extending evaluation periods, and reducing short-term incentives.
- Flexibility in Risk Scenarios:
 - (a) The system must allow for reductions or suspensions of extraordinary remuneration in cases of losses or materialised risks exceeding expectations.
- Continuous Review and Disclosure: Banks must:
 - (a) ensure continuous review of their remuneration policies by the Remuneration Committee and the Comprehensive Risk Management unit; and
 - (b) disclose remuneration policies, the composition and functions of the Remuneration Committee, and risk analyses through their websites and annual reports.

Supervisory Approach

The CNBV oversees compliance with remuneration requirements by monitoring disclosures and conducting periodic reviews. Banks must maintain sufficient documentation to demonstrate compliance, ensuring that the Remuneration System aligns with the regulatory framework and supports long-term financial stability.

5. AML/KYC

5.1 AML and CFT Requirements

Mexico's banking sector is subject to robust anti-money laundering (AML) and counter-terrorist financing (CTF) regulations under the Banking Law and the *Reglas a las Que se Refiere el Artículo 115 de la Ley de Instituciones de Crédito* (the "Anti-Money Laundering Rules" or the "AML Rules").

As a member of the Financial Action Task Force (FATF) and the Financial Action Task Force of Latin America (GAFILAT), Mexico adheres to international standards and best practices. Mexican authorities actively cooperate with international counterparts to combat cross-border money laundering and terrorist financing activities.

Key Obligations for Banks

- Customer Identification: Banks must verify the identity of customers using reliable, independent source documents, data, or information.
- Know-Your-Customer (KYC): Banks must collect and maintain detailed information about the customer's identity, business activities, and the purpose of the account.
- Enhanced Due Diligence (EDD): Banks must apply additional scrutiny to high-risk customers, such as politically exposed persons (PEPs) and those from high-risk jurisdictions.
- Record-Keeping: Banks are required to maintain records of all transactions and customer information for at least ten years. This includes account-opening documents, transaction histories, and correspondence.
- Reporting Obligations:
 - (a) Suspicious Activity Reports (SARs): Banks must promptly report suspicious transactions or activities to the Financial Intelligence Unit (the UIF).
 - (b) Threshold Reporting: Transactions exceeding specified monetary thresholds, such as high-value cash transactions, must also be reported to the UIF.
- Internal Controls and Compliance Programmes: Banks must establish and maintain an effective AML/CTF compliance programme, which includes:
 - (a) developing written policies and procedures to detect and prevent money laundering and terrorist financing;
 - (b) providing regular training for employees on AML/CTF regulations, identifying red flags, and reporting procedures;
 - (c) conducting periodic independent audits to assess the effectiveness of the AML/CTF programme and ensure regulatory compliance; and
 - (d) regularly evaluating potential money laundering and terrorist financing risks, considering customer profiles, products, services, and geographic locations.

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6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Mexico's depositor protection regime is governed by the *Ley de Protección al Ahorro* (the "Savings Protection Law" or the "IPAB Law") which established the *Instituto para la Protección al Ahorro Bancario* (the IPAB). The IPAB operates as a decentralised federal agency with its own legal personality, assets, and liabilities. Its mission is to safeguard bank savings and manage financial reorganisation programmes for distressed banks.

Administration of the Scheme

The IPAB is overseen by a board of governors composed of seven members: three appointed by the federal government and four independent governors approved by the senate upon the President's proposal. An executive secretary leads the agency's operations.

Coverage and Limits

The IPAB guarantees the payment of certain deposits and loans made to Mexican banks, up to a maximum of 400,000 UDIs (approximately USD135,000) per individual or corporate depositor across all accounts and loans with the bank. Payments are made within 90 days of the bank being declared in liquidation, "suspension of payments", or bankruptcy.

Depositors must submit documentation, such as agreements or account statements, to claim payments. However, certain obligations are excluded from IPAB's coverage, including the following:

- debts owed to Mexican or foreign financial institutions;
- obligations to entities within the same financial group as the bank;
- liabilities documented in negotiable instruments or bearer securities (unless held by the original owner);
- deposits or obligations in favour of shareholders, directors, senior management, or other specified individuals; and
- transactions conducted in violation of laws or good banking practices, or related to money laundering.

Subrogation and Additional Remedies

When the IPAB makes a payment, it is subrogated into the rights of the depositor or creditor in the relevant insolvency proceedings. Depositors and creditors may seek recovery of amounts exceeding the guaranteed limit through other legal means.

Financial Support for Banks

In exceptional circumstances, the IPAB may provide financial support to distressed banks on its own initiative or at the request of the CNBV. Support measures include the following:

- subscription of shares or subordinated debentures;
- assumption of liabilities; and
- loans or acquisition of loan portfolios or other assets.

Such assistance is contingent on a cost-benefit analysis confirming that supporting the bank is less expensive than paying the guaranteed obligations. The bank must agree to a financial reorganisation programme, with its voting shares pledged as collateral. If obligations are not met, the IPAB becomes the owner of the pledged shares and assumes control of the bank's management.

Funding of the Scheme

Mexican banks finance the deposit guarantee scheme through ordinary and extraordinary contributions:

- ordinary contributions – at least 0.004% of the bank's annual funding operations;
- extraordinary contributions – capped at 0.003% of the bank's annual funding operations; and
- combined contributions cannot exceed 0.008% of a bank's funding operations in a single year.

Conclusion

The IPAB plays a vital role in safeguarding depositor funds and maintaining stability in Mexico's banking system. By guaranteeing deposits and managing distressed banks, it ensures confidence and continuity within the financial sector.

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7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Mexico's banking regulatory framework is aligned with international standards, including Basel III, as implemented by the CNBV through the CUB, and the Banking Law. Below is a summary of key requirements and the regulatory framework.

Basel III Standards and Implementation

Mexico fully adopted Basel III standards through amendments to the Banking Law and the CUB, implemented by the CNBV in co-ordination with Banco de México. These reforms:

- updated the definition of net capital, comprising capital contributors, retained earnings, and reserves; and
- mandated minimum capital adequacy ratios for banks, requiring:
 - (a) Total Capital Ratio: 10.5%, including a Capital Conservation Buffer;
 - (b) Tier 1 Capital Ratio: 8.5%, inclusive of the buffer; and
 - (c) Fundamental Capital Ratio: 7%, inclusive of the buffer.

The CNBV may impose additional capital requirements or buffers, such as counter-cyclical buffers, to mitigate risks during economic downturns. While Mexico's adoption aligns closely with Basel III, the rules allow flexibility, granting the CNBV discretionary power to adapt requirements to local market conditions.

Risk Management Rules

Mexican banks must implement comprehensive risk management frameworks encompassing credit, liquidity, market, operational, and technological risks. Key requirements include the following:

- establishing Risk Committees and Risk Management Units;
- defining and monitoring exposure limits;
- conducting regular stress tests and submitting risk assessments to the CNBV; and

- adopting sound methodologies for measuring and mitigating risks.

Failure to comply with these standards can lead to CNBV intervention, including imposing corrective measures or limitations on specific activities.

Risk exposures are monitored regularly, and banks must submit risk reports to the CNBV, including data on large exposures, related-party lending, and sectoral concentrations.

Capital Requirements and Buffers

Mexican banks' capitalisation requirements follow Basel III principles but are tailored for local conditions.

- **Minimum Paid-In Capital:** This is 90 million UDIs (approximately USD36 million).
- **Legal Reserves:** Banks must allocate 10% of net income annually to reserves until they equal 100% of paid-in capital.
- **Capital Composition:** Aggregate net capital is divided into Core Equity Tier 1 (eg, paid-in capital, retained earnings, and reserves), Additional Tier 1 (eg, perpetual preferred shares and subordinated debt), and Tier 2 capital (eg, long-term subordinated debt with phased inclusion based on maturity).
- **Corrective Measures:** Non-compliance with capital ratios results in restrictions, such as dividend suspensions, bonus limits, or debt term adjustments.

This framework ensures banks maintain robust loss-absorbing capacity while aligning with international standards.

Liquidity Requirements

The amendments to the Banking Law also reinforced liquidity measures. Banks must comply with the Liquidity Coverage Ratio (LCR) and maintain adequate liquidity buffers to meet short-term obligations. If a bank's liquidity falls below mandated thresholds, the CNBV may:

- require a restoration plan;
- suspend certain operations; or
- impose operational restrictions.

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Additionally, Banco de México supervises compliance with liquidity ratios to ensure resilience during market shocks.

Systemically Important Banks

Systemically important banks (SIBs) are subject to heightened regulations due to their potential impact on the financial system. Requirements include the following.

- **Additional Capital Buffers:** SIBs must maintain higher capital ratios. The supplementary capital is being phased in between 2022 and 2025.
- **Exposure Limits:** The CNBV imposes caps on exposures to interconnected counterparties to prevent excessive concentration risk.
- **Enhanced Supervision:** SIBs undergo more frequent and detailed regulatory reviews.

Conclusion

Mexico's banking regulation aligns with international standards, ensuring robust capital adequacy, liquidity, and risk management frameworks. These measures enhance financial stability while allowing regulatory flexibility to address local market conditions. For systemically important institutions, stricter requirements ensure their resilience, safeguarding the broader economy.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The Mexican banking system is governed by a robust legal and regulatory framework aimed at maintaining financial stability and protecting depositors. The key elements of this framework include licensing requirements, intervention mechanisms, resolution strategies, and specific insolvency rules.

Mexico's framework for the insolvency, recovery, and resolution of banks is primarily governed by the Banking Law and the Bank Savings Protection Law (*Ley de Protección al Ahorro Bancario*, the LPAB), under the supervision of the CNBV and the *Instituto para la Protección al Ahorro Bancario* (IPAB). These laws provide mechanisms to ensure financial stability and protect depositors during bank failures.

Principal Means of Resolving a Failing Bank

The resolution of a failing bank involves various stages under the Banking Law.

- **Intervention:** The CNBV may declare managerial intervention if a bank's capital ratios fall below regulatory thresholds or if significant payment obligations are not met. If IPAB provides financial support, it appoints a "peremptory manager" with full authority to manage the bank during intervention.
- **Revocation of Banking Licence:** When a bank's licence is revoked due to insolvency or other violations, the IPAB assumes responsibility for liquidation. This process involves transferring assets and liabilities to other banks, establishing a new temporary bank, or pursuing other measures to minimise depositor impact.
- **Liquidation Process:** Liquidation follows the CNBV's resolution, with the IPAB acting as liquidator. In cases of insolvency, liquidation is managed through court procedures tailored to the banking sector, ensuring priority payments according to established rules.

When a bank faces insolvency or financial instability, the following mechanisms are employed.

- **Recovery Plans:** Banks are required to maintain recovery plans detailing measures to restore financial health during periods of distress.
- **Resolution Process:** The resolution process includes intervention by the CNBV and measures under the LPAB, such as the following:
 - (a) appointment of an administrator to manage the bank and stabilise operations;
 - (b) transfer of assets and liabilities to another financial institution or a bridge bank; and/or
 - (c) as a last resort, liquidation may occur under CNBV and IPAB oversight to ensure an orderly process.
- **Deposit Insurance and Payouts:** The IPAB guarantees deposits up to a maximum of 400,000 UDIs (approximately USD135,000), ensuring that depositors are compensated promptly.

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Implementation of the Financial Stability Board's Key Attributes of Effective Resolution Regimes

Mexico has implemented key elements of the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes, including the following.

- **Legal Authority:** The CNBV and IPAB have broad legal powers to intervene in failing banks, including transferring critical functions and restructuring liabilities.
- **Resolution Planning:** Banks designated as systemically important are subject to recovery and resolution planning to minimise systemic risks.
- **Continuity of Critical Functions:** The LPAB mandates that resolution efforts prioritise continuity of essential services, such as deposit-taking and payment processing.
- **Bail-In Mechanisms:** While not fully developed, certain tools allow for creditor and shareholder loss absorption to reduce reliance on public funds.

Insolvency Preference Rules Applicable to Deposits

Under Mexican law, depositors enjoy priority in insolvency proceedings.

- **Deposit Preference:** Insured deposits covered by the IPAB (up to 400,000 UDIs – approximately USD135,000) are paid first from the liquidation proceeds. The IPAB Law guarantees deposits in the above-mentioned amounts per person per institution.
- **General Deposits:** Uninsured deposits have a higher priority over other unsecured creditors but rank below secured creditors. Upon liquidation, payment preferences are established as follows:
 - (a) secured or pledged credits;
 - (b) liquid and enforceable labour liabilities;
 - (c) tax liabilities;
 - (d) IPAB-related claims, including guaranteed obligations;
 - (e) bank deposits, loans, and other liabilities;
 - (f) preferred subordinated debentures;
 - (g) non-preferred subordinated debentures; and
 - (h) shareholders.

Unsecured obligations cease to accrue interest upon liquidation, and derivatives or repurchase transactions are terminated and netted.

- **IPAB Reimbursement:** As shown above, the IPAB, after compensating insured depositors, has a claim against the failed bank's estate, ranking after insured depositors and before other unsecured creditors.

Conclusion

Mexico's legal and regulatory framework aligns closely with international standards, including the FSB Key Attributes. The framework emphasises depositor protection, systemic stability, and orderly resolution, with clear priorities in insolvency proceedings and tools to manage failing banks effectively.

9. ESG

9.1 ESG Requirements

Banking Regulatory Requirements Related to ESG in Mexico

Mexico's financial sector is undergoing significant regulatory changes to align with global environmental, social and governance (ESG) standards. These adjustments aim to integrate sustainability into financial practices and reflect Mexico's commitments to reducing greenhouse gas emissions and combating climate change. Below are the key ESG-related banking regulatory requirements currently shaping the sector.

Mexican sustainable taxonomy

Launched in March 2023 by the Ministry of Finance and Public Credit, the sustainable taxonomy is a cornerstone of Mexico's ESG framework. It serves as a science-based classification tool to identify sustainable economic activities across six sectors:

- **agriculture** – includes farming, forestry, and greenhouse operations;
- **energy and water supply** – encompasses renewable energy and water treatment projects;
- **construction** – focuses on sustainable housing and infrastructure;

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- manufacturing – covers industries like cement and steel with climate mitigation thresholds;
- transportation – targets sustainable public and freight transport systems; and
- waste management – supports recycling and safe waste disposal practices.

This taxonomy mandates financial institutions to consider sustainability metrics when funding projects, ensuring they align with climate change adaptation, gender equality, and basic service access objectives.

Sustainable financing mobilisation strategy

Published in September 2023, this strategy is designed to align Mexico's financial system with sustainability goals. Its three pillars include the following:

- sustainable public financial management – integrating sustainability into public finance systems;
- sustainable financing mobilisation – encouraging private-sector investment in sustainable projects; and
- transversal actions – promoting inclusiveness, gender equality, and social impact monitoring.

The strategy fosters a conducive environment for ESG-compliant financial practices, including low-cost financing for sustainable activities and transparent information disclosure.

Amendments to financial laws

Recent changes to the Securities Market Law and Mutual Funds Law (November 2023) reinforce climate action. These amendments empower the Ministry of Finance to issue provisions for monitoring sustainable development and gender equality within securities markets. This legal framework promotes accountability and transparency among financial institutions.

Sustainability Information Standards (NIS)

In May 2024, the Mexican Council for Financial Information and Sustainability Standards introduced NIS A-1 and B-1:

- NIS A-1 – establishing a conceptual framework for sustainability disclosures, providing quality and consistency standards; and

- NIS B-1 – requiring disclosure of Basic Sustainability Indicators (IBSO), promoting transparency on entities' sustainability performance.

These standards are harmonised with international frameworks like the IFRS Sustainability Disclosure Standards, ensuring Mexico's alignment with global practices.

Self-assessment tool for ESG risks

Developed by the CNBV, this tool helps financial institutions evaluate their integration of ESG factors and climate-related risks. Based on global guidelines, it covers:

- corporate governance for sustainability;
- ESG factors in operations; and
- climate-related risk mitigation.

The tool generates confidential reports for internal use while providing aggregated benchmarks for Mexico's financial sector.

ESG obligations for pension fund managers

Effective January 2022, Mexican pension fund managers (AFOREs) are required to consider ESG criteria when making investment decisions. This regulation ensures that pension funds contribute to sustainable economic and environmental projects, maximising benefits for the economy and society.

Conclusion

Mexico's regulatory developments reflect a broader commitment to embedding ESG principles into its financial framework. From the introduction of the sustainable taxonomy to enhanced disclosure standards and tools, the nation is creating a robust environment for sustainable financing. These efforts not only support Mexico's climate goals but also position its financial sector as a key player in the global transition to a sustainable economy. Financial institutions operating in Mexico must now navigate these regulations to ensure compliance while leveraging opportunities to support environmentally and socially impactful initiatives.

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10. DORA

10.1 DORA Requirements

While the Digital Operational Resilience Act (DORA) is an EU regulation and does not directly apply in Mexico, certain regulatory frameworks in Mexico address operational resilience, cybersecurity, and third-party risk management in the banking sector, which align with DORA's objectives.

ICT Risk Management

The CNBV requires financial institutions to implement robust frameworks for managing risks related to information and communication technology (ICT). Banks must establish internal controls, regularly assess vulnerabilities, and adopt measures to mitigate cybersecurity threats as per the CUB.

Incident Reporting

Mexican banks must report significant operational or cybersecurity incidents to the CNBV promptly. This is outlined in Article 168 Bis 16 of the CUB, which aims to address and protect operational continuity and cybersecurity, ensuring transparency and timely intervention in the event of disruptions.

Third-Party Risk Management

Financial institutions are obligated to oversee and manage risks associated with third-party service providers, especially those offering ICT services. Regulations require due diligence, regular monitoring, and contractual safeguards to ensure resilience across outsourced operations.

Operational Continuity and Disaster Recovery

Banks in Mexico are required to maintain robust business continuity and disaster recovery plans, aligning with best practices for operational resilience. Testing and periodic updates of these plans are mandatory to ensure preparedness for operational disruptions.

International Standards Influence

While DORA is not directly applicable, Mexican regulators are influenced by global standards and practices, including those of the EU, to maintain international competitiveness and ensure the stability of cross-border banking operations. Mexican banks with EU operations or partnerships are particularly mind-

ful of DORA's requirements to maintain compliance in those jurisdictions.

These requirements reflect Mexico's commitment to operational resilience in the financial sector, even though DORA itself does not impose direct obligations. Mexican banks should stay vigilant regarding international developments to ensure alignment where cross-border operations.

11. Horizon Scanning

11.1 Regulatory Developments

Local Repo Master Agreement

A significant regulatory milestone in the Mexican financial markets was the issuance of the new local master agreement for repo transactions (the *Contrato Marco de Compraventa de Valores y Reporto*), jointly developed by the Mexican Banking Association (*Asociación de Bancos de México*, the ABM) and the Mexican Association of Broker Dealers (*Asociación Mexicana de Instituciones Bursátiles*, the AMIB). This new framework was prepared in co-ordination with market participants to align the documentation with the recent amendments to the Reporto Regulations issued by Banco de México, which modernised the operational and prudential rules applicable to repo transactions.

The new master agreement introduces several structural innovations long awaited by the market, including the ability to substitute the underlying securities during the term of the transaction, subject to some rules, the incorporation of tri-party repo mechanisms operated through custodians, and the possibility to enter into evergreen and open repo structures.

These features are designed to enhance collateral mobility, reduce settlement risk, and harmonise local practices with international standards such as those under the Global Master Repurchase Agreement (GMRA). The implementation of the new local master agreement represents a major step toward greater efficiency and legal certainty in the Mexican repo market, supporting broader efforts to deepen secondary market liquidity and improve collateral management practices in the financial system.

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Global Ethics Code for FX Transactions

Banco de México's Circular 5/2025 updates Circular 22/2017 by replacing Annex 1 with the December 2024 revision of the FX Global Code, aligning Mexico's wholesale FX conduct standards with the latest guidance from the Global Foreign Exchange Committee. The revised annex reiterates the Code's six pillars, which are:

- ethics;
- governance;
- execution;
- information sharing;
- risk and compliance; and
- post-trade confirmation/settlement,

and embeds detailed expectations on topics like fair handling of client orders, price firmness versus indications, disclosures around execution policies and fees, treatment of stop-loss and fixing orders, use of algorithms and aggregation, controls and transparency for "last look", parameters for pre-hedging when acting as principal, and the protection and use of confidential information. It also strengthens post-trade controls by emphasising settlement-risk reduc-

tion and includes illustrative examples and a glossary to drive consistent market practice. The amendments were exempted from public consultation because they solely align local rules with the updated global Code and take effect the day after publication in the *diario oficial* (official gazette).

From a compliance standpoint, the key operative change is procedural: entities that previously notified Banxico of their adherence must submit a new communication confirming adherence under the updated Code by 30 April 2026; those that fail to do so will be listed as if they had determined not to adhere, without prejudice to applicable sanctions. The Circular applies to banks, broker-dealers, exchange houses, and other group-affiliated intermediaries active in Mexico's FX market. Substantively, while the Code itself is not law, the incorporation of its updated text into Banxico's reporting framework raises the supervisory salience of its good-practice principles, particularly around transparency in execution and disclosures, management of conflicts when acting as principal versus agent, data-sharing practices on electronic platforms, and robust operational controls to mitigate settlement and conduct risks.

Trends and Developments

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Ritch, Mueller y Nicolau, S.C. is a top-tier multidisciplinary transactional firm committed to offering high-value legal advice to national and international clients engaged in structuring, developing and financing private businesses and public-sector projects in Mexico. The firm represents Mexican, international and multi-lateral banks, as well as other financial intermediaries in secured and unsecured, bilateral and syndicated lending transactions of different levels of complexity involving Mexican obligors or assets. With a consistent presence in the market, Ritch Mueller has actively

participated in all phases of the credit cycle, including origination in bull markets as well as restructuring in the context of regional or global crises. The firm has played a pivotal role in advising the majority of foreign financial institutions that have established subsidiaries in Mexico, guiding them through the authorisation processes. Additionally, Ritch Mueller extends advisory services to industry organisations such as ISDA and the Mexican Banking Association, particularly in derivatives transactions within the Mexican market.

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MEXICO TRENDS AND DEVELOPMENTS

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FinCEN Orders, CNBV Intervention, and Regulatory Implications for Transactions With Three Mexican Financial Institutions

When the US Financial Crimes Enforcement Network (FinCEN) issued orders against two Mexican banks and one broker dealer, it set off a chain of events that quickly crossed borders and affected everyday financial operations in Mexico. The authors will explain the reasons why the FinCEN orders were so relevant and the reaction of Mexico's banking regulator (*Comisión Nacional Bancaria y de Valores*, the CNBV). Finally, the authors will describe how these actions influenced routine transactions such as payments, transfers, and agreements. The most recent developments will also be highlighted, including the CNBV's revocation of CIBanco's banking licence. Above all, the discussion that follows shows how interconnected the Mexican and US financial systems are, and why Mexico's rules and market practices should adapt, and market participants should be prepared, so that when foreign measures ripple through the system, banks and businesses can keep meeting their obligations, protect customers, and uphold strong anti-money laundering standards without disrupting essential payment and funding flows.

FinCEN orders: what they are, context, and background

On 25 June 2025, FinCEN issued orders identifying three Mexican financial institutions (the "Designated Entities") as foreign financial institutions of primary money laundering concern and prohibiting "covered financial institutions" under US law from making or receiving certain transmittals of funds to or from those entities once the orders took effect. The orders apply by reference to the Bank Secrecy Act and its implementing regulations, and they are not limited to US correspondent banks. The compliance date was extended twice to 20 October 2025.

There were three features of scope and application that proved material for market practice regarding the FinCEN orders.

1. The orders are binding on US covered institutions and have immediate extraterritorial effects through US dollar clearing, correspondent relationships, and enterprise-wide risk and compliance standards appli-

cable to US-regulated groups and their global affiliates. Mexico-based subsidiaries of US groups faced strong prudential and policy reasons to align their conduct with the orders, even where the orders were not directly binding under Mexican law.

2. The orders cover situations in which the Designated Entities acted not only in their own name, but also in capacities that could involve cash flows intersecting the US system. However, some of them involved trustees of Mexican trusts, which complicated matters further. A FinCEN guidance later clarified that covered US institutions were not prohibited from engaging in a transmittal of funds to or from a trust for which one of the Designated Entities is a trustee if the trust account is held at a financial institution other than the Designated Entities. Market participants relied on this clarification to restructure payments via non-designated third bank trust accounts.

3. The timing overlapped with Mexican supervisory measures. On 26 June 2025, the CNBV decreed a temporary administrative intervention for the two Mexican banks under the Banking Law (*Ley de Instituciones de Crédito* – LIC), and for the broker dealer under the Securities Market Law (*Ley del Mercado de Valores* – LMV), with notices from the *Instituto para la Protección al Ahorro Bancario* (the IPAB) in the Mexican official gazette of the Federation concerning the appointment of the administrative intervention of the Designated Entities. Together, the US prohibitions and Mexican administrative measures reshaped the legal and operational environment for domestic and cross-border payments, fiduciary services, and contractual performance.

Mexican law treats foreign measures through two lenses. As a matter of territorial jurisdiction, the orders are not per se binding on Mexican entities. But they can create a supervening compliance and prudential context for Mexico-based subsidiaries of US financial groups and for Mexican entities reliant on US dollar clearing and correspondent services. In practice, the orders were a regulatory "derisking event" that compelled counterparties to reassess performance and seek either lawful alternative payment channels or contractual exits.

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There is also a civil law baseline. Force majeure under Mexican law requires absolute impossibility of performance for any similarly situated party, not mere difficulty, expense, or heightened risk. Because lawful alternative mechanisms typically exist (such as judicial consignment, third-party trust routing, and, in appropriate cases, use of cashier's checks or certified checks), force majeure would usually not excuse performance in the abstract, as further discussed below.

CNBV intervention: measures under LIC and LMV and administrative mechanics

The CNBV's Board decreed temporary managerial intervention on 26 June 2025. For the two banks, intervention was decreed pursuant to Article 129 of the Banking Law, with IPAB publishing the corresponding administrative appointments in the official gazette of the Federation. For the broker dealer, intervention was decreed under Article 141 of the Securities Market Law via the appropriate CNBV communication.

Administrative intervention is a prudential tool short of resolution. It preserves going concern operations under the oversight of appointed administrators; there is no automatic moratorium on payments or stay of contractual performance. However, the intervention typically triggers default and termination mechanics across a wide range of contractual instruments because Mexican financial contracts often treat "*intervención*" as an insolvency-type event.

Under the Local Master Derivatives Agreement (CMOF), Clause 7.7.5 expressly treats administrative intervention as an Event of Default, entitling the non-defaulting party to designate an Early Termination Date and close out on a net basis, including collateral netting under the related credit support agreement.

Under the ISDA Master Agreement, intervention falls within the definition of "Bankruptcy" under Section 5 (a)(vii), and the FinCEN orders may support "Illegality" under Section 5 (b)(i), either of which can justify termination or suspension.

Many loan, agency, and trust agreements include "*intervención*" within the insolvency definitions or "material adverse change" and "governmental action"

clauses, enabling resignation of agency roles, assignment or transfer mechanics, or termination.

Despite the absence of a legal stay, the combination of the US prohibitions, group-level risk standards, and the CNBV's administrative action created a de facto constraint on further dealings with the Designated Entities. Structured exits, or carefully managed performances, are described below, particularly for trusts where the Designated Entities acted as trustees.

- Trustee substitution is legally feasible but procedurally complex. Resignation requires "serious cause" (*causa grave*) and judicial approval; amendments, consents of settlors and beneficiaries, public registry updates, and tax record updates can be time consuming. To mitigate paralysis of cash flow obligations, the parties have the possibility to make payments to new accounts opened at third banks, use escrow structures, or resort to judicial consignment while the substitution is processed.
- The trustee's duty of adherence to instructions is not absolute. Under Article 115 of the Banking Law and its General Rules, Mexican banks, including when acting as the trustee, may, in certain limited cases, argue to decline to execute instructions that present credible AML/CFT risks, provided refusals are grounded in internal policies, documented risk assessment, and timely reporting to the Mexican Intelligence Unit (the UIF).

In short, intervention opened contractual exit routes and made continuation of many roles impractical or high risk; yet it did not, by itself, bar payments or absolve performance. That legal posture frames the transactional decision tree addressed next.

Relevant transactional issues: denial of payments, termination, and denial of transfers

There were mainly three implications regarding the management of obligations to, from, or involving the Designated Entities:

- when and how to deny payments;
- when and how to terminate or otherwise exit agreements; and

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- how to handle transfers in regulated payment systems (SPEI and SPID) and cheque clearing (CECOBAN).

Denial of payments

Banks operating in Mexico are generally required to accept and process all transfers that meet legal and operational rules, including Banco de México's Circular 3/2012. Once a payment order is accepted and processed by Banco de México within SPEI or SPID, it becomes firm, irrevocable, and unopposable to third parties. That finality severely limits ex post refusals.

At the same time, Article 115 of the LIC and its General Rules empower and obligate banks to identify and act upon AML/CFT risk. Where there are reasonable indicators that a transaction may involve proceeds of unlawful activity or terrorist financing, including signals derived from foreign authorities such as FinCEN, banks can decline to execute a transaction at the pre-acceptance validation stage, provided the refusal is grounded in internal criteria and reported as an "unusual operation" to the UIF within 24 hours. Mexican jurisprudence has recognised that banks perform a delegated public function when blocking accounts or declining high-risk transactions, reinforcing the defensibility of prudent, documented refusals.

However, two civil law guardrails are important to highlight. First, force majeure requires absolute impossibility; if lawful alternatives exist, wholesale refusal to pay is not defensible. Second, wrongful withholding of client funds is not legal under Mexican law; any account closure or service termination must promptly return funds via lawful mechanisms (eg, trust routing, cheques, and consignment), discontinuing unilateral retention.

Termination of agreements

Across derivatives, fiduciary, agency, commission, and other roles, there are several exit routes. For derivatives, CMOF, Clause 7.7.5 (intervention default) and ISDA, Sections 5 (a)(vii) (Bankruptcy) and 5 (b) (i) (Illegality) support early termination and net close out, including collateral netting. Best practice includes timely reservation of rights, precise designation of early termination dates, and service of notices with notarial support to reduce litigation risk.

For administrative or collateral agency, standard loan documentation allows resignation on notice and successor appointment. If appointment stalls, the outgoing agent often holds a back-stop right to appoint a successor on behalf of lenders. Where resignation is impractical, assignment of the agent's position or the underlying participation to an eligible transferee is a viable option, subject to contractual eligibility criteria.

For commission agent (*comisionista*) roles under the Commerce Code, the strict duty to follow the principal's instructions must be balanced with AML/CFT obligations. The better route to follow is to find contractual solutions, such as substitution of the agent, and scope limitations that exclude dealings with the Designated Entities.

For trusts, immediate substitution of the trustee is the anchor recommendation. Where delayed, payment mechanics can be amended to route funds through newly opened accounts at a third bank, hold in escrow, or consign. AML grounds justify declining instructions that pose credible risk, with appropriate documentation and reporting.

In conclusion, a staged approach should be followed when counterparties hesitate to terminate:

- provide notice of intervention/default and reserve rights;
- pursue consensual termination or assignment; and
- if needed, execute unilateral termination under identified clauses.

Where neither termination nor safe performance routing is feasible, consignment provides a lawful discharge.

Denial of transfers (SPEI, SPID, CECOBAN direct debit)

Payment system architecture imposes hard constraints. In SPEI and SPID, refusal after Banco de México has processed an order is not an option; payments are final and irrevocable. Any refusal must occur during authentication/validation before injection into the system. Non-compliance can trigger per-event monetary penalties, compensation fees for delays, potential suspension/disconnection if system-

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ic harm is found, and, in persistent cases, exposure to CNBV licence revocation proceedings. Documented AML-based refusals at validation are, however, legally defensible and should be reported as unusual operations.

For CECOBAN direct debit (*domiciliación*), it is important to distinguish between restricting a service and rejecting a cleared payment. Before submission into CECOBAN's clearing, a bank can remove entities from the catalogue and discontinue the direct debit service with proper notice - this restricts a channel, not a cleared payment, and customers retain other payment avenues. After clearing, participating institutions must settle; refusal is not permitted. Service agreement provisions typically allow amendments/termination on notice or to comply with regulatory mandates, provided operational changes are co-ordinated and customers are notified with reasonable migration periods.

Latest developments, outcomes, and how Mexican regulation should adapt

The CNBV's revocation of CIBanco's authorisation was published in the official gazette (evening edition of 13 October 2025), and the CNBV announced the initiation of the voluntary liquidation and depositors' payment processes in co-ordination with IPAB. These actions move CIBanco from the administrative intervention phase to an orderly exit from the market, with depositor protection mechanisms activated. This happened after the Ministry of Finance and Public Credit (SHCP) reported progress in the sale of a significant portion of the Designated Entities' operations, including movements to transfer trustee portfolios. This supports fiduciary continuity and reduces market disruption in structured finance and capital markets vehicles where the Designated Entities acted as trustees or common representatives. Additionally, both the CNBV and FinCEN imposed monetary fines on the Designated Entities.

Conclusion

The FinCEN orders against the Designated Entities, followed by the CNBV's administrative interventions, created an immediate, complex overlay of US and Mexican legal constraints. Mexican law neither automatically imports foreign measures nor excuses performance simply because performance becomes more difficult or reputationally costly. Rather, parties must thread the needle: use lawful alternative performance mechanisms, activate contractual exit or suspension rights, and ensure AML/CFT compliance and UIF reporting. In payment systems, the finality of SPEI/SPID and CECOBAN clearing sharply limits after-the-fact refusals, channelling risk management into pre-acceptance validation and service catalogue adjustments.

The latest developments confirm the expected trajectory: FinCEN's sanctions became operational and were accompanied by civil monetary penalties; the CNBV revoked a banking licence, initiating liquidation and depositor payout; and there was concrete progress in selling portions of operations and trustee portfolios to preserve financial market continuity.

Looking forward, the trends and developments of the Mexican financial market will be heavily influenced by all of this. Market participants should prevent and have safe harbours in place for the ordered exit of new Designated Entities and also to prevent any AML/CFT concerns from the US government. In the authors' view, FinCEN orders were a message to the whole financial system. The cross-border nature of modern finance guarantees that this will not be the last instance of this kind, and it is necessary to be prepared.

MOZAMBIQUE



Law and Practice

Contributed by:

Pedro Cassiano Santos, Guilherme Daniel and Rickson Neves
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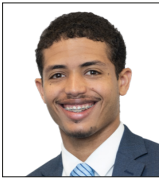
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1. Legal Framework

1.1 Key Laws and Regulations

The Credit Institutions and Financial Companies Law (*Lei das Instituições de Crédito e Sociedades Financeiras*), approved by Law No 20/2020, of 31 December 2020, contains the main rules governing Mozambique's banking sector, specifically the activity of credit institutions and financial companies. It contains a regime for the establishment, operation and supervision of credit institutions and financial companies, as well as a regime for the establishment, operation and monitoring of microfinance operators that are not credit institutions. The law also covers the activities abroad of credit institutions and financial companies headquartered in Mozambique, the activities in Mozambique of credit institutions and financial companies headquartered abroad, the corrective intervention and provisional administration applicable to credit institutions in Mozambique, and establishes a sanctions regime. The Credit Institutions and Financial Companies Law is further detailed by Regulation of the Law Applicable to Credit Institutions and Financial Companies (*Regulamento da Lei das Instituições de Crédito e Sociedades Financeiras*), approved by Decree No 50/2024, of 11 July 2024.

Also, given that credit institutions in Mozambique are incorporated as public limited companies (*sociedades anónimas*), the rules established in the Mozambican Commercial Code (*Código Comercial Moçambicano*), approved by Decree-Law No 1/2022, of 25 May 2022, should also be considered.

The provision of investment services by a Mozambican institution is subject to the Securities Market Code (*Código do Mercado de Valores Mobiliários*), approved by Decree Law No 4/2009, of 24 July 2009, which establishes the fundamental principles and provisions governing the organisation and functioning of securities' markets in Mozambique, as well as the transactions carried out on securities issued by Mozambican entities and the activities performed on those markets by all agents involved in them.

Another important law in banking matters is the Foreign Exchange Law (*Lei Cambial*), approved by Law No 28/2022, of 29 December 2022, which regulates

the acts, business, transactions and operations of all kinds that take place between residents and non-residents and that result or may result in payments or receipts abroad or cross-border. Further detailing the implementation of the Foreign Exchange Law, the Foreign Exchange Law Regulation (*Regulamento da Lei Cambial*), approved by Decree 56/2023, establishes the rules and procedures for the exercise of partial foreign exchange trading, including the applicable rates.

Also relevant is the Law on the Prevention and Combating of Money Laundering and Terrorist Financing (*Lei de Prevenção e Combate ao Branqueamento de Capitais e Financiamento do Terrorismo*), approved by Law No 14/2023, 28 August 2023, which establishes the legal framework and measures to prevent and combat the exploitation of the financial system and also sets the duties of non-financial entities for the purposes of money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction, applying, among others, to financial institutions and non-financial entities with headquarters in national or foreign territory, as well as their branches, agencies, subsidiaries or any other forms of representation. This law is further detailed by the Law on the Prevention and Combating of Money Laundering and Terrorist Financing (*Regulamento da Lei de Prevenção e Combate ao Branqueamento de Capitais e Financiamento do Terrorismo*), approved by Decree No 53/2023, of 31 August 2023.

Supervision Authorities

Under the Organic Law of the Bank of Mozambique (*Lei Orgânica do Banco de Moçambique*), approved by Law No 1/92, of 3 January 1992, the Bank of Mozambique (*Banco de Moçambique*) is the Mozambican central bank and is the entity responsible for the supervision of banking services and which also serves as the regulatory authority in Mozambique (including on matters relating to credit institutions and financial companies' compliance with the anti-money laundering and counter-terrorist financing requirements, prudential regimes and other requirements established in its Notices and Circulars) ensuring both financial stability and consumer protection.

The Ministry of Finance and the Bank of Mozambique are both responsible for supervising and regulating the

securities' markets, as well as the transactions carried out on them.

2. Authorisation

2.1 Licences and Application Process

Authorisation and Activities

To initiate banking activities in Mozambique, credit institutions and financing companies, both defined in the Credit Institutions and Financial Companies Law, must be licensed by the Bank of Mozambique. In Mozambique, banks enjoy universal banking licences and are entitled to carry out the following activities: (i) receiving deposits from the public or other repayable funds; (ii) credit operations, including the granting of guarantees and other commitments; (iii) payment operations; (iv) issuing and managing payment instruments, such as bank cards, travellers' cheques and letters of credit; (v) transactions, on their own account or on behalf of others, in money markets, financial and foreign exchange instruments; (vi) participation in issues and placements of securities and provision of related services; (vii) issuance of electronic money; (viii) advisory, custody, administration and management of securities' portfolios; (ix) transactions involving precious metals, under the terms established by foreign exchange legislation; (x) acquisition of holdings in the capital of companies; (xi) marketing of insurance contracts; (xii) rental of safe deposit boxes and safekeeping of valuables; (xiii) consulting for companies on capital structure, business strategy and related matters; and (xiv) other similar operations not prohibited by law.

Only banks are allowed to carry out the activity of receiving deposits or other repayable funds from the public for use on its own account.

Licensing Process

In Mozambique, the process for obtaining a banking licence involves three key stages: (i) authorisation application (which includes submission of the application along with supporting documentation, evaluation of the application, and the final decision on authorisation by Bank of Mozambique); (ii) completing special registration with the Bank of Mozambique; and (iii) initiating operations.

The authorisation process formally starts with the submission of the respective application, worded either in Portuguese or in English language (in which case it must be accompanied by the respective official translation into Portuguese), to Bank of Mozambique. Applicants must appoint a representative, who may be a natural or legal person, with full powers to represent them in all matters regarding the application and towards the central bank. This person must have at least one address in Mozambique for the purposes of notification and correspondence.

Following receipt of the application, Bank of Mozambique reviews the information submitted to ensure that it is complete and sufficient for a comprehensive evaluation. The purpose of this review is to determine whether the proposed project fulfils all the conditions required by applicable legislation.

A final decision (granting or refusing the authorisation) is issued within 180 days from the Bank of Mozambique receiving a complete application or the additional information that may be requested, or within 180 days from the date on which the Bank of Mozambique requests such additional information as the central bank may deem applicable.

After the authorisation, the relevant financial institution must be incorporated within 90 days and subsequently commence operations within one year, under penalty of authorisation expiry. A licence fee is due and must be paid within 60 days of the date of authorisation of the application.

Financial institutions may only begin operating after being registered in a special register held at the Bank of Mozambique. The special register also covers the opening and closing of branches and subsidiaries, shareholders' agreements, delegation of management powers, identification of members of corporate bodies and any changes made to these elements and to the company's articles of association. In these cases, the registration period is counted from the date on which the facts to be registered occurred. It should be noted that the application for registration of members of corporate bodies must be accompanied by the registration questionnaire established by Circular Letter No 5/DSB/2005 of 31 October.

Banks may only operate after the Bank of Mozambique has inspected the premises where they intend to carry out their activities and concluded that the conditions are suitable for this purpose.

Common Ancillary Activities and Additional Requirements

It is typical for Mozambican credit institutions to carry out investment services and activities, including, among other ancillary services: (i) transactions, on their own account or on behalf of others, in money market, financial and foreign exchange instruments; (ii) participation in issuances and placements of securities and provision of related services; (iii) issuance of electronic money; (iv) advisory, custody, administration and management of securities' portfolios; (v) transactions involving precious metals, under the terms established by foreign exchange legislation; (vi) marketing of insurance contracts; (vii) rental of safe deposit boxes and safekeeping of valuables; (viii) consulting for companies on capital structure, business strategy and related matters; (ix) issuing and managing payment instruments, such as bank cards, travellers' cheques and letters of credit; and (x) acquisition of holdings in the capital of companies.

Financial institutions may provide financial intermediation services without prejudice to the rules relating to registration with the Stock Exchange (*Bolsa de Valores*), since the banking licence and authorisation also covers participation in the issuance and placement of securities, as well as the provision of related services. However, certain issues require specific authorisation from the Ministry of Finance.

Furthermore, banks may also be authorised to engage in financial leasing and factoring activities in Mozambique.

Cross-Border Banking Services

In certain circumstances, Mozambican law allows Mozambican financial institutions to provide banking services abroad and also allows foreign financial institutions to provide banking services in Mozambique.

Credit institutions and financial companies headquartered in Mozambique that wish to establish a branch abroad must request authorisation from the Bank of

Mozambique. Representative offices abroad can also be established by credit institutions and financial companies headquartered in Mozambique, which requires prior registration with the Bank of Mozambique.

The establishment of branches of foreign credit institutions and financial companies in Mozambique is subject to authorisation by the Bank of Mozambique, following the same procedures as for a financial institution established in Mozambique. The following conditions are also required: (i) evidence of the prior authorisation from the supervisory or regulatory authority of the country of origin; (ii) copies of documents issued by foreign entities, authenticated by the competent authorities of the respective countries of origin and legalised by the Ministry of Foreign Affairs and Co-operation; and (iii) the application form in duplicate and, when written in a foreign language, accompanied by the respective official translation into Portuguese.

The establishment and operation in Mozambique of representative offices of credit institutions and financial companies based abroad are subject to prior special registration with the Bank of Mozambique, upon presentation of a certificate issued by the supervisory authorities of the country of origin. The activity must commence within three months of registration and is strictly dependent on the credit institutions and financial companies represented.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank Qualifying Holding

The regime governing qualifying holdings in financial institutions in Mozambique requires prior authorisation from the Bank of Mozambique for the disposal, increase or acquisition of qualifying holdings when the thresholds of 5%, 25%, 33%, 50%, 66% or 75% of the share capital or voting rights are reached, exceeded or surpassed.

The authorisation request must be accompanied by documents detailing the planned transaction, and the Bank of Mozambique has up to 90 days to communi-

cate its decision. The assessment considers the suitability, financial capacity and origin of the acquirer's funds, and opposition may be raised if there are risks to management or irregularities.

When it authorises the planned transaction, the Bank of Mozambique may set a reasonable deadline for completion, which shall be one year if no other deadline is set. Financial institutions are also required to report to the Bank of Mozambique within 15 days of the transaction taking place.

In May of each year, credit institutions and financial companies shall notify the Bank of Mozambique of the identity of holders of qualifying holdings and the amount of their holdings.

The credit regime granted to persons holding qualifying holdings in financial institutions in Mozambique sets strict limits to prevent excessive risk concentrations. The amount of credit, including guarantees, granted to a single qualifying shareholder or related entities may not exceed 10% of the institution's own funds, while total credit to all qualifying shareholders combined is limited to 30%. These transactions require approval by two-thirds of the management body and a favourable opinion from the supervisory body, except for transactions involving entities of the same group included in the scope of consolidated supervision.

4. Governance

4.1 Corporate Governance Requirements

Legal Requirements

In Mozambique, the main rules applicable to corporate governance are covered by: (i) the Mozambican Commercial Code; and (ii) the Credit Institutions and Financial Companies Law.

The governance model for financial institutions in Mozambique establishes responsible management systems, focusing on prudent decision-making, separation of duties, and effective oversight by management and supervisory bodies. The board of directors is responsible for the integrity of accounting systems, financial control, risk management and supervision of

senior management, and may create specialised committees, such as audit, risk, asset and liability management, appointments, and remuneration committees, to ensure the proper performance of its functions.

In addition, all financial institutions must include at least internal audit, compliance, and risk management in their structure. The appointments committee is responsible for identifying and recommending candidates for management and supervisory bodies, annually evaluating the composition, performance and competencies of these bodies, and proposing adjustments for their improvement. The model seeks to foster a solid governance system, adapted to the size, complexity and nature of the institution's activities, ensuring efficiency and stability.

Soft Law and Industry Initiatives

In Mozambique, there are a few initiatives aimed at ensuring that banking activities are carried out with a higher degree of professionalism and trust, particularly in customer relations.

The Mozambican Banking Association (AMB) is a non-profit organisation, established in 1999 under Law No 27/91 of 31 December, which aims to promote and implement measures that contribute to the technical, economic and social progress of banking activities.

With the aim of achieving high standards of honesty, diligence, integrity and competence in the relationship between credit institutions affiliated to the Mozambican Banking Association and their customers, in 2006, a Banking Code of Conduct (*Código de Conduta Bancária*) was published, which sought to govern the relationships between AMB credit institutions among themselves, as well as the relationships of those institutions with their customers.

4.2 Registration and Oversight of Senior Management

Potential members of the management and supervisory bodies of credit institutions are subject to a suitability assessment prior to the exercise of their duties and throughout their entire mandate. They must always meet the requirements of suitability, professional qualification, independence and availability. The

start of their functions is also subject to prior authorisation from Bank of Mozambique.

The registration of the members of the management and supervisory bodies must be accompanied by a request to be submitted prior to the actual appointment or hiring by the General Assembly or the competent body. This request must indicate the starting date of their functions and, in cases requiring prior authorisation, be accompanied by a copy of the minutes with the resolution appointing them.

The request must be accompanied by a report prepared by the financial institution demonstrating that the suitability requirements necessary for the performance of the respective functions have been verified.

When not refused, the registration made shall be considered provisional until confirmation of the appointment and/or hiring is communicated by the institution or interested party concerned.

4.3 Remuneration Requirements

The remuneration policy in Mozambique regulates compensation practices in financial institutions, covering administrators, senior directors, risk managers and employees with equivalent remuneration, in order to ensure alignment with strategic objectives and prudent management practices. The management body or the Remunerations Committee, if one exists, shall submit the remuneration policy relating to directors to the general meeting for approval on an annual basis, while the management body approves and regularly reviews the policies applicable to other categories.

The Remunerations Committee, composed of members of the management body without executive functions, makes independent assessments of remuneration practices and incentives, considering their impact on risk, capital and liquidity.

5. AML/KYC

5.1 AML and CFT Requirements

In Mozambique, the main AML/CFT framework is set out in Law No 14/2023 of 28 August (as amended by Law No 3/2024 of 22 March), its implementing Regu-

lation approved by Decree No 53/2023 of 31 August, and supervisory instruments, notably Notice No 10/GBM/2024 of 30 August 2024 issued by the Bank of Mozambique.

Under this comprehensive, risk-based framework, banks must implement robust governance, customer due diligence, ongoing monitoring, timely reporting, record keeping and effective internal control systems designed to prevent, detect, and respond to money laundering and terrorist financing risks.

Banks must adopt board-approved AML/CFT policies, and a risk-based programme tailored to their business model, product suite, delivery channels and geographic exposure. Governance requires the appointment of a dedicated AML/CFT compliance officer with sufficient autonomy, resources, and direct access to senior management and the board. Institutions must ensure regular, role-specific training for relevant staff, maintain training records and embed AML/CFT responsibilities within operational and control functions, including the three lines of defence. Independent internal audit must periodically assess the effectiveness of the AML/CFT framework, issue findings and oversee remediation.

Customer Due Diligence (CDD/KYC) obligations cover identification and verification of customers and beneficial owners, including enhanced procedures for Politically Exposed Persons (PEPs), higher-risk jurisdictions, complex ownership structures, non-face-to-face onboarding, and certain products (eg, correspondent banking, trade finance). Banks must understand the nature and purpose of the business relationship, assess source of funds and, where relevant, source of wealth, and apply a graduated approach: simplified, standard, or enhanced CDD in line with a documented risk assessment. Ongoing due diligence entails maintaining accurate, up-to-date customer information and re-evaluating risk profiles throughout the relationship.

Transaction monitoring must be continuous and risk-sensitive, leveraging scenario-based and typology-informed alerts to detect unusual or suspicious activities. Screening against applicable sanctions lists is required at onboarding and on a rolling basis; banks

must implement asset-freezing and prohibitions as legally mandated. The framework also expects controls around wire transfers (including originator and beneficiary information), correspondent relationships, and higher-risk products. Outsourcing of CDD or screening functions is permitted only with equivalent standards and full access to underlying documentation; responsibility remains with the bank.

Reporting duties include prompt submission of suspicious transaction/activity reports to the competent authorities and periodic supervisory returns to the Bank of Mozambique covering AML/CFT indicators, incidents and remedial actions. Banks must retain CDD records and transaction data for legally mandated periods to ensure auditability and support investigations. Institutional risk assessments must be aligned with the national typologies and findings from the National Risk Assessment (*Avaliação Nacional de Risco*), with periodic refreshes following material changes in products, channels or risk environment.

The supervisory regime provides for inspections, thematic reviews and enforcement. Non-compliance may trigger administrative sanctions (fines, corrective measures, restrictions) and, in severe cases, criminal liability. Banks are expected to co-operate fully with supervisory requests, maintain comprehensive documentation, and demonstrate effective remediation of identified gaps. The overall system emphasises proportionality, effectiveness, and continuous improvement, requiring banks to evidence a strong compliance culture and documented risk governance.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

In Mozambique, the main rules applicable to depositor protection are covered by: (i) the Regulation of the Deposit Guarantee Fund approved by Decree No 36/2024 of 10 June; (ii) Ministerial Diploma No 86/2024 of 2 October (coverage limit); and (iii) Ministerial Diploma No 85/2024 of 2 October (periodic contributions, coverage rate and target level), complemented by the Bank of Mozambique's account regime regulation (Notice No 6/GBM/2024 of 27 March).

The scheme is administered by the Deposit Guarantee Fund (FGD), a public legal entity with legal personality and administrative and financial autonomy, headquartered in Maputo, which manages the Deposit Guarantee System (SGD). The FGD's primary mandate is to guarantee the reimbursement of covered deposits within statutory limits and timelines and, subject to safeguards, to finance resolution measures proposed by the Bank of Mozambique, provided that: (i) the cost does not exceed what the fund would bear in a straight depositor payout; and (ii) no more than 50% of the fund's assets are used for resolution. The governance model comprises a Directive Committee (deliberative body), a Directorate General (day to day management) and a Fiscal Council (oversight). The Minister of Finance sets key parameters (target level, coverage rate, contribution rules and investment policy) upon proposal by the FGD; the Bank of Mozambique determines deposit unavailability and co-ordinates supervisory triggers.

All credit institutions authorised to take deposits from the public are automatically and mandatorily participants in the FGD. The guarantee covers deposits placed with participating institutions, including interest accrued up to the date used for guarantee calculation, and applies to natural and legal persons, residents and non-residents, with balances in meticaïs and in foreign currency (the latter converted into meticaïs at the official reference exchange rate on the date of deposit unavailability). Institutions must maintain operational readiness to produce complete depositor claims data promptly and to execute payouts through a paying agent if appointed. They must also embed clear, standardised references to the FGD in pre-contractual information sheets and deposit agreements and provide ongoing disclosures to customers regarding scope, limits, exclusions and payout timelines.

Covered deposits include eligible balances held by individuals and companies. For joint accounts, each co-holder benefits up to the statutory limit, with equal allocation unless institutional records indicate a different split. Deposits opened in the name of legal representatives belong to the represented person. Deposits held by associations or other unincorporated entities are treated as belonging to a single depositor. Exclusions are expressly set in law and include deposits

of: (i) members of the management, administration or supervisory bodies of the participating institution and senior managers involved in external audit services; (ii) their spouses, first degree relatives, or third parties acting on their behalf; (iii) credit institutions; (iv) public administrative entities (national or foreign) and international or supranational organisations; (v) persons finally convicted for money laundering, terrorist financing, financing of proliferation of weapons of mass destruction and related offences; and (vi) persons holding a qualifying shareholding in the participating institution.

The guarantee limit is MZN40,000 per depositor and per participating institution, applied to the aggregate of eligible balances (including interest) on the date deposits become unavailable. Foreign currency balances are converted into meticaís at the reference exchange rate on that date. The FGD must reimburse within seven business days from the date of deposit unavailability. The failing institution must provide the FGD, within two business days, with a complete list of depositor claims and any additional information required for the payout process. The FGD may appoint a paying agent bank to execute reimbursements. Public notices must be posted at all branches of the failing institution, on the FGD's official website and in a national newspaper, indicating the unavailability decision, payout terms, the reimbursement window and the designated paying institution. Upon payment, the FGD is subrogated to the depositor's rights up to the amount reimbursed. Reimbursement may be refused where the depositor, under applicable law, caused or aggravated the institution's financial distress or benefited from it, directly or indirectly.

Ordinary resources of the scheme include: (i) an initial contribution by each participating institution within 30 days of commencing activity (amount set by the FGD's Directive Committee after hearing the Bank of Mozambique); and (ii) periodic contributions, paid quarterly, calculated on the average monthly balances of covered deposits in the preceding quarter, in accordance with ministerial methodology. Current parameters provide for a 0.174% contribution rate, a 10% coverage rate and a minimum 10% target level of covered deposits. The FGD notifies institutions of the quarterly amount due. Late or insufficient payments trigger a 2% fine plus monetary update indexed to the

MIMO rate. If the fund's resources remain above the target level for three consecutive years due to continuous contributions, proportional reimbursement of excess contributions may be authorised. Extraordinary resources include special contributions determined by the Minister of Finance (upon FGD proposal) when resources are insufficient, capped per institution at its ordinary annual contribution for that financial year; the Minister may exempt new institutions from special contributions for three years. Additional resources may include state contributions, income from investment of the fund's assets, donations, a defined share of fines applied by the Bank of Mozambique, and borrowings authorised by the Minister of Finance. As a last resort, emergency liquidity assistance may be provided by the Ministry of Finance, capped at 50% of the payout or resolution financing amount and structured as a short-term loan with adequate collateral, with detailed criteria set by ministerial act in co-ordination with the Bank of Mozambique and the FGD. The investment policy requires application of resources in low-risk, liquid instruments prioritising capital preservation and payout readiness; placing deposits with credit institutions is prohibited except for operational purposes; an investment committee supports decision making and the general terms are approved by the Minister of Finance.

Institutions must provide continuous, clear and standardised information on the FGD, including the identity of the scheme, scope of coverage, exclusions, maximum reimbursement amount and payout timelines in pre-contractual standardised information sheets and in contract documents, and must comply with periodic statements and communication rules under the account regime regulation.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Mozambique has adhered to Basel III standards in a phased manner, through regulations issued by the Bank of Mozambique under Law No 20/2020, of 31 December. This implementation covers the composition and quality of own funds, the possibility of additional prudential buffers, when necessary, prudential

limits differentiated by risk and business model, and a national liquidity ratio with its own methodology and reporting, formalised in Notice No 14/GBM/2017, of 28 December. Risk governance is assigned to the management body, which must approve and periodically review policies for risk-taking, control and mitigation, ensure separation of functions and prevention of conflicts of interest, and guarantee the effective operation of internal audit, compliance and risk management, supported by appropriate committees, namely the risk management and asset-liability management committees. The Bank of Mozambique exercises supervision through regular reporting, on-site inspections, and adoption of corrective measures when it identifies weaknesses in liquidity, solvency or internal control.

Regarding capital, eligible own funds are defined by the Notice No 14/GBM/2017 with loss-absorption requirements and prudential deductions to ensure quality and transparency. Institutions build capital structurally via legal reserves from profits: 30% while reserves are below paid-in capital and 15% when they equal or exceed it, and may also establish special reserves to strengthen equity or cover losses. When there are risks not fully captured by the minima, such as credit concentration or interest rate risk, the supervisor may impose additional buffers and capital levels above the regulatory floor, as well as short deadlines for replenishment in case of deterioration. The minimum capital required for each type of institution is defined by Decree No 50/2024, of 11 July, setting minimum amounts for commercial banks, investment banks, microbanks, microfinance institutions and other financial companies, serving as a basis for authorisation and operation, with periodic updates by the supervisor.

In liquidity, institutions must permanently maintain adequate levels and comply with the domestic ratio set out in Notice No 14/GBM/2017, which establishes the calculation base, eligible assets and respective weightings, maturity mismatch parameters, reporting obligations, stress tests and remediation plans. Additionally, the Bank of Mozambique may impose specific requirements, limit mismatches between assets and liabilities, modulate deposit-taking and lending by product type, strengthen the frequency and granularity

of reporting, and require supplementary disclosures. Recovery plans with adverse scenarios and actionable measures to ensure financial and operational resilience are mandatory.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Mozambique has a special insolvency, recovery and resolution regime applicable to banks, microbanks and certain financial companies, governed by Credit Institutions and Financial Companies Law. Banking crisis management is organised in three layers: preventive recovery, corrective/administrative intervention, and resolution.

In recovery, each bank must maintain an internally approved plan submitted to the Bank of Mozambique, with adverse scenarios and credible measures to restore viability. The supervisor assesses coherence and feasibility and may require specific changes and structural measures, including risk reduction, capital strengthening, funding and governance adjustments, corporate changes, and restrictions on disproportionately risky activities. This planning links to corrective intervention, triggered in the face of breaches or a serious risk of prudential non-compliance, or significant deficiencies in the accounting organisation and internal controls. In corrective intervention, the Bank of Mozambique may impose immediate measures, such as reinforced capital and liquidity requirements, increased provisions and reserves, limits on lending and deposit-taking, restrictions on interest and dividend payments, enhanced reporting and disclosure, specific liquidity requirements, and submission of a restructuring plan. If these measures are insufficient to ensure sound and prudent management, the law provides for provisional administration: the supervisor may suspend or remove board members and appoint provisional administrators with strengthened corporate powers under its direct guidance. These administrators may veto resolutions contrary to stabilisation objectives, revoke prior decisions, convene meetings, assess the asset and financial situation, propose recovery solutions including debt conversion, capital reduction or increase, and business transfers, manage strategic business lines and order audits. Remunera-

tion is set by the supervisor and borne by the intervened institution, and liability is limited to intentional misconduct or gross negligence. Functionally, this figure replaces the “insolvency administrator” of the general regime but operates within the special administrative framework of Credit Institutions and Financial Companies Law.

When non-viability or a probable risk of insolvency is verified and recovery is not reasonably foreseeable through the institution’s own measures or corrective intervention, resolution applies for reasons of public interest. The aims are to ensure continuity of essential services, avoid contagion and systemic instability, protect depositors with guaranteed deposits, and reduce recourse to public support. Resolution follows structuring principles a loss hierarchy with shareholders bearing losses first, equitable treatment of creditors, the “no creditor worse off” rule ensuring no shareholder or creditor is worse off than in liquidation, and explicit protection of guaranteed deposits. The main means of resolving a failing bank are:

- the partial or total sale of business, with rapid transfer of assets, liabilities and, if necessary, equity to an eligible acquirer, maximising value and ensuring operational continuity;
- the bridge bank, a temporary entity created to sustain critical functions and run the business while preparing a sale, merger or wind-down, which may receive capital and support from the Deposit Guarantee Fund within limits consistent with its guarantee function;
- asset segregation, through transfer to an asset management vehicle that isolates problematic portfolios and promotes value recovery and orderly disposal, a measure always combined with another resolution tool; and
- the reduction or conversion of own funds instruments (bail-in), reducing capital and eligible claims and converting them into common equity according to the applicable hierarchy, with differentiated conversion rates by category.

All these measures rely on an independent, prudent and swift valuation of the institution’s balance sheet, including a liquidation counterfactual and the possibility of post-adjustment following a definitive assess-

ment. For effective execution, the law grants resolution powers to the Bank of Mozambique, such as temporary stays of payment and delivery obligations, restrictions on enforcement of collateral, modification of debt terms on interest and maturities, termination or modification of financial and derivative contracts, instructions for the issuance of new instruments, and protection of finality in payment and securities settlement systems. There are mandatory exceptions that shield guaranteed deposits and certain critical market infrastructure obligations. The law also establishes a minimum requirement for own funds and eligible liabilities (MREL), calibrated by the supervisor according to the business model, risk profile, resolvability and potential systemic effects, including the effectiveness of resolution powers on instruments governed by third-country laws.

Regarding the FSB Key Attributes of Effective Resolution Regimes, although Law No 20/2020 does not expressly mention them, Mozambique’s regime materially incorporates their core elements, namely a single resolution authority with broad, urgent powers, a complete toolkit (sale, bridge bank, asset vehicle and bail-in), planning rules with recovery and resolution plans, resolvability assessments and measures to remove impediments, MREL, robust safeguards including the creditor hierarchy, the “no creditor worse off” rule, protection of collateral and market infrastructures, and funding mechanisms through the Deposit Guarantee Fund without direct recapitalisation of the resolved institution. Substantively, the framework is aligned with international best practices delineated by the Key Attributes.

In respect of deposit preference, the law provides reinforced protection for guaranteed deposits, which do not bear losses under resolution measures and are excluded from the scope of certain stays and reductions. Safeguards preserve the creditor hierarchy and require that, in partial transfers of assets and liabilities, remaining creditors receive at least what they would obtain in liquidation; if an independent valuation shows worse treatment than in the liquidation counterfactual, compensation is due from the Deposit Guarantee Fund. The regime also protects collateral, covered obligations, and set-off and novation arrangements, preventing partial transfers that

fragment contractually protected positions, and safeguards finality in payment and settlement systems. In practice, this ensures normative and operational preference for guaranteed deposits during resolution, while liquidation observes the applicable legal hierarchy with the principle of not worsening losses relative to the counterfactual.

As a gap-filling rule, whenever there are lacunae not covered by Law No 20/2020, the general corporate insolvency and recovery regime may be applied to the extent compatible, as established in Decree-Law No 1/2013, authorised by Law No 9/2013, integrated into Decree-Law No 44/129 (Code of Civil Procedure), and complemented by Decree No 64/2022 (Statute of the Insolvency Administrator), insofar as consistent with the nature and specialty of the banking sector.

9. ESG

9.1 ESG Requirements

Mozambique does not currently have a single, binding, and detailed legal regime of ESG requirements specifically applicable to the banking sector. Nevertheless, the national regulatory framework has been evolving consistently, gradually incorporating principles of sustainable finance, climate risk management, and the promotion of green inclusion. These initiatives stem mainly from the actions of the Bank of Mozambique and from complementary laws that reinforce governance, corporate ethics, and transparency, with significant progress observed between 2024 and 2025.

In respect of environmental matters, in November 2024, the Bank of Mozambique launched a public consultation on Climate Risk Management Procedures, requiring financial institutions to integrate climate risks into their enterprise risk management frameworks. This integration covers the identification, assessment, mitigation, governance, reporting, and disclosure of risks, aligning with the country's vulnerabilities to natural disasters such as cyclones, floods, and droughts. Accordingly, banks are encouraged to adapt their operations and credit portfolios, mitigating environmental impacts and reducing exposure of investments to high environmental risk sectors, ensuring resilience and financial sustainability. In January

2025, the Bank of Mozambique initiated a new public consultation aimed at creating a decree that will establish the legal regime for sustainable bonds, also known as green bonds, paving the way for the issuance of financial instruments designed to fund environmental, social, and climate mitigation projects, with direct implications for sustainable bank financing.

Under the social pillar, Mozambique highlights the National Financial Inclusion Strategy (ENIF) 2025–2031, a public policy instrument that reinforces the country's commitment to universal access to responsible and inclusive financial services. The objective is to promote sustainable economic growth and population well-being, with a focus on vulnerable populations and rural areas, encouraging banks to create accessible, innovative, and socially responsible financial products, thereby strengthening inclusion and equity.

In the area of governance, noteworthy are Law No 20/2020, of 31 December, and Law No 14/2023, of 28 August, which strengthen prudential supervision, internal control mechanisms, and the management of ethical, reputational, and compliance risks in the financial sector. In parallel, the Bank of Mozambique, in partnership with the Alliance for Financial Inclusion, is developing a Roadmap for Inclusive Green Finance, scheduled for implementation between March and October 2025. The goal is to create a national framework that integrates sustainability into the financial system, providing for institutional capacity building, the development of green taxonomies, the promotion of sustainable financial products, and public-private partnerships for climate finance. Additionally, institutions such as BCI and Standard Bank have adopted voluntary ESG practices, producing sustainability reports, promoting events on green finance, and encouraging corporate responsibility. The Mozambican Banking Association has promoted best practices and dialogue among regulators, operators, and stakeholders. However, the development of the roadmap and the new regulations of the Bank of Mozambique may lead to the creation of binding standards and enforcement mechanisms in cases of non-compliance, including fines, corrective measures, and other administrative actions intended to ensure the effectiveness of ESG policies.

10. DORA

10.1 DORA Requirements

In Mozambique, there is no framework equivalent to DORA that establishes, in a unified and binding manner, cross-cutting requirements for digital operational resilience across the entire financial sector. The regime applicable to matters close to DORA essentially results from two instruments: Law No 3/2017, of 9 January (Electronic Transactions Law) and Notice No 10/GBM/2023 (Regulation of the Electronic Clearing System). Together, these instruments ensure the legal validity of electronic transactions and documents, rules on security and liability for electronic payment instruments, data protection and operational governance of clearing systems, but they do not enshrine a comprehensive and sectoral regime for ICT risk management, periodic resilience testing or supervision of critical third-party providers, as under DORA.

The Law No 3/2017, of 9 January establishes the principles and legal regime for electronic transactions, commerce and e-government, guaranteeing functional equivalence between electronic means and paper: data messages have legal validity, admissibility and evidential value, with requirements for original, retention and accessibility, and electronic signatures (including advanced signatures) being recognised, with a digital certification system based on public key and accreditation rules for certification providers. It also defines rules on electronic contracts (formation, acknowledgment of receipt, times and place of dispatch/receipt), electronic advertising and marketing, and imposes information duties and consumer rights (including cooling-off periods and transparency requirements). In the protection of electronic personal data, it enshrines obligations of the controller/processor – accuracy, purpose, security, confidentiality, rights of access/rectification and internal governance – imposing security measures and accountability. In the financial sector, the regime on the security of electronic payment instruments is critical: the Bank of Mozambique is mandated to issue rules that establish security guarantees for payments with electronic instruments, authorise issuing entities and define specific data processing rules for credit institutions and financial companies; issuers must adopt measures to allow cancellation and reimbursement in case

of fraud, except in cases of gross negligence by the holder. This core assigns the Bank of Mozambique a central regulatory and supervisory role in the operational security of payments, approaching dimensions of operational risk management relevant to digital resilience. The law also assigns to INTIC cross-cutting powers of regulation, supervision and oversight of electronic transactions and e-commerce, management of the.mz domain and certification, strengthening the institutional infrastructure for authenticity, integrity and interoperability.

The Notice No 10/GBM/2023, approved by the Bank of Mozambique, regulates the functioning of the electronic exchange mechanism for payment instruments, calculation of multilateral net balances and submission for settlement in the interbank system. The Bank of Mozambique is the operator and manager of the system, with powers to authorise participants, define forms of participation (direct/indirect), impose participation requirements (solvency, settlement account, technical and technological capacity, including cheque truncation), and establish operational responsibilities. Participants must have technical competence, documented and tested procedures, and ensure the integrity, security, quality and efficiency of data; they are liable for message errors, internal software/communications failures and poor data quality. The regulation sets deadlines for the availability of funds (D and D+1), the finality/irrevocability of instructions after clearing, return procedures with communicated reasons, and requires the existence of contingency mechanisms for network disruptions or unavailability, ensuring continuity of service.

11. Horizon Scanning

11.1 Regulatory Developments

It is anticipated that, in 2026, credit institutions in Mozambique will face new regulations across several key areas, which are still under discussion and debate. The Bank of Mozambique is analysing rules on the use of AI in the financial system, requiring banks to incorporate AI technologies in a regulated manner, considering risks, opportunities and digital supervision. In parallel, the National Financial Inclusion Strategy 2025–2031 foresees the future implementation of reg-

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ulations for consumer data protection and cybersecurity, obliging banks to review their privacy policies, strengthen digital infrastructures and protect against cyber threats. Additionally, the development of regulations for fintechs and financial innovation remains under debate, allowing credit institutions to collaborate with innovative solutions to expand access to financial services.

NETHERLANDS



Law and Practice

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Osborne Clarke NV is a future-focused international legal practice with over 330 partners and more than 1,260 talented lawyers working across 26 global locations. Osborne Clarke is a full-service office with nine law practices in the Netherlands: financial regulatory, banking and finance, corporate M&A, employment, pensions and incentives, tax, litigation and arbitration, real estate and infrastructure, tech, media and

comms and notarial law. Osborne Clarke's financial regulatory practice has a standout reputation with clients and Dutch regulators. The financial regulation team primarily represents innovative and tech-driven clients in the fields of banking, payments, investment services and cryptocurrency. It is also known as one of the most significant Dutch practices for licence applications to key regulators – DNB and the AFM.

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1. Legal Framework

1.1 Key Laws and Regulations

Laws and Regulations Applicable to Dutch Licensed Banks

Dutch-licensed banks are regulated by a broad set of laws which predominantly arise from European directives, regulations and guidelines issued by the European supervisory authorities.

The main European regulations (not exhaustive) are:

- the Capital Requirements Directive (2013/36/EU);
 - (a) Directive ((EU) 2024/1619) amending Directive (2013/36/EU) (CRD6) entered into force on 9 July 2024, but as a directive the changes will need to be transposed into national law in each member state before they become applicable;
- the Capital Requirements Regulation ((EU) 575/2013);
 - (a) Regulation ((EU) 2024/1623) amending Regulation ((EU) 575/2013) (CRR3) entered into force on 9 July 2024 and largely applies directly in all member states since 1 January 2025;
- the Deposit Guarantee Schemes Directive (2014/49/EU);
- the Bank Recovery and Resolution Directive (2014/59/EU);
- the Anti-Money Laundering Directive ((EU) 2015/849), as amended, AMLD);
- to the extent that a bank performs investment services: the second Markets in Financial Instruments Directive (2014/65/EU), the Markets in Financial Instruments Regulation ((EU) 600/2014) and delegated regulations and technical standards thereto; and
- for payment services provided by the bank: the revised Payment Services Directive ((EU) 2015/2366).

European regulations have direct effect in the Netherlands and are not separately copied in Dutch laws. The abovementioned European directives, except AMLD, are implemented in Dutch law in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, DFSA) and underlying regulations. AMLD is implemented in the Dutch Anti-Money Laundering and Anti-Terrorist

Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*).

The DFSA is the main law governing financial institutions, including banks, and, for example, provides rules on authorisation, the code of conduct, capital, capital markets, and division of tasks/co-operation between the relevant regulatory authorities.

In addition to implementing European laws, the DFSA contains purely national laws, such as rules on the duty of care that applies to banks and remuneration rules, which are more stringent than European laws.

Another important source of regulation is formed by a set of guidelines issued by the European Banking Authority (EBA). Although these guidelines are not formal law, the Dutch Central Bank (*De Nederlandse Bank*, DNB) must apply these guidelines unless it has informed the EBA that it will deviate from them, which only happens on rare occasions. For example, the EBA guidelines provide detailed rules on the governance of banks and outsourcing of operations by banks. Also notable is the ECB Guide on climate-related and environmental risks.

Supervisory Authorities

The main regulators for banks are:

- the European Central Bank (ECB);
- DNB; and
- the Dutch Authority for the financial markets (*Autoriteit Financiële Markten*, AFM).

The division of tasks between the ECB and the national regulators is based on the Single Supervisory Mechanism (SSM) Regulation and the SSM Framework Regulation, and is summarised below.

- The ECB is responsible for (i) granting and revoking bank licences; (ii) granting Declarations of No Objection (*verklaring van geen bezwaar*, DNO) to qualified holders in a licensed bank, being those entities/persons that (in)directly hold 10% or more of the shares, voting rights or comparable control in a bank; and (iii) ongoing supervision of banks that qualify as significant institutions. Ongoing supervision is performed by Joint Supervisory

- Teams (JSTs), which are composed of ECB staff and staff of the national regulators.
- Under overall oversight by the ECB, DNB is responsible for prudential supervision of non-significant banks.
 - The AFM is responsible for ongoing code of conduct supervision (*gedragstoezicht*) of non-significant banks.

The AFM and DNB closely co-operate. In practice, Dutch-licensed banks primarily interact with DNB as part of ongoing supervision, including code of conduct supervision.

2. Authorisation

2.1 Licences and Application Process

Introduction to Banking Licences in the Netherlands

The requirement to obtain a banking licence in the Netherlands is laid down in the DFSA in conjunction with the Capital Requirements Regulation (CRR). Broadly, a licence is required when an institution both (i) takes deposits or other repayable funds from the public (such as attracting debt); and (ii) grants credit for its own account.

Limited exemptions to the licence requirement exist, such as the exemption for group financing companies, which covers institutions that raise funds through the issuance of securities and use these funds within their corporate group, subject to certain conditions.

The available services that a bank can apply for under a licence are set out in Annex I to the Capital Requirements Directive 5 (CRD5). At a minimum, such services must include taking deposits and other repayable funds, as well as granting credit for own account. Depending on the activities of the institution, other services set out in this Annex must be applied for as part of the licence application process or later added following a licence expansion or notification procedure. These include but are not limited to:

- investment activities or investment services originating from the Markets in Financial Instruments Directive 2 (MiFID2);

- crypto-asset services following from the Markets in Crypto-Assets Regulation (MiCAR);
- e-money and payment services originating from the Electronic Money Directive 2 (EMD2) and Payment Services Directive 2 (PSD2), including the issuance of e-money tokens (stablecoins) under MiCAR; and
- consumer credit provision and servicing.

In all cases, the respective bank must adhere to relevant additional conduct of business requirements set out in the DFSA or applicable regulations.

Licensing Process

In practice, two phases can be distinguished in the process of obtaining a banking licence: the preliminary phase and the formal phase. The preliminary phase is used by DNB and the ECB to provide feedback to the applicant prior to the formal licence being submitted. Formal submission must be done via the IMAS portal operated by the ECB. The application itself, along with all subsequent communication, is conducted primarily in English through DNB. This reflects the international standards and practices of the banking industry. DNB offers comprehensive resources on its website, providing applicants with essential information on relevant laws, terms, and regulations. This includes updates and guidance, ensuring applicants are well-informed throughout the process.

Once the formal licence application is received, the formal decision-making timeframe is 26 weeks. However, this period can be extended if further information is required or if additional questions arise from the application. The quality and completeness of the application are crucial as they significantly influence the duration of the process. Upon finalisation of the review by DNB, DNB provides a draft proposal to the ECB and the ECB will issue the final decision on the licence application. In practice, close to finalisation of the review by DNB, DNB will first share a written intention for a draft proposal with the ECB. The ECB will then review and provide feedback to DNB, allowing DNB and the applicant to address concerns that the ECB may have with the draft proposal.

The banking licence application process, overseen by DNB and the ECB, is designed to ensure that new banking entities meet the many standards necessary

for operating in the financial sector. In addition to the licence application process, all direct and indirect qualifying shareholders of the prospective bank have to obtain a DNO from the ECB. The application process for DNOs runs parallel to the banking licence process and ultimately is part of the draft proposal prepared by DNB for the ECB to formally decide on.

The cost of processing a banking licence application applies regardless of the outcome of the application, whether it results in the granting, rejection, withdrawal, or a temporary hold of the licence.

European Passport

A Dutch-licensed bank that seeks to provide services in other European Economic Area (EEA) jurisdictions can do so on the basis of a so-called European passport, either by opening a branch or providing cross-border services in the respective EEA jurisdictions. The process of obtaining a passport involves several stages.

A Dutch-licensed bank can follow a passport notification procedure through the IMAS portal of the ECB which will then be forwarded to DNB. The services that a Dutch-licensed bank can provide in other EEA jurisdictions may be all or a selection of services for which the Dutch-licensed bank is authorised. When launching new activities or changing notification details, the Dutch-licensed bank must re-run the notification procedure. On receipt of a European passport notification, DNB, as regulator of the home member state, will assess the completeness and accuracy of the information provided. Where the information provided in the notification is assessed to be incomplete or incorrect, DNB must inform the bank without delay, indicating in which respect the information is assessed to be incomplete or incorrect. DNB must, within one month of receipt of a complete and accurate notification, send that notification to the competent regulator of the host state.

To establish a branch, DNB submits the branch notification to the host state regulator within thirteen weeks. The host state regulator then has two months to prepare its supervision for the new branch. Unlike the provision of cross-border services, a branch can

start its activities two months after the host state regulator confirms the receipt of a complete notification.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

For the acquisition, holding, or increase of a qualifying holding in a Dutch-licensed bank, prior approval from the ECB is required in the form of a DNO.

The requirements regarding DNOs are laid down in sections 1.6.1a and 3.3.11.1 DFSA. Furthermore, the following guidelines are relevant:

- EBA, EIOPA and ESMA Guidelines on qualifying holdings of December 2016 (the “Joint Guidelines”); and
- ECB Guide on qualifying holding procedures of March 2023.

Qualifying Holding

There are three situations in which a qualifying holding exists:

- a direct or indirect holding of 10% or more of the issued capital of a Dutch-licensed bank;
- the power to exercise, directly or indirectly, 10% or more of the voting rights in a Dutch-licensed bank; or
- the power to exercise a significant influence over the management of a Dutch-licensed bank.

To assess whether qualifying holdings exist, the ownership chain of the Dutch-licensed bank must be analysed using the calculation methods set out in the Joint Guidelines. The calculation methods include certain aggregation rules. One such rule is that for parties that “act in concert”, the holdings of the relevant parties are aggregated, and each party is considered to hold the resulting aggregated percentage. The Joint Guidelines list various indicative factors for acting in concert, including the existence of family relationships or a consistent voting pattern.

In complex acquisition structures, such as private equity firms, sovereign wealth funds and conglomer-

ates, an extensive qualifying holding analysis may be required.

DNO Application

A DNO must be obtained from the ECB. DNB plays a key role in preparations and serves as the primary contact. The DNO application form is to be submitted through the ECB's IMAS Portal. The current version of the form requests applicants to also submit one or more ancillary forms through DNB's MyDNB Portal. The statutory consideration period is 62 business days, which can be extended once by 30 business days if supplementary information is needed.

The DNO assessment encompasses, at a high level, the following areas:

- (i) the integrity (*betrouwbaarheid*) and reputation (*reputatie*) of the qualifying holder;
- (ii) the financial soundness of the qualifying holder;
- (iii) whether the licensed bank will be able to continue meeting its prudential requirements as a result of the holding; and
- (iv) whether the holding may involve actual or attempted money laundering or terrorist financing or might increase the risk thereof.

For legal entity DNO applicants, the individuals who effectively direct the business of the legal entity are also screened. This screening primarily relates to areas (i) and (iv).

Ongoing Requirements

Once the DNO is obtained, ongoing requirements apply towards the ECB and/or DNB, such as the requirements to:

- notify material changes in previously provided information or circumstances;
- report any instances where the holding falls below 10%, 20%, 33%, 50% or 100%;
- obtain a new DNO before increasing the holding to or above 20%, 33%, 50% or 100%, unless the threshold falls within the specified bandwidth of the existing DNO; and

obtain prior approval for appointing new individuals who effectively direct the business of a legal entity holding a DNO.

CRD VI and Qualifying Holding RTS

CRD VI introduces legally binding EBA Regulatory Technical Standards (RTS), for which the consultation period has recently ended, that set an EU-wide minimum information list for qualifying holding notifications, replacing the variable, guidance-based approach under CRD V. CRD VI must be transposed by 11 January 2026, and the RTS will apply directly once adopted by the Commission.

The RTS add a clearer completeness test and more granular content on the topics above. Process harmonisation via standardised templates and data fields should reduce variation across jurisdictions and routine gold-plating. Unchanged are the assessment criteria, the 60-working-day timeline for the DNO decision date, and the principle of proportionality.

4. Governance

4.1 Corporate Governance Requirements

The corporate governance requirements applicable to Dutch-licensed banks are primarily laid down in (i) the DFSA; (ii) Book 2 of the Dutch Civil Code (*Burgerlijk Wetboek*); (iii) the EBA Guidelines on internal governance; and (iv) the Dutch Corporate Governance Code (DCGC).

Two-Tier Model

The DFSA prescribes that a Dutch-licensed bank must apply a two-tier model, whereby management is separate from management supervision. Management is performed by a management board consisting solely of executive directors, while management supervision is carried out by the supervisory board. As follows from the Dutch Civil Code and the EBA Guidelines on internal governance:

- the management board is responsible for the general day-to-day operations of the bank; and
- the supervisory board supervises the management board and provides the management board with solicited and unsolicited advice.

The DFSA determines that the day-to-day operations of the bank must be determined by at least two individuals that operate from the Netherlands. The day-to-day management is considered to be performed by the management board.

The supervisory board must consist of at least three individuals. All members of the supervisory board must be independent in mind and appearance. In addition, at least 50% of the supervisory board members must meet formal independence criteria. If a bank is significant, the supervisory board must establish a risk committee, nomination committee, and a remuneration committee from among its members.

EBA Guidelines on Internal Governance

Apart from the statutory laws set out in the DFSA, the EBA Guidelines on internal governance are the main source as regards the organisation of the internal governance of banks. The EBA Guidelines contain detailed provisions regarding a broad set of topics which focus on ensuring sound internal governance. For example, the EBA Guidelines determine that banks must have a compliance function, a risk function and an independent internal audit function and provide detailed provisions as regards the composition and tasks of such functions.

DCGC

In addition to the EBA Guidelines on internal governance, the DCGC provides best practices regarding (i) sustainable long-term value creation; (ii) effective management and supervision; (iii) remuneration; and (iv) the relationship with and role of the shareholders. The DCGC is formally only applicable to listed companies. However, DNB generally expects Dutch-licensed banks to take the DCGC into account. The DCGC applies on a “comply or explain” basis.

Diversity

Diversity at the board level has become a prominent focus in recent years, driven by the principles of fairness and the acknowledgement of its positive impact on governance. Banks are expected to implement policies that promote diversity, aiming for balanced representation across gender, educational and professional backgrounds, and age.

4.2 Registration and Oversight of Senior Management

Fit and Proper Screening

Individuals appointed as management board members (ie, day-to-day policymakers) or as supervisory board members are subject to screening by DNB or the ECB. The division of tasks between DNB and the ECB depends on whether it concerns screening in the context of a licence application and whether it concerns a significant or non-significant bank.

The regulator (ie, DNB or the ECB) assesses whether the integrity (*betrouwbaarheid*) of the individual subject to screening is beyond doubt and whether the individual is suitable (*geschikt*) for the function. This is sometimes also referred to as fit and proper screening.

Integrity screening relates to the individual and not to the function that the individual will hold. Integrity is assessed on the basis of antecedents disclosed in a standard questionnaire. Suitability screening involves an assessment of whether the individual has sufficient and relevant knowledge, work experience and other relevant competencies for the function to be held.

Screening Requirements for Second-Tier Functions

Screening also applies to second-tier functions. These are management functions directly below the executive board, responsible for individuals whose activities can significantly impact the risk profile of the bank. For these second-tier functions, DNB assesses the integrity, while the bank itself must establish whether the individual is suitable.

An individual cannot start their role until they receive a positive screening decision from DNB.

4.3 Remuneration Requirements

The remuneration requirements applicable to Dutch-licensed banks are laid down in the DFSA, the Regulation on Sound Remuneration Policy DFSA (*Regeling beheerst beloningsbeleid Wft 2021*, Rbb), the EBA Guidelines on Sound Remuneration policies, and the DCGC.

These regulations and guidelines differentiate between several types of staff, and each may have different requirements for fixed remuneration and variable remuneration.

DFSA

The remuneration rules in the DFSA apply to individuals working under the responsibility of the Dutch-licensed bank, and its subsidiaries. The most relevant remuneration requirements under the DFSA are as follows:

- **Remuneration Policy Requirements:** Banks must have a remuneration policy tailored to their size and activities, among others setting out specific principles for awarding fixed and variable remuneration.
- **Disclosure Requirements:** Banks must publish a description of their remuneration policy in their annual accounts and on their website, including information on the amount of variable remuneration awarded.
- **Bonus Cap:** The amount of variable remuneration awarded must be limited to 20% of the individual's fixed remuneration. There are limited exemptions to this bonus cap, such as for individuals predominantly working outside of the Netherlands.
- **Welcome Bonuses and Severance Payments:** Banks can only award guaranteed variable remuneration (welcome bonuses) and severance payments under specific conditions.
- **Malus and Clawback:** In certain circumstances, banks can reduce or reclaim variable remuneration (also known as malus and clawback measures).
- **Retention of Shares:** A retention requirement of five years applies to shares (or comparable instrument) awarded by the bank as fixed remuneration.

A breach of these remuneration rules, such as an employment contract in breach of the Dutch bonus cap rules, is considered null and void (nietig) under Dutch law.

Rbb

The Rbb contains remuneration requirements for individuals who can materially affect the risk profile of the bank (identified staff). The Rbb implements most of

the remuneration requirements following CRD V. As follows from the Rbb:

- The supervisory board must adopt the remuneration policy of the bank, and must be responsible for reviewing and implementing this policy.
- Significant banks must establish a remuneration committee responsible for, inter alia, preparing remuneration decisions to be made by the supervisory board.
- A significant portion of variable remuneration (at least 50%) must consist of shares (or comparable instruments), which must also be subject to an appropriate retention period linked to the bank's performance.
- When awarding variable remuneration, a considerable portion (at least 40%) must be deferred over a period of at least four to five years (depending on the individual's role).

An exemption exists to the financial instruments and deferral requirements described above, available to small banks and individuals who are awarded a certain (limited) amount of variable remuneration.

EBA Guidelines on Sound Remuneration Policies

DNB applies the EBA Guidelines in its supervision of Dutch-licensed banks, which further detail the remuneration requirements as set out in the DFSA and Rbb. The EBA sets detailed remuneration requirements, such as on the identification process of identified staff, the tasks and responsibilities of the remuneration committee and the pay-out process for variable remuneration.

Dutch Corporate Governance Code

According to the DCGC, the supervisory board should determine the remuneration of the individual management board members, within the boundaries of the management board remuneration policy as adopted by the general meeting of the bank.

5. AML/KYC

5.1 AML and CFT Requirements

Banks are expected to have a comprehensive anti-money laundering and counter-terrorist financing

(AML-CFT) framework in place. The requirements and expectations on AML-CTF primarily follow from:

- the Dutch anti-money laundering act (*Wet ter voorkoming van witwassen en financieren van terrorisme*, Dutch AML Act) and underlying regulations;
- EBA Guidelines, such as the EBA Guidelines on risk factors;
- DNB AML-CFT Q&As and Good Practices of May 2024; and
- AML-CFT Industry Baselines of 2023.

Dutch AML Act

The Dutch AML Act implements the European anti-money laundering directives, and is largely the same as in other EEA member states, with certain deviations. The Dutch AML Act has three main elements which are outlined below.

AML-CFT risk analysis

The Dutch AML Act follows a risk-based approach. The actual measures that banks implement in the context of these requirements depend on the associated risks. The cornerstone of the risk-based approach is the AML-CFT risk analysis, based on which the concrete AML-CTF measures must be determined. The AML-CFT risk analysis is often part of the Systematic Integrity Risk Analysis (SIRA).

Customer due diligence (CDD)

The purpose of conducting CDD is that the bank knows who it is doing business with. CDD, among others, requires the bank to identify and verify the identity of a customer, its Ultimate Beneficial Owner(s) (UBO), the individual(s) representing the customer and the purpose and nature of the business relationship.

CDD is required when the bank enters into a business relationship with a customer or when it conducts an incidental transaction(s) amounting to EUR15,000 or more on behalf of the customer. The bank applies (i) regular; (ii) simplified; or (iii) enhanced CDD, each with minimum requirements depending on the customer risks involved.

Throughout the business relationship, the bank is obligated to conduct CDD reviews, typically triggered periodically or based on specific events.

Transaction monitoring

Banks must monitor transactions within a business relationship to identify unusual activities by means of objective and subjective indicators as laid down in the Dutch AML Act. If a transaction meets certain criteria, it qualifies as unusual and must be promptly reported to the Financial Intelligence Unit Netherlands (FIU-NL).

EBA Guidelines

The EBA has published numerous guidelines on AML-CTF that are also relevant to Dutch-based banks. In these guidelines, the EBA addresses various topics, such as the onboarding of remote customers, the application of risk factors, and the roles and responsibilities of compliance officers.

DNB AML-CFT Q&As and Good Practices

DNB has published Q&As and Good Practices on AML-CTF. The Q&As provide interpretations of legal standards, while the Good Practices offer recommendations for compliance, though institutions may choose alternative methods as long as they continue to meet legal requirements.

AML-CFT Industry Baselines

In consultation with DNB, the Dutch Banking Association (*De Nederlandse Vereniging van Banken*, DBA) has developed various practical principles for the risk-based application of the Dutch AML Act. Nearly all Dutch banks are members of the DBA.

AMLR and AMLD6

The Anti-Money Laundering Regulation (AMLR) will apply directly in the Netherlands as of 10 July 2027. The Anti-Money Laundering Directive 6 (AMLD6) will need to be transposed into Dutch law before 10 July 2027. The AMLR and AMLD6 will replace the Dutch AML act.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

Dutch Deposit Guarantee Scheme

The Dutch Deposit Guarantee Scheme (DGS) is laid down in Section 3.5.6 of the DFSA and the relevant regulations thereto. The DGS implements the EU Directive 2014/49/EU on deposit guarantee schemes. The DGS regime is administered by DNB. The DGS funds are kept in the Deposit Guarantee Fund (*deposi-togarantiefonds*, DGF), which is managed by DNB.

Since 2016, Dutch-licensed banks have been required to contribute to the DGF on a quarterly basis. These contributions are divided into collective and individualised components, with DNB determining each bank's contribution based on their deposit base and that of all banks combined. Supplementary contributions may be set if covered deposits increase. When DNB has to repay depositors out of the DGF but the available funds in the DGF are not sufficient to finance the payments, extraordinary contributions are levied. DNB determines these contributions ex post and may ask banks for an advance payment if needed.

Accounts Eligible for Protection Under the Dutch DGS

Various types of accounts are eligible for protection under the DGS. These include:

- **Payment Accounts:** This category covers standard bank accounts used for daily financial transactions, such as current accounts.
- **Savings Accounts:** These accounts, specifically designated for saving money, which may offer interest on the saved amount, are protected.
- **Fixed-Term Deposits:** These are deposits made for a fixed period, often at a fixed interest rate, and cannot be accessed until the term ends without incurring penalties.
- **Life-Cycle Saving Schemes:** These accounts are designed for long-term saving, often linked to significant life events like retirement.
- **Bank Savings Accounts:** Similar to regular savings accounts, these accounts may have specific terms and conditions regarding deposits and withdrawals.

- **Investment Accounts:** These accounts hold investments rather than cash.

It is important to note that while the account itself may be covered, investment products (like shares or bonds) held within these accounts are not covered by the DGS. Furthermore, subordinated deposits are generally not covered by the DGS.

The types of account holders covered include:

- **Natural Persons:** Personal account holders, irrespective of their age, nationality, or residence status, are covered by the DGS.
- **Businesses:** Small, medium, and large businesses holding accounts in participating banks are eligible for protection.
- **Associations and Foundations:** Non-profit organisations, including associations and foundations, are also covered under the scheme.
- **Joint Account Holders:** Accounts held jointly by multiple individuals are protected. The coverage is typically divided equally among the account holders unless a different division is agreed upon.

Notably, the DGS excludes certain account holders from its protection, such as account holders involved in financial crimes and account holders who have failed to provide necessary identity verification documents.

Maximum Reimbursement

The maximum reimbursement under the DGS is in principle EUR100,000 per account holder per bank. This applies collectively to all the accounts a person holds with the same bank. Joint accounts and accounts held in the names of two or more legal persons have their cover calculated proportionately, unless a different division is agreed upon in advance. The limit of EUR100,000 still applies in these cases. In principle, account holders have five years to claim their deposits.

In certain cases, a temporary limit of EUR500,000 applies for account balances of natural persons, on top of the standard protection of EUR100,000. This limit covers temporarily high account balances in connection with:

- the sale or purchase of a principal residence;
- pension payments;
- severance payments; or
- insurance payouts.

The temporary limit applies up to six months following the respective deposit.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Prudential Regime for Banks

The legal basis for prudential supervision in the Netherlands follows from CRR and CRD V as implemented in the DFSA and the Decree on Prudential Rules for Financial Undertakings (*Besluit Prudentiële regels Wft, Bpr*).

Broadly, the prudential rules cover risk management, capital requirements and liquidity requirements for Dutch-licensed banks and branches of banks with a registered office in a non-member state conducting business in the Netherlands.

The prudential rules of CRR and CRD V are the European implementation of the international Basel III standards (Basel III), an international regulatory framework that aims to strengthen the regulation, supervision and risk management of the banking sector.

The final texts of CRR3 and CRD VI were adopted in June 2024. Since January 2025, most of the CRR3 provisions have started to apply in the Netherlands. CRD VI must be implemented into Dutch law and will be applicable from January 2026. Accordingly, this chapter takes into account the 2025 regime covering CRR3 changes and the rules that are (still) applying under CRD V.

Risk Management

Dutch-licensed banks are required to have sound risk management policies to control relevant risks. Relevant risks at least include concentration risks, credit risks, counterparty risks, liquidity risks, market risks, operational risks, ESG risks, interest rate risks from non-trading activities, rest risks, risks due to exces-

sive leverage, securitisation risks, insurance risks, lapse risk and risks arising from the macroeconomic environment in which the bank operates and which are related to the state of the business cycle.

Risk management policies must be translated into specific procedures and measures to control the relevant risks and must be integrated into the business processes of the bank. The procedures and measures must consist of, inter alia, authorisation procedures, limit settings and limit monitoring tailored to the bank's nature, size, risk profile and complexity.

Dutch-licensed banks must have an independent risk management function. This function is tasked with the systematic and independent conduct of risk management, aimed at identifying, measuring and evaluating the risks banks are exposed to. The management board and the supervisory board must be actively involved in a bank's risk management.

The ESG risk framework of Dutch-licensed banks must be further enhanced when CRD VI is implemented into Dutch law.

Capital Requirements

To ensure financial stability and mitigate risks, banks are subject to two distinct regulatory measures: capital requirements and liquidity requirements. The first set of measures follows from the CRR, and aims to establish minimum capital requirements for credit, market, and operational risks, ESG risks and other relevant risks. This requires banks to maintain an adequate capital buffer to absorb unexpected financial setbacks. Capital requirements can be divided into (i) qualitative; and (ii) quantitative requirements.

Qualitative requirements

The CRR addresses the quality of capital by the extent to which the capital can absorb losses and classifies the capital into different tiers.

Tier 1 capital, comprised of Common Tier 1 (CET1) capital and Additional Tier 1 (AT1) capital:

- CET1 Capital: As the highest quality of capital, CET1 capital represents the core equity capital of a bank and enables it to absorb losses imme-

diately without significantly impacting its operations or stability. It consists of capital instruments, share premium accounts related to these capital instruments, retained earnings, accumulated other comprehensive income, other reserves and funds for general banking risks.

- **AT1 Capital:** AT1 capital is Tier 1 capital that is not CET1 capital and consists of capital instruments and the share premium accounts related to these capital instruments. AT1 capital has certain characteristics; eg, the provisions governing the instruments must require that, when the CET1 capital ratio falls below 5.125%, the principal amount of the instruments will be written down on a permanent or temporary basis or the instruments will be converted into CET1 instruments.
- **Tier 2 Capital:** Tier 2 capital is considered to be of lower quality. This tier includes instruments such as subordinated debt instruments, which hold a subordinate position to other debts in the event of liquidation or bankruptcy. While Tier 1 capital forms the primary layer of a bank's capital structure, Tier 2 capital provides an additional cushion.

Quantitative requirements

In order to ensure that banks maintain sufficient financial cushion to absorb potential losses, the CRR addresses the quantity of capital by stipulating that banks must maintain specific capital ratios, expressed as percentages of the total risk exposure amount. This exposure amount is calculated using risk-weighted assets (RWA). In principle, banks must maintain (i) a Common Equity Tier 1 capital ratio of 4.5%; (ii) a Tier 1 capital ratio of 6%; and (iii) a total capital ratio of 8%.

CRR3 changes the way banks calculate their RWA, requiring a more standardised calculation approach. Additionally, CRR3 introduces an output floor, setting a minimum limit on the own funds requirements of banks calculating their RWA by using internal models.

In addition to the above three capital ratios, banks are required to maintain a minimum of 3% leverage ratio. The leverage ratio is calculated by dividing a bank's Tier 1 capital by its total exposure. Unlike the capital ratios above, the leverage ratio takes into account the unweighted total exposure rather than the total risk-weighted exposure.

Banks must also uphold a capital buffer, comprising the following elements: (i) the capital conservation buffer, set at 2.5%, which consists of CET1 capital, and (ii) the institution-specific countercyclical capital buffer, confirmed by DNB in September 2025 to remain at 2%.

Systemically important banks may be subject to additional buffer requirements, including a Global Systemically Important Institution buffer (G-SII) or an Other Systemically Important Institution (O-SII) buffer, as well as a systemic risk buffer.

Liquidity requirements

Besides the capital requirements, Dutch-licensed banks must adhere to liquidity requirements. These requirements are designed to guarantee that Dutch-licensed banks maintain an adequate amount of liquid assets to fulfil their short-term obligations, particularly in times of financial strain. The CRR outlines two primary liquidity requirements: the liquidity coverage ratio and the stable funding ratio.

The liquidity coverage ratio focuses on short-term liquidity risks and requires banks to hold sufficient liquid assets to be able to convert these assets into cash under stressed conditions over a thirty-day period. The stable funding ratio, on the other hand, focuses on the long-term liquidity risks and requires banks to ensure that their long-term obligations are met with diverse stable funding instruments.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The key piece of legislation around insolvency, recovery and resolution of banks is the Bank Recovery and Resolution Directive (BRRD). BRRD is implemented in Part 3A of the DFSA.

The BRRD serves the purpose of ensuring the continuity of a bank's critical financial and economic function, while minimising the impact of a bank's failure on the economy and financial system. To that effect, the BRRD provides the national resolution authorities (in the Netherlands, this is DNB) with a set of tools to

intervene sufficiently early and quickly in an unsound or failing bank.

The BRRD distinguished three phases with regard to recovery and resolution:

- recovery and resolution planning (Title II BRRD);
- early intervention for recovery (Title III BRRD); and
- resolution (Title IV BRRD).

Phase 1: Recovery and Resolution Planning

Dutch-licensed banks must establish a recovery plan. The recovery plan must include a framework of qualitative and quantitative indicators identifying the points at which escalation processes/action plans must be activated. The EBA has issued guidelines on the minimum indicators that banks must include in their recovery plan (EBA Guidelines on recovery plan indicators). With a view to proportionality, DNB has the option to simplify these recovery plan requirements for certain less significant institutions (LSIs).

DNB, as the resolution authority in the Netherlands, must establish a recovery plan for each licensed bank. The recovery plan will be based on information to be provided by the respective bank.

Recovery and resolution plans must be updated at least annually.

Phase 2: Early Intervention for Recovery

If the financial condition of a bank is rapidly deteriorating (as further set out in the EBA Guidelines on early intervention triggers), the BRRD confers a number of powers on DNB to intervene. These powers include:

- convening (with or without management co-operation) a meeting of shareholders of the bank and requiring certain decisions to be considered for adoption by the shareholders;
- requiring one or more members of the management body or senior management to be removed or replaced; and
- requiring changes to the strategy, legal or operational structures.

If the powers reflected above do not suffice, DNB may impose the following (additional) measures:

- the removal of the senior management or management body of the institution, in its entirety or with regard to individuals; or
- the appointment of one or more temporary administrators to the bank.

Phase 3: Resolution

The BRRD provides for resolution tools. The aim of applying such tools is (i) to ensure the continuity of critical functions; (ii) to avoid a significant adverse effect on the financial system; (iii) to minimise reliance on public financial support (ie, prevent a bailout); and (iv) to protect depositors, client funds and client assets.

Resolution tools can only be applied if all the following conditions are met:

- (i) DNB determines that the bank is failing or is likely to fail;
- (ii) there is no reasonable prospect that any alternative private sector measures, including the write-down or conversion of relevant capital instruments and eligible liabilities, would prevent the failure of the bank within a reasonable timeframe; and
- (iii) resolution is necessary in the public interest.

As regards condition (i), a bank is failing or likely to fail if:

- the bank infringes or likely will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation;
- the assets of the bank are or will, in the near future, be less than its liabilities;
- the institution is or will, in the near future, be unable to pay its debts or other liabilities as they fall due; or
- extraordinary public financial support is required.

The BRRD distinguishes four resolution tools, which may be applied individually or in any combination, as outlined below.

The sale of business tool

- DNB can transfer the shares in the bank or (part of) the assets, rights or liabilities to a purchaser that

is not a bridge institution. This transfer does not require shareholder consent.

- If only the sale of business tool is used and only part of the assets are transferred, the bank and its remaining assets/activities shall be wound up under normal insolvency proceedings.

The bridge institution tool

- DNB can transfer the shares in the bank or (part of) the assets, rights or liabilities to a bridge institution. This transfer does not require shareholders consent.
- A bridge institution must be wholly or partially owned by one or more public authorities and is controlled by DNB.
- The purpose of the bridge institution is maintaining access to critical functions of the bank and selling the bank.
- If only the bridge institution tool is used and only part of the assets are transferred, the bank and its remaining assets/activities shall be wound up under normal insolvency proceedings.

The asset separation tool

- DNB can transfer assets, rights or liabilities of a bank or a bridge institution to one or more asset management vehicles. This transfer does not require shareholder consent.
- An asset management vehicle must be wholly or partially owned by one or more public authorities and controlled by DNB.
- The asset management vehicle will manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind-down.

The bail-in tool

- The bail-in tool is applied to absorb losses and recapitalise the distressed bank so that it once again meets its licence requirements.
- The bail-in tool allows unsecured debt to be written down or converted to equity. That way, the creditors of a bank bear the losses and the need for a taxpayer bailout is avoided.
- The bail-in tool may be applied to all liabilities of a bank except for the liabilities excluded by the BRRD, which include covered deposits, secured claims, claims with an original maturity of fewer

than seven days, claims of employees, claims of commercial or trade creditors and claims arising from the provision of goods or services to the bank that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises.

- Once CET1 capital instruments have been wholly or partly written down, non-excluded liabilities are written down or converted into rights to newly issued shares or other instruments of ownership of the bank.
- For bail-in, the “no creditor worse off principle” applies, meaning that shareholders and creditors may not incur greater losses than they would have incurred if the bank had been wound up immediately beforehand under normal insolvency proceedings.

Minimum Requirements for Own Funds

Banks are subject to minimum requirements for own funds and eligible liabilities (MREL). The MREL serve to ensure that a bank maintains at all times sufficient eligible instruments to facilitate the implementation of the preferred resolution strategy. MREL is the European equivalent of worldwide Total Loss Absorbing Capacity standard (TLAC) developed by the Financial Stability Board (FSB).

DGS

If a bank is unable to meet its obligations towards eligible deposit holders, such deposit holders are protected under the Dutch DGS. Please see **6.1 Deposit Guarantee Scheme (DGS)**.

9. ESG

9.1 ESG Requirements

ESG requirements for Dutch-licensed banks primarily consist of (i) climate risk management requirements; and (ii) ESG disclosure requirements.

Climate Risk Management

Currently, climate risk management requirements for banks primarily follow from the ECB’s Guide on climate-related and environmental risks (2020) (the “ECB Guide”). The ECB Guide is strictly speaking not binding for banks. However, it reflects the ECB’s under-

standing of how banks are expected to adequately manage climate risks under the current prudential framework, as primarily follows from CRD V, pending the application of CRD VI in 2026.

The ECB, as direct supervisor of significant banks, applies the ECB Guide in its supervision. DNB also applies the ECB Guide in its supervision of less significant banks, but in a proportionate manner.

The supervisory expectations in the ECB Guide can be summarised as follows:

- **Business Strategy:** Banks should integrate short-, medium-, and long-term climate risks into their business strategies.
- **Risk Appetite and Governance:** Banks should incorporate climate risks into their risk appetite frameworks, allocate responsibilities, and report aggregated risk data.
- **Risk Management:** Banks should integrate climate risks into the risk management framework, conduct regular reviews and consider these risks across a range of risks, including credit, liquidity and operational risks.

In 2022, the ECB set a deadline for banks to achieve full alignment with supervisory expectations in the ECB Guide, ensuring the integration of climate and environmental risks into stress testing frameworks and the ICAAP.

The ECB has already communicated that it has started enforcement towards banks that have failed to adequately manage climate risks in line with the ECB's expectations.

In 2026, CRD VI will integrate ESG risks directly into the existing prudential framework for risk management by banks. Compared to the ECB Guide, CRD VI will impose more detailed requirements on the identification, assessment, management and monitoring of ESG risks.

On 9 January 2025 the ECB published guidelines for the new CRD VI requirements on ESG risks. The guidelines will apply from 11 January 2026 except for small

and non-complex institutions for which the guidelines will apply at the latest from 11 January 2027.

ESG Disclosure Requirements

As of 2025, CRR3 requires banks to enhance their disclosures for ESG risks. These disclosures should distinguish between environmental, social and governance risks, and differentiate between physical and transition ESG risks. Notably, CRR3 introduces regulatory reporting on ESG risk exposures as well as on the integration of ESG risks into the strategy, processes, policies, governance and risk management of banks.

Following the Corporate Sustainability Reporting Directive (CSRD), Dutch banks meeting certain size criteria will have to publish a sustainability report together with their annual accounts. Following the Stop-the-Clock Directive, the application of the reporting requirements has been postponed from financial year 2025 to financial year 2027.

Other ESG Requirements

Other ESG requirements relevant for Dutch-licensed banks include, but are not limited to:

- **The EBA Guidelines on Loan Origination and Monitoring:** These guidelines detail how banks should incorporate ESG factors into their credit risk policies for corporate lending.
- **DCGC:** The DCGC includes best practices on sustainability, emphasising long-term value creation for companies and the role of management boards in developing strategies and procedures to achieve this goal.
- **Sustainable Finance Disclosure Regulation (SFDR):** Banks providing portfolio management or investment advice services are subject to disclosure requirements following from SFDR. These disclosures cover, besides ESG topics, the integration of sustainability risks into the bank's investment processes, and how the bank considers adverse impacts that investments may have on sustainability.
- **Taxonomy Regulation:** This establishes criteria for identifying and classifying the sustainable economic activities of a bank, used for the purposes of other sustainability regulations (such as CSRD and SFDR).

10. DORA

10.1 DORA Requirements

The Digital Operational Resilience Act (DORA) is a European regulation that entered into force on 16 January 2023 and applies as of 17 January 2025 to Dutch-licensed banks. DORA is part of a larger European digital finance package that aims to ensure financial stability and consumer protection through technological development. This digital finance package also includes a European digital finance strategy, regulation on markets in crypto-assets (MiCAR), and regulation concerning market infrastructures based on distributed ledger technology.

DORA has direct effect in member states and aims to harmonise the rules relating to digital operational resilience for the financial sector. Besides Dutch-licensed banks, it applies to a total of 21 types of financial entities, including payment institutions, investment firms, crypto-asset service providers, and the information and communication technology (ICT) third-party providers that are critical to the financial infrastructure, bringing technology vendors under direct financial supervision. Each of these entities must align their operational and risk management processes with DORA's stringent requirements to effectively manage and mitigate ICT risks.

Five Pillars of DORA

DORA is built on five key pillars, each addressing different aspects of digital operational resilience for financial institutions:

- **ICT Risk Management:** Chapter II of DORA requires financial entities to have in place an elaborate system of processes, controls, digital operational resilience strategies, policies, and procedures, ICT protocols, and tools to manage their ICT risks. These measures, which together form the DORA risk management framework, need to address aspects such as governance and organisation; ICT risk management framework; ICT systems, protocols, and tools; identification; protection and prevention; detection; response and recovery; back-up policies, restoration and recovery; learning and evolving; and crisis communication plans.

- Moreover, particular emphasis is placed on the role of management bodies in ensuring compliance, and ensuring that ICT risk management is embedded in their internal governance and control framework.
- **ICT Incident Management:** Chapter III of DORA requires financial entities to establish and implement a specific ICT-related incident management process to detect, manage, and notify ICT-related incidents, and to record them together with significant cyber threats. Financial entities will also have to classify ICT-related incidents and determine their impact in accordance with a set of prescribed criteria, details of which are to be set out in secondary legislation, and report major ICT-related incidents to the competent authority.
- **Digital Operational Resilience Testing:** Chapter IV of DORA requires financial entities to put in place a sound and comprehensive digital operational resilience testing programme, comprising a range of assessments, tests, methodologies, practices, and tools. Testing should be applied on a risk-based approach by an independent party – either internal or external. In addition, significant financial entities will be required to carry out threat-led penetration testing (TLPT) every three years.
- **ICT Third-Party Risk Management:** Chapter V of DORA covers the required policy documents, risk analysis, and contractual provisions with ICT third-party providers to ensure that financial entities maintain strong contracts with their ICT third-party providers. DORA also requires that all contractual arrangements for the provision of ICT services must be recorded in a register of information. Section II of Chapter V defines the oversight framework for critical third-party providers of ICT services.
- **Information Sharing:** Chapter VI of DORA provides a framework for the sharing of information about cyber threats and vulnerabilities with other financial entities.

In addition to the requirements described in the regulation, a number of topics are further elaborated in the Regulatory Technical Standards (RTS), Implementation Technical Standards (ITS), and Guidelines (GL) developed by the three European Supervisory Authorities (ESAs).

The DORA requirements will be applied in accordance with the principle of proportionality. This means that, when implementing DORA, financial entities should consider their size and overall risk profile, as well as the nature, scale, and complexity of their services, activities, and operations.

Supervision and Enforcement

DORA places the supervision of compliance with its requirements on the respective competent authorities responsible for overseeing the in-scope financial entities. For Dutch-licensed banks, this responsibility will be placed on DNB. To this end, DNB will have supervisory, investigatory, and sanctioning powers, including powers to request access to documents and data, carry out on-site inspections and investigations, and impose administrative penalties and remedial measures.

11. Horizon Scanning

11.1 Regulatory Developments

EU Banking Package

In July 2024, the new EU banking package came into effect. This package, consisting of the Capital Requirements Regulation 3 (CRR3) and the Capital Requirements Directive (CRD6), ensures the implementation of the final elements of the Basel III agreement. CRD 6 introduces various interesting changes.

CRD6 introduces a prohibition on the provision of cross-border banking services in the EU of a third-country (non-EU) institution. It requires institutions from third countries to establish a branch (third-country branch, TCB) in a member state and to apply for a licence for that TCB before they can provide “core banking services” in the respective member state. It should be emphasised that for the applicability of the TCB regime, the qualification of the services – not the service provider – is decisive. Core banking services in this context include deposit taking, lending, guarantees and commitments. Of course, there are some exceptions to this TCB regime. For instance, it does not apply in the case of reverse solicitation – in short, when a client approaches the enterprise in the third country on their own initiative. Additionally, the regime does not apply to enterprises in third countries that

offer MiFID services and provide ancillary services, such as receiving deposits or granting loans for the purpose of providing those MiFID services.

Furthermore, CRD6 establishes a renewed, more detailed framework for assessing the suitability of members of the management body and key function holders. This framework is currently not well harmonised. CRD6 prescribes standard information requirements for a suitability application, including a suitability questionnaire and a curriculum vitae. The EBA will issue technical regulatory standards at a later stage specifying the information that must be provided to the competent authority. Regarding a related change, under CRD6, the chair of the supervisory board of an institution cannot also be the CEO of the same institution. The impact of this on Dutch banks is negligible given the existing two-tier model with a management board and a supervisory board.

CRD6 must be transposed into Dutch legislation by 10 January 2026, with the TCB regime not coming into effect until 11 January 2027.

New Payment Rules

In June 2023, the European Commission (EC) published its legislative proposals for payment services, financial data access and the establishment of the digital euro. The legislative proposals consist of, inter alia:

- a third Payment Services Directive (PSD3) and a Payment Services Regulation (PSR);
- a Financial Data Access Regulation (FIDA); and
- a regulation on the establishment of the digital euro (Digital Euro Regulation)

The PSD3, PSR and FIDA proposals are part of the EC “financial data access and payments package”, which was launched by the EC to modernise the regulatory landscape in relation to the provision of payment services and sharing financial services data.

The Digital Euro Regulation is part of the EC’s “single currency package” and sets out a framework for a possible new digital form of the euro that the ECB could choose to issue in the future, as a complement to cash.

The final text of PSD3 and PSR are not yet available. However, PSD3 is still expected to come into force in 2026. After PSD3 becomes final, member states will have 18 months to implement the directive into national law. PSR is also expected to come into force in 2026. A phased implementation of FIDA is expected to begin in 2027. The establishment of the digital euro is expected to take a few more years. The ECB will only issue the digital euro once the Digital Europe Regulation has been adopted. At the moment of writing this overview, the latest update is that the ECB has selected and signed agreements with providers for five digital euro components and related services.

SSM Supervisory Priorities for 2025-2027

The ECB has set its SSM supervisory priorities for 2025-2027. These priorities reflect ECB Banking Supervision's medium-term strategy for the next three years, based on a comprehensive assessment of the main risks and vulnerabilities for supervised entities. They support efficient allocation of the available supervisory resources and can be adjusted if warranted by changes to the risk landscape. Banks will be requested to strengthen their ability to withstand immediate macro-financial threats and severe geopolitical shocks (Priority 1), remedy persistent material shortcomings in an effective and timely manner (Priority 2) and strengthen their digitalisation strategies and tackle emerging challenges stemming from the use of new technologies (Priority 3).

EBA Financial Regulatory Work Programme 2026

Every year, the key EU financial regulatory institutions publish their annual work programmes, setting out their priorities for the year ahead. These priorities align with each institution's broader long-term strategy (published every three to five years). On 1 October 2025, the EBA published its Work Programme for 2026. In 2026, the EBA will start executing its priorities for the period 2026-2028. EBA's priorities for 2026-2028 are defined in its Single Programming Document for 2028-2028:

- contributing to an efficient, resilient and sustainable single market (Rulebook);
- developing tools, data and methodologies for effective analysis, supervision and oversight (Risk Assessment); and

- enhancing technological capacity for all stakeholders (Innovation).

According to the EBA, 2026 will be a landmark year as it takes on new oversight and supervisory functions. These responsibilities arise from new legislation covering critical third-party providers (DORA), issuers of crypto-assets (MICA), and the use of internal margin models (EMIR). These new functions will be carried out alongside the EBA's traditional policy development and supervisory convergence work. Taking the above priorities for 2026-2028 into account, the EBA has set priorities and areas of focus for 2026.

The rulebook priority relates to EBA's core responsibilities of (i) developing a single rulebook and (ii) ensuring its consistent implementation for the activities and supervision of the financial entities in its remit, to contribute to an efficient, resilient and sustainable single market in financial services. Regarding developing a single rulebook, EBA will focus on simplification and efficiency, the banking package, payment services, Crisis Management and Deposit Insurance (CMDI) with Bank Recovery and Resolution (BRR) and the Deposit Guarantee Schemes Directive (DGSD), Enhanced Supervisory Interaction and Undertakings (ESIU) and securitisation. Regarding consistent implementation, the EBA will focus on rebalancing ex ante harmonisation towards ex post convergence, peer reviews, IRRBB and liquidity/funding.

The risk assessment priority relates to:

- (i) the EBA's responsibility for assessing risks and vulnerabilities in the EU/EEA banking and financial sector through regular and ad hoc analyses;
- (ii) the EBA's new roles as the lead overseer of critical ICT third-party service providers, supervisor of significant asset-referenced and e-money token issuers and validator of certain EMIR IMM models; and
- (iii) its need for reliable and adequate data supporting efficient methodologies and tools as an enabler of (i) and (ii).

Regarding risk assessment and stress testing, the EBA will focus on efficient EU stress testing capacity, timely risk analysis, outreach, and analysis of ICT inci-

dents and cyber threats. Regarding supervision and oversight, EBA will focus on DORA oversight, MiCAR supervision and EMIR IMM validation. In the context of data, tools and methodologies, the EBA will focus on integrated reporting and reviewed data collections.

The EBA's third priority is to enhance technological capacity within the financial sector with special attention paid to consumer protection. In the context of technological capacity, the EBA will focus on innovation monitoring and knowledge-sharing, AI/ML and crypto, DLT and value chain. Regarding consumer protection, the EBA will focus on over-indebtedness, de-risking and education, and implications of innovation.

ESAs' 2026 Joint Work Programme

The three ESAs, the EBA, the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), have their Joint Work Programme for 2026. In 2026 the Joint Committee (JC) of these ESAs will, amongst other things, focus on the following points:

- **Digital Operational Resilience:** With the implementation of DORA, the JC will concentrate on the effective operation of the new Oversight Framework and work related to supervisory convergence of DORA.
- **Consumer Protection and Financial Innovation:** The JC will strengthen European consumer confidence and protection in the areas of banking, insurance and pensions as well as securities products and services.
- **Sustainable Finance:** The ESAs will continue to prioritise sustainable finance as a key topic and to deliver any tasks asked of the ESAs. Regarding SFDR, the ESAs will monitor the ongoing review of its text while providing clarifications where necessary on the existing framework.
- **Risk Assessment:** The JC will continue to remain an important forum for discussion of cross-sectoral risks. As a result, the ESAs will jointly assess key trends and vulnerabilities to financial stability and continue producing targeted cross-sectoral risk analysis in addition to their respective sectoral risk analysis.

Trends and Developments

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Osborne Clarke NV is a future-focused international legal practice with over 330 partners and more than 1,260 talented lawyers working across 26 global locations. Osborne Clarke is a full-service office with nine law practices in the Netherlands: financial regulatory, banking and finance, corporate M&A, employment, pensions and incentives, tax, litigation and arbitration, real estate and infrastructure, tech, media and

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Introduction

The regulatory supervision by the Dutch Central Bank (*De Nederlandsche Bank* DNB) is shaped by its four-year outlook on regulatory supervision (*Visie op toezicht 2025–2028*). The core of DNB's supervision is focused on:

- risk-based, proportionate, independent and forward-looking supervision;
- European and international collaboration;
- transparent guidance on open standards; and
- effective enforcement of standards.

In addition, DNB has identified three areas of focus that are embedded in regular supervision:

- combating financial crime;
- maintaining a grip on sustainability risks; and
- managing governance and behaviour.

Other focus areas in DNB's supervision include:

- identifying and managing geopolitical risks;
- flexible and agile responses to technological innovations; and
- increasing resilience to cyber threats.

Looking ahead, Dutch-licensed banks face new challenges and regulatory changes. Owing to the new EU Anti-Money Laundering (AML) Package containing a new AML Regulation, a new AML Directive and the establishment of a new AML authority, banks will face many new AML requirements and a new, direct or indirect supervisory authority. It is therefore little wonder that combating financial crime is one of DNB's focus areas.

Additionally, some new rules regarding the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD) will impose new capital requirements on banks. Also, new rules regarding payment services are expected to have a negative impact on the competitive position of banks, as these rules will allow non-bank payment service providers (PSPs) to compete with banks more easily. Moreover, new rules regarding the management of customer data sharing in the financial sector are expected to emerge.

Economic Developments

Economic growth is being slowed by global uncertainties such as geopolitical tensions and import tariffs. These are causing increased economic uncertainty and lower global trade growth, which depresses economic growth. According to GDP figures, the Dutch economy is expected to grow by 1.1% in 2025 and for this to remain at around 1% in 2026 and 2027.

Owing to economic slowdown, lower energy prices, the appreciation of the euro and domestic factors such as the cooling economy and slowing wage growth, the inflation rate in the Netherlands is projected to fall below 3% in 2025, and is expected to be around 2.6% in 2026 and 2027. This is a further decrease compared to the rates for 2023 (4.1%) and 2024 (3.2%). This also means that the inflation in the Netherlands will remain above the inflation rates for the eurozone, and will remain above the European Central Bank's (ECB) inflation target of 2% in the years ahead.

DNB also noted the global uncertainties mentioned above in its Financial Stability Report for Spring 2025. DNB warned about increasing risks to Dutch financial stability due to an uncertain environment characterised by geopolitical tension and a fragmented global economy. Uncertainty around trade, international co-operation and fiscal balances has increased, mainly because of US import tariffs. The uncertainty around these tariffs is affecting both global growth prospects and the Dutch economy. The risk of economic contraction and higher inflation is therefore increasing, especially in the medium term. In addition, the rising geopolitical tensions are compelling European countries to spend more on their defence, resulting in renewed scrutiny of debt sustainability.

The geopolitical and economic risks also translate into higher volatility in global financial markets, as investors are concerned about the impact of tariffs of growth and corporate profitability. These concerns are aggravated by general uncertainty about US economic policy. DNB also notes that investors see US government bonds and the dollar as less safe, prompting them to seek refuge in other currencies and gold. While US government bonds still function well, the resilience of this systemically important market is a concern.

Dutch banks have solid buffers to cope with the current uncertainties. The higher interest rates and moderate growth have helped Dutch banks to solidify their financial positions. However, continued geopolitical tensions could lead to larger economic impact. According to a stress test performed by DNB to assess the potential impact of an escalating trade war on large Dutch banks, the banks' capitalisation would deteriorate but the average core capital ratio would remain above requirements.

According to DNB's analysis, the geopolitical tensions also increase cyber threats to the financial sector. Banks can be directly targeted by cyber-attacks but are more often hit indirectly. These indirect attacks often target service providers critical to the bank, such as cybersecurity firms and network providers, or through attacks on vital infrastructure such as the energy and telecoms sectors. Recent power outages in Spain and Portugal have demonstrated the systemic impact of a disruption of vital payment systems. The geopolitical tensions also add to the concerns about digital dependence on non-European service providers. According to DNB, these developments underline the importance of digital resilience for Dutch (and European) banks, and the need for them to thoroughly understand and manage their digital dependence.

Macroprudential Developments

The banking sector is facing major regulatory updates with the new rules updating the CRR (CRR III) and CRD (CRD VI). The Implementation Act on Capital Requirements 2026 aims to implement the material amendments of CRD VI to the regulatory framework for banks into Dutch law. For example, the amendments to the Dutch Financial Supervision Act (*Wet op het financieel toezicht* Wvft) following from the CRD VI implementation focus on ESG risks, harmonisation of supervisory powers and instruments, third-country branches and independence of national competent authorities.

The amendments regarding ESG risks aim to incorporate ESG risks as specific risks that should be managed by banks; thus, ESG risks are fully integrated into the internal governance of banks as well as specifically addressed in the supervision of banks by DNB. The amendments regarding the harmonisation

of supervisory powers and instruments aim to ensure further convergence of supervisory powers and instruments within the EU and to prevent significant differences between EU member states. This includes, for example, harmonisation in relation to F&P assessments for key function holders, DNOs and administrative sanctions.

The amendments regarding third-country branches aim to provide for a harmonised third-country branch (TCB) regime. This regime requires a specific branch authorisation in a member state if a non-EU member state bank provides certain banking services in an EU member state (deposit-taking, lending, providing guarantees). The Dutch legislature did not use its member state option to subject third-country branches to the same regulatory requirements as regular Dutch banks, as the TBC regime already provides quite stringent requirements for these branches. The amendments regarding independence of national competent authorities include, for example, minimum requirements for the prevention of conflicts of interest at the supervisory authorities.

The implementation of CRD VI should be final by January 2026, with the amendments becoming applicable on 11 January 2026. However, the TCB regime should become applicable later, on 11 January 2027.

CRR III has been applicable since 1 January 2025; however, some transitional provisions apply. One of the relevant exceptions is for existing holdings that had a significant influence on the company for at least six years at the time CRR III entered into force. The transitional phase applies to equity investments affected by the increase in risk weights, during which the risk weights will be gradually increased to the target level from 2026 to 2030. For 2026, the target level for speculative components is set at 160% and for other components at 130%.

The regulator is also providing for a transitional period for the new output floor introduced under CRR III. During this period, banks may apply a factor when calculating their total risk exposure amount. The minimum capital ratio will increase by 5% per year until 2029, and the final level of 72.5% will be reached in 2030. The percentage for 2026 is set at 55%.

From 1 January 2026, banks may no longer use the alternative internal model approach to calculate their own funds requirements for market risk for trading risks that do not meet certain requirements. In addition, the European Banking Authority (EBA) shall issue several guidelines, draft regulatory technical standards and draft implementing technical standards by 10 January 2026, and shall issue several draft regulatory technical standards and submit several reports by 10 July 2026.

AML Developments

The banking sector is also facing major regulatory updates due to the introduction of the EU AML Package, consisting of the Anti-Money Laundering Regulation (AMLR), the Anti-Money Laundering Authority Regulation (AMLAR) and the new Anti-Money Laundering Directive (AMLD VI). This package aims to strengthen and further harmonise EU regulations to combat money laundering and terrorist financing.

Most of the rules are laid down in the AMLR, with most provisions becoming applicable on 10 July 2027 and some provisions becoming applicable on 10 July 2029. The AMLR provides rules regarding governance requirements for banks, and the measures that banks must take to prevent money laundering and terrorist financing. A major change will be the shift from unusual transactions to suspicious transactions. Under the AMLR, banks must report all suspicious transactions to the Financial Intelligence Unit (FIU). The AMLR also bans cash payments above EUR10,000; member states may set their own limits below EUR10,000. In the Netherlands, the Wwft will be amended to contain a provision prohibiting cash payments for goods and services exceeding EUR3,000. The aim of the Dutch government is to introduce this ban before 1 January 2026.

AMLD VI sets out, inter alia, provisions regarding:

- supranational and national risk assessments;
- national supervisory powers (eg, the supervisory powers of DNB);
- establishing and providing access to central registries relating to ultimate beneficial owners (UBOs) and bank accounts; and

- organisational requirements for the FIUs (eg, the Dutch FIU).

The Implementation Act on Anti-Money Laundering and Anti-Terrorist Financing implements these rules, including several member state options in the AMLAR. The Implementation Act will completely replace the Wwft as of 10 July 2027, as the AMLR is directly applicable and overrules the current Wwft provisions.

The AMLAR provides for the establishment of the Anti-Money Laundering Authority (AMLA). Whereas the AMLR and AMLD VI lay down the substantive requirements, AMLA has the task of monitoring compliance with those obligations within the EU. AMLA will gradually grow over the next few years to a workforce of 430 by 2028. From 1 January 2028, AMLA will directly supervise 40 financial institutions, including at least one Dutch institution. In addition, AMLA has various mandates to draft further regulations and policies, and will indirectly supervise other entities, including banks.

DNB expects that the introduction of the AMLR and the arrival of AMLA will require a significant investment in their supervisory capacity. DNB will therefore need to shift its supervisory priorities to comply with the AMLR and the AMLAR.

Payment Services Developments

To keep up with the rapid developments in the EU electronic payments markets, the European Commission published proposals for a new Payment Services Directive (PSD III) and a Payment Services Regulation (PSR). The PSD III and PSR proposals aim to:

- strengthen user protection and confidence in payments;
- improve the competitiveness of open banking services;
- improve enforcement (eg, by DNB) and implementation in member states; and
- improve (direct or indirect) access to payment systems and bank accounts for non-bank PSPs.

These changes seek to increase innovation and to cater for fair competition in the electronic payments market – for example, by allowing non-bank PSPs to compete with banks more easily.

PSD III is expected to come into force in 2026. After PSD III becomes final, member states will have 18 months to implement the directive into national law. The PSR is also expected to come into force in 2026.

Financial Data Access Development

In the past few years, new providers enabled by digital technologies have entered the payment services market, in particular offering “open finance” solutions. These solutions are not always efficient and secure. In response to this development, the EU proposed a Financial Data Access Regulation (FiDA). This framework aims to address these problems by enabling consumers and firms to better control access to their financial data, establishing clear rights and obligations to manage customer data sharing in the financial sector beyond payments accounts, which will lead to more innovative financial products. Final adoption of FiDA is still pending; a phased implementation is expected to begin in 2027.

Some key aspects of FiDA are expansion beyond open banking, customer consent and the introduction of new players. FiDA includes a wider range of financial data such as insurance, mortgages and investments, while PSD II focused on payment accounts. Customer consent is central to FiDA, as financial data can only be shared with a customer’s explicit consent. Regarding the introduction of new players, FiDA will create a new category of regulated entities called financial information service providers (FISPs).



Law and Practice

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Al Busaidy, Mansoor Jamal & Co (AMJ) is an independent, award-winning, full-service law firm of international standard that has been established in Oman for over 40 years. The firm has one of the largest, most diverse practices in Oman, with a 30-strong resident team of lawyers comprising eight partners, experienced solicitors, barristers, Arab law specialists and Omani advocates, backed by a 28-strong support team. The firm's solicitors and barristers, trained in the UK, US, Commonwealth and leading legal jurisdictions in the MENA region, include most of

Oman's elite legal practitioners, recognised for their involvement in precedent-setting, award-winning cases that are "first of a kind" deals and projects in Oman and the region. They combine a wealth of experience of international practice with in-depth local knowledge and advanced linguistic capability, to act effectively on behalf of clients ranging from government and state-owned enterprises to multinational, blue chip companies, financial institutions, start-ups and foreign investors.

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1. Legal Framework

1.1 Key Laws and Regulations

The Banking Law (Royal Decree 2/2025, replacing Royal Decree 114/2000, the previous banking law) is the primary banking legislation in Oman. The Central Bank of Oman (CBO) is the designated regulator of the banking sector. Pursuant to its powers under the Banking Law, the CBO has issued a number of regulations, circulars and directives, all of which, collectively with the Banking Law, regulate the banking sector in Oman.

Banks in Oman may also engage in various activities relating to the field of securities, which are regulated by the Financial Services Authority (FSA). The principal laws governing the provision of services relating to the field of securities include the Securities Law (Royal Decree 46/2022) and the Executive Regulations of the Capital Market Law (CMA Decision 1/2009) (the “Executive Regulations”). The Securities Law repealed the earlier Capital Market Law, however the Executive Regulations issued under the earlier Capital Market Law are still in force until such time as new regulations under the Securities Law have been issued.

2. Authorisation

2.1 Licences and Application Process

The Banking Law and regulations apply to locally incorporated banks (to be Omani listed companies) as well as foreign banks incorporated in other jurisdictions that are granted a licence to establish a branch in

Oman. Application for setting up a new bank in Oman (whether a local bank or a branch of a foreign bank) is a two-stage process.

Application Process

Stage 1

Stage 1 involves the sponsor submitting an application for the granting of a licence to establish the proposed bank in Oman. This entails submission to the CBO of:

- a completed application form for the banking licence;
- if an Omani entity, proof that the proposed bank will take the form of a public joint stock company, together with a copy of its proposed memorandum of association drafted in accordance with the provisions of the Commercial Companies Law;
- if a foreign entity, a copy of its memorandum or articles of association, and evidence that it is authorised to conduct banking business in its home country;
- an “action plan” that includes information on the geographical and commercial groups that the applicant will serve, the extent to which those groups need the banking services it will provide, and any other information stipulated in the regulations and decisions issued by the CBO;
- payment of the prescribed fee;
- a pro forma balance sheet;
- payment of application fees for issuance of the banking licence in the sum of OMR6,000 for the head office and OMR600 for each branch; and

- a list of names of all members of senior management who will be employed in Oman, as well as their CVs.

Following receipt of an application with all the supporting documents, the CBO is required to make a decision in relation to the application for a banking licence within 90 days of completion of the application (previously 120 days). This also applies in relation to licence applications for bank branches. A lack of response from the CBO within the 90-day period is now deemed to be an acceptance of the application, rather than a rejection, as previously.

A foreign bank that is not licensed in Oman may now open a representative office, provided it obtains a licence from the CBO to do so, pays the requisite fee, and only if:

- it does not have a branch in Oman;
- its activity is limited to studying markets and investment opportunities and acting as a link between its head office abroad and banks in Oman;
- it does not engage in banking business, financial activities or any other activities in Oman that are subject to another regulatory authority; and
- such representative office remains under the control and supervision of the CBO.

Stage 2

Following notification by the CBO of its approval of a licence application, the applicant has 360 days within which to commence operations. If the applicant does not commence banking business within that time period, its licence will automatically be revoked unless the CBO agrees to extend this period.

One of the key tasks during Stage 2 is for the applicant to complete its corporate structuring formalities, which include incorporating the company (or registering the foreign entity) in Oman and completing all related formalities. As banks are required to be public joint stock companies, the process of an initial public offering must also be completed.

Other key tasks include leasing premises where the bank proposes to undertake its banking business,

and obtaining all the necessary clearances from the municipality concerned and the Royal Oman Police. Once all the conditions required by law have been fulfilled, the bank may commence banking operations.

Types of Licence

The CBO issues banks with a commercial banking licence which authorises the licensed bank to undertake all banking activities and functions within the meaning of “banking business” as defined in Article 49 of the Banking Law (with the exception of Islamic banking, digital banking and investment banking activities, for which, in each case, a separate licence is required).

Investment banking

Licensed banks require prior approval from the CBO if they intend to carry out investment banking activities with regard to securities. This could include financing companies providing project advisory services, investment brokerage, investment advisory services, investment management, underwriting of stock issues, trust or fiduciary services, and brokerage activities. These all constituted investment banking activities under the previous legislation, with regard to which, the Banking Law clarifies that the licensed bank must obtain the prior approval of the CBO before obtaining a licence from the FSA for the conduct of any securities-related activities regulated by the FSA.

Digital banking

The Banking Law defines a digital bank as being a licensed bank conducting banking business through digital platforms or channels using modern technological techniques. It further provides that digital banks are regulated by the CBO pursuant to provisions yet to be issued by the CBO. The regulatory framework for digital banks allows for a 90-day period for the CBO to approve or reject an application, with the establishment process needing to be completed within one year of in-principle approval.

Islamic banking

The Banking Law sets out a framework for Islamic banking in Oman, including provisions relating to licensing, governance (in accordance with Sharia principles), and financial instruments such as sukuks. The Banking Law changes very little of the regime previ-

ously applicable to Islamic banking business, with the following exceptions.

- Article 130 of the Banking Law now allows Islamic banks to establish and own special purpose vehicles, as well as to own, sell, buy or rent real estate property (which is often a core component of Islamic finance structures).
- Article 129 also allows conventional banks to convert Islamic windows into local Islamic banks through its subsidiaries.

As noted above, a separate Islamic banking licence issued by the CBO allows a bank to provide Islamic banking products and services to its customers within the regulatory regime of the Islamic Banking Regulatory Framework (IBRF) issued by the CBO.

With regards to investment banking, CBO Circular BM 720 and Regulation BM/REG/38/04/94 (the “CBO Investment Banking Regulations”) provide a framework for regulating certain “investment banking” activities, as listed in the CBO Investment Banking Regulations, which may be undertaken by banks subject to obtaining an investment banking licence.

Article 4 of the CBO Investment Banking Regulations provides for “investment banking activities” to comprise the following, for which an investment banking licence will be required:

- Corporate finance – the financial advisory services relating to the public raising of capital on the Muscat Stock Exchange (“MSX”), loans, and M&A of, or by, publicly quoted companies. This includes the preparation of prospectuses relating to such activities.
- Project finance – the preparation of detailed plans, analyses and forecasts for the financing of projects and for raising capital on the basis of the forecasts through limited circulation of the prospectus to unconnected third parties.
- Investment brokerage and investment advisory services – the offer of brokerage services, in or from Oman, for the purchase and sale of securities on an agency basis and the offer of investment advisory service to clients for the following: (i) securities

quoted on the MSX; and (ii) securities approved by the CBO.

- Investment management (discretionary) – the provision of a fully discretionary investment management service subject to a discretionary management agreement for the following: (i) securities quoted on the MSX; and (ii) securities approved by the CBO.
- Underwriting of securities –
 - (a) lead underwriting: contracting with an issuer of stock or debt finance and guaranteeing the part or total placement of the issue, whether private or public, for a fee; or
 - (b) sub-underwriting: contracting with a lead underwriter and guaranteeing the part placement of an issue, whether private or public debt or equity, for a fee.
- Custodian and fiduciary services – the acceptance and administration of securities in safekeeping, and the exercise of trustee functions for third parties.

In this respect, there is some overlap between activities that fall within the domain of “investment banking”, which is regulated by the CBO, and activities in the “field of securities”, which are regulated under the Securities Law by the FSA. The following activities, as set out in Article 21 of the Securities Law, require a licence from the FSA:

- intermediation (brokerage);
- market making;
- custodianship;
- asset management;
- margin financing; and
- investment banking.

Should there be any overlap between the CBO and FSA in respect of an activity that a licensed bank intends to undertake, the bank is required to obtain the necessary licences from both the CBO and FSA before undertaking such activities.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Banking Law Restrictions

All local banks in Oman are required to be established as public listed companies (unless they have a specific exemption, pursuant to a Royal Decree). The Banking Law (Articles 68 to 71) provides a number of restrictions on the transfer of shares in banks, as summarised below:

- a notification requirement if between 5% and 10% of the issued voting share capital of a bank is to change ownership;
- prior approval from the CBO if more than 10% of the issued voting share capital of a bank is to change ownership; and
- prior approval from the CBO will be required for a commercial company or other business entity holding 10% or more of the voting shares, or the equivalent thereof, of a licensed bank to merge into, or combine with, or effect a consolidation with, any other business entity; or to issue, authorise or record the transfer of any interest that in itself is in excess of 25% of its outstanding voting shares, or the equivalent thereof, to any person or any group of persons acting jointly or to a common purpose.

Limits on Shareholdings

Additionally, the CBO has established the following limits on shareholdings by an individual or corporate entity and its related parties in a bank:

- an individual shareholder together with related parties may hold up to 15% of the voting shares in a bank;
- an incorporated body (other than a joint stock company) together with its related parties may hold up to 25% of the voting shares in a bank; and
- a joint stock company or holding company, together with its related parties, may hold up to 35% of the voting shares in a bank (the CBO has in the past extended this definition to include foreign joint stock companies).

If a proposed transaction results in the merged entity acquiring more than 35% of the market share of the relevant business sector, then it will be necessary to secure a competition/merger approval from the Ministry of Commerce, Industry and Investment Promotion, which regulates competition matters under the Competition Law (Royal Decree 67/2014).

The Takeover Code

As most banks in Oman are Omani listed companies, any acquisition of more than 25% of the shares of a listed company would trigger the Omani Takeover Code (CMA Decision 2/2019). In terms of the letter of the law, the Takeover Code provides that any acquisition of more than 25% of the shares of a listed company may only be effected through a mandatory tender offer (MTO) which is made to all shareholders of the company. The Takeover Code does not recognise any concept of a direct block transfer/sale of shares and instead requires that the MTO is made to all the shareholders so they can acquire shares on a pro rata basis, and so that if a buyer intends to acquire 51% of the shares in a bank held by a certain shareholder, it will need to make an offer to acquire a higher percentage of shares, in order to allow for a margin to cater for acceptances by shareholders other than the primary selling shareholder. Having noted the above, in a number of precedent deals in Oman, the FSA has provided exemptions to acquirers from the requirements of an MTO set out in the Takeover Code, and has also permitted acquirers to enter into direct bilateral deals of more than 25% shareholding.

4. Governance

4.1 Corporate Governance Requirements

Pursuant to CBO Circular BM 932, the CBO has prescribed a Code of Corporate Governance for Banking and Financial Institutions which sets out the principles of role, responsibility and accountability of the board of directors and senior management of licensed banks operating in Oman. In the case of a branch of a foreign bank operating in Oman, such branch would not have a board of directors and accordingly, the provisions relating to boards of directors would not be applicable, although the provisions relating to the CEO/manager will be applicable.

In addition to the above, all public listed companies are required to comply with the Code of Corporate Governance for Listed Companies (CMA Decision 27/2021) (the “Code”), which is a comprehensive code on corporate governance. The Code is binding on all public listed companies and, as locally incorporated banks operating in Oman are public listed companies (with one exception), the CBO has specifically directed listed banks to comply with the provisions of the Code. In summary, the Code provides a legal framework and clarifies the principles for the management and control of listed companies and, among other things, outlines the composition of the board and its committees, as well as the functions and powers attributed to them.

4.2 Registration and Oversight of Senior Management

In accordance with the Banking Law, a licensed bank’s CEO and other senior management staff can only be employed by the bank if such appointment has been approved by the CBO, and the proposed personnel satisfy the CBO’s “fit and proper” criteria, outlined below.

“Fit and Proper” Criteria

CBO Circular BM 954 provides that the CBO requires licensed banks to ensure, before seeking the CBO’s approval for the appointment of senior management members, that the proposed appointee meets the following “fit and proper” criteria:

- the person has not been convicted of any crime, unless cleared by a judicial authority;
- the person has not committed an offence involving fraud or other dishonesty or violence;
- the person has not acted in contravention of any statute of the Sultanate of Oman or abroad, or provisions thereof established for the purpose of protecting members of the public from financial loss due to dishonesty, incompetence or malpractice by the person concerned;
- the person has not been involved in any deceptive or oppressive practices (whether lawful or not) which would cast doubt on their integrity and that of the business; and
- the person has not been involved or associated with any other business practices, or otherwise

conducted themselves in such a way as to cast doubt on their competence and soundness of judgement.

In addition to the above, licensed banks are required to look into the previous conduct and activities in business and financial matters of the proposed appointee and take into account other positions held by such person, as well as consider their financial solvency, qualifications, experience and expertise in the relevant position they are proposed for.

Other Documentation

The process of obtaining the CBO’s approval involves submitting the CBO’s prescribed application form along with the profile/CV of the proposed appointee, together with supporting documentation (which includes undertakings from the bank as well as the proposed appointee regarding the appointee’s experience/qualifications, etc). In the case of the incorporation of a new bank, the appointment applications must be submitted to the CBO at the same time as the banking licence application. In all subsequent cases, applications are submitted as and when a vacancy arises which has to be filled.

The CBO has the discretion to reject any proposed appointee or to displace any director, executive officer, general manager or deputy general manager by passing a direction in the interests of depositors and customers of the bank.

Omanisation Targets

Furthermore, in accordance with CBO Circular BM 1105, banks are also required to achieve and maintain the following Omanisation targets in each cadre of staff, in addition to achieving the overall Omanisation target of 90%:

- senior/top management – 80%;
- middle management – 90%; and
- clerical/non-clerical staff – 100%.

4.3 Remuneration Requirements

Through Circular BM 1135, the CBO has issued instructions to all banks operating in Oman to comply with the “Sound Compensation Principles and Standards” issued by the Financial Stability Board

(FSB) regarding the reward/compensation of senior management. The Circular provides that, in order to protect the financial stability of banks, to avoid losses likely to arise from giving excessive rewards to senior management, and to streamline the applicable processes, it is necessary for banks to strike a balance between risks and rewards. All banks are required to have a remuneration committee of the board of directors in order to decide on the remuneration of senior management in line with the FSB's "Sound Compensation Principles and Standards", without the need for the CBO's involvement.

With respect to branches of foreign banks, the circular states that foreign banks should review their policies/practices as required, however, it does not provide any other guidance.

It is also important to note the various limitations on remuneration payable to directors of listed companies (given that the majority of banks operating in Oman are listed companies). Article 129 of the CMA's Executive Regulations for Listed Companies (MD 27/2021) (the "SAOG Regulations") stipulate that the sitting fees of directors and subcommittees are to be approved at the company's ordinary annual general meeting, provided that the sitting fees are not more than OMR10,000 for each director per annum.

With regard to directors' remuneration, this can only be paid from the net profits of the company after the deduction of taxes, legal and optional reserves, and the funds allocated from the profits for capitalisation and dividends. Directors' remuneration should also be approved by the ordinary general meeting, provided that:

- it does not exceed OMR300,000 per annum for a company that realised net profits equal to or exceeding the profits realised in the previous financial year, where the company has no accumulated losses or losses in the capital; or
- it does not exceed OMR150,000 per annum for a company that realised net profits less than the profits realised in the previous financial year, where the company has no losses in capital.

5. AML/KYC

5.1 AML and CFT Requirements

The cornerstone legislation governing AML/CFT in Oman is the Anti-Money Laundering and Combating Terrorism Financing Law (Royal Decree 30/2016) ("AML/CFT Law"). The AML/CFT Law and the Executive Regulations of the AML/CFT Law ("AML Executive Regulations") seek to counter money laundering and the financing of terrorism activities in Oman.

The AML/CFT Law applies to banks/financial institutions, non-financial businesses and professions and non-profit associations. Banks are obliged to retain records, documents, information and data relating to the identity of actual clients and beneficiaries, and their activities and transaction records, in a way that facilitates retrieval upon request in accordance with the provisions of the AML/CFT Law for a period of ten years commencing from the date of:

- conducting or initiating the transaction; or
- expiry of the business relationship; or
- completion of the transaction, of a customer with whom it has no business relationship.

Upon request, a bank will provide these records and documents to the judicial authorities, the National Financial Information Centre and other regulatory bodies (including the CBO). Banks may keep authenticated copies of these records, documents, information and data. Under the AML/CFT Law, banks are obliged to notify the National Financial Information Centre immediately in the event of any suspicion, or existence of reasonable grounds for suspicion, that any funds routed through the bank relate to the proceeds of crime, money laundering or terrorism financing ("Proceeds of a Crime"). The AML Executive Regulations specify the records, documents, information and data that must be retained.

The AML/CFT Law and Executive Regulations set out a number of obligations regarding checks that a "covered institution" is required to undertake, namely:

- correctly identifying the relevant counterparties, clients and beneficiaries to a transaction;

- determining whether a client or beneficial owner is a politically exposed person (PEP) and carrying out further due diligence for PEPs; and
- undertaking further due diligence in respect of any party for whom it opens a bank account.

Banks are not permitted to open anonymous accounts or accounts under assumed or fictitious names or numbers or codes and are not permitted to provide any services to such accounts. Banks are required to undertake the necessary due diligence to identify their clients, using reliable and independent sources, documents, data and information in the following cases:

- before establishing a business relationship;
- before carrying out a transaction for a customer with whom the bank does not have an established business relationship;
- before executing a wire transfer for a customer with whom the bank does not have an established business relationship;
- where there is suspicion of a crime of money laundering or terrorism financing; and
- where there are doubts concerning the accuracy or adequacy of information and/or documentation received from the potential and/or existing customer.

It is also important to monitor all existing relationships and client transactions on an ongoing basis to ensure that information regarding such relationships is consistent with the client due diligence information held on file for that client.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS) The Bank Deposit Protection Law (Royal Decree 47/2024)

The Bank Deposit Protection Law (BDPL) was promulgated in October 2024 to replace the previous Bank Deposit Insurance Scheme. The BDPL sets out a framework for protecting deposits in both the conventional and Islamic banking sectors in the event of the default of a licensed bank or financial institution. One of the aims of the BDPL framework is to safeguard depositors and enhance public confidence in

the financial system in Oman. Specialised funds and strict regulatory requirements ensure a safe environment for depositors, with all eligible deposits automatically covered under the system.

As noted by the CBO, the main objectives of protecting bank deposits include:

- providing comprehensive protection of deposits to encourage savings;
- enhancing confidence in the soundness of the financial position of the banking sector in Oman; and
- minimising the effects of systemic risks in the banking sector.

Further, the BDPL provides comprehensive protection cover for specific deposits with banks operating in Oman. It aims to compensate depositors without delay, especially those with relatively small savings. This has the effect of ensuring that the system operates to bridge the financing gap until the liquidation procedures in relation to the failed bank are finally resolved. The CBO supervises the system.

Eligibility of deposits

The accounts eligible for protection under the framework set out in the BDPL include savings deposits, current accounts, call deposits, time deposits, government deposits, deposits of trust funds and pension funds, or any other deposits of a similar nature, and any other deposits determined by the CBO.

The BDPL sets out a limit for insured eligible deposits, capped at OMR20,000 per depositor (although this limit may be amended by the CBO, according to prevailing economic and financial conditions). This limit applies to various types of accounts, covering individual and corporate depositors. If a depositor has more than one account with the same defaulting bank, the amounts deposited in all accounts eligible for coverage are aggregated to calculate the compensation amount. Accounts eligible for coverage in relation to the same depositor over different banks are dealt with independently, so the depositor could receive the maximum compensation amount of OMR20,000 from each bank.

Certain deposits are excluded from the coverage noted above, including deposits held by bank executives, external auditors and affiliated companies of the depositors. The payment of compensation to depositors must be made within seven business days of a bank's liquidation or suspension, thus ensuring swift resolution for depositors.

Funds

The BDPL has established two independent funds: the Takaful Fund for the Protection of Deposits with Licensed Islamic Institutions (the "Takaful Fund") and the Insurance Fund for the Protection of Deposits with Licensed Conventional Institutions (the "Conventional Fund"). Both funds have the same aim of compensating depositors in the event of a bank failure, with each fund initially capitalised at OMR10 million. The CBO contributes half of the capitalisation of each fund and the balance comes from licensed banks or Islamic financial institutions (as appropriate in relation to each fund).

The CBO will exercise ongoing regulatory oversight over both funds to ensure they remain adequately capitalised and properly managed. Financial institutions (in both the Islamic and conventional sectors) must also make annual contributions that are proportional to their total respective deposit balances to maintain the capitalisation of the funds. Additionally, the Takaful Fund is required to comply with Sharia principles, in managing its affairs and investing its funds (including the operation of this fund being subject to Sharia audit by independent auditors appointed by the CBO's Board of Governors).

Management

The BDPL sets out strict governance standards for both funds. A management committee is appointed by the CBO and is responsible for overseeing each fund's operations. Regular audits and annual reporting requirements have been introduced to maintain transparency. Fund performance reports must also be made available to the public on a regular basis.

Licensed financial institutions are subject to various penalties for non-compliance, including fines, suspensions, or removal from the commercial registry. Where financial institutions do not make any required fund

contributions, the CBO is authorised to deduct overdue amounts from their accounts held with the CBO or to impose fines.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Basel III Standards

The CBO has directed all banks to comply with the Basel III Standards and has issued a number of circulars and guidelines on adherence to and compliance with the various requirements prescribed by the Basel III Standards (eg, the Net Stable Funding Ratio (NSFR)). Through CBO Circular BM 1147 and the Basel III Net Funding Ratio Guidelines issued by the CBO, the CBO has directed all banks in Oman to comply with the NSFR disclosure requirements, as set out in the Circular. The CBO's Guidelines provide guidance on the NSFR with the objective of reducing funding risk over a longer time period by requiring banks to fund their activities with sufficiently stable sources of funding. Section 2 of the Guidelines provides minimum requirements, definitions, etc. Section 3 discusses application issues for the NSFR, such as scope of application, implementation date, etc. The disclosure requirements for the NSFR are set out in Section 4 of the Guidelines, including a common template the banks must use to report their NSFR results and selected details of the NSFR components.

See the section on "Capital Requirements and Capital Buffers" below for more information regarding the capital requirements set out in the Basel III Standards.

Risk Management Rules

CBO Circular BM 955 requires all banks operating in Oman to comply with CBO's Guidelines on Risk Management Systems. The Guidelines broadly cover management of credit, the market and operational risks. Due to diversity and the varying size of balance sheet items, it may not be possible or necessary for all banks to adopt uniform risk management systems. The design of a risk management framework is required to be orientated towards the bank's own specific requirements, dictated by the size and complexity of its business, risk philosophy, market perception and

the existing level of capital. The Guidelines are purported to serve as a benchmark for banks, which are yet to establish integrated risk management systems. Banks are permitted to develop their own systems compatible with the type and size of their operations as well as their risk perception.

Capital Requirements and Capital Buffers

Through CBO Circular BM 1114, the CBO has directed all banks to comply with the CP-1 Guidelines on Regulatory Capital Under Basel III and CP-2 Guidelines on the Composition of Capital Disclosure Requirements. Banks are required to implement the capital adequacy framework under Basel III. The Basel III framework is applicable to all banks at consolidated bank level, as well as at standalone level.

Multinational banks are required to follow the more stringent of the regulations between those of the home jurisdiction and the host jurisdiction. Banks are required to ensure a total capital adequacy ratio of 12% of risk-weighted assets. Of this, Common Equity Tier 1 capital should be maintained at a minimum level of 7% and Tier 1 capital at a minimum of 9% of risk-weighted assets. A capital conservation buffer of 2.5% of risk-weighted assets, comprised of Common Equity Tier 1, is in addition to the minimum Total Capital Adequacy ratio. The counter-cyclical buffer, if required, is at a maximum level of 2.5%.

Furthermore, through CBO Circular BM 1140, the CBO has directed all banks in Oman to comply with the Concept Paper on Capital Buffer Requirements under Basel III, issued by the CBO. The Concept Paper provides, among other things, a capital conservation range table (including a counter-cyclical buffer), instructions on the release of the buffer, treatment of surplus when the buffer returns to zero, calculation of the buffer requirement, calibration of thresholds, performance of variables for signalling release of the buffer, etc.

Liquidity Requirements

Pursuant to CBO Circular BM 1127, the CBO has directed all banks in Oman to comply with the framework on Liquidity Coverage Ratio (LCR) and LCR disclosure standards. The standard LCR became effective from 1 January 2015, with a minimum ratio of 60%

which increased by 10% every year until it reached a minimum of 100% in 2019. The LCR is still understood to be at 100%.

The objective of the LCR is to promote the short-term resilience of a licensed bank's liquidity risk profile by ensuring that it has sufficient high-quality liquid assets (HQLA) to survive a significant stress scenario lasting for 30 days.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The CBO has issued the Bank Resolution Framework (BRF), which is part of the overall regulatory and supervisory architecture of the CBO, and which has the aim of preventing a bank from reaching a phase of failure or resolution in the first instance. The BRF charts out prompt corrective actions to be taken by a bank if the capital conservation buffers are drawn down, or if there are weaknesses in liquidity, asset quality or other aspects of operation. The BRF further provides a mechanism for an institution-initiated recovery plan if the bank hits certain thresholds. Lastly, if the recovery plan fails, the BRF provides a resolution toolkit for the orderly exit of the bank, with the aim of avoiding excessive market disruption and ideally avoiding the need for any capital support from the government (other than in its capacity as a shareholder), all while at the same time preserving critical functions once it is clear that the institution is no longer viable.

The BRF has been prepared in line with the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regime, which is a global standard in respect of bank recovery/resolution processes.

Pursuant to the Banking Law, the CBO is the resolution authority for all banks in Oman and it retains the power to adopt and implement any resolution measures in respect of banks licensed by it. A resolution event may be triggered if:

- in the CBO's assessment, the institution is no longer viable or is likely to be no longer viable;
- in the CBO's assessment, no action(s) other than resolution measures can be taken within a reasonable

- a resolution measure is necessary to preserve financial stability and safeguard the public interest.

A resolution event may also be triggered due to any systemic event which requires immediate action by the CBO. Such events could include circumstances where a bank or group of banks is unable to provide the products or services that they have contractually undertaken to provide; or if there is an actual or perceived loss of confidence in the ability of one or more banks or the financial system to continue to provide financial products or services (to an extent that could have a substantial adverse effect on the financial system and economic activity in Oman, irrespective of the event or circumstance occurring or arising inside or outside of Oman).

Article 9 of the BRF provides that the general principle to be applied in any resolution process is that “no creditor will be left worse off” than they would have been under the usual insolvency/liquidation regime.

The BRF, read with Article 230 of the Banking Law, provides that in the event of a resolution process, priority of payments will be as follows:

- Unpaid monthly wages for workers within the range of three months or OMR10,000, whichever is less, in addition to any unpaid claims relating to their other entitlements.
- The claims of the fund established to secure and protect bank deposits as a guarantor of such deposits, as follows:
 - (a) the net amount due for payment to depositors as determined by the fund;
 - (b) instalments payable to the fund;
 - (c) loans and advances due to the fund; and
 - (d) any other dues to the fund.
- All claims of the CBO.
- The claims of other creditors of the bank under liquidation, including the rights of depositors that are not covered pursuant to the Law of Bank Deposits Insurance Scheme.

9. ESG

9.1 ESG Requirements

As of the date of publication of this Practice Guide, the CBO has not issued any regulatory requirements or guidelines in relation to ESG. However, the MSX recently issued its environmental, social and governance (ESG) guidelines (the “ESG Guidelines”). The ESG Guidelines are applicable to all listed companies and therefore apply to the majority of banks operating in Oman. The ESG Guidelines align with the Gulf Cooperation Council’s GCC ESG Disclosure Metrics for listed companies published in 2022.

The ESG Guidelines encourage listed companies to voluntarily report on their ESG performance and compliance in 2024 for all ESG-related activities undertaken in 2023. Reporting is mandatory for all listed companies from the year 2025 onwards and the mandatory reports for activities undertaken in 2024, for example, had to be filed by 31 March 2025 at the latest.

As per the ESG Guidelines, the business case for ESG reporting includes several factors, such as meeting investor demands, achieving operational improvements, complying with an evolving regulatory environment, enhancing financial performance, improving reputation, and maintaining effective risk management.

The ESG Guidelines provide 30 measures to assess a listed company’s impact on environmental sustainability, social responsibility and governance matters. These measures include matters such as board diversity, labour practices, carbon emissions, etc.

From 2025 onwards, listed companies will be required to publish standalone ESG reports according to the Global Reporting Initiative (GRI) Universal Standards. These reports will be required to document changes in any performance measures, such as diversity at various institutional levels, etc.

10. DORA

10.1 DORA Requirements

DORA requirements are not applicable to Omani licensed banks.

11. Horizon Scanning

11.1 Regulatory Developments

Regulatory reforms are expected in the areas of capital markets and banking, with new regulations governing banking, sovereign debt and capital markets expected to come out in 2026. At this point in time, the most anticipated regulations are the new executive regulations of the Securities Law, which are expected to replace the current prevailing regulations issued under the now-repealed Capital Market Law. The new executive regulations of the Securities Law are expected to address, among other things, the specific activities or persons that do (or do not) require regulatory licences from the FSA, as well as those activities that FSA-licensed entities are prohibited from conducting. Given that most banks in Oman also undertake and provide various services in the field of securities, the executive regulations of the Securities Law are expected to be a major regulatory development for banks, once the said regulations are issued.

In terms of other regulatory developments, in 2024 the FSA circulated the new bonds and sukuk regulations. It is expected that the new regulations will focus on building up the regulatory infrastructure of the financial sector to cope with the current requirements of the Omani market through diversification of investment and financing instruments. The regulations are also anticipated to be aligned with the objectives of Oman's Vision 2040. According to the FSA, the key strategic objectives of issuing the new regulations will be to help enable flexible and convenient financing arrangements (both conventional and Islamic), in line with prevailing global norms.

A draft Open Banking Regulatory Framework was approved for public consultation in July 2024. This is a very important part of the process of technological development and innovation in the financial sector. Its main aim is to set up interfaces between banks and third-party providers and it includes regulations on data security and authentication.

Commencing in 2026, licensed banks will be required to disclose climate-related risks. This reflects a global shift towards decarbonisation and the potential impact on Oman's hydrocarbon-reliant sectors.

Trends and Developments

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Al Busaidy, Mansoor Jamal & Co (AMJ) is an independent, award-winning, full-service law firm of international standard that has been established in Oman for over 40 years. The firm has one of the largest, most diverse practices in Oman, with a 30-strong resident team of lawyers comprising eight partners, experienced solicitors, barristers, Arab law specialists and Omani advocates, backed by a 28-strong support team. The firm's solicitors and barristers, trained in the UK, US, Commonwealth and leading legal jurisdictions in the MENA region, include most of

Oman's elite legal practitioners, recognised for their involvement in precedent-setting, award-winning cases that are "first of a kind" deals and projects in Oman and the region. They combine a wealth of experience of international practice with in-depth local knowledge and advanced linguistic capability, to act effectively on behalf of clients ranging from government and state-owned enterprises to multinational, blue chip companies, financial institutions, start-ups and foreign investors.

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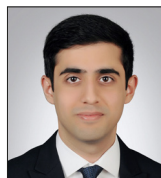


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Overview

Oman's banking sector is undergoing significant legal and regulatory modernisation to align with Oman Vision 2040's goals of economic diversification, digital transformation, and enhanced financial stability. The Central Bank of Oman (CBO) has been pivotal in driving reforms, focusing on digital innovation, customer protection, and stronger oversight. Key trends include the introduction of a new comprehensive Banking Law, frameworks for digital banks, deposit protection mechanisms, and specialised judicial processes for financial disputes. These changes aim to boost competitiveness, attract foreign investment and integrate fintech, while maintaining robust compliance and risk management. Challenges involve adapting to heightened penalties and shareholding restrictions, but opportunities arise from improved governance and financial inclusion.

Major Legal Reforms: The New Banking Law (Royal Decree 2/2025)

The cornerstone of recent developments is the New Banking Law, promulgated via Royal Decree 2/2025 and effective from 1 January 2025. This law repeals and replaces the outdated Banking Law of 2000 (Royal Decree 114/2000), introducing sweeping changes to modernise the sector. Key provisions include the following.

Expanded regulatory authority

CBO's oversight now explicitly covers digital banks (defined as institutions operating via digital platforms using advanced technologies) and investment banks, in co-ordination with the Securities Law (Royal Decree 46/2022). The CBO must decide on licence applications within 90 days (reduced from 120 days), and it regulates a broader range of financial activities, including financing, leasing, money transfers, electronic services, crowdfunding, and Sharia-compliant operations.

Licensing and structural requirements

Local banks must operate as public joint-stock companies to obtain licences and no entity can conduct banking or financial activities without CBO approval. Foreign banks may apply to establish representative offices. Securities-related activities (eg, brokerage,

underwriting, custody) require prior CBO consent, before seeking other regulatory approvals.

Foreign lending

Overseas lenders may lend to Omani borrowers through local security and facility agents, without being required to have a business presence in Oman or to be licensed by the CBO.

Governance enhancements

The law mandates independent directors, strengthens Sharia governance for Islamic banks, and allows conventional banks to convert Islamic windows into separate entities. Islamic banks can form special purpose vehicles for compliant transactions. Strict confidentiality rules apply, with disclosures limited to specific scenarios like judicial orders or client consent.

Customer protection and transparency

Banks must provide clear, fair information on products, avoid misleading advertising, and refrain from restrictive practices that limit customer access to other institutions. A price list for services must be published, and data handling is tightly regulated.

Penalties and compliance

Violations, such as unauthorised banking or confidentiality breaches, now carry steeper fines (eg, OMR1,000 to OMR5,000 per day for misuse of "bank" terminology) and potential imprisonment (ranging from three months to three years). Entities had until June 2025 to comply fully.

This law positions Oman as a more attractive hub for international banks and fintechs, emphasising innovation while safeguarding stability.

Digital Banking and Fintech Regulations

Building on the New Banking Law, the CBO issued Decision 25/2025 on 1 June 2025, establishing a dedicated Regulatory Framework for Digital Banks. This integrates digital operations into the broader reforms, promoting financial inclusion for non-banking populations.

Licensing categories

Two tiers exist: Category 1 (unrestricted banking, minimum capital OMR30 million for local banks) and

Category 2 (restricted activities, eg, deposit and lending caps, minimum capital OMR10 million). Foreign branches have CBO-determined capital requirements.

Shareholding and Omanisation

Caps on ownership (eg, 15% for individuals, 35% for joint-stock companies) prevent concentration. Omanisation targets start at 50% in year one, rising to 90% by year five. A physical presence in Oman is mandatory, but not for customer transactions.

Application and exit requirements

Applicants need a detailed business plan, financial projections, and proof of fit-and-proper status. A five-year exit plan ensures orderly wind-down without systemic disruption. Decisions are made within 90 days.

Additionally, Oman expanded digital infrastructure with the Direct Debit System in May 2025, adopted by several banks to streamline payments and support fintech growth.

Deposit Protection and Consumer Safeguards

In September 2025, the Bank Deposits Protection Law came into force, providing compensation to savers in case of bank defaults, enhancing depositor confidence. Supporting this, the CBO issued Executive Regulation (Decision CB/60/8/2025) on 26 August 2025, detailing implementation. These measures align with global standards for financial stability.

Broader Trends and Implications

Legal trends emphasise digitalisation, with open banking frameworks (approved early 2025) enabling data sharing and API integrations for personalised services. Islamic banking regulations remain aligned with Sharia principles, showing 18% asset growth. Stricter AML/KYC and cybersecurity rules are being enforced to combat risks.

These developments foster a resilient sector, with credit growth at 8.6% and deposits at 7.0% as of August 2025. However, banks face compliance burdens from new penalties and restrictions. Future outlook includes potential cryptocurrency integration and sustainability-focused regulations, positioning Oman competitively in the Gulf Cooperation Council (GCC).

Mandated Sectoral Lending/Financing Targets

The CBO issued CBO Circular BM 1212 on 29 January 2025, in which it directed licensed banks to achieve certain sectoral lending/financing targets over a period of six years (ie, by not later than 31 December 2030). Accordingly, banks are expected to set annual targets for each of the following sectors with the lending/financial targets set out against them:

- Agriculture and Fisheries – 6% annual growth rate on “existing lending/financing” or 7% of total credit/financing, whichever is higher.
- Mining – 6% annual growth rate on “existing lending/financing” or 7% of total credit/financing, whichever is higher.
- Education – 1.5% of total credit/financing.
- Healthcare – 1.5% of total credit/financing.
- Logistics and Transport – 8% annual growth rate on “existing lending/financing” or 7% of total credit/financing, whichever is higher.
- Renewable Energy – 8% of total credit/financing.
- Technology – 4% of total credit/financing.
- Tourism – 6% annual growth rate on “existing lending/financing” or 5% of total credit/financing, whichever is higher.

Clarification on interest rate limits

Article 80 of the Oman Commercial Law empowers the Ministry of Commerce, Industry and Investment Promotion (MOCIIP), formerly the Ministry of Commerce and Industry, in agreement with the Oman Chamber of Commerce and Industry (OCCI) to specify interest rate limits every year, within which interest rates on commercial credit may be charged, taking into account the term of the loan and the purposes and risks thereof. Until 15 March 1995, the Ministry of Commerce and Industry (as it was then called) had deregulated the rates of interest. However, with effect from that date, the MOCIIP specified rates for the maximum revenue that a creditor could receive on a loan or commercial debt. Article 80 gave rise to uncertainty in terms of whether or not the maximum interest rates made applicable to creditors would also apply to banks and finance companies. In 1995, the MOCIIP issued a clarification and continued to do so in its annual interest rate determinations, made through the issuance of a ministerial decision, that the rate of interest fixed by it with the OCCI would not apply to financing

made available by Omani licensed banks and financing companies. The implication of this is that foreign lending banks and financial institutions may not be covered by the clarification provided in the MOCIIP's annual interest rate determination. Consequently, when lending to borrowers in Oman, foreign banks are required to obtain specific approvals from the MOCIIP in cases where they are proposing to charge a higher interest rate than that provided in the MOCIIP's annual determination.

For the ongoing development and enhancement of the laws and regulations enforced in Oman to encourage and attract foreign investments, the most recent Ministerial Decision 409/2025 issued by the MOCIIP (published on 2 October 2025) permits creditors to charge interest at a maximum rate of 6% per annum on commercial loans, unless otherwise approved by the MOCIIP in agreement with the OCCI. In contrast to earlier ministerial decisions, which only confirmed an exemption for banks and finance companies licensed by the CBO, this new ministerial decision expressly confirms that the maximum interest rate shall not apply:

- to loans and facilities granted by financial institutions licensed by the CBO;
- to loans and facilities advanced by lenders from outside of Oman; or
- in relation to securities.

Judicial and Dispute Resolution Developments

On 1 October 2025, the new Investment and Commerce Court of Oman (ICC), established pursuant to Royal Decree 35/2025 of 23 March 2025, began operations, handling commercial and investment disputes electronically with strict timelines, intending to expedite adjudication of cases filed before the ICC. The ICC is structured under the oversight of the Supreme Judicial Council (Oman) (SJC), with its headquarters located in the Governorate of Muscat and with circuits (both primary and appellate) distributed across the country to ensure wider access.

The ICC will have exclusive jurisdiction (ie, it is the specialist forum) over commercial and investment-related disputes in which at least one party is a merchant (ie, engaged in commercial activities) and

the dispute relates to their commercial work arising from investment contracts. These include disputes between shareholders/partners in commercial companies (including listed public joint-stock companies), banking, securities, insurance, bankruptcy/insolvency and restructuring issues, intellectual property, trade secrets, competition law, e-commerce, PPP (public-private partnership) contracts, maritime sales and foreign investment matters. The ICC will not, however, handle certain disputes – eg, administrative law, labour law and rental disputes – which will remain under the jurisdiction of the existing specialised courts.

The ICC emphasises that digital filing and case management, such as filing of claims, service of process, submissions of pleadings, expert reports, etc, will all be filed through the ICC's electronic system. Where necessary, hearings may take place via video or remote means, although it is not mandatory that hearings will be necessary in all proceedings. Much will depend upon the view of the judge trying the case as to whether they think an oral hearing is required. The court can set strict timelines and limit adjournments. The law provides for a target timeline to decide cases within 90 days from the filing of proceedings (with a possible extension of up to 45 days being granted in valid circumstances).

To improve national access, the SJC decision establishes multiple geographic circuits, for example, four appellate chambers outside Muscat (Dhofar, Al Dakhiliyah, Al Batinah North and Al Sharqiyah North) and ten primary chambers in various governorates of Oman. The structure of the courts and their locations aim to reduce travel burdens and delays for litigants across Oman.

The establishment of the court aligns with Oman's broader socio-economic strategy, namely Oman Vision 2040, which emphasises diversifying the economy, improving the investment climate, and modernising the judicial infrastructure, with the ICC being part of the government's effort to boost investor confidence by offering a predictable, specialised and efficient dispute-resolution forum.

For investors and businesses, the ICC will provide faster resolution of disputes, improved legal clarity,

and centralised expertise in business/investment litigation. For the judiciary, the ICC should help reduce the burden on the general courts, with specialisation leading to higher-quality judgments in the commercial/investment domain. For the economy generally, the ICC will create a legal environment that is better aligned with international norms, for example, for foreign investment protection and corporate disputes, thereby enhancing Oman's attractiveness as a business hub.



Law and Practice

Contributed by:

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VdA

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VdA is an international law firm with almost 45 years of experience providing corporate legal services. The firm is recognised for its established track record and innovative approach. To meet the increasingly complex challenges faced by its clients, it has a highly specialised legal service offering, covering a range of industries and practice areas, including the banking and financial industries, a key area of focus since the very start of the firm. In addition to providing robust legal solutions, it adheres to consistent standards of excellence, ethics and professionalism. The firm's work is recognised by its peers, clients and stake-

holders, and is acknowledged by professional associations, legal publications and academic institutions. VdA has also received several international awards and accolades from the legal industry in recognition of its work and contributions. Through the VdA Legal Partners network, clients have access to seven jurisdictions (Angola, Cabo Verde, Equatorial Guinea, Mozambique, Portugal, São Tomé and Príncipe and Timor-Leste) - in addition to broad sectoral coverage throughout all Portuguese-speaking African countries, as well as Timor-Leste.

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1. Legal Framework

1.1 Key Laws and Regulations

Legal Framework Applicable in Portugal

The Legal Framework of Credit Institutions and Financial Companies (Decree-Law No 268/92, of 31 December) contains the main rules for Portugal's banking sector, specifically for the activity of credit institutions and financial companies. It covers authorisation, registration, management and shareholder assessment, conduct rules, co-operation with authorities, prudential limits, supervision, corrective measures, deposit guarantees, and penalties. The principal European texts are transposed in Portugal and are included either in the Legal Framework of Credit Institutions and Financial Companies or in secondary, supplement laws and regulations.

The provision of investment services by a Portuguese institution is subject to the Portuguese Securities Code (Decree-Law No 486/99, of 13 November), which incorporates the rules of MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014).

As regards payment services and electronic money, Portuguese credit institutions and financial companies must comply with the Legal Framework for Payment Services and Electronic Money, which incorporates PSD2 (Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015).

The Portuguese Anti-Money Laundering and Counter-Terrorist Financing Law (Law No 83/2017, of 18 August) is also a key piece of legislation in Portugal, applicable to the banking sector.

EU regulations are directly applicable in Portugal, such as the Capital Requirements Regulation (CRR) – Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013) and the Digital Operational Resilience Act (DORA) – Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector), among others.

Banco de Portugal (the Portuguese Central Bank) establishes national requirements in its Notices,

Instructions, and understandings. The guidelines and Q&As issued by the European Central Bank (ECB) and by the European Supervisory Authorities are also usually adopted in Portugal, by Banco de Portugal.

Supervision Authorities

Under Portuguese law, supervision is divided between Banco de Portugal, the national competent authority, which is responsible for supervising banking activities in Portugal (including credit institutions and financial companies' compliance with the anti-money laundering and counter-terrorist financing requirements), and the ECB, whose supervision enforces European legislation (namely, the Single Supervisory Mechanism (SSM) – Council Regulation (EU) No 1024/2013 of 15 October 2013, and the SSM Framework Regulation – Regulation (EU) No 468/2014 of the ECB of 16 April 2014).

The Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – CMVM) supervises the provision of investment services and the activity in capital markets, generally.

2. Authorisation

2.1 Licences and Application Process

Authorisation and Activities

Authorisation to initiate banking activities in Portugal can be obtained through a request to incorporate a credit institution or a financing company, both defined in the Legal Framework of Credit Institutions and Financial Companies.

Credit institutions cover several types of entities, the main type being banks. In Portugal, banks enjoy universal banking licence and are entitled to carry out operations such as: (i) acceptance of deposits or other repayable funds; (ii) credit operations, including the granting of guarantees and other commitments, financial leasing, and factoring; (iii) payment services; (iv) transactions, on their own account or on behalf of clients, involving money market and foreign exchange market instruments, financial futures instruments, options, and operations on currencies, interest rates, commodities, and securities; (v) advisory services, custody, administration, and management of securi-

ties portfolios; (vi) management and consultancy in the management of other assets; and (vii) provision of investment services and activities, among others.

Only credit institutions are allowed to receive deposits or other repayable funds from the public for use on their own account.

Licence Process

In Portugal, the process for obtaining a banking licence involves three key stages: (i) securing authorisation (which includes submission of the application along with supporting documentation, evaluation of the application, and the final decision on authorisation); (ii) completing special registration with the Banco de Portugal; and (iii) initiating operations.

The process to set up a credit institution formally starts with the submission of the respective application, either in Portuguese or in English, physically or via e-mail, to Banco de Portugal. No fee is due to the Banco de Portugal during this process.

Following receipt of the application, Banco de Portugal, together with the ECB, reviews the information submitted to ensure that it is complete and sufficient for a comprehensive evaluation. The purpose of this review is to determine whether the proposed project fulfils all the conditions required by applicable legislation.

A final decision (granting or refusing the authorisation) is issued within six months from Banco de Portugal receiving a complete application or the additional information that may be requested, or within a maximum of 12 months of the initial application submission. The absence of notification of a decision by Banco de Portugal represents a tacit refusal of the application.

The granting of authorisation enables the applicant to set up a credit institution, which must start its activities within 12 months of the approval decision (otherwise, the authorisation expires), without prejudice of a one-time extension for another 12 months, as provided.

To commence banking activities, the credit institution must also have completed a special registration with Banco de Portugal.

Common Ancillary Activities and Additional Requirements

It is typical for Portuguese credit institutions to carry out investment services and activities, including, among other ancillary services: (i) reception and transmission of orders on behalf of others; (ii) execution of orders on behalf of others; (iii) portfolio management on behalf of others; (iii) services and activities involving underwriting and placement with a guarantee, or placement without a guarantee; (iv) trading on own account; (v) investment advice; (vi) management of a multilateral trading facility; and (vii) management of an organised trading facility.

In Portugal, in addition to authorisation by Banco de Portugal, registration with the Portuguese Securities Market Commission is required for financial intermediation activities. This additional registration is a case of gold-plating, making the process more time-consuming.

Furthermore, in relation to the issuance, offer to the public, and admission to trading of crypto-assets or the provision of services related to crypto-assets, credit institutions shall observe the requirements established by MiCA (Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023), notably the required notification.

European Passport

European Union credit institutions – passport

To commence activities in Portugal, a notification from the home member state's competent authority to the Banco de Portugal is required.

European Union credit institutions – branch in Portugal

Before a branch can be established in Portugal, Banco de Portugal must receive a detailed notification from the home member state's competent authority.

Once this notification is received, Banco de Portugal has two months to establish the supervision framework for the branch in relevant areas. After this period,

Banco de Portugal will notify the credit institution that it can proceed with the establishment of its branch, specifying any conditions for its operation in Portugal required by public interest.

If no notification is received within two months, the branch can be established and may start its activities after completing the relevant registration process.

Portuguese credit institutions – passport

A Portuguese credit institution that intends to start operations in another member state of the European Union must previously notify Banco de Portugal, detailing the activities it plans to carry out in that member state.

Banco de Portugal will then notify the host member state's competent authority within one month, certifying that the proposed operations/activities fall within the scope of the credit institution's authorisation in Portugal.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Qualifying Holding

Under the Legal Framework of Credit Institutions and Financial Companies, a qualifying holding is a direct or indirect holding: (i) representing a percentage of not less than 10% of the share capital or voting rights of the institution in question; or (ii) for any reason, allowing for the exercise of significant influence over the management of the institution.

An assessment of the good reputation of the owners or potential owners of qualifying holdings is required and is carried out by the ECB or, if the institutions in question are not part of the Single Supervisory Mechanism, by Banco de Portugal.

Notification

The relevant thresholds are: (i) 10%; (ii) 20%; (iii) one third; and (iv) 50%, in relation to a credit institution's capital or voting rights.

Any natural or legal person that intends to acquire, increase, reduce or dispose of a qualifying holding is required to provide prior notice to Banco de Portugal. This notification is required when the percentage of such qualifying holding reaches, exceeds or falls below the above thresholds.

This notification to Banco de Portugal must be made in Portuguese or in English, physically or via e-mail and no fee is due as a result thereof.

Acquisition or increase of a qualifying holding

In case of a planned acquisition or increase of a qualifying holding, the process begins with the submission of a notification and the required documents to Banco de Portugal, which then forwards this submission to the ECB. Both entities jointly review the proposal and may request more information, if necessary. Banco de Portugal subsequently drafts a decision on the acquisition or increase of a qualifying holding, which is sent to the ECB for review and for a final decision to be taken. This final decision is then communicated back to Banco de Portugal and the applicant, within 60 working days after proper submission of the notification.

Reduction or disposal of a qualifying holding

In the case of a planned reduction or disposal of a qualifying holding, a notification with all the required elements must be submitted to Banco de Portugal. Banco de Portugal then reviews the proposal to assess if the remaining holding is considered a qualifying holding. Additional information may be requested during this process. Banco de Portugal must decide on the holding status within 30 days (business days for electronic money institutions or calendar days for credit institutions and financial companies) after proper submission of the notification. Banco de Portugal will specify if the holding still qualifies, if it falls below 10%, or will confirm receipt and completeness of the submission, if the holding is fully disposed of or remains above 10%.

Ongoing Requirements

Any holders of qualifying holdings shall notify Banco de Portugal of any changes to the information previously provided to the regulator and of any increase,

reduction, or disposal of a qualifying holding in accordance with the procedures outlined above.

4. Governance

4.1 Corporate Governance Requirements

Legal Requirements

In Portugal, the main rules applicable to corporate governance are covered by: (i) the Portuguese Companies Code (Decree-Law No 262/86, of 2 September); and (ii) the Legal Framework of Credit Institutions and Financial Companies.

Portuguese credit institutions always take the form of a public limited company (*sociedade anónima*). They must have their head office and place of effective management in Portugal, and must have in place robust governance arrangements, including a clear organisational structure with well-defined, transparent, and consistent lines of responsibility, and effective processes to identify, manage, monitor, and report risks. Credit institutions also need to be equipped with adequate internal control mechanisms (according to Banco Portugal Notice No 2/2025), including sound administrative and accounting procedures, gender-neutral remuneration policies and practices that promote and are consistent with sound and prudent risk management, and management and supervisory bodies composed of members whose reputation, professional qualifications, independence, and availability ensure the sound and prudent management of the credit institution.

In terms of corporate bodies, credit institutions in Portugal can be organised as follows:

- board of directors and supervisory board;
- board of directors, including a supervisory board, and statutory auditor; and
- executive board of directors, general and supervisory board, and statutory auditor.

Diversity in Management and Supervisory Bodies

Portuguese credit institutions must implement internal policies for the selection and evaluation of management and supervisory body members that promote diversity in the qualifications and skills necessary for

these roles, setting objectives for the balanced representation of men and women and designing a strategy aimed at increasing the number of individuals from the underrepresented gender.

Soft Law and Industry Initiatives

The European Banking Authority's Guidelines of 2 July 2021 on internal governance serve as the primary reference for the internal governance structure of credit institutions. These guidelines cover a wide range of topics to ensure the robust internal governance of credit institutions.

Credit institutions that are members of the Portuguese Banking Association (*Associação Portuguesa de Bancos*) must comply with the Association's Code of Conduct, which establishes rules of conduct for banks in Portugal, particularly regarding their professional ethics standards.

Additionally, many credit institutions in Portugal are also members of the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance* – IPCG). This Institute has a Corporate Governance Code that sets forth rules regarding: (i) a company's relationship with its shareholders, stakeholders, and the community in general; (ii) the composition and functioning of the company's corporate bodies; (iii) shareholders and general meetings; (iv) management; (v) performance evaluation, remuneration, and appointments; (vi) internal control; and (vii) information and statutory audit of accounts.

4.2 Registration and Oversight of Senior Management

Board members (and supervisory board members) are selected and appointed by the general meeting of shareholders in accordance with the Portuguese Companies Code.

Potential members of the management and supervisory bodies of credit institutions are subject to a suitability assessment prior to the exercise of their duties and throughout their entire mandate. They must always meet the requirements of suitability, professional qualification, independence, and availability. The start of their functions is also subject to prior authorisation from Banco de Portugal; these proce-

dures are established in Banco de Portugal Instruction No 23/2018, as amended by Banco de Portugal Instruction No 13/2025.

Once authorisation from Banco de Portugal has been obtained, the registration of the members of the management and supervisory bodies must be requested. This request must indicate the starting date of their functions and, in cases requiring prior authorisation, be accompanied by a copy of the minutes with the resolution appointing them.

Positions which, despite not being part of the management or supervisory bodies, entail the exercise of functions with significant influence over the management of a credit institution (namely, those responsible for the functions of compliance, internal audit, control, and risk management) are also subject to the suitability assessment mentioned above.

In this regard, the European Banking Authority and the European Securities and Markets Authority's Guidelines on the assessment of the suitability of members of the management body and key function holders, of 2 July 2021, provide important information on the suitability assessment. Banco de Portugal adopted these Guidelines on 29 November 2021, through its Circular Letter No CC/2021/00000058.

4.3 Remuneration Requirements

Credit institutions define and implement remuneration practices based on sound and prudent remuneration policies for all their employees, consistent with the institution's risk profile and risk tolerance. The remuneration policy covers at least those employees whose professional activities have a significant impact on the credit institution's risk profile, including:

- members of the management and supervisory bodies;
- senior management;
- heads of significant business units;
- individuals responsible for internal control functions; and
- employees who work in a significant business unit and whose activities, due to their nature, have a significant impact on the risk profile of that business unit, who earned, in the previous year, a

remuneration equal to or greater than EUR500,000 and equal to or greater than the average remuneration given to the members of the management and supervisory bodies and senior management of the institution.

Credit institutions' remuneration policies must follow certain key principles. These policies should be proportional, taking into account the size and activities of the institution, and should clearly differentiate between fixed and variable remuneration, ensuring the variable part does not exceed the fixed amount. They must also be gender-neutral and uphold the independence of employees in internal control functions, linking their pay to the achievement of specific objectives.

Additionally, at least half of the variable remuneration, including deferred amounts, should consist of financial instruments (Banco de Portugal may impose restrictions on the types and characteristics of such instruments), and the entire variable component must be subject to malus and claw-back mechanisms. Guaranteed variable remuneration is only allowed in the first year for new hires, and only if there is a strong capital base. The remuneration policy should be published on the institution's website to ensure transparency. Finally, the management body or remuneration committee should submit the remuneration policy for approval by the management and supervisory bodies at the general meeting of each year.

Credit institutions must also establish a remuneration and performance evaluation policy for individuals who have direct contact with bank customers when marketing deposits and credit products. This policy will also apply to individuals who are directly or indirectly involved in the management or supervision of those with direct customer contact.

This remuneration and performance evaluation policy must not impair individuals' ability to act in the best interests of the customers. In particular, it should ensure that remuneration measures, sales targets, or other goals do not encourage these individuals to prioritise their own interests or the interests of the credit institution over the interests of their customers. The policy must be assessed at least annually, with the adoption of any measures considered necessary to

ensure that it upholds the rights and interests of the customers and does not create any incentives that could harm those rights and interests.

Finally, when drafting and implementing their remuneration policies, credit institutions must consider the European Banking Authority's Guidelines on sound remuneration policies under Directive 2013/36/EU of 2 July 2011. Banco de Portugal adopted these Guidelines on 21 November 2021, through its Circular Letter No CC/2021/00000056. In addition, credit institutions in Portugal that are members of the Portuguese Institute of Corporate Governance must consider the provisions of the Corporate Governance Code.

5. AML/KYC

5.1 AML and CFT Requirements

Under the Portuguese Anti-Money Laundering and Counter-Terrorist Financing Law, credit institutions and financial companies, as financial entities, are considered obliged entities, subject to the supervision of Banco de Portugal.

In this context, the board member responsible for these functions and the person in charge of the anti-money laundering and counter-terrorist financing compliance (known as the Compliance Officer) play fundamental roles.

Consequently, financial entities must comply with several preventive obligations, such as:

- obligation of control;
- obligation of identification and diligence;
- obligation of reporting;
- obligation of abstention;
- obligation of refusal;
- obligation of record-keeping;
- obligation of examination;
- obligation of co-operation;
- obligation of non-disclosure; and
- obligation of training.

Among these, the authors highlight the following two: (i) identification and diligence; and (ii) reporting.

The first obligation encompasses the know your customer (KYC) process, under which obliged entities are required to identify their customer as well as the beneficial owner when: (i) establishing business relationships; (ii) conducting occasional transactions, regardless of whether the transaction is carried out through a single operation or several operations that appear to be related, amounting to EUR15,000 or more, or constituting a transfer of funds or a transaction involving virtual assets, whenever the amount exceeds EUR1,000; (iii) there is a suspicion that the operations, regardless of their value and any exception or threshold, may be related to money laundering or terrorist financing; and (iv) there are doubts about the accuracy or adequacy of previously obtained customer identification data.

The measures, information, and documentation requested will always depend on an anti-money laundering and counter-terrorist financing risk analysis, with the possibility of applying simplified or enhanced measures. The customer's profile should be assessed, specifically considering whether they come from a sanctioned country, are a politically exposed person (PEP), or are individuals closely associated with a PEP.

The obligation of reporting requires obliged entities to immediately inform, on their own initiative, the Central Department of Investigation and Criminal Action of the Attorney General's Office (*Departamento Central de Investigação e Ação Penal* – DCIAP) and the Financial Intelligence Unit whenever they know, suspect, or have reasonable grounds to suspect that certain funds or other assets, regardless of the amount or value involved, originate from criminal activities or are related to terrorist financing.

Obliged entities shall implement internal organisational structures and procedures informed by risk assessments, particularly regarding exposure to money laundering risks based on the services offered and the origin or destination country of the funds.

In this respect, obliged entities must observe Banco de Portugal Notice No 1/2022, of 6 June, and Notice No 1/2023, of 24 January (the latter regarding virtual assets), along with the European Banking Authority's Guidelines under Articles 17 and 18 (4) of Directive

(EU) 2015/849 on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions, repealing and replacing Guidelines JC/2017/37 of 1 March 2021, and the Financial Action Task Force Recommendations, last updated in November 2023.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Legal Framework of Credit Institutions and Financial Companies establishes the legal rules applicable to the Portuguese Deposit Guarantee Scheme (*Fundo de Garantia de Depósitos*).

The Portuguese Deposit Guarantee Scheme is a legal entity of public law, endowed with administrative and financial autonomy, and with its own assets. Its purpose is to ensure the reimbursement of deposits made into participating credit institutions. This is only possible through its financial resources (in addition to complementary financial resources), which are made up of: (i) initial contributions from participating credit institutions; (ii) periodic contributions from participating credit institutions; (iii) income from the application of resources; (iv) donations; and (v) any other revenues, income or amounts arising from a credit institution's activity or assigned to it by law or contract, including the proceeds of fines imposed on credit institutions.

The Portuguese Deposit Guarantee Scheme is managed by a steering committee composed of three members. The chairperson is a member of the Board of Directors of Banco de Portugal, designated by it. The second member is appointed by and in representation of the Ministry of Finance. The third member is designated by the association representing, in Portugal, the participating credit institutions that collectively hold the largest volume of guaranteed deposits.

The following entities are mandatory participants in the Portuguese Deposit Guarantee Scheme: (i) credit institutions headquartered in Portugal that are authorised to receive deposits; and (ii) credit institutions headquartered in countries that are not mem-

bers of the European Union, with respect to deposits collected by their branches in Portugal, unless these deposits are covered by a guarantee system in their country of origin which Banco de Portugal considers equivalent to the Portuguese Deposit Guarantee Scheme, particularly regarding the scope of coverage and the guarantee limit, and without prejudice to any existing bilateral agreements on the matter.

The Portuguese Deposit Guarantee Scheme ensures the reimbursement of: (i) deposits made in Portugal or in other member states of the European Union with credit institutions headquartered in Portugal; and (ii) deposits made in Portugal with branches of credit institutions headquartered in countries that are not members of the European Union, regarding the deposits collected by their branches in Portugal. The maximum limit is EUR100,000 per credit institution, in relation to the overall balance in cash of each deposit holder.

Finally, the Portuguese Deposit Guarantee Scheme does not guarantee the reimbursement of: (i) deposits made in the name and on behalf of credit institutions, investment firms, financial institutions, insurance and reinsurance companies, collective investment undertakings, pension funds, entities of the national and foreign public administrative sector, and supranational or international organisations, with the exception of deposits from pension funds whose members are small or medium-sized enterprises, and deposits from local authorities with an annual budget equal to or less than EUR500,000; (ii) deposits resulting from operations for which a final criminal conviction for money laundering has been handed down; (iii) deposits whose holder has not been identified in accordance with the Portuguese Anti-Money Laundering and Counter-Terrorist Financing Law, as of the date on which the unavailability of the deposits is determined; and (iv) deposits of persons and entities that, in the two years preceding the date on which the unavailability of deposits is determined or a resolution measure has been adopted, have had a direct or indirect holding equal to or greater than 2% of the share capital of the credit institution in question or have been members of its management bodies, unless it is demonstrated that they were not, by action or omission, the cause of the financial difficulties faced by the credit institution and

that they did not contribute, by action or omission, to the aggravation of such situation.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Legal Regime

The principal legislation on capital, liquidity, and related risk control requirements is the Legal Framework of Credit Institutions and Financial Companies (which implemented in Portugal the Capital Requirements Directive IV (CRD IV) – Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and the Capital Requirements Regulation (CRR) – Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms).

The rules provided for in CRR and CRD IV represent the adoption of Basel III standards, which were established to improve the banking sector's ability to withstand shocks arising from adverse economic and financial scenarios.

There is a general principle that credit institutions must manage their available funds in a manner that ensures adequate levels of liquidity and solvency, at all times.

Initial Share Capital

According to Executive Order No 95/94, of 9 February 1994, the following credit institutions and financial companies must have a share capital of at least the amounts indicated below.

- Banks and savings banks: EUR17.5 million.
- Mutual agricultural credit banks: EUR5 million or EUR7.5 million, depending on whether or not they are part of the integrated mutual agricultural credit system.
- Central agricultural credit banks: EUR17.5 million.
- Investment companies: EUR5 million.

- Leasing companies: EUR3 million if their sole business is movable property leasing, or EUR5 million in all other cases.
- Factoring companies: EUR1 million.
- Financial brokerage companies: EUR3.5 million.
- Brokerage firms: EUR350,000.
- Money market or currency market brokers: EUR50,000 or EUR500,000, depending on whether they operate exclusively in the money market or in both markets simultaneously.
- Asset management companies: EUR250,000.
- Regional development companies: EUR3 million.
- Group purchasing management companies: EUR500,000 or EUR250,000, depending on whether they manage groups constituted for the acquisition of real estate.
- Currency exchange agencies: EUR100,000.
- Mutual guarantee companies: EUR2.5 million.
- Microcredit financial companies: EUR1 million.
- Financial credit institutions: EUR10 million.
- Financial credit companies: EUR7.5 million.
- Attached savings banks: EUR1 million.

Risk Management Rules

Credit institutions establish a risk management function that is independent of the business lines and is provided with adequate resources. This function is responsible for: (i) ensuring that all material risks of the credit institution are properly identified, assessed, and reported; (ii) participating in the definition of the credit institution's risk strategy; and (iii) participating in decisions related to the management of material risks.

The risk management, compliance, and internal audit functions are established as autonomous and independent from each other. The board of directors ensures that the risk management function has a comprehensive view of all the risks to which the credit institution is currently exposed and may be exposed in the future.

Capital Requirements

The CRR addresses capital requirements, such as Common Equity Tier 1 (CET1), which is a part of Tier 1 capital and involves shares, capital instruments ranking below all other claims in an insolvency, share premium accounts, retained earnings, other reserves, and funds designated for general banking risks. In addition

to CET1, Tier 1 capital also encompasses Additional Tier 1 (AT1) capital, which includes capital instruments subordinated to Tier 2 instruments in an insolvency, along with their related share premium accounts. In contrast, Tier 2 capital is composed of subordinated instruments and associated share premium accounts, which rank below CET1 in priority.

In quantitative terms, credit institutions must ensure that they maintain at all times the own funds required under the CRR, namely: (i) CET1 – capital ratio of 4.5%; (ii) Tier 1 – capital ratio of 6%; (iii) total capital ratio – 8%; and (iv) leverage ratio – 3%.

According to the Legal Framework of Credit Institutions and Financial Companies, credit institutions must maintain, in addition to the 4.5% CET1, (i) a capital conservation buffer equal to 2.5% of the risk-weighted assets (RWA, as defined in the CRR); and (ii) a countercyclical capital buffer of between 0% and 2.5% of the RWA in Portugal (in increments of 0.25% or multiples thereof). Banco de Portugal has already announced that, from 1 January 2026, the countercyclical capital reserve will be set at 0.75% of the total amount of the national banking sector's credit exposures to the non-financial private sector, weighted by risk.

Global Systemically Important Institutions (G-SIs) must maintain, on a consolidated basis, a G-SI buffer composed of CET1 capital corresponding to the specific subcategory it is assigned to, as follows: (i) in the lowest subcategory, a buffer of 1% of the RWA is required; (ii) in the subsequent subcategories, the required capital buffer for each subcategory increases in increments of at least 0.5% of the RWA. Currently, there are no G-SIs in Portugal and, therefore, this is not applicable. In turn, Other Systemically Important Institutions (O-SIs) must maintain, on a consolidated, sub-consolidated, or individual basis, as applicable, an O-SI buffer composed of CET1 capital of up to 3% of the RWA, taking into account the criteria for identifying O-SIs. As from 1 October 2024, a sectoral systemic risk buffer of 4% is applicable, as determined by Banco de Portugal. This buffer is applicable to institutions using the Internal Ratings Based (IRB) approach, based on the RWA of the residential mortgage portfolio secured by properties located in Portugal.

Liquidity Requirements

Under Commission Delegated Regulation (EU) 2015/61 of 10 October 2015 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions, a liquidity coverage ratio of at least 100% must be maintained by credit institutions. In this context, liquidity inflows and liquidity outflows shall be assessed over a 30 calendar-day stress period.

The liquidity coverage ratio shall be reported to Banco de Portugal by the credit institution in question.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The Legal Framework of Credit Institutions and Financial Companies, which implemented the Bank Recovery and Resolution Directive (BRRD) – Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, which largely adopts the FSB Key Attributes of Effective Resolution Regime, establishes four resolution tools that can be applied by Banco de Portugal:

- sale, in part or in whole, of the business;
- bridge, in part or in whole, of the credit institution;
- asset separation, in part or in whole; and
- bail-in.

Firstly, in case of a sale of the business, Banco de Portugal may determine the partial or total sale of the rights and obligations of a credit institution under resolution, including its assets, liabilities, off-balance sheet items, and managed assets, as well as the ownership of shares or other securities representing its capital stock. The referred sale is conducted on commercial terms, considering the specific circumstances of the case, and the evaluation performed by an independent entity at the expense of the credit institution under resolution. This evaluation, to be carried out within the timeframe set by Banco de Portugal, must fairly, prudently, and realistically assess the credit institution's assets, liabilities, and off-balance sheet items, taking

into account European Union principles, rules, and guidelines on state aid.

Secondly, Banco de Portugal may determine the partial or total transfer of the rights and obligations of a credit institution, including its assets, liabilities, off-balance sheet items, and managed assets, as well as the transfer of ownership of shares or other securities representing its capital stock, to bridge institutions established for this purpose, with the aim of facilitating their subsequent sale. In this case, a bridge institution must be established by Banco de Portugal, with its share capital fully or partially subscribed and paid by the Resolution Fund (*Fundo de Resolução*) using its own funds.

Thirdly, Banco de Portugal may order the transfer of the rights and obligations of a credit institution or a bridge institution, including its assets, liabilities, off-balance sheet items, and managed assets, to asset management vehicles established for this purpose, with the goal of maximising their value for subsequent sale or liquidation. Additionally, the transfer of the rights and obligations of two or more credit institutions within the same group to asset management vehicles may be mandated. These vehicles are created to receive and manage all or part of the rights and obligations of credit institutions under resolution or a bridge institution. Similarly to bridge institutions, the share capital of the asset management vehicle is fully or partially subscribed and paid by the Resolution Fund using its own funds.

Fourthly, Banco de Portugal may mandate the application of the internal recapitalisation measure to strengthen the own funds of a credit institution to the extent necessary to enable it to meet the requirements for maintaining its authorisation to operate and to obtain autonomous and sustainable financing from the financial markets.

- This is applicable in cases where there is a reasonable prospect that the measure, along with other relevant measures, will achieve the objectives set out in the law and restore the long-term financial stability and viability of the credit institution. The following powers may be applied: (i) partial or total reduction of the nominal value of the liabilities of

the credit institution under resolution that do not arise from ownership of own funds instruments and that are included within the scope of the internal recapitalisation measure; and (ii) increase in the capital of the credit institution under resolution or its parent company by partially or fully converting the liabilities included within the scope of the internal recapitalisation measure into common shares or securities representing the capital of the credit institution under resolution or its parent company.

- Additionally, based on the evaluation carried out by an independent entity, the following is determined in aggregate: (i) the amount of reduction in the nominal value of the liabilities included within the scope of the internal recapitalisation measure to ensure that the own funds of the credit institution under resolution are zero; and (ii) the amount of conversion of the liabilities included within the scope of the internal recapitalisation measure into capital, through the issuance of common shares or securities representing the capital, to achieve a Common Equity Tier 1 (CET1) ratio of the credit institution under resolution or the bridge institution that allows it to maintain its authorisation to operate for at least one year and to obtain autonomous and sustainable financing from the financial markets.
- Lastly, Banco de Portugal applies the internal recapitalisation measure in accordance with the hierarchy of claims in insolvency. The nominal value of a class of liabilities cannot be reduced, nor can a class of liabilities be converted into capital, until those powers have been exercised in relation to the hierarchically lower classes of liabilities, as per that hierarchy.
- With the implementation of this measure, the management body of the credit institution under resolution must prepare and submit a business reorganisation plan to Banco de Portugal within 30 days of the measure's application. This plan should include the following elements: (i) a detailed diagnosis of the factors, circumstances, and issues that led the credit institution under resolution to the risk or situation of insolvency; (ii) a description of the measures aimed at restoring the long-term viability of the credit institution under resolution, or of part of its activities, within an appropriate time-frame, which may include reorganising its activities;

introducing changes to its operational systems and internal infrastructure; cessation of loss-making activities; restructuring existing activities that can be made competitive; and the disposal of assets or business lines; and (iii) the timeline for implementing these measures.

Deposits in Case of an Insolvency

The general credit privilege applies to most deposits (with a few exceptions), placing it above unsecured senior creditors of a credit institution.

9. ESG

9.1 ESG Requirements

Environmental, social and corporate governance (ESG) aspects are mainly regulated by European legislation and by soft law instruments. At present, there is a very broad array of ESG legislation applicable to credit institutions.

In 2024, we have witnessed a crucial legislative change in the banking sector with the introduction of Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024, amending Regulation (EU) No 575/2013, regarding requirements for credit risk, credit valuation adjustment risk, operational risk, market risk, and the output floor. This Regulation, which will be applicable from 1 January 2025, will amend Article 449a of the CRR. Consequently, all institutions will be required to disclose information on ESG-related risks, distinguishing between environmental, social, and governance risks, as well as physical and transition risks with respect to environmental risks. Previously, this requirement was only applicable to large institutions that had issued securities admitted to trading on a regulated market of any EU member state. Portuguese credit institutions are already adapting internally to be prepared for the implementation of this new obligation.

The requirements for climate risk management in banks are mainly derived from the ECB's Guide on climate-related and environmental risks, published in November 2020. Although this Guide is a soft law instrument, it outlines the ECB's expectations (which are normally adopted by Banco de Portugal) on how

banks should effectively manage climate risks within the existing prudential framework.

The European Banking Authority issued mandatory standards on Pillar Three ESG risk disclosures, particularly the Green Asset Ratio (GAR), on 1 March 2021. The GAR measures the percentage of environmentally sustainable assets in relation to total assets. The numerator shows the proportion of assets invested in sustainable economic activities, while the denominator encompasses the institution's total assets, loans, bonds and equities, collateral, and other balance sheet items. In this context, Commission Implementing Regulation (EU) 2022/2453 of 30 November 2022, which amended Commission Implementing Regulation (EU) 2021/637 of 15 March 2021, establishes important guidelines on how banks are required to disclose ESG-related information.

Credit institutions must also comply with the Taxonomy Regulation (Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment) and its delegated acts. This Regulation establishes, among others, the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. Consequently, it has been observed in the Portuguese market that some Portuguese banks now provide eco-friendly loan options through their sustainable finance programmes, with favourable terms for borrowers, but which also include specific restrictions on how the funds can be used and certain requirements applicable to the borrowers' activities.

The Sustainable Finance Disclosure Regulation (SFDR – Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector) is applicable to credit institutions providing portfolio management services (not to all credit institutions), establishing ESG-related disclosure obligations. In contrast to the Taxonomy Regulation, which focuses solely on environmental issues, the SFDR also covers social aspects.

The Corporate Sustainability Reporting Directive (CSRD – Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022), which replaced the Non-Financial Reporting Directive, imposes mandatory reporting obligations on around 50,000 companies, including both EU and non-EU companies that meet the specified employee and annual turnover thresholds. The first reporting period will commence in 2025, covering information from the 2024 financial year. Its implementation in Portugal is still pending.

Finally, the authors highlight again the Corporate Governance Code of the Portuguese Institute of Corporate Governance and its incorporation and adaptation to the CSRD, which includes an article dedicated to stakeholders and sustainability. This emphasises the growing importance of sustainability matters, aligning with frameworks such as the 2023 G20/OECD Principles of Corporate Governance.

10. DORA

10.1 DORA Requirements

The Digital Operational Resilience Act (DORA – Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector) represents an important regulation for Portuguese credit institutions since it requires the adaptation of the security of their network and information systems supporting business processes.

DORA entered into force in January 2023 and has been applicable since 17 January 2025. The requirements set forth under the six pillars of DORA are: (i) organisational governance; (ii) management of information and communication technology (ICT) risks; (iii) handling of ICT incidents; (iv) resilience testing; (v) managing risks associated with third-party ICT providers; and (vi) sharing of information. Therefore, credit institutions are required to:

- establish internal governance and control systems to effectively and prudently manage all ICT risks. This includes creating monitoring roles for arrangements with third-party ICT service providers.

Additionally, they must redefine the responsibilities of their management bodies to ensure they are accountable for defining, approving, and overseeing ICT risk management frameworks;

- develop a robust ICT risk management framework, including a digital resilience strategy, tailored to their specific needs, size, and complexity (which includes creating strategies, policies, procedures, protocols, and tools in line with DORA requirements, maintaining high standards of data security, confidentiality, and integrity). The disclosure of ICT incidents or vulnerabilities to relevant stakeholders is also required, as is the separation of ICT management, control, and internal audit functions, management of cyber threats, detection of abnormal activities, establishment of continuity and backup policies, performance of post-incident reviews, and guaranteeing adequate staffing and monitoring;
- implement a process for handling ICT-related incidents, including the detection, management, monitoring, follow up, and reporting of these incidents, classifying them based on specific criteria. Under DORA, any major ICT incidents must be reported to the appropriate regulator within specified timeframes and conditions. Additionally, if these incidents affect or could affect the financial interests of service users and clients, they must be informed of the incident and the measures taken to mitigate any negative effects;
- develop a digital operational resilience testing programme that follows a risk-based approach, including appropriate testing and vulnerability assessments;
- integrate third-party ICT risk into their ICT risk management framework, which includes: (i) ensuring compliance with DORA for third-party ICT services; (ii) developing and updating a third-party ICT risk strategy; (iii) formalising relationships through detailed contracts; (iv) maintaining a register of all ICT service contracts; (v) annually reporting new ICT arrangements to the authorities; and (vi) ensuring high security standards, auditing providers, and terminating contracts if necessary; and
- collaborate with other entities, sharing cyber threat information and intelligence with each other to enhance digital operational resilience, provided this occurs within a trusted community and under

arrangements that safeguard the sensitive nature of this information.

11. Horizon Scanning

11.1 Regulatory Developments

Introduction

According to the European Commission (in its In-Depth Review 2024 Portugal of April 2024), “Portuguese banks improved their resilience in 2023 as higher net interest income boosted their profitability, without materially impacting their asset quality. Banks’ profit margins increased substantially over 2023 as the large share of variable rate loans yielded higher returns on the back of higher Euribor and key ECB interest rates, while deposit costs remained moderate. These further improved banks’ return on equity, to 10.6% in the first three quarters of 2023, the highest level since the financial crisis and above the euro area average. Portuguese banks used part of these profits to strengthen their capital positions, increasing their CET1 capital ratio by 104 basis points over the first three quarters of 2023 to 16.4%”. This is positive news, and the Portuguese economy (and banking sector) is expected to continue growing.

ESG Regulatory Development

It is expected that the Taxonomy Regulation will eventually cover social matters, as the Sustainable Finance Disclosure Regulation already does.

In addition, as referred above, the “new” Article 449a of the Capital Requirements Regulation has been applicable since 1 January 2025, and all Portuguese credit institutions will be required to disclose information on ESG-related risks, distinguishing between environmental, social, and governance risks, as well as physical and transition risks with respect to environmental risks.

Capital Requirements Regulation (CRR) III and Capital Requirements Directive (CRD) VI

CRR III and CRD VI introduce significant changes with a view to implementing the remaining elements of the Basel III regulatory reforms, which the European Union (EU) has mostly adopted. Key aspects include a new regulatory framework for non-EU banks to harmonise

EU supervision, requirements for managing ESG-related risks, revised methods for calculating risk-weighted assets, with an emphasis on standardised calculations, and the introduction of an “output floor” to ensure minimum capital requirements for banks using internal models.

Moreover, they mandate more detailed fit and proper tests for senior bank managers, ensuring harmonised vetting processes before they assume their roles, and extend the supervisory powers of competent authorities. This includes the oversight of credit institution acquisitions, significant asset or liability transfers, and mergers or divisions. These initiatives aim to align bank risk management and capital requirements with broader sustainability and regulatory goals within the EU.

Anti-Money Laundering and Counter-Terrorist Financing: AMLD6 and AML Regulation

Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD6) establishes guidelines requiring national governments to implement measures against money laundering and terrorist financing. This Directive will need to be implemented in Portugal.

Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Regulation) establishes rules which include measures for obliged entities to prevent money laundering and terrorist financing. It also outlines transparency requirements regarding beneficial ownership for legal entities, express trusts, and similar legal arrangements, and implements measures to curb the misuse of anonymous instruments. This Regulation will apply from 10 July 2027, except for the provisions regarding football clubs and agents as obliged entities, which will not be applicable until 10 July 2029.

Payment Services Developments: PSD3 and PSR

The Payment Services Directive (PSD3) and the Payment Services Regulation (PSR) are set to bring sig-

nificant changes to the payments industry. PSD3 is designed to improve open banking and consumer protection by making payments more transparent, increasing market competition, and promoting innovation in digital payments.

Some of the key changes include enhanced security measures, to better protect online transactions from fraud, and expanded open banking practices, which require banks to share customer data more effectively with third-party providers. Additionally, there is a focus on transparency, mandating that banks clearly disclose their fees and terms so that consumers are better informed.

The PSR and PSD3 also emphasise the development of instant payments, the simplification of cross-border transactions, and the overall improvement of the digital payment infrastructure. These measures aim to help Portuguese credit institutions better adapt to the needs of tech-savvy consumers and businesses, thus ensuring they are well-prepared for the rapidly evolving financial landscape.

Markets in Crypto-Assets Regulation (MiCA)

MiCA is applicable from 30 December 2024. In relation to the issuance, offer to the public, and admission to trading of crypto-assets or the provision of services related to crypto-assets, credit institutions shall observe the requirements established by MiCA, notably the required notification.

According to the latest proposal, it is the intention of the Portuguese Government that Banco de Portugal, and the Portuguese Securities Market Commission share the supervision of crypto-assets in Portugal.

Retail Investment Package

As a result of its 2020 Capital Markets Union Action Plan, the European Commission adopted the Retail Investment Package on 24 May 2023, with the primary aim of protecting retail investors in the EU. This Package involves changes to, for example, MiFID II and the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs – Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products).

Developments in this regard are expected in the final quarter of 2025.

Non-Performing Loans (NPLs)

Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers was recently implemented in Portugal by Decree-Law No 103/2025, of 11 September. This Decree-Law establishes the regime for the assignment and servicing of bank loan credits, notably non-performing, as well as a new Credit Responsibility Central (to centralise credit information), and designates Banco de Portugal as the competent supervisory authority.

Banking Activity Code

The draft of the new Portuguese Banking Activity Code was released for public consultation by Banco de Portugal on 29 October 2020. Five years later, this legislation, intended to simplify and systematise the legal framework governing banking activities in Portugal (completely replacing the Legal Framework of Credit Institutions and Financial Companies), is yet to be approved. Banco de Portugal has urged the government to revisit this matter, but, as far as public knowledge is concerned, without success so far.

Trends and Developments

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Abreu Advogados is a Big Four independent law firm with more than 30 years of experience in the Portuguese market, navigating the sectors and industries of tomorrow. The firm continuously attracts strategic opportunities for its clients in key areas such as finance, corporate and M&A, tax, litigation, and competition. Abreu Advogados invests in multidisciplinary teams that tackle increasingly complex transactions with cost-effective solutions and anticipate clients' needs with a business-oriented vision. Both in Por-

tugal and internationally, the firm is chosen to provide legal advice in international transactions across Portuguese-speaking countries, particularly Angola, Mozambique and Timor-Leste. The firm partnered with FBL Advogados in 2007 and with JLA Advogados in 2010 to meet clients' interests in the Angolan, Mozambican and Portuguese markets, thereby benefiting from an international decision-making process when presenting innovative legal solutions to clients.

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The Portuguese Banking Landscape at a Glance

Against a challenging backdrop, the Portuguese economy will reportedly grow by 1.6% in 2025 (and 2.2% in 2026), according to the Bank of Portugal's forecast – exceeding the average performance in the eurozone. This result is notable within a depressed European context and a larger shift in the geopolitical environment. It follows a slowdown in inflation, which is expected to stabilise below 2%, with interest rates remaining unchanged. Regardless, in the first quarter of 2025, the banking market saw a slight reduction in borrowers' borrowing costs.

Even so, the Portuguese banking sector continues to show positive signs – notably, in asset quality. The non-performing loans (NPLs) ratio published by the Bank of Portugal has showed a steady decrease in such liabilities for several years – remaining at 2.3% for the second quarter of 2025 – while the ratio of Stage 2 loans for corporate borrowers experienced a 0.4% decrease in the second quarter of 2025 (compared to the previous quarter), also according to the Bank of Portugal's data.

Following an upward trend, banks' returns on both assets and equity showed signs of a slight decline in the first half of 2025 by decreasing to 1.36% and 14.85% respectively. Nonetheless, data from the European Central Bank regarding the significant institutions under its direct supervision indicates a recovery from the first quarter of 2025 in the second quarter of 2025, with both return metrics not only recovering but surpassing the Q1 figures – marking a renewed positive trend. In fact, some of the largest Portuguese banks achieved record profit levels in the first semester of the year, making the Portuguese banking sector the second most profitable in the eurozone.

As to solvency, according to Q2 2025 data from the Bank of Portugal, both the total own funds and common equity tier 1 (CET1) ratios remained at 20.4% and 17.9% respectively. These developments reflected the slight decline in CET1, amid a relative stabilisation in risk-weighted assets.

As the inflation curve begins to flatten, an uptick in confidence by market participants and a return in M&A activity in Portugal is expected, after a year marked

by the selling of Novo Banco to France's BPCE (the second-largest banking group in France). The transaction, worth EUR6.4 billion, represented the biggest cross-border deal in Europe in recent years – surging within a wave of industry consolidation reflected in cross-border and domestic banking mergers in Europe. It is also noteworthy to mention that Revolut, who until now operated in Portugal under the freedom to provide services, opened a branch in Portugal and announced that it aims to become the third-largest bank in terms of customers within a couple of years.

Digital and AI-driven solutions are expected to continue to be strongly implemented by banks with a view to transforming and enhancing today's banking services and keeping up with new market entries from fintech players, as consumers demand digital enhancements. This is all taking place amid growing discussions surrounding the digital euro, with some predictions suggesting 2029 as a realistic timeline for its introduction.

ESG criteria will also remain a key topic in 2026, with an expected increase in green and sustainability-linked financial products in loan and debt securities. There are signs of growing demand for sustainability-linked offerings from lenders, investors and other stakeholders, and broader society; thus many (if not the majority) of financing arrangements already incorporate sustainability elements. The launch of the European Defence Bond Label by Euronext, which integrates ESG principles, also represents a significant step forward in mobilising capital.

Looking ahead to 2026, the EU has underscored its commitment to pursuing sustainability goals while remaining keen on safeguarding competitiveness, as the new “Omnibus” package illustrates. With an already-in-force EU directive postponing certain ESG-related obligations for some companies, further changes in this area are anticipated, potentially including amendments affecting the substance of EU norms.

AI and fintech

On the fintech side, innovation has focused mainly on areas such as digital onboarding, payment solutions, robo-advisory, and open banking, fuelled by collaborations between incumbents and fintech start-ups. Since its creation in 2018, Portugal's FinLab has con-

tributed to the fostering of innovative projects, in close connection with the national regulators. The recent creation of “technology-free zones” (*zonas livres tecnológicas*, or ZLTs) – ie, the regulatory sandboxes for sponsors to develop and test their technology-based goods and services – is contributing to the increased dynamism of the Portuguese fintech market.

It is anticipated that innovation in fintech will continue to be a key driver in 2026, with new opportunities and innovation-driven models arising in the banking and financial sectors – namely, under the EU’s Digital Finance Package.

Furthermore, the Portuguese banking sector has showed interest in implementing AI as an integral part of customer relations and financial services. AI technologies are seen as having the potential to revolutionise customer service, credit scoring, fraud detection, decision-making and general automation for the industry. In 2026, the expectation is that investments in AI in the financial sector will continue to exponentially increase in order to drive beneficial innovation.

Restructuring, recovery, and loan trading

In recent years, the market has been largely fuelled by maturity-driven refinancings and amend-to-extend transactions. On the other hand, secondary market activity has remained slow. As a result of efforts to strengthen their position since the global financial crisis, Portuguese banks have focused mainly on smaller disposals, even as the macroeconomic challenges of 2023 intensified.

From a regulatory perspective, 2025 was marked by the transposition of Directive (EU) 2021/2167 into national law through Decree-Law No 103/2025 of 11 September. The new legislation harmonises the rules governing access to – and the exercise of – credit-servicing activities, while also establishing requirements applicable to purchasers of such loans.

In transposing the EU directive, Portugal made use of the opportunity to adapt the regime established therein. Notably, the national legislation also regulates the assignment and the management of loans granted by financial companies, payment institutions and electronic money institutions, with the national framework

extending to alternative credit investment undertakings and to the assignment of loans for securitisation purposes. The Portuguese legislator also opted to apply the rules on credit assignment and management to a wider range of credits, rather than limiting them to NPLs. Surprisingly, credit servicers will not be allowed to receive and hold funds from borrowers, which was the norm until now.

The legislator took the opportunity to introduce a new legal framework for the Central Credit Register, which is an online database managed by the Portuguese banking regulator and contains information provided by certain participating entities (credit-granting institutions) on credit granted to their customers in Portugal. Until now, only Portuguese banks and Portuguese branches of foreign banks were required to send information periodically to the regulator. However, this will change with the new legal framework, which broadens the range of participating entities that must report to the Portuguese banking regulator. Now credit institutions, financial companies, payment institutions and electronic money institutions headquartered abroad but granting credit in Portugal under the freedom to provide services rule will all be required to submit data to the Portuguese banking regulator.

Large-scale public works

In 2026, Portugal’s banking sector stands to benefit from a range of ambitious public infrastructure investments, particularly in transportation, healthcare and sustainability. A major focus is the construction of a high-speed rail network connecting Lisbon and Porto, which will improve regional connectivity and economic integration. The long-anticipated development of a new Lisbon airport at Montijo aims to expand air travel capacity, boosting both passenger and cargo traffic. Urban mobility is also being prioritised, with significant expansions to the subway systems in Lisbon and Porto in order to reduce congestion and enhance public transport efficiency. In healthcare, key projects include the expansion of *Hospital Central do Algarve* and new healthcare facilities in major cities such as Lisbon and Porto.

In addition to these developments, Portugal is heavily investing in renewable energy infrastructure, such as solar energy parks (particularly in the Alentejo and

Algarve regions) and offshore wind farms. These projects align with the country's push for green energy and sustainability, creating new opportunities for banks in sustainability-linked and green finance. Urban regeneration, including the revitalisation of Lisbon's waterfront and the creation of business hubs in Porto, is also expected to attract significant investment.

Although road infrastructure expansion has been de-emphasised, efforts are focused on improving traffic flow and safety through smart technologies rather than expanding highways. This shift towards sustainable transport and infrastructure offers considerable financing opportunities for the banking sector, aligning with broader EU climate goals and enhancing Portugal's long-term economic competitiveness.

Diversifying sources of funding

Another major driver of legislative changes in the Portuguese financial landscape has been the need to facilitate access to alternative sources of financing – in particular, for SMEs, so as to reduce their indebtedness and dependency on banks. Traditional bank loans remain the most relevant source of financing for businesses in Portugal.

Participating loans were introduced in 2022 as a form of hybrid (or quasi-equity) funding. In a nutshell, participating loans are remunerated and/or repaid based on the borrower's results and any outstanding amounts may be converted into equity – notably, upon default.

Loan funds were also introduced into Portuguese law as a subtype of alternative investment funds (AIFs). These funds are expressly authorised to originate loans, to participate in loan syndicates, or to acquire loans (performing or non-performing) originated by banks. In an effort to encourage the use of such funds, a tax regime equivalent to that of venture capital funds has been adopted. Accordingly, loan funds are fully exempt from corporate income tax on any income or gains. Moreover, unlike ordinary investment funds (which incur stamp duty on their net asset value at regular intervals), loan funds are exempt from such taxation. Additionally, certain changes will be in place following the transposal of the Alternative Investment Fund Managers Directive 2 (AIFMD2), due in April 2026.

It will be interesting to see how these – and other – alternative types of lending will play out in 2026 within the general financing landscape. Although some forms of alternate lending have been visible, credit granting in Portugal remains a strictly regulated activity and therefore restricted to duly authorised entities. In an effort to prevent and combat unauthorised financial activities and to protect consumers, a recent legislative act set forth a general duty for market operators to refrain from marketing and taking part in financial products provided by unauthorised entities. The act also establishes reporting duties in relation to unauthorised banking practices, while expanding the supervisory powers of Portuguese financial regulators.

ESG, sustainable finance and the Omnibus Package

ESG concerns are also expected to remain a focal point for the Portuguese financial sector in 2026. Recent data from the Bank of Portugal showed that the stock of ESG-linked bonds was above EUR13 billion as of July 2025 – a significant figure for a relatively small market. Clients' and investors' awareness of green loans, ESG-linked loans or sustainability-linked loans has increased, and banks and other lenders are facing increasing pressure to make their loan books "greener". There has also been a progressive increase in the incorporation of ESG key performance indicators (KPIs) in loan transactions during the past couple of years, associated with better pricing for borrowers and other more favourable debt conditions.

Since late 2024, the EU Green Bond Regulation – aiming to create a robust framework for green bonds and ensuring that proceeds are used for environmentally sustainable projects – has been in effect. The regulation enhanced transparency and accountability, enabling investors to confidently finance initiatives that align with the EU's climate goals. For instance, after the regulation came into effect, several issuers such as EDP and Iberdrola have issued bonds under the EU Green Bond Standard and witnessed strong investor demand. Additionally, the Sustainable Finance Disclosure Regulation (SFDR) has required financial institutions to disclose the sustainability risks associated with their investments, promoting greater transparency in the financial sector and generating compliance requirements for banks.

As regards the ESG regulatory framework, the EU sought to address concerns regarding the complexity of sustainability reporting requirements while ensuring the region remains competitive within the global economic landscape. To this end, the Omnibus Package was introduced with the primary objective of simplification. Since April 2025, the so-called Stop-the-Clock Directive has been in effect, requiring EU member states to transpose it into national law by 31 December 2025. This measure defers certain ESG obligations under both the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD). As a result, companies classified within the “second wave” and “third wave” categories will see their reporting duties postponed to 2028 (covering FY 2027–28) and 2029 (covering FY 2028–29) respectively. Furthermore, EU member states now have until July 2027 to transpose the CSDDD into domestic legislation.

In addition, the EC has already presented draft proposals introducing substantive amendments to various instruments, including the CSRD, CSDDD, and the EU Taxonomy Regulation. These proposals, which – at the time of writing (November 2025) – are still undergoing the EU’s legislative process, focus on matters such as scope, thresholds, and other key regulatory elements. In 2026, it will be important to closely monitor these changes and proposals and to assess how they may influence corporate reporting obligations, compliance requirements, and strategic planning for companies across the EU.

Nonetheless, banks in Portugal are increasingly integrating ESG criteria into their organisational, lending and investment practices. The SFDR mandates that firms categorise their financial products based on their sustainability characteristics, encouraging the development of products that support the EU’s objectives for a greener economy. Furthermore, the EU Taxonomy Regulation provides a classification system for sustainable economic activities, guiding financial institutions in identifying which investments are aligned with environmental objectives.

This regulatory landscape not only drives banks to enhance their sustainable finance offerings but also compels them to assess the impact of their invest-

ment portfolios on climate change and biodiversity loss. With rising regulatory scrutiny and growing consumer demand for sustainable practices, the banking sector in Portugal is well positioned to lead in green financing initiatives that not only comply with EU laws but also contribute to a more sustainable and resilient economy.

AI in banking services

Recent developments in the field of AI, with the broader and increasing use of generative AI systems and large language models (LLMs), have generated great interest within the banking industry. These developments have already been reflected – albeit still in a limited capacity at this stage – in banking services.

The integration of generative AI and LLMs into the banking sector is expected by some to significantly reshape how financial institutions operate and engage with their customers. Leveraging these technologies, banks may automate and enhance various processes, such as risk assessment, fraud detection, credit scoring, customer service, and compliance management.

Generative AI could have the potential to analyse vast datasets and generate predictive models that inform business (and lending) decisions, helping to reduce defaults and improve profitability. Furthermore, generative AI can facilitate product innovation by analysing customer preferences and market trends to help banks develop new services that better meet client needs.

Additionally, LLMs can enhance customer interactions through personalised communication, enabling chatbots and virtual assistants to provide tailored financial advice and support and thereby improving customer satisfaction and engagement. In the realm of compliance, such models could in the future assist in:

- monitoring transactions for anomalies;
- ensuring adherence to applicable regulations; and
- streamlining reporting processes by automatically generating necessary documentation.

As these technologies continue to evolve, their ability to drive efficiency, enhance security, and deliver personalised experiences positions banks to remain

competitive in an increasingly digital financial landscape.

2025 was also marked by the first regulatory milestones in the phased implementation of the EU AI Act. As of February 2025, the “unacceptable risk” AI practices (as defined by the regulation) are banned. In August 2025, rules regarding general-purpose AI models took effect. Accordingly, any new models falling under that category introduced in the EU market must comply with the EU AI Act’s transparency, safety and copyright measures. For providers that were already installed in the market before August 2025, the deadline for compliance is set for August 2027. By August 2026, most of the EU AI Act’s requirements will be fully enforceable, including those targeting high-risk AI applications across sectors such as health, financial services, employment, and vital infrastructure.

A significant recent development in this field is the publication of the General-Purpose AI (GPAI) Code of Practice, a comprehensive set of voluntary guidelines designed to assist AI providers in fulfilling the EU AI Act’s obligations for foundational models. This non-binding framework addresses three principal areas: transparency, copyright compliance, and the safety and security of advanced AI systems. While adherence is voluntary, providers who follow the GPAI Code of Practice benefit from a presumption of conformity – meaning they are considered to meet the legal requirements applicable to GPAI under the EU AI Act.

Although the use of AI in the financial sector is advancing, the limited track record with these technologies still creates significant risks. To meet supervisory expectations and safeguard market stability, institutions need to ensure strong oversight of the tools and processes they deploy. The competitive landscape has also shifted, with banks no longer contending solely with one another but increasingly facing pressure from fintech firms, crypto-asset providers, and digital platforms that are often quicker to adopt new technology. In Portugal, the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários*, or CMVM) has highlighted several priorities:

- strengthening investor protection in digital and AI-driven contexts (eg, marketing through online influencers);
- improving transparency in the promotion of financial products;
- revising reporting duties for asset managers; and
- sharing with Banco de Portugal the responsibility of supervising cryptocurrency markets under MiCAR.

On the international stage, initiatives such as Project Gaia are making use of LLMs to process corporate disclosures and identify climate-risk data points. This provides regulators with new tools to monitor environmental exposures as sustainability reporting obligations expand.

Digital banking

Digital banking has maintained a tendency towards exponential growth and its influence is expected to become increasingly more significant in the banking industry. Key developments include:

- embedded finance;
- banking as a service (BaaS);
- generative AI as a tool for personalisation and automation; and
- central bank digital currencies (CBDCs).

In the coming years, some areas will enhance the potential of digital banking. Consumers’ awareness of the significance of their personal data enables banks to portray themselves as the safest place for consumers’ data. Equally, business models have already started to move towards platformisation. As more players in other sectors begin bundling financial services with their own, banks will ideally allow customers to choose a more need-centred approach.

In terms of regulation, governments and regulating bodies are required to entirely shift their way of identifying and managing risks. There is a move towards a focus on the outcome, rather than monitoring the activities of institutions. Equally, this regulation may become progressively more dependent on AI, personal data and the blockchain.

Digital banking is starting to impact the Portuguese market, with competition among credit institutions (which are being forced to diversify their services and utilise automation and fintech) and focus on convenience for costumers both increasing, along with a heightened awareness of cybersecurity and the protection of personal data.

Basel III

The Capital Requirements Directive VI (“CRD VI”) and Capital Requirements Regulation III (“CRR III”) packages mark the completion of the EU’s implementation of the Basel III framework. While the CRR III has already been in force since 1 January 2025, the CRD VI still awaits transposition into national law, with the deadline set for 10 January 2026. So far, there has not been any public discussion on the CRD VI’s domestic implementation.

The CRD VI foresees an amended framework for third-country banks to operate within the EU (including through branches), as well as a review of supervisory powers and the introduction of ESG criteria in the internal policies and procedures of in-scope institutions. The proposed changes, when transposed into national law (hopefully by early 2026), will force the banking industry to once again adapt its structures to ensure compliance.

Revision of the countercyclical capital reserve in Portugal

Even though institutions were required only to maintain a 0% countercyclical capital reserve in the fourth quarter of 2025, it will rise to 0.75% on 1 January 2026. This will allow for a gradual increase in the reserve of releasable capital, thereby enabling the mitigation of losses resulting from unforeseen system shocks without significantly restricting the granting of credit. If the shock materialises, the reserve is liberated, totally or partially. The concept of risk adopted by this measure is quite broad, varying from external circumstances (such as pandemic crises or geopolitical uncertainty) to simply the price correction resulting from overvaluation of real estate. Rather than triggering this reserve when a cyclical systemic risk occurs, the aim is now to trigger it in a neutral environment.

This will be the first time the Bank of Portugal has set this reserve at a value exceeding 0%. The total value of reserves to be created through this measure is expected to be around EUR1 billion – although it is difficult to provide a definite forecast at this stage.

MiCAR

The Markets in Crypto-Assets Regulation (“MiCAR”) has been fully enforceable since the end of 2024, representing a legislative shift towards a unified European framework for the cryptocurrency sector, even if its implementation does not directly interfere with the distributed ledger technology/blockchain technology underlying the crypto-asset markets. MiCAR’s rules encompass asset-referenced tokens, e-money tokens and other crypto-assets – although they notably exclude non-fungible tokens.

On 16 September 2025, Draft Law No 32/XVII/1st was presented to the Portuguese Parliament, implementing MiCAR into national law. As expected, the proposal suggests a division of supervisory powers between the Bank of Portugal and the CMVM. The legislation granted the Bank of Portugal prudential supervisory powers in addition to the Bank of Portugal’s AML/CFT responsibilities. The CMVM, in turn, will be responsible for conduct supervision. For entities that were registered with the Bank of Portugal on 30 December 2024 under the AML/CFT Law and that have started and reported their activity, the proposal provides for them to continue to carry out the activities for which they are qualified until 30 December 2025. After that, these entities will have to obtain a new authorisation from the Bank of Portugal.

It is now up to the Portuguese Parliament to confirm or amend the terms of the draft law in the coming months. Relevant amendments to its content may yet emerge, potentially affecting entities intending to benefit from the new regime.

SENEGAL



Law and Practice

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1. Legal Framework

1.1 Key Laws and Regulations

The principal laws and regulations governing the banking sector are:

- the Framework law on banking regulation (BCEAO) (*Loi cadre portant réglementation bancaire* (BCEAO));
- Law No 2025-03 of 19 February 2025 on banking regulations; and
- the Collective Agreement on Banks and Financial Institutions in Senegal (*Convention collective des banques et établissements financiers au Sénégal*).

The regulator responsible for supervising banks in Senegal is the *Banque Centrale des Etats d'Afrique de l'Ouest* (the Main Agency of the Central Bank of West African States) (hereinafter the “Central Bank” or the BCEAO).

2. Authorisation

2.1 Licences and Application Process

The Authorisation Requirement and the Process for Applying for Authorisation

In Senegal, the banking authorisation regime is regulated by the Banking Law of 2025.

According to this Law, no one may engage in banking activities or present themselves as a bank, financial institution, payment institution, electronic money institution or fintech without obtaining prior authorisation and being registered on the official list.

However, certain transactions remain authorised without authorisation for companies, in particular:

- the granting of payment terms or advances between contractors;
- leasing with an option to purchase;
- cash transactions between related companies;
- the issue of securities or debt instruments; and
- the issue of payment instruments intended for the purchase of goods or services from the issuing company.

The Law of 2025 on banking provides for exemptions to the banking monopoly.

Microfinance institutions may carry out certain banking operations within the limits set by their regulations.

The BCEAO may grant fintech companies a temporary exemption via its Financial Innovation Laboratory, allowing them to test banking services under specific conditions.

Financial companies and multilateral development banks are not subject to the prohibition on using the terms “bank”, “banker”, “financial institution”, “payment institution”, “electronic money” or “fintech” in their name or activity.

To obtain banking approval in Senegal, Banking Law 2025 requires:

- legal form – banks must be public limited companies with fixed capital or co-operatives with variable capital. Other institutions may also be incorporated as limited liability companies. Single-member companies are excluded;
- a head office – which must be located in a WAEMU member state, as must the governing bodies;
- share capital – a minimum amount, set by the WAEMU Council of Ministers, must be fully paid up in cash and invested in the WAEMU zone; and
- shareholders – shares must be registered, and no shareholder may exceed the ownership threshold set by the BCEAO. Institutions of a certain size must be listed on the *Bourse Régionale des Valeurs Mobilières SA* (Regional Securities Exchange SA) (BRVM), written in simple but legal French.

The procedure for applying for banking authorisation in Senegal is supervised by the central bank and the UMOA Banking Commission. It begins with the submission of an application addressed to the Senegalese Minister of Finance and registered with the central bank, which verifies that the application complies with legal requirements, particularly in terms of legal form, share capital, governance, financial viability of the project and origin of funds. The central bank then examines the application, assessing its financial

soundness, transparency, management quality and anti-money laundering measures.

Authorisation is then granted by order of the Senegalese Minister of Finance, after a favourable opinion from the Banking Commission, and may be limited to certain operations. Once authorisation has been obtained, any significant changes must be notified to the Banking Commission. The authorised institution is included on the official list of authorised financial institutions, published in the Official Gazette of the Republic of Senegal and on the Commission's website. Finally, the institution must commence operations within one year of the authorisation decision, failing which the authorisation will be withdrawn.

Activities and Services Covered, and Restrictions on Licensed Banks' Activities

The Banking Law of 2025 defines the operations that banks and authorised institutions are permitted to carry out.

Operations authorised for banks and financial institutions

Banks are authorised to carry out all banking operations, namely the receipt of funds from the public, credit operations and the provision of payment facilities to customers or the management of payment methods (Article 21-22).

Financial institutions are authorised to carry out one or more banking operations in accordance with the conditions and limits defined by their licence. They may only accept deposits with the prior authorisation of the Minister of Finance, after approval by the Banking Commission. The conditions and procedures for the exercise of the activities of financial institutions are set by the Central Bank (Article 22).

Operations authorised for payment institutions

Payment institutions are authorised to provide, as their usual business, one or more payment services, namely:

- cash deposits or withdrawals and account management operations;
- the execution of the following payment operations:
 - (a) single or standing orders and direct debits; and

- (b) payment transactions made with a payment card or similar device;
- fund transfer transactions;
- payment transactions made by any means of communication;
- the issuance of payment instruments and/or the acquisition of payment transactions;
- payment initiation services; and
- account information services,

in accordance with the conditions and limits defined by their authorisation.

Transactions executed by payment institutions are linked to a payment account.

The conditions and procedures for the exercise of the activities of payment institutions are set by the Central Bank (Article 24).

Operations authorised for electronic money institutions

Electronic money institutions are authorised to issue and distribute, as their usual business, electronic money – ie, any monetary value representing a claim on the issuer, which is:

- stored in electronic form, including magnetic form;
- issued without delay against the deposit of funds of an amount not less than the monetary value issued; and
- accepted as a means of payment by natural and legal persons other than the issuer of the electronic money.

Transactions carried out by electronic money institutions are linked to an electronic money account.

The terms and conditions governing the activities of electronic money institutions are set by the Central Bank (Article 25).

However, there are some transactions that banks and authorised institutions are prohibited from carrying out.

Credit institutions, particularly banks and financial institutions, are not permitted to:

- directly or indirectly grant loans to related parties, auditors and staff for a total amount exceeding a percentage of their actual own funds, as set by prudential regulations;
- engage, on their own behalf or on behalf of others, in commercial, industrial, agricultural or service activities, except to the extent that such operations are necessary or incidental to the conduct of their banking business or essential to the recovery of their claims, taking into account the limits set by prudential regulations;
- grant loans against the pledge of their own shares; and
- acquire or hold holdings in the form of listed shares in a single company the value of which exceeds a threshold defined by the Central Bank.

Payment institutions are prohibited from:

- disposing of payment service users' funds for their own account; and
- using funds from a payment account to make investments on behalf of the customer.

Electronic money institutions are prohibited from granting credit services to their customers in any form whatsoever or from paying interest on funds received in exchange for electronic money units issued. However, funds originating from a loan granted to a customer by a bank or microfinance institution may be used to issue electronic money.

The Central Bank may prohibit authorised institutions from entering into partnerships that include an exclusivity clause for the provision of one or more services, or prohibit authorised institutions from conducting activities or carrying out transactions that could compromise the stability of the WAEMU financial system.

However, following approval by the Banking Commission, the Minister of Finance may grant individual and temporary exemptions to authorised institutions for prohibited transactions.

Common Ancillary Activities of Banks and Additional Authorisation/Requirements (MiFID II, MiCAR)

Banks and authorised institutions may carry out operations considered to be related to their activities.

Subject, where applicable, to compliance with authorisations and other specific legislative and regulatory provisions relating to the exercise of certain activities or professions, credit institutions are authorised to carry out the following transactions, which are considered to be related to their activities:

- transactions involving gold and precious metals;
- manual or book-entry foreign exchange transactions;
- transactions relating to the investment, subscription, purchase, management, custody and sale of securities and any financial product;
- transactions involving the acquisition of and participation in existing or newly formed companies, subject to compliance with the provisions of Articles 51 and 52 and within the defined prudential limits;
- advisory and assistance services in the areas of asset management, financial management, financial engineering and, in general, any transaction intended to facilitate the creation and development of companies, in particular the search for financing and partners; and
- intermediation operations as commission agents, brokers, insurance service providers or otherwise in all or part of the banking operations and operations referred to in this article.

Payment institutions may, for their part, carry out foreign exchange transactions, custody services and data recording and processing, which are considered to be related to their activities (Article 24).

Electronic money institutions may provide payment services, which are considered to be operations ancillary to their activities (Article 25).

Obtaining a European Passport (Branches, Cross-Border Services)

The Banking Law of 2025 does not mention obtaining a European passport to provide cross-border ser-

vices, to open branches or generally exercise banking activities in Senegal.

When a foreign entity wishes to carry out banking or auxiliary activities, particularly on the regional financial market, it must obtain authorisation to do so.

However, no person may direct, administer or manage an authorised institution or one of its branches if they do not have Senegalese nationality or that of a West African Economic and Monetary Union (WAMU) member state, unless they enjoy assimilation to Senegalese nationals by virtue of an establishment agreement. The Minister of Finance may grant individual exemptions, with the approval of the Banking Commission. Executives for whom a waiver is sought must hold at least a Master's degree or an equivalent diploma and have at least five years' professional experience in banking, finance or any other area of expertise deemed compatible with the duties envisaged. Any manager or director who has obtained a waiver of the nationality requirement to work in a credit institution in a WAMU member state is not required to apply for a new waiver when changing position, in any other authorised WAMU institution.

For directors, a new exemption is required to perform the duties of a manager of an authorised WAMU institution.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

The Nature of Regulatory Filings and Ongoing Requirements

During the life of a bank, operations that have a significant impact on its shareholder structure are governed by Articles 53 to 55 of the Banking Law of 2025.

To this end, merger operations by absorption or creation of a new company or demerger are subject to prior authorisation by the Minister of Finance. Moreover, under Article 53, any acquisition or transfer of a holding that would have the effect of raising the holding of any one person (directly or through an intermediary) or of any group of persons acting in concert, first

above the blocking minority, then above the majority of voting rights in the credit institution, is subject to the same obligation of prior authorisation by the Minister of Finance; also, any acquisition or transfer of a holding that would have the effect of lowering the holding below those thresholds is subject to the same requirement.

The new Banking Law adds that any transfer by an institution of more than 20% of its assets corresponding to its operations, or any management or cessation of all its activities, or any opening of an Islamic window in the Republic of Senegal, is also subject to the same obligation. The same applies to the opening of a representative office within the WAEMU by a foreign institution.

For the purposes of this law, the majority of voting rights and the blocking minority are set at half of the votes plus one and one third of the voting rights plus one, respectively.

Under Article 53, the creation of a branch or subsidiary located outside the WAEMU, as well as any transfer of assets of that subsidiary or any acquisition of a stake in a company representing more than 10% of the share capital of the issuing entity or any transfer of more than 10% of the assets of a subsidiary located in the Union, are subject to prior authorisation by the Banking Commission.

In addition, banks and authorised institutions with their registered office abroad are required to notify the Banking Commission of any operation referred to above that concerns them.

Pursuant to Article 2 of Instruction No 19-12-2011 of 27 December 2011 establishing the list of Documents and Information Constituting the Prior Authorisation File for the Modification of the Shareholding Structure of Credit Institutions (the "Instruction"), the prior authorisation file must be submitted in four copies to the central bank of the member state in which the credit institution is located, following the format provided for in Annex 2 of the Instruction, and it must include a written request addressed to the Minister of Finance of the Republic of Senegal, as well as the documents and information listed in Annex 1 of the Instruction.

The application for prior authorisation, which is processed in the same way as for authorisation, is addressed to the Minister of Finance and filed with the National Directorate of the BCEAO. Authorisation from the Minister of Finance, after receiving the assent of the Banking Commission, is required before the planned operation is carried out.

The Nature of the Ongoing Requirements Towards the Supervisor

The nature of the ongoing requirements towards the supervisor refers to the ongoing obligations that an authorised institution must meet vis-à-vis the supervisory authority, in this case the Central Bank or the Banking Commission, as part of its operations. These requirements are in place to guarantee the stability, transparency and compliance of financial activities with the regulations in force.

Authorised institutions are required to submit regular financial and operational reports to enable the supervisor to monitor their financial health.

They must also comply with the laws and regulations in force, including rules on governance, risk management and customer protection.

In addition, authorised institutions must maintain sound internal control systems to prevent the risk of failure and protect depositors and the financial system in general.

Lastly, the supervisory authorities may carry out audits or inspections to verify the institution's compliance with regulatory requirements.

4. Governance

4.1 Corporate Governance Requirements

Under Senegalese legislation, corporate governance requirements are also regulated by the Banking Law of 2025.

The following conditions apply to banks.

- Banks may be incorporated in two legal forms, namely as:

- (a) public limited companies with fixed capital (*société anonyme*); or
- (b) co-operative or mutual companies with variable capital after special authorisation by the Minister of Finance.

- They cannot take the form of a one-person company.
- Exceptionally, they may take the form of other legal entities.
- They must have their registered office in the territory of one of the member states of the WAEMU.

The following conditions apply to financial institutions.

- Financial institutions may be incorporated as:
 - (a) public limited companies with fixed capital;
 - (b) limited liability companies (*société anonyme*); or
 - (c) co-operative or mutual companies with variable capital.
- They cannot take the form of a one-person company.
- They must have their registered office in the territory of one of the member states of the WAEMU.

Under Senegalese law, credit institutions are required to establish a corporate governance mechanism in line with good practice and adapted to their size, their structure, and the nature and complexity of their activities (Article 4 of Circular No 01-2017/CB/C of 27 September 2017 relating to the Governance of Credit Institutions and Financial Companies in the WAEMU).

4.2 Registration and Oversight of Senior Management

The registration and oversight of directors and senior management is generally regulated by the Banking Law of 2025 and more specifically by Circular No 02-2017/CB/C of 27 September 2017 on the Conditions of Exercise of the Functions of Directors and Officers in Credit Institutions and Financial Companies of the WAEMU.

The provisions of the Banking Law of 2025 regulate the status of directors and require the directors to be of Senegalese nationality or of the nationality of one of the other member states of the WAEMU.

However, the Minister of Finance may, on advice of the Banking Commission, grant individual exemptions to the nationality requirement. In such a case, a director must hold at least a Master's degree or an equivalent diploma and must have at least five years of professional experience in the banking sector, finance sector or any other field relevant to the functions envisaged (Article 61, Law of 2025).

The granting of individual exemptions from the nationality requirement takes into account the criteria set out in Articles 61, 62 and 63, as well as the need to ensure sufficient representation of WAEMU nationals within the governing bodies.

In order to obtain an individual exemption to the nationality requirement, the credit institution must send to the Minister of Finance a request for approval specifying:

- the full identity and nationality of the person for whom the exemption is requested;
- the relevant position;
- the reason for using a non-WAEMU national to fill the position; and
- for the profiles of management positions other than chief executive officer and deputy chief executive officer, a formal indication by the credit institution that the proposed employment contract does not raise any objections from the national employment authorities.

The request sent to the National Directorate of the BCEAO must contain the following documents:

- an extract from the criminal record of the person concerned;
- a declaration on honour;
- official documents establishing the identity and nationality of the person concerned;
- a detailed curriculum vitae indicating the training received and the acquisition of at least five years' professional experience in the field of banking, finance or any other field of competence deemed compatible with the duties envisaged;
- the precise addresses of previous employers;
- copies of the required diplomas;

- the draft employment contract for executives, except for the chief executive officer and the deputy chief executive officer; and
- a conflict of interest declaration.

Persons involved in the direction, administration, management, stewardship or control of authorised institutions and financial companies are bound by professional secrecy. This secrecy covers all information relating to the operations and activities of these entities, as well as all information brought to their attention in the course of their duties (Article 68).

4.3 Remuneration Requirements

The Individuals Subject to the Remuneration Requirements

Under Senegalese law, employees of banks are bound by the provisions of the Senegalese Labour Code and the provisions of the Interprofessional National Collective Agreement, as well as by the specific provisions of the Collective Agreement on Banks and Financial Institutions in Senegal.

In fact, under Senegalese labour law, employees are classified into different categories, which correspond to different remuneration scales. The Collective Agreement on Banks and Financial Institutions provides for specific classifications of bank employees according to the job they hold. As such, bank employees are classified into:

- workers and employees, further classified into seven different subcategories;
- agents, classified into four subcategories; and
- executives, classified into four subcategories.

Relevant Remuneration Principles

Depending on the category into which the bank or financial institution employee is classified, a specific remuneration is provided for by the Ministry of Labour, which sets up the categorical salary scales in the private sector. The basic salaries provided for by the Ministry for the different categories are mandatory and cannot be reduced by the employer.

Diversity Requirements

There is no specific legislation on diversity on bank boards of directors, the role of women in bank manage-

ment, equity and inclusion, or even on gender, ethnicity and sexuality. However, some banks include provisions in their internal policies to promote or eradicate certain issues that affect diversity within these companies.

The Bankers' Oath or Equivalent Binding Rules of Conduct for Bank Employees

Articles 62, and 69 of the Banking Law of 2025 establish strict prohibitions for managers and employees of authorised institutions, similar to an oath of probity. The purpose of these provisions is to prevent anyone convicted of serious crimes (such as forgery, fraud, corruption or money laundering) from holding a management or executive position in a credit institution.

Prohibitions for managers (Article 62) – any conviction for serious crimes or offences (such as forgery, theft, fraud, breach of trust, corruption, money laundering or damage to the credit of the state) automatically results in:

- a ban on directing, administering or managing an authorised institution;
- a ban on carrying out certain regulated activities;
- proposing the creation of an authorised institution; or
- acquiring a stake in the capital of an authorised institution.

These prohibitions apply in the event of attempted or complicit offences and extend to convictions or bankruptcies pronounced abroad, as well as to directors or administrators suspended or dismissed by the WAE-MU Banking Commission by another WAEMU financial sector supervisory authority or by a foreign authority.

Prohibitions on managers and on employment in authorised institutions (Article 69) – use confidential information that has come to their knowledge in the course of their work to carry out, directly or indirectly, transactions for their own account or for the benefit of other persons.

That being said, bank secrecy is not enforceable against the Banking Commission, the Central Bank or a judicial authority acting in the context of criminal proceedings or against the authority responsible for macroprudential supervision in the Union in the context of the implementation of its regulated powers (Article 68, Banking Law of 2025).

According to the above-mentioned provisions, a breach of bank secrecy and breach of confidential information are punishable by imprisonment for one month to two years and/or a fine of XOF50–200 million. In the event of a repeat offence, the maximum penalty is increased to five years' imprisonment and a fine of XOF300 million.

These rules impose irreproachable conduct on bank managers and employees, with the aim of guaranteeing the reliability and integrity of authorised institutions.

5. AML/KYC

5.1 AML and CFT Requirements

The legislation in force in Senegal against money laundering is composed of national laws and community and international standards. In this regard, it should be noted that the reference national law is Law No 2018/03 of 23 February 2018 on the fight against money laundering and terrorist financing, which transposes into domestic law the Uniform Anti-Money Laundering Bill adopted by Decision No 26/CM/WAEMU of 2 July 2015 (the "AML/CFT Law").

Persons subject to AML/CFT obligations are listed in Articles 5 and 6 of the AML/CFT Law, including financial institutions.

The AML/CFT Law introduced a risk-based approach, requiring financial institutions to have policies of procedures and internal controls to effectively mitigate and manage AML/CFT risks. Articles 23 and 24 of the AML/CFT Law impose several obligations, including:

- the centralisation and retention of information on the identity of customers, principals, agents and beneficial owners;
- the monitoring of suspicious transactions;
- the appointment of internal managers responsible for the application of anti-money laundering programmes;
- the continuous training of personnel;
- the implementation of an internal control system for the effective application and effectiveness of the measures adopted to control risks; and

- the implementation of measures relating to the detection of unusual or suspicious transactions and compliance with the obligation to report suspicions to the National Financial Intelligence Processing Unit.

In addition to the obligations listed above, banks have an obligation of vigilance with respect to their customers. Indeed, the law obliges banks to have up-to-date knowledge of all their customers, including their income and assets, and to monitor their operations. In this respect, Article 18 of the AML/CFT Law provides the following: “Before entering into a business relationship with a customer or assisting them in the preparation or execution of a transaction, the persons mentioned in Articles 5 and 6 of this Law shall identify the customer and, where applicable, the beneficial owner of the business relationship by appropriate means and shall verify these identification elements on presentation of any reliable written document.” Article 19 of the AML/CFT Law provides the following: “Before entering into a business relationship with a customer, the persons referred to in Articles 5 and 6 of this Law shall collect and analyse the items of information, from among those included in the list drawn up for this purpose by the supervisory authority, that are necessary for the knowledge of their customer as well as the purpose and nature of the business relationship, in order to assess the risk of money laundering and terrorist financing.”

In addition, financial institutions, when entering into a business relationship or conducting transactions with or on behalf of foreign politically exposed persons (PEPs), are required to take specific measures to:

- implement adequate and appropriate risk-based procedures to determine whether the customer or a beneficial owner of the customer is a PEP;
- obtain authorisation from the appropriate level of management before entering into a business relationship with the customer;
- take any appropriate risk-based measures to establish the origin of the assets and the source of the funds involved in the business relationship or transaction; and
- ensure enhanced ongoing monitoring of the business relationship.

Lastly, financial institutions are required to identify and assess the risk of money laundering or terrorist financing, which may result from:

- the development of new products and business practices, including new distribution methods; and
- the use of new or emerging technologies, related to new or existing products (Article 37 of the AML/CFT Law).

Failure to comply with these procedures exposes the institution to the administrative, disciplinary and criminal sanctions provided for in Articles 112 et seq of the AML/CFT Law.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Deposit Guarantee Scheme (DGS) in the WAEMU, including Senegal, is governed by the 2025 Banking Act which refers to it as the Deposit Guarantee and Resolution Fund, and by specific WAEMU decisions, in particular Decision No 088-03-2014 of 21 March 2014, the Articles of Association of the Depositors' Guarantee Fund (FGD), and Decision No 009 of 30 June 2017/CM/UEMOA. These texts define the membership, financing and compensation arrangements for depositors in the event of bank failure.

Creation and Operation of the FGD (Decision No 088-03-2014)

The Deposit Guarantee and Resolution Fund in the WAEMU guarantees the deposits of customers of member institutions and may participate in financing their recovery or resolution.

Decision No 088-03-2014 establishes the FGD, responsible for protecting savers in the event of the failure of a banking institution, thereby strengthening financial stability and confidence in the WAEMU banking system.

The FGD's mission is to compensate depositors while contributing to the stability of the banking sector.

Compulsory Membership and Contributions

Authorised institutions authorised to collect deposits within the WAEMU shall, upon receiving their authorisation under the conditions set out in Article 40, join the Deposit Guarantee and Resolution Fund in the WAEMU, referred to in this law as the Fund.

Contribution Rate and Compensation Limit

The Fund shall compensate depositors up to a ceiling set by the WAEMU Council of Ministers and shall define the terms and procedures for compensation.

The Fund shall be subrogated to the rights and actions of compensated depositors within the limits of the compensation amounts paid to them.

Member institutions shall provide the Fund with the necessary information concerning compensable deposits in accordance with the deadlines and procedures it sets in this regard.

Decision No 009-2017 sets the annual contribution rate for members to feed the FGD, ensuring that the fund has sufficient resources to cover deposits in the event of a banking crisis. It also defines the compensation ceiling per depositor in the event of default, guaranteeing the protection of deposits up to a certain limit in order to cover mainly small savers.

Depositor Protection and Compensation

The Banking Law of 2025 protects depositors by imposing obligations of fairness, transparency, prudence, security and confidentiality on authorised institutions, in order to ensure a fair, secure banking relationship that respects customers' rights.

Member institutions must provide the Fund with the necessary information concerning eligible deposits in accordance with the deadlines and procedures it sets in this regard.

In the event of an institution's failure, the FGD compensates depositors up to the set limit, in accordance with the conditions set out in the regulations. Banks are also required to inform their customers about the cover offered by the FGD.

These FGD requirements aim to protect depositors and ensure the resilience of the WAEMU banking sector. They impose proactive risk management and transparency obligations on institutions, thereby strengthening customer confidence and the overall financial stability of the Union.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Specific prudential measures are laid down by the Banking Law of 2025 for certain types of authorised institutions.

The Banking Commission is authorised to adjust the prudential requirements for authorised institutions. It may increase them depending on the institution's risk profile and systemic importance, or set differentiated standards and, in exceptional cases, grant temporary exemptions tailored to each institution's individual situation.

Institutions must comply with the minimum capital requirements set by prudential regulations. In addition to these minimums, there are mandatory capital buffers:

- the conservation buffer (the level of which is set by prudential regulations);
- the countercyclical buffer (the rate of which is set by the macroprudential authority); and
- the systemic buffer (a surcharge set by the Banking Commission and applicable only to systemically important banking institutions).

The Banking Commission has the power to require authorised institutions to maintain a level of capital in excess of the regulatory requirements set out in Article 84.

This additional requirement is generally imposed when:

- the institution is exposed to risks that are poorly covered or not covered by regulatory capital;
- stress tests reveal a probable capital shortfall;
- the governance, internal control or risk management system is deficient; or

- an audit reveals an underestimation of the actual risks incurred by the institution.

Authorised institutions are subject to mandatory minimum liquidity standards set by prudential regulations. To ensure their stability, they must also maintain appropriate liquidity buffers and have a contingency funding plan outlining resolution strategies in the event of a shortage or crisis (Article 86, Law of the 2025).

In addition, the Banking Commission has the power to impose liquidity requirements on institutions that exceed the regulatory minimums in several situations, including:

- the existence of systemic liquidity risk (within the territory or in the West African Monetary Union);
- stress tests revealing an inability to cope with probable risks;
- the failure of the liquidity risk management system; and
- controls revealing an underestimation of the actual liquidity risk incurred by the institution.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

In Senegal, each authorised institution is required to draw up, update and submit to the Banking Commission a Preventive Recovery Plan. This plan must detail the measures that the institution could implement on its own initiative to restore its financial situation if it deteriorates significantly (whether due to a macroeconomic crisis, a serious financial crisis or a problem specific to the institution/group). The institution must provide for various scenarios of deterioration in this plan. It is also required to inform the Banking Commission of any decision to activate (or not to activate) these measures when its financial situation so requires. The precise terms and conditions for drawing up this plan are set by the Banking Commission (Article 151, Banking Law of 2025).

The bank resolution is mainly established in Articles 170 et seq. specifically for the treatment of institutions in difficulty, and derogates from common law procedures for relevant entities. This text entrusts the implementation of the resolution to the Resolution College of

the WAEMU Banking Commission, acting as the Resolution Authority, and defines resolution as a restructuring aimed at safeguarding the public interest and the financial stability of the Union. The primary objectives of this approach are to ensure the continuity of the critical functions of institutions, mitigate the systemic impact of a failure on financial stability, protect public money and safeguard customer deposits covered by the Deposit Guarantee and Resolution Fund (FGDR).

In order to achieve these objectives, the Resolution College has at its disposal a range of resolution tools provided for in Articles 187 et seq. These tools include the business transfer tool, the use of a bridge institution to manage essential functions on a transitional basis, the asset separation tool to isolate impaired assets in a bad bank, and, above all, the internal bail-in tool, which allows eligible debts to be written down or converted into capital to absorb losses, while expressly preserving guaranteed deposits.

In addition, the Resolution Authority is vested with extensive powers to ensure the effectiveness of resolution, including the immediate takeover of the institution in difficulty to exercise shareholder rights, the power to forcibly transfer assets or liabilities to a receiving entity, and the power to write down, cancel or convert equity securities and debt instruments. These provisions provide a comprehensive legal framework for managing and resolving banking crises in an orderly manner, thereby minimising the impact on the economy and taxpayers.

The legal and regulatory framework governing the insolvency, recovery and resolution of banks is in general governed by the OHADA Uniform Act on the Organization of Collective Procedures (the “Uniform Act”) and more specifically by the Banking Law of 2025.

The Banking Law of 2025 organises three procedures for dealing with companies in difficulty: preventive settlement, resolution and liquidation.

Preventive settlement is a procedure intended to avoid the insolvency or closure of a business and to enable the discharge of the company’s liabilities by means of a preventive composition agreement. This procedure is applicable to any person who, whatever the nature

of their debts, is in a difficult but not in an irremediably compromised economic and financial situation and thus allows the company to be exempted from the payment of most of its debts in order to prepare a recovery plan for the company. The OHADA Uniform Act on the Organisation of Collective Proceedings for the Settlement of Liabilities does not apply to the reorganisation of authorised institutions.

The bank resolution aims to ensure the orderly management of institutions in difficulty in order to preserve the financial stability of the Union and protect the public interest. This mechanism, implemented by the Resolution College of the WAEMU Banking Commission, aims primarily to ensure the continuity of institutions' essential functions, limit the systemic impact of a failure, protect deposits covered by the Deposit Guarantee and Resolution Fund, and avoid the use of public funds.

Regarding the procedure of liquidation of assets, in the event of the opening or pronouncement of liquidation proceedings against a authorised institution, the Banking Commission shall take a decision on the withdrawal of authorisation and the winding-up of the institution. The asset liquidation procedure established by law may only be initiated against an authorised institution with the approval of the Banking Commission (Article 213, Banking Law of 2025).

Under Senegalese law, the above-mentioned procedures concern all creditors, regardless of their particular situation (employees, preferential creditors, unsecured creditors, etc). In this respect, creditors cannot pursue the recovery of their claim against a defaulting debtor by starting an individual procedure. Collective procedures may be imposed on the creditors of a company in difficulty.

In the event of the liquidation of an authorised institution, deposits guaranteed by the Fund and sums held in segregated accounts opened in the name of payment institutions and electronic money institutions are repaid immediately after creditors of legal costs and super-preferential wage creditors, in proportion to the available resources, after deduction of the debts owed to the institution (Article 218 of the Banking Law of 2025).

The following shall also be paid by priority before all other claims, with the exception of those mentioned in the previous paragraph:

- advances granted by the Fund, at the request of the Banking Commission, as part of a preventive intervention or the financing of the resolution; and
- repurchase agreements.

Decision No 013-24-06/CM/WAEMU relating to the prudential framework applicable to credit institutions (the "Decision") is intended to establish a prudential framework in force within the WAEMU and in particular in Senegal.

The preamble to the Decision states that the WAEMU community framework, and in particular the minimum capital requirements according to risks (credit, operational, market), are based on the Basel II and Basel III rules, and the Basel rules have been transposed taking into account the characteristics of the economies and specificities of the WAEMU banking system.

It consists of a series of provisions organised around three themes:

- the conditions for exercising the profession (minimum capital and its representation, special reserve, accounting regulations);
- the regulation of specific operations (shareholdings, fixed assets, loans to main shareholders, managers and shareholders, managers and staff); and
- management standards (coverage of risks by effective equity capital, of medium and long-term assets by stable resources, division of risks, liquidity rules, structure of liquidity rules, portfolio structure).

Among the requirements of the prudential system is the integration of operational risk into the process of supervising credit institutions. In this respect, the Banking Commission has proposed two approaches to the evaluation of operational risks based on weighting applied to an institution's net banking income. These weights are identical to those defined by the Basel Committee, namely 15% for the basic approach and a level varying between 12% and 18% for the standard approach.

Among other things, it requires institutions wishing to use the standard approach to set up an operational risk management function with strong involvement of the executive body, which defines the roles and responsibilities of each player.

In the area of credit risk, the precise assessment of risk under the standard approach is based primarily on the counterparty weighting set by the French Banking Commission, which is the ACPR (*Autorité de contrôle prudentiel et de résolution*). These weightings depend on the ratings established by External Credit Assessment Institutions or rating agencies. In addition, the Annex to the Decision provides for the reinforcement of the core capital to be mobilised by the banks under Pillar One requirements (minimum capital requirements). Banks must hold a level of core capital corresponding to a minimum threshold of 5% of the amount of their exposure to credit, market and operational risks. This ratio is reinforced by the introduction of a conservation buffer established at a maximum level of 2.5% of the bank's total exposure to risk, following the example of the threshold defined by Basel III.

Regarding the thresholds of banks' share capital, Decision No 003 of 30/03/2015/CM/WAEMU fixing the minimum share capital of credit institutions of the member states of the WAEMU has set the minimum share capital of credit institutions of the member states of the WAEMU at XOF10 billion for banks and XOF3 billion for financial institutions of a banking nature.

9. ESG

9.1 ESG Requirements

In Senegal, there are no specific banking regulatory requirements relating to ESG matters. Although no specific banking regulatory requirements are provided for under Senegalese legislation, credit institutions are encouraged to implement or strengthen their ESG responsibility by implementing the international ESG standards. These ESG standards encourage, among other things, the quality of social dialogue, employment of disabled people, transparency of executive remuneration and the fight against corruption.

Banks and financial institutions may, on a voluntary basis, implement ESG requirements adapted to their specific structure and activities.

10. DORA

10.1 DORA Requirements

As DORA is not applicable in Senegal, there are no banking regulatory requirements related to this EU Regulation.

11. Horizon Scanning

11.1 Regulatory Developments

In Senegal, the evolution of banking regulations in the WAMU reflects a shift from a traditional national framework to modern, comprehensive community regulations aligned with international standards.

This transformation is marked by three major developments: the broadening of the scope of application, the strengthening of financial stability through crisis management, and the integration of new financial practices.

At the same time, the system is becoming more specialised: microfinance institutions are now governed by separate legislation in Law No 2025-04 of 19 February 2025 on the regulation of microfinance to enhance inclusion while ensuring financial security, while Regulation 06/2024/CM/UEMOA reforms exchange controls to ease the management of international capital flows, thereby supporting the stability and openness of the regional market.

Trends and Developments

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Microfinance in Senegal: Between Innovation and Opportunities

Innovations introduced by Law No 2025-04 of 19 February 2025 regulating microfinance in Senegal (the “Microfinance Law”)

The Microfinance Law represents a major overhaul of the normative framework applicable to the microfinance sector.

It expressly repeals Law No 2008-47 of 3 September 2008, thereby ending a system that has become inadequate given the sector’s evolution and the contemporary demands of financial inclusion.

This reform aims to align national legislation with technological, economic and social changes observed within the financial system. In particular, it establishes a broader and modernised approach to the activities that microfinance institutions (MFIs) may undertake.

Expansion of the scope of MFIs

One of the key contributions of the new law is the authorisation given to MFIs to carry out operations related to the digitalisation of financial services, specifically:

- issuance and distribution of electronic money; and
- provision of payment services.

This innovation reflects the legislature’s intention to position MFIs as key players in the digital transformation of the financial sector and to promote broader financial inclusion, particularly through the digitalisation of transactions.

Introduction of modern financial instruments

The Microfinance Law also extends MFIs’ powers to financial mechanisms previously reserved for credit institutions, such as leasing and factoring.

These tools provide micro-entrepreneurs and small businesses with alternative financing solutions tailored to their investment and cash flow needs, thereby enhancing their competitiveness and growth potential.

Legal recognition of Islamic microfinance

For the first time, the Microfinance Law introduces a specific regulatory framework for Islamic microfi-

nance, applicable to institutions operating exclusively in accordance with Sharia principles.

This official recognition responds to growing social demand for ethical and participatory financial products.

The legislature’s objective is to ensure the credibility, transparency and proper supervision of these structures, while promoting product diversification and strengthening financial inclusion.

In conclusion, the Microfinance Law marks the transition from a sectoral regulatory framework to an integrated approach, placing MFIs at the heart of digital finance and ethical finance development in Senegal.

Typology and classification of MFIs under the Microfinance Law

The Microfinance Law establishes a hierarchical and rational structuring of the sector based on professionalisation, transparency and responsible governance principles. This typology clarifies the roles and statuses of the various actors in the decentralised financial ecosystem.

MFIs

MFIs remain the central actors in the system.

They are established as legally recognised entities authorised to conduct microfinance activities in accordance with applicable regulations.

Two legal forms are now permitted:

- public limited company with fixed capital (*société anonyme à capital fixe*), suitable for institutions with a commercial orientation or high growth potential; and
- co-operative society with variable capital, (*société coopérative à capital variable*) favoured for mutualist structures based on solidarity and member participation.

This dual legal framework provides organisational flexibility, allowing the institutional model to adapt to the size and economic nature of each entity.

Structuring of the co-operative movement

The co-operative movement is organised in a network around several hierarchical levels:

- basic institutions, operating locally and in direct contact with beneficiaries; and
- umbrella structures, including unions, federations or confederations, responsible for co-ordination, supervision and resource pooling.

This model strengthens the financial and institutional solidity of the system while facilitating the dissemination of best practices and sector representation at national and community levels.

Recognition of Islamic MFIs

A major innovation of the reform is the formal recognition of Islamic MFIs (IMFIs) and the possibility for conventional MFIs to create internal Islamic branches.

This dual approach encourages diversity in economic models and allows the distribution of products compliant with Islamic finance principles, including profit-and-loss sharing, prohibition of interest, and financing of lawful activities.

Branches and outlets

The Microfinance Law emphasises strong territorial anchoring by recognising the role of branches and outlets as operational extensions of MFIs.

These local structures ensure the distribution of products and services and guarantee an effective presence in rural and semi-urban areas, contributing to national financial inclusion goals.

Authorised operations

Under Article 4 of the Microfinance Law, MFIs are authorised to carry out four main operations:

- collection of deposits;
- granting of credit;
- commitments by signature (endorsement, guarantee, surety); and
- Islamic finance operations in compliance with specific legal provisions.

Article 5 of the Microfinance Law also provides for secondary operations subject to Central Bank (BCEAO) approval, including payment services, electronic money issuance, leasing and factoring.

These innovations contribute to the modernisation and diversification of MFIs' offerings, reinforcing their role in transforming Senegal's financial landscape.

Related operations, prohibitions and limitations

Authorised related operations

MFIs may enter financial or commercial partnerships to facilitate member access to productive goods and services, subscribe to insurance contracts to cover their or their clients' risks, and offer safe deposit services.

Prudential limitations

Certain activities remain restricted to prevent speculative behaviour.

MFIs may participate in commercial or real estate activities only as ancillary to their mission or debt recovery.

Equity participations must also comply with BCEAO-established limits.

Prohibited operations

The legislature explicitly prohibits:

- management or provision of traditional payment instruments (checks, commercial paper);
- opening or holding anonymous accounts; and
- exclusive partnerships that restrict free competition.

However, regulated exemptions exist for electronic money operations and payment services within thresholds set by the BCEAO.

Operations requiring prior authorisation

MFIs under Banking Commission supervision must obtain authorisation for:

- any equity stake exceeding 10% in a company; and

- any transfer exceeding 25% of the assets of a non-controlled subsidiary.

Post-event notification requirement

Institutions must notify the BCEAO and supervisory authority of major events (opening/closing branches, relocation of headquarters, governance changes) within 30 days.

Territorial scope of operations

Article 11 of the Microfinance Law establishes the principle of territoriality: MFIs must conduct activities exclusively within Senegal, except for confederations authorised to interact with affiliates in other UEMOA member states.

Licensing conditions and procedure

Engaging in microfinance activities requires prior approval from the Minister of Finance, following a favourable opinion from the BCEAO.

Substantive conditions

The applicant institution must:

- adopt the legal form of a PLC with fixed capital or a co-operative with variable capital;
- have a minimum paid-in capital set by the BCEAO;
- maintain headquarters in Senegal; and
- ensure the integrity and competence of its managers and shareholders.

Review procedure

The licence application is submitted to the Minister of Finance with a complete file detailing proposed operation.

Administrative silence beyond four months constitutes tacit refusal.

Once granted, the licence is published in the Official Journal and on the BCEAO website.

The institution has one year to commence operations, otherwise the licence is considered void.

Effects of licensing

The registration number in the official registry of licensed institutions must appear on all administrative and contractual documents, ensuring transparency to the public and partners.

Status of the microfinance sector in Senegal (in reference to the BCEAO data)

Recent BCEAO reports indicate sustained growth in Senegal's microfinance sector, marked by an increase in licensed MFIs and diversification of financial products.

However, challenges remain regarding governance, profitability and effective digitalisation of services.

Opportunities for investors created by the Microfinance Law

Digitalisation as a growth lever

Explicit authorisation of electronic money and payment services opens new investment opportunities in fintech.

MFIs become strategic partners for financial innovation, reaching clients historically excluded from the banking system.

Diversification and ethical finance

Opening access to instruments such as leasing and factoring, combined with recognition of Islamic finance, attracts ethical capital and diversifies sector revenue sources while reinforcing resilience.

Reduction of systemic risk

Strengthened prudential oversight, BCEAO approval and early intervention mechanisms enhance sector stability, securing investments.

SLOVAKIA



Law and Practice

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BBH, advokátska kancelária, s.r.o. is a leading Central European law firm with offices in Prague and Bratislava, providing comprehensive legal services across key business sectors. The Bratislava office consists of a team of more than 15 lawyers. BBH is highly active in advising banks, financial institutions and corporate clients on the financing of multi-jurisdictional transactions, bond issuances, and syndicated and bilateral facility agreements, as well as on

day-to-day regulatory and transactional matters. The firm has an outstanding track record and extensive experience in the banking and finance sector, including advising clients on the financing of their transactions, structuring and executing Eurobond and local bond issuances, drafting and negotiating syndicated and bilateral facility agreements, and providing comprehensive regulatory and general legal advice in the area of banking and finance.

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1. Legal Framework

1.1 Key Laws and Regulations

Banking Regulation in Slovakia

The banking sector in the Slovak Republic is primarily governed by European Union law, given Slovakia's membership of both the EU and the eurozone, complemented by domestic legislation that transposes EU directives and establishes the institutional framework for banking supervision.

The cornerstone of Slovak banking regulation is Act No. 483/2001 Coll. on Banks ("Act on Banks"), which sets out the conditions for the establishment and operation of banks, licensing requirements, permissible activities, governance, prudential rules, and measures for recovery and resolution.

The Act on Banks defines a bank as a legal entity with its registered office in the Slovak Republic, established as a joint-stock company, which is a credit institution under a special regulation and which holds a banking licence (a "Slovak bank"). The Act also regulates branches of foreign banks located and operating in Slovakia.

Closely linked is Act No. 747/2004 Coll. on Supervision of the Financial Market ("Act on Financial Market Supervision"), which sets out the statutory powers of the supervisory authority. In addition, Act No. 118/1996 Coll. on Deposit Protection ("Deposit Protection Act") establishes the Deposit Protection Fund and guarantees deposits up to the harmonised EU limit of EUR100,000 per depositor.

Key EU banking legislation includes the Capital Requirements Regulation No. 575/2013 (CRR), the Capital Requirements Directive No. 2013/36/EU (CRD IV), the Capital Requirements Directive No. 2019/878 (CRD V), and the Bank Recovery and Resolution Directive No. 2014/59/EU (BRRD).

Other relevant EU acts that significantly affect banks include:

- the Deposit Guarantee Schemes Directive No. 2014/49/EU;

- the Single Supervisory Mechanism Regulation No. 1024/2013, the SSM Framework Regulation No. 468/2014 of the European Central Bank and the Single Resolution Mechanism Regulation No. 806/2014 ("SRM Regulation"), which establish the framework for the supervision and resolution of banks in EU member states participating in the Banking Union, including Slovakia;
- the Markets in Financial Instruments Directive II No. 2014/65/EU (MiFID II) and the Payment Services Directive No. 2015/2366 (PSD2), which regulate investment and payment services provided by banks; and
- the Markets in Crypto-Assets Regulation No. 2023/1114 ("MiCA Regulation"), which governs crypto-related activities.

Anti-money laundering (AML) obligations are governed by Act No. 297/2008 Coll. on Protection against Money Laundering and Terrorist Financing ("AML Act"), transposing the EU AML legislation.

Supervisory Authorities

Banking supervision in Slovakia operates within the framework of the EU Banking Union. The National Bank of Slovakia (NBS) is the national supervisory authority. It is entrusted with licensing, ongoing supervision, prudential regulation, conduct oversight and consumer protection in the financial sector.

At the European level, the European Central Bank (ECB) has direct supervisory responsibility for significant credit institutions, ie, banks, in Slovakia (eg, Tatra banka, a.s. or Všeobecná úverová banka, a.s.) under the Single Supervisory Mechanism (SSM). Less significant credit institutions remain under the direct supervision of the NBS, subject to ECB oversight. The supervisory framework is complemented by the Single Resolution Mechanism (SRM), which provides a harmonised approach to the orderly resolution of failing banks covered by the SSM.

2. Authorisation

2.1 Licences and Application Process

Bank authorisation in Slovakia is governed by the Act on Banks and EU law, with the NBS as the compe-

tent authority in co-ordination with the ECB within the framework of the SSM.

(i) Authorisation Requirement

Any legal entity intending to conduct banking activities in Slovakia must obtain a banking licence, also referred to as “banking authorisation”. Only authorised banks may use the term “bank” in their business name. Foreign banks from outside the EU are also subject to authorisation by the NBS, while banks licensed in other EU member states may operate in Slovakia under the EU passporting regime, without the need for a separate national licence (please see (v) below).

(ii) Application Process, Timelines, Costs and Regulatory Engagement

The authorisation process is strictly regulated and involves a thorough assessment of the applicant, including its ownership structure, business plan, capital adequacy, governance framework, and the fitness and propriety of senior management.

Applications for authorisation are submitted to the NBS. The NBS assesses whether the applicant meets all statutory conditions for obtaining a banking authorisation. However, the ECB has the ultimate authority to grant or revoke banking licences for all banks in participating EU member states, whether significant or less significant, under the SSM. Therefore, if the NBS finds all conditions met, it submits a draft decision to the ECB, which has ten working days to object; if no objection is raised, the authorisation is granted.

The banking authorisation shall not be granted unless the conditions set out in the Act on Banks are proved to have been met. These include, inter alia, minimum share capital of EUR16.6 million, lawful origin of funds, suitable and trustworthy shareholders and management, a sound business plan, and adequate organisational and control systems.

A bank may commence the performance of the banking activities specified in its banking authorisation upon written notification by the NBS that the required conditions have been fulfilled.

The banking authorisation is granted for an indefinite period and non-transferable, and it does not pass to a legal successor. The fee for granting a banking authorisation is set by the NBS and, at present, amounts to EUR5,000.

The NBS decides on applications within 6 to 12 months, or up to 18 months if co-operation with European authorities is required.

A bank is required to register the authorised banking activities in the Commercial Register within ten days of the banking authorisation becoming legally effective.

(iii) Activities and Restrictions

A banking authorisation specifies the exact scope of the authorised banking activities and may also include conditions that the bank or a branch of a foreign bank must fulfil. The banking authorisation may also limit the scope or manner of conducting certain banking activities.

Apart from its core activities of accepting deposits and granting loans, a bank may carry out other banking activities, provided they are included in its banking authorisation. These may include payment and settlement services, investment and trading activities, management of client claims, financial leasing, issuance and administration of securities, safe custody of assets, and the issuance of electronic money or asset-backed tokens.

However, banks and branches of foreign banks are prohibited from carrying out any business activities other than banking activities, except for activities that are directly related to their operations and carried out with the prior consent of the NBS. Banks and branches may also engage in financial intermediation in accordance with Act No. 186/2009 Coll. on Financial Intermediation and Financial Advisory Services.

(iv) Ancillary Activities and Additional Regimes (MiFID II, MiCA)

In addition to core banking services, banks commonly engage in investment services and ancillary investment activities under MiFID II, which is implemented in

Slovakia through Act No. 566/2001 Coll. on Securities and Investment Services.

Investment services and activities include executing orders relating to financial instruments on behalf of clients, portfolio management, investment advice, etc. Ancillary services include safekeeping and administration of financial instruments for clients, providing credits or loans to facilitate transactions in financial instruments, performing investment research or financial analysis, etc.

Banks and branches of foreign banks are authorised to provide investment services, investment activities, and ancillary services only if such activities are included in their banking authorisation.

With regard to crypto-asset services, from 30 December 2024, such services may be provided only with an authorisation issued by the NBS. This applies to services including custody and administration of crypto-assets on behalf of clients, operation of trading platforms, or the issuance of stablecoins and electronic money tokens.

Please note that a branch of a foreign bank cannot be granted a banking authorisation to perform these activities.

To assist applicants, the NBS allows pre-licensing meetings to clarify the required services under the MiCA Regulation, consult on detailed regulatory requirements and explain the steps of the authorisation process.

(v) European Passport (Branches and Cross-Border Services)

Foreign banks authorised in another EU member state or another contracting state of the European Economic Area (EEA) may operate in Slovakia under the European passporting framework upon notification to the NBS, either:

- on the basis of freedom to provide services; or
- through the establishment of a branch.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

The acquisition or increase of control over a bank in Slovakia is subject to a detailed regulatory framework under the Act on Banks, harmonised with EU requirements under the CRD IV/CRD V package.

Requirements and Triggering Thresholds

Any person (natural or legal) intending to acquire, directly or indirectly, a qualifying holding in a Slovak bank must notify and obtain prior approval from the NBS.

A qualifying holding is defined in line with EU law as a direct or indirect holding representing 10% or more of the capital or voting rights of a bank, or the ability to exercise significant influence over its management.

According to Section 28 of the Act on Banks, prior approval from the NBS is also required for any further increase in a qualifying holding whereby the share in the bank's share capital or voting rights would reach or exceed 20%, 30% or 50%, or whereby the bank would become a subsidiary of the person acquiring such holding.

Likewise, any person intending to dispose of a qualifying holding in a bank, or to reduce their share in the bank's capital or voting rights below 20%, 30% or 50%, or in such a way that the bank would cease to be their subsidiary, is required to notify the NBS in advance in writing.

The regime applies equally to domestic and foreign acquirers. There are no general restrictions on foreign ownership of Slovak banks, although the NBS and the ECB, as part of the SSM, assess the proposed acquirer's suitability and reputation, the financial soundness of the proposed acquirer and the acquisition, and the transparency of the ownership structure.

Nature of Regulatory Filings and Obligations

The notification must be submitted to the NBS, which assesses the application and forwards its draft decision to the ECB. Similarly to the granting or withdrawal

of a banking authorisation, the ECB may oppose the acquisition; if not, the NBS grants prior approval.

The competent authority, ie, NBS or ECB, may oppose the acquisition if there are reasonable grounds for doing so or if the information provided by the proposed acquirer is incomplete.

The NBS has set out the detailed requirements for the application for prior approval, including the documents to be attached, in its Measure No. 6/2010, as amended.

The application must include identification of the applicant and target bank, details of shares, acquisition purpose, conflict-of-interest information, and supporting documents demonstrating financial soundness and governance of the acquirer.

The fee for prior approval is EUR1,200, and the NBS decides within 60 working days; if no decision is made, approval is deemed granted.

Ongoing Requirements and Reporting Obligations

Once approved, shareholders with qualifying holdings are subject to ongoing obligations, including the following:

- Any subsequent increases or decreases crossing the statutory thresholds (10%, 20%, 30%, 50%) must again be notified and approved.
- Shareholders must remain fit and proper, financially sound, and transparent in ownership. Compliance with conditions and obligations is monitored by ongoing supervision.

In addition, banks listed on a regulated market must provide the NBS at least annually, or immediately upon request, with written information on their shareholders and any other persons exercising voting rights at the bank's general meeting.

4. Governance

4.1 Corporate Governance Requirements

Core Corporate Governance and Risk Management Requirements

Banks are subject to corporate governance, risk management and internal control requirements under EU law (CRD IV/CRR), national law and European Banking Authority (EBA) Guidelines.

Under the Act on Banks, banks must define a management structure with clear responsibilities and proportionate internal control and audit functions. Banks are required to establish remuneration policies that are consistent with their risk management framework, promote sound risk-taking and comply with principles of equal treatment.

Moreover, banks must implement a comprehensive risk management system covering all material risks, with policies for monitoring, mitigating and reporting, and ensure IT systems, business continuity and AML/counter-terrorist financing (CTF) measures are integrated into internal controls and audit functions.

In addition, in accordance with NBS Methodological Guideline No. 8/2022 and in line with EBA Guidelines, suitability checks (integrity, competence, time commitment, limits on multiple directorships) for board and senior managers are carried out on an ongoing basis and where necessary.

Voluntary Codes and Industry Initiatives

Beyond binding law, Slovak and regional voluntary instruments influence corporate governance and banking practice.

The Slovak Association of Corporate Governance issued the Code of Corporate Governance for Slovakia, to the preparation of which the Slovak Banking Association (SBA) also contributed. The development of the national Code closely follows global trends in corporate governance and is based on the OECD Principles of Corporate Governance. Regarding the banking sector specifically, the SBA has issued the Ethical Code of Banks – Consumer Protection, which sets binding rules and principles for SBA member banks.

In addition, in Slovakia it is customary for individual banks to maintain their own codes of conduct, which they follow within the scope of their business.

Diversity Requirements

EU governance guidance (ie, EBA Guidelines on internal governance and Guidelines on the benchmarking of diversity practices) requires banks to adopt diversity policies for their management bodies and to report on diversity indicators (gender, skills, age, etc).

In the context of Slovak law, the NBS has expressed its alignment with the EBA Guidelines on the benchmarking of diversity practices, and supervised entities are expected to act in accordance with these guidelines. Under the Act on Banks, banks are obliged to apply diversity rules when selecting members of the management body and the supervisory board, in line with the relevant EBA Guidelines. Banks are also required to promptly submit published information on diversity to the NBS.

Bankers' Oath/Rules of Conduct

Slovakia does not presently operate a nationally mandated “bankers’ oath” comparable to legislative moves in some EU states. Instead, professional conduct is ensured through fit and proper rules, internal codes, contractual and disciplinary regimes, and supervisory sanctions.

4.2 Registration and Oversight of Senior Management

Designation and Approval Process

In Slovakia, the appointment of directors and senior managers of banks is governed by the Act on Banks and EU governance rules (CRD/CRR, EBA/ECB guidance).

Members of the management body, members of the supervisory board, holders of key functions, and persons proposed for appointment as a holder of procurement or head of a control unit (internal audit or internal control), or responsible for AML and CTF tasks, require prior approval by the NBS or ECB, depending on bank significance; otherwise, such election, appointment or change is invalid.

In accordance with NBS Methodological Guideline No. 4/2024, the suitability of individuals for positions under the Act on Banks requires, in particular: sufficient time commitment for the performance of duties; honesty, integrity and independent thinking; adequate individual and collective knowledge, skills and experience; adequate human and financial resources allocated for training and professional development; and diversity considerations in the selection of persons.

The Methodological Guideline further specifies the scope of information and accompanying documentation to be submitted by the bank, without providing an exhaustive list of the factors considered in assessing the suitability of individuals and the management and supervisory bodies as a whole.

Screening Requirements

The assessment of suitability of individuals and of the bank’s bodies as a whole is conducted on an ongoing basis and as necessary.

The assessment encompasses checks on professional competence (relevant education, track record in financial services, managerial capacity), reputation and integrity (absence of criminal convictions, disciplinary sanctions, insolvency records), and financial soundness (no personal bankruptcy). The NBS/ECB also review conflicts of interest, the collective suitability of the management body, and diversity of expertise.

4.3 Remuneration Requirements

Remuneration Requirements

In Slovakia, remuneration requirements for banks are primarily governed by the Act on Banks, CRD IV/CRD V, and related EBA Guidelines on sound remuneration policies.

Remuneration principles apply to all persons whose professional activities have a material impact on the bank’s risk profile. This includes members of the management and supervisory boards, senior managers, employees in control functions (risk management, compliance, internal audit), and other staff whose remuneration or responsibilities materially influence the institution’s risk exposure.

Under the Act on Banks, remuneration principles must take into account the bank's size, its internal organisation and the nature, scope and complexity of its activities.

Remuneration Principles

The regulatory framework requires banks to adopt sound, transparent and risk-aligned remuneration policies that promote prudent risk-taking, reflect the bank's strategy and values, prevent conflicts of interest, ensure independent compensation for control functions, and distinguish between fixed and variable components.

Supervisory Approach

According to the Act on Banks, significant banks are required to establish a remuneration committee composed of at least three members. Other banks may appoint a designated person responsible for the remuneration system instead.

In addition, banks must annually inform the NBS by 30 June of gender pay differences, and of all individuals whose total remuneration equals or exceeds EUR1 million for the relevant accounting period.

5. AML/KYC

5.1 AML and CFT Requirements

Legal and Regulatory Framework

Slovak banks as well as branches of foreign banks operating in Slovakia are subject to a comprehensive AML and CTF framework under Slovak law. The primary legislation is the AML Act, which has been repeatedly amended to implement the requirements of the 4th and 5th EU AML Directives.

In addition, on 30 May 2024, the Council of the European Union adopted a new legislative package that further strengthens the EU AML/CTF framework. The package consists of:

- the 6th AML Directive, which repeals the 4th AML Directive and represents a significant step forward in harmonising AML/CTF supervision and co-operation across EU member states;
- a Regulation establishing a new EU AML authority;

- a Regulation on AML/CFT obligations in the private sector ("AML Regulation"), which introduces a fully harmonised set of AML/CTF rules across the EU. It is also expected to significantly improve the consistency, enforcement and effectiveness of AML/CTF measures throughout the EU; and
- a revision of the Transfer of Funds Regulation on information accompanying transfers of funds and certain crypto-assets ("TFR Regulation").

While the Regulations are directly applicable in all EU member states, the 6th AML Directive entered into force on 10 July 2024 and must be transposed by member states into national law by 10 July 2027.

In Slovakia, the recent amendment of the AML Act, effective as of 15 January 2025, has already addressed the implementation of the TFR Regulation. However, the 6th AML Directive has not yet been transposed into Slovak law. Its implementation is expected to be carried out through a forthcoming amendment to the AML Act.

The AML Act in conjunction with other key legal provisions, notably the Act on Banks and the Act on Financial Market Supervision, entrusts the NBS with supervisory powers over banks and other financial institutions. In addition, the Act No. 300/2005 Coll., the Criminal Code, criminalises both money laundering and the financing of terrorism. Corporate criminal liability in this area was introduced by Act No. 91/2016 Coll. on the Criminal Liability of Legal Persons.

The implementation of this framework is supported by secondary regulations, methodological guidelines and recommendations.

The AML Act applies, inter alia, to all banks licensed under the Act on Banks, including domestic and foreign branches operating in Slovakia. Banks are classified as "obliged entities", meaning they must implement measures to detect, prevent and report money laundering and terrorist financing. Failure to comply can result in administrative sanctions, fines or criminal liability.

In practice, the key obligations imposed on banks under the AML Act include:

- conducting customer due diligence (CDD) and continuous monitoring of business relationships;
- detecting, suspending and reporting unusual transactions to the Financial Intelligence Unit of the Presidium of the Police Force (FIU);
- refusing to establish or terminating a business relationship, or declining to execute a transaction;
- developing, implementing and regularly updating an internal AML/CTF programme;
- identifying, assessing and regularly reviewing AML/CFT risks associated with their services, clients and delivery channels; and
- providing full co-operation and information to the FIU and the NBS during inspections or investigations.

Customer Due Diligence Requirements

Under the AML Act, banks are required to perform CDD to identify and prevent money laundering and terrorist financing. The AML Act distinguishes between three levels of due diligence depending on the type of client, transaction and assessed risk:

- **Basic due diligence** – generally applies when establishing a business relationship or, for instance, where a transaction exceeds the statutory threshold.
- **Simplified due diligence** – may be applied where the risk of money laundering or terrorist financing is low, for example when dealing with public authorities or entities subject to equivalent AML regulation.
- **Enhanced due diligence** – is required in higher-risk situations, including business relationships with politically exposed persons, institutions from high-risk third jurisdictions, or complex or unusual transactions.

Reporting Obligations

Under the AML Act, banks are required to detect, withhold and report unusual transactions to the FIU without undue delay. Article 4 of the AML Act defines an unusual transaction as a legal act or other act that indicates that its execution may lead to the legalisation of proceeds from criminal activity or the financing of terrorism, and lists types of transactions that could fall under this definition (eg, one which, due to its

complexity, unusually large amount of funds or other nature, has no apparent economic or legal purpose).

If a bank identifies an unusual transaction, it must withhold execution until the transaction is reported to the FIU, unless withholding could frustrate the investigation. Reports must be submitted confidentially, and banks are strictly prohibited from informing the client or any third party that a report has been filed or that an investigation is under way (“tipping-off” prohibition).

Internal Policies, Procedures and Controls

Banks must implement comprehensive AML/CTF internal policies and procedures, including:

- appointment of a compliance officer responsible for AML/CFT oversight, reporting to the management body and ensuring communication with the FIU;
- regular risk assessments;
- development and regular updating of a written internal AML/CTF programme; and
- periodic employee training to ensure awareness of AML/CTF obligations and identification of suspicious activities.

Banks are also required to retain records of all transactions and CDD documentation for a minimum of five years after the end of the business relationship or the transaction.

The statutory body of the bank is ultimately responsible for the bank’s AML/CFT framework and approves the AML/CTF programme in writing. The compliance officer is responsible for day-to-day AML/CFT operations, including reporting unusual transactions and communicating with the FIU.

Supervisory Approach and Sanctions

Pursuant to the AML Act, a dual supervisory and control system applies in the Slovak Republic in the area of AML/CFT for entities operating within the financial market. The FIU is responsible for the control of all obliged entities under the provisions of the AML Act, while the NBS exercises supervisory powers over financial market participants with respect to AML/CFT compliance. Relevant findings are referred to law enforcement, tax authorities or partner FIUs abroad.

Breaches of AML obligations, such as failing basic CDD, may result in fines of up to EUR1 million.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Slovak depositor protection framework, based on EU law and governed mainly by the Deposit Protection Act and Act on Banks, aims to protect retail confidence and provide a safety net in case of bank failure.

Deposit Guarantee Scheme Requirements

All banks incorporated in Slovakia are required to participate in the Slovak Deposit Guarantee Scheme (DGS). Banks from EEA member states, whether operating in Slovakia under the EU single passport or through a branch, are covered by their home-state deposit guarantee scheme and do not become members of the Slovak DGS.

Branches of banks from non-EEA countries must participate in the Slovak DGS in full if deposits in the branch are not protected in the bank's home jurisdiction, or if they are protected to a lesser extent than required by Slovak law (in which case, the Slovak DGS provides additional protection up to the Slovak level).

Deposits covered by the Slovak DGS are automatically protected, with no need for the depositor to take any action.

Deposits are repayable within seven working days of a bank's failure being formally determined by the NBS or by a competent court. The short payout deadline is consistent with EU harmonisation efforts and aims to ensure depositors can access their funds quickly.

Administration of the Scheme

The Slovak DGS is administered by the Deposit Protection Fund (DPF; in Slovak: *Fond ochrany vkladov*), a legal entity established under Slovak law. The DPF is supervised by the NBS with regard to its compliance with the Deposit Protection Act. The DPF collects contributions from banks and branches, manages resources and provides compensation for deposits in accordance with the Deposit Protection Act. In cross-border EU cases, the DPF co-operates with the DGSs

of other member states when paying out via a host scheme or intermediating payouts in Slovakia.

Classes of Depositors and Deposits Covered

The Slovak DGS provides protection for deposits of natural and legal persons. The Deposit Protection Act defines a deposit as a claim of a natural or legal person for the repayment of funds entrusted to a bank. This includes joint deposits and duly notified notarial escrows.

Deposits excluded from coverage include:

- a bank's own deposits/own funds placed in its own name and account;
- deposits derived from money laundering;
- deposits of financial institutions, investment firms, insurers/reinsurers, collective investment schemes (UCITS/AIFs), pension management companies, supplementary pension companies and public authorities; and
- deposits that are financial instruments.

Coverage Limits

The general coverage level is EUR100,000 per depositor per bank, harmonised across the EU. Coverage is calculated per depositor, not per account, so multiple accounts with the same bank are aggregated for compensation.

The DPF pays the full amount above EUR100,000 if the deposit demonstrably:

- comes from the transfer of a private residential property;
- relates to specified social purposes (eg, inheritance/probate proceeds or transfer of inheritance; dowry; gift on marriage; settlement of community property; severance, retirement or other statutory benefits; death); or
- arises from insurance benefits or compensation for damage, including damage caused by a criminal offence or wrongful accusation.

These higher limits apply for 12 months from the date the deposit was first credited (or when it became legally transferable).

Funding of the Scheme

The DPF is financed by entry, annual and extraordinary contributions by banks.

The entry fee is EUR35,000; the annual fee is set by the DPF (at least 0.01% of covered deposits in the respective bank); extraordinary fees may be called, generally up to 0.5% of covered deposits in the respective bank (more than this requires the prior consent of the NBS).

According to the Deposit Protection Act, annual and extraordinary fees are currently set so that the DPF's available financial means reach and maintain the target level of 0.8% of the value of all covered deposits by 3 July 2024. The DPF updates the target level annually based on year-end data of covered deposits and adjusts fees if financial means fall below the target or below two-thirds of it, ensuring restoration within six years. Moreover, in setting annual fees, the DPF considers its obligations, banking sector stability and the economic cycle, using data provided by the NBS.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Adherence to Basel III and Local Implementation

The Basel framework is implemented in the EU primarily through the CRR/CRD regulatory framework, with its final components transposed via the CRR III/CRD VI banking package. CRR III is directly applicable in all EU member states and has been in effect since 1 January 2025, while member states have until 10 January 2026 to transpose CRD VI into national legislation.

In Slovakia, Basel III standards are implemented mainly through the Act on Banks, while additional technical requirements and detailed rules are set out in regulations and guidelines issued by the NBS.

With regard to EU-specific deviations, the EU generally follows the Basel III principles, but it has made several adjustments to better suit the European banking sector, which include phased capital requirements, minimum thresholds for risk calculations, and transi-

tional measures for certain loans, ensuring both prudence and operational flexibility for banks.

Risk Management Rules

Banks are required to have a full risk management system in place, covering all major risks such as credit risk, market risk, liquidity risk, operational risk (including IT and cyber risks) and concentration risk. This system must be fully integrated with the bank's governance, internal controls, audit and compliance functions.

In accordance with EU law, and under the Act on Banks, banks are required to operate formal internal capital adequacy (ICAAP) and liquidity adequacy (ILAAP) processes. The NBS further specifies and supervises these obligations in Measure No. 4/2015, as amended, providing guidance on risk management systems, liquidity metrics and the application of these rules to branches of foreign banks operating in Slovakia.

In addition, under the new CRD VI framework, banks will be required to integrate ESG risks into their risk management frameworks and to disclose how ESG risks are incorporated into their governance, strategies, and risk management procedures.

Quantity and Quality of Capital Requirements; Capital Buffers

According to the Act on Banks, Slovak banks are required to calculate and continuously monitor the value of their own funds. Banks must maintain their own funds at least at the level of their registered capital and ensure that they are adequate to cover all risks arising from their activities.

In accordance with the Basel III framework and EU law, Slovak banks are required to maintain minimum levels of CET1, Tier 1 and total capital as specified by the CRR framework. In practice, Slovak banks often maintain higher capital levels to comply with additional supervisory expectations, including capital buffers imposed by the NBS, which further strengthen their resilience.

Beyond the minimum capital ratios, banks must also maintain capital buffers, which serve as an extra cushion against losses. These include:

- a **capital conservation buffer**, which all banks must maintain to ensure resilience during financial stress. Under the Act on Banks, its level is set at 2.5% of risk-weighted assets;
- a **countercyclical capital buffer**, which the NBS adjusts depending on credit growth and cyclical economic risks. For exposures in Slovakia, the rate has been set at 1.5% since 1 August 2023;
- a **systemic risk buffer**, addressing long-term structural risks in the financial sector. Since 2022, the NBS has not set a systemic risk buffer; and
- an **O-SII buffer**, applied to banks considered systemically important within Slovakia, reviewed and updated by the NBS each year. For 2025, the NBS designated five banks as Other Systemically Important Institutions (O-SIIs), with buffer rates ranging from 0.25% to 2%.

The NBS regularly sets and publishes the rates for these buffers and oversees compliance through its supervisory activities.

Liquidity Requirements

Slovak banks, including branches of foreign banks, are required to maintain sufficient liquidity to meet their obligations at all times, ensure continuous solvency, manage assets and liabilities in accordance with liquidity ratios, and promptly notify the NBS and submit recovery plans if necessary.

In Slovakia, these liquidity requirements are implemented in accordance with the CRR framework and aligned with EU standards. Banks are required to maintain the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR) and conduct regular internal liquidity planning, which is reviewed by the NBS during supervision.

Historically, the Slovak banking sector has maintained strong liquidity levels, with sector-wide LCR around and NSFR well above the regulatory minimum. As at June 2024, the Slovak banking sector had an LCR of 203% and an NSFR of 134%, while the respective EU medians were 205% and 137%.

In addition, the NBS has issued Measure No. 18/2008, as amended, which sets out detailed requirements for banks and branches of foreign banks regarding the management of liquidity, the methods for its assessment, and the internal system for managing liquidity risk.

Additional Requirements for Systemically Important Banks

The NBS identifies banks that are considered systemically important, meaning their failure could affect the stability of the financial system. This designation is made based on specific criteria set out in the Act on Banks, such as the bank's size, its interconnectedness and its role in the domestic economy. Banks classified as O-SIIs must hold an additional capital cushion called the O-SII buffer, which ranges from 0.25% to 2% of risk-weighted assets. For 2025, five Slovak banks have been designated as O-SIIs. Global Systemically Important Institutions (G-SIIs) are also identified by the NBS using similar criteria and are subject to higher loss-absorbing requirements and additional capital surcharges under EU and international rules.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The legal and regulatory framework governing the insolvency, recovery and resolution of banks in Slovakia is primarily determined by EU law, transposed into Slovak legislation and applied by domestic authorities in co-operation with EU institutions. As an EU member state, Slovakia applies a harmonised framework consistent with international standards, in particular the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes, as implemented in the EU through the BRRD and the SRM Regulation.

Principal Means of Resolving a Failing Bank

If a Slovak bank is deemed “failing or likely to fail”, resolution authorities apply the framework established under the BRRD/SRM Regulation. Before any resolution action is taken, the capital instruments of the bank must be written down or converted. The available resolution tools include:

- **Bail-in tool (also known as creditor participation)** – a key resolution instrument provided for in the BRRD. It allows the write-down of debt owned by a bank to creditors or its conversion into equity to absorb losses and stabilise the bank, while ensuring that losses are borne by investors rather than taxpayers.
- **Sale of business tool** – the transfer of shares, assets, rights or liabilities of a bank under resolution to one or more purchasers that are not bridge institutions. The resolution authority has the power to execute such a transfer with or without the consent of shareholders. The sale of business tool may be applied individually or in combination with other tools.
- **Bridge institution tool** – the transfer of assets and liabilities to a temporary public entity (a bridge bank or bridge institution) that maintains the bank's operations until conditions allow for a sale or orderly wind-down.
- **Asset separation tool** – the transfer of assets, rights or liabilities from a failing bank or a bridge bank to an asset management vehicle (AMV). These assets are managed by the AMV with the aim of maximising their value for an eventual sale or orderly wind-down. The asset separation tool must always be applied together with another resolution tool (sale of business, bridge institution and/or bail-in).

Resolution tools can be applied individually or in combination, guided by the resolution objectives: maintaining financial stability, protecting public funds, safeguarding insured deposits and preserving critical banking functions. The national resolution authority – the Resolution Council of the NBS (in Slovak: *Rada pre riešenie krízových situácií*) takes the necessary steps to implement the resolution scheme.

If resolution is not in the public interest, the failing bank undergoes normal insolvency proceedings under Slovak insolvency law. In such cases, the general bankruptcy regime applies, subject to banking-specific provisions.

Implementation of the FSB Key Attributes

The FSB Key Attributes of Effective Resolution Regimes were incorporated into EU law in 2014

through the BRRD and the SRM Regulation. As an EU member state and part of the Banking Union, Slovakia applies these rules directly or through national transposition. Thus, Slovakia's framework is broadly consistent with the FSB standards, benefiting from EU-level harmonisation and the oversight of the Single Resolution Board.

Insolvency Preference Rules Applicable to Deposits

The Slovak legal framework provides deposit protection and establishes depositor preference in insolvency proceedings. These rules form the core of the country's depositor protection framework and ensure that natural persons and SME depositors are prioritised over other creditors.

Deposit guarantee scheme

Deposits up to EUR100,000 per depositor per bank are protected by the DPF, funded by contributions from banks. In certain situations, such as the sale of a home or insurance payouts, temporary higher coverage may apply.

Deposits covered by the DPF are referred to as covered deposits, which benefit from statutory preference in insolvency or resolution. When the DPF reimburses a depositor for a covered deposit, it acquires the depositor's claim against the bank, known as a subrogated claim, which is treated at the same priority level as the original covered deposit.

Creditor hierarchy in insolvency

Under Slovak law, the order of priority for satisfying creditors in the insolvency of a bank is as follows: first, claims against the general estate (in Slovak: *pohl'advky proti všeobecnej podstate*), which include, for example, the costs of insolvency proceedings, claims arising from the operation of the business during insolvency, as well as labour-related claims, followed by secured creditors, who are satisfied from the proceeds of their collateral.

Next in priority are covered deposits of natural persons and SMEs, as well as subrogated claims of the DPF, which are satisfied after secured creditors but

before all other deposits and creditors. Thereafter, other eligible deposits of natural persons and SMEs exceeding EUR100,000 are satisfied. In subsequent rounds, ordinary unsecured claims, subordinated claims (including contractual penalties and claims of affiliates) and capital instruments (Tier 2, AT1) are satisfied, with shareholders being entitled only to the residual liquidation balance.

This hierarchy ensures that depositors, particularly individuals and SMEs, are protected ahead of ordinary unsecured and subordinated creditors, maintaining confidence in the banking system.

9. ESG

9.1 ESG Requirements

Slovak banks adhere to the EU Single Rulebook, which includes environmental, social and governance (ESG) obligations. These obligations primarily stem from EU legislation, notably the Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards, which have been transposed into Slovak law through amendments to Act No. 431/2002 Coll. (“Act on Accounting”), effective from 1 June 2024. In addition, the EU Taxonomy Regulation applies directly in Slovakia, providing a framework for classifying environmentally sustainable economic activities. Together, these instruments require banks to integrate ESG considerations into governance, risk management and disclosure practices, and to report on the alignment of their financing and investment activities with sustainability criteria.

Sustainability Reporting

Slovak banking ESG disclosure is set in the Act on Accounting. Banks (other than the NBS) and certain financial institutions must include a separate sustainability section in their annual report if, in each of the two preceding financial years, they meet at least two of the following conditions:

- total assets exceeding EUR25 million;
- net turnover exceeding EUR50 million; or
- an average of more than 250 employees.

The obligation also extends to banks and companies whose securities are admitted to trading on an EU regulated market and which meet comparable or slightly lower thresholds (total assets over EUR5 million, turnover over EUR10 million or over 50 employees).

In accordance with the Act on Accounting, the sustainability report must provide a concise overview of the company’s business model and strategy, including ESG risks, opportunities and transition plans towards a sustainable economy and climate neutrality. It should also cover sustainability objectives, progress, governance roles, policies, incentives, risk management and relevant reporting indicators.

Additionally, banks are required to inform and consult employee representatives regarding the collection, verification and presentation of sustainability data, and to communicate employees’ views to the management or supervisory bodies. Banks also must ensure that the sustainability information in their annual report is subject to assurance on sustainability reporting by an auditor.

Prudential Requirements and Risk Management

The Act on Banks already addresses ESG risks through general governance and risk management rules. Banks must operate safely, maintain independent risk, control and audit functions, and align remuneration with sound risk-taking. They are required to identify, measure, monitor, mitigate and report all material risks, including climate and social risks when relevant.

The revised CRR/CRD framework introduces new, explicit ESG-related requirements for banks. Under Article 449a of CRR III, banks must publicly disclose ESG risks, distinguishing between environmental, social and governance risks. For environmental risks, they must differentiate between physical and transition risks, report total exposures to the fossil fuel sector, and explain how ESG risks are integrated into business strategy, governance and risk management processes.

The forthcoming CRD VI complements this by imposing qualitative requirements. Banks will have to explicitly integrate ESG risks into their governance struc-

tures, internal risk management frameworks and ICAAP; align remuneration policies with ESG risk management; and conduct long-term, climate-related stress tests. Supervisors (NBS and ECB under the SSM) will incorporate ESG considerations into their supervisory review and evaluation process.

10. DORA

10.1 DORA Requirements

The Digital Operational Resilience Act (DORA) came into effect on 17 January 2025 and is binding for all EU member states.

The regulation focuses primarily on information and communication technology (ICT), which in the context of DORA means all the information and communication technology systems, tools and services on which financial entities rely.

The supervisory authority responsible for monitoring compliance with the conditions set out in DORA within the Slovak Republic is the NBS.

As required by DORA, the NBS mainly monitors compliance with the conditions in five main areas regulated by DORA, which are:

- ICT risk management framework;
- ICT incident management and reporting;
- digital operational testing;
- third-party ICT risk management; and
- information sharing.

It should be emphasised that the legal scope of DORA in Slovakia is identical to that applicable throughout the EU. What differs are local supervisory practices; the NBS has published guidance on reporting deadlines, clarified audit/review expectations and requires DORA readiness in licensing (especially for Crypto-Asset Service Providers (CASPs)).

Of the specific local guidelines and differences between the regulatory framework established by DORA and the practical requirements adjusted and specified by the NBS, we consider it important to mention the following in particular.

Third-Party ICT Risk Management Reporting

Within the Third-Party ICT Risk Management category, the NBS maintains a register of information relating to all contractual arrangements for the use of ICT services provided by external ICT service providers.

The NBS has set 7 April 2025 as the deadline for the first fulfilment of this obligation. It is not yet clear how often the register will need to be updated subsequently, but it is recommended that obligated entities continuously maintain the information in the register in accordance with the actual situation.

The information is uploaded to the register via the Statistical Collection Portal (IS ŠZP – SK) information system, which is aligned with the EBA reporting framework.

While DORA sets minimum content for ICT contracts, the NBS issued guidance with detailed clauses it expects to see (eg, data location, subcontracting policies, audit rights, co-operation duties during incidents, termination rights).

Requirements for Crypto-Asset Service Providers

The term “Crypto-Asset Service Providers” has its origin in the MiCA Regulation, which defines CASPs as legal persons or entities providing professional services related to crypto-assets to third parties on a commercial basis. They act as regulated intermediaries, similar to banks or brokers in traditional finance.

While CASPs are explicitly included in DORA as obliged entities, the NBS also imposes additional conditions on CASPs beyond those set out in DORA in relation to their registration. Therefore, while other regulated entities generally comply with the conditions set out in DORA “on the fly” – ie, after the entity has been duly established and has been providing the relevant service for some time – the NBS requires CASPs to prove DORA compliance from the start in order to obtain their MiCA licence. Unless they are DORA-compliant, CASPs will not get the necessary permit and licences from the NBS to provide the intended services.

TIBER-SK

Concerning the topic of digital operational testing, the ECB has developed a standardised framework for testing the cyber resilience of financial entities, called TIBER-EU (Threat Intelligence-based Ethical Red Teaming).

A Slovak adaptation of this framework is called TIBER-SK, and it is managed and co-ordinated by the NBS. It provides a controlled secure environment for threat-led penetration tests of Slovak financial entities.

It uses intelligence-led red teaming to test how well banks and other critical financial institutions withstand real-world cyberattacks — and it is the way Slovakia will deliver DORA's advanced testing obligations.

Personal Obligations

DORA requires statutory representatives of financial entities to undergo regular training on digital operational resilience, but DORA does not specify the scope of the training. At the same time, DORA stipulates that every financial institution must ensure that persons responsible for managing ICT risks have adequate expertise and experience.

The NBS specifies these requirements, stating that statutory bodies must undergo training covering IT/cybersecurity, with the NBS monitoring compliance with this requirement by all members of the management body with regard to their education and certifications obtained.

Persons responsible for managing ICT risks must demonstrate the ability to effectively identify, assess, manage and mitigate ICT-related risks. The NBS will evaluate their expertise based on the level and focus of their IT education, relevant professional certifications (such as CISA, CISM or CISSP), and the frequency and quality of training they regularly undertake.

11. Horizon Scanning

11.1 Regulatory Developments

Slovak banks operate within the EU single rulebook and the eurozone supervisory architecture (ie, the SSM), so most material regulatory change is EU-driven

and implemented nationally in co-ordination with the ECB. The items below summarise the principal near-term developments, expected impacts and practical implications for Slovak credit institutions.

Finalisation of CRR III/CRD VI (EU Banking Package)

The EU banking package, comprising CRR III and CRD VI, introduces major updates to the prudential framework for banks, implementing the final Basel III standards and strengthening ESG risk management. Key changes include revised capital requirements, enhanced risk-weighted asset calculations, the introduction of an “output floor” to reduce variability in internal model results, expanded Pillar 3 disclosures, and new governance requirements for ESG risk integration. The package also establishes a harmonised regime for third-country branches operating in the EU, ensuring consistent supervision across member states.

In Slovakia, banks must prepare for phased implementation: CRR III applies from 1 January 2025, while CRD VI must be transposed into national law by 10 January 2026, with full application, including the third-country branch regime, effective from 11 January 2027. Banks will need to adjust internal capital planning (ie, ICAAP), incorporate ESG risk considerations into governance and reporting, and ensure that data and reporting systems comply with the new supervisory and disclosure standards.

DORA and NIS2 Directive

In addition to DORA, which from January 2025 introduced harmonised rules for managing ICT and cyber risks in the financial sector, the NIS2 Directive has also entered into effect. Unlike DORA, which applies exclusively to financial institutions, NIS2 has a cross-sector scope, covering essential and important entities across various industries, including the financial and banking sector.

In Slovakia, NIS2 was transposed by an amendment to Act No. 69/2018 Coll. on Cybersecurity, setting minimum cybersecurity, risk management and incident reporting obligations that financial institutions must align with alongside DORA requirements.

Anti-Money Laundering Reforms and the Creation of the AMLA

The EU's new AML package establishes the European Anti-Money Laundering Authority (AMLA), which co-ordinates supervision and directly oversees high-risk cross-border entities from 2025 onwards.

For Slovak banks, the AML reforms mean tighter monitoring of unusual transactions, greater harmonisation of due diligence standards and faster supervisory follow-up. In addition, the AML Regulation, effective as of 10 July 2027, introduces a Europe-wide upper limit of EUR10,000 for cash payments in the business sector.

Markets in Crypto-Assets Regulation

The MiCA Regulation creates a comprehensive EU framework for crypto-asset activities. Banks that wish to offer custody, trading, issuance or wallet services for crypto-assets must now comply with the MiCA Regulation's authorisation, governance and consumer-protection requirements.

Supervisors such as the European Securities and Markets Authority, the EBA and national regulators (including the NBS) are issuing detailed technical standards. From 30 December 2024, under the MiCA Regulation, crypto-asset services may be provided only on the basis of authorisation granted by the NBS. Slovak banks interested in offering crypto-related services should therefore closely monitor these developments and prepare their licensing documentation early.

Sustainability and ESG

Sustainability regulation continues to expand through the CSRD, the EU Taxonomy Regulation and new prudential rules on ESG risks introduced under the CRR III/CRD VI package and the EBA Guidelines on ESG risk management (effective from January 2025).

Under the revised CRD VI, banks are required to integrate ESG risks into their overall risk management framework, business strategy and internal governance. Moreover, CRR III strengthens the ESG disclosure requirements, meaning banks must publish more granular and comparable data on their ESG exposures and risk management practices.

Payments Framework Reform

The EU is updating the payments landscape with Payment Services Directive (PSD3) and the new Payment Services Regulation (PSR). These reforms aim to enhance consumer protection, strengthen fraud prevention, promote open banking and support instant payments.

PSD3/PSR were proposed by the European Commission in June 2024, and drafts are now under review by the European Parliament and Council. Political agreement is expected in Q1–Q2 2026, with national implementation likely around 2027–2028. Key changes include stronger customer authentication, unified licensing for payment and e-money institutions, updated rules for marketplaces and the commercial agent exemption, improved fraud liability frameworks, and increased transparency for currency conversion fees.

Supervisory Priorities

The ECB and NBS supervisory priorities for 2025–2027 focus on strengthening banks' resilience to macroeconomic and geopolitical shocks, enhancing risk governance and addressing challenges arising from digital transformation. Banks are expected to remediate deficiencies in credit risk management, operational resilience, climate and environment-related risk frameworks, and risk data aggregation and reporting, while maintaining adequate provisioning and capital levels. Targeted exercises, including the 2025 EU-wide stress test, on-site inspections and follow-ups on past supervisory findings, will ensure timely remediation and robust risk management.

Digital Euro and Payments Innovation

The digital euro is currently in its final preparation phase. The ECB is selecting platform providers, developing the Digital Euro Scheme Rulebook and conducting technical tests, including offline payments, to ensure usability, security and privacy. The preparation phase is expected to conclude by the end of 2025, with the final launch decision dependent on the completion of the European legislative process in early 2026.

SWEDEN



Law and Practice

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Harvest Advokatbyrå was established in 2016 and is Scandinavia's largest independent specialist law firm with a clear focus on advising financial institutions. Its 26-lawyer-strong banking and finance team advises clients ranging from innovative start-ups, payment institutions, banks, fund managers and credit providers, to crypto-asset service providers and other companies active in the Swedish financial sector. It advises on a wide range of legal and financial regulatory issues important to the finance industry, including compliance, internal audits, application procedures,

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1. Legal Framework

1.1 Key Laws and Regulations

Key Laws and Regulations Governing the Swedish Banking Sector

A substantial portion of Swedish banking regulations is derived from EU directives and regulations, reflecting Sweden's membership in the European Union. However, the primary domestic legislation governing the banking sector in Sweden is the Banking and Financing Business Act (SFS 2004:297). This Act covers various aspects, including rules related to authorisation, governance, operations, corporate provisions, credit assessment, ownership, and supervision.

In terms of financial soundness, the Capital Requirements Regulation ((EU) 575/2013) (as amended by Regulation (EU) 2019/876 (CRR II)) (CRR) is directly applicable. Supplementing this regulation are two additional pieces of legislation: the Credit Institutions and Securities Companies (Special Supervision) Act (SFS 2014:968) and the Capital Buffers Act (SFS 2014:966), implementing the Fourth Capital Requirements Directive (2013/36/EU) (as amended by Directive (EU) 2019/878 (CRD V)) (CRD).

For recovery and resolution matters, the Resolution Act (SFS 2015:1016) is the pertinent national legislation implementing the Bank Recovery and Resolution Directive (2014/59/EU) (as amended by Directive (EU) 2019/879 (BRRD II)) (BRRD).

Other laws and regulations applicable to the banking sector, depending on specific services offered, include:

- Money Laundering and Terrorist Financing (Prevention) Act (SFS 2017:630);
- Payment Services Act (SFS 2010:751);
- Electronic Money Act (SFS 2011:755);
- Securities Market Act (SFS 2007:528);
- Investment Funds Act (SFS 2004:46);
- Alternative Investment Fund Managers Act (SFS 2013:561);
- Mortgage Business Act (SFS 2016:1024);
- Certain Consumer Credit-related Operations Act (SFS 2014:275);
- Insurance Distribution Act (SFS 2018:1219);
- Consumer Credit Act (SFS 2010:1846);
- Debt Collection Act (SFS 1974:182);
- Purchase and Servicing of Non-Performing Credit Agreements Act (SFS 2023:714);
- Deposit Business Act (SFS 2004:299);
- Covered Bonds (Issuance) Act (2003:1223); and
- Act (2023:254) on the availability of certain products and services.

The Swedish Financial Supervisory Authority (SFSA) also issues regulations and general guidelines that complement fundamental rules. Regulations are binding and require compliance, while general guidelines offer recommendations for adherence to binding provisions.

Regulators

Supervision of Swedish banks involves multiple authorities: the SFSA, the Swedish Central Bank (*Riksbanken*), the Swedish National Debt Office (*Riksgälden*), and the Ministry of Finance (*Finansdepartementet*). These entities collectively form the Financial Stability Council, a forum for discussing financial stability and crisis measures. Decisions, however, are made independently by the government and relevant authorities.

SFSA

The SFSA is responsible for micro- and macro-level supervision of banks and conducts on-site inspections and requests information to analyse and control operations. It also monitors systemic risks, such as financial imbalances in the credit market.

Swedish Central Bank

With a mandate to promote a stable financial system, the Central Bank focuses on maintaining a secure payment system and addressing potential financial crises. Regular monitoring includes analysis of risks to the financial system's stability, encompassing payment systems, major banking groups, borrower profiles, and macroeconomic developments.

Swedish National Debt Office

Tasked with managing banks in crisis and overseeing the deposit insurance scheme, the Swedish Debt Office plays a critical role in financial stability.

Ministry of Finance

Responsible for formulating laws and regulations applicable to the financial system, the Ministry of Finance plays a key role in shaping the legal framework for the banking sector.

2. Authorisation

2.1 Licences and Application Process

Types of Licences

Banking and financing operations, with certain exceptions, may only be conducted after obtaining authorisation from the SFSA. The prerequisites for conducting banking or financing business are set out by the Banking and Financing Business Act (2004:297) and the Banking and Financing Business Ordinance (2004:329). Special rules for savings banks are set out in the Savings Banks Act (1987:619) and for members' banks in the Members' Banks Act (1995:1570).

Definitions

Banking business encompasses:

- payment services via general payment systems; and
- receipt of funds which, following notice of termination, are available to the creditor within not more than 30 days.

Financing business encompasses:

- accepting repayable funds from the public; and
- granting loans, providing guarantees for loans or, for financing purposes, acquiring claims or granting rights of use in personal property (leasing).

Foreign Banks

Credit institutions (which include both banks and credit market undertakings) domiciled in an EEA country may conduct business in Sweden either through a branch or by providing services in Sweden from their home country. Credit institutions domiciled in a non-EEA country may conduct business in Sweden through a branch or a representation office.

Activities and Services Covered

A bank may engage in a broad range of activities, which include, inter alia:

- borrowing funds (for example, by accepting deposits from the general public or issuing bonds or other comparable debt instruments);
- granting and brokering loans (for example, in the form of consumer credit and loans secured by charges over real property or claims);
- participating in financing (for example, by acquiring claims and leasing personal property);
- providing payment services pursuant to the Payment Services Act (SFS 2010:751);
- providing means of payment;
- issuing guarantees and assuming similar obligations;
- participating in the issuance of securities;
- providing financial advice;
- holding securities in safekeeping;
- conducting letters of credit operations;
- providing bank safety deposit services;
- engaging in currency trading;
- providing investment services and activities subject to the conditions prescribed in the Securities Market Act (SFS 2007:528);
- providing credit information subject to the conditions prescribed in the Credit Information Act (SFS 1973:1173); and
- issuing electronic funds pursuant to the provisions of the Electronic Money Act (SFS 2011:755).

This list is merely illustrative; consequently, a bank may conduct other financing operations, as well as operations that have a natural connection to financing.

Conditions for Authorisation

A licence to conduct financing business may be granted to Swedish limited companies and co-operative associations. Such entities are referred to as credit market undertakings. A licence to conduct banking business may be granted to Swedish limited liability companies, co-operative associations, and savings banks.

Other general conditions that need to be fulfilled in order to have a licence granted include:

- the articles of association contain the specific provisions required, taking into consideration the scope and nature of the planned operations;
 - there is reason to assume that the planned business will be conducted in accordance with the provisions of banking regulation and other statutes that govern the company's operations;
 - the holder or anticipated holder of a qualified holding in the company is deemed suitable to exercise a significant influence over the management of a bank;
 - any person who is to serve on the company's board of directors or serve as managing director, or be an alternate for any of the aforesaid, possesses sufficient insight and experience to participate in the management of a bank and is otherwise suitable for such duties;
 - the board of directors as a whole has sufficient expertise and experience to run the company; and
 - an initial capital which, at the time of the decision regarding a licence, corresponds to not less than EUR5 million.
- When assessing a holder's suitability, their reputation and financial strength will be considered. It shall also be taken into consideration as to whether there is reason to believe that:
- the holder will impede the bank's ability to operate in compliance with the requirements that regulate the business; or
 - the holding has a connection with, or can increase the risk of, money laundering or terrorist financing.
- an organisational chart;
 - outsourcing agreements;
 - a group or ownership chart;
 - documentation for ownership and management assessment;
 - annual reports, interim reports, forecasts and lending instructions;
 - guidelines and instructions regarding risk management, customer protection, ethical rules, events of material significance, measures against money laundering and financing of terrorism and audit function;
 - a description of operations;
 - a detailed description of the operations to be conducted; the description should, inter alia, contain:
 - (a) a general outline (organisational chart) regarding the manner in which the operations are organised;
 - (b) a general description of the areas of operation and functions;
 - (c) information regarding the number of employees, broken down by various areas of operation and functions; and
 - (d) a description of the responsibilities and positions of employees with special responsibility for a particular function or area of operation; and
 - information regarding the manner in which IT operations will be organised, the systems used and the strategy which may be relevant; information should also be provided regarding how the company intends to organise and structure the responsibility for IT support and information security.

Filing Documents

The Banking and Financing Business Ordinance (2004:329) lays down the formalities for applications and the information that should be included. This is further outlined in the SFSA's general guidelines (FFFS 2011:50) regarding an application for authorisation to conduct banking or financing business, which stipulate that the application shall include the following:

- articles of association; and
- a business plan.

The business plan should contain, and append to the plan, the information set out below:

Application Process

The original application and one copy should be submitted to the SFSA. An additional copy should be furnished to the company's auditor. Applicants must pay a SEK 1,500,000 fee in conjunction with the application.

Once the application has reached the SFSA, it becomes a matter and is assigned a reference number. An administrator is then appointed as responsible for the matter and confirmation that the SFSA has received the application is sent out.

After the application fee is paid, the administrator conducts a formal review to verify that the application is complete. If there are any formal deficiencies, the SFSA will request supplementary information. Once the application is deemed formally complete, the SFSA initiates a review of the material documentation to assess whether the conditions for the authorisation are met. During the handling process, the SFSA may also request supplementary information before a decision is reached.

Provided that the application is formally complete and the fee has been paid, the SFSA will make a decision within six months.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Requirements Governing Change in Control

Prior to the acquisition of a qualified holding of shares, an application for authorisation to acquire shares must be submitted to the SFSA.

A “qualifying holding” is defined as a direct or indirect holding that represents 10% or more of the capital or of the voting rights, or which makes it possible to exercise a significant influence over the management (eg, through a shareholder agreement). Authorisation is also required when a direct or indirect holding increases above a prescribed percentage of 20%, 30% or 50%, or when it causes the undertaking to become a subsidiary. A notification shall be made to the SFSA if the holding falls below one of the mentioned thresholds (10%, 20%, 30% or 50%).

Authorisation must be obtained prior to the acquisition. Where the acquisition has occurred as a result of a division of joint marital property, testamentary disposition, corporate distribution, or any other similar measure, consent shall instead be required for the acquirer to retain the shares of participating interests. The acquirer shall thereupon apply for consent within six months of the acquisition.

Restrictions

There are currently no specific restrictions on private ownership or geographical restrictions on foreign ownership of Swedish banks. However, in December 2023, Sweden introduced a new legislation, the Screening of Foreign Direct Investments Act (the “FDI Act”), implementing the EU Screening Regulation (Regulation (EC) 2019/452). The FDI Act introduced a screening regime for certain foreign direct investment transactions. The purpose of such screening is to examine whether the relevant foreign investment may harm national security or public order. Any investment falling under the FDI Act must receive approval, or a decision to take no further action, from the screening authority before closing.

Factors to be Considered

Authorisation shall be granted for an acquisition where the acquirer is deemed suitable to exercise a significant influence over the management of a bank and it can be assumed that the anticipated acquisition is financially sound. Consideration shall be taken of the acquirer’s likely impact on the business of the bank.

In conjunction with the assessment, the acquirer’s reputation and financial strength shall be taken into consideration. It shall also be taken into consideration whether:

any person who, as a result of the acquisition, will become a member of the board of directors of the credit institution or act as managing director or act as an alternate for either of the foregoing has sufficient insight and experience to participate in the management of a bank and is also otherwise suitable for such a task, as well as whether the board of directors, taken as a whole, has sufficient expertise and experience to run the institution;

there is reason to believe that the acquirer will impede the credit institution’s ability to operate in compliance with statutes regulating the business of the bank; and

there is reason to believe that the acquisition is connected to, or may increase the risk of, money laundering or terrorist financing.

Information to Include in the Application

The SFSA's regulations regarding ownership, ownership management and management assessment in credit institutions (FFFS 2023:13) set out the information that a company must submit to the SFSA in conjunction with ownership assessments. These regulations apply during ongoing ownership assessments, but are not applicable at the time of applying for authorisation. During the authorisation phase, the following applies: the Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards that specify the information to be submitted in a credit institute's authorisation application and the factors that can prevent competent authorities from conducting efficient supervision.

The information to be submitted includes:

- information about the acquirer;
- registration certificate;
- financial position (including annual reports);
- information about the board of directors and senior management;
- description of the ownership chain;
- relations and interests;
- information about the acquisition;
- financing of the acquisition; and
- business plan and detailed information about the acquisition.

As a part of the ownership assessment, the SFSA collects information from, for example, the Swedish Police, the Swedish Companies Registration Office, the Swedish Tax Agency, the Swedish Enforcement Authority and firms that provide credit assessments.

Application Process

A decision of the SFSA regarding an authorisation for an acquisition shall be issued within 60 working days of the confirmation being sent (the evaluation period). Where the SFSA requests supplementary information, the evaluation period may be extended. The SFSA shall be deemed to have given consent to the acquisition if the authority has not issued a decision on the application during the evaluation period. The fee is currently SEK33,000.

4. Governance

4.1 Corporate Governance Requirements Governance Rules

The main corporate governance rules applicable to banks are set out in the SFSA's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control. The guidelines on internal governance issued by the European Banking Authority (EBA) are also applicable (EBA/GL/2021/05) in relation to banks' governance arrangements, including their organisational structure and the corresponding lines of responsibility, processes to identify, manage, monitor and report all risks they are or might be exposed to, and the internal control framework. Due to domestic legislation being incompatible with the guidelines in a few areas, some provisions are not applicable (nomination committee and independent board members).

The main governance rules are summarised below.

General organisational requirements

The company shall ensure that it has an appropriate, transparent organisational structure with a clear allocation of functions and areas of responsibility that ensure sound and efficient governance of the undertaking and enable the SFSA to conduct efficient supervision.

The responsibility of the board of directors and the managing director

When the board of directors sets the company's strategies, it must consider the company's long-term financial interests, the risks it currently faces or may face, and the capital required to address them. Board members shall have a sound knowledge and understanding of the company's organisational structure and processes to ensure they are consistent with the decided strategies. Board members shall be thoroughly familiar with and knowledgeable about the operations and the nature and scope of the risks.

The board of directors or the managing director shall regularly review and assess the efficiency of the organisational structure, procedures, measures, methods, etc, as established by the company to comply with laws and other statutes regulating operations that are subject to authorisation. The board of direc-

tors or managing director shall also take appropriate measures to address any deficiencies therein.

Ethical rules

The company shall conduct its operations in an ethically responsible and professional manner and maintain a sound risk culture.

Conflicts of interest in the operations

The company shall identify and address any conflicts of interest that exist or could arise in its operations. The company shall have internal rules specifying how it addresses conflicts of interest. The internal rules shall be appropriate, taking into account the size and organisation of the company, as well as the nature, scope, and complexity of the operations.

Risk management

The company shall have a risk management framework containing the strategies, processes, procedures, internal rules, limits, controls and reporting procedures required to ensure that the company may, on an ongoing basis, identify, measure, govern, internally report and exercise control of the risks to which it is or could perceivably become exposed.

Control functions

The company shall have a risk control function, a compliance function and an internal audit function. The control functions shall, in organisational terms, be separate from each other. In smaller companies with less complex operations, both the risk control and compliance functions can be combined.

Outsourcing arrangements

The company shall establish internal rules for managing its outsourcing agreements. It shall exercise due skill, care, and diligence when entering into, managing, and terminating outsourcing agreements related to work or functions of significant importance to its operations.

4.2 Registration and Oversight of Senior Management

Regulatory Approval of Appointment

The main requirements applicable to senior management are set out in the Banking and Financing Business Act (SFS 2004:297) which stipulates that

any person who is to serve on the board of directors or serve as managing director, or be an alternate for any of the aforesaid, possesses sufficient insight and experience to participate in the management of a bank and is otherwise suitable for such duties and the board of directors as a whole has sufficient expertise and experience to run the company.

Swedish banks are also, except for certain provisions, subject to the joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body (ESMA35-36-2319 and EBA/GL/2021/06) and key function holders, which further outline the requirements regarding the suitability of members of the management body.

An application regarding suitability assessment must be filed with the SFSA in connection with appointing a new person or making changes to the following positions in the bank:

- chairman of the board;
- board members;
- alternate board members; and
- managing director or deputy managing director, that is, the person serving in the managing director's stead.

As a part of the suitability assessment, the SFSA collects information from the Swedish Police, the Swedish Companies Registration Office, the Swedish Tax Agency, the Swedish Enforcement Authority and firms that provide credit assessments. Other information and documents that need to be included in the application are:

- information about the person subject to the suitability assessment;
- employment history and senior management positions held;
- CV that contains relevant information about education, work experience and other roles;
- qualifying ownership;
- relations and interests; and
- reputation.

A decision of the SFSA shall be issued within 60 working days, provided that the application is complete and the fee of SEK18,000 has been paid.

For every change to the board of directors, the company must assess whether the board as a whole has the requisite knowledge and experience to manage the company.

Accountability

In terms of accountability, the bank's board of directors is ultimately responsible for ensuring compliance with regulations governing banking operations.

The SFSA may intervene against a person who is a member of a bank's board of directors, its managing director, or an alternate for any such person, where the bank has violated certain obligations pursuant to the bank's business. An intervention may only take place where the infringement is serious and the person in question caused it intentionally or through gross negligence.

In addition, senior management may also have to compensate damages caused to the company, the shareholders or other persons due to infringements of the Banking and Financing Business Act (SFS 2004:297) and the Companies Act (SFS 2005:551) – provided, however, that the damages are caused intentionally or negligently.

4.3 Remuneration Requirements

General

The remuneration policies and practices of banks licensed in Sweden are governed by the SFSA's regulations (FFFS 2011:1) on remuneration structures for credit institutions, investment firms, and fund management companies licensed to conduct discretionary portfolio management.

The regulation stipulates that the board of the bank shall establish a documented remuneration policy that is in line with and promotes sound and effective risk management and counteracts excessive risk-taking behaviour. The remuneration policy shall encompass all employees.

The board of directors shall decide on:

- remuneration to senior management;
- remuneration to employees who are primarily responsible for any of the firm's control functions; and
- measures to enable a review of how the firm's remuneration policy is being applied.

The decision of the board of directors shall, where applicable, comply with decisions made by the Annual General Meeting with regard to the company's remuneration.

The total variable remuneration shall not limit the company's ability to maintain, or, as needed, strengthen, a sufficient capital base. The control function shall annually review the company's remuneration structure for compliance with the remuneration policy.

Remuneration Structure

Where a company's remuneration contains variable components, it shall ensure that the fixed and variable components are appropriately balanced. The fixed components shall represent a sufficiently large portion of the employee's total remuneration that the variable components can be set at zero.

The performance assessment for calculating variable remuneration components will primarily focus on risk-adjusted profit measures. This assessment will take into account both current and future risks, as well as the actual costs of capital and the liquidity needed for business activities.

Specially Regulated Staff

Senior management and employees in the following categories of staff are identified as specially regulated staff:

- employees in strategic management positions;
- employees responsible for control functions;
- risk takers; and
- employees whose total remuneration is equal to or exceeds the total remuneration of any of the members of senior management.

A risk taker is an employee belonging to a category of staff whose professional activities can have a material

impact on the firm's risk level. This normally refers to employees who can:

- enter into agreements;
- take positions on behalf of the firm; or
- otherwise affect the firm's risks.

Variable remuneration to specially regulated staff shall be based on both the employee's performance and the overall performance of both the business unit and the company. Both financial and non-financial criteria shall be considered in assessing the employee's performance. The variable compensation for this category may not exceed the fixed compensation.

The company shall ensure that at least 40% of the variable remuneration to specially regulated staff, whose variable remuneration over a period of one year totals at least SEK100,000, is deferred over a period of not less than three to five years before it is paid or the right of ownership passes to the employee. The company shall also defer at least 60% of variable remuneration for members of senior management and other employees who are members of the firm's specially regulated staff with particularly high variable remuneration.

A significant bank shall ensure that at least 50% of the variable remuneration to a member of senior management consists of the firm's shares, participations or instruments linked to the firm's shares or participations, or other instruments that fulfil the conditions for Tier 1 capital contributions. Where appropriate and possible, the company shall allow the variable remuneration components within the meaning of the foregoing.

A significant bank shall ensure that the shares, participations, and other instruments are subject to restrictions such that the employee may not exercise control over the instruments for at least one year, or longer, depending on the bank's long-term interests, after the ownership rights to the instruments have passed to the employee. This applies regardless of whether the variable remuneration has been deferred or not.

The company shall ensure that deferred variable remuneration components are paid or passed to the employee only to the extent justified by the financial situation and the performance of the company, the

business unit in question, and the employee. The deferred portion of the remuneration may also be cancelled in full for the same reasons.

Breaching the Requirements

Where a bank violates the requirements in the foregoing, the SFSA has the authority to, and shall, intervene. Depending on the specific circumstances at hand, the board of directors may also be liable for damages.

5. AML/KYC

5.1 AML and CFT Requirements

The main AML and CTF legislation in Sweden is the Money Laundering and Terrorist Financing (Prevention) Act (SFS 2017:630), transposing the fourth EU Anti-Money Laundering Directive ((EU) 2015/849) (as amended by the fifth EU Anti-Money Laundering Directive (2018/843/EU)). This is further accompanied by the SFSA's regulations (FFFS 2017:11) regarding measures against money laundering and terrorist financing.

The regulations impose a range of obligations on banks including:

- general risk assessment and routines;
- customer due diligence;
- monitoring and reporting;
- collaboration against money laundering and terrorist financing;
- processing of personal data; and
- internal monitoring and reporting of suspected infringements.

In addition, banks in Sweden should adhere to the EBA's guidelines on the use of remote customer onboarding solutions (EBA/GL/2022/15), the EBA's guidelines on the role of AML/CFT compliance officers (EBA/GL/2022/05) as well as the EBA's guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risks associated with individual business relationships and occasional transactions (EBA/GL/2021/02), which have been amended by the EBA's guidelines regarding crypto assets and crypto service providers (EBA/GL/2024/01).

Banks are also required to comply with various international financial sanctions issued by the EU and the United Nations.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Swedish deposit insurance scheme was introduced in 1996 and the responsible competent authority is the Swedish National Debt Office. The deposit insurance scheme has been extended on several occasions and today all deposits in banks and credit market institutions are covered.

Deposit insurance applies to all private persons (including minors), as well as companies and other legal persons, such as the estate of a deceased person. However, financial institutions and public and local authorities are not eligible for compensation.

All types of accounts are covered by the deposit insurance regardless of whether they are restricted or free to withdraw. However, individual pension accounts are not covered. Deposit insurance also does not apply to bank money orders (cashier's cheques) because these fall outside the definition of deposits under the Deposit Insurance Act (SFS 1995:1571).

For client accounts, the main rule is that every underlying individual owner of the money receives compensation up to the maximum amount covered. A client account is an account in which a company has deposited money for several customers in a single account.

If the account is protected by deposit insurance, the depositor is entitled to receive compensation equal to the amount deposited, including interest, up to either the date the institution was declared in default or the date the decision to activate the deposit guarantee scheme was made. The insurance provides compensation of up to SEK1,050,000 per depositor. If an account is opened in two or more persons' names, each person is counted separately.

The deposit insurance scheme is financed by contributions from the member banks and institutions, which are invested in a fund. The fees are calculated based on a

number of risk indicators and the institute's guaranteed deposits as of 31 December of the previous year. The institute's fee is also affected by the fact that the total fee must amount to 0.1% of total guaranteed deposits. Based on the risk indicators, a risk score is calculated for each institute. Based on the risk score, the institutes are then divided into different risk classes. The institution's risk class and size of guaranteed deposits then determine which fee the institution must pay.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Duty of Confidentiality

An individual's relationship with a bank may not be disclosed without authorisation (this includes both physical and legal persons). Bank confidentiality covers all information exchanged between the individual and the bank, whether written or oral. This also includes whether or not a certain individual is an actual customer at the bank.

However, the duty of confidentiality is not strict, and exceptions can be made when:

- there is a statutory obligation;
- there is a duty to the public to disclose;
- the interests of the bank require disclosure; or
- the disclosure is made with the customer's express or implied consent.

For example, the Swedish Parental Code (SFS 2008:913) contains provisions regarding the obligation of banks to provide information to the chief guardian. A bank is also obliged to disclose information regarding an individual's relations with the bank where such information is requested by the investigating officer in the course of an investigation pursuant to the provisions regarding preliminary investigations in criminal actions, by the public prosecutor in a matter pertaining to legal assistance in criminal actions, on application by another country or an international court, or in a matter of recognition and execution of a European Information Order.

Additional statutory obligations to provide information on individuals' relationships with banks include, inter alia:

- suspicion of money laundering or terrorist financing;
- market abuse or other crimes;
- bankruptcy proceedings;
- a request by another state or international court;
- a European arrest warrant; or
- a request from the SFSA, the Swedish Tax Agency or the Swedish Enforcement Authority.

Violation of bank secrecy is, depending on the relevant circumstances, punished by:

- public sanctions;
- criminal sanctions;
- civil sanctions; or
- disciplinary sanctions.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Capital Requirements

The capital requirements in Sweden are based on principles set by the Basel Committee, which have been implemented through EU capital adequacy regulations, Swedish laws, and SFSA regulations. The principles contain minimum own funds requirements (Pillar 1), additional own funds requirements (Pillar 2), and combined buffer requirements.

Pillar 1

Banks measure their risks and calculate minimum own funds requirements in accordance with the rules and calculation models set out in the EU Capital Requirements Regulation (575/2013/EU).

The minimum own funds requirement is 8% of the value of the bank's assets and other assumptions adjusted for their risk, which is called the risk-weighted exposure amount (REA). The requirement is calculated for credit, market and operational risks.

Pillar 2

Banks must hold capital that adequately covers all risks to which they are or may be exposed. To ensure that a bank knows which risks it may be exposed to, the Banking and Financing Business Act (2004:297) requires a bank to identify, measure, govern, internally

report, and exercise control over the risks associated with its business.

The banks must evaluate their capital requirements for non-Pillar 1 risks through the Internal Capital Adequacy Assessment Process (ICAAP) and determine their total capital requirements. The SFSA conducts a supervisory review and evaluation process (SREP) for the bank's governance structures, processes and procedures related to its ICAAP and assesses the bank's risks and capital needs. After an SREP, the SFSA determines an additional own funds requirement and provides guidance on it. The bank's and the SFSA's risk and capital assessments are both parts of the Pillar 2 framework.

Combined buffer requirement

Requirements for maintaining different types of capital buffers are set out in the Capital Buffers Act (2014:966). A bank may use the buffers, although only in specific circumstances and subject to restrictions.

Capital conservation buffer

Banks must hold a 2.5% capital conservation buffer in addition to the minimum own funds requirements and the additional own funds requirements. The buffer is an additional layer of capital that the bank should be able to use to cover losses without breaching minimum or additional capital requirements.

Capital buffer for systemically important banks

The SFSA evaluates annually which Swedish banks are systemically important and which must hold a buffer to provide extra protection against the negative effects that problems in the bank could cause in the financial system. Systemically important banks must hold an institution-specific capital buffer of 1%.

Systemic risk buffer

This buffer must protect against systemic risks that are not covered by other capital requirements. Every other year, the SFSA reviews the systemic risk buffer and the banks subject to it. Banks subject to the requirement must hold a systemic risk buffer of 3%.

Countercyclical capital buffer

During periods of strong economic growth and rapid credit growth, banks should build capital buffers they can draw upon during periods of financial uncertainty.

The objective of the countercyclical capital buffer is to enhance the banks' resilience and prevent future financial crises. The SFSA sets the countercyclical capital buffer quarterly based on the current economic conditions.

Liquidity Requirements

Since 1 January 2018, binding EU regulations apply in full (CRR and the liquidity coverage requirement regulation (EU) 61/2015 (LCR)). These set out the following requirements:

Quantitative requirement for liquidity coverage (Pillar 1)

The EU regulation imposes a 100% Liquidity Coverage Ratio (LCR) requirement, meaning that an institution must maintain sufficient liquid assets to withstand actual and simulated cash outflows during a stressed period of 30 days.

The Pillar 1 requirement in EU regulation is not expressed in individual currency levels; rather, it imposes a general requirement that the liquidity buffer's currency composition align with net outflows by currency. If there is an imbalance between the currency composition of a bank's liquidity buffer and the net outflows in individual currencies, the supervisory authority may require the bank to address this imbalance. This may involve setting limits on the proportion of liquid assets in one currency that the bank can use to cover liquidity outflows in another currency.

Quantitative requirement for the stable net financing ratio (Pillar 1)

Since 2021, the EU regulations have included a binding requirement for the stable net financing ratio (NSFR) in addition to the minimum binding requirement for the liquidity coverage ratio (LCR). The NSFR requirement means that a company must have sufficient stable funding to cover its financing needs over a one-year horizon under both normal and stressed conditions. The NSFR requirement in EU regulations is set at 100%.

Risk Management

The SFSA's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions apply to Swedish banks and impose an obligation on banks to ensure they

have an appropriate, transparent organisational structure with a clear allocation of functions and areas of responsibility that ensure sound and efficient governance of the undertaking and enable the SFSA to conduct efficient supervision.

Banks need to have a risk management framework containing the strategies, processes, procedures, internal rules, limits, controls and reporting procedures required to ensure that the company may, on an ongoing basis, identify, measure, govern, internally report and exercise control of the risks to which it is or could perceivably become exposed.

Banks must further have a procedure for regularly reporting the risks that exist or which could perceivably arise in the operations to the board of directors and the risk committee, if such has been appointed, the managing director and other functions that require such information, so that they receive reliable, current and complete reports in a timely manner.

A bank must set clear boundaries (limits and mandates) for the person who is to make decisions within the framework of the company's risk appetite.

9. ESG

9.1 ESG Requirements Swedish Developments

For several consecutive years, the SFSA has prioritised sustainable finance as a key area of supervision, focusing on risks such as greenwashing and the failure to fully consider climate-related risks in financial assessments.

For example, on 15 September 2025, the SFSA released a new supervisory report examining how Swedish banks are incorporating climate risks into their stress testing frameworks. The report highlights a significant shift in the financial sector's approach to sustainability and risk management. In anticipation of upcoming EU regulations requiring banks to assess their resilience to long-term ESG risks starting in January 2026, the SFSA asked banks to include a climate-related scenario in their 2024 stress tests. The goal was to evaluate how far banks have come

in integrating climate risks and to prepare them for future regulatory demands (the EBA's guidelines on the management of ESG risks [EBA/GL/2025/01]).

The SFSA concludes by stressing the importance of continued development in this area. Banks are expected to align their climate stress testing with materiality assessments and comply with the forthcoming regulations. The SFSA will continue to monitor progress as part of its ongoing supervisory activities, viewing climate stress testing as a crucial tool to enhance the financial sector's resilience to climate-related risks.

EU Developments

The regulatory framework for ESG-related issues has been growing in the financial sector. Although the main focus so far has been on channelling investments into sustainable finance projects, several initiatives are also affecting the banking sector.

For example, as mentioned above, the EBA's guidelines on the management of ESG risks (EBA/GL/2025/01), published by EBA in January 2025, establish a comprehensive framework for financial institutions to identify, measure, manage, and monitor ESG risks. These guidelines aim to embed ESG considerations into governance structures, strategic planning, and risk management systems, ensuring institutions are resilient to sustainability-related challenges. Key requirements include regular materiality assessments (annually for most institutions, biennially for smaller, non-complex ones), robust data collection, and scenario-based methodologies to evaluate ESG impacts across traditional risk categories like credit, market, and operational risks. Institutions must also develop transition plans aligned with the EU's climate neutrality goals by 2050, including clear targets and milestones. The guidelines apply from January 2026 for most institutions and from January 2027 for smaller entities, with a proportionality principle allowing tailored approaches based on size and complexity. Also, the Corporate Sustainability Reporting Directive (CSRD), initially intended to start applying to large listed companies from 1 January 2024, with the first reporting obligation in 2025 for the financial year of 2024 (and subsequent years for all other large companies and, eventually, all listed companies except micro-cap companies), has been "stopped". The Omnibus package proposed by

the European Commission in January 2025 includes a "stop the clock" mechanism, under which the CSRD reporting requirements for large companies and listed SMEs (second- and third-tier) are delayed by two years. The purpose of the legislative proposal is to streamline rules in areas such as sustainable finance, corporate sustainability reporting, due diligence, and the EU Taxonomy, with the goal of cutting administrative costs by 25% for all businesses and 35% for SMEs.

Key changes in the Omnibus package include narrowing the scope of the CSRD to only cover large companies with over 1,000 employees and significant turnover or balance sheet totals, thereby removing around 80% of companies from its requirements. A voluntary SME reporting standard will be introduced to shield smaller firms from excessive data requests. The proposal also simplifies the European Sustainability Reporting Standards (ESRS), eliminates the obligation for sector-specific standards, and maintains a limited assurance level for sustainability reports.

Another piece of legislation relevant to Swedish banks is the EU Green Bond Regulation (2023/2631), which entered into force at the end of 2024. The regulation has introduced a robust framework for issuing bonds labelled as European Green Bonds (EuGBs), aiming to strengthen trust and transparency in sustainable finance. For banks, this regulation provides a clear and credible pathway to raise capital for environmentally sustainable projects. To qualify as an EuGB, 100% of the bond proceeds must be allocated to activities aligned with the EU Taxonomy, with a limited flexibility allowance of up to 15% for projects not yet covered by the taxonomy. Issuers are required to publish a pre-issuance factsheet verified by an independent reviewer, followed by annual allocation reports and environmental impact disclosures throughout the bond's lifecycle. All documentation must be publicly accessible for at least one year after the bond matures. The regulation also establishes a supervisory framework for external reviewers, managed by ESMA, to ensure consistency and prevent greenwashing. Although voluntary, the EuGB label is designed to become the gold standard for green bonds, helping banks demonstrate alignment with EU climate goals and attract sustainable investment.

10. DORA

10.1 DORA Requirements

National Legislative Measures Related to DORA

As of 17 January 2025, the Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (DORA) has applied across the Union. The vast majority of financial undertakings are now subject to DORA.

In Sweden, legislative measures to complement the Digital Operational Resilience Act (DORA) and the related Amending Directive (EU) 2022/2556 have advanced over the past year. This progress includes the enactment of Law 2024:1278, which provides additional provisions for DORA. The new law grants the Swedish Financial Supervisory Authority (SFSA) and the Central Bank clear supervisory and enforcement powers under DORA.

The supplementary act sets out:

- the designation of responsible authorities for threat-led penetration testing (TLPT) and related oversight;
- SFSA's powers to impose administrative fines, issue injunctions and require remediation in the event of DORA breaches;
- cooperation arrangements between the SFSA and the Central bank; and
- fee-financed models for supervisory costs connected to DORA oversight.

In addition, amendments to the Banking and Financing Business Act (2004:297) and other sectoral laws now clarify that institutions must comply with DORA's provisions on ICT risk management, incident reporting, third-party risk governance and information sharing. The intervention provisions authorise the SFSA to act against members of the board of directors or senior management if an institution fails to comply with key obligations set out in DORA.

In parallel, the SFSA has actively begun implementing its supervisory approach. In March–April 2025, the SFSA circulated extensive questionnaires to banks and other financial institutions to assess their DORA readiness, focusing on ICT risk frameworks, incident management and third-party registers. The authority

has indicated that the findings will inform the first targeted DORA inspections during 2026.

In March 2025, institutions were also required for the first time to submit the Information Register under DORA, reporting all third-party ICT service providers. Many institutions encountered challenges in consolidating group-wide data and determining the scope of “ICT services” and subcontractors. The SFSA subsequently issued technical guidance and adjustments to the reporting in May 2025.

Overall, by late 2025, Sweden's legal and supervisory framework for DORA implementation is largely in place, with an extensive package of new and amended regulations and guidelines issued by the SFSA. The SFSA has transitioned from preparatory oversight to active supervisory follow-up, and the coming year is expected to mark the start of on-site inspections and further harmonisation between DORA, the forthcoming Cybersecurity Act implementing NIS2, and EBA's extended guidelines on third-party risk management.

11. Horizon Scanning

11.1 Regulatory Developments

The main upcoming regulatory developments are outlined below.

Sweden

In October 2025, the Swedish government submitted its proposal for a new Cybersecurity Act (prop. 2025/26:28) to implement the EU's NIS2 Directive, signalling a major upgrade in the regulatory regime governing network and information system security. The proposed law covers both public authorities and private operators in designated sectors and mandates risk-based security measures, supply-chain and continuity obligations, incident reporting to a supervisory authority, and fresh enforcement powers including fines and leadership bans. Although the law is scheduled to enter into force on 15 January 2026, banks and other financial institutions – which already face overlap with DORA and ICT risk regimes – should already be reviewing their incident-management frameworks, supplier contracts and governance structures. The trend points to a tighter cybersecurity compliance

landscape in Sweden, aligned with broader digital-resilience efforts across the EU.

EU

The European Union's overhaul of the payment services framework is now entering the trialogue phase, with the draft PSD3 and PSR (Payment Services Regulation) reaching the negotiating table in mid-2025. The package aims to combat fraud, enhance interoperability (especially mobile and offline channels), extend open banking provisions, increase transparency of fees and strengthen national supervisory powers. Although full implementation is not anticipated until 2027 or later, Swedish banks and payment service providers should already be initiating gap analyses and readiness programmes covering fraud prevention, strong customer authentication, third-party contracting and cross-border payments. The forthcoming regime emphasises operational resilience, consumer protection and competitive payment markets across the EU. The forthcoming Financial Data Access Regulation (FiDA) marks a major evolution in the EU's digital finance agenda. Building on the open banking model established under PSD2, the regulation expands data-sharing requirements to include the banking, investment, insurance, and pension sectors. Agreements reached by the Council in December 2024 have paved the way for implementation in 2027, with transitional periods allowing institutions to adapt. Swedish banks and finance groups should already be mapping data flows, modernising API infrastructures and reviewing third-party access arrangements in preparation for the new regime. While not yet in force, FiDA underscores the structural shift towards open finance, with increased consumer data rights, intensified competition from fintechs and technology firms, and a renewed focus on data governance and system interoperability.

The EBA's forthcoming guidelines on third-party risk will extend the scope of outsourcing regulation beyond ICT services under the DORA, to encompass a broader array of function- and service-provider relationships. The draft consultative guidelines, open until 8 October 2025, anticipate new requirements on governance (including board oversight of third-party arrangements), comprehensive third-party registers, enhanced exit and continuity plans for "critical or important functions", and a wider set of institutions

in scope, including MiCAR-authorised issuers of asset referenced tokens, investment firms and non-bank creditors (under the mortgage credit directive). Swedish banks and financial institutions should begin reviewing their contracts, outsourcing policies and supplier registers now, ensuring readiness for the two-year implementation phase following final publication.

The EU Banking Package (CRR3/CRD6) entered into force on 9 July 2024, following its publication in the Official Journal on 19 June 2024.

During 2025, banks and supervisors have focused on implementation and transitional preparations ahead of the main application date, 1 January 2025, for CRR III. The package strengthens the risk-based capital framework, introduces an output floor, refines credit-, market-, and operational-risk approaches, and embeds ESG-risk considerations into prudential supervision. The European Commission confirmed in 2025 that the Fundamental Review of the Trading Book (FRTB) will apply from 1 January 2027, following the one-year postponement announced in 2024 and formalised through a delegated act adopted in April 2025.

For Sweden, legislative work to transpose CRD VI is ongoing. The Government's memorandum "EU:s bankpaket" was published in May 2025, aiming for entry into force on 11 January 2026, with rules on third-country branches becoming applicable from 11 January 2027. The proposed new legislation establishes new governance, fit-and-proper and sustainability-risk requirements for banks and investment firms.

By late 2025, EU institutions and national authorities are transitioning from legislative adoption to supervisory implementation, as banks finalise internal models, ESG data integration, and disclosure processes ahead of the first CRR III reporting cycle in 2026.

Trends and Developments

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Harvest Advokatbyrå was established in 2016 and is Scandinavia's largest independent specialist law firm with a clear focus on advising financial institutions. Its 26-lawyer-strong banking and finance team advises clients ranging from innovative start-ups, payment institutions, banks, fund managers and credit providers, to crypto-asset service providers and other companies active in the Swedish financial sector. It advises on a wide range of legal and financial regulatory issues important to the finance industry, including compliance, internal audits, application procedures,

AML/CTF, sustainable finance, and the outsourcing of technology services by financial institutions. The firm maintains frequent and close contact with the Swedish Financial Supervisory Authority (Finansinspektionen, SFSA) and a number of its employees are SFSA alumni. The scope of its services also includes advising companies in the banking and finance sector on corporate matters, such as setting up legal entities, transactional assistance, preparing and negotiating agreements, etc. The firm also advises on data privacy and data protection issues.

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SWEDEN TRENDS AND DEVELOPMENTS

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In recent years, the Swedish financial sector has been subject to several new regulations as well as supervisory activities affecting the market and the financial institutions conducting business operations in Sweden. For example, the sustainable finance framework has been in focus for quite some time and remains a main area of relevance, not only from a regulatory standpoint but also from a business perspective. Digital resilience and cybersecurity are other key areas for the financial sector, driven by the implementation of the Digital Operational Resilience Act (DORA) and the upcoming NIS2 Directive. Also, the Swedish Financial Supervisory Authority (SFSA) has continued to exercise a high degree of supervisory oversight, leading to the imposition of significant sanctions and the adoption of evolving practices within the financial market.

The Sustainable Finance Regulatory Framework *Sustainability practices in Sweden*

Sweden has a long history in sustainable finance, as demonstrated by the pervasive commitment among its financial institutions to integrate sustainability principles into their daily operations and corporate identities.

In the asset management sector, fund managers have voluntarily disclosed their funds' sustainability profiles in response to growing consumer appetite for sustainable asset management. However, since the implementation of the Sustainable Finance Disclosure Regulation (SFDR) on 10 March 2021, the integration of even more stringent sustainability considerations into investment processes for financial products, particularly funds, has progressed at a relatively moderate pace. As the regulatory landscape is complex, asset managers have struggled to correctly implement and comply with disclosure requirements.

The banking sector in Sweden has long been attuned to sustainability, as evidenced by products such as green mortgages and sustainability-linked loans. In recent years, banks have significantly expanded their sustainability departments, mirroring a broader industry trend. Despite these efforts, a discernible gap persists between the asset management sector and the loan operations of Swedish banks in terms of sustainability integration. The surge in customer interest in "green" banking solutions extends beyond private

customers, indicating both a need for further improvements and the potential to generate business value in this area.

Activities by the regulator

The SFSA has long prioritised sustainability issues, and the introduction of the SFDR has further propelled the SFSA to take a leading role in international efforts to standardise reporting for all companies (ie, not only financial institutions). Despite expected regulatory relief at the EU level with the proposed Omnibus initiative presented by the European Commission in February 2025, it is evident that the SFSA has continued to focus on this area in its supervisory activities.

Regarding the Omnibus package, the SFSA responded to the European Commission in April 2025, expressing concern that the proposed changes may undermine the availability of reliable and comparable data necessary for informed investment decisions and regulatory compliance. The SFSA highlights the lack of thorough impact analyses regarding how these changes could affect transparency, the application of related EU regulations such as SFDR, and the broader financial ecosystem. It also questions the implications for value chain reporting, the role of auditors, and the coherence between the CSRD and other standards, such as ESRS. The SFSA calls for deeper analysis and alignment to ensure that simplification efforts do not compromise the effectiveness of sustainability reporting and its role in promoting sustainable finance.

The SFSA has conducted a supervisory review of how Swedish banks incorporate climate risks into their stress testing frameworks. The SFSA has previously identified climate transition risks in Swedish banks' loan portfolios, and the purpose of this recent supervisory activity was to evaluate the maturity of banks' approaches and their preparedness for upcoming EU regulations that will require more robust ESG risk management starting in 2026 (the European Banking Authority's (EBA) Guidelines on the management of ESG risks). The guidelines will become applicable from 11 January 2026 for most institutions (11 January 2027 for smaller, non-complex institutions) and mandate that banks must identify, assess, and manage ESG risks across their operations, including through scenario analysis and stress testing. They

also require banks to integrate ESG considerations into their governance structures and risk management systems, and to develop strategic plans that address the financial risks associated with the transition to a climate-neutral economy by 2050.

In the supervisory report published on 15 September 2025, the SFSA emphasises that these regulations will significantly raise expectations of banks and that it will closely monitor their progress to ensure compliance and resilience. The report further shows that all 11 surveyed banks included climate-related risks in their 2024 stress tests, marking a clear step forward. However, the authority observed substantial variation in how these risks were assessed, even among banks with similar business models. This inconsistency suggests that the sector is still in an early phase of methodological development, according to the SFSA.

In terms of modelling, a few banks have begun quantifying the impact of climate risks on credit metrics such as probability of default (PD) and loss given default (LGD). Others have explored how climate risks might affect customer savings, consumption patterns, and ultimately, bank revenues. One of the key challenges identified is access to relevant data. To accurately assess exposure to climate risks, banks need detailed information, including emissions data, property energy classifications, geolocation data, and industry-specific risk factors. While some banks have started using such data, gaps remain that need to be addressed.

The SFSA notes that while progress has been made, further development is needed, especially in linking stress tests to materiality assessments and improving data quality. Climate stress testing is still in its early stages of development, and banks must continue refining their methodologies. The SFSA intends to deepen its oversight of how individual banks incorporate climate risks into their stress-testing frameworks and will monitor how banks adapt to the forthcoming EBA guidelines. The SFSA also expects banks to improve their ability to quantify climate-related impacts on credit risk and other financial exposures. This will be part of the authority's ongoing supervisory activities, during which it will evaluate the relevance and robustness of the scenarios used, the quality of

the data, and the integration of materiality assessments.

More broadly, the SFSA has identified climate-related sustainability risks as a priority area in its supervisory strategy for 2025. It aims to ensure that financial institutions can fulfil their core functions in an increasingly uncertain environment shaped by climate change. The SFSA's supervision will be risk-based, proactive, and clearly communicated, and the authority is prepared to take strong action if necessary to safeguard financial stability.

Summary

To summarise, Sweden has a strong tradition in sustainable finance, with financial institutions actively integrating sustainability into their operations. Asset managers have voluntarily disclosed sustainability profiles, but the adoption of stricter standards under the SFDR has been slow due to regulatory complexity. Swedish banks have embraced sustainability through products such as green mortgages and expanded sustainability departments, though a gap remains between asset management and lending practices. The SFSA has taken a proactive role, especially in response to the EU's proposed Omnibus initiative, expressing concern that simplifications could weaken data quality and regulatory coherence. The SFSA has also reviewed how banks incorporate climate risks into stress testing, finding progress but noting methodological inconsistencies. With upcoming EU guidelines requiring robust ESG risk management by 2026, the SFSA emphasises the need for improved data, scenario relevance, and integration of materiality assessments. Climate-related risks are a supervisory priority for 2025, and the SFSA is committed to ensuring financial institutions remain resilient in the face of climate change.

Digital Resilience and Cybersecurity

Supervisory focus on DORA implementation

The SFSA has made digital operational resilience one of its top supervisory priorities for 2025. In light of increased geopolitical tensions and a highly interconnected financial sector, the SFSA has launched a three-phase analysis of how 50 selected banks, insurers, payment institutions and trading venues are implementing the Digital Operational Resilience

Act (DORA). The review covers ICT-risk governance, incident reporting, testing, and management of third-party ICT providers, and will serve as preparation for the SFSA's first on-site DORA inspections in 2026.

At the same time, Sweden is finalising its new Cyber Security Act – the national act implementing the NIS2 Directive – which will impose complementary requirements on incident handling, supply-chain security and continuity planning across critical sectors, including finance.

Parallel to this, the EBA is consulting on extended guidelines on third-party and outsourcing risk, broadening supervisory expectations beyond ICT-outsourcing to all external service arrangements. Together, DORA implementation, the Cybersecurity Act and the EBA guidelines form one of the most dynamic regulatory themes in Sweden's financial sector, driving heightened scrutiny of operational resilience, vendor oversight and cyber-preparedness.

NPL Market and Emergence of Specialised Debt Restructurers (SDRs)

During 2025, the Swedish market has seen renewed attention to the management of non-performing loans (NPLs), driven by the EU's continued implementation of its NPL action plan and the so-called "NPL backstop" under the Capital Requirements Regulation.

Banks are increasingly incentivised to dispose of distressed loan portfolios rather than hold them on their balance sheets, as the backstop requires full capital coverage for unsecured NPLs after three years and for secured exposures after seven years. This has fostered a more structured secondary market for distressed debt across the EU.

A key development is the emerging implementation of the framework, with several Swedish banks and credit management companies currently exploring the establishment of, or collaboration with, SDR entities as part of their broader NPL and portfolio restructuring strategies. The initiative aims to enhance market transparency, investor confidence and overall financial stability.

Instant Payments and the Push for Real-Time Euro Transfers

Implementation deadlines and market impact

The adoption of the Instant Payments Regulation (IPR) by the EU on 13 March 2024 marks a significant milestone in the drive towards fully real-time credit transfers across euro-area Member States. Under the regulation, payment service providers must offer instant credit transfers in euros, ensure cost-parity between instant and standard transfers, and provide a free-to-payer "verification of payee" service. With different implementation deadlines (depending on the service/requirement), banks operating in Sweden must begin aligning their infrastructure and pricing models, particularly for cross-border euro payments or services directed at EU markets. For Swedish banks more focused on domestic SEK payments, the regulation nonetheless signals the wider European push towards instant payments, heightened cost competition, and increased technical and compliance complexity.

EU Bank Crisis Management Reform (CMDI Framework)

Reinforcing resolution tools and depositor protection

The political agreement reached on 5 June 2025 between the Council and the European Parliament marks a key step in reforming the EU's Crisis Management and Deposit Insurance (CMDI) framework. The revised regime aims to strengthen the resolution process for small and medium-sized banks by allowing, under strict safeguards, access to industry-funded safety nets such as national resolution funds and, within the Banking Union, the Single Resolution Fund. This "bridge-the-gap" mechanism enables failing banks with insufficient loss-absorbing capacity (MREL) to use deposit-guarantee or resolution funds to finance resolution without resorting to depositor bail-ins.

The reform also clarifies how resolution authorities should conduct the public interest assessment, broadening the criteria for resolution over liquidation when it better supports financial stability or depositor protection. A harmonised "least-cost test" ensures consistent use of deposit-guarantee resources across the EU while maintaining the existing depositor-pref-

erence hierarchy, which prioritises protected deposits, followed by uncovered household and SME deposits.

Implications for Swedish institutions

For Swedish institutions, the CMDI reform signals tighter EU coordination on crisis management tools and deposit protection rules, reinforcing expectations that even smaller banks maintain credible resolution plans and sufficient MREL buffers.

A Tighter Consumer Credit Market

On 1 March 2025, amendments to the Swedish Consumer Credit Act (SFS 2010:1846) entered into force. These amendments introduced stricter rules on interest rate and cost caps, with the aim of counteracting high-risk lending and preventing individuals from becoming overindebted by granting loans they are unable to repay.

Under the new provisions, the credit interest rate or default interest rate on loans may not exceed the applicable reference rate by more than 20 percentage points. The previous cap of 40 percentage points has thus been both reduced and extended to cover all credits (except mortgage loans) under the Consumer Credit Act.

The amendments also expand the scope of the cost cap, which limits the total cost of credit. It now applies to all loans under the Consumer Credit Act, except for mortgage loans, overdraft facilities primarily connected to credit purchases, and loans where the credit amount is less than 2% of the price base amount.

A further restriction was introduced on the possibility of extending credit at a cost. A creditor may no longer extend the term more than once if doing so would impose an additional cost on the consumer. However, it is still permitted to extend the term at no cost or in connection with an agreement on a reasonable repayment plan.

Repeal of the Consumer Credit Operations Act

The most notable amendment, however, pertains to the repeal of the Certain Consumer Credit-related Operations Act (SFS 2014:275) (the “Consumer Credit Operations Act”) by the Swedish Parliament on 21 May 2025.

As of 1 July 2025, consumer credit may only be granted or brokered by banks and credit market companies authorised under the Swedish Banking and Financing Business Act (2004:297) (the “Banking Act”). Exceptions are made only for credit activities specifically regulated by other legislation, such as the Swedish Housing Credit Activities Act (SFS 2016:1024) and the Swedish Payment Services Act (SFS 2010:751).

When the Consumer Credit Operations Act was introduced in 2014, it was considered appropriate to impose a special licensing requirement for consumer credit institutions, but the regulation was made less onerous than that applicable to banks and credit market companies. In light of developments in the credit market and rising levels of overindebtedness, the Government and the Parliament have now concluded that this regulatory distinction is no longer justified. The Government Bill Enhanced Consumer Protection in the Credit Market (Sw. Stärkt konsumentskydd på kreditmarknaden, prop. 2024/25:138) emphasises that imposing equivalent requirements on credit intermediation and credit granting is both appropriate and proportionate, in order to prevent incentives to shift responsibility between credit providers and intermediaries. At the same time, it is emphasised that the repeal of the Consumer Credit Operations Act does not mean a ban on credit intermediation as such, but that it is credit intermediation that contributes to overindebtedness that should cease.

On 12 February 2025, the Council on Legislation (Sw. Lagrådet) issued a statement regarding the proposal. According to the statement, the Council recommended that the Parliament reject part of the Government’s proposal to repeal the Consumer Credit Operations Act. While the Council on Legislation’s statements are not formally binding, they have historically been respected by the Swedish Parliament and Government. According to the Council, the proposal that only Swedish or foreign credit institutions may conduct business activities aimed at providing or brokering credit to consumers would constitute a restriction on the constitutional freedom of enterprise, the freedom of establishment, and the freedom to provide services under EU law. Such restrictions must be proportionate, appropriate to achieve the desired objective, and must not go beyond what is necessary.

The Council on Legislation also rejected the part concerning consumer credit intermediaries and noted that the main reasons cited relate to credit granting and its negative consequences, not to credit intermediation. Although the Government acknowledges a lack of moderation in credit intermediaries' marketing, the Council believes that repealing the Consumer Credit Operations Act is not the most effective measure to address aggressive marketing. Less far-reaching but still effective measures can be taken, for example, through changes to the rules on credit marketing. Moreover, the Council considered that the Government had not substantiated its argument regarding the risk of circumvention, nor had it demonstrated that the proposal was appropriate and proportionate given its restrictive impact on the freedom of trade and establishment of intermediaries. The Council recommended that this issue be further examined within the legislative process for implementing the EU's new Consumer Credit Directive.

Notwithstanding the criticism mounted by industry stakeholders and the recommendation to reject the proposal by the Council on Legislation (a noteworthy occurrence in itself), the Swedish Parliament resolved to repeal the Consumer Credit Operations Act.

New Licensing Requirements for Consumer Credit Institutions

The repeal of the Consumer Credit Operations Act means that companies previously operating as consumer credit institutions must now obtain authorisation as credit institutions (banks or credit market companies) under the Banking Act to continue providing or brokering consumer credit.

The authorisation process is both lengthy and resource-intensive. It also imposes significantly more far-reaching requirements than previously, including capital requirements and requirements concerning governance, organisation, and risk management.

The legislative changes have also removed previous exemptions from the licensing requirement for payment institutions, electronic money institutions and mortgage credit institutions. This has relatively significant consequences for companies that offer consumer credit within the framework of a payment

institution or a mortgage credit institution. However, companies that are authorised to carry out payment transactions through credit facilities under the Swedish Payment Services Act (SFS 2010:751) still have some scope to provide credit to consumers. The legislative amendments do not target credit under any regulations except the now-repealed Consumer Credit Operations Act.

However, it is crucial that such credit is provided strictly within the scope of payment transactions where the funds are covered by the user's credit facility under the Payment Services Act. Should the credit fall outside this definition, a licence under the Banking Act is required. For mortgage credit institutions that also engage in consumer credit activities, such activities must therefore either be discontinued or the institution must apply for a license with the SFSA.

Applications are assessed by the SFSA, and the application fee is currently SEK 1,500,000. A grace period applies to enable an orderly transition. Companies that had a licence under the Consumer Credit Operations Act on 1 July 2025 may continue their operations until 31 July 2026, or until their application for a licence under the Banking Act has been finally assessed. For the business to continue after the end of the grace period, an application must be submitted and approved. Given the significant thresholds for authorisation under the Banking Act, it is probable that the majority of the approximately 70 independent consumer credit companies in Sweden will be wound up.

Companies applying must, among other things, meet the capital requirements under EU regulations and Swedish law, as well as the SFSA's regulations, including minimum requirements for own funds (Pillar 1), additional capital (Pillar 2) and combined buffer requirements.

Proposals to Ease Mortgage Caps and Amend Repayment Requirements

While consumer protection has been tightened in the area of high-cost short-term credit, a parallel review of borrower-based macroprudential measures for mortgages is ongoing. The aim is to lower the thresholds to the housing market and strengthen households' liquidity buffers.

In April 2023, a government committee was tasked with reviewing, inter alia, the mortgage cap and amortisation requirements. The Swedish Ministry of Finance presented a memorandum (Fi2025/01375) in June 2025 with proposals for consultation, which, if adopted, are proposed to enter into force on 1 April 2026.

The key proposals are:

raising the mortgage cap from 85-90% of the market value of the property;

lowering the maximum permitted total loan-to-value ratio to 80% for additional credit on existing mortgages;

abolition of the stricter amortisation requirement (additional one percentage point for debt ratios above 4.5), while other amortisation rules remain unchanged: at least 1% per year for loan-to-value ratios of 50–70% and at least 2% per year above 70%; and

transfer of the regulation of mortgage caps and amortisation requirements from SFSA's regulations to law, for greater clarity and predictability.

The SFSA has analysed the effects of the mortgage cap. In a report dated 22 February 2024 The SFSA's View on Raising the Mortgage Cap from 85-90%, the SFSA noted that unsecured loans have likely played a significant role in housing finance for certain borrower groups since the introduction of the cap in 2010. Between 2009 and 2018, annual new lending by niche banks for unsecured loans exceeding SEK50,000 increased from approximately SEK3 billion to SEK24 billion. Given that unsecured loans are typically more expensive than secured housing loans, this development may undermine consumer protection.

Several banks and industry representatives welcome measures that facilitate entry for young people and first-time buyers. At the same time, the SFSA, among others, has expressed concerns about increased indebtedness and rising house prices, with potential risks to financial stability. Many parties also emphasise the need for long-term supply-side measures, not

least increased housing construction, to address the fundamental problems in the market.

Supervisory Activities on AML/CFT Compliance *Background*

The SFSA has remained very active in supervisory activities related to AML/CFT. In recent years, the SFSA has initiated several investigations into the AML/CFT routines and processes at financial institutions to prevent money laundering and terrorist financing. Several of these investigations are still ongoing and concern banks, as well as Swedish branches of banks licensed in other EEA countries.

A couple of recent sanction decisions made by the SFSA will now be looked at more closely.

Decision regarding Klarna Bank AB (bank)

In December 2024, the SFSA announced that Klarna Bank AB ("Klarna") would receive a warning and a penalty fee of SEK500 million for violations of key parts of the anti-money laundering regulations, including the rules for general risk assessment and customer due diligence procedures. In its decision, the SFSA pointed out that the general risk assessment had significant shortcomings, including a lack of assessment of how Klarna's products and services could be used for money laundering or terrorist financing. Klarna's general risk assessment included typologies based on information from authorities, but lacked explanatory descriptions of how they are relevant to the bank's operations. In addition, the general risk assessment showed that Klarna sent 61 suspicious activity reports to the Police Authority during the first four months of 2021, yet the bank did not take into account the information and circumstances that emerged from these reports in its general risk assessment.

Furthermore, the SFSA considered that Klarna lacked procedures and guidelines covering all situations in which customer due diligence measures must be taken with regard to customers who use the invoice product. These situations primarily involve defining business relationships and establishing a procedure for model risk management concerning customer due diligence requirements.

The decision states, among other things, that Klarna established specific criteria for determining when customer due diligence measures should apply to consumers using the invoice product. The assessments had been made on the basis of these criteria, which had been standardised and automated. According to the SFSA, the procedure used by Klarna constituted a model within the meaning of the Money Laundering Act, but Klarna had no routine for model risk management for that model.

Overall, the sanction decision highlights the importance of linking all risks and risk assessments to the company's specific services and characteristics.

SWITZERLAND



Law and Practice

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Loyens & Loeff is a leading continental European law and tax firm with over 1,000 advisers, and the logical choice for companies doing business in or from the Netherlands, Belgium, Luxembourg and Switzerland, the firm's home markets. The banking environment is constantly evolving. Financing solutions are multiplying and legal implications related to financial products are becoming more complex. Due to the ever-changing economic, political, environmental and regulatory worlds, financial markets will continue

to present challenges in the years ahead. Loyens & Loeff keeps track of the developments and assists its clients to navigate the increasingly complex debt and financial markets. The firm also goes a step further – guiding its clients in identifying opportunities and innovative ways to access the most suitable funding for them, whilst also managing risk. Loyens & Loeff stays ahead of legal changes for its clients, allowing them to stay focused on their core business.

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LOYENS & LOEFF
Law & Tax

1. Legal Framework

1.1 Key Laws and Regulations

Supervision

The Swiss Financial Market Supervisory Authority (FINMA) is responsible for supervision of the Swiss banking sector. The responsibility for the monetary policy and overall stability of the financial system lies with the Swiss Central Bank (SNB). The latter also determines, in consultation with FINMA, which banks are systematically important.

Laws and Regulations

The Swiss Federal Act on Banks and Savings Banks (the BankA) and the related ordinances issued by the Swiss Federal Council and FINMA are the primary pieces of legislation, which, inter alia, set out the licensing and ongoing operational requirements for banks.

Ordinances enacted by the Federal Council include the following:

- the Swiss Federal Ordinance on Banks and Savings Banks (the BankO) which further details the provision of the BankA;
- the Swiss Capital Adequacy Ordinance (CAO), on the minimum capital requirements of Swiss banks, based on their business activities and risks; and
- the Swiss Liquidity Ordinance (LiqO), containing the qualitative and quantitative liquidity requirements for banks.

Further, FINMA has issued the following ordinances covering banks:

- the FINMA Foreign Banks Ordinance (FBO-FINMA), which applies to foreign banks that seek to establish a branch or representative office in Switzerland;
- the FINMA Insolvency Ordinance (InsO-FINMA), which entered into force on 1 October 2025, repealing three separate ordinances: the FINMA Banking Insolvency Ordinance of 30 August 2012 (BIO-FINMA), the FINMA Insurance Bankruptcy Ordinance of 17 October 2012 (IBO-FINMA) and the FINMA Collective Investment Schemes Bankruptcy Ordinance of 6 December 2012

(CISBO-FINMA); it lays down the procedure for the restructuring and bankruptcy of financial market institutions that fall under FINMA's insolvency jurisdiction in a single set of rules;

- the FINMA Accounting Ordinance (AO-FINMA), covering, inter alia, the preparation of financial statements and the publication of annual reports and interim financial statements;
- the FINMA Ordinance on Disclosure Obligations (DisO-FINMA), which governs disclosure obligations, in particular with respect to capital, liquidity, interest rate risks, remuneration and corporate governance principles;
- the FINMA Ordinance on Credit Risks (CreO-FINMA), which further details the minimum capital requirements for credit risks under the CAO;
- the FINMA Ordinance on Market Risks (MarO-FINMA), which covers the requirements of the CAO with respect to minimum capital requirements for market risks;
- the FINMA Ordinance on the Trading and Banking Book and Eligible Capital (TBEO FINMA), which specifies the requirements of the CAO with respect to the trading and banking book (including the classification of assets and calculation of RWA) as well as eligible capital; and
- the FINMA Ordinance on the Leverage Ratio and Operational Risks (LROV-FINMA), which includes the requirements of the CAO with respect to calculation of the leverage ratio and the minimum capital requirements for operational risks.

Other relevant laws and regulations include:

- the Swiss Financial Services Act (FinSA) and the ordinance thereto (FinSO), which (i) set out the rules that apply to the provision of financial services, such as conduct rules, organisational rules, duties to register as client adviser, or affiliate with an ombudsman, and (ii) contain the primary market rules for offering securities;
- the Swiss Financial Market Infrastructure Act (FinMIA) and the ordinance thereto (FinMIO), which regulate financial infrastructures and provide for rules that ensure the functionality of the Swiss financial market (financial infrastructures include trading venues for securities, central counterparties, central securities depositories, and payment

systems); further, FinMIA and FinMIO regulate conduct requirements for trading in OTC derivatives and exchange-traded derivatives, the rules on the disclosure of significant shareholders in listed companies and the rules on market abuse and insider dealing; and

- the Swiss Federal Act on Combating Money Laundering and Terrorist Financing (AMLA) including the ordinances issued thereunder, and, in particular the FINMA Ordinance on Combating Money Laundering and Terrorist Financing (AMLO-FINMA), which sets out the anti-money laundering (AML) and combating the financing of terrorism (CFT) framework for FINMA-regulated financial institutions.

With respect to the Swiss supervisory practice, (i) the Swiss Financial Market Supervision Act (FINMASA), sets out the organisation of FINMA, as well as its competences and instruments for enforcement, and (ii) the Swiss National Bank Act (NBA) and the ordinance thereto (NBO), regulate the regulatory framework for the SNB and its powers, which in particular relate to systemic oversight (ie, also systemically important banks). Furthermore, FINMA issues circulars to explain how it applies financial market regulation in its supervisory practice. Circulars provide clarity on how FINMA exercises its discretion available under the applicable regulations.

Finally, there are also self-regulatory organisations in Switzerland that issue rules that apply to the banking business. Two examples are the Swiss Banking Association (SBA) and the Asset Management Association Switzerland (AMAS). SBA has, inter alia, issued the Agreement on the Swiss Banks' Code of Conduct for the Exercise of Due Diligence (CDB 20), which focuses on preventing money laundering and terrorist financing in the Swiss banking sector. The CDB 20 is revised in a five-year cycle, which is why an amendment to the CDB 20 can be expected in the near future. AMAS regularly issues self-regulatory guidelines to its members, including their fund management code of conduct (which is recognised by FINMA as a minimum standard) as well as the AMAS ESG framework applicable to managers of sustainability-related collective assets, or operators or producers thereof.

2. Authorisation

2.1 Licences and Application Process Overview

Similar to other jurisdictions, banking activities are regulated in Switzerland. Licences are granted to legal entities that pursue banking activities which are carried out in or from Switzerland. The relevant activities and licensing requirements are set out in the BankA and the related ordinances and circulars.

Scope and Limitations of Banking Activities

From a Swiss perspective, a bank is an entity that operates primarily in the financial sector and:

- accepts deposits from the public exceeding CHF100 million on a commercial basis (or publicly solicits such deposits);
- accepts public deposits up to CHF100 million or certain crypto-based assets designated by the Federal Council on a commercial basis (or publicly solicits such deposits) and invests these public deposits or assets or pays interest on them; or
- refinances itself to a significant extent from several banks that do not have a major stake in it, to finance various individuals or companies that are not part of their own business group.

The terms public deposits and commercial capacity require further explanation. Pursuant to Swiss law, public deposits are understood to be liabilities to customers with the central characteristic of a repayment obligation. Funds held in settlement accounts (*Durchlaufkonti*) are not considered public deposits, provided that these accounts are used exclusively for executing client transactions expected to occur in the foreseeable future, do not accrue interest, and the funds are transferred within a maximum period of 60 days. Also, further exemptions apply. In principle, an entity that continuously accepts more than 20 public deposits or publicly recommends itself as a recipient of public deposits (ie, advertises it, even if fewer than 20 deposits result from it) is deemed to be acting in a commercial capacity.

Swiss entities that meet the abovementioned requirements should in principle apply for a banking licence. In some cases, such entities may alternatively apply

for a “fintech licence” – also called a “banking licence light” – or may benefit from the sandbox regime. Both concepts are explained below.

The fintech licence allows for the acceptance of public deposits for which no full banking licence is required but this comes with certain limitations. Fintech-licensed entities may accept public deposits on a commercial basis as long as (i) the aggregate amount of deposits does not exceed CHF100 million; (ii) the deposits do not bear interest; and (iii) the deposits are not reinvested by the company (eg, deposits are not used for on-lending purposes).

Generally, the requirements of such fintech licence are less stringent than those of the “full” banking licence. In particular, in relation to the accounting and auditing standards, the non-application of the provisions on deposit protection, and the lower capital requirements.

The Swiss sandbox regulation intends to facilitate fintech startups that may struggle to obtain a fintech- or “full”-banking licence. Entities that can benefit from the sandbox are those that are not deemed to act on a commercial basis as a result of:

- permanently accepting more than 20 public deposits totalling no more than CHF1 million;
- not engaging in interest margin business; and
- informing the depositors, before making the deposit, in writing (or other form demonstrable by text) that they are not supervised by FINMA and that the deposit is not covered by the deposit protection.

If an entity in scope of the sandbox exception exceeds the CHF1 million threshold, it must report this to FINMA within ten days and apply for a “full” banking or a fintech licence within 30 days. Whether this 30-day period is realistic in practice, is questionable.

Supervisory Categories

FINMA assigns banks to supervisory categories based on their total assets, assets under management, deposits subject to the deposit protection scheme and capital. Banks in different categories are supervised with different levels of intensity.

Categories 1 and 2 include the largest market participants, which require greater attention in view of their importance and risk profile (high to very high risk). FINMA subjects these players to ongoing, close supervision. Categories 1 and 2 include the systemically important banks (SIBs), which are, as of September 2025, UBS (category 1), Raiffeisen Schweiz Genossenschaft (category 2), Zürcher Kantonalbank (category 2) and PostFinance AG (category 2).

Category 3 banks include large and complex market participants that carry significant risk and are supervised on a preventive basis, but do not require close and continual supervision.

On the other end of the spectrum, category 4 and 5 banks are supervised mostly on the basis of quantitative indicators and only looked at on an event-driven basis (ie, when rules are breached).

Category 4 and 5 banks can opt into a “small-bank” regime (SBR) if they fulfil certain conditions. To benefit from the relief measures of the SBR, a bank in category 4 or 5 must meet the following criteria (as set out in the CAO) at all times (i) at the level of the individual institution, and (ii) at the level of the financial group:

- refinancing rate of at least 100%;
- average liquidity coverage ratio (LCR) (assessed over a period of 12 months) of at least 110%, and
- simplified leverage ratio of at least 8%.

The FINMA can reject an application for the SBR in certain cases, for example, if supervisory measures or proceedings have been initiated against the bank. Banks may also lose the benefits of the SBR regime if they fail to remedy deficiencies within a reasonable period of time or if FINMA conducts enforcement proceedings against them for breaches of supervisory law.

SBR banks benefit from simplified requirements for calculating their capital and liquidity. In particular, they benefit from less stringent requirements for quality and quantity of the necessary capital, which includes the elimination of the calculation of risk-weighted assets (RWA), elimination of the capital buffer, as well as the elimination of the sectoral countercyclical buff-

ers (CCB). Further, calculation of and compliance with the net stable funding ratio (NSFR) are not required. In addition, there are some qualitative relaxations in the FINMA circulars. FINMA further announced that institutions in the SBR regime will be fully exempt from the applicability of the new Circular 2026/1 “Nature-related financial risks”. FINMA provides an inventory with simplifications for SBR banks on their website.

By the end of 2024, 55 institutions had participated in the SBR. This is a fourth of all category 4 and 5 banks. Costs for market entry of entities applying for a banking licence have decreased as a result of the SBR regime. For existing banks, costs have – according to an evaluation by FINMA – not been reduced to the expected level. The reason is that most banks have already put in place expensive infrastructure to comply with the “full requirements”. It is, however, likely that the simplified requirements for banks will, over the longer term, lower costs for existing banks participating in the SBR regime.

Overview: Application Process

Before submitting a licence application, the applicant must first present the project to FINMA for preliminary review. For this purpose, a presentation must be submitted containing, inter alia, the following:

- business model and description of the regulated activity;
- financial resources and origin of the funds (based on current figures);
- intended setup (ie, organisation);
- overview of the group structure, if applicable;
- timetable; and
- power of attorney (if represented).

Preliminary assessments of licensing projects are subject to a fee.

The licence application needs to be submitted via the web-based Survey and Application Platform (EHP). To use the EHP platform, a one-time self-registration on the FINMA portal must be made and an application completed. Once FINMA has reviewed the application, templates and forms will be made available to the applicant on the EHP. Subsequently, the application

for the banking licence can be submitted directly via the platform.

After the licence application has been submitted, a FINMA staff member who is responsible for the procedure will be assigned to it.

The FINMA Fees and Charges Ordinance sets out a framework for the tariffs in relation to the licence application. They vary from CHF10,000 to CHF100,000. The exact costs for each licence application are determined on the basis of the actual time FINMA spends on processing it. Processing time of the application depends on the licensing type, quality and complexity of the application as well as FINMA’s workload.

Overview: Requirements for a Banking Licence

Banks are required to adhere to stringent organisational, financial, and risk management standards. For a banking licence to be granted, the applicant must meet all licensing requirements. The following are considered key requirements by FINMA:

- a minimum capital of CHF10 million (fully paid-up);
- a detailed and accurate description of the business, including its geographical scope, to be included in the articles of association, partnership agreement, and business rules;
- a business plan demonstrating continuous compliance with capital adequacy, risk diversification, and liquidity requirements;
- assurance of irreproachable business conduct by qualified participants (ie, shareholders holding at least 10% of the capital or voting rights) and members of management (fit and proper requirements);
- management of the bank to be effectively conducted from Switzerland;
- distinction between ultimate strategic management and executive management (no member of the bank’s board of directors may simultaneously be part of the executive management);
- effective segregation of internal functions, especially lending, trading, asset management, and settlement;
- effective risk management, specifically through the proper identification, limitation, and monitoring of market, credit, default, settlement, liquidity, reputational, operational, and legal risks;

- effective internal control system, with an internal audit function that operates independently of executive management;
- appointment of a recognised audit firm for the licensing process; and
- appointment of a recognised regulatory audit firm for continuous supervision.

There are additional requirements that must be met in specific situations. Certain requirements are imposed on foreign banks. For applicants under foreign control (ie, a foreign shareholder holds at least 50% of the capital or voting rights or otherwise controls the applicant), FINMA may require the relevant jurisdiction to grant reciprocity.

FINMA may also require adequate consolidated supervision by a recognised supervisory authority if the applicant is considered to be part of a financial group. If the individual group companies are obviously independent of each other, FINMA can exclude them from the group assessment. This can be justified in particular if the group companies pursue different business models or objectives and this leads to a differentiated risk assessment. FINMA has set out details on the scope and content of its supervisory practice regarding consolidated supervision in its Circular 2025/4, which entered into force on 1 July 2025.

Ancillary Banking Activities and Regulatory Approvals

Swiss financial regulatory law sets out a hierarchy of licences granted by FINMA. In hierarchical terms, the banking licence is the “highest”. The “broad” banking licence allows entities to carry out other regulated activities such as (i) securities trading (client dealers and own-account dealers) and market making (securities firm licence); (ii) fund management (manager of collective investment schemes licence); (iii) portfolio management (asset manager licence); and (iv) trustees activities (trustee licence). Banks are also open to carry out investment advisory activities (such activities are not subject to a licence in Switzerland).

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank Reporting Obligations for Qualified Participations in Banks

Both the prospective purchaser and seller of qualified participations in a bank must notify FINMA of their intention to purchase or sell. A qualified participation exists when an individual or entity directly or indirectly holds at least 10% of the capital or voting rights of a bank or has the ability to significantly influence its business operations via other means.

Banks must also report parties purchasing or selling qualified participations to FINMA as soon as they become aware thereof. Banks are further required to update their list of qualified participants at least once every year (within 60 days after the financial year ends). This can be done via the EHP.

Shareholders of banks (individuals and legal entities) must also notify FINMA before their shareholding hits, surpasses, or drops below the thresholds of 10, 20, 33, or 50 percent of the capital or voting rights.

Fit and Proper Requirements

The BankA does not set restrictions with respect to the type of entities or individuals holding a controlling interest in a bank. However, as a general principle, any party with a qualified participation in a bank must ensure proper business conduct to maintain public confidence in the financial sector and in the supervised institutions. Individuals and entities who hold a qualified participation in a bank must ensure that their influence does not compromise the bank’s prudent and sound business operations. Reference is also made to the ongoing fit and proper requirements related to senior management in 4.2 **Registration and Oversight of Senior Management**.

Foreign Control

Swiss-controlled banks that change to foreign control must obtain an additional licence from FINMA. Entities that are under foreign control and apply for a banking licence are also subject to such additional requirements. Foreign control means that foreign holders of qualified participations directly or indirectly hold more

than 50% of the votes of, or otherwise exert a controlling influence on, the bank.

FINMA will grant an additional licence if certain requirements are met (cumulatively).

- The jurisdictions in which the qualified participants reside or are domiciled must ensure reciprocal rights (Swiss individuals or entities must have the possibility to operate a bank in the relevant jurisdiction and such banks would not be subject to more restrictive provisions compared to foreign banks in Switzerland). Verification of reciprocity is not required if international agreements that provide for reciprocity, such as those with WTO member states, exist.
- The bank's company name must not imply or suggest that the bank has a Swiss character (meaning the public must not be misled directly or indirectly with respect to the bank being under foreign control).
- If the transfer to foreign control leads to the bank becoming part of a financial group, FINMA may require the consent of the foreign supervisory authority. FINMA may make the licence conditional on ensuring adequate consolidated supervision.

Foreign-controlled banks also require authorisation with respect to changes concerning qualified participations in such banks.

Passporting

As Switzerland is not a member state of the EU, passporting is not available to Swiss banks.

4. Governance

4.1 Corporate Governance Requirements

Overview

FINMA published Circular 2017&/1 – Corporate Governance – Banks dealing with governance requirements for banks. The circular outlines the requirements for corporate governance, risk management, internal control systems, and internal audit that banks are expected to meet.

Executive Board

The management is responsible for executing the bank's day-to-day business operations in line with the business strategy and the directives set forth by the board of directors. Key responsibilities include:

- overseeing daily operations, managing operational income, and assessing risks, including balance sheet structure and liquidity management; it also acts as the representative of the institution in all operational matters involving third parties;
- presenting proposals for business decisions to the board; and
- designing and maintaining effective internal processes.

The executive board also develops the risk policy as well as the basic features of the bank-wide risk management.

Members of the executive board, individually and also with respect to the body as a whole, must have adequate management expertise, specialist knowledge and experience of banking and financial services. This is required to ensure compliance with licensing requirements in connection with the institution's operational activities. See **4.2 Registration and Oversight of Senior Management** with respect to the applicable fit and proper standards.

As banks need to be effectively managed from Switzerland, managing directors must reside in a location where they can effectively and responsibly fulfil their duties. Decisions and directives within the framework of group supervision must be made from Switzerland.

Board of Directors

The board of directors holds the ultimate responsibility for the management, oversight, and strategic direction of the bank. It defines the bank's business strategy and establishes its risk policy, ensuring the effective regulation, implementation, maintenance, monitoring, and periodic review of internal controls.

To fulfil these duties, the board must possess adequate managerial and technical expertise, relevant experience, and the necessary time commitment. Members are required to personally fulfil their respon-

sibilities and maintain a constant state of readiness to respond to crises and emergencies, beyond the routine schedule of meetings. The board's composition must be sufficiently diverse, representing key areas of responsibility, including finance, accounting, and risk management. For the sake of clear functional separation, no member of the board of directors may simultaneously serve on the bank's management team. Additionally, at least two-thirds of the members must meet independence criteria, which include the following prohibitions:

- they have not been employed by the institution in any other capacity within the past two years;
- they have not served as the lead auditor for the institution within the last two years;
- they do not have any business relationships with the institution that could result in a conflict of interest; and
- they are not qualified participants in the institution or represent such participants.

The board may establish committees to assist in carrying out its responsibilities. For banks in supervisory categories 1 to 3, a sufficiently independent audit committee and a risk committee are mandatory. Further, SIBs must establish, at least at group level, a compensation and nomination committee.

Internal Control System

The internal control system (ICS) needs to be comprised of at least two main controlling bodies: revenue-generating units and independent control bodies. Revenue-generating units manage risks as part of their daily operations, actively monitoring and reporting on these risks to maintain effective control.

Independent control bodies oversee risks and ensure compliance with legal, regulatory, and internal guidelines. Institutions can establish a variety of control bodies carrying out different functions, but must at least cover (i) risk control, and (ii) compliance (see in further detail below). The control bodies need to be integrated into the ICS independently from the revenue-generating units, having full rights to access information and conduct inspections. Their compensation structures must be designed to avoid conflicts of interest.

One or more executive board members must oversee the independent control bodies, ensuring they have direct access to the board. For banks in supervisory categories 1 to 3, an autonomous risk control and compliance function is established, led by a Chief Risk Officer (CRO). SIBs must appoint a CRO who is a member of the executive board.

Risk control's primary responsibilities include monitoring and reporting on individual and aggregated risk positions, conducting stress tests, and performing scenario analyses under adverse conditions. It also implements risk data aggregation and reporting provisions for larger institutions, monitors risk profiles against defined tolerances, and ensures compliance with supervisory regulations. Risk control must be consulted during the development of new products or major transactions and plays a critical role in defining risk limits.

The compliance function conducts an annual assessment of compliance risks, creating a risk-oriented activity plan that requires executive board approval. It promptly reports significant changes in compliance risks to the executive board and annually updates the board of directors on compliance assessments and activities. In cases of serious compliance breaches, the compliance function informs both the executive board and the board of directors, assisting in determining appropriate actions.

Internal Audit

Every bank needs to establish an independent internal audit function. In limited circumstances, a delegation of the internal audit is possible. The internal audit reports to the board of directors (or its audit committee) and delivers independent assessments and audits of the company's organisation and business processes (in particular with respect to the ICS and risk management). Further, it needs to, inter alia, carry out an annual comprehensive risk assessment of the institution's significant risk categories. Internal audit publishes a report that sets out its key findings and important activities per audit period. This report is to be submitted to the board of directors (or its audit committee), the executive board as well as the regulatory audit firm. The compensation system for members of the internal audit function needs to be

designed in a way that does not lead to conflicts of interest.

4.2 Registration and Oversight of Senior Management

Senior management of banks must adhere to strict business conduct requirements, commonly known as “fit and proper” standards, to maintain public trust and protect the reputation of the financial sector. These standards apply to both the board of directors and executive management.

Fitness pertains to the competence and experience individually and of the management body as a whole. The assessment does not solely consider whether an individual, such as the Chairman of the Board or the CEO, possesses all the necessary experience; instead, it evaluates whether the management team collectively has the required expertise. FINMA assesses strategic and operational management capabilities at the institutional level. Propriety, on the other hand, relates to an individual’s integrity and reputation. Each member of senior management must independently fulfil the propriety requirement, as integrity cannot be delegated. FINMA continuously monitors both individuals and the management body as a whole to ensure compliance with these standards.

Any changes to the board of directors or executive management must be reported to and approved by FINMA prior to implementation. FINMA collects and reviews detailed personal, professional, financial, and legal information, including identification details, qualifications, financial standing, and auditor reports, to evaluate the suitability of individuals for key roles. To that extent, FINMA also manages a database to assess compliance with proper business conduct requirements in accordance with financial market law. FINMA further assesses fitness and propriety based on specific roles, taking into account the institution’s size and complexity.

If an individual is deemed unfit, FINMA has the authority to mandate his/her removal (as part of enforcement proceedings), thereby ensuring that leadership upholds the standards for effective governance. Procedures against individuals may lead to entry into

the above-mentioned database (also referred to as a watch list).

4.3 Remuneration Requirements Remuneration Requirements Based on the Banking Act

The BankA provides for remuneration requirements applicable to SIBs. If a SIB or its parent company receives state aid (despite the implementation of the special measures required for SIBs), the Federal Council is mandated to implement measures concerning remuneration. In particular, the Federal Council has the authority to either wholly or partially prohibit the payment of bonuses or to mandate changes to the remuneration system of the bank. Furthermore, SIBs are required to include provisions in their remuneration systems that limit the entitlement to bonuses in the event of state support. The overarching objective of this regulation is to ensure that banks benefiting from state aid appropriately adjust their remuneration frameworks.

Remuneration Requirements Based on FINMA-Circular 2010/1

FINMA issued the Circular 2010/1 “Remuneration schemes”, which sets out principles on remuneration systems of, inter alia, banks. It defines minimum standards for the design, implementation and disclosure of remuneration schemes in financial institutions. In particular, it establishes ten principles for minimum standards that must be observed in this context (subject to the principle of proportionality). Only banks of a certain size (those that, in their capacity as a single entity or financial group, are required to maintain equity capital in the amount of at least CHF10 billion under the CAO) are obliged to implement the circular, although FINMA recommends that all banks do so as best practice. Deviations from the principles set out in the circular are possible, although only in justified exceptional circumstances, and such deviations must be disclosed (“comply or explain”).

Remuneration Requirements with Respect to Financial Services

FinSA and FinSO require that remuneration systems do not incentivise non-compliance with legal obligations related to the provision of a financial service.

Remuneration Requirements for Listed Companies

Under Swiss corporate law, a bank may be in scope of the compensation requirements that apply to listed stock corporations incorporated under Swiss law with a registered office in Switzerland. Such requirements are set out in the Swiss Code of Obligations and include, for example, a compensation report and voting on compensation.

Internal Remuneration Requirements

As mentioned in 4.1 **Corporate Governance Requirements**, the remuneration system for the independent control bodies and internal audit function should be designed in a way as to not create any conflicts of interest.

Outlook

In September 2025, the Federal Council proposed measures addressing the Credit Suisse crisis, which include provisions with respect to remuneration systems. In particular, the Federal Council noted that remuneration systems must not provide employees with incentives to excessive risk-taking, and must not jeopardise compliance with regulatory requirements.

It is further proposed that FINMA can impose remuneration-based measures during early intervention.

Banks are required to meet certain minimum standards, while SIBs would be subject to enhanced requirements. These include implementing specific mechanisms for variable remuneration, such as retention periods for bonus payments, as well as malus and clawback provisions in cases of misconduct.

5. AML/KYC

5.1 AML and CFT Requirements

Swiss banks qualify as financial intermediaries and therefore are in scope of the Swiss AML framework, including AMLA and its implementing ordinances. The AMLO-FINMA provides the more detailed requirements for financial institutions (including banks) to prevent money laundering (ML) and terrorist financing (TF), including customer due diligence, organisation rules, transaction monitoring, and reporting obligations.

In summary, banks need to:

- identify the contracting party;
- establish and verify the identity of the beneficial owner;
- repeat the identification per the first two bullet points above in the event of doubt, and update client data on a regular basis;
- apply special duties of due diligence in certain circumstances;
- comply with ongoing documentation and retention obligations;
- comply with ongoing organisational measures; and
- comply with reporting (or further measures) in the event of a reasonable suspicion of ML or TF.

Identification of Contracting Party

For purposes of identification of the contracting party, the controlling party, and the beneficial owner, AMLO-FINMA refers to the CDB 20. Banks must establish the identity of the contracting party when establishing business relationships.

Natural persons

If the business relationship is established in a face-to-face meeting, the bank must identify the contracting party via an official identification document with a photograph (eg, passport or identity card) and put a copy of such document on record. If the business relationship is established by video and meets the requirements of the FINMA Circular 2016/7 “Video and online identification”, it is deemed equivalent to face-to-face identification.

If the business relationship is established by correspondence, the bank must verify the identity of the contracting partner via an authenticated copy of an identification document. Online identification is deemed equivalent to identification by correspondence, if the process meets the requirements of the FINMA Circular 2016/7.

Legal entities and partnerships

Legal entities and partnerships are generally identified via a Swiss or foreign-equivalent commercial registry extract or written extract of such database. The identity of the individuals that establish the business

relationship must be checked and power of attorney relationships taken note of and documented.

Establishment of Beneficial Owner

Swiss banks must also establish and verify the identity of the beneficial owner of legal entities and partnerships. Client information must be updated on a regular basis.

For operating legal entities, the bank needs to determine the individual who ultimately controls the legal entity (controlling party). Such determination is made according to the following cascade:

- When a business relationship is established, the first step is to check whether a natural person holds a voting or equity interest of 25% or more in the contracting party.
- If this is not the case, the second step is to check whether a natural person exercises effective control over the contractual partner in any other way.
- In a third step, if no controlling party could be identified in steps one and two, the managing director of the contracting party is recorded as the controlling party. The above steps can be completed in a written declaration or via Form K appended to the CDB 20 (or equivalent purpose-made declaration).
- If a legal entity holds a voting or equity interest of 25%, the individual that ultimately controls by holding more than 50% of the voting or equity interest in this legal entity, or by other means, needs to be established (“attribution approach”).

For non-operating entities (domiciliary companies), the above cascade does not apply. The decisive factor here is the possibility of the beneficial owner (alone or together with other beneficial owners) to make the final decision on the use of the assets held by the domiciliary company.

Swiss banks further need to obtain a declaration from the contracting party as to who is the beneficial owner of the assets deposited with the bank. This can be done via Form A appended to the CDB 20 (or equivalent purpose-made declaration).

Special Duties of Due Diligence

Swiss banks must establish the type and purpose of the business relationship intended by the contracting party (the extent of the inquiries depends on the risk associated with the contracting party). In certain cases – eg, in the event of an increased-risk business relationship or transaction, the bank must establish the background and purpose of a business relationship or transaction. For that purpose, banks must develop risk criteria to identify business relationships or transactions with increased risks.

Organisational Measures, Documentation and Retention Obligations

Swiss banks need to establish an internal AML department that monitors compliance on an ongoing basis. Such department needs to, inter alia, (i) issue instructions; (ii) be the first point of contact in AML/CFT matters; and (iii) plan and make sure that the staff are adequately trained on AML/CFT matters. Further, in-house controls with respect to AML/CFT compliance need to be made.

Swiss banks further need to ensure adequate documentation and retention of documents. All documents required in connection with the fulfilment of due diligence obligations must be retained for ten years after the transaction in question has been carried out or the relevant business relationship has been terminated.

Reporting Duties and Additional Measures

Banks must, in the event of reasonable suspicion of ML or TF, immediately report to the Money Laundering Reporting Office (MROS). This includes, inter alia, circumstances where such bank knows or has reasonable grounds to suspect that the assets involved in the business relationship are connected with ML or criminal organisations, derive from a crime or a qualified tax offence or serve for TF.

Swiss banks must further observe the asset freezing and confidentiality rules set out in AMLA. In particular, Swiss banks must enact an asset freeze with respect to assets entrusted to them as soon as MROS informs them that it will forward a report to a prosecution authority (subject to certain exceptions where assets need to be frozen immediately). Swiss banks are generally prohibited from informing the persons

concerned or any third parties about a report made to MROS. This is subject to certain exceptions – eg, if the Swiss bank cannot enact the asset freeze itself, it may inform the financial intermediary that can enact such asset freeze.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Swiss depositor protection scheme is based on a three-tier system and applies to Swiss-regulated banks, foreign banks operating branches in Switzerland (provided the deposits are booked with the branch) and securities dealers.

- Tier 1: Under the privileged deposit system, deposits up to a maximum of CHF100,000 per depositor and institution are privileged deposits. These privileged deposits are first paid out from the available liquid assets of the failed bank (outside of the schedule of claims under bankruptcy law). Such deposits are (i) paid out immediately if they are booked in Switzerland, and (ii) paid out as soon as the bank can pay out such deposits legally and operationally if they are booked outside of Switzerland. For that purpose, all banks must hold collateral consisting of assets in Switzerland equivalent to 125% of the protected and preferential client deposits.
- Tier 2: As a second-tier measure, the deposit protection scheme applies. Esisuisse is tasked with maintaining such system. All banks in Switzerland that accept client deposits are obliged to participate in the depositor protection scheme. If the bank has insufficient liquidity available to cover the protected deposits (see tier 1), esisuisse funds the disbursement of protected deposits up to a maximum of CHF100,000 per depositor. The amount that all banks contribute to esisuisse is based on 1.6% of the total of all deposits secured at banks in Switzerland (currently CHF7.9 billion), but may not be less than CHF6 billion. The Federal Council is authorised to increase this amount if necessary. Up to such cap, the guaranteed amounts must be paid out within a period of seven days to the liquidator by esisuisse.

- Tier 3: If the deposits have not been paid out under tier 1 or tier 2, they are treated preferentially and placed among the second class of bankruptcy claims (up to a maximum of CHF100,000). In such a case, they may be paid out only partially, and at the same time as other second-class claims (after first-class claims, such as employee salary and pension fund claims, have been paid out).

The deposit protection scheme also applies to cantonal banks; however, some cantonal banks additionally benefit from a state guarantee. Cantonal banks are banks controlled by a Swiss canton (at least one-third of the capital and voting rights must be held by a Swiss canton for a bank to be characterised as cantonal). The applicable cantonal legislation provides to what extent the liabilities incurred by a cantonal bank are insured by the concerned canton.

Assets held at providers that use the “sandbox” exception or use the fintech licence are not protected under the depositor protection scheme.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Statutory Capital Requirements

To obtain a banking licence, banks need to have a fully paid-in minimum capital of at least CHF10 million. FINMA can demand higher statutory capital, depending on the bank’s intended activities.

Overview: Regulatory Capital and Liquidity

In general, the Basel III standards have been gradually incorporated into Swiss financial regulatory law. Capital adequacy and liquidity requirements are regulated in the CAO and LiqO. In November 2023, the Federal Council decided to put the Basel III standards (also referred to as Basel 3.1) into force by means of an amendment to the CAO. Such amendments took effect in January 2025 and are accompanied by a number of FINMA ordinances (see 1.1 Key Laws and Regulations).

Regulatory Capital Requirements

Regulatory capital

Non-systemic banks are required to maintain a minimum regulatory capital of at least 8% of their RWA: (i) 4.5% must be held in the form of common equity Tier 1 (CET1), and (ii) 6% must be held in the form of Tier 1 capital. If the minimum capital required and capital buffer (see below) do not sufficiently cover the risks of a bank, FINMA may require additional capital to be held by such bank. FINMA assesses this on a case-by-case basis.

Capital buffer

Further, banks must have a capital buffer ranging from 2.5% to 4.8% of their RWA. Further, the Swiss sectoral countercyclical capital buffer (CCyB) targeted at mortgage loans financing residential property located in Switzerland remains at 2.5% as decided by the Federal Council in January 2022 (this is to mitigate and counteract risks from excessive credit growth).

Extended countercyclical buffer

Banks with total assets of at least CHF250 billion, of which (i) the total foreign commitment amounts to at least CHF10 billion, or (ii) with a total foreign commitment of at least CHF25 billion, are further required to maintain an extended countercyclical buffer of up to 2.5% of RWA (in the form of CET1).

Liquidity Requirements

As a main rule, a bank must always have sufficient liquid assets to meet their payment obligations, even in stress situations. To achieve this, banks must maintain adequately measured, sustainable liquidity reserves and ensure appropriate financing. The LiqO implements Basel III's liquidity standards and sets out both qualitative and quantitative liquidity requirements.

With respect to qualitative requirements, banks must, inter alia, manage their liquidity risks appropriately according to their size and business complexity, establish processes for identifying, managing, and monitoring liquidity risks to ensure they always have sufficient liquidity and that their payment and settlement systems are not impaired, and implement measures to mitigate liquidity risks.

With respect to quantitative requirements, banks must comply with an LCR and net stable funding ratio (NSFR). The LCR requires banks to ensure that they have sufficient high-quality liquid assets (HQLA) to cover their short-term liabilities within 30 days. The NSFR promotes long-term stability by requiring banks to maintain a stable funding base to finance their long-term assets. The calculation of both LCR and NSFR is comprehensively regulated in the LiqO. FINMA monitors compliance with these requirements and can take appropriate measures in case of non-compliance.

Risk Management

Banks must manage concentration risks and adhere to specific regulations. As a general standard, the maximum risk concentration is set at 25% of the bank's adjusted Tier 1 capital (Tier 2 supplementary capital is generally not taken into account).

SIBs

SIBs are required to maintain higher levels of regulatory capital compared to other banks (ie, there are additional requirements for SIBs). This ensures they can better withstand unexpected losses from their regular business operations (going concern) and aims to minimise the risk of restructuring, winding up by FINMA or even state intervention (gone concern).

To guarantee progression of the bank (ie, from the going concern perspective), SIBs are required to comply with:

- baseline requirements: 12.86% RWA ratio and 4.5% leverage ratio;
- a surcharge (or add-on): the size of the surcharge depends on the degree of systemic importance (in particular, the bank's total exposure and market share in domestic lending and deposit business); and
- CCyB (applicable to all banks).

The going concern requirements need to be largely met with CET1 capital.

Additionally, in the event of a crisis (ie, from a gone concern perspective), SIBs must have extra funds available to absorb losses. Domestic systemically important banks (D-SIBs) must maintain gone concern

capital requirements of at least 40% of their going concern capital. For global systemically important banks (G-SIBs) at the consolidated group level, the requirement is 100%, with FINMA having the authority to grant rebates.

The gone concern requirements are typically fulfilled with bail-in bonds (which need to meet certain eligibility criteria, such as being issued by the group holding company under Swiss law and with jurisdiction of the Swiss courts).

Like “regular” banks, SIBs must limit concentration risks, with a standard cap of 25% of Tier 1 capital. However, for SIBs, exposure to other SIBs, whether Swiss or global, is capped at 15% of Tier 1 capital.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework Insolvency Regulations

In Switzerland, the measures to be taken by banks (and fintech-licensed entities) in the event of insolvency risks are regulated in the BankA and aim to ensure business continuity, streamlining of restructuring and time-efficient repayment of preferential deposits.

If there are justified concerns that a bank is over-indebted or facing serious liquidity issues, or if it fails to meet the capital adequacy requirements by the deadline set by FINMA, the supervisory authority can impose (i) protective measures; (ii) restructuring measures; and (iii) the liquidation of the bank, all as set out in the BankA.

Initial protective measures may include issuing directives to the bank’s management, revoking their authority to represent the bank, dismissing them, or prohibiting the bank from making or receiving payments and conducting securities transactions. The aim of ordering these protective measures is the continuation of the bank at risk. Protective measures can be issued on a standalone basis or in combination with restructuring or liquidation measures.

If justified (realistic chance of restructuring), FINMA may initiate restructuring measures to ensure continu-

ation of the bank or single banking services. FINMA will then issue the necessary directives to carry out the restructuring proceedings and may appoint an officer to develop a restructuring plan that outlines the basic elements of the procedure and specifies the measures to be implemented (eg, the reduction of existing capital and the creation of new equity, or the conversion of debt into equity, as well as the reduction of claims). The restructuring plan ensures that the bank complies with legal regulations after the restructuring is completed and that the protection of the bank’s creditors is guaranteed.

If there is no realistic chance of a successful restructuring (or if such restructuring failed), FINMA will (i) revoke the bank’s licence; (ii) order its liquidation; and (iii) publish such liquidation proceedings. Additionally, FINMA will appoint one or more liquidators (subject to supervision and reporting duties to FINMA).

Additional rules apply to SIBs. Such banks must have an emergency plan, which will be assessed by FINMA for efficacy. The goal of such plan is to ensure that the systemic functions can be continued without disruption in the event of imminent insolvency.

Further, SIBs require a recovery and resolution plan. The recovery plan is to be drafted by the management of the bank and needs to contain the stabilising measures to be taken in a time of crisis, allowing the bank to continue its business without government intervention. The recovery plan is subject to approval by FINMA.

The resolution plan is drafted by FINMA. The aim of such plan is to illustrate how a FINMA-ordered restructuring or liquidation of the systemic bank can be carried out. The bank has to provide FINMA with the information required to draft such plan.

The Swiss deposit protection regime is explained in **6.1 Deposit Guarantee Scheme (DGS)**.

9. ESG

9.1 ESG Requirements

Overview: Swiss ESG Framework

Other than a few legal requirements, primarily in the area of corporate transparency and sustainability reporting, the Swiss regulatory sustainability framework is rather minimal (especially when compared to the EU) and has been largely left to self-regulatory efforts.

Non-financial Reporting Based on Corporate Law

As of January 2024, the associated ordinance on climate reporting (the Climate Reporting Ordinance) applies in Switzerland. Under the Climate Reporting Ordinance, Swiss companies that cumulatively (i) are of public interest (eg, listed companies or supervised companies, such as banks); (ii) which together with their controlled domestic or foreign entities, have an annual average of at least 500 full-time equivalent positions in two consecutive financial years; and (iii) which together with their controlled domestic or foreign entities exceed a balance sheet total of at least CHF20 million or a turnover of CHF40 million, are subject to non-financial reporting duties.

With respect to content, the report needs to contain non-financial information concerning environmental matters (in particular CO₂ goals), social responsibility, employee matters, human rights and combatting corruption. Companies (including banks) subject to the reporting duties are deemed to have complied with climate reporting duties (as a part of the environmental matters) if reporting is made in accordance with the recommendations of the task force on climate-related financial disclosures. In general, the report can be based (content-wise) on nationally or internationally recognised guidelines (such as the relevant OECD guidelines).

For completion, Swiss corporate law also imposes certain transparency and due diligence duties with respect to conflict minerals and child labour.

Disclosure of Climate-related Risks

In DisO-FINMA, FINMA mandates significant financial institutions (those in supervisory categories 1 and 2) to meet disclosure requirements related to climate-

related financial risks. As such, the largest banks must provide details on their material climate-related financial risks and explain how these risks impact their business strategy, business model, and financial planning. Additionally, they are required to disclose their processes for identifying, measuring, and managing these risks, including providing quantitative data and outlining the methodologies used. Finally, institutions must describe the key aspects of their governance structures as they relate to climate-related financial risks.

Management of Climate- and Other Nature-Related Financial Risks

In December 2024, FINMA published a new circular, FINMA Circular 2026/01 “Nature-related financial risks”, which will enter into force in stages from 1 January 2026. In this circular, FINMA clarifies its supervisory expectations from, inter alia, banks and branches of foreign banks with respect to the management of climate- and other nature-related risks. In particular, the circular sets out provisions for risk management and its internal documentation, as well as for the internal control system for the institutions in scope.

Self-Regulation

As mentioned above, Switzerland has largely relied on self-regulation with respect to ESG.

Since January 2024, members of the SBA are subject to guidelines on the inclusion of ESG preferences and ESG risks in investment advice and asset management. This introduces binding self-regulation regarding sustainable finance, also covering the risk of greenwashing at the point of sale for SBA members.

AMAS has developed a principle-based self-regulation for sustainable asset management (version 2.2 in October 2025). This set of rules applies to AMAS member institutions (including banks) that produce and manage sustainability-related collective assets. It aims to ensure transparency and quality in the management and positioning of collective assets presented as sustainable or having sustainable characteristics.

Broad Interpretation of General Principles

It needs to be noted that in certain cases, general principles are applied broadly for purposes of ESG compliance – eg, with respect to greenwashing. With respect to funds, the name of a fund may not give rise to confusion or be deceptive. As part of authorisation proceedings by FINMA, this has been interpreted broadly to combat greenwashing with respect to fund products. Further – and equally relevant in the context of greenwashing – Swiss competition law prohibits deception or conduct that violates the principle of good faith.

10. DORA

10.1 DORA Requirements

The Digital Operational Resilience Act (DORA) is a European Union regulation aimed at strengthening IT security and operational resilience within the financial sector. It will become fully applicable by January 2025 and aims to ensure that banks, insurance companies, investment firms, and third-party information and communication technology (ICT) service providers can withstand severe operational disruptions. It also standardises operational resilience rules across 20 categories of financial entities in the EU.

Although Switzerland is not an EU member state and Swiss banks are not directly subject to DORA, those banks operating within the EU will need to comply with its requirements. In practice, Swiss financial institutions (including banks) that interact with EU-based entities or customers may still need to meet DORA standards. This is particularly important for Swiss firms providing IT services to EU subsidiaries, sister companies, or EU-based clients. As a result, many Swiss financial institutions are preparing for increased alignment with DORA's operational resilience requirements.

Swiss financial institutions, including banks, already adhere to stringent IT security and risk management standards set by FINMA. Key guidelines, such as Circular 2018/3 on outsourcing, LROV-FINMA on operational risks and the FINMA Guidances 05/2020 and 03/2024 on the duty to report cyber attacks as well

as scenario-based cyber risk exercises, help ensure robust cybersecurity and operational resilience.

Finally, Switzerland often aligns its financial regulations with international standards, which may lead to future adoption of similar rules concerning operational resilience and cybersecurity.

11. Horizon Scanning

11.1 Regulatory Developments

The recent Credit Suisse crisis, which led to an intervention by Swiss authorities and a rescue by way of a merger with the UBS group, has had an impact on the financial marketplace and will trigger changes to the regulatory framework for banks.

During its meeting on 6 June 2025 the Swiss Federal Council determined the parameters for amendments to acts and ordinances, which will be submitted for consultation from autumn 2025 onwards.

The proposed amendments introduce, inter alia, stricter capital requirements for systemically relevant banks with foreign subsidiaries. Currently, Swiss banks only have to provide partial capital backing for foreign subsidiaries. If those subsidiaries lose value, it reduces the bank's CET1 capital, limiting measures it can take in a crisis situation (eg, via sale of certain business areas). Further, the Swiss Federal Council proposed additional requirements with respect to the recovery and resolution of systemically relevant banks.

In addition, the introduction of a senior managers regime for banks is proposed. Banks shall define who is responsible for which decisions within a bank. This shall make it possible to clearly assign responsibility and impose targeted sanctions.

Finally, it is proposed that FINMA's supervisory powers shall be extended. The Federal Council has determined that FINMA should be able to take early intervention measures and impose pecuniary administrative sanctions (fines) on non-compliant institutions.

In December 2023, Switzerland and the UK entered into an agreement with respect to recognition of finan-

cial services (the Bern Financial Services Agreement). In essence, this agreement provides for the mutual recognition of equivalence in terms of national legislation. Based on the provisions of the agreement, the UK and Switzerland's supervisory authorities, the PRA, the FCA and FINMA, signed a memorandum of understanding in September 2025, which describes how Swiss and British supervisory authorities will work together in the insurance and investment services segments, in particular with respect to information exchange.

On 19 June 2024, the Swiss Federal Council published a proposed revision of the FinMIA. The draft bill includes extensive amendments to derivatives trading rules, the Swiss market conduct framework, and market infrastructure, such as payment systems, central securities depositories, and trading venues. It also proposes significant changes to the Swiss transaction reporting regime. The draft bill was open for public consultation until 11 October 2024. The Federal Council will then prepare a revised version to submit to the Swiss Parliament. Subject to further changes in the legislative process, the new rules can be expected to come into force at the earliest in 2027 or 2028.

With respect to AML, it is expected that, in mid-2026 at the earliest, the federal act on the transparency of legal entities (TLEA) will come into force. The TLEA will – in line with the recommendations of the Financial Action Task Force (FATF) – introduce a federal register for the identification of beneficial owners of the legal entities in scope. Currently, the CDB 20 is also due for a revision to consider adjustments made to the AMLA and its related ordinances as well as FATF recommendations.

In a recent important development for banks, the FINMA circular “Operational Risks – Banks” has been completely revised and replaced by the new FINMA circular 2023/1 “Operational Risks and Resilience –

Banks”, which came into effect in January 2024. This circular considers technological developments and specifies the supervisory practice regarding the management of operational risks, particularly in connection with ICT, the handling of critical data, and cyber risks. The circular also adopts the revised principles for managing operational risks and the principles on operational resilience published by the Basel Committee on Banking Supervision in 2021. For certain aspects of operational resilience, transitional periods apply until December 2025.

As mentioned in **9.1 ESG Requirements**, the new FINMA Circular 2026/1 “Nature-related financial risks” will come into force in stages from 1 January 2026. It will initially apply exclusively to climate-related financial risks (excluding other nature risks). The circular will apply to all nature-related financial risks (including other nature risks) from 1 January 2028. Further, banks in supervisory categories 3 to 5 have one year longer – until 1 January 2027 – to comply with the provisions relating to climate-related financial risks. Institutions in the SBR regime will be exempt.

Moreover, the Swiss Federal Department of Finance (FDF) and the State Secretariat for International Finance (SIF) are working on a legislative reform to modernise the regulatory framework for innovative financial institutions, particularly fintech companies. This initiative stems from the 2022 Federal Council report Digital Finance: Areas of Action, which identified 12 strategic measures to strengthen Switzerland's digital financial sector. Key goals include reviewing the fintech licence (stronger protection of client money in bankruptcy, simplification through insurance solution, inspired by the EU regime for payment service providers), addressing developments in blockchain and crypto-assets, and ensuring the framework supports emerging technologies like regtech, suptech, and open finance. A draft bill is being prepared and is expected to enter consultation in Q4 2025.

Trends and Developments

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MLL Legal Ltd is a leading Swiss full-service law firm with offices in Zurich, Geneva, Zug, Lausanne, London, and Madrid. With a team of approximately 180 lawyers and a total of 260 employees, the firm combines in-depth domestic expertise with international reach. Its Regulatory/FinTech/DLT and Banking and Finance teams advise a wide and diverse range of clients, including banks, funds, financial institutions, fintech companies, and investors. Renowned for its profound knowledge in financial regulations such as licensing, compliance questions, and FINMA enforce-

ment proceedings, the firm has particular strength in fintech, distributed ledger technology, and crypto-finance. MLL Legal Ltd has been a pioneer in these areas, advising on key legal issues such as token offerings, tokenisation projects and listing of tokens, smart contracts, decentralised finance, payment solutions, and blockchain infrastructure. Clients benefit from the firm's interdisciplinary approach, which integrates banking, transactional advice, corporate, tax, IP and regulatory expertise.

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Introduction

Switzerland continues to occupy a central position in the global banking and financial industry landscape. The financial sector accounts for 9.1% of GDP (CHF72 billion), employs 200,000 people and is a global leader in cross-border wealth management (www.sif.admin.ch). In 2023, there were 230 banks with around 110,000 FTEs. In recent years, Switzerland's banking regulatory framework has undergone a series of targeted reforms and developments aimed at modernising the financial sector, strengthening systemic resilience, and aligning with international standards, while preserving its distinctive Swiss finish.

The regulatory developments in Switzerland reflect a clear strategic balance: preserving the competitiveness of the Swiss financial centre, while reinforcing prudential supervision, promoting technological innovation, and addressing key regulatory priorities with a renewed focus, including on capital adequacy and governance structures in systemically important financial market infrastructures.

The risk landscape in the financial sector has become more acute in recent times: for example, trade conflicts have put upward pressure on the Swiss franc and heightened its volatility. Government debt is rising in some important countries. The geopolitical situation remains tense. There are also continuing risks of sanctions, and the situation remains challenging in the area of goods sanctions. Customer protection is particularly important in connection with risks. To this end, conduct obligations must be strictly adhered to, for example when selling higher-risk financial products. With regard to digital IT risks, an increasing complexity of systems can be observed at financial institutions. In addition, the risks associated with cyber attacks and outsourcing have increased. Many banks now outsource central IT services, for example to cloud providers. Often, there are only a few third-party providers, which further increases the vulnerability to cyber attacks and exacerbates the risks. In view of these increasingly challenging risks, it is all the more important that financial institutions are well managed in order to strengthen their resilience. The Swiss Financial Market Supervisory Authority (FINMA) is also taking this into account and, since April 2025, has been centralising risk functions and cross-cutting

issues (such as liquidity, capital and stress tests, credit risks, money laundering and sustainable finance), analyses and instruments, as well as on-site inspections, in a new business area called "Integrated Risk Expertise" (GB-I). Pooling this expertise will strengthen integrated supervision.

The trends and developments outlined in this practice guide not only reflect the Swiss authorities' response to evolving market conditions but also offer insight into the direction of future reforms.

Recent Decision Regarding the Write-Off of AT1 Bonds

For many years, Switzerland has been home to systemically important banks with global operations, which have been subject to close supervision and rigorous regulation by FINMA. In 2023, the world witnessed the realisation of latent risks faced by each and every bank materialise in the form of a "bank run". Credit Suisse suffered several reputational crises, leading to a loss of confidence among creditors and investors. Due to the systemic relevance of the bank, what started as a "liquidity crisis" triggered by creditors requesting back their deposits ended in major urgency measures being adopted by the government, FINMA and the Swiss National Bank for the takeover of Credit Suisse by UBS. One such measure was the write-off of AT1 bonds, with a nominal value of approximately CHF16.5 billion in March 2023, following an Emergency Ordinance.

On 1 October 2025, and after around 3,000 complaints had been filed, the Federal Administrative Court revoked the FINMA decree instructing Credit Suisse to write off all AT1 bonds, which was based on the Emergency Ordinance. Mainly, complaints contended that there was not sufficient legal basis to write off the AT1 bonds. The question at stake in this case is (i) whether the protective measures issued by FINMA were permitted following Article 26 of the Swiss Banking Act, which the court denies based on the grounds that such measures are foreseen for an impending insolvency, and at the time only a liquidity crisis was proven and (ii) whether the Emergency Ordinance followed constitutional principles, especially for safeguarding the guarantee of ownership in Article 26 of the Federal Constitution as a fundamental right. The

decision is still pending and may be appealed. This case highlights a crucial issue for democratic societies: whether fundamental democratic principles continue to be respected when governments intervene, particularly in emergency situations. Many jurisdictions provide for urgent measures as a last resort in response to unforeseen threats, such as the systemic risk posed by the collapse of a major bank.

Federal Council's Package to Strengthen Banking Stability

Following the Credit Suisse crisis, the Federal Council proposed a comprehensive package to prevent liquidity crisis and increase the stability of systemically important banks in June 2025. Amongst the different measures proposed, it suggests increasing capital requirements, strengthening liquidity through the assistance of the Swiss National Bank and creating a public liquidity backstop (PLB), which would function as a state guarantee on liquidity assistance during a crisis. It also proposes expanding the range of available crisis management tools, and changes to the variable remuneration and responsibility regime of senior managers. The latter requires the banks to define in a legally binding manner who is responsible for which decisions. This enables a clear allocation of responsibility and thus targeted new sanctions – for example, clawbacks of variable remuneration already paid out or bonus cuts. At the same time, it makes it easier to enforce existing measures such as withdrawing an individual's fit and proper designation or imposing an industry ban.

Further, FINMA's demand for statutory powers to enable it to order supervisory measures earlier and more effectively (early interventions) has also been heard and included in the proposal, as is the removal of the suspensive effect of appeals in such cases. Finally, FINMA should be granted the power to impose fines on non-compliant institutions.

However, the Federal Council is working on these legislative projects at the moment and public consultations of the draft legislations are planned for the end of 2025/beginning of 2026 and entry into force will be in January 2027 at the earliest.

Amendment of Financial Market Legislation Regarding Innovative Business Models

As published by the State Secretariat for International Finance (SIF), the SIF is in the course of reviewing the existing regulatory framework in connection with the so-called fintech licence in accordance with Article 1b of the Swiss Banking Act, which had been created as a "banking licence light", in order to allow innovative business models to grow with certain limitations and less stringent regulatory requirements. The supervision of the few institutions that have been granted such a licence has, according to FINMA, proven challenging, especially to protect depositors due to the low capital and liquidity requirements. Furthermore, the intrinsic value of assets (such as potentially innovative software) proved to be questionable in difficult situations that are often faced by start-ups, which often forced liquidation.

SIF is currently drafting a bill to amend the relevant provisions in the Swiss Banking Act and the Banking Ordinance. The fintech licence currently allows acceptance of public deposits of up to CHF100 million in fiat or unlimited amounts in pooled crypto-based assets (payment tokens). However, the collected funds cannot be invested or used for lending, and no interest can be paid on them. If crypto-based assets (payment tokens) are held individually for each customer and can be segregated from the bankruptcy estate of the company, neither a banking licence nor a fintech licence is required. Numerous other exceptions apply to the banking licence requirement, such as the regulatory sandbox of funds collected below CHF1 million and the settlement accounts (ie, funds are received to settle a transaction within less than 60 days). However, according to SIF, the whole catalogue of exceptions in connection with the public collection of funds and the qualification of payment tokens needs to be reviewed and subject to more stringent regulations. It is expected that the relevant regulations will, as is lately the case, be drafted following the relevant EU regulations, such as the Markets in Crypto-Assets Regulation (MICA).

Enhancing Corporate Transparency and Extending the Applicability of AML to Advisers

Switzerland is in the final phase of a major reform of its anti-money laundering (AML) framework. Fol-

Following the recommendations of the Financial Action Task Force (FATF) and the outcome of the 2022 mutual evaluation, the Parliament adopted a comprehensive revision of the Swiss Anti-Money Laundering Act (AMLA) in 2025. The revision introduces new due diligence duties for professional advisers and enhances transparency in corporate ownership structures, as outlined below.

- **New “Adviser Due-Diligence Duties”:** The revised AMLA extends obligations beyond traditional financial intermediaries to certain professional advisers involved in the incorporation, management or structuring of legal entities or trusts, or in real estate and company acquisition transactions. These advisory duties are triggered when advisers perform transactions that present a risk of misuse for money laundering or terrorist financing. Obligations include the verification of the contracting party’s identity, identification of the beneficial owner, clarification of the purpose of the structure or transaction, and documentation duties. Lawyers and notaries remain exempt to the extent their activity is protected by legal professional privilege, but they must nevertheless assess the boundary carefully, especially when acting as financial intermediaries or corporate service providers.
- **Beneficial Ownership Register:** In parallel, the Transparency of Legal Entities and Beneficial Owners Act (TJPG) introduces a central register of beneficial owners for Swiss legal entities. The register will be maintained by the Federal Department of Justice and Police and is scheduled to enter into force in 2026. Swiss companies must identify their beneficial owners and notify the register within 30 days of incorporation or of any change. Access will initially be limited to competent authorities and obliged financial intermediaries. Non-compliance may result in fines and, in serious cases, the suspension of registration rights.

The TJPG and the relevant ordinance complement the AMLA revision and respond to FATF criticism of the Swiss system’s opacity regarding ownership structures. It will also have significant practical implications for banks and fiduciaries, which can rely on register information for KYC but must continue to verify and document discrepancies.

Together, the AMLA and TJPG reforms will substantially reshape AML compliance for banks, asset managers and advisory firms and prepare Switzerland for the next FATF examination starting at the end of 2026. Institutions should update client onboarding processes, internal policies and cross-border data-sharing arrangements in preparation for the 2026 implementation.

Guidance on Stablecoins/Closed-Loop Model

The regulator published its FINMA Guidance 06/2024 on stablecoins dated 26 July 2024, highlighting the increased risks associated with stablecoins, particularly in relation to money laundering, terrorist financing, and the circumvention of sanctions, which create reputational risks for the Swiss financial centre as a whole.

In particular, the stabilisation mechanism applied by stablecoin issuers, linking the coin to one or more underlying assets such as national currencies, gives stablecoin holders a payment claim against the issuer. These claims are typically classified either as a deposit pursuant to the Swiss Banking Act or as collective investment schemes, depending on whose account and at whose risk the underlying assets are managed.

Given their typical use as a means of payment, stablecoins are, in most cases, subject to the Swiss AMLA. Since the issuer’s liability to each stablecoin holder is typically qualified as a deposit under banking regulations, the business relationship is considered permanent for anti-money laundering purposes. Accordingly, the issuer qualifies as a financial intermediary under AMLA. The issuer or an appropriately supervised financial intermediary is thus required, among other obligations, to adequately verify the customer’s identity and identify the beneficial owner, while specific contractual and technological transfer restrictions apply. This creates a closed-loop model for stablecoins, where they circulate exclusively among pre-approved, identified parties within a controlled network, enforced by contractual and technical controls. Some industry participants anticipate that upcoming regulatory developments, especially those related to the replacement of the fintech licence, may prompt a partial or even complete shift away from this closed-loop model to an open-loop model. This would lead

to only issuance and redemption being subject to full onboarding in compliance with AML regulations and free secondary market transactions (maybe subject to some sort of blacklisting possibilities).

Furthermore, accepting public deposits on a professional basis requires a FINMA licence under the Swiss Banking Act. However, various stablecoin issuers apply exceptions – eg, where repayment (and interest) is guaranteed by a bank (so-called default guarantee) – and thus these funds are not treated as public deposits. Accordingly, these stablecoin issuers do not require a banking licence for this activity but are instead only required to affiliate with a self-regulatory organisation (SRO) as financial intermediaries under the anti-money laundering framework. This arrangement poses risks for both stablecoin holders and the bank providing default guarantees.

As a result, FINMA has established technology-neutral minimum requirements governing the applicability of the exception for default guarantees, including in the context of stablecoins. While these requirements enhance depositor protection, they do not offer equivalent safeguards as a banking licence. In particular, stablecoin holders are not covered by statutory deposit protection under the Swiss Banking Act. FINMA further notes that breaches of anti-money laundering obligations by the stablecoin issuer can indirectly pose risks to the bank providing default guarantees, due to their contractual relationship.

Disclosure of Crypto-Based Assets

The entry into force of the Distributed Ledger Technology (DLT) Act has introduced the term “crypto-based assets” into Swiss financial regulation. However, the FINMA Accounting Ordinance dated 31 October 2019 (FINMA-AO) and the FINMA Circular 2020/1 “Accounting – banks” refer to cryptocurrencies instead of the newly introduced term “crypto-based assets”. Therefore, FINMA has addressed the lack of clarity regarding the following two matters in the FINMA Guidance 03/2025 dated 5 September 2025:

- How shall the disclosure of crypto-based assets in the notes to the annual financial statements prepared by banks be handled?

- How shall the reporting of crypto-based assets in supervisory reporting be handled?

The Guidelines for enquiries on Initial Coin Offerings (ICOs) dated 16 February 2018 categorised tokens into the following three categories, while also acknowledging hybrid forms: (i) payment tokens, (ii) utility tokens, and (iii) asset tokens. While the term “cryptocurrencies” at that time primarily referred to payment tokens, the DLT Act now provides a legal definition for crypto-based assets. Under this new terminology, cryptocurrencies correspond to crypto-based assets that are neither classified as securities under the Swiss Banking Act, nor exclusively convey a right of access to a digital utility or service (as in the case of utility tokens). Already within the 2018 Guidelines for enquiries of ICOs, FINMA deemed asset tokens to qualify as securities.

Prior to the entry into force of the DLT Act, cryptocurrencies held off-balance sheet for clients were required to be segregated in the event of bankruptcy. As a result, such cryptocurrencies were treated as custody assets (cf. Article 16 Note 2 of the Swiss Banking Act) and had to be disclosed as fiduciary transactions in the notes to the annual financial statements, as well as in the form of supervisory reporting. In summary, cryptocurrencies were subject to either recognition on the balance sheet or disclosure in the notes to the annual financial statements.

Following the introduction of Article 16 Number 1bis of the Swiss Banking Act, crypto-based assets are now classified as custody assets under certain conditions, even if they do not qualify as securities. The previous practice of treating such assets as fiduciary transactions is no longer applicable. In particular, FINMA has clarified the following:

- margin no. 214 of FINMA Circular 2020/1 “Accounting – banks” is no longer applicable to crypto-based assets;
- the corresponding section in the annual financial statements shall be left blank;
- transparency must continue to be ensured, and until a specific position in the notes to the annual financial statement is introduced by regulation, banks must choose an appropriate section in the

notes to disclose crypto-based assets classified as custody assets (a meaningful comparison with the previous year shall be ensured; eg, by including a footnote under margin no. 214 with a reference to the new disclosure location in the notes);

- no amounts shall be reported under the section regarding cryptocurrencies held on a fiduciary basis for the account of clients; and
- crypto-based assets that qualify as securities must continue to be reported as custody assets in the above-mentioned supervisory reporting forms in the section regarding “custody account volume: securities and precious metals holdings of clients excluding banks/Securities firms”.

FINMA Guidance and Survey on Artificial Intelligence

Back in December 2024, FINMA published its guidance 08/2024 on governance and risk management when using artificial intelligence (AI). FINMA is drawing therein the supervised institutions’ attention to the need for appropriate identification, assessment, management and monitoring of the risks resulting from the adoption of AI. It is also providing information on corresponding measures that it has observed in the course of ongoing supervision.

According to a survey conducted by FINMA between the end of November 2024 and mid-January 2025, about half of the surveyed institutions already use AI or have initial applications in development, while a further 25% plan to adopt it within the following three years. On average, respondents reported using around five applications and developing nine more, with larger institutions generally deploying more applications than smaller ones. Among those surveyed institutions using AI, 91% also use generative AI, such as chatbots. The survey sample comprised approximately 400 entities, including banks, securities firms, insurance companies and intermediaries, fund management companies, managers of collective assets, and financial market infrastructures.

Based on the above, the financial sector is increasingly relying on AI and services provided by Big Tech firms. However, this trend also introduces operational risks, as many institutions do not solely rely on internal solutions but also on third-party applications and

technologies, and thus potentially outsource critical functions to external providers.

Approximately half of the surveyed institutions have integrated AI into a dedicated AI strategy, focusing on data protection, IT and cybersecurity, data governance, and enterprise risk management. While the use of AI offers significant potential in the sector of FINMA-licensed entities, it continues to raise risks and challenges, particularly relating to data quality and protection, and the explainability of generated outcomes. Accordingly, institutions are increasingly attentive to data security risks and vulnerabilities, potential inaccuracies in AI-generated outputs, and the risks associated with the outsourcing of such functions. The survey intends to monitor the evolution of AI adoption, rated governance structures, and risk management practices, thereby ensuring the supervisory approach of FINMA remains technology-neutral and risk-based.

ICT, Cybersecurity and Outsourcing

Digitalisation and operational resilience have become core supervisory priorities. The complexity of ICT environments and reliance on a limited number of critical service providers, especially cloud platforms, expose Swiss financial institutions to heightened cyber and concentration risks.

- **FINMA’s Updated Supervisory Expectations:** FINMA has intensified its oversight of ICT and cyber risks through thematic reviews and revised supervisory guidance. In 2023, it updated its expectations on operational resilience, business continuity and outsourcing, integrating lessons from international developments such as the EU Digital Operational Resilience Act (DORA). Supervised entities must ensure end-to-end risk management across their entire ICT supply chain, covering governance, data protection, incident response, and contingency planning. Contracts with third-party providers must grant the institution and FINMA full audit and access rights, including for subcontractors and data stored abroad. Institutions must maintain an updated register of all material outsourcing arrangements and periodically assess concentration risks.

- **Cyber-Incident Reporting and Critical Third Parties:** FINMA has also reinforced cyber-incident reporting duties and expects institutions to classify events by materiality and notify serious incidents without undue delay. The authority increasingly performs targeted cyber audits and has announced its intention to issue specific guidance on critical third-party supervision. These developments mirror the EU's DORA framework, under which critical ICT providers may become directly subject to supervisory oversight. Switzerland aims to achieve functional equivalence without formally transposing DORA, thereby maintaining compatibility for cross-border financial groups.
- **Balancing Efficiency and Resilience:** For many institutions, outsourcing remains essential to achieving cost efficiency and technological agility. However, FINMA's recent risk analyses show that the accumulation of dependencies on a small number of global providers could jeopardise the operational continuity of the financial centre. Consequently, boards of directors are expected to maintain direct oversight of ICT risk governance and ensure adequate resources for cybersecurity, testing and staff training.

In the medium term, supervisory expectations will continue to rise, especially as AI-based and cloud-native applications expand across the sector.



Law and Practice

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Lee and Li, Attorneys-at-Law is the largest full-service law firm in Taiwan, and understands the need to diversify and specialise. The firm constantly refines and expands its practice areas in response to the rapid developments in trade and technology, and in order to satisfy the needs of clients. It has built the largest intellectual property rights practice in Taiwan, and has been involved in the phenomenal growth of foreign direct investment since the 1970s. Lee and

Li was a pioneer in developing banking and capital market practice in the 1980s, and played a pivotal role in the formation of technology law practice in the 1990s. It is also active in public construction, government procurement and M&A matters. It stays relevant by keeping up to date on the latest developments in every industry, and applies its legal skills to help clients achieve their business goals.

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1. Legal Framework

1.1 Key Laws and Regulations

Principal Laws and Regulations

The principal laws and regulations governing the Taiwan banking sector include:

- the Banking Act;
- the Financial Holding Company Act;
- the Central Bank of the Republic of China (Taiwan) Act;
- the Regulations Governing Foreign Exchange Business of Banking Enterprises and the foreign exchange control-related laws and regulations;
- the Consumer Protection Act;
- the Financial Consumer Protection Act; and
- other related laws and regulations.

Moreover, for banks concurrently conducting other business such as acting as a trust enterprise or electronic payment institutions, the relevant laws and regulations governing such business also apply.

The Banking Act and the Financial Holding Company Act

The Banking Act is the primary law governing the Taiwan banking industry and provides rules for conducting banking business, including:

- the setting-up and dissolution of banks;
- the scope of banking business;
- compliance requirements for banks' business, finance, internal control and other matters; and

- administration and supervision by the regulator, etc.

For banks that are subsidiaries of financial holding companies, another major law is the Financial Holding Company Act, which governs the establishment, business, finance, administration and supervision of financial holding companies.

The Central Bank of the Republic of China (Taiwan) Act, the Regulations Governing Foreign Exchange Business of Banking Enterprises and the foreign exchange control-related laws and regulations

This legislation governs foreign exchange-related activity, which is regulated by the Central Bank of the Republic of China (Taiwan) (CBC). Such laws and regulations also govern banks' business operations involving foreign exchange. For example, the Regulations Governing Foreign Exchange Business of Banking Enterprises cover the scope of (among others):

- foreign exchange business;
- requirements for managing foreign exchange business; and
- administration and supervision by the regulator.

The Consumer Protection Act and the Financial Consumer Protection Act

The Consumer Protection Act provides the general rules and requirements for the protection of the interests of all consumers, and the Financial Consumer Protection Act focuses on the protection of consumers who deal with banks and other financial institu-

tions. Among other matters, the Financial Consumer Protection Act provides requirements regarding:

- the advertising of financial products and services;
- contracts with consumers; and
- the procedures for financial consumer dispute resolution, in order to reasonably and effectively handle financial consumer disputes.

Regulators – the Financial Supervisory Commission (FSC) and CBC

The FSC and the CBC are the major regulatory authorities regulating banks in Taiwan.

The FSC is the primary competent authority regulating the financial markets and financial institutions in Taiwan. It determines financial policy, issues regulations and rules, conducts financial examinations and supervises financial institutions. The FSC has four bureaux:

- the Banking Bureau;
- the Securities and Futures Bureau;
- the Insurance Bureau; and
- the Financial Examination Bureau.

While the FSC regulates financial markets and financial institutions generally, the Banking Bureau focuses on the banking sector, and the Financial Examination Bureau is in charge of financial examination of all financial institutions regulated by the FSC.

The CBC sets monetary policy for regulating the availability of money and credit. It also regulates foreign exchange activities and business, and conducts examinations of banks.

2. Authorisation

2.1 Licences and Application Process Types of Licences

According to the Banking Act, banks in Taiwan are categorised into three different types based on the main operations and purposes of the bank:

- commercial banks;
- banks for a special business purpose; and
- investment and trust companies.

Commercial banks are the major and most common type of bank in Taiwan, and their principal function is to accept deposits and extend loans. Banks for a special business purpose are established primarily to facilitate the extension of specialised credit, such as:

- agricultural credits;
- export-import credits;
- credits for medium and small-sized enterprises; and
- real estate credits.

However, as such functions may also be performed by commercial banks, the establishment of banks for special business purposes has been declining gradually, and most such banks have transformed into commercial banks.

Investment and trust companies act as trustee to accept, operate, manage and employ trust funds and manage trust properties, or act as an investment broker to invest in funds and capital markets for specific purposes. There is currently no investment and trust company, as all such companies have transformed or merged into commercial banks. Therefore, the following discussion will focus on commercial banks.

In addition, in order to support and promote international financial activities, banks may apply to the FSC and CBC for a licence to establish offshore banking units, which can engage in foreign currency-denominated financing business in Taiwan without being subject to foreign exchange-related regulations.

Also, apart from traditional banks with physical branches, the FSC has agreed to the establishment of three online-only banks, which commenced business in 2021 and 2022.

Services and Restrictions on Licensed Banks' Activities

According to Article 71 of the Banking Act, the main business activities of a commercial bank include:

- accepting deposits;
- issuing bank debentures;
- investing in securities;
- handling domestic and foreign remittances;

- offering loans and credit;
- providing guarantees; and
- acting as the agency bank in related banking business.

Besides the normal scope of services set forth in the Banking Act, a bank may also concurrently conduct other business upon the approval of the FSC. For instance, a bank may concurrently operate:

- trust enterprise business;
- insurance agent or insurance broker business;
- financial advisory services; and
- electronic payment business.

To facilitate the development of secure and reliable virtual asset custodianship services by financial institutions and to foster domestic financial innovation, the FSC has launched a thematic pilot programme for “virtual asset custodianship services”, which has accepted applications from financial institutions seeking to provide virtual asset custodianship services.

Statutory and Other Conditions for Authorisation

The statutory restrictions on and implications of authorisation can be found in three major aspects:

- the paid-in capital;
- responsible persons of the bank; and
- the ownership.

The minimum paid-in capital requirement for establishing a commercial bank is NTD10 billion (approximately USD326 million), and the contribution must be made in cash only.

According to the Regulations Governing Qualification Requirements and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Banks, the general restrictions and requirements for the responsible persons of a bank include that the person must:

- not have been sentenced to imprisonment for certain financial crimes or in violation of financial regulations;
- not concurrently hold positions that may incur a conflict of interest; and

- have adequate knowledge, capability and experience in banking business.

A person must obtain the FSC’s approval before they acquire more than 10%, 25% or 50% of the issued voting shares of a bank. There is no restriction on foreign ownership and the FSC is generally receptive to foreign investors. However, PRC investors are subject to the PRC ownership restriction and a different approval process.

Applying for Authorisation – Timelines, Costs and Engagement With the Regulators

According to the Standards Governing the Establishment of Commercial Banks, the major steps and regulatory approvals generally required for the establishment of a bank are as follows.

- Firstly, the founders of the bank should subscribe up to 80% of the total paid-in capital of the bank at the time of initiation.
- Secondly, the founders are required to submit an application for the FSC’s approval. The application documents should include:
 - (a) a business plan;
 - (b) the founder’s qualification declaration;
 - (c) the source of funds;
 - (d) the articles of association; and
 - (e) the paid-in capital and equity instruments of the bank.
- After the establishment is approved by the FSC and within three months of completing the incorporation registration with the Ministry of Economic Affairs, the bank should apply to the FSC for its business licence. The licence fee is one four-thousandth of the total capital specified in the articles of association of the bank.

During the establishment process of the bank, the FSC or another competent authority may designate its personnel to examine the matters relevant to the bank’s establishment, and may order the applicant to provide certain supporting documents or make explanations at any time. Also, the FSC may decide not to issue the business licence to the bank if:

- the bank’s shareholders, directors, supervisors or managers do not meet the requirements;

- the bank fails to complete preparation before the start of business; or
- any condition occurs that the FSC deems might lead to unsound and inefficient business operations of the bank.

Common Ancillary Activities of Banks in Taiwan

According to Article 3 of the Banking Act, business activities of a bank also include (among others):

- managing trust funds under entrustment;
- discounting bills and notes;
- investing in securities; and
- trading in foreign currencies.

Each business activity conducted by a bank must be approved by the FSC and specified in the business licence.

The FSC has permitted banks to conduct wealth management businesses for high-asset customers since 2020. For continuing the promotion of the wealth management business towards local high-asset customers, the FSC further issued a letter in 2022 allowing qualified banks in Taiwan to carry out trust investment services for high-asset customers through the trust licence, by using the entrusted assets to invest in an offshore fund that does not have the nature of a securities investment trust fund.

European Passport

There is no concept similar to the European Passport under Taiwan law.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Change in Control, Shareholding Thresholds and Other Restrictions

An investor in a bank would be subject to reporting requirements and/or the FSC's prior approval if its stake reaches a certain level.

If an investor and their spouse and children under 18 years of age (if any) in aggregate hold 1% or more of

the voting shares in a bank, such investor must notify the bank of this.

A report to the FSC will be required if an investor (together with their related parties provided under the Banking Act) acquires or holds more than 5% of the voting shares of a bank. Any subsequent change in the shareholding by more than 1% is also required to be reported to the FSC.

A person (together with their related parties) must obtain the FSC's approval before their acquisition of 10%, 25% or 50% of the issued voting shares of a bank.

In addition, the shares held by a third party for or on behalf of the investor or their related parties in trust, by mandate or through other types of contract, agreement or authorisation should be aggregated with the shareholdings held by such investor or the related parties.

Regulatory Filings and Related Obligations

The application documents sent to the FSC for the acquisition of 10% or more of the issued voting shares of a bank should include documents and information regarding:

- the investor's existing shareholding;
- the proposed acquisition;
- the source of funds; and
- other documents and information that may be required by the FSC on a case-by-case basis.

Additional documents and information would be required in an application for the acquisition of 25% or 50% of the issued voting shares of a bank, including documents and information regarding the following.

- In an application for a 25% acquisition:
 - (a) the investor's business and finance conditions by which the investor may improve the soundness of the operation of the bank and its management strategy;
 - (b) the investment structure;
 - (c) an evaluation of the effect on the bank's business and finance condition within three fiscal years after the acquisition; and

- (d) the CPA-audited financial statements of the investor (including their related parties) or alternative financial information for the last three fiscal years.
- In an application for a 50% acquisition, in addition to the aforementioned application documents required for a 25% acquisition:
 - (a) a business plan;
 - (b) the proposed management team; and
 - (c) protection of the bank's employees' interests.

Ongoing Requirements Regarding Supervision

Once an investor (together with their related parties provided under the Banking Act) acquiring or holding more than 5% of the voting shares of a bank has reported to the FSC, any subsequent change in the shareholding by more than 1% is also required to be reported to the FSC.

4. Governance

4.1 Corporate Governance Requirements Relevant Statutory and Regulatory Requirements

In addition to the board of directors, a bank must set up an audit committee comprised of its independent directors to review important matters and transactions (including related parties' transactions). Also, according to the Banking Act and the Implementation Rules of Internal Audit and Internal Control System of Financial Holding Companies and Banking Industries, a bank should establish an internal audit system and internal control system comprising three main elements:

- a self-inspection system;
- a legal compliance system; and
- a risk management mechanism to ensure effective corporate governance.

The internal control system of a bank should be approved by its board of directors. It should cover all banking business activities and incorporate five major components.

The first element and the basis for the implementation of an internal control system is the "control environment", which encompasses:

- the integrity and ethical values of the bank;
- the supervision responsibilities of the directors and supervisors;
- the organisational structure;
- the assignment of authority and responsibility;
- human resources policies;
- performance measurements;
- awards and discipline; and
- the code of conduct for all directors and employees.

Secondly, the internal control system should adopt a "risk assessment" procedure, the results of which can assist the bank in designing, correcting and implementing the necessary controls in a timely manner.

Thirdly, the internal control system should include various "control operations" – namely, to implement proper policies and procedures at all levels, business processes and subsidiaries of the bank based on the risk assessment results to control risks.

Fourthly, the internal control system should ensure an effective internal and external "information sharing and communication" mechanism.

Last but not least, the bank should constantly "monitor" all operations. Any findings of deficiencies by the internal control system should be reported to the appropriate management levels.

To implement the internal control system, a bank should establish an internal audit unit and have sufficient and competent personnel as full-time internal auditors performing internal control duties independently and impartially. The internal audit unit is directly under the board of directors, and is required to report its audit matters to the board of directors and audit committee at least every six months.

In addition, a bank should appoint a chief auditor to manage all audit matters. The chief auditor is not allowed to take a job that will cause conflicts or limitations to the audit work. The employment, dismissal or transfer of the chief auditor should be approved by the consent of the majority of audit committee members as well as by the consent of more than two thirds of

the board of directors, and should be reported to the FSC for ratification.

According to the Banking Act, a bank that fails to establish or diligently implement the internal control and audit systems should be subject to an administrative fine of between NTD2 million and NTD50 million.

Voluntary Codes and Industry Initiatives

The Bankers Association of Taiwan (BA) may issue various disciplinary rules under the authority granted by the applicable laws and regulations. Such rules should be submitted to the FSC for ratification. A bank that fails to meet the requirements under the disciplinary rules would be deemed by the FSC as failing to establish or diligently implement the internal control and audit systems, and should be subject to the administrative fine as mentioned above.

Diversity Requirements

According to the Corporate Governance Best Practice Principles for TWSE/TPEX Listed Companies, the composition of the board of directors of a listed company is recommended to take diversity and basic values such as gender, age, nationality and culture into consideration; it is also advisable that the number of female directors account for at least one third of all the directors. The FSC also encourages banks to have an appropriate number of female directors.

Bankers' Oath or Equivalent Binding Rules of Conduct for Bank Employees

Under the Implementation Rules of Internal Audit and Internal Control System of Financial Holding Companies and Banking Industries, the board of directors of a bank should adopt its code of conduct for employees. Further, according to the Internal Control Operation Principle Related to Preventing Financial Consultants from Misappropriating Customers' Funds issued by the BA, a bank should conduct due diligence when hiring new financial consultants and establish appropriate mechanisms to understand the employee's character, expertise, credit score and financial position. Additionally, the code of conduct for financial advisers adopted by the bank should stipulate that employees are not allowed to keep customers' seals, stamps or passbooks, nor should they engage in unauthorised transactions or improper solicitation.

4.2 Registration and Oversight of Senior Management

Directors' and Senior Managers' Designation, and the Regulatory Approval of Appointments

The Banking Act and the Regulations Governing Qualification Requirements and Concurrent Serving Restrictions govern the designation of the responsible persons of a bank (including board members and senior managers). Generally, the responsible persons of a bank should have good moral character and full competence for serving in their positions, and must not have been sentenced to imprisonment for certain crimes.

Chairperson of Board of Directors, and Directors

Directors of the bank are elected by shareholders. Although it is not required to obtain prior approval from the FSC to be nominated or elected as the director of the bank, the FSC has stipulated relevant requirements to ensure that the chairperson of the board and the directors are capable of managing and operating a bank.

In the supervision of chairpersons and directors, one of the FSC's main focuses is the restriction on holding concurrent positions. The chairperson may not concurrently act as the general manager of the same bank nor act as the chairperson of another financial institution (bank, financial holding company, insurance company, securities firm, etc), nor may they act as the chairperson, general manager or equivalent role of a non-financial institution, unless otherwise approved by the FSC. If the chairperson is allowed to hold concurrent positions in other companies, they must ensure that all positions are managed effectively, without any conflict of interest.

In addition – except for banks that are 100% owned by the government or a single corporate shareholder – at least two of the directors of the bank must meet any of the following qualifications:

- having at least five years' banking experience, and having served as a vice-manager or higher, or an equivalent position, of the bank's head office;
- having three years' banking experience, and having served as a manager or higher, or an equivalent position, of the bank's head office; or

- having five years' experience of working in financial administration or management, and having held the position of civil service-recommended appointment grade eight or higher, or equivalent, with a good performance record.

The minimum number of directors required to meet said qualifications would increase according to the total number of directors and the total assets held by the bank.

Senior Managers

The general manager of the bank must meet any of the following qualifications:

- having a bachelor's degree or an equivalent degree with at least nine years' banking experience, and having served at least three years in a management position; or
- having at least five years' banking experience and having served as a vice-general manager or higher, or an equivalent position, for at least three years, with a good performance record.

The relevant qualification documents should be submitted to the FSC for approval before the appointment of the general manager of a bank.

Other senior managers – such as a vice-general manager, assistant vice-general manager or manager – are subject to other applicable qualification requirements regarding experience and expertise.

Directors' and Senior Managers' Roles and Accountability Requirements

The board of directors shall be responsible for the bank's overall business strategies and major policies, supervising the senior managers, and shall be accountable to all shareholders. The board of directors is also responsible for the implementation and supervision of the bank's internal control system.

Senior managers are appointed by and under the supervision of the board of directors. The general manager is responsible for handling the general operation of a bank. Other senior managers are delegated certain authority to assist the general manager in managing and operating the bank.

The BA has implemented the "Self-Regulatory Guidelines for the Implementation of the Responsibility Map System" in the banking industry, effective 1 January 2025. These guidelines apply to senior management personnel with decision-making authority. Banks should allocate senior management functions, clearly define responsibilities, and obtain signed statements of accountability. Furthermore, the board of directors must oversee the implementation of the responsibility map system and establish or designate a committee to manage related matters.

4.3 Remuneration Requirements

Individuals Subject to Remuneration Requirements

According to the Corporate Governance Best-Practice Principles for Banks issued by the BA and ratified by the FSC, banks in Taiwan are advised to establish a remuneration committee led by and consisting of independent directors. In practice, all banks in Taiwan have independent directors serving on the board of directors, and most banks have set up a remuneration committee, whose primary responsibility is to establish performance appraisal standards and remuneration standards for managers and salespersons, as well as the remuneration structure and system for directors.

Relevant Remuneration Principles

The remuneration standard and payment should be based on performance, and adjusted considering future risks and the long-term profitability challenges facing the banking industry and shareholders' interests to avoid inappropriate loss to the bank. Moreover, a significant proportion of a remuneration reward should be paid in deferred or equity-related payment. Also, when assessing the contribution of individual directors, managers and employees, an overall assessment of the banking industry should be carried out to clarify that such profits are not due to advantages such as the lower capital cost of the banking industry.

The remuneration system should not incentivise directors, managers and employees to engage in acts that exceed the risk appetite of the banking industry in order to pursue remuneration. Last but not least, the remuneration system and performance should be reviewed regularly.

Regulators' Supervisory Approach

A bank is required to disclose the remuneration of directors, supervisors, general managers, vice-general managers, chairpersons of the board and general managers rehired as consultants by disclosing the aggregate remuneration information (with the name(s) indicated for each remuneration bracket) or to disclose the name of each individual and the corresponding remuneration amount (as applicable) in its annual report.

Consequences of Breaching the Requirements

A bank that fails to comply with the disclosure requirement for the annual report should be subject to an administrative fine of between NTD500,000 and NTD10 million.

5. AML/KYC

5.1 AML and CFT Requirements

Principal Laws and Regulations

In Taiwan, the primary regulators for anti-money laundering (AML) and countering terrorism financing (CTF) are the Investigation Bureau under the Ministry of Justice (IBMOJ) and the FSC. The FSC has promulgated specific regulations governing AML and CFT in the banking sector, including:

- the Regulations Governing Anti-Money Laundering of Financial Institutions; and
- the Regulations Governing Internal Audit and Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Banking Business and Other Financial Institutions.

Know-Your-Customer (KYC) Requirements

Firstly, a bank should conduct due diligence on both new and existing customers, taking a risk-based approach. The bank should properly identify and verify the identity of the customer as well as its beneficial owner, and should keep records on all relevant information. In particular, when the customer is a juristic person, the bank should understand the business nature, equity structure and controlling person of the customer.

Under higher-risk circumstances, the bank should conduct enhanced customer due diligence. For ongoing customer due diligence, the bank should regularly

update all information at least once a year to ensure that the business relationship with the customer is consistent with the bank's risk profile. The bank should also understand the customer's source of funds when necessary.

In addition, the bank should verify the identity of the customer and keep relevant records of large cash transactions, as well as report such transactions to the IBMOJ, with certain exceptions for government departments and fund arrangements between financial institutions.

Suspicious Activity and Transaction Reporting

The bank should report all suspicious transactions to the IBMOJ, including attempted transactions. When reporting to the IBMOJ, the bank should use the Suspicious Activity Report (SAR) form prescribed by the IBMOJ, covering the following information:

- the transaction details (eg, the type, currency and amount of the transaction);
- a statement of the reason for suspicion, including who, what, when and where; and
- the warning signs of money-laundering activities.

If a transaction triggers the red flags (see below), it should be reviewed under the risk-based assessment to decide whether it is a SAR transaction. If the financial institution holds the view that such red-flagged transaction has nothing to do with any AML and CTF activity based on the relevant facts and its assessment, it is not required to report the transaction to the IBMOJ. However, it must retain records of the determination and assessment of such transaction.

The BA has implemented the red flags list for suspicious money-laundering and terrorism-financing transactions, though such items are not exhaustive in their coverage. To identify a red flag transaction concerning potential money laundering/terrorism financing, a bank should select or create suitable red flags based on its:

- assets scale;
- geographic areas;
- business profile;
- customer-base profile;
- characteristics of transactions;

- internal money-laundering/terrorism-financing risk assessment; or
- information on daily transactions.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

DGS Requirements, and Administrator of the DGS

The Deposit Insurance Act mainly governs the depositor protection regime in Taiwan. The Central Deposit Insurance Corporation (CDIC) was established on 27 September 1985 and is responsible for the management of the deposit insurance system. The CDIC implements a deposit insurance mechanism pursuant to which the CDIC provides compensation to depositors within the maximum insured amount of NTD3 million, in order to protect the rights and interests of depositors and to maintain financial stability in the event of a financial institution being ordered to cease operations by the FSC.

Classes of Deposits Covered by the Depositor Protection Scheme

Currently, the following deposits are covered by deposit insurance:

- checking accounts;
- demand deposits;
- time deposits;
- deposits required by law to be deposited in certain financial institutions; and
- any other deposits approved by the FSC.

Limits on the Amount of the Depositor Protection Scheme

If an insured institution is ordered to cease its business operations or is unable to pay off its deposits, the CDIC compensates each depositor for up to NTD3 million, including principal and interest.

Funding of the Depositor Protection Scheme

The share capital of the CDIC is provided by the Ministry of Finance, the CBC and the insured financial institutions. The total capital provided by the Ministry of Finance and the CBC exceeds 50%. Financial institutions duly authorised to take deposits must take part

in deposit insurance provided by the CDIC, and must pay premiums for deposit insurance.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Adherence to Basel III Standards

The principal rule regarding the capital adequacy of a bank is contained in the Regulations Governing the Capital Adequacy and Capital Category of Banks, which adopted a number of elements of the Basel III framework.

Risk Management Rules

A bank is required to self-assess its capital adequacy and to establish its strategy for maintaining its capital adequacy. Based on a bank's self-assessment, the FSC may request that a bank improve its risk management. If the bank fails to comply with such request, the FSC may order the bank to adjust its regulatory capital and risk-weighted assets, or to submit a capital restructuring plan within a certain period.

Capital Requirements

The minimum paid-in capital for establishing a commercial bank in Taiwan is NTD10 billion. The promoters of the bank should subscribe up to 80% of the total paid-in capital of the bank, and the remaining shares should be publicly offered; the capital contribution should be made in cash.

Subject to certain exceptions, a branch of a foreign bank in Taiwan must allocate a minimum operating capital of NTD250 million if the Taiwan branch plans to conduct retail deposit business.

Capital Adequacy Requirements

The current capital adequacy requirements are generally in line with the standards under the Basel III framework, including:

- Common Equity Tier 1 Ratio (ie, net Common Equity Tier 1 divided by total risk-weighted assets) of 7%;
- Tier 1 Capital Ratio (ie, net Tier 1 Capital divided by total risk-weighted assets) of 8.5%; and

- Total Capital Adequacy Ratio (ie, aggregate amount of net Tier 1 Capital and net Tier 2 Capital divided by total risk-weighted assets) of 10.5%.

Countercyclical Capital Buffers

To enhance the risk-bearing capacity and international competitiveness of domestic banks, the FSC has authorised the implementation of countercyclical capital buffers. The FSC will consult with the CBC and other relevant authorities, when necessary, to impose on banks an additional provision of a countercyclical capital buffer of up to 2.5%.

Liquidity Requirements

To enhance banks' short-term liquidity recovery ability, the FSC implemented the liquidity coverage ratio (LCR) framework in 2015. The LCR is calculated by dividing a bank's high-quality liquid assets by its total net cash flows over a 30-day period. Since 1 January 2019, banks incorporated under the laws of Taiwan must maintain an LCR of at least 100%.

The LCR requirement is not applicable to a branch office of a foreign bank in Taiwan. However, a foreign bank applying to establish a branch office in Taiwan must specify the liquidity risk management framework adopted by the head office and the liquidity risk management measures applicable to the Taiwan branch.

Additional Requirements for Systemically Important Banks

In 2019, the FSC announced the supervisory measures for systemically important banks in Taiwan, which are required to meet 4% additional capital buffer requirements with their Common Equity Tier 1 capital in the four years after designation. The 4% additional capital buffer includes a 2% additional regulatory capital buffer and a 2% bank's internal capital buffer.

Systemically important banks in Taiwan are required every year to submit their contingency action plans for dealing with situations where the capital is not sufficient. They are also required to conduct and report two-year stress test results to the FSC.

Six banks are currently designated as systemically important banks:

- CTBC Bank;
- Cathay United Bank;
- Taipei Fubon Commercial Bank;
- Mega International Commercial Bank;
- Taiwan Cooperative Bank; and
- First Commercial Bank.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

Principal Means of Resolving a Failing Bank

The FSC may take over a bank if:

- there is a concern that a bank might not be able to pay its debts when due or there might be a detriment to the depositors' interests because of obvious deterioration in the bank's business or financial condition;
- a bank's capital is graded as being seriously inadequate and 90 days have lapsed since the date the bank was so graded (however, if a bank is ordered by the FSC to undertake capital restructuring or a merger within a prescribed period and fails to do so, the 90 days should be calculated from the day subsequent to the prescribed period); or
- the losses of a bank exceed one third of the bank's capital and the bank fails to make up such deficit within three months.

If the FSC places a bank in receivership, the duties and powers of the bank's shareholders' meeting, board of directors, directors, supervisors and audit committee shall be suspended. The receiver appointed by the FSC has the power to manage the bank's business and to dispose of the bank's properties.

The FSC has the power to resolve failing banks in an orderly manner. In local practice, seven banks were placed under receivership from 2006 to 2008. The FSC divided their assets into non-performing assets and other assets, and sold them separately. The non-performing assets were sold to asset management companies while the other assets were sold to other banks, with a certain amount of compensation agreed to be paid by the FSC. The depositors, employees and non-deposit creditors suffered little harm.

Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes

Following the crisis management guidance under the FSB Key Attributes of Effective Resolution Regimes, systemically important banks in Taiwan are required to annually submit their contingency action plans for dealing with situations where the capital is not sufficient. They are also required to conduct two-year stress tests and report the results to the FSC. However, there is no special resolution regime for systemically important banks in Taiwan.

Insolvency Preference Rules Applicable to Deposits

If the failing bank is ordered by the FSC to cease its business operations, deposit debts shall precede non-deposit debts.

9. ESG

9.1 ESG Requirements

To enhance environmental, social and governance (ESG) information disclosure, the annual report of a bank should specify how it supports sustainable development. If the bank is listed on the Taiwan Stock Exchange or the Taipei Exchange, the annual report should also disclose any deviation from compliance with the Sustainable Development Best Practice Principles for TWSE/TPEX Listed Companies. Under those Principles, listed companies are encouraged to report their carbon footprint, waste management practices, gender diversity, etc, to improve the availability of domestic ESG data for investors.

The FSC has also promulgated:

- the Guideline on Financial Disclosure of Climate Risks for Local Banks, under which banks should disclose financial information on climate-related risks from 2023; and
- the Guideline for Preventing Greenwashing by Financial Institutions (the “Greenwashing Prevention Guidelines”) in May 2024.

The Greenwashing Prevention Guidelines stipulate five principles for financial institutions to implement for prevention of greenwashing. In particular, the state-

ment issued by the financial institutions on sustainability should be:

- true and correct;
- supported by evidence that is sufficient, relevant and publicly verifiable when it is made; and
- reviewed and updated regularly.

10. DORA

10.1 DORA Requirements

In 2022, the FSC released the Financial Cyber Security Action Plan 2.0, providing guidance on ensuring uninterrupted operation of the financial system and focusing on:

- strengthening information security supervision by competent authorities;
- strengthening information security governance of financial institutions; and
- improving the resilience of financial institutions’ information security operations.

In February 2025, the BA also established the Cyber Security Protection Standards for Financial Institutions to ensure consistent security measures across financial institutions’ information and communication systems.

Strengthening Information Security Supervision by Competent Authorities

According to the Implementation Rules of Internal Audit and Internal Control System of Financial Holding Companies and Banking Industries, banks should assign a manager, ranked vice-president or above, or an individual with equivalent powers to serve concurrently as the chief information security officer, who shall oversee the implementation and co-ordination of the information security policy as well as resource allocation.

A bank whose total assets of the previous year exceed NTD1 trillion should set up a dedicated information security office, and should appoint a person at a level higher than associate general manager (or equivalent function) as chief officer of such dedicated information security office.

Strengthening Information Security Governance of Financial Institutions

In 2019 and 2023, in response to the trend of applying technologies to financial operations, the FSC amended the Regulations Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation by establishing a risk-based cloud outsourcing management framework. Banks are required to assess the risk level, significance, and impact on operations and customer rights of outsourced matters, and to implement appropriate controls and risk-based measures.

According to the amendments, financial institutions should:

- adopt appropriate risk control measures, such as ensuring the diversity of cloud service providers;
- be ultimately responsible for the supervision of cloud service providers, and may engage professional third parties to assist in supervising the operations of the cloud service providers;
- adopt customer data encryption, tokenisation or other effective protection measures, and establish appropriate encryption key management mechanisms when transmitting and storing customer data with a cloud service provider;
- retain complete ownership of the data outsourced to cloud service providers for processing, and prevent the data from being used for purposes other than the outsourced operations;
- retain the right to designate the location for the processing and storage of the data;
- establish plans to respond to termination of an outsourcing agreement with cloud service providers; and
- basically store customer data of material retail finance business information systems within the territory of Taiwan – if stored offshore, back-ups of important customer data should be retained in Taiwan unless otherwise approved by the FSC.

11. Horizon Scanning

11.1 Regulatory Developments The Draft Virtual Asset Services Act

To strengthen the regulation and supervision of virtual assets transactions and related industry players, the FSC

announced the draft of the Virtual Asset Services Act (the “Draft Services Act”) in March 2025. The Draft Services Act proposes to introduce a comprehensive regulatory regime for virtual asset service providers (VASPs). Although the Draft Services Act applies to all VASPs, it is expected to have a significant impact on commercial banks, as they are expected to qualify as VASPs.

The Draft Services Act mandates that VASPs must obtain approval from the FSC for their operations, establishing branches (including branches set up in Taiwan by foreign VASPs), opening physical business locations or providing automated services. VASPs are prohibited from concurrently engaging in any businesses not approved by the FSC. However, financial institutions may, with the FSC’s approval, concurrently provide virtual asset services.

The Draft Services Act further requires that VASPs include virtual asset-related words in their official names, and their responsible persons and personnel must meet the qualification requirements prescribed by the FSC. As to financial aspects, VASPs are required to meet the minimum capital requirement and provide an operation bond, and are subject to limits on total liabilities. In terms of internal control and audit, VASPs must implement an information security management system, operational data management and confidentiality policies, and a business continuity plan. The Draft Services Act also regulates the outsourcing of operations by VASPs.

Notably, Article 6 of the Draft Services Act broadens the definition of VASPs to include “virtual asset lenders”, and introduces a flexible clause allowing the FSC to approve other types of virtual asset service providers that may be designated by the FSC in the future, accommodating future industry developments.

The Draft Services Act was submitted by the FSC to the Executive Yuan of Taiwan for review in June 2025. Once the bill is formally passed by the Legislative Yuan of Taiwan after the required three rounds of deliberation and voting, Taiwan’s virtual asset services industry will enter a new, institutionalised regulatory environment.

Trends and Developments

Contributed by:

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Lee and Li, Attorneys-at-Law is the largest full-service law firm in Taiwan, and understands the need to diversify and specialise. The firm constantly refines and expands its practice areas in response to the rapid developments in trade and technology, and in order to satisfy the needs of clients. It has built the largest intellectual property rights practice in Taiwan, and has been involved in the phenomenal growth of foreign direct investment since the 1970s. Lee and

Li was a pioneer in developing banking and capital market practice in the 1980s, and played a pivotal role in the formation of technology law practice in the 1990s. It is also active in public construction, government procurement and M&A matters. It stays relevant by keeping up to date on the latest developments in every industry, and applies its legal skills to help clients achieve their business goals.

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“Digital-Only” Banks

In 2018, Taiwan’s financial regulator, the Financial Supervisory Commission (FSC), promulgated regulations governing the establishment of “digital-only” banks, which are defined as banks without physical branches. The establishment of digital-only banks is generally expected to encourage cross-industry combinations and fintech applications for everyday life by building a fintech ecosystem.

Following the promulgation of these regulations, three applications to set up digital-only banks were filed with the FSC in early 2019, all of which were approved by the FSC on 30 July 2019. At the time of writing, all three digital-only banks have received an operating licence from the FSC.

The creation of digital-only banks is expected to foster cross-industry collaborations and to integrate fintech solutions into daily life by developing a fintech ecosystem. To address market developments and the innovative nature of digital-only banks, the FSC engaged in discussions with all digital-only banks with the purpose of relaxing the restrictions on the operations conducted by digital-only banks in the following four areas:

- deposits;
- credit;
- fund sales; and
- online insurance.

Also, the FSC has been researching the supervision of digital-only banks, focusing on topics such as real-time monitoring of liquidity risk and other important matters of digital banks, as well as on the introduction of suptech (supervisory technology) and regtech (regulatory technology) into the supervision and surveillance of digital banks’ business activities.

Digital Insurance Companies

In response to the growing digitalisation within the insurance sector, the FSC introduced a new initiative in December 2021 aimed at facilitating the creation of digital-only insurance providers. This initiative included a strategic policy outline and a projected schedule for implementation. By April 2022, the FSC had released proposed changes to existing regulations,

detailing the criteria for launching digital-only insurers and addressing rules around insurance solicitation, underwriting and claims settlement. These regulatory updates were finalised and made by the end of June 2022. Despite these efforts, the FSC reported that as of 31 October 2022 only two applications for digital-only insurance licenses had been submitted, with neither receiving approval. Following further deliberations, the FSC confirmed in 2024 that it would resume accepting applications for digital insurance companies.

In 2025, the FSC introduced additional regulatory revisions, easing the previously stringent requirements and lowering the barriers for new digital-only insurers’ entry into the market. According to the FSC July 2025 newsletter, applications from digital insurance companies are now officially being accepted under the newly amended regulations. The FSC stated that it will rigorously review:

- whether applicants’ business models are forward-looking;
- whether their use of fintech is innovative;
- whether their paid-in capital is sufficient to meet future operational needs; and
- the qualifications of promoters and responsible persons, and the compliance capabilities of the management team.

The FSC hopes that by introducing new business models and applying fintech it can drive innovative development in the insurance market, accelerate the industry’s digital transformation, provide a diverse range of insurance products and expand insurance accessibility, thereby promoting financial inclusion.

Virtual Currencies

Cryptocurrencies (ie, digital currencies or virtual currencies based on blockchain technology) that are not linked or tied to a government-issued currency of any nation are currently not accepted as currencies by Taiwan’s central bank, the Central Bank of the Republic of China (Taiwan). In December 2013, both the Central Bank and the FSC expressed the government’s position towards Bitcoin in a joint press release, in which the two authorities held that Bitcoin should be considered not as a currency but as a highly speculative

digital virtual commodity. This also means that digital currencies such as Bitcoin should not be considered as financial products regulated by the FSC.

In another press release issued in 2014, the FSC ordered that local banks neither accept Bitcoin as a payment method nor provide any other services related to Bitcoin (eg, the exchange of bitcoins for fiat currency). Further, in another press release in 2022, the FSC made clear that virtual currencies, including Bitcoin, are not considered currencies under the current regulatory regime in Taiwan, but are considered digital virtual commodities.

It should also be noted that, in 2019, the FSC issued a ruling officially defining security tokens (ie, virtual currencies that have the nature of securities) as a type of security. It amended several regulations and issued rulings in January 2020 laying out major principles concerning:

- the issuance of security tokens;
- the exemption of security token offerings (STOs) from the filing obligation under the Securities and Exchange Act; and
- the establishment of STO platforms.

It also authorised the Taipei Exchange (TPEX) to supervise STOs. With such authority and intent to regulate the issuance of security tokens and the establishment of STO platforms, in January 2020 the TPEX promulgated:

- the TPEX Rules Governing the Operation by Securities Firms of the Business of Proprietary Trading of Security Tokens; and
- the TPEX Rules Governing Information to be Published in Prospectuses for Applications for Security Token Offerings for Over-the-Counter Trading (together with the regulations and rulings published by the FSC on STOs – the “STO Regulations”, which were further amended in 2023).

Pursuant to the STO Regulations, security tokens are defined as follows.

- Tokens that utilise cryptography, distributed ledger technology or other similar technologies to repre-

sent their value and that can be stored, exchanged or transferred through digital mechanisms.

- Tokens that are transferable.
- Tokens that encompass all the following attributes of an investment:
 - (a) funding provided by investors;
 - (b) the provision of funding for a common enterprise or project;
 - (c) investors expecting to receive profits; and
 - (d) profits generated primarily on the efforts of the issuer or third parties.

The FSC contemplates the application of different regulations on STOs below or above the threshold of NTD30 million. An STO of NTD30 million or less (an “Exempted STO”) should comply with the STO Regulations, and the filing obligation under the Securities and Exchange Act may be exempted. An STO above NTD30 million must first apply to be tested in the financial regulatory sandbox under the Financial Technology Development and Innovative Experimentation Act; if the experiment has a positive outcome, its offering may then be conducted under the Securities and Exchange Act.

Pursuant to the STO Regulations, there are rules governing the issuance of security tokens. For example, as to the qualifications of the issuer, such issuer must be a company limited by shares incorporated under the laws of Taiwan and must not be a company listed on the Taiwan Stock Exchange or TPEX or traded on the Emerging Stock Market. The issuer may only issue profit-sharing or debt tokens without shareholders’ rights, and only professional investors are eligible to participate in STOs. Where a professional investor is a natural person, the maximum subscription amount is NTD300,000 per STO.

There are also rules governing the STO platform operator. An STO platform operator should:

- obtain a securities dealer licence;
- have minimum paid-in capital of NTD100 million; and
- provide an operation bond in the amount of NTD10 million.

Such platform operator should enter into an agreement with the Taiwan Depository and Clearing Corporation, and should daily transmit trading information such as balance changes and balance statements to the Taiwan Depository and Clearing Corporation for its records. The Taiwan Depository and Clearing Corporation should provide an STO balance enquiry service to investors.

At the time of writing, no STOs have been conducted under the STO Regulations, though it has been reported that an STO in Taiwan may be forthcoming in the near future.

Although cryptocurrencies are not legal tender and are not subject to financial regulations (except for security tokens), Taiwan's Money-Laundering Control Act (the "AML Act") has brought virtual asset service providers (VASPs) within the local anti-money laundering (AML) regulatory regime. Thereunder, enterprises falling within the designated scope will be subject to the relevant rules applicable to financial institutions under the AML Act.

In September 2023, the FSC announced a set of "VASP Guidelines" under the AML Act. The VASP Guidelines cover the following requirements, among others.

- Obligations of an issuer regarding the issuance of virtual assets, such as announcement of the "White Paper" on the issuer's website – the White Paper should contain information such as:
 - (a) the details of the issuer;
 - (b) the description of the issuance project;
 - (c) issuance amount and price;
 - (d) the conditions for subscription;
 - (e) relevant rights and obligations in relation to the virtual assets;
 - (f) disclosure of technologies used; and
 - (g) associated risks.
- VASPs' standards and procedures for reviewing the launching of virtual assets – the reviewing standards should include:
 - (a) the issuer's compliance status;
 - (b) the liquidity of the virtual asset;
 - (c) whether the price of the virtual asset has been manipulated;

- (d) the existence of the issuer; and
- (e) whether there is any inappropriateness, misrepresentation or fraud involved in the advertisement and business solicitation of the virtual asset.

- The custody and segregation of VASPs' assets and customer assets; in the case of fiat money, there should be a trust or bank performance guarantee. The CPA's report on the customers' assets would be required at least every year.
- Fairness and transparency of transactions, under which VASPs should set out the trading rules for virtual assets and incorporate these into the VASPs' internal control systems. Information regarding the matched trades should be disclosed and made available to customers in a timely manner. VASPs should also have in place a relevant mechanism for ensuring fairness of the trading in the market, including a mechanism that may indicate abnormal prices as well as aid the prevention of market abuse and conflicts of interest.
- Management mechanisms of operation, information security (considering the types, quantities and nature of the information kept or handled, and the scale and nature of the IT system), and cold and hot wallets.
- Information disclosure (including disclosure of the material contingency events).
- Internal control and audits (including the mechanism of self-audit, compliance and risk management).
- Applicability of the guidelines to offshore VASPs – specifically, offshore VASPs must not engage in advertising activities and solicitation of business within the territory of Taiwan or targeting Taiwanese persons, unless they have completed the corporate registration in accordance with the Taiwan Company Act and have duly made an AML compliance statement with the FSC.

The Taiwan AML Act was later amended in July 2024. According to this amendment, VASPs are required to complete the "Anti-Money Laundering Registration" with the FSC before offering their services. Additionally, any offshore VASPs must establish a company or branch office in compliance with the Company Act, and must complete the aforementioned registration prior to providing services within Taiwan. Violations of

these provisions may result in imprisonment for up to two years, detention or a criminal fine of up to NTD5 million, either in place of or in addition to imprisonment. Furthermore, if the criminal offence is committed by a juristic person, the entity itself will also face a criminal fine.

In summary, any VASP operating in Taiwan without prior completion of the “Anti-Money Laundering Registration” with the FSC will be subject to criminal liability under the newly amended AML Act. The aforementioned amendment took effect at the end of 2024.

According to the definition of relevant regulations under the AML Act, VASPs should refer to those that engage in the following activities on others’ behalf:

- exchange between virtual assets and New Taiwan dollars (NTDs), foreign currencies or currencies issued by Mainland China, Hong Kong or Macao;
- exchange between virtual assets;
- transfer of virtual assets;
- custody and/or administration of virtual assets, or providing instruments enabling control over virtual assets; and
- participation in and provision of financial services related to the issuance or sale of virtual assets.

Also, pursuant to relevant regulations, VASPs are required to establish (among others):

- internal control and audit mechanisms;
- a reporting procedure for suspicious transactions; and
- a know-your-customer (KYC) procedure.

Furthermore, the FSC is contemplating the introduction of a specific cryptocurrency law, with a draft Virtual Asset Services Act (the “Draft Services Act”) unveiled in June 2025. Industry participants are advised to keep a close watch on potential regulatory developments in Taiwan.

Also, considering the demand for virtual assets transactions and international trends, the FSC has announced the launch of a pilot programme for “virtual asset custody” services. At the time of writing,

four banks have obtained the FSC’s approval for such pilot programme.

Stablecoins

The Draft Services Act introduces specific regulations for stablecoins, which it characterises as virtual assets linked to the value of one or more fiat currencies with the aim of preserving price stability.

According to the Draft Services Act, any entity wishing to issue stablecoins in Taiwan must first secure approval from the FSC, which is required to consult the Central Bank before making a decision. VASPs are prohibited from offering services related to stablecoins that have not been authorised for issuance or trading by the FSC. The FSC is tasked with establishing the application process and compliance standards for stablecoin issuers. Furthermore, the FSC and the Central Bank will jointly determine (among other regulatory details):

- the eligibility criteria for issuers;
- the types of stablecoins permitted; and
- the acceptable use cases, procedures and grounds for revocation.

The Draft Services Act further obligates stablecoin issuers to:

- hold sufficient reserves with a local financial institution;
- keep these reserves separate from their own assets and subject them to regular audits;
- maintain additional reserves, including mandatory deposits, if the volume of issuance surpasses a specified limit; and
- adhere to Central Bank rules regarding foreign exchange matters related to stablecoin issuance.

Central Bank Digital Currency (CBDC)

According to publicly available information, the Central Bank has set up a special task force on the study of CBDC, which is generally considered to be digital New Taiwan dollar. The CBDC task force has already completed two exploratory projects on the feasibility of issuing:

- a “wholesale CBDC” (ie, CBDC used by financial institutions), with the preliminary observation that a platform built with distributed ledger technology does not necessarily perform better than a platform with a centralised system; and
- a “retail CBDC” (ie, CBDC for use by the general public).

According to news reports in June 2022, the President of the Central Bank, Mr Chin-Long Yang, gave a seminar speech indicating that the previous CBDC projects had been carried out in a closed-ended environment, and the next major steps regarding CBDC were to:

- ensure the CBDC system’s stability;
- establish a legal framework for CBDC; and
- communicate with the general public.

As CBDC will affect people’s payment habits (eg, as opposed to payment with cash, credit cards or other emerging payment services rendered by payment service companies), it is generally expected that the issuance of CBDC (the digital New Taiwan dollar) might have a material impact on the current banking industry as well as on e-payment industry players. It is therefore suggested that industry participants closely follow CBDC developments as well as the results of the Central Bank’s relevant projects.



Law and Practice

Contributed by:

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PwC Legal and its network firms operate in more than 100 territories with over 4,000 lawyers, delivering comprehensive advisory and transactional services to financial institutions, multinational corporates and public bodies. The firm's Global Financial Services Sector Group brings together more than 450 lawyers who provide strategic, commercially driven advice across the full spectrum of transactional, regulatory and advisory matters – spanning all major asset classes and the rapidly evolving crypto-assets and digital infrastructure landscape. PwC Legal supports clients through the entire regulatory life cycle

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PwC Legal Germany

1. Legal Framework

1.1 Key Laws and Regulations

In the United Kingdom's (UK) legislative, regulatory and supervisory framework, the legally operative perimeter is not the colloquial "bank" label but the regulated activity of accepting deposits under Part 4A of the Financial Services and Markets Act 2000 (FSMA 2000) and the authorisation of "deposit-takers". For prudential purposes, the onshored UK Capital Requirements Regulation (UK CRR) and Prudential Regulation Authority (PRA) Rulebook use the term "credit institution", but authorisation is granted under FSMA Part 4A permissions. In simple terms, a firm that accepts deposits or other repayable funds from the public and lends on its own account will ordinarily require authorisation, and is supervised as a bank or building society.

The following firms, while regulated, generally fall outside the deposit taker regime unless they also conduct regulated deposit-taking:

- investment firms authorised under the UK Markets in Financial Instruments Directive (MiFID) framework and the Investment Firms Prudential Regime (IFPR) administered by the Financial Conduct Authority (FCA);
- payment institutions and electronic money institutions under the Payment Services Regulations 2017 (PSR 2017) and Electronic Money Regulations 2011 (EMR 2011) (client funds safeguarded, but not "deposits"); and
- non-bank credit providers funded via capital markets or wholesale lines (subject to consumer credit or mortgage regulation, where applicable).

UK banking groups may include financial holding companies and mixed-activity holding companies subject to consolidated supervision by the PRA. Following Brexit, the UK maintains extensive onshored EU law, but divergence has emerged in targeted areas, driven by the PRA's strong and simple prudential agenda, Basel 3.1 implementation choices and UK conduct reforms such as the Consumer Duty.

The UK benefits from a comprehensive, FSMA-centred legal and regulatory framework for banks, com-

plemented by retained EU law and extensive regulator-made rules. The principal sources are FSMA, the Banking Act 2009, the UK CRR and the rulebooks of the PRA and FCA. These are supported by HM Treasury statutory instruments and policy materials, as well as statements of policy and supervisory statements issued by the Bank of England (BoE) and PRA.

Following Brexit, the UK onshored relevant EU regulations and technical standards to ensure continuity, with ongoing reforms under the Financial Services and Markets Act 2023 (FSMA 2023) designed to replace retained EU law with a domestically tailored framework. The UK CRR continues to set core prudential requirements, though substantial elements have migrated (and will further migrate) into the PRA Rulebook as the UK implements Basel 3.1 and broader "Smarter Regulatory Framework" reforms. In addition to FSMA and the UK CRR, sectoral legislation such as the PSR 2017 and EMR 2011 apply to specific activities.

Principal Laws and Regulations

The UK banking prudential and supervisory framework rests on a combination of primary and secondary legislation as well as regulatory rules and policy materials issued by the BoE, PRA and FCA. Key instruments include the following.

- FSMA 2000, as amended by the Financial Services Act 2012 and FSMA 2023, which provides the statutory architecture for authorisation, supervision and rulemaking. FSMA is the foundation statute for UK financial services regulation. It establishes the "general prohibition" (Section 19 FSMA 2000), making it a criminal offence to carry on a regulated activity in the UK unless authorised or exempt. The specification of regulated activities and exclusions is set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). For deposit-takers, the defining regulated activity is accepting deposits, although most universal banks will also require permissions spanning investment business, consumer credit, mortgages and insurance distribution, and may undertake payment services and issue e-money pursuant to the PSR 2017 and the EMR 2011, respectively.

- The UK CRR and the PRA Rulebook, implementing Basel standards across Pillar 1 capital, leverage, liquidity (liquidity coverage ratio (LCR) and net stable funding ratio (NSFR)), large exposures, reporting and Pillar 3 disclosure, complemented by PRA supervisory statements and policy statements.
- The Banking Act 2009, establishing the UK's Special Resolution Regime (SRR), resolution tools, Minimum Requirement for Own Funds and Eligible Liabilities (MREL) and the BoE's resolution authority functions.
- Leveraged lending and wholesale credit risk: the PRA continues to scrutinise leveraged lending activities, focusing on underwriting standards, pipeline risk, leveraged lending definitions, covenant robustness, enterprise value dependency and stress testing of leveraged portfolios. Banks must demonstrate prudent risk appetite, sectoral concentration management and governance over underwriting commitments, including syndication pipeline risk.
- The Ring-Fencing regime (FSMA 2013 amendments and the Ring-Fenced Bodies (RFB) framework) applicable to the largest UK banking groups engaged in core retail deposit taking.
- ICARA and wind-down planning expectations: FCA reviews of investment firms under the Investment Firms Prudential Regime (IFPR) have highlighted deficiencies in wind-down triggers, liquidity projections, stress testing and operational readiness to execute wind-down plans. Banks with IFPR subsidiaries must ensure group-aligned recovery/wind-down strategies, realistic cost projections, and operational capability to execute orderly wind-down without crystallising client harms.
- Anti-money laundering/countering the financing of terrorism (AML/CFT) legislation: the Money Laundering Regulations 2017, as amended, the Proceeds of Crime Act 2002 and the Sanctions and Anti-Money Laundering Act 2018, with the Office of Financial Sanctions Implementation (OFSI) responsible for sanctions enforcement.
- Operational resilience and information and communication technology (ICT) frameworks delivered through PRA/FCA policy (notably PS21/3 and SS1/21 on operational resilience) and the emerging Critical Third Parties regime under FSMA 2023.

- The UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 for data protection, the Network and Information Systems Regulations for cyber, and the FCA's Consumer Duty for retail conduct outcomes.

The PRA supervises safety and soundness (prudential) and is the competent authority for deposit-takers. The FCA supervises conduct across retail and wholesale activities and prudentially supervises non-systemic non-deposit takers under the IFPR. The BoE acts as the UK resolution authority. Competition and payments regulation is overseen by the Payment Systems Regulator (PSR), which is being fully absorbed into the FCA and the Competition and Markets Authority (CMA). The Financial Services Compensation Scheme (FSCS) provides depositor protection.

While many prudential requirements reflect Basel standards similarly to the EU, European passporting no longer applies. Market access is governed by the UK's domestic regime for UK entities and overseas firms, with a tailored Third-Country Branch (TCB) framework and limited equivalence in specific market segments.

Banking Regulators

UK banks are dual-regulated.

- The PRA (a part of the BoE) is the prudential regulator for banks, building societies and PRA designated investment firms. Its primary objective is the safety and soundness of firms; it also has competition and international competitiveness/growth secondary objectives.
- The FCA is the conduct regulator for all authorised firms and the prudential regulator for firms outside the PRA's remit. It oversees consumer protection, market integrity, competition and competitiveness/growth secondary objectives.

Moreover, the following are worth highlighting.

- The BoE acts as the UK resolution authority under the Banking Act 2009 and leads on macro-prudential policy through the Financial Policy Committee.
- The Financial Ombudsman Service (FOS) adjudicates eligible complaints and provides binding

redress where determinations are accepted. The PSR oversees designated payment systems and their participants; consolidation of the PSR into the FCA has been signalled by government to streamline regulatory burdens.

Local Particularities

Distinctive features of the UK regime include the following.

- A ring-fencing regime separating core retail banking from investment/wholesale activities for groups above thresholds set in FSMA Part 9B.
- A developed resolution framework (the “Special Resolution Regime”) with minimum requirements for own funds and eligible liabilities (MREL) calibrated to resolution strategy.
- A robust individual accountability regime via the Senior Managers and Certification Regime (SM&CR).
- A comprehensive operational resilience framework spanning both prudential and conduct expectations.
- Part 7 FSMA 2000 provides a court-sanctioned mechanism for transfers of all or part of the business of deposit-taking banks. The regime facilitates transfers without counterparty consent, subject to regulator engagement, customer and public notifications and court scrutiny of statutory criteria. Pure investment banks cannot generally use the banking business transfer scheme except as part of a broader intra-group transfer involving deposit-taking.

Besides banks (credit institutions), UK authorised payment institutions and e-money institutions are regulated under dedicated regimes; PRA-designated investment firms are prudentially supervised akin to deposit-takers.

Smarter Regulatory Framework – Implementation Roadmap

The PRA and HM Treasury are progressing the staged repeal and replacement of retained EU law under the Smarter Regulatory Framework. Between 2025 and 2028, key areas of the UK CRR are scheduled to be revoked and replaced by PRA rules, including capital definitions, credit risk, market risk, operational risk and

securitisation. Firms will need to align ICAAP/ILAAP, model change, Pillar 3 disclosures and governance programmes with the PRA’s sequencing, including Basel 3.1 (which has currently stalled due to international discussions, and was scheduled to go live on 1 January 2027), transitional floors and updated reporting taxonomy. Boards should receive structured oversight packs mapping existing EU-derived obligations to successor PRA Rulebook provisions to ensure continuous compliance.

2. Authorisation

2.1 Licences and Application Process Authorisation Requirements

Any person (individual, body corporate, partnership or unincorporated association) must be authorised or exempt to carry on a regulated activity in the United Kingdom. A Part 4A permission under FSMA is required, with the PRA acting as the decision-maker where the application includes a PRA regulated activity (notably accepting deposits, effecting or carrying out contracts of insurance as principal and certain Lloyd’s activities) and the FCA acting in all other cases. Where dual regulation applies, the PRA leads the process and FCA consent is required prior to granting.

Certain activities fall under separate registration or authorisation regimes (including payment services providers and e-money institutions, certain mutual societies, consumer buy-to-let firms and specified crypto-asset firms for anti-money laundering purposes). Firms should map proposed business lines against the RAO and relevant perimeter guidance to determine whether activities are regulated and, if so, the appropriate licensing route.

A person must not carry on regulated activities in the UK by way of business unless authorised or exempt. For banking, the relevant permission is authorisation under FSMA 2000 Part 4A to carry on the regulated activity of accepting deposits. The PRA is the decision-maker for deposit-taker authorisations, with FCA consent.

Assessment Standards and Threshold Conditions

Applications are assessed against the statutory “threshold conditions” and supervisory expectations. Emphasis is placed on robust governance, adequate financial resources, effective risk management, operational resilience, systems and controls, and the suitability of controllers and senior managers.

Initial capital and prudential resources must be commensurate with the proposed business, reflecting UK Capital Requirements Regulation and the PRA Rulebook (including Basel aligned Pillar 1 minimums and applicable buffers). Building societies are subject to parallel frameworks under specialist legislation and PRA rules.

Applicants must present a credible programme of operations, including a business plan, the Internal Capital Adequacy Assessment Process (ICAAP) and the Internal Liquidity Adequacy Assessment Process (ILAAP), a recovery plan and wind-down planning where appropriate. Outsourcing and third-party risk management frameworks should be mature, with operational resilience mapping of important business services and defined impact tolerances.

Governance arrangements must meet the requirements of the SM&CR, with clear allocation of prescribed responsibilities, fit-and-proper assessments, statements of responsibilities and embedded conduct rules.

Systems and controls must be proportionate and effective, covering data, risk, compliance, internal audit, model governance and reporting, with appropriate independent oversight.

Authorisation With Restrictions and Mobilisation

The PRA may authorise firms with limitations or requirements, and where suitable offers an optional “mobilisation” phase (authorisation with restrictions) to support orderly build-out following authorisation. New banks may elect to enter mobilisation – typically for up to 12 months – with constrained deposit-taking while completing systems, staffing and third-party arrangements. PRA supervisory statement SS3/21 sets expectations for new and growing non-systemic UK banks across business models, governance, risk

management and capital, and emphasises orderly exit planning if the bank fails.

Cross-Border Considerations

The PRA may authorise UK branches of international banks where criteria are met; larger or more complex cross-border structures may be required to operate through a UK subsidiary, subject to prudential and resolvability considerations. The FCA assesses conduct readiness, including product governance, disclosures, complaints-handling and Consumer Duty compliance for retail propositions.

Licensing Process

Pre-application engagement with the PRA/FCA is strongly encouraged and is expected for prospective banks. Applications are made via the PRA (email submission) for PRA-regulated activities and via the FCA's Connect for FCA solo-regulated firms. A complete application must evidence that the firm will meet and continue to meet the threshold conditions (Schedule 6 FSMA 2000) and be capable of effective supervision. Typical core components include the following.

- A tailored regulatory business plan setting out the business model, governance, customer journey, approach to vulnerable customers, compliance architecture, complaints, staff training, incentives, capital and liquidity, and key policies and procedures. For firms within scope of the Consumer Duty, the plan must evidence how good outcomes for retail customers will be delivered and monitored, supported by product governance, fair value assessments, customer understanding testing, outcomes monitoring and appropriate management information (MI).
- Controllers' forms for each proposed controller, with clear ownership and control maps.
- SM&CR applications for designated Senior Management Functions (SMFs) and allocation of prescribed responsibilities, and the firm's certification and conduct rules frameworks.
- Financial information should include historic data where relevant, forward projections and – where required – a credible wind-down plan evidencing an orderly exit with minimal adverse customer and market impact.

The PRA and FCA scrutinise the completeness and internal coherence of documentation. The FCA has published areas of good practice and improvement requests seen across applications, including:

- clarity of ownership/control;
- UK centre of decision-making where operations are offshore;
- practical allocation of time for individuals with multiple roles;
- evidence of the embedding of Consumer Duty within policies; and
- credible information technology (IT) systems plans.

Smaller firms are not excused substance: policies must be tailored, consistent and operational, and not restatements of rules.

Statutory determination periods are six months for complete applications (three months for insurance distribution only). In practice, end-to-end timelines are highly sensitive to the quality of pre-application preparation and completeness of first submission.

Process and Timelines

The statutory decision period is up to six months from the date that a complete application is received (and up to 12 months if incomplete). In practice, timelines are highly sensitive to the quality of pre-application preparation and the completeness and coherence of the initial submission.

Activities and Services

Regulated activities are those specified under FSMA 2000 and secondary legislation (notably the RAO), including accepting deposits, lending, payment services, custody, dealing and underwriting. Ancillary services may be carried on in accordance with the firm's permissions and the scope articulated in the regulatory business plan. UK perimeter guidance and the "general prohibition" in FSMA 2000 delineate when activities are considered carried on in the UK and therefore require authorisation or exemption.

Overseas firms and third-country branches

Passporting has ceased between the UK and Gibraltar. Third-country firms require UK authorisation to establish a branch or subsidiary to carry on regulated

activities in the UK. The PRA operates a risk-based framework for third-country businesses, focusing on:

- the scale and risk profile of UK activities;
- supervisory co-operation and equivalence of home jurisdiction oversight;
- booking arrangements and local risk management of UK-generated risks; and
- resolution co-operation and resolvability, including the BoE's ability to achieve SRR objectives.

The PRA may require subsidiarisation where warranted by systemic footprint, criticality of services or insufficient home host co-operation.

Non-UK banks can operate via a UK subsidiary (requiring full authorisation) or a UK branch (branch authorisation). The PRA/FCA has published distinct approaches to international firms, reflecting supervisory challenges of cross-border operating models, resolvability and home/host co-ordination. In certain cases, subsidiarisation may be required. Pure cross-border provision from overseas without a UK place of business raises complex perimeter questions; for accepting deposits, the activity is typically regarded as carried on where the account is located, but marketing restrictions and other regime specific requirements still apply.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

Prior approval is required under the UK Change in Control regime in Part XII of the FSMA 2000 for any person proposing to acquire or increase "control" over a UK authorised firm, including banks.

The PRA/FCA jointly assess:

- the acquirer's reputation and financial soundness;
- the suitability of proposed appointees;
- the institution's ongoing compliance; and
- the risks of money laundering or terrorist financing.

The regulators may object, impose conditions or approve.

Applications may be approved unconditionally, approved with conditions or refused; proceeding without approval is a criminal offence. The PRA expects banks to monitor controllers and report significant events, and to report annually on controllers. Prospective investors from non-Financial Action Task Force (FATF) compliant jurisdictions face elevated scrutiny given that money laundering/terrorist financing risk is a mandatory assessment criterion.

Control and Qualifying Holding

For UK purposes, “control” captures direct or indirect holdings at, or crossing, prescribed percentage thresholds of capital or voting rights, as well as situations conferring significant influence over the management of the authorised firm. A “qualifying holding” is broadly a direct or indirect holding of 10% or more of capital or voting rights, or any holding otherwise enabling significant influence over management. The regime applies to acquisitions or increases in control effected individually or through concerted action, indirect structures or other arrangements such as shareholder agreements.

Notification Thresholds

The regime operates in parallel with the EU-derived “qualifying holdings” framework under the Capital Requirements Directive, and thresholds are aligned with EU practice. Prior notification and approval are required when proposing to acquire or increase control at the 20%, 30% and 50% thresholds, or to become the authorised firm’s parent (ie, acquisition of subsidiary status). Disposals crossing the same thresholds are subject to notification. The regulators also expect firms and acquirers to consider look-through holdings, aggregation across concert parties and the prudential impact of intra-group restructurings, which may remain in scope notwithstanding the absence of external third parties.

Process and Assessment Period

Notifications must be made to the appropriate regulator before the proposed acquisition or increase occurs. The statutory assessment period begins once the regulators acknowledge a complete notification, and may be paused for information requests. The application may be approved unconditionally, approved subject to conditions or refused. Regulators

have powers to object, attach conditions or impose directions, including restrictions on voting rights or requirements to divest. The PRA expects banks to maintain robust monitoring of their controllers, report significant events and provide annual returns on controllers.

Assessment Criteria

The PRA and FCA apply harmonised criteria reflecting EU practice and joint supervisory guidance. The assessment addresses:

- the acquirer’s reputation and financial soundness;
- the reputation, experience and governance of proposed appointees;
- the institution’s ongoing capacity to meet prudential and conduct requirements post-transaction; and
- the risks of money laundering or terrorist financing.

Investors from jurisdictions with weaker AML/CFT frameworks can expect heightened scrutiny given the mandatory focus on financial crime risk.

Intra-Group Transactions

Intra-group restructurings may require notification where thresholds are crossed or control is altered, particularly if the changes affect prudential consolidation, resolution strategies or supervisory oversight. Firms should assess the structure and impact of internal reorganisations against the regime’s thresholds and the regulators’ emphasis on sound and prudent management.

Decreasing Control Over a Credit Institution

Disposals or reductions in holdings that cross the prescribed thresholds must be notified. Supervisors will consider whether reductions compromise the firm’s sound and prudent management or group supervision arrangements. Depending on the transaction’s nature and prudential impact, certain corporate actions – such as mergers, de-mergers, material asset transfers or divisions – may also require approval under evolving capital requirements legislation.

Consequences of Non-Compliance

Completing a notifiable acquisition or increase without prior approval constitutes a criminal offence and may

lead to supervisory action, including objections, conditions, directions limiting voting rights or governance participation and requirements to dispose of shares. The regulators retain discretion to intervene to protect the safety and soundness of the firm and the integrity of the financial system.

4. Governance

4.1 Corporate Governance Requirements

UK governance standards emphasise a robust and effective board, clear segregation between management and oversight, and strong, independent control functions. The PRA Fundamental Rules and FCA Principles for Businesses set high-level obligations, complemented by detailed organisational requirements in the PRA Rulebook. Boards must set “tone from the top” and evidence active challenging, particularly on risks to viability and resolvability.

The PRA’s Fundamental Rules and supervisory statements require:

- a coherent organisational structure with clear lines of responsibility;
- independent and adequately resourced risk management, compliance and internal audit, with direct escalation to the board;
- effective model risk management, data aggregation and reporting consistent with Basel Committee on Banking Supervision Regulation 239 (BCBS 239) principles;
- sound outsourcing and third-party risk management, including intra-group arrangements, with contractual rights and oversight consistent with operational resilience expectations; and
- remuneration policies aligned with prudent risk-taking, malus and claw-back, and shareholder oversight – the UK has removed the bonus cap for PRA/FCA-regulated firms, with proportionality and robust risk adjustment remaining central.

Boards must set and oversee risk appetite, ensure a healthy risk culture and embed conduct expectations, including Consumer Duty outcomes for retail business. Diversity, independence and challenge are active supervisory themes.

Ring-fenced banks (RFBs) are subject to additional structural independence requirements from other group entities. Groups with bail-in strategies are expected to organise issuance and subordination of loss-absorbing instruments to support resolvability.

SM&CR

The SM&CR establishes clear individual accountability. SMFs require pre-approval, with prescribed responsibilities allocated to identified individuals and a duty of responsibility to take reasonable steps to prevent regulatory breaches within their remit. Firms must maintain an up-to-date governance responsibilities map and Statements of Responsibilities for each SMF holder.

The Certification Regime component of the SM&CR applies to “significant harm” roles and requires annual fit-and-proper certification by the firm.

Across all SM&CR firms, conduct rules apply broadly across the workforce, with additional, higher-level rules for senior managers.

Although targeted simplifications to the SM&CR framework have been consulted on, the core accountability architecture remains intact and supervisors continue to focus on evidence of reasonable steps, clarity of responsibility and effective oversight.

Diversity

Regulators continue to emphasise the link between diversity and inclusion (D&I) and effective risk management, conduct and innovation. While certain proposed D&I rules were not taken forward (save for non-financial misconduct work), supervisory expectations remain that firms integrate D&I into governance, remuneration and product design, particularly when serving diverse retail customers. Culture remains a cross-cutting supervisory priority, with the Consumer Duty expected to strengthen consumer-centric cultures.

Voluntary Codes and Industry Initiatives on Corporate Governance and Conduct of Business Standards

Many institutions adopt national codes and international standards to strengthen governance and con-

duct. In the UK, relevant frameworks include the UK Corporate Governance Code and other best-practice guidance issued by professional bodies. Internationally recognised principles – such as those of the Financial Stability Board (FSB) and Basel Committee on corporate governance – are commonly reflected in firms' governance frameworks and in supervisory assessments. These voluntary and industry standards complement regulatory requirements and support credible, transparent and stakeholder-focused governance.

4.2 Registration and Oversight of Senior Management

Under the SM&CR, individuals performing SMFs must not commence their roles until regulatory approval is granted. Approval is predicated on the firm demonstrating that the candidate is fit and proper against the established criteria of honesty, integrity and reputation, competence and capability, and financial soundness. A clear and up-to-date Statement of Responsibilities must be maintained for each senior manager and – where applicable – an organisationally coherent Management Responsibilities Map must be maintained to evidence clear lines of accountability, reporting and decision-making. Firms must implement robust onboarding and ongoing oversight arrangements, including pre-employment screening, regulatory references and annual fit-and-proper assessments for certified staff, supported by comprehensive record-keeping.

All in-scope staff (other than those in ancillary roles) are subject to the conduct rules, and firms must deliver role-appropriate training, maintain evidence of compliance and notify the regulator promptly of any breaches in line with the prescribed reporting framework. The regulators may object to, condition or withdraw approvals and may require remediation where governance is deficient, including through skilled-person reviews, business restrictions or supervisory interventions. Senior managers are subject to the duty of responsibility, requiring them to take reasonable steps to prevent regulatory breaches in their areas of accountability, with breach consequences that may include public censure, fines and prohibition. Firms should ensure that governance arrangements, delegation frameworks and escalation protocols allow senior

managers to discharge their responsibilities effectively, with clear MI, challenge from control functions and periodic board oversight of SM&CR compliance.

4.3 Remuneration Requirements

The PRA and FCA Remuneration Codes apply to material risk takers (MRTs) on a proportional basis for certain smaller firms and staff. Banks are required to ensure that remuneration policies promote sound risk management and avoid excessive risk-taking. Key expectations include the following.

- An appropriate balance between fixed and variable pay. However, the removal of the bonus cap allows flexibility subject to risk alignment, though firms must ensure enhanced governance around variable pay to avoid unduly risky incentives.
- Deferral and instrument-based payment of a substantial proportion of variable remuneration, with higher deferral for senior staff and larger awards.
- Robust malus and claw-back, with restrictions on guaranteed bonuses and termination payments that would reward failure. The aim is to ensure that remuneration is in alignment with risk appetite and long-term firm interests.
- Pillar 3 disclosures on remuneration remain in scope for larger institutions.

Staff Subject to the Remuneration Requirements

The Remuneration Codes apply firm-wide at the level of policy, governance and risk alignment, and apply more prescriptively to identified staff whose activities have a material impact on the risk profile. These typically include senior managers, members of the management body, heads of business units, individuals in control functions (risk, compliance, internal audit) and other MRTs identified through qualitative criteria (role, authority, decision-making) and quantitative thresholds (total remuneration or variable pay relative to peer groups and business unit risk). Identification must be performed annually, with appropriate documentation of the methodology, rationale and outcomes, and must capture changes in roles, structures and risk drivers. Where individuals are not formally designated but perform equivalent responsibilities or exercise comparable influence, firms should treat them as in scope. Staff not designated as MRTs remain subject to overarching remuneration principles

and governance standards, with proportional application of specific requirements depending on the firm's categorisation.

Remuneration Principles

Remuneration must be governed by a competent and independent remuneration committee for significant firms, with risk and compliance functions providing input and challenge. Policies should be consistent with business strategy, risk appetite, capital and liquidity plans, and should incorporate ex ante and ex post risk adjustment. Performance assessment must be multi-year, using a balanced scorecard that reflects financial performance, risk and conduct outcomes, and the achievement of strategic and sustainability objectives.

Variable remuneration should be subject to deferral over appropriate time horizons, with longer deferral and vesting schedules for senior roles and larger awards and a meaningful proportion delivered in appropriate instruments (eg, shares or share-linked instruments) to mirror long-term stakeholder outcomes. Malus and claw-back must be clearly articulated, legally enforceable and triggered by specified events such as misconduct, poor risk outcomes, material restatements or regulatory sanctions, with look-back periods calibrated to the firm's risk cycle and seniority of staff.

Guaranteed variable remuneration and retention awards should be exceptional, subject to strict conditions and must not undermine prudent risk management; buy-outs must preserve malus and claw-back. Severance should reflect performance over time and should not shield individuals from the consequences of misconduct or risk failings. Personal hedging or insurance that undermines risk alignment is prohibited, and firms must monitor for circumvention. The ratio of fixed to variable pay should support prudence and resilience, with robust justification and board oversight where higher variable pay is proposed. Disclosure must be clear, consistent and sufficiently granular to demonstrate the link between remuneration structures and risk outcomes, including the operation of deferral, instrument delivery and ex post risk adjustment.

5. AML/KYC

5.1 AML and CFT Requirements

UK-authorised firms must maintain robust systems and controls to prevent, detect and report financial crime under the Proceeds of Crime Act 2002, the Terrorism Act 2000, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) (the "MLRs"), the Bribery Act 2010, the Criminal Finances Act 2017 and the Sanctions and Anti-Money Laundering Act 2018, together with applicable UK sanctions regulations and guidance issued by the OFSI.

The FCA supervises compliance for most financial services firms through its Principles for Businesses, the Senior Management Arrangements, Systems and Controls (SYSC) sourcebook and the SM&CR. The Joint Money Laundering Steering Group (JMLSG) Guidance sets out industry-recognised good practice and is a key reference point for demonstrating compliance.

The FCA expects firms to evidence end-to-end financial crime risk assessment, control design and effectiveness testing commensurate with the nature, scale and complexity of the business and its customer base. Material AML/CFT deficiencies are treated as governance failings with prudential and conduct consequences.

Core AML/CFT obligations in the FCA's SYSC sourcebook include:

- risk-based customer due diligence, identification and verification of customers and beneficial owners, ongoing monitoring and enhanced due diligence for higher-risk relationships (including politically exposed persons (PEPs));
- ongoing compliance with sanctions screening and asset-freezing compliance;
- a designated Money Laundering Reporting Officer (MLRO), staff training, independent audit and governance oversight; and
- timely suspicious activity reporting.

The FCA expects firms to evidence risk assessment, control design and effectiveness, calibrated to the nature, scale and complexity of the business.

The UK AML/CFT framework requires risk-based customer due diligence (CDD), screening and ongoing monitoring under the MLRs, with group-wide policies and information-sharing across UK and non-UK establishments. Enhanced due diligence applies to higher risk cases, including PEPs and complex or unusual transactions. Suspicious activity reports must be filed with the National Crime Agency.

Material AML/CFT failings are treated as governance issues with prudential consequences. Equally, one should note that the Economic Crime and Corporate Transparency Act 2023 introduced a “failure to prevent fraud” offence applicable to large organisations, including banks. Firms must maintain reasonable procedures to prevent fraud by associated persons, including staff, agents and certain third parties. This intersects with AML/CFT frameworks, requiring enhanced fraud risk assessments, control design, training and oversight methodologies.

Customer Due Diligence and Ongoing Monitoring

Firms must operate risk-sensitive CDD and KYC procedures at onboarding and throughout the relationship life cycle. This includes:

- identifying and verifying customers using reliable, independent sources;
- establishing and verifying ultimate beneficial ownership and control;
- assessing complex ownership structures; and
- obtaining sufficient information to understand the purpose and intended nature of the relationship.

Ongoing monitoring must be calibrated to the customer’s risk profile and the firm’s business model and should comprise transaction monitoring, periodic KYC refresh, event-driven reviews and screening against relevant sanctions and watchlists. Enhanced due diligence (EDD) is required in higher-risk situations, including for PEPs, business relationships or transactions involving high-risk third countries, correspondent banking, complex or unusual transactions and other elevated risk indicators. For PEPs, firms should adopt

a genuinely risk-based approach in accordance with the MLRs and FCA guidance, applying proportionate EDD and senior approval where appropriate, without automatic de-risking.

Where group structures are in scope, Regulation 20 of the MLRs requires group-wide AML/CFT policies, controls and procedures, including information-sharing arrangements, that ensure consistent standards across UK and non-UK branches and subsidiaries. Where local law restricts intra-group information-sharing, firms must implement additional, risk-mitigating measures and maintain oversight to the extent permitted.

Reporting, Record-Keeping and Supervisory Co-Operation

Suspicious Activity Reports (SARs) must be submitted to the UK Financial Intelligence Unit within the National Crime Agency as soon as practicable where knowledge or suspicion of money laundering or terrorist financing arises. Firms must observe applicable consent (defence against money laundering) and moratorium processes, and avoid tipping off. Internal reporting lines should ensure that front-line staff escalate suspicions promptly to the MLRO.

The MLRs require firms to retain CDD records and transaction data for the statutory period, and to ensure data completeness, accuracy and retrievability. Firms must be able to provide timely, accurate information to competent authorities upon request. Effective engagement with the FCA, the PRA (where relevant), OFSI and law enforcement is integral to the UK’s co-ordinated AML/CFT architecture.

Governance, Resourcing and Accountability

Firms must appoint a suitably senior and independent MLRO (SMF17) and ensure that the compliance oversight function (SMF16) and other relevant senior managers have clearly delineated responsibilities under the SM&CR, supported by an up-to-date Statement of Responsibilities and a Responsibility Map. AML/CFT risk management should be embedded across the three lines of defence, with clear escalation routes, periodic independent testing and validation of models and monitoring tools, and board-level oversight.

Adequate resourcing is essential, including appropriately skilled personnel, training tailored to roles and risks, and technology capable of effective screening, transaction monitoring and case management. Outsourcing arrangements must be overseen pursuant to SYSC and applicable outsourcing guidance, ensuring retained accountability, auditability and resilience.

Sanctions and Restrictive Measures

UK sanctions and restrictive measures adopted under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) and implementing regulations are directly binding, and must be fully embedded in onboarding, screening, payment filtering and asset control processes. Firms must:

- implement immediate asset freezes and transaction prohibitions for designated persons and entities;
- undertake ownership and control look-through in line with OFSI guidance;
- maintain audit trails; and
- ensure rapid updates to sanctions lists and controls as measures evolve.

Breaches may attract civil monetary penalties on a strict liability basis, regulatory action and criminal enforcement. Where appropriate, firms should seek licences from HM Treasury to enable otherwise prohibited activity, and should maintain robust licence management and assurance processes.

Sector-Specific Considerations and Cross-Cutting Risks

Firms should consider cross-sector obligations and risks, including the register of overseas entities regime, Companies House reforms and developments under the Economic Crime and Corporate Transparency Act 2023 (including corporate criminal liability reforms). Businesses operating in higher-risk sectors or offering correspondent banking, trade finance, payment services or crypto-asset services supervised under the MLRs should calibrate controls to sector-specific risks, including implementation of the wire transfer “travel rule” requirements and cross-border information sharing consistent with UK law.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The Financial Services Compensation Scheme (FSCS) provides deposit protection up to GBP85,000 per eligible depositor per firm. Temporary high balances enjoy enhanced, time-limited protection in defined circumstances. Membership of the FSCS is mandatory for PRA-authorised deposit-takers. Payout speed is targeted at seven days for most cases. UK branches of non-UK banks are subject to UK disclosure and protection rules applicable to their authorisation status.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Prudential requirements for UK banks and PRA-designated investment firms derive from the UK CRR (as onshored and amended) and the PRA Rulebook, supplemented by supervisory statements. Since 1 January 2022, significant portions of the UK CRR (liquidity, leverage, large exposures, certain CCR and reporting/disclosure) have been migrated into PRA rules as part of the UK’s implementation of CRR II-related Basel standards. The PRA continues to move towards full UK-specific rulemaking under FSMA 2023, with further migration envisaged under the UK’s Basel 3.1 implementation from 1 January 2027.

At a high level, prudential requirements span Pillar 1 (minimum risk-based capital and liquidity), Pillar 2 (ICAAP/ILAAP with Supervisory Review and Evaluation Process (SREP)-driven add-ons) and Pillar 3 (public disclosure). Firms must also meet leverage requirements (for larger firms) and MREL set by the BoE where relevant, in addition to maintaining adequate financial resources at all times.

Basel III Standards Implementation

Although the Basel III standards do not have direct legal effect in the UK, their substance has been progressively incorporated into EU law (while the UK was an EU member state) through the CRR and the Capital Requirements Directive (CRD) and subsequently onshored into UK law. As a result, the prudential

regime applicable to UK credit institutions broadly reflects the Basel framework, adapted to UK-specific policy objectives and applied across the UK banking sector. The UK has implemented Basel III through the UK CRR, the PRA Rulebook and supervisory statements, with ongoing Basel 3.1 finalisation via PRA reforms. The regime includes the following.

- Pillar 1 risk-based capital minimums: total capital 8% of RWA, with Tier 1 and Common Equity Tier 1 (CET1) sub-components, overlaid by combined buffers (Capital Conservation Buffer (CCoB), Countercyclical Capital Buffer (CCyB) and systemic buffers for Global Systemically Important Institution (G-SIIs)/Other Systemically Important Institution (O-SIIs) and any sectoral Systemic Risk Buffer (SyRB)).
- Leverage ratio requirements for larger institutions and systemically important firms, with a G-SII leverage buffer where applicable.
- Liquidity standards: LCR and NSFR, with asset eligibility and calibration aligned with UK CRR and PRA policy.
- Large exposure limits anchored to Tier 1 capital and connected client aggregation.
- Pillar 2: the PRA's SREP determines firm-specific Pillar 2 Requirements (P2R)/Pillar 2 Guidance (P2G) for idiosyncratic risks not fully captured under Pillar 1, including Interest Rate Risk in the Banking Book (IRRBB), concentration risk, model risk and outsourcing/ICT risks. ICAAP and ILAAP expectations emphasise robust stress testing, credible management actions and clear risk appetite metrics.
- Model risk: permissions for internal models are subject to stringent approval and ongoing validation, with PRA scrutiny similar in intensity to ECB Targeted Review of Internal Models (TRIM)-style benchmarks, focusing on data quality, parameterisation and back-testing. Output floor implementation under Basel 3.1 will constrain model variability over time.
- Model risk management (MRM): the PRA's evolving approach to MRM requires firms to treat model risk as a standalone risk class, with clear board-approved MRM frameworks, model inventories, independent validation, challenger frameworks and documented model life-cycle controls. Supervisors increasingly benchmark model performance, moni-

toring overrides, back-testing, data lineage and governance of vendor/AI-enabled models. Firms must demonstrate credible remediation plans and incorporate model risk capital where deficiencies are material.

- Banks with bail-in or partial transfer resolution strategies must maintain sufficient MREL resources to absorb losses and recapitalise in resolution. The BoE calibrates firm-specific MREL in line with the preferred resolution strategy. From 2026, the BoE will increase the indicative total assets threshold for considering partial transfer strategies and adjust MREL calibration expectations for certain firms, reflecting enhancements to depositor outcomes in insolvency.
- Comprehensive risk management frameworks with independent risk functions, Chief Risk Officer (CRO) stature and board-level risk governance.

Loss-absorbing capacity is delivered through MREL set by the BoE, interacting with capital buffers and distribution constraints (Maximum Distributable Amount (MDA)). UK G-SIIs must also meet Total Loss Absorbing Capital (TLAC) standards. Disclosure under Pillar 3 remains a core market discipline tool, with enhanced templates expected as Basel 3.1 is finalised.

Basel 3.1 implementation in the UK will migrate substantial prudential content from the UK CRR to the PRA Rulebook, revising credit, market and operational risk frameworks from 1 January 2027. The PRA is also implementing a simplified Small Domestic Deposit-Taker regime to tailor requirements for smaller firms.

Capital: definitions and minimums

Part Two of the UK CRR specifies quality and eligibility of own funds (CET1, Additional Tier 1 (AT1), Additional Tier 2 (AT2)).

UK CRR Article 92 sets the minimum risk-based capital ratios: CET1 of 4.5%, Tier 1 of 6.0% and total capital of 8.0% of total risk exposure amount.

Article 93 requires capital resources to be at least equal to initial capital required at authorisation. Risk-weighted assets (RWAs) are determined under standardised or (with PRA approval) internal ratings-based approaches for credit risk and under

standardised or internal model approaches for market risk, with operational risk measured under the Basic Indicator Approach (BIA), standardised approach or Advanced Measurement Approach (AMA) (pending reforms under Basel 3.1).

These minimums are supplemented by buffers (for example, capital conservation, countercyclical, systemic buffers, as applicable) and firm-specific Pillar 2A/B requirements following SREP. The PRA expects robust ICAAPs underpinning capital planning and risk appetite.

Leverage and Liquidity

The PRA imposes a binding leverage ratio on the largest banks, expressed as Tier 1 capital over total exposures. The current minimum is 3.25%, with buffer add-ons for certain firms; the PRA has consulted on raising the threshold for scope (for example, to GBP70 billion of retail deposits). All banks are subject to the LCR and must maintain adequate liquidity resources in amount and quality to meet liabilities as they fall due. The PRA may issue firm-specific Individual Liquidity Guidance (ILG) under Pillar 2.

Pillar 2 Processes

Banks must maintain and periodically update an ICAAP and ILAAP, identifying risks (credit, market, operational, liquidity and funding risks, among others), calibrating internal capital and liquidity adequacy, and evidencing governance around risk management. The PRA's SREP informs Pillar 2 capital/liquidity requirements and sets supervisory expectations for remediation.

MREL

The BoE sets firm-specific MREL to ensure credible loss-absorption and recapitalisation in resolution, reflecting the preferred resolution strategy (bail-in, transfer or modified insolvency). Eligible liabilities must meet strict criteria to be bail-in-able. The UK framework implements the FSB's TLAC standard for Global Systemically Important Banks (G-SIBs) and applies proportionately to other firms. From 1 January 2026, the BoE's revised approach increases the indicative total assets threshold for modified insolvency strategies from between GBP15 billion and GBP25 billion to between GBP25 billion and GBP40 billion,

and makes targeted changes to MREL calibration for partial-transfer firms; the PRA also intends to raise the threshold for the separate Resolution Assessment Part to GBP100 billion of retail deposits in H1 2026.

Small Domestic Deposit-Taker (SDDT) Regime

The PRA is introducing a simplified prudential framework for SDDTs, easing certain governance and liquidity requirements proportionately, with fuller implementation aligned with Basel 3.1 timelines, while preserving safety and soundness.

Ring-Fencing

Large UK banking groups with core retail activities are subject to ring-fencing, separating retail banking services within ring-fenced bodies from investment and certain wholesale activities. Governance, exposures, location and services restrictions apply to protect continuity of critical retail services. Reforms to thresholds and scope are under review and incremental changes have been enacted, though ring-fencing remains a defining UK structural feature.

Groups with substantial retail operations are subject to ring-fencing under Part 9B FSMA 2000. RFBs are prohibited from specified trading and exposures to certain financial institutions, and must be legally, economically and operationally independent within their groups. Structural separation and governance rules drive significant intra-group reorganisation for affected groups.

Risk Management Rules

UK firms are expected to maintain comprehensive, forward-looking risk management frameworks calibrated to their business models, risk profiles and scale. The PRA Rulebook establishes requirements for risk control, governance and reporting, supplemented by supervisory statements and Dear CEO letters.

Core expectations include:

- the articulation of clear risk appetite statements approved by the board, supported by quantitative limits and qualitative tolerances;
- effective three-lines-of-defence arrangements, with clearly delineated responsibilities for first-line own-

- ership, second-line oversight and challenge, and independent third-line internal audit;
- a properly empowered and independent second-line risk function led by a CRO with sufficient stature, resources and unfettered access to the board risk committee;
- model risk management policies covering development, validation, use and decommissioning of models, with robust data governance, back-testing and limitations explicitly recognised;
- stress testing and scenario analysis embedded in business planning, capital and liquidity assessments, and contingency actions, including reverse stress tests and multi-factor scenarios; and
- comprehensive risk reporting that is timely, accurate and sufficiently granular to enable board and senior management decision-making.

Firms must also maintain prudent outsourcing and third-party risk management arrangements, including contractual safeguards, exit planning and operational resilience mapping, consistent with PRA expectations on outsourcing and ICT risk.

Board composition and governance should ensure appropriate financial services, risk and audit expertise, with committees overseeing risk, audit and remuneration aligned with prudential objectives and conduct considerations.

Capital and Liquidity Requirements

Capital requirements comprise minimum Pillar 1 risk-based ratios and a binding leverage ratio where in scope, supplemented by combined buffers and firm-specific Pillar 2A capital to address risks not fully captured under Pillar 1. Distribution restrictions apply where CET1 falls within the combined buffer range, constraining dividends, variable remuneration and coupon payments on AT1 instruments via the maximum distributable amount mechanism.

Supervisors expect firms to operate with prudent management buffers above minimum and Pillar 2 thresholds to absorb volatility and maintain market confidence. Liquidity requirements include compliance with the LCR and NSFR, supported by qualitative PRA liquidity rules on governance, monitoring and reporting, and firm-specific Pillar 2 liquidity guid-

ance where necessary. ILAAPs must demonstrate a robust funding strategy, diversified and stable funding sources, collateral management and contingency funding plans, with credible management actions under stress. Firms should maintain adequate high-quality liquid assets and monitor intra-day liquidity, encumbrance and transferability across entities and jurisdictions, with appropriate legal and operational arrangements to ensure availability of resources when needed.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The Banking Act 2009 provides the Special Resolution Regime with tools including transfer powers (sale of business, bridge bank), asset separation and bail-in. The BoE sets preferred resolution strategies (SPE/MPE), calibrates MREL and conducts resolvability assessments covering valuation readiness, bail-in execution, continuity of access to financial market infrastructures (FMIs), separability and operational continuity in resolution. Liquidity in resolution is a priority; firms must maintain playbooks for collateral mobilisation, central bank facilities access and FMI obligations.

The BoE's 2024–2025 guidance requires banks to demonstrate liquidity mobilisation capabilities in resolution, including real-time collateral tracking, FMI payment continuity and executable playbooks for secured central bank facilities. Firms must maintain granular intra-day liquidity analytics and ensure that legal documentation permits transferability and encumbrance tracking during stress.

Recovery planning is mandatory and must set clear escalation indicators, recovery options and governance arrangements. Early intervention powers allow regulators to impose business and governance measures where viability is threatened. Outside resolution, general insolvency tools are available under UK law, with SRR objectives guiding the public interest assessment.

Insolvency

The Banking Act 2009 provides a dedicated bank insolvency procedure, prioritising prompt FSCS payout or transfer of protected deposits. Only the BoE, PRA or Chancellor may petition for bank insolvency, subject to statutory conditions. General corporate insolvency law applies where the bank insolvency procedure is not engaged.

Following HM Treasury's 2024 review, enhancements to the bank insolvency procedure (BIP) will improve the speed and certainty of FSCS payout, broaden FSCS powers to support transfer strategies, and clarify treatment of operational continuity. Banks should review intra-group service arrangements and wind-down plans to ensure alignment with revised BIP mechanics.

Recovery

Banks must maintain credible recovery plans setting out indicators, governance and options to restore viability in stress. The PRA reviews plans and can direct remedial measures or changes to business models or funding strategies if plans are materially deficient or not actionable. Intra-group financial support agreements are subject to a specific authorisation framework and disclosure obligations.

Resolution

The BoE's SRR provides stabilisation options (bail-in, transfer to private sector purchaser or bridge bank and asset management vehicle), together with temporary public ownership in limited circumstances. The BoE may exercise mandatory write-down and conversion of capital instruments at the point of non-viability, and must assess and, where necessary, remove impediments to resolvability.

Resolution Planning: RAF, MREL, OCIR and Legal Stay Readiness

Resolution packs and planning

Banks must maintain resolution packs providing information for the BoE to draw up resolution plans. The PRA's SS19/13 sets phased information expectations (baseline group structure and critical economic functions, detailed information supporting the preferred strategy, and contingent information on stress). The BoE draws up resolution plans setting preferred

strategies – bail-in, transfer or modified insolvency – reviewed at least annually. Smaller banks with modified insolvency strategies may be subject to simplified obligations.

Resolvability assessment framework (RAF)

Major banks are assessed by the BoE for resolvability against three outcomes:

- adequate financial resources (MREL, valuations, liquidity in resolution);
- continuity and restructuring (continuity of contracts and services, FMI access, restructuring capabilities); and
- management, governance and communication.

The BoE publishes public statements on resolvability for significant retail deposit-takers, and firms within the Resolution Assessment Part must produce their own public assessments. The next assessment cycle is planned for 2026–27, focusing on continuity and restructuring.

Operational continuity in resolution (OCIR)

Banks above defined size thresholds that receive critical services must ensure continuity of those services through recovery, resolution and post-resolution restructuring. Contracts for critical services must contain terms ensuring non-termination and continued performance through resolution, on arm's length terms with predictable charging and access to operational assets, subject to defined exclusions (for example, UK law intra-group contracts, certain FMI contracts). Group providers must be appropriately governed to deliver continuity.

Contractual recognition: stays and bail-in

For third-country law financial contracts, banks must procure contractual recognition of UK resolution stay powers to avoid disorderly termination upon entry into resolution or write-down/conversion at non-viability. Banks must also include contractual recognition of bail-in in third-country law liabilities (subject to impracticability guidance). The BoE expects robust compliance, legal, record-keeping and communication capabilities to support enforceability and counterparty engagement, and expects firms to understand

residual early termination risk on out-of-scope contracts.

Continuity of access to FMIs and restructuring planning

Banks must identify and map critical FMI relationships (direct and via intermediaries), maintain usage records, and develop and maintain contingency plans for sustained access in stress and resolution. For bail-in firms, restructuring planning capabilities are required to deliver a viable business reorganisation plan within one month of entry into resolution, addressing causes of failure and restoring long-term sustainability.

Early Intervention Measures

When a bank exhibits deterioration short of failure, the PRA may deploy early intervention measures (Bank Recovery and Resolution (No 2) Order 2014 (BRRO2)) and prudential supervisory measures (UK Capital Requirements Regulations). Tools include:

- requiring reinforcement of risk management and governance;
- restoration plans with deadlines;
- provisioning policies;
- restrictions on business lines posing excessive risk;
- reductions in inherent risk;
- limits on variable remuneration;
- retention of profits to build capital;
- restrictions or prohibitions on distributions and AT1 coupons (where no events of default);
- enhanced reporting;
- specific liquidity requirements; and
- additional disclosures.

Intra-Group Financial Support Agreements (IGFSAs)

Banks in cross-border groups may enter IGFSAs to provide intra-group financial support (loans, guarantees, collateral) prior to meeting early intervention conditions. PRA rules and BRRO2 set conditions, authorisation processes, member approval and disclosure duties. An IGFSa cannot be authorised if terms are incompatible with conditions for support or any party already meets early intervention conditions.

Impediments to Resolvability

Following resolvability assessments, the BoE may determine that there are substantive impediments to resolution and, after a structured process affording the bank the opportunity to propose remedies, direct the bank to implement measures to remove impediments (for example, structural, operational or legal changes). For bail-in firms, the BoE must consider whether constitutional documents present obstacles to conversion (for example, pre-emption rights) and may require amendments.

Mandatory Reduction of Capital Instruments

Where a bank is failing or likely to fail and supervisory measures are insufficient, the BoE has powers to write down or convert capital instruments (AT1/AT2) outside the stabilisation regime in defined “cases”, subject to assessing whether alternative measures (early intervention, prudential measures, parental support) are feasible. The BoE must notify the PRA if considering these powers; if a feasible alternative measure exists (other than parental support), the PRA must take it.

Special Resolution Regime (SRR): Stabilisation Powers and Safeguards

If a bank is failing or likely to fail, public interest conditions are met and SRR objectives cannot be achieved to the same extent in insolvency, the BoE may exercise stabilisation options:

- transfer to a private purchaser;
- transfer to a bridge bank;
- transfer of assets/liabilities to an asset management vehicle (in conjunction with other tools); or
- (via HM Treasury) temporary public ownership (after at least 8% loss absorption by shareholders and creditors).

The BoE’s powers include wide transfer and override provisions subject to statutory safeguards, notably the “no creditor worse off” (NCWO) principle. A bank administration procedure supports continued services to a transferred business where a residual entity remains insolvent. The bank insolvency procedure prioritises transfer or FSCS payout of insured deposits.

9. ESG

9.1 ESG Requirements

The UK embeds climate and broader sustainability expectations through a combination of prudential, disclosure and conduct measures.

- PRA expectations (eg, SS3/19) require boards to integrate climate risk into governance, risk management, scenario analysis and capital frameworks; PRA thematic reviews and supervisory engagement have intensified.
- FCA climate-related disclosure rules reflect the Task Force on Climate-related Financial Disclosures (TCFD) and the UK's path towards International Sustainability Standards Board (ISSB)-aligned reporting. The FCA's Sustainability Disclosure Requirements (SDR) and investment labels apply initially to asset management but shape market norms and client communications across financial services.
- Transition plan disclosure is developing through the Transition Plan Taskforce (TPT) framework; UK taxonomy consultation is ongoing.
- Greenwashing risks are a supervisory focus; product governance and client communications must be clear, fair and not misleading.

While distinct from EU Sustainable Finance Disclosure Regulation (SFDR)/Taxonomy, the UK regime aims at comparable transparency and integration outcomes, with cross-border firms managing parallel requirements. The UK will mandate TPT-aligned transition plan disclosures for large listed and regulated firms. Banks must integrate transition pathways into ICAAP, credit risk modelling and scenario analysis, linking climate metrics to risk appetite. The FCA is increasing scrutiny of potential greenwashing, particularly in retail savings products and sustainability-linked finance.

10. DORA

10.1 DORA Requirements

The UK's operational resilience regime is well established. Banks are required to identify important business services and set impact tolerances, map the resources supporting those services and test their

ability to remain within tolerances in severe but plausible scenarios. Banks must remediate vulnerabilities and reach full resilience standards by the regulatory deadlines. As of 31 March 2025, banks should have embedded strategies, processes and systems to meet operational resilience expectations.

Outsourcing and third-party risk management frameworks across the PRA and FCA rulebooks require governance, risk management, regulatory access, audit and information rights, data protection, concentration risk assessment and exit planning – particularly for material outsourcings (including cloud). Banks must implement robust frameworks that preserve supervisory access and assurance, with particular focus on material arrangements and critical third parties (CTPs).

FSMA 2023 introduces a dedicated regulatory framework for CTPs. Once a service provider is designated jointly by HM Treasury, the PRA and the FCA, financial institutions must comply with new obligations including enhanced due diligence, contractual assurance, incident reporting, and participation in sector-wide resilience testing. The regulators will have the ability to give directions directly to CTPs, including requirements around testing, information provision and remediation, materially affecting firms' outsourcing strategies and operational risk assessments. Firms must revise outsourcing policies to ensure pre-emptive compliance with CTP standards.

In parallel, OCIR rules require contractual and structural arrangements to ensure continuity of critical services through resolution and post-stabilisation restructuring. Banks must structure intra-group service arrangements on arm's length terms with predictable charging, and must ensure no resolution-related termination rights.

Outsourcing frameworks across the PRA and FCA rulebooks require governance, risk management, access and audit rights, data protection, concentration risk assessment and exit planning, particularly for material outsourcings and CTPs.

The UK maintains its own regulatory approach to third-party risk management – in particular, on ICT risks and providers. The UK has not adopted the EU's Digital

Operational Resilience (DORA) regime. Instead, PRA and FCA rules require firms to identify important business services, set impact tolerances and demonstrate the ability to remain within tolerances during severe but plausible disruptions. Governance, mapping, scenario testing, third-party risk and communications are central. FSMA 2023 introduces a regime for CTPs to UK financial services, enabling direct oversight of systemic ICT providers and complementing firms' outsourcing frameworks.

Cyber resilience remains a core supervisory concern. Banks are expected to identify and protect against cyber threats, rapidly detect incidents, respond and recover, and contain disruption. Use of artificial intelligence (AI) must align with existing, technology-neutral rules across the AI life cycle – governance, data, model risk and accountability – with the FCA and PRA articulating cross-cutting expectations for safe adoption.

Data protection and sectoral obligations are framed by the UK GDPR and the Data Protection Act 2018, with cyber obligations grounded in the Network and Information Security (NIS) Regulations and sectoral guidance. AI deployment is currently subject to cross-cutting principles and supervisory expectations rather than a comprehensive AI statute; model governance and accountability remain supervisory priorities.

Data Location, Cloud Resilience and Exit Management

The PRA and FCA expect firms to evaluate data localisation requirements, cross-border data transfer dependencies and cloud concentration risk as part of operational resilience. Firms must maintain exit strategies capable of restoring critical services within impact tolerances, including demonstrable ability to migrate workloads from dominant cloud providers in severe but plausible scenarios. Metadata, logs and audit trails must remain accessible to the UK authorities irrespective of hosting location.

11. Horizon Scanning

11.1 Regulatory Developments

The main developments on the horizon include the following.

UK Prudential, Conduct and Markets Agenda

The UK continues to consolidate its post-EU regulatory framework, with FSMA 2023 providing broad powers to revoke retained EU law and restate requirements in domestic rulebooks. In prudential regulation, HM Treasury and the PRA are progressing targeted repeal of UK CRR provisions and the migration of core prudential policies – such as securitisation and capital definitions – into PRA rules, alongside Basel 3.1 finalisation and implementation currently targeted from 1 January 2027. The BoE has consulted on streamlining resolution reporting (including COREP13 UKTS) with implementation aimed for April 2026, and its revised MREL Statement of Policy will take effect from 1 January 2026, including adjusted thresholds and calibrations aligned with improving depositor outcomes in insolvency. Firms should align board-level oversight with these timelines, ensuring coherent integration across ICAAP/ILAAP, model change, disclosure and resolvability programmes.

Basel 3.1 Calibration and Pillar 3

The PRA's calibration choices – including the output floor and revisions to credit, market and operational risk approaches – remain pivotal. Firms should anticipate detailed Pillar 3 templates and UK-specific reporting instructions, with scrutiny of model approval pipelines, portfolio variability and bindingness of the floor across business lines. Transitional arrangements and sequencing will require close programme management and transparent stakeholder communications.

Ring-Fencing Evolution

Following statutory reviews, the ring-fencing regime is expected to evolve, with potential threshold recalibration, refinements to permitted activities and closer alignment with resolvability objectives. Banks should validate legal entity strategies, service company arrangements and intragroup exposures to maintain robust separability and continuity of critical economic functions.

Climate and Sustainability Disclosures

UK disclosures continue to converge towards the ISSB, with the FCA's Sustainability Disclosure Requirements/labels regime and transition plan expectations shaping product governance and investor communications. Banks should embed climate metrics, scenario analysis and transition planning within risk management and public reporting, ensuring internal coherence across prudential, conduct and stewardship frameworks.

Payments Reforms and Open Banking

The payments landscape is being reshaped by mandatory Authorised Push Payment (APP) fraud reimbursement under the PSR, strengthened Confirmation of Payee and work on the future governance of open banking, with possible extensions towards open finance. Operational implications include real-time fraud controls, customer communications, liability allocation and enhanced data sharing safeguards. Firms should align Strong Customer Authentication (SCA) implementation and dispute-handling across channels, with consistent treatment of vulnerable customers.

The PSR's mandatory reimbursement regime for APP fraud fundamentally changes liability allocation. From 2024, sending and receiving PSPs must reimburse victims within strict timeframes unless narrow exceptions apply. Banks must implement real-time fraud detection controls, enhanced Confirmation of Payee, strengthened data-sharing mechanisms and consistent treatment of vulnerable customers. Governance frameworks must be updated to reflect APP reimbursement MI, fraud typology analysis and board-level oversight.

Sanctions Enforcement and Circumvention Risk

UK sanctions have expanded materially, with heightened OFSI enforcement and guidance on ownership and control, trade-based evasion typologies and beneficial ownership transparency. Banks must maintain agile list management, robust look-through and circumvention detection across onboarding, payment filtering, asset freeze administration and exit strategies, with documented governance and periodic independent testing of screening effectiveness.

OFSI's 2024 guidance emphasises detection of circumvention typologies, including complex ownership structures, proxy trading networks, trade-based evasion, crypto-mixing services, use of third-country intermediaries and redirection of goods via transshipment hubs. Banks must calibrate screening, KYC refresh, payment interdiction and trade finance oversight to these risks, documenting independent periodic testing.

The SM&CR and Remuneration

Targeted refinements to the SM&CR continue, together with remuneration code evolution following removal of the bonus cap. Firms should revisit accountability maps, fitness and propriety controls, variable pay risk adjustment and malus/claw-back frameworks to ensure alignment with conduct outcomes and prudential soundness.

Resolution Liquidity, MREL Resilience and Execution

The BoE's expectations on resolution liquidity and credible execution require detailed playbooks, collateral mobilisation strategies and continuity of access to FMI's under stress. MREL stack resilience should be modelled alongside buffer requirements, P2R/P2G and potential distribution constraints, with clear communications to management, boards and markets.

Retail Conduct and Markets

While the EU advances MiFIR/MiFID reforms and a Retail Investment Strategy, the UK is pursuing its own trajectory through the Wholesale Markets Review, MiFID onshoring adjustments and the FCA's Consumer Duty. Changes to market structure, transparency and data (including consolidated tape initiatives) will interact with stricter expectations on product governance, value for money, inducements and client communications. Banks should refresh suitability/appropriateness frameworks, remuneration structures for sales staff and ESG preference assessments, recognising intensified supervisory scrutiny of mis-selling risks.

Payments and Instant Transfers

The UK is not mirroring the EU's Payment Services Directive 3 (PSD3)/Payment Services Regulation reforms, but is implementing targeted reforms via the

PSR and FCA rulebooks, including 24/7 payments resilience expectations and strengthened fraud prevention. Confirmation of Payee and enhanced sanctions/AML screening for real-time payments should be embedded operationally. Updates to third-party access arrangements, open banking standards and governance will require careful contract and vendor management, with ICT resilience integrated under the UK operational resilience regime.

The UK government intends to consolidate and integrate the Payment Systems Regulator into the FCA to streamline supervision and reduce regulatory duplication. This transition will expand FCA enforcement tools in payments markets, consolidate complaints, data and fraud monitoring regimes, and align payment system governance with FCA conduct supervision. PSPs should expect increased scrutiny of operational resilience, fraud controls, dispute-handling and transparency.

Derivatives and Market Infrastructure

UK EMIR continues to diverge in places from the EU's EMIR 3.0, with UK-specific reporting, margin and clearing requirements and no active account mandate akin to the EU. Firms should reassess clearing strategies, counterparty risk management and collateral practices to reflect UK supervisory expectations, while preparing for reporting refits and data quality enhancements. In post-trade, UK policy initiatives – including the FMI sandbox and work on digital securities – aim to support innovation while preserving robust settlement and custody controls.

Data, AI and Cybersecurity

The UK retains the UK GDPR, with ongoing refinements to data protection and digital governance. The UK's approach to AI is currently principles-based and pro-innovation rather than prescriptive, but banks should treat AI applications in credit/underwriting and risk assessment as high-risk, documenting model governance, data integrity, transparency and human oversight. Cyber obligations intersect with operational resilience and sectoral guidance; firms should ensure consistency across ICT risk management, incident response and vendor oversight, while mindful of UK-specific supervisory expectations rather than

Network and Information Security System 2 (NIS2)/DORA constructs.

Although the UK has not adopted an AI Act (as the EU has), the PRA and FCA expect firms to treat AI models as high-risk within existing governance frameworks. Supervisory areas of focus include data integrity, explainability, bias detection, human-in-the-loop controls, operational resilience and accountability under the SM&CR. Firms must evidence traceability of decision-making and undertake model validation proportionate to risk, including AI-specific stress and sensitivity testing. Where AI is used in credit underwriting, fraud detection or customer communications, Consumer Duty outcomes – particularly fairness and consumer understanding – must be demonstrably met.

Sanctions Operations and Governance

UK restrictive measures are directly applicable, with rigorous enforcement. Controls must address complex corporate structures, trade flows and trans-shipment risks, ensuring comprehensive ownership/control look-through and timely asset freeze administration. Governance should document escalations and decision-making, with independent effectiveness testing and remediation tracking to mitigate both conduct and prudential consequences.

Securitisation and Covered Bonds

The UK securitisation framework is being domesticated, with PRA/FCA rulebooks replacing retained EU law. Simple, Transparent and Standardised (STS) Securitisations remain relevant for preferential treatment, subject to UK criteria. Banks acting as originators, sponsors or investors should maintain documented due diligence, risk retention compliance and transparency, integrating securitisation risks into ICAAP and model oversight. The UK covered bonds regime continues to emphasise asset quality, cover pool management, liquidity buffers and investor disclosure, aligned with resolution separability expectations.

From 2025, the UK Securitisation Regulations are being replaced with PRA/FCA rules, including revised due diligence templates, originator/sponsor definitions, STS criteria, risk retention and disclosure. Banks

must update policies to reflect the new UK rulebooks and adjust investor reporting, retention documentation and warehouse financing arrangements accordingly.

Recovery, Resolution and Liquidity

Unlike the EU's Crisis Management and Deposit Insurance (CMDI) framework package, UK reforms focus on resolvability assessments, bail-in execution, valuation readiness and early intervention under domestic frameworks. A critical operational dimension – liquidity in resolution – requires detailed playbooks and collateral mobilisation plans, with FMI access continuity evidenced under stress. Recovery and resolution plans should demonstrate separability and robust execution capabilities consistent with BoE guidance.

MREL/TLAC and Capital Stack Interactions

Loss-absorbing capacity expectations continue to tighten through the revised MREL Statement of Policy (SoP). Banks should articulate internal MREL/TLAC frameworks, subordination strategies and issuance plans, modelling interactions across combined buffers, P2R/P2G and potential breaches, including management of distribution constraints affecting dividends, AT1/AT2 coupons and variable remuneration. Transparent disclosure of stack resilience and contingency measures supports market discipline and supervisory dialogue.

Third-Country Market Access and Booking Models

The UK framework for overseas firms – spanning authorisation, branch supervision and the Overseas Persons Exclusion – is being refined. Banks should assume a conservative perimeter for cross-border services into the UK, with attention paid to local risk management for UK-booked risks and clear governance over back-to-back and remote booking to avoid supervisory arbitrage. Colleges and co-oper-

ation arrangements remain important, but host-state expectations for subsidiarisation or enhanced branch supervision may be applied where warranted.

Consumer Credit and Mortgages

The UK is progressing reforms to consumer credit, with the FCA's Consumer Duty setting high bars for fair value, communications and customer support. MCOBs continue to emphasise responsible lending, affordability and treatment of vulnerable customers. Banks should integrate ESG and energy efficiency considerations where relevant with collateral values and lending policies, ensuring coherent product governance and fair outcomes.

Competition and Digital Markets

UK digital platform regulation – via the CMA and evolving statutory powers – affects payments initiation, wallet interoperability and default settings that shape consumer journeys. Banks should monitor gatekeeper obligations, ensure fair access and preserve competitive neutrality in digital payments ecosystems. Interchange fee constraints and card network rule changes require pricing and conduct alignment, with co-ordinated oversight between competition and consumer protection authorities.

Technical Standards and Supervisory Roll-Out

Basel 3.1 and the migration from retained EU law to PRA/FCA/BoE rulebooks will entail extensive secondary materials. Institutions should track and implement UK technical standards across credit risk (including real estate exposures), market risk permissions, operational risk, CVA, ESG Pillar 3 templates and governance/reporting for TCBs. Transitional arrangements and phase-ins will affect model approvals, output floor bindingness and disclosure sequencing; supervisory calendars should be integrated into programme plans with robust board oversight.

Trends and Developments

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PwC Legal

PwC Legal and its network firms operate in more than 100 territories with over 4,000 lawyers, delivering comprehensive advisory and transactional services to financial institutions, multinational corporates and public bodies. The firm's Global Financial Services Sector Group brings together more than 450 lawyers who provide strategic, commercially driven advice across the full spectrum of transactional, regulatory and advisory matters – spanning all major asset classes and the rapidly evolving crypto-assets and digital infrastructure landscape. PwC Legal supports clients through the entire regulatory life cycle

and across phases of growth, financing and corporate transformation. The firm's expertise includes licensing and perimeter analysis; prudential and conduct regulation; payments and fintech; crypto-assets and tokenisation; market infrastructure and trading; governance, risk and remediation; outsourcing and cloud; operational resilience; and ESG. The firm also assists clients in structuring, documenting and executing complex transactions – including M&A, reorganisations, structured finance, derivatives and banking and finance – and acts in investigations, disputes and enforcement matters.

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Background

The UK regulatory landscape has shifted decisively over the past two years towards outcomes-focused supervision, heightened disclosure standards and tighter controls on distribution – particularly in relation to complex or illiquid products sold to retail clients. While the Financial Conduct Authority (FCA) continues to operate independently of EU regulatory pathways, its agenda has increasingly centred on three interlocking pillars:

- protection of mass-market consumers under the Consumer Duty;
- integrity and transparency in product communications; and
- resilience in the financial system’s infrastructure and supply chain.

For market participants – manufacturers, distributors, platforms and arrangers – the direction of travel is clear: distribution strategies must be rebuilt around robust product governance, fair value and a demonstrable evidence base showing that retail clients are receiving good outcomes across the product life cycle.

Completion of the Edinburgh Reforms and the Future Regulatory Framework

The UK’s Future Regulatory Framework (FRF) continues to reshape how prudential and conduct requirements are made, interpreted and supervised. As more retained EU law is repealed during 2025–26, the FCA and the Prudential Regulation Authority (PRA) will materially expand their rulebooks, accompanied by enhanced consultation duties and a sharper focus on the new secondary international competitiveness and growth objectives. Firms should anticipate more principles-led, less prescriptive rulemaking, coupled with a more agile supervisory dialogue. This shift increases the importance of horizon scanning, responses to CPs/DPs, and maintaining a robust evidential basis for internal governance around regulatory engagement.

Reform of Ring-Fencing and Threshold Changes

The government’s response to the Ring-Fencing Review introduces recalibrated thresholds, updated definitions of “core deposits”, and targeted exemptions for smaller systemic firms. Banks operating near thresholds should reassess structural compliance,

intra-group arrangements and permitted products within the ring-fence, particularly where offering complex or digital assets to retail clients.

The Consumer Duty as the Regulatory “North Star”

Since coming into force for open products in 2023 and for closed products in 2024, the Consumer Duty has become the FCA’s primary enforcement and supervisory lens for retail-facing financial services. Its expectations are no longer confined to headline suitability or appropriateness questions; rather, firms must evidence that their strategies, product features, distribution channels and service models align with retail customers’ needs and deliver “good outcomes” on a continuing basis. In practice, this has had several consequences for complex or unlisted investments.

First, fair value assessments now drive commercial decision-making and price architecture for a broader range of assets. For unlisted vehicles – such as long-term asset funds (LTAFs) or other illiquid AIFs – firms need to map the interplay between costs, access restrictions, liquidity profiles and expected returns over realistic holding periods. The FCA’s scrutiny has increasingly focused on whether a product’s charging structure and ancillary fees can be justified in light of target market characteristics and reasonable expectations about performance and risk.

Second, the Consumer Duty intensifies the need for coherent product governance under the FCA’s Product and Governance (PROD) sourcebook, with strengthened target market articulation, granular distribution strategy oversight and clear use of positive/negative target market criteria. The FCA expects not merely documented product governance frameworks but also active oversight and credible challenge by manufacturers and distributors alike, particularly where products are made available on execution-only platforms or via networks of appointed representatives.

Third, post-sale support, information quality and complaint root-cause analysis are being tested against the Consumer Duty’s consumer support and consumer understanding outcomes. For illiquid or complex assets, that imposes a heavier onus on firms to ensure that communications remain clear, accurate and bal-

anced throughout the product life cycle, including in down markets or during gating and suspension events.

Treatment of Vulnerable Customers and Forbearance Standards

The FCA has reinforced expectations that firms identify, record and tailor support to vulnerable customers – particularly across banking, payments and lending activities. Forbearance practices, fee charging during periods of financial stress, and the clarity of communications during arrears remain high-priority supervisory areas. Management information (MI) evidencing consistent treatment across channels will be required.

Motor Finance and the Redress Programme

The FCA's sector-wide review into discretionary commission arrangements (DCAs) and associated redress determinations will continue through 2025–26. Banks and lenders should prepare for significant operational uplift in complaint handling, data retrieval, remediation governance and capital planning. The FCA is expected to scrutinise whether firms' remediation approaches meet the Consumer Duty's standards for fairness and timeliness.

Reform of Payment Services Regulation and APP Fraud Reimbursement

The UK's updated payment services regime will introduce more prescriptive safeguarding, liquidity and governance rules for payment and e-money institutions. Firms must also adapt to the mandatory reimbursement regime for authorised push payment (APP) fraud, requiring new operational controls, data-sharing arrangements and real-time fraud detection capabilities.

Open Banking Transition and the Road to Open Finance

2026 will see structural reforms to the UK open banking ecosystem, including the establishment of a long-term regulatory and governance framework. Firms should prepare for mandatory API performance standards, strengthened dispute resolution, and the early design of open finance requirements covering savings, credit, investments and insurance.

Retail Access to Illiquid and Unlisted Assets: the LTAF and Beyond

The UK has taken its own approach to facilitating long-term investment by pension schemes and sophisticated retail clients through the LTAF regime. Recent FCA rule changes have steadily widened the potential footprint of the LTAF across the retail ecosystem, anchored by stricter governance and more comprehensive disclosure. As access expands beyond defined contribution schemes and into advised retail channels, the regulator's posture reflects a pragmatic balance: enabling productive finance while embedding robust protections in target market criteria, liquidity management, valuation controls and distribution safeguards.

For firms considering bringing illiquid strategies to a broader client base – private equity, infrastructure, private credit or real assets – three design considerations recur. First, liquidity mechanisms must be honest to the underlying asset class, with redemption terms, notice periods and gating options set out plainly, avoiding any implication of liquidity transformation. Second, fair value assessment should be no less exacting than that applied to listed UCITS, but tailored to illiquid fund economics and the cadence of capital deployment and return. Third, distributor training and data requirements need to be elevated so that intermediaries can evidence that client understanding has been achieved and maintained.

Beyond the LTAF, the FCA has sharpened warnings on mass distribution of complex and high-risk investments to retail clients. Its guidance and interventions around speculative illiquid securities, mini-bonds and other high-risk propositions underscore a broad trend: where structures are opaque, concentrated or contingent on aggressive marketing claims, the threshold for acceptable retail access is now materially higher, and the evidential burden on firms is heavier.

Financial Promotions and Approvals: Gatekeeping Tightens

The UK financial promotions regime has undergone substantial recalibration. Two reforms stand out for distribution strategy.

First, the new Financial Promotion Approvals regime imposes a dedicated gateway for firms wishing to approve third-party promotions under Section 21 of the Financial Services and Markets Act 2000 (FSMA 2000). This has raised the quality bar for approver firms, increased accountability for the ongoing monitoring of approved content, and tightened the feedback loop where promotions are distributed via appointed representatives (ARs) or other third-party channels. Approvers must consider the target market, the medium and the complexity of the product to ensure that promotions are clear, fair and not misleading throughout their life cycle – not just at initial sign-off.

Second, the changes to the high net worth and sophisticated investor exemptions have curtailed the ability to deploy broad-based self-certification pathways. Criteria and processes have been tightened to reduce inappropriate retail access via exemptions, particularly in relation to higher-risk, unlisted offers. Firms reliant on these routes need to revisit segmentation, onboarding questionnaires and verification steps, and should align these with strengthened appropriateness tests and the Consumer Duty's consumer understanding outcome.

Crypto-asset promotions provide a useful case study. Since the regime's expansion to capture qualifying crypto-asset communications, firms have been required to adopt more rigorous risk warnings, avoid inappropriately gamified or urgency-based messaging, and ensure that channels used are consistent with the sophistication and risk tolerance of the target audience. The FCA has signalled that it will continue to intervene in this space where poor practice persists, and expects approvers to be demonstrably competent to assess crypto-related promotions.

Disclosure Reform and the UK's Post-Brexit Framework

The UK is steadily decoupling its retail disclosure framework from EU-derived rules, aiming for simpler, more comprehensible consumer-facing materials. This programme sits alongside the FCA's labelling and anti-greenwashing rules and is expressly tied to the Consumer Duty's consumer understanding outcome. The policy rationale is straightforward: shorter, clearer

and more decision-useful disclosures should drive better consumer outcomes than prescriptive, technical documentation designed primarily for regulatory completeness.

Key implications for product manufacturers and platforms include a shift to layered disclosure with clear signposting of risks and fees, a re-examination of performance presentation standards and benchmarks, and the expectation that firms will test consumer comprehension in practice rather than rely on formalistic compliance. For alternative investment products, including unlisted strategies, that likely means retooling risk factor language to avoid boilerplate and ensuring that liquidity constraints, valuation uncertainty and potential capital loss are explained in plain terms.

Separately, the UK's new public offers and admissions regime replaces the EU Prospectus Regulation with a more flexible, FCA-guided model. While the core investor-protection objectives remain unchanged, issuers and intermediaries should note the increased emphasis on materiality and the FCA's ability to set more tailored disclosure requirements by market segment or instrument type.

Sustainability Disclosures and Anti-Greenwashing Controls

The FCA's Sustainability Disclosure Requirements (SDR) and investment labels rules mark the UK's most significant sustainability intervention to date, with the anti-greenwashing rule already in force. The message is unambiguous: sustainability-related claims must be specific, substantiated and accurately reflect a product's investment strategy, stewardship approach and holdings over time. Labels – where used – must align with investment objectives, asset selection processes and measurable sustainability outcomes, and cannot be deployed as marketing badges detached from underlying realities.

For UK-distributed unlisted strategies, potential pitfalls include vague impact narratives for private market investments, incomplete or uneven data coverage across portfolio companies, and overstatement of influence on ESG practices where holdings are minority or passive. Governance expectations extend to board-level oversight of sustainability claims and

adequate resourcing for data collection, verification and ongoing monitoring. The FCA has indicated that it will not hesitate to challenge firms that over-claim or mislead, particularly where retail branding is involved.

The SDR interacts with the Consumer Duty in two material ways. First, sustainability claims form part of the consumer understanding outcome; misleading or opaque claims risk breach irrespective of the product's financial risk profile. Second, fair value analyses must account for the costs associated with sustainability tooling – data providers, assurance and stewardship – and evidence that these costs translate into verifiable benefits aligned with the product's stated aims.

ARs, Oversight and Distribution Controls

The FCA's reinforced expectations for principals in the ARs regime have practical consequences for distribution networks, particularly where ARs promote or arrange more complex products. Principals face enhanced responsibilities for pre-appointment due diligence, ongoing oversight, financial promotions control and data reporting. The regime's direction is clear:

- principals must be able to demonstrably supervise and be accountable for AR activities; and
- diffuse or multiple-delegated oversight models will invite scrutiny.

For manufacturers using AR networks to reach retail customers, three risk vectors stand out. First, the alignment of AR incentives with fair value and target market outcomes must be real and evidenced – commission structures or volume-driven remuneration can be incompatible with the Consumer Duty's expectations. Second, principals need timely and granular MI on AR sales practices, cancellations, complaints and customer understanding metrics to spot harm and intervene quickly. Third, where ARs rely on approver firms for promotions, the chain of accountability must be coherent – splitting responsibilities between multiple third parties does not dilute the principal's obligations.

Systemic Payment Firms and Heightened Oversight

The joint FCA/Bank of England regime for systemic payment firms introduces prudential, liquidity, operational resilience and wind-down planning obligations aligned with banking-style oversight. Firms approaching systemic designation thresholds should map the potential impact on capital, governance and outsourcing.

Digital Assets, Stablecoins and the Revised Perimeter

The UK continues to build a measured regulatory perimeter for digital assets. Recent steps include the phased introduction of a regime for fiat-backed stablecoins used as a means of payment, aligning conduct oversight with the FCA and, for systemic arrangements, with the Bank of England. This twin-peak approach reflects the UK's focus on consumer protection and financial stability. For firms exploring tokenised fund units, on-chain settlement infrastructure or stablecoin rails for subscriptions and redemptions, the practical takeaway is that perimeter management will be critical: permissions, safeguarding, custody, outsourcing and resilience expectations will converge as products interface with regulated e-money, payments and custody functions.

Crypto-asset promotions provide a near-term compliance imperative. Firms must ensure that all retail-facing materials meet the heightened standards on risk warnings, do not exploit behavioural biases, and are capable of being withdrawn or amended rapidly as market conditions change. For tokenised offerings resembling securities or units in a collective investment scheme, firms must analyse the existing perimeter carefully; the FCA has shown a readiness to intervene early where consumer harm is plausible.

The Digital Pound and Digital Securities Infrastructure

2026 may see progression of the design phase for a potential UK digital pound, with focus on privacy, programmability constraints, intermediated wallet models, and impacts on bank funding. Alongside this, the Digital Securities Sandbox (DSS) aims to enable tokenised wholesale settlement models, requiring

banks to consider custody, operational resilience and prudential impacts of on-chain assets.

Operational Resilience, Critical Third Parties and Supply Chain Risk

Operational resilience has matured from a policy concept to a binding compliance reality. The FCA and PRA expect firms to identify important business services, set impact tolerances, map dependencies and test their ability to remain within tolerance in severe but plausible scenarios. This expectation is of immediate relevance to manufacturers and distributors of retail investment products, whose service chains frequently rely on cloud providers, transfer agents, valuation agents and market data vendors.

The UK's emerging critical third party (CTP) regime will further sharpen supervisory focus on systemic outsourcing risks. While designation as a CTP will be limited to providers whose failure could pose systemic risk, the regime's existence signals broader supervisory scrutiny on concentration risk, exit plans and contractual levers ensuring access, audit and substitution rights. Firms should anticipate that resilience assessments will encompass not only their internal systems but the integrity and recoverability of the supply chain supporting customer-facing services.

AI Governance and Model Risk Management

Use of AI in credit decision-making, fraud detection, marketing and customer interaction will be subject to an integrated regulatory approach from the FCA, the PRA and the Information Commissioner's Office (ICO). Firms should expect mandatory governance requirements covering explainability, bias detection, human oversight, data provenance and operational resilience of AI models. For PRA-regulated firms, the PRA's Model Risk Management (MRM) principles will apply to both traditional and AI-driven models, requiring inventory mapping, validation, testing and senior manager accountability.

SMCR (phased) Reform and Senior Manager Accountability

The government's Senior Managers and Certification Regime (SMCR) reform, due to be implemented in phases from 2026, will streamline regulatory approvals, adjust the certification regime and refine

conduct-rules applicability. Despite simplification, the FCA's supervisory messaging is clear: senior manager accountability for consumer outcomes, financial promotions governance, data quality and operational resilience will intensify, supported by more intrusive, data-driven thematic reviews.

Non-Financial Misconduct as a Conduct Risk

Following consultation, the FCA is expected to finalise updated rules incorporating non-financial misconduct into fitness-and-propriety assessments and conduct-rules compliance. Banks should embed behavioural risk frameworks, evidencing consistent disciplinary processes and cultural metrics.

Depositor Protection and FSCS Reform

HM Treasury's review of depositor protection may lead to recalibrated Financial Services Compensation Scheme (FSCS) limits, changes to temporary high balances protection, and amended payout processes. Banks should assess operational readiness for accelerated payout and customer communications during resolution or failure scenarios.

Enforcement, Supervisory Posture and the Evidence Imperative

Across the regulatory themes outlined above, the FCA's operational posture has been consistent: supervision and enforcement will be data-driven and outcome-based. Firms are expected to collect and use management information that is timely, granular and comparable across business lines. For retail distribution of complex products, this includes metrics on target market adherence, appropriateness test outcomes, cancellation and switch rates, complaints causation and indicators of customer understanding.

The FCA will operate a reformed enforcement model characterised by earlier public identification of investigations, accelerated case timetables, and a stronger appetite for using Section 166 and voluntary requirements (VREQs) – ie, a set of conditions that a financial services firm formally requests (even if proposed by the FCA) to have imposed on it by the FCA to redress regulatory concerns, to compel rapid remediation. Banks must maintain detailed MI and audit trails to defend decisions in areas such as fair value, promo-

tions governance, suitability and vulnerable customer treatment.

In this context, “paper compliance” is unlikely to satisfy supervisory expectations. The FCA will ask for the data underpinning fair value assessments, pressure-test the assumptions used in product stress testing, and examine how MI informs interventions – product withdrawal, tightening of target market criteria, enhanced adviser training or changes to fee structures. Firms should expect a greater emphasis on ex post validation – ie, whether customers did in fact receive the outcomes that the firm predicted.

Practical Implications for Product Structuring and Distribution

For manufacturers of unlisted and illiquid products seeking UK retail distribution – whether via advised channels, platforms or AR networks – several practical imperatives follow from the current framework.

Product architecture must reflect realistic holding periods and liquidity mechanics, with clear investor communications on redemption terms, valuation lags and the potential for gating. Charging structures must be justified through fair value assessments that consider the cumulative cost to the retail customer, the expected net benefit, and the availability of materially cheaper substitutes delivering comparable outcomes.

Target market articulation should be granular and enforceable across distribution channels, with negative target market criteria used to exclude unsuitable segments. Distributors, including ARs, must be equipped with training and tools to assess client understanding, particularly for features that differ markedly from mainstream UCITS – drawdowns, capital calls, dilution levies or performance fee crystallisation.

Financial promotions oversight should be designed to operate at scale, including pre-approval protocols, content inventories, expiry and review cycles, and data capture on distribution reach. Approver firms should be selected for competence in the relevant

asset class and channel; documentation of competence is no longer optional.

Sustainability claims – where made – should be evidence-based, restrained and aligned with strategy and holdings. If data limitations exist for private assets, these should be disclosed plainly, with a realistic plan for improving coverage and a clear explanation of how stewardship or engagement is conducted.

Lastly, operational resilience must be embedded early. Tokenised or digital distribution models, cross-border reliance on non-UK affiliates, and cloud-based infrastructure all require clear legal and operational mapping, robust outsourcing oversight, and a credible approach to exiting or substituting critical service providers.

Outlook

The UK is not attempting to import the entire corpus of EU reforms nor to revive the permissive retail distribution practices that preceded the era of mini-bond failures and speculative illiquid securities. Instead, the regulatory strategy is to enable access to long-term, productive assets through regimes such as the LTAF while hardwiring the Consumer Duty into every stage of the product life cycle. Marketing freedoms are matched by stricter gatekeeping under the promotions approval regime, and disclosure is being retooled to inform rather than overwhelm. Sustainability claims must be capable of proof, and digital asset perimeters are being built deliberately to support innovation without sacrificing consumer protection or systemic resilience.

For firms, the challenge is to meet these expectations without losing commercial velocity. Success will hinge on credible product governance, disciplined distribution oversight, and a mature evidence base showing that customers receive the outcomes that the firms intend to deliver. Those who invest early in these capabilities will find that the UK remains a hospitable market for innovation in retail investment products – provided that innovation is accompanied by transparent, durable and consumer-centric design.

UKRAINE



Law and Practice

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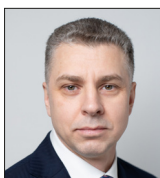
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in-depth market knowledge. Its world-class team delves deep into the heart of each client's business to craft the most effective and transparent solutions, tailored to protect and enhance their reputation. The firm combines deep market knowledge with strategic precision to guide clients through complex transactions and disputes, helping to protect and enhance their reputations.

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ARZINGER

1. Legal Framework

1.1 Key Laws and Regulations

Principal Laws and Regulations

The banking regulation system in Ukraine consists of laws that were promulgated by the Parliament of Ukraine and respective by-laws introduced by supervising authorities. Among the principal laws and regulations governing the Ukrainian banking sector are the following.

- The Law of Ukraine “On Banks and Banking Activity”, dated 7 December 2000 (the “Banking Law”). This Law stipulates the structure of the Ukrainian banking system as well as the general organisational, legal and economic requirements for the creation, operation and liquidation of banks.
- The Law of Ukraine “On Joint Stock Companies”, dated 27 July 2022 (the “Joint Stock Companies Law”). This Law sets the procedure for creation, operation and reorganisation of joint stock companies as well as the rights and obligations of shareholders. A joint stock company is the primary legal form that banks use in Ukraine.
- The Law of Ukraine “On Financial Services and Financial Companies”, dated 14 December 2021. This Law establishes high-level regulation for:
 - (a) the functioning of the financial market;
 - (b) the activities of financial and/or ancillary services providers; and
 - (c) state regulation and supervision of financial services providers, etc.
- The Law of Ukraine “On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction”, dated 6 December 2019 (the “AML Law”). This Law establishes a legal mechanism for counteracting and combating laundering of illicit proceeds, terrorism financing and financing the proliferation of weapons of mass destruction (“anti-money laundering”, or AML) by determining the subjects of AML combating and their rights and obligations. Ukrainian banks, as primary subjects of AML combating, have to comply with this Law.
- The Law of Ukraine “On Currency and Currency Transactions”, dated 21 June 2018. This Law stipulates general foreign exchange regulations, includ-

ing the possibility of introducing restrictions when necessary, ranging from restrictions on the transfer of funds from Ukraine to export-import transaction supervision. Under the Law, banks are declared as the main authorised subjects that have to make sure that the payments they facilitate do not violate the currency control regulations. Nine regulations have been issued by the National Bank of Ukraine (NBU) to address foreign exchange regulation in detail.

- Regulation No 18 on the Operation of the Banking System During Martial Law, approved by the Management of the NBU, dated 24 February 2022 (the “Martial Law Regulation”). The Martial Law Regulation sets the foreign exchange restrictions that apply in Ukraine for the period of martial law and overrules all other regulations issued by the NBU.
- Instruction No 368 on the Procedure of Regulating Banking Activity in Ukraine, approved by the Management of the NBU, dated 28 August 2001 (the “Banking Activity Instructions”). The Banking Activity Instructions set economic and financial requirements with which banks must comply.
- Regulation No 149 on Licensing of Banks, approved by the Management of the NBU, dated 22 December 2018 (the “Licensing Regulation”). The Licensing Regulation, among other things, stipulates:
 - (a) the detailed procedure for the creation and liquidation of banks;
 - (b) the banking licence application procedure; and
 - (c) the requirements for shareholders or potential buyers of a bank.

Banking Sector Regulators

The main state regulator and supervisor of banks is the NBU. In general, the NBU:

- issues and revokes bank licences;
- provides banks with the necessary financing, including acting as the lender of last resort;
- gives a bank’s purchasers or its current shareholders permission to acquire or increase their shareholdings in the bank respectively; and
- is responsible for prudential supervision.

Another important regulator is the Deposit Guarantee Fund (the “Fund”), which is responsible for ensuring

the functioning of the deposit guarantee system in Ukraine, liquidating insolvent banks and repaying amounts to creditors, including guaranteed amounts to individuals.

2. Authorisation

2.1 Licences and Application Process

Authorisation Requirement

Under the law, legal entities are prohibited from carrying out banking activities unless they have obtained a banking licence. Banking activities include:

- deposit services (attracting funds and bank metals from an unlimited number of persons with an obligation to return them);
- bank account services (opening and managing bank accounts for clients); and
- credit services (lending funds that were attracted as deposits).

A person carrying out banking activities without a licence can be held liable according to the law. Specifically, a person carrying out banking activities without the respective licence can be held liable under Article 1668 of the Code of Ukraine on Administrative Offences, which sets a fine ranging from UAH1,700 (approximately USD40) to UAH51,000 (approximately USD1,200). Depending on the particular case, a person that carried out banking activities without a licence can also be held liable under civil and/or criminal charges.

Authorisation Process

The NBU is the main regulator that issues banking licences to applicants in Ukraine. A newly established bank must apply for a banking licence within a year of its registration as a legal entity.

Before the state registration of a bank as a legal entity, shareholders of the bank or their representatives must apply to the NBU for approval of the bank's charter. At the same time, an authorised representative of the future bank must file documents regarding its shareholders. In general, the package of documents includes:

- banking licence application;
- corporate decisions establishing the bank;
- the bank's charter;
- shareholders' identification/business reputation documents/information;
- confirmation of the full payment of the charter capital;
- information regarding affiliated entities/persons;
- strategy and business plan;
- approval of the Antimonopoly Committee of Ukraine (if applicable); and
- other documents.

All documents/information should be submitted to the NBU at the same time. The NBU reserves the right to request any additional documents/information that it considers necessary for decision-making. The NBU has three months upon receiving the full package of documents to decide whether to issue a banking licence or refuse. The overall application fees to be paid by a future bank to the NBU total UAH229,000 (approximately USD5,500).

Banking and Ancillary Activities

The activities that are allowed to be or prohibited from being carried out by Ukrainian banks are listed in Articles 47 and 48 of the Banking Law.

Banks are allowed to provide banking and other financial services, except for insurance services, under a banking licence. Banking services include:

- deposit services (attracting funds and bank metals from an unlimited number of persons with an obligation to return them);
- bank account services (opening and managing bank accounts of clients); and
- credit services (lending funds that were attracted as deposits).

Banking services can only be provided by banks.

Other financial services that can be provided by banks are:

- financial leasing;
- factoring;
- issuance of guarantees;

- currency trading;
- financial payment services;
- financial instruments trading (either direct purchase sale or organisation of this trading);
- clearing services;
- depository services;
- asset management;
- management and financing of real estate construction; and
- administration of non-state pension funds.

Banks can also carry out specific activities other than providing banking and financial services. Specifically, banks can provide custodian services or offer individual bank safes, as well as rendering operations with cash, providing cash delivery services and providing consultation and information services regarding banking and other financial services. Finally, banks can act as an administrator for the purposes of the issuing of bonds.

Specific services can be provided by banks subject to obtaining the respective licence from the National Security and Exchange Commission.

Ukrainian law directly forbids banks from engaging in risky activities that undermine the interests of depositors or other creditors of a bank. In addition, banks cannot engage in material production, trade or insurance.

Banks can own real estate up to 25% of their equity capital. The threshold does not apply to:

- premises that are used for banking operations;
- enforced real estate;
- real estate assets acquired by a bank to avoid damages subject to the sale of the assets within a year from the date of the acquisition; or
- assets owned by a bank based on the trust ownership.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

A person intending to acquire or increase control over a bank must notify the NBU about the proposed acquisition or increase if the acquisition or increase triggers the substantial control threshold requirement. The substantial control thresholds are set at 10%, 25%, 50% and 75% or more of the charter capital of a bank. The law directly forbids acquiring or increasing substantial control over a bank without the NBU's consent. At the same time, the notification requirement also applies if a shareholder decreases its control in a bank so that the substantial control thresholds are triggered.

A bank must notify the NBU within three working days of the date it became aware of the acquisition, increase or decrease of substantial control over the bank.

A shareholder that intends to acquire or increase its substantial control over a bank must apply to the NBU for respective approval. The shareholder must apply for approval no later than two months before the anticipated acquisition or increase. The applicant must file documents and information that will allow the NBU to consider the following issues:

- the ownership structure after the acquisition or increase of substantial control;
- approval or consent of the Antimonopoly Committee of Ukraine (if applicable);
- the business reputation of the applicant;
- the financial position of the applicant; and
- other issues.

There are no direct restrictions on the foreign ownership of Ukrainian banks, except for individuals or legal entities residing or registered in a state conducting aggression against Ukraine and subject to the applicable sanctions requirements of Ukraine.

4. Governance

4.1 Corporate Governance Requirements

Applicable Regulation

Since Ukrainian banks are established and exist as joint stock companies, the Joint Stock Companies Law applies to them. The Law specifies the general requirements for the corporate governance structure and directors' duties of joint stock companies. The corporate governance structure of banks is subject to more detailed requirements that are contained in the Banking Law and the Licensing Regulation.

Governing Bodies

A shareholders' meeting is the highest management body in a bank. It is responsible for the general management of the bank. This includes:

- defining the main areas of its activity;
- amending the management structure;
- issuance or cancellation of shares; and
- approval of regulations applying to the activity of the shareholders' meetings, management board and supervisory board, etc.

The management board is responsible for the day-to-day management of the bank. It has to create the following mandatory committees as a minimum:

- credit committee; and
- assets and obligations committee.

The management board is headed by a CEO, who is personally liable for the bank's business. There must be no fewer than three members on a bank's management board. The tenor of the management board's members' service must not exceed three years. After the expiration of this term, they may be reappointed for a new term.

Banks are obliged to have a supervisory board, which will be responsible for supervising the management board's activity and protecting the interests of depositors, the other creditors of the bank and the bank's shareholders. Under the law, a bank must have at least five members on its supervisory board. Members of the supervisory board are forbidden from holding any other positions in the bank.

Banks are obliged to have risk management, compliance and internal audit departments. These departments represent an integral part of the compliance and risk management system of a bank. The NBU sets out special qualification requirements for the heads of these departments. The dismissal of the heads of the risk management, compliance and internal audit departments must be approved by the NBU, unless the head is dismissed based on their voluntary decision or based on mutual agreement between the head and the bank or due to the expiration of a labour agreement.

Ethical and Diversity Requirements

Each bank must incorporate a code of conduct (ethical code). The ethical code must be approved by the supervisory board of the bank. The approved ethical code is mandatory for the bank's employees.

No diversity requirements apply to the corporate governance of Ukrainian banks.

4.2 Registration and Oversight of Senior Management

A person falls under the definition of "senior manager" if they hold any of the following positions in a bank:

- head, deputy head or member of the management board;
- head, deputy head or member of the supervisory board; or
- chief accountant.

The appointment of senior managers of a bank must be approved by the bank according to the procedure defined in the Licensing Regulation. The head of the management board, the chief accountant and the members of the supervisory board can only commence their duties after the NBU's approval.

In general, senior managers must comply with qualification requirements that relate to professional suitability and business reputation.

Their business reputation must be impeccable. In order to prove the professional suitability of a senior manager, a bank must file documents proving the

person's educational, professional and management experience.

Under the law, a senior manager must have a specific number of years of experience before holding a specific position. For example, the head of a management board must have at least five years of experience in banking and finance and at least three years of experience of management positions in a bank. Other members of the management board must have at least three years' experience of a management position in a bank.

No fewer than half of the members of the supervisory board of a bank, including the head of the supervisory board, must have at least three years of experience in the banking industry. The law requires the chief accountant to have at least five years of experience. Meanwhile, the deputy to the chief accountant must have at least two years of experience to hold the position.

A bank must inform the NBU about the appointment of a senior manager within three days from the appointment and file all documents to the NBU within a month for the appointment to be approved. The NBU must inform the bank of its decision within 45 calendar days of receiving the full package of documents from the bank. A bank may also receive pre-appointment approval from the NBU. In this case, no further approval by the NBU is needed if the bank appoints the respective senior manager within six months from the date of the pre-appointment approval.

4.3 Remuneration Requirements

Applicable Regulation

The NBU has introduced Regulation No 153 on the Remuneration Policy in a Bank, dated 30 November 2020 (the "Remuneration Regulation"), which sets the requirements for the internal remuneration policies or regulations of banks and the respective reports. The requirements stipulated in the Remuneration Regulation are minimum requirements, and a bank has to set other detailed requirements considering the bank's size, particularities, risk profile, banking and financial services offering, etc.

A bank must implement a specific remuneration regulation for members of the management board and persons whose professional conduct has a significant effect on the bank's risk profile in line with the remuneration policy.

Individuals Subject to the Remuneration Requirements

The requirements of the Remuneration Regulation generally apply to:

- members of the management board;
- members of the supervisory board; and
- persons whose professional conduct has a significant effect on the bank's risk profile ("Significant Professional Persons").

A bank's employee falls under the definition of "Significant Professional Person" if they satisfy one of the quantitative or qualitative criteria listed in the Remuneration Regulation or the bank's remuneration policy; for example, the person:

- is head of a department;
- is the chief accountant of the bank;
- holds a position that entitles them to introduce new banking products or veto decisions on implementation of new banking products; or
- has a salary in excess of EUR70,000.

Remuneration Principles

The remuneration policy of a bank must:

- ensure sustainable development, comply with the bank's strategy and facilitate functioning of the risk management;
- be gender neutral and be based on the principle of equal remuneration of male and female employees; and
- be precise, documented, transparent and written in plain language.

5. AML/KYC

5.1 AML and CFT Requirements

Applicable Regulation

The primary legal acts addressing AML and CFT issues are the AML Law and Regulation No 65 of the NBU on the Conducting of Financial Monitoring by Banks, dated 19 May 2020.

General Rule

Under the AML Law, banks are declared the subjects of primary financial monitoring, ie, subjects that analyse, report, suspend, terminate and/or block (as the case may be) financial transactions or bank accounts of their clients according to the procedures stipulated in the AML legislation.

Customer Due Diligence

Banks as subjects of primary financial monitoring have to conduct proper due diligence of their clients. The proper due diligence of a client includes various actions such as verifying the identity of the client, determining the ultimate beneficiary owner(s) of the client (including the ownership structure), and clarifying the aim and character of the client's financial transactions and business relationships, as well as conducting permanent monitoring of these transactions or relationships and securing the documents that are relevant to the client.

Identification or verification of a client must be done before establishing business relationships with the client. A bank has a right to request information/documents/explanations from the client to perform its obligations under the AML legislation, and the client has to address the respective enquiry.

While performing their obligations, banks must use a risk-oriented approach. This means that the strictness and depth of any analysis depends on the client's risk assessment or the financial transaction's suspiciousness assessment. Specifically, where the risk is low, the bank can conduct simplified proper due diligence, while where the risk is high, enhanced due diligence must be conducted.

Banks also have to update the client's due diligence portfolio from time to time. The frequency of the

update depends on the client's risk level and can vary from once in five years (in the case of low-risk clients) to once a year (in the case of high-risk clients).

Reporting

Banks have to report suspicious and threshold financial transactions exceeding UAH400,000 (approximately USD9,500) as well as on any discrepancies between the information on the ultimate beneficiary owner(s) of a client in the State Register of Legal Entities of Ukraine and the information filed by a client. Suspicious transactions are ones that in a bank's view may be connected to money laundering or terrorism financing. All reports must be filed with the State Financial Monitoring Service of Ukraine, the main state body executing financial intelligence powers in Ukraine.

Internal Controls and Procedures

The AML legislation obliges banks to implement robust and sound internal policies, control and procedures. A bank must establish a three-level AML security structure, create a separate AML division to be led by an authorised person approved by the NBU, introduce internal AML policies/procedures and ensure regular reporting to the board of directors.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

General

Under the Law of Ukraine "On the Individuals' Deposit Guarantee System", dated 23 February 2012 (the "Deposit Guarantee Law"), all banks have to be members of the Fund and they become members upon receiving a banking licence from the NBU.

Administrator of the Scheme

The Fund is a special government agency responsible for the administration of the individuals' deposit guarantee system, removing insolvent banks from the Ukrainian banking system and liquidating banks.

Entitled Persons

The Fund only guarantees deposits of individuals and individual entrepreneurs that are held by a bank based on the banking account agreement and/or banking

deposit agreement, including interest accrued on these amounts.

Guaranteed Amount

The Deposit Guarantee Law states that the guaranteed deposit amount is limited to UAH200,000 (approximately USD4,700). However, between the imposition of martial law and three months after it is terminated, no limits apply to the amounts that must be returned to individuals and individual entrepreneurs. Depositors are therefore entitled to receive the full amount of funds deposited with the bank. After the termination of the current period of martial law that came into effect on 24 February 2022, the guaranteed amount will be increased to UAH600,000 (approximately USD14,000).

Funding

The Fund is funded via the following main sources.

- **Initial fees:** Newly licensed banks have to pay a fee to the Fund that is equivalent to 1% of the bank's charter capital within 30 calendar days from the day the licence is issued.
- **Regular fees:** Banks have to pay regular fees on the last working day of each quarter. The fees are calculated based on the accrual basis for calculating the regular fee, which is the arithmetic average of the daily balances on deposit accounts.
- **Funds received from the investment activity of the Fund:** The Fund can invest its funds into state treasuries or bonds of international finance institutions.

The Fund also actively traces assets of insolvent banks and their beneficiaries. Specifically, the Fund initiated numerous court and enforcement proceedings against banks and their beneficiaries that went insolvent between 2015 and 2017. During this period, approximately 90 banks went into insolvency. Most of these were liquidated.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

Applicable Regulation

The capital, liquidity and related financial ratio requirements are set by the Banking Activity Instructions.

Basel III standards have not been implemented in Ukraine so far. However, over the course of the last few years, the NBU has been updating the Banking Activity Instructions to implement EU banking features and Basel requirements. The further implementation of the EU and Basel requirements will continue due to the integration course Ukraine has embarked on with the EU.

Risk Management

Banks must create comprehensive, robust and effective internal control management systems that include risk management and internal audits. The risk management system of a bank must ensure the detection, evaluation, monitoring, control, reporting and reduction of all material risks in the bank's activity. When developing the risk management system, the bank must consider its size and the volume, types and features of the bank's transactions. Risk management and compliance departments are mandatory in the bank's organisational structure.

Charter Capital

The charter capital of a bank must not be less than UAH200 million (approximately USD4.7 million). The NBU may set a higher charter capital amount threshold for specific banks.

Regulatory Capital Adequacy

The NBU requires banks to have regulatory capital adequacy at the level of 10% of the total risk exposure (total amount of assets + minimum amount of operational risk x 10 + minimum amount of market risk x 10 + total amount of differences that occur due to the transfers into banking or trade books (uncovered credit risk)).

However, a different ratio applies to newly established banks. For the first 12 months of its operation (commencing on the date of obtaining the banking licence),

a newly established bank must comply with a 15% ratio of the total risk exposure. Thereafter, they must comply with a 12% ratio for the second year of their activity and, ultimately, with the 10% ratio from the third year onwards.

Capital Buffers

Conservation buffer

Banks must have a conservation buffer amounting to 2.5% of the total risk exposure.

Countercyclical buffer

The NBU obliges banks to create a countercyclical buffer in case of excessive growth of lending or other signs that indicate an increase in systemic risk. The amount of the buffer can be 0% to 2.5% of the total risk exposure.

Systemically important bank buffer

This buffer only applies to systemically important banks. As of June 2025, there are 16 systemically important banks. Depending on the category of the systemically important bank, the buffer requirement can be 1% (for the first category), 1.5% (for the second category) or 2% (for the third category) of the total risk exposure.

Systemic risk buffer

If systemic risks (other than those that have been considered for the countercyclical buffer) occur, the NBU can introduce a systemic risk buffer ranging from 0% to 3% of the total risk exposure.

Liquidity requirements

Banks must have enough liquidity assets to cover 100% of funds outflows for 30 calendar days under the stress scenario.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

General

The procedure for resolution of a failing bank is regulated by the Banking Law and the Deposit Guarantee Law. The regulators that are responsible for dealing with a failing bank are the NBU and the Fund. The NBU supervises banks and can declare a bank prob-

lematic or insolvent or initiate a liquidation procedure. The Fund, meanwhile, manages a failing bank through an administrator as well as sending proposals to the NBU regarding the bank's liquidation. The NBU is obliged to execute such proposals.

A failing bank can specifically be subject to three failure statuses:

- problematic bank;
- insolvent bank; or
- bank in liquidation.

Problematic Bank

The NBU may declare a bank problematic if it does not comply with the minimum legally required capital adequacy or liquidity requirements for 30 calendar days or if it systematically submits and/or publishes false information or reports with the purpose of concealing the real financial condition of the bank. The bank has 120 calendar days to remedy the situation and comply with the requirements. Upon the expiration of this term, the NBU declares the bank either compliant or insolvent.

Insolvent Bank

The removal of an insolvent bank from the banking market must be initiated upon the bank being declared insolvent. The removal of an insolvent bank from the banking market cannot be stopped.

The NBU can declare the bank insolvent if:

- the bank's capital adequacy ratios have decreased by 50% or more from the minimum required amounts;
- the grounds on which the NBU declared the bank problematic recur within 60 days of the NBU declaring the bank compliant;
- the bank has not performed its obligations before creditors (including depositors) in a timely manner due to the lack of funds;
- the problematic bank has not cured its financial ratios for 30 days;
- the problematic bank executes agreements that trigger an increase of obligations to individuals within the guaranteed deposit amount;

- the problematic bank has failed to execute the NBU's directives, decisions and/or requirements within the stipulated timeframe; or
- the problematic bank refuses to provide examiners with access.

The Fund establishes an interim administration of an insolvent bank no later than the next working day after receiving the official decision of the NBU on the declaration of the bank as insolvent. The interim administration manages the bank. During the interim administration period, the Fund will approve a resolution plan for the bank. The possible resolution options include:

- liquidation;
- bridge bank;
- asset separation;
- sale of the bank to an investor; and
- bail-in.

Liquidation

Bank can be liquidated if:

- the option is stipulated in the resolution plan;
- the resolution plan has not been executed within the term;
- the bank submitted false information when it applied for the banking licence;
- the bank has not performed any transaction within a year; and
- the bank has systematically violated the AML Law.

Once it is commenced, the liquidation procedure cannot be stopped. The liquidation is managed by the Fund and is completed upon approval of the liquidation balance sheet. The information about the liquidation must be reflected in the Banking Register and the Unified Register of Legal Entities.

Repayment Preference Rules

Each depositor will get repaid the guaranteed deposit amount. Amounts that exceed the guaranteed deposit amount will be repaid according to the repayment preference rule stated in the Deposit Guarantee Law. Specifically, funds received as a result of the liquidation and sale of the bank's assets or the investment of the bank's funds must be used by the Fund to repay the creditors' claims in the following preference order:

- life harm or health injuries claims;
- the salary claims of bank employees;
- the Fund's claims;
- claims of depositors that have not been covered by the guaranteed amount;
- the NBU's claims;
- claims of individuals in connection with blocked transactions;
- claims of other individuals;
- other claims, except for the subordinated debt;
- claims of affiliated persons;
- claims of the subordinated debt; and
- claims under write-off or conversion terms.

9. ESG

9.1 ESG Requirements

There are no specific banking regulatory requirements relating to ESG matters. However, over the course of the last few years, the NBU has been addressing the ESG issue constantly.

In 2021, the NBU introduced the Policy on Sustainable Financing Until 2025 (the "ESG Policy"), which aimed to establish the general vision of the main principles of sustainable financing in Ukraine and the respective actions of the NBU to implement sustainable financing. However, due to the commencement of the full-scale invasion of Ukraine by the Russian Federation, the implementation of the ESG Policy has been suspended, since it no longer reflected the current challenges that the financial community and the NBU face.

In 2024, the NBU released the Policy on the Development of Sustainable Financing (the "Sustainable Financing Policy"), which stipulates three stages of implementation:

- Introduction of a White Book on ESG policy that:
 - (a) proposes a unified terminology;
 - (b) adopts a unified questionnaire for banks' clients; and
 - (c) systematises the experience in preparing ESG policies and strategies for banks.
- Adoption of the ESG policy addressing recommendations for ESG risk management and disclosure.

- Application of the ESG policy to non-banking institutions.

In June 2025, the NBU approved the White Book on Managing Environmental, Social and Governance Risks in the Financial Sector, which discloses the essence of ESG risks, and the state and prospects of ESG regulation in Ukraine.

In the upcoming future, the NBU plans to provide recommendations to banks on the organisation of corporate governance, including the preparation of strategic documents on ESG risk management. In 2026, the same is planned for non-bank financial institutions.

The NBU also plans to prepare and discuss draft regulations on ESG risk management with:

- the banking market – during the first quarter of 2026; and
- the non-banking market – during the first quarter of 2027.

Thus, so far, the NBU has successfully completed the first stage of the Sustainable Financing Policy implementation and is gradually moving towards the second stage.

10. DORA

10.1 DORA Requirements

The Digital Operational Resilience Act (DORA) is an EU regulation that came into force in January 2025 and is aimed at increasing the cybersecurity resilience of financial services providers and ensure proper resistance and response to and recovery from disruptions. Ukraine is not an EU member yet, and DORA does not apply to local banks.

However, the NBU has introduced specific local regulations addressing cybersecurity and information and communications technology-related issues.

Regulation No 95 of the NBU on the Organisation of Measures to Ensure Information Security in the Banking System of Ukraine, dated 28 September 2017, sets the minimal organisational measures to be taken by

local banks to ensure information security and cybersecurity as well as requirements for the information systems of banks.

In 2022, the NBU also introduced Regulation No 178 on the Organisation of Cybersecurity in the Banking System of Ukraine, dated 12 August 2022, prescribing the main principles of the cybersecurity system, detailed cybersecurity measures of banks, and information exchange procedures between banks and the NBU.

Regulation No 4 of the NBU on Supervision over Compliance of Banks with Information Security, Cybersecurity and Electronic Trust Services Legislation, dated 16 January 2021 (the “Supervision Regulation”), specifies the NBU’s mandate to supervise banks in connection with compliance with cybersecurity legislation. It also obliges banks to conduct self-assessment of their information security and cybersecurity systems.

In 2025, the Supervision Regulation was supplemented by new reporting requirements. They require each bank to inform the NBU of any significant changes in the information security and cyber protection organisation related to:

- dismissal or transfer to another position/appointment of the chief information security officer;
- changes in the distribution of functions, duties and powers of the bank’s management and control bodies in terms of information security and cyber protection;
- changes in the organisational structure of the bank in terms of divisions whose functions include ensuring information security and cyber protection of the bank;
- making a decision on the introduction of a new product or significant changes in the bank’s activities that will have an impact on the organisation of information security and cyber protection of the bank; and
- making a decision on outsourcing the bank’s information security/cybersecurity functions or changing the provider of such services.

Thus, the NBU is actively working to strengthen control over cyber resilience, information security and digital operational resilience, in particular taking into account EU legislation on digital operational resilience in the financial sector.

11. Horizon Scanning

11.1 Regulatory Developments

Foreign Exchange Restrictions

Upon the commencement of the Russian Federation's full-scale invasion of Ukraine, the NBU introduced strict foreign exchange regulations by way of adopting the Martial Law Regulation. The Regulation overrules all other NBU foreign exchange regulations and is the main legal act addressing, among other things, the cases when local companies, including banks, can transfer funds from Ukraine abroad or buy foreign currency, restrictions for companies having Russian/Belarusian beneficiaries, the limits for card payment amounts, currency exchange peculiarities, etc. Banks are authorised entities and have to analyse their clients' transactions and make sure that the requirements under the Martial Law Regulation are met and that clients do not circumvent them.

Over the course of the last four years, the NBU has introduced numerous relaxations and exceptions. In 2026, more relaxations and exceptions will be introduced by the NBU provided that the macroeconomic situation does not deteriorate.

Open Banking

The NBU is known for its active part in the introduction of technical innovations in the financial sector. In recent years, steps have been taken to develop public key infrastructure and electronic trust services, remote identification for obtaining financial services, etc.

Besides this, the NBU has been actively progressing towards the adoption of open banking, having first approved the Open Banking Concept and then adopt-

ed Regulation No 80 on Open Banking, dated 25 July 2025 (the "Open Banking Regulation"). Open banking allows banks to exchange information with third-party service providers subject to a client's consent.

Hence, the Open Banking Regulation addresses, among other things:

- the procedure and conditions for the provision of open banking services;
- the procedure for the granting and withdrawing of a client's consent;
- principles of interaction between open banking participants; and
- principles of use and classification of specialised interfaces used in open banking.

Thus, the NBU is bringing Ukrainian legislation closer to European standards and is ensuring the fulfilment of the requirements for Ukraine's accession to the Single Euro Payments Area and the EU.

Inclusive Banks

The full-scale invasion by the Russian Federation caused a number of significant problems, including restricted access to financial services for inhabitants of particular regions near the front line and de-occupied regions.

Inclusive banks are intended to address this issue by ensuring unimpeded access to financial services in areas where the normal operation of banking institutions is hindered or not feasible at all.

The new type of licence will give an opportunity for retail and postal companies to provide services to their large number of customers. The licence will have a limited scope. To provide services, the company will have to create a separate branch in the form of a joint stock company – a bank of financial inclusion. After receiving the licence, the branch will be able to use existing infrastructure to provide financial services to the population and small businesses.

Trends and Developments

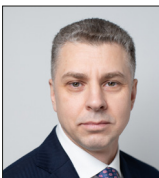
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Oleksander Plotnikov and Kyrilo Senyshyn
Arzinger Law Firm

Arzinger Law Firm is a leading independent law firm which is proudly headquartered in Kyiv. It has regional offices in Western and Southern Ukraine. For more than 20 years, the firm has been at the forefront of the legal industry, delivering top-tier legal expertise to clients in both Ukraine and internationally. The team consists of more than 70 highly skilled legal professionals, led by 12 seasoned partners, who each bring a wealth of experience, international education and

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ARZINGER

Introduction and Overview

Despite the ongoing war in Ukraine and its negative effects on the economy, Ukrainian banks have proved their sustainability and effectiveness over the course of the last four years. The volume of banks' lending has been growing, and the number of unsubsidised loans has been constantly increasing.

The National Bank of Ukraine (NBU) continues to clear the banking system of unsustainable and Russian-linked banks. The total number of banks has decreased by 11 since the start of the war in February 2022. Four out of five Russian-owned banks have been liquidated. Sense Bank, which held 3.2% of the market (the largest stake among the Russian-owned banks) has been nationalised, although the government has already begun preparations for the sale of shares in Sense Bank.

Banks continue to demonstrate operational stability. In the first half of 2025, they earned UAH100.06 billion (approximately USD2.4 billion) in pre-tax profits. This is nearly the same result as in the first half of 2024.

In general, the war has triggered substantial changes in the legislation that will shape the banking sector for decades to come.

Sanctions

Since the outbreak of the war, the Ukrainian sanctions policy has been constantly developing, engaging numerous state authorities, including the President of Ukraine, the Parliament, enforcement bodies and the NBU. The main legal act addressing the sanctions issue is the Law of Ukraine "On Sanctions" No 1644-VII, dated 14 August 2014 (the "Law on Sanctions").

On its introduction, the Law on Sanctions was a high-level document that omitted important details and raised many practical issues. However, as soon as the war broke out, it became important to have a feasible and hard-to-circumvent sanction system. The state bodies also proceeded to sanction persons and legal entities related to the Russian Federation and its allies (whose numbers totalled thousands of people). This required vital amendments to be introduced to the legislation.

The Parliament adopted multiple important amendments to the sanctions legislation. For example, the Parliament:

- introduced the possibility of freezing assets that are owned by sanctioned persons indirectly. Pre-2022, it was only possible to freeze assets that were directly owned by sanctioned persons;
- introduced the possibility of the disposal of assets of sanctioned persons in favour of the state. Pre-2022, this mechanism could only be applied by the National Security and Defence Council of Ukraine (the "Defence Council") with the approval of the President of Ukraine. Now, after the Defence Council's decision, the Ministry of Justice of Ukraine seizes the assets by making an application to the High Anti-Corruption Court of Ukraine;
- launched the State Register of Sanctions, containing information on all sanctioned individuals and legal entities. The information is publicly available and accessible; and
- introduced criminal liability for collaboration, aiding an aggressor state and circumvention of sanctions.

The NBU recently introduced Regulation No 65 on Implementing Special Economic and Other Restrictive Actions (Sanctions), dated 11 May 2023 (the "Regulation on Sanctions"). Under the Regulation on Sanctions, banks are responsible for implementing sanctions by way of analysing transactions and the parties involved. Where a bank identifies a sanctioned person, the bank is obliged to:

- refuse to establish business relationships with the sanctioned person; or
- suspend transactions with the sanctioned person.

These potential actions must also be applied to persons who are not sanctioned but are helping the sanctioned persons circumvent the sanctions.

The NBU has already started fining local banks for violating requirements of the sanctions legislation, including the Regulation on Sanctions. Some fees are quite substantial and go up to EUR500,000. Consequently, sanctions screening will become increasingly important and be critical for banks in order to ensure compliance with relevant regulations. The Regulation

on Sanctions will be updated to incorporate EU and international developments.

Foreign Exchange Restrictions

Ukraine has a long history of foreign exchange regulation, starting from 1991 when the country became independent. Between 1991 and 2018, the foreign exchange regulation was built on the principle that companies are only allowed to conduct transactions that are directly allowed by the regulation. If a transaction was not directly mentioned as allowed, banks would not facilitate the transaction.

A particular percentage of the income of companies in foreign currency also had to be exchanged into Ukrainian hryvnia. The transfer of funds abroad required obtaining a preliminary licence that was issued by the NBU. Foreign currency could not be freely purchased or sold by companies.

However, in 2018, a completely new foreign exchange legal framework was introduced that changed the main underlying principle, allowing any transaction that was not directly forbidden. This evolution of the foreign exchange regulation became known as foreign exchange liberalisation. The NBU has also changed its approach to the supervision of compliance with the foreign exchange regulations by banks.

Before the foreign exchange liberalisation, the NBU had been focused on ensuring that capital was not flowing away from Ukraine. The focus has now shifted to currency control, where the NBU just makes sure that banks are not violating the regulation. Before the outbreak of the war, the NBU had cancelled half of the active restrictions.

On 24 February 2024, the NBU introduced a separate Regulation No 18 (the “Martial Law Regulation”) to try to secure the stability of the banking sector and economy of Ukraine. The Martial Law Regulation stipulated that:

- companies could only transfer funds abroad in the cases listed directly in the Martial Law Regulation. At the beginning, the list was short and included, for example, transactions with international financial institutions and the purchase of goods allowed

by the government and based on a standalone decision issued by the NBU;

- individuals were limited to withdrawing cash from banks;
- the NBU fixed the currency exchange rates;
- card transaction amounts were limited; and
- banks were not allowed to prepay their debts in favour of foreign companies.

Shortly after, the NBU started to expand the list of permitted transactions and eased foreign exchange restrictions as the macroeconomic situation became more predictable. In 2023, the NBU adopted the Strategy of Currency Restrictions Easements, Transition to Exchange Rate Flexibility and Return to Inflation Targeting (the “Strategy”). The Strategy describes a road map for actions expected to be taken by the NBU in connection with the relaxation of the restrictions set out by the Martial Law Regulation. The Strategy will be implemented in three stages:

- minimising the plurality of exchange rates, liberalising trade transactions and facilitating new loans and investments;
- liberalising trade financing, managing banks’ currency risks, repaying “old” loans and repatriating dividends under “old” investments; and
- making repaying loans and investments possible as well as liberalising retail and derivatives transactions and making lending to non-residents and investments abroad possible.

To date, the first stage has been completed. The NBU is currently introducing relaxation measures in the second stage. Third-stage amendments will be introduced gradually. No timeframes have currently been specified for the total implementation of the relaxation measures. It is expected that the NBU will focus on the amendments requested by business, eg, repayment of dividends accrued before 2024, further cancellation of restrictions relating to the repayment of “old” loans, etc.

Ukraine’s foreign exchange regulation has therefore significantly evolved over the last three decades. This has seen the regulation change from a rigid, restrictive system to one characterised by increasing liberalisation. The 2018 reform marked a critical turning point,

introducing greater flexibility and aligning Ukraine's regulatory framework with international practices. However, the outbreak of war in 2022 necessitated the reintroduction of strict currency controls under the Martial Law Regulation to safeguard economic stability. Since then, the NBU has pursued a carefully phased approach towards easing restrictions.

Social Inclusiveness

The full-scale invasion of Ukraine by the Russian Federation has significantly restricted access to the most vital infrastructure and to various types of services, including financial ones.

Over the past few years, the NBU has been actively working to enhance the inclusiveness of the banking sector, aiming to ensure comprehensive access to financial services for all citizens, especially for war veterans, persons with disabilities and the elderly.

In July 2024, the NBU approved the Methodological Recommendations on the Rules for the Inclusive Provision of Financial Services in Ukrainian Institutions. These recommendations stipulate that banks must ensure:

- physical accessibility of premises and equipment for people with disabilities and other low-mobility groups of the population; and
- remote service systems with functionality similar to that available during a physical visit to the premises of the institution.

Additionally, amendments were made to Regulation No 149 on Licensing of Banks, dated 22 December 2018, which obliged banks to ensure the physical and information accessibility of at least 50% of their premises by 1 January 2025.

Banks of Financial Inclusion

For the NBU, another important step was to ensure financial inclusion in regions near the front line and de-occupied regions, where branches of most banks do not fully operate and, as a result, citizens cannot receive financial services.

To address the issue, in June 2025, the Law of Ukraine “On Amendments to Certain Legislative Acts of

Ukraine on the Development of Financial Inclusion in Ukraine” was adopted by the Ukrainian Parliament, and at time of writing it is waiting for the President's signature to be fully enacted. This will make it possible to create a new type of financial institution – a bank of financial inclusion.

The law is specifically aimed at retail and postal companies that serve a large number of customers and have a developed network of branches near the front line. Such companies will be able to obtain a limited banking licence. To receive the licence, a company will have to create a separate legal entity in the form of a joint stock company and file for the licence with the NBU.

To obtain a limited banking licence, the applicant must file a package of documents, including the standard documents for a banking licence. However, the applicant will also have to file a strategy and business plan for three years that describe the types of clients and their structures, the territorial coverage and how to provide services that will secure financial inclusivity.

Upon receiving a licence, the legal entity will receive the status of a bank of financial inclusion. The bank of financial inclusion will be able to use the existing infrastructure to provide financial services to the population and small businesses.

Shortly after the law enters into force, the NBU will set financial and regulatory requirements for financially inclusive banks. These banks will only be able to work with individuals and small enterprises; they will be banned from working with medium-sized and large enterprises or in capital markets.

Digitalisation of the Financial Market

In the context of ongoing hostilities and power outages that threaten the uninterrupted provision of financial services, the digitalisation of processes, the introduction of new technologies in administrative and financial services, and the growth of cashless payment have ensured the stability of the financial system, allowing most financial operations to be conducted virtually.

The NBU is known for its active part in the introduction of technical innovations in the financial sector. In recent years, steps have been taken to develop public key infrastructure and electronic trust services, remote identification for obtaining financial services, etc.

To further advance the technological development of the financial market, the NBU plans to:

- strengthen co-operation with market participants to promote the development of RegTech in Ukraine;
- introduce instant credit transfers within Ukraine;
- further develop the NBU's Electronic Payment System (SEP); and
- place special emphasis on implementing open banking standards.

In August 2023, the NBU approved the Concept of Open Banking in Ukraine, which defined the main principles of open banking and directions for its further development in accordance with the needs of the market.

In July 2025, the NBU moved further and adopted Regulation No 80 on Open Banking, dated 25 July 2025 (the "Open Banking Regulation"), which legally defines open banking and determines:

- the procedure and conditions for the provision of open banking services;
- the procedure for the granting and withdrawing of a client's consent;
- the principles of interaction between open banking entities; and
- the principles of use and classification of specialised interfaces (APIs) used in open banking, etc.

In this way, the NBU is bringing Ukrainian legislation closer to European standards and is ensuring the fulfilment of the requirements for Ukraine's accession to the Single Euro Payments Area and the EU.

Equally important, these developments are making the Ukrainian financial services market increasingly attractive to users and enhancing its competitiveness in the global market for payment services and products.

Co-Operation of Ukrainian Banks With International Institutions

Since the beginning of the full-scale invasion, international financial and credit organisations have provided important financial and technical support to Ukrainian banks in order to restore and/or develop enterprises in various sectors of the economy.

During the Ukraine Recovery Conference 2025 in Rome alone, the largest Ukrainian banks, including PrivatBank, Ukrgasbank, Ukreximbank and Oschadbank, managed to conclude ten deals worth almost EUR1.5 billion.

These agreements are of key importance for supporting the financial sector, as they allow banks to:

- attract funding for existing and new projects;
- distribute their risks under new sub-loans;
- receive guarantees that open up new lending opportunities, etc.

The main efforts are aimed at lending to Ukrainian businesses, financing social initiatives, developing municipalities, improving the energy efficiency of communities and building the private sector of Ukraine. Given the importance of these projects for Ukraine, co-operation with international financial organisations is expected to continue in 2026 and in the following years.

Bank Number Reduction

At the start of 2022, there were 71 institutions with a banking licence in the country. However, over the course of the last four years, the number has decreased by 11. There are now therefore only 60 banks with a banking licence. The NBU liquidated two banks that were owned by Russia. In addition, Sense Bank, one of the largest banks in the Ukrainian banking sector and owned by Russian oligarchs, has been nationalised. Sense Bank could be one of the first state-owned banks to be sold to a private buyer, and the state is already making preparations to execute the sale.

Other banks have been liquidated for violations of the AML regulation and non-compliance with the NBU's regulations. The NBU meticulously scrutinises the

activity of each bank. It is anticipated that the number of banks might continue to decrease, as smaller banks can struggle to comply with the NBU's regulations or engage in risky activities.

Conclusion

Despite the enormous challenges posed by the ongoing war, Ukraine's banking sector has shown impressive resilience and adaptability. The NBU has shown strong leadership, and the system has remained stable. The NBU has removed unsustainable and Russian-linked banks, and it has enforced sanctions.

The sector's increasing profitability and new initiatives, such as the launch of financially inclusive banks, show a clear focus on maintaining access to financial services, even in the most affected regions.

At the same time, Ukraine's foreign exchange regulations have continued to evolve. While wartime conditions required the reintroduction of strict controls, the NBU is steadily moving back towards greater liberalisation in line with international practices. Although there is no set timeframe for full liberalisation, the phased approach and business-focused amendments give cause for optimism. The last few years have proven that Ukraine's banking sector is not just surviving but is adapting, modernising and preparing for deeper integration into the global financial system.



Law and Practice

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Latham & Watkins LLP is an international firm with over 3,500 lawyers in major financial centres around the globe. Its bank regulatory practice is centred in New York, but it also has partners and counsel in its London, Frankfurt and Tokyo offices. The core team has approximately 20 lawyers, but when adjacent fields such as financial regulatory enforcement and securities and derivatives regulatory advice are considered, it counts approximately 250 lawyers. The principal US bank regulatory issues on which it advises US and non-US bank clients include “control”

questions under the Bank Holding Company Act, the Federal Reserve’s implementation of the Dodd-Frank Act’s enhanced prudential standards requirements, bank capital requirements, the Volcker Rule, resolution planning, and novel issues related to stablecoins and digital assets. Its clients consist primarily of major US and non-US banks, broker-dealers, companies active in the fintech and digital assets space, and non-bank institutions that invest in banking institutions.

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1. Legal Framework

1.1 Key Laws and Regulations

The USA has a complex web of laws and regulations governing the banking sector.

The USA operates a “dual banking system”, under which a bank may become licensed under either federal law or the law of one of the 50 US states. (The same concept applies to the licensing of branches or agencies of non-US banks.) The choice of licensing authority affects a bank’s principal regulator, but state-licensed banks also have federal regulators for certain purposes. In addition, federal law regulates the holding companies for most US banks.

The National Currency Act of 1863, now known as the National Bank Act, and the Home Owners’ Loan Act of 1933 (HOLA) are the principal sources of authority for federally licensed US banks and US federal thrifts (a thrift is a charter that focuses on mortgage finance and consumer lending). These statutes are implemented by the Office of the Comptroller of the Currency (OCC), which issues regulations relevant to these entities.

At the state level, New York has the most developed banking law, implemented by the New York Department of Financial Services. California’s banking laws are implemented by the California Department of Financial Protection and Innovation.

The Federal Reserve Act of 1913 governs the activities of state-chartered banks that have elected to become members of the Federal Reserve System. The Bank Holding Company Act of 1956 (“BHC Act”) and the holding company provisions of HOLA apply, respectively, to companies that control FDIC-insured banks and thrifts. These statutory provisions are implemented by regulations of the Board of Governors of the Federal Reserve System (“Federal Reserve”).

The Federal Deposit Insurance Act of 1950 (FDIA) contains provisions relating to federal deposit insurance for banks and thrifts, the resolution of insolvent insured banks and thrifts, and the activities of insured state-chartered banks that are not members of the Federal Reserve System and insured state-chartered

thrifts. The Federal Deposit Insurance Corporation (FDIC) has promulgated regulations implementing this statute.

The most important bank safety and soundness regulation is the Federal Reserve’s Regulation W, which implements Sections 23A and 23B of the Federal Reserve Act, and places restrictions on transactions between federally insured banks or thrifts (and uninsured national banks engaged in fiduciary activities) and their affiliates.

The activities of non-US banks operating through branch or agency offices are governed by either state or federal law as a licensing matter (in the latter case, the International Banking Act of 1978 and the regulations of the OCC), and the Federal Reserve is the umbrella regulator of those banks’ overall US activities.

There is a large body of federal consumer law, including the Truth in Lending Act, the Truth in Savings Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. The federal Consumer Financial Protection Bureau has promulgated regulations under these statutes.

2. Authorisation

2.1 Licences and Application Process

As a general matter, a banking licence is required for an entity to take deposits. Both US states and the federal government also require a trust company or national trust bank licence for a non-deposit-taking corporate entity to act as a fiduciary.

An entity seeking to obtain a banking licence (charter) first must determine whether to seek state or federal authorisation. If a state banking charter is selected, the entity must also decide whether to become a member of the Federal Reserve System. Larger entities or entities with sophisticated business plans tend to become Federal Reserve System members.

For a domestic US banking licence, it is possible that three applications may be required: first, to the chartering authority, the state regulator or the OCC; second,

to the FDIC for federal deposit insurance; and third, to the Federal Reserve, if the bank is to be a national bank (membership is required for national banks) or if it is to be a state-chartered bank and elects Federal Reserve System membership. In addition, if the bank is to be FDIC-insured – as are all banks except for non-deposit-taking trust companies, national trust banks and a particular type of Connecticut bank – then all entities that control the bank must apply to the Federal Reserve to become bank holding companies or thrift holding companies, depending on whether a bank or thrift charter has been applied for.

If the applicant is a non-US bank seeking to establish a branch or agency office, there will generally be two applications: one to the applicable state regulator or the OCC, and another to the Federal Reserve.

These applications will require information relating to the applicant's and its parent's financial and managerial resources, a business plan, pro forma financial statements, and information about proposed management, directors and shareholders, among other requirements. Senior management, directors and principal individual shareholders will likely be subject to background checks and fingerprinting.

Obtaining a banking licence is a time-consuming process, and engagement with the relevant regulators is recommended from the start. It is critical to present a persuasive business plan, including plans to raise the necessary initial capitalisation for the bank, and capable management and director candidates. Pre-filing preparation and recruitment can take several months. After filing, the timing to approval of all the applications can run from six to 12 months in most cases. In the case of a domestic US bank, the chartering authority's approval is conditional and requires the organisers to raise the necessary initial capitalisation, obtain and outfit premises, and undergo a pre-opening examination.

Unless the application is for a limited-purpose non-depository trust charter, approval of a charter application permits the bank or thrift to engage in all activities permissible under the relevant banking statute. In the USA, which has a separation of banking and commerce, banks are, as a general matter, required to be

financial intermediaries, and their holdings of equity securities, commodities and non-investment-grade debt are limited. Thrifts generally must concentrate on mortgage and consumer finance, with the amount of their commercial loans limited. Because under the federal securities laws, most securities brokerage and dealing activities must be carried out in a broker-dealer affiliate of a bank, it is common for entities seeking to engage in a wide range of financial services to seek authorisation to establish a broker-dealer entity as a sister affiliate of the newly chartered bank.

3. Changes in Control

3.1 Requirements for Acquiring or Increasing Control Over a Bank

The acquisition of “control” of an FDIC-insured US bank or thrift and/or its holding company requires the prior approval of the Federal Reserve under the BHC Act and, if the target institution has a state charter, the approval of its state banking supervisor as well.

For federal purposes, “control” is conclusively deemed to exist upon the acquisition of 25% or more of any class of voting securities or obtaining the ability to control the election of a majority of the target's board. However, under the Federal Reserve's “control” regulations, there can be a finding of control at below 5% of a class of voting security ownership if the acquiror controls one-third or more of the target's total equity – 25% or more in the case of a thrift or thrift holding company – or has an agreement with the target giving it control over the target's business akin to that of a general partner over a partnership. Between an investment of 5% or more of a class of voting securities and 25% of a class of voting securities, there are additional “control” factors, which become more stringent as the amount of voting securities increases. For US state approvals, where the requirements are jurisdiction-specific, some states define “control” at as low as 10% share ownership.

Applications must contain information that will permit the regulators to analyse the acquisition under the factors required by the relevant statutes. Under the BHC Act, the Federal Reserve is required to consider a number of factors: the financial and manage-

rial resources of the acquiror (including its compliance record); antitrust considerations; the record of the acquiror and the target under the Community Reinvestment Act of 1977, which requires banking institutions to meet the credit needs of lower and middle-income communities; and effects of the acquisition on US financial stability. State regulatory authorities consider similar factors.

In addition, in the case of an acquisition by a non-US entity, the Federal Reserve must find that banking institutions in the home country of the acquiror are subject to comprehensive supervision on a consolidated basis. Because of the US policy on the separation of banking and commerce, an acquiring entity must generally be a bank or a company that is predominantly engaged in financial activities, such as a broker-dealer. It can take six to nine months (or in the case of a very large acquisition, somewhat longer) for the required regulatory approvals to be received.

A company that is not regulated by the Federal Reserve as a bank holding company or thrift holding company before it acquires a US FDIC-insured bank or thrift must register with the Federal Reserve promptly after the acquisition closes. Bank and thrift holding companies are subject to periodic examination by the Federal Reserve, capital and liquidity requirements, restrictions on their activities to banking activities and activities that are financial in nature, and financial reporting requirements, among other requirements.

If the entity in question is not an FDIC-insured one, such as a state non-depository trust company or national trust bank, no application must be filed with the Federal Reserve. However, there will need to be a change-in-control approval by the relevant regulator, either the state chartering authority or, for national trust banks, the OCC. The focus of the approval process will be on the financial and managerial resources of the acquiring entity. A similar process is required in the rare case of an acquisition of an FDIC-insured bank or thrift by an individual.

4. Governance

4.1 Corporate Governance Requirements

The duties of directors at US corporations, including at banks, are generally governed by state corporate statutes and common law. The board of directors of a corporation has the ultimate responsibility for the overall direction and strategy of the corporation, and the board carries out this responsibility by approving major decisions throughout the life of the corporation, as well as by selecting, retaining and overseeing the executives who manage and direct its daily operations.

A director owes certain fiduciary duties to the corporation and its stockholders. The duty of care requires a director to exercise the degree of care that a reasonably prudent person would use under similar circumstances, and the duty of loyalty requires a director to act in good faith, and in the best interests of the corporation and its stockholders (and not in the director's own personal interest). The business judgement rule provides a defence to directors facing liability for breaching a fiduciary duty, and a court will uphold the decisions of a director as long as they were made in good faith, on an informed basis, and with the reasonable belief that the director was acting in the best interests of the corporation.

Bank directors are subject to a heightened standard with regard to these fiduciary duties, in the sense that they act not only as representatives of the bank's stockholders but are responsible for overseeing the safe and sound management of the bank. This is particularly the case when banks undergo financial stress, due to the US government's insurance of depositor funds.

The OCC, the regulator of national banks, has promulgated heightened corporate governance standards for large national banks, namely, those with USD50 billion or more in total consolidated assets. Under these standards, a board of directors is to establish and implement an effective risk governance framework and hold front-line units, risk management and internal audit responsible for their respective obligations under the framework and ensure that each such unit

has the necessary stature and resources to carry out its responsibilities under the governance framework.

The OCC has also stated that boards of directors should present a credible challenge to management, by actively overseeing the bank's risk-taking activities and holding management accountable for adhering to the bank's framework. Boards of directors should also, either themselves or through their committees, grant unfettered access to the independent risk management function and internal audit.

4.2 Registration and Oversight of Senior Management

As a general matter, US bank regulators do not engage in screening directors or senior management. There are certain exceptions. First, in the case of a new bank, in determining whether to grant a charter, the regulators will conduct background checks on the proposed senior management and directors of the bank as well as large individual shareholders. The focus is on whether any such person has a criminal background or has had financial difficulties or improprieties. Second, if a bank's financial or compliance record deteriorates substantially such that it is in a "troubled condition", it will generally need to provide advanced notice to its regulator before making changes to its board or senior management team. Finally, under their enforcement authority, bank regulators have the power to remove directors and senior management for violations of law, breach of fiduciary duty, or participation in unsafe or unsound practices at a bank; use of this power, however, is rare.

4.3 Remuneration Requirements

As a general matter, there are no bank-specific remuneration requirements. Following the 2008 financial crisis, Congress included a requirement in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") that authorised the banking regulators to promulgate regulations regarding incentive-based compensation in order to deter excessive risk taking, but those regulations have never been finalised in the more than 15 years since the statute's enactment.

5. AML/KYC

5.1 AML and CFT Requirements

Banks in the USA are subject to strict requirements relating to money laundering and terrorist financing. The principal statutes are the so-called Bank Secrecy Act of 1970 and the USA PATRIOT Act of 2001, which was enacted in the aftermath of the 11 September 2001 terrorist attacks. Anti-money laundering requirements are imposed by the bank regulators and the Financial Crimes Enforcement Network (FinCEN) at the US Treasury Department.

Under these requirements, banks are required to have anti-money laundering programmes that include a system of internal controls to assure ongoing compliance; independent testing for compliance to be conducted by bank personnel or by an outside party; designation of an individual or individuals responsible for co-ordinating and monitoring day-to-day compliance; training for appropriate personnel; and appropriate risk-based procedures for conducting ongoing customer due diligence. The last of these must include understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile and conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, including beneficial ownership information on customers that are legal entities.

Banks are further required to have customer identification programmes designed so that they may form a reasonable belief as to the identity of their customers and to determine whether their customers appear on any list of known or suspected terrorists or terrorist organisations. The anti-money laundering rules also impose reporting obligations, such as filing reports on transactions in physical currency and reports of suspicious activities. Heightened due diligence requirements apply to correspondent accounts for foreign financial institutions and private banking accounts.

6. Depositor Protection

6.1 Deposit Guarantee Scheme (DGS)

The USA has had a deposit insurance scheme since the Great Depression. Under the FDIA, US federal deposit insurance is administered by the FDIC. In the normal course, all depositors are insured up to USD250,000 for their deposits in all capacities at a single institution – for example, amounts in a person's own account and in a joint account with their spouse would be aggregated for purposes of the USD250,000 insurance limit. There is no prohibition, however, on opening accounts at multiple different institutions and thereby increasing deposit insurance. Upon a determination by two-thirds of the Federal Reserve and two-thirds of the board of directors of the FDIC that a particular bank failure would result in systemic risk, as happened in the insolvency of Silicon Valley Bank in 2023, it is possible for the FDIC to cover all of an institution's deposits, but this is extremely rare.

The FDIC's deposit scheme is funded via assessments on all FDIC-insured institutions. After the 2008 financial crisis, the assessment scheme was altered in order to make the amount of the assessments correlate more with particular banks' risks.

7. Prudential Regime

7.1 Capital, Liquidity and Related Risk Control Requirements

US bank capital requirements are currently very complex, particularly for the largest banks. As a general matter, the USA has adopted Basel III standards, with the exception of the so-called Basel III Endgame, which has yet to be implemented; in addition, small "community" banks are permitted to adhere to a simplified leverage capital framework.

The nation's largest, most internationally active banks are allowed, with regulatory permission, to use internal models to calculate capital requirements; however, they must also, under the so-called Collins Amendment to the Dodd-Frank Act, calculate their capital under the standardised Basel III risk-weighted approach that generally applies outside of the com-

munity bank framework, and then comply with the more conservative of the two approaches.

Outside of the community bank framework, the generally applicable capital rules require adherence to both risk-weighted and leverage requirements. Banks with USD100 billion or more in total consolidated assets are also subject to the Federal Reserve's supervisory stress tests, which are used to create a required "stress capital buffer" requirement above minimum permissible capital ratios. This buffer, which must be composed of Common Equity Tier 1 (CET1) capital and is set at a minimum of 2.5%, is intended to reflect a particular bank's economic losses in the severely adverse economic scenario used in the Federal Reserve's stress tests. In addition, global systemically important banks (G-SIBs) are subject to the so-called "G-SIB Surcharge", which is an additional amount of required CET1 capital, based on size and complexity factors. The result of all of this is that the minimum CET1/risk-weighted assets ratios of the large banks subject to the stress tests ranges from a low of 7.0% to 16.0% in 2025. Large US banks are also subject to a supplementary leverage ratio (SLR), which considers off-balance sheet exposures in addition to balance sheet assets, with G-SIBs being required to meet the highest, so-called "enhanced", SLR requirements.

In an effort to reduce regulatory burden, Congress has permitted smaller, "community" banks – banks with fewer than USD10 billion in assets – to elect to comply with a Tier 1 leverage ratio requirement of 9% only, and not to use risk-based capital requirements.

The banking agencies have also adopted minimum liquidity requirements for large US banks, comprising a liquidity coverage ratio (LCR) and a net stable funding ratio (NSFR). The LCR requires these banks to maintain on each business day an amount of unencumbered high-quality liquid assets (HQLA) that are sufficient to meet their total stressed net cash outflows over a prospective 30-calendar-day period, calculated in accordance with banking agency rules. The very largest US banks are required to have a 100% ratio of HQLA to net cash outflows, with the two next tiers of banks being required to meet a modified LCR of 85% and 70%, respectively. The NSFR measures the stability of the funding profile of large banks and

requires these banks to maintain minimum amounts of stable funding to support their assets, commitments and derivatives exposures over a one-year time horizon. Like the LCR, the NSFR is tailored to the size and risk profile of the banks to which it is applicable, with the nation's largest banks having the most onerous NSFR requirements.

The banking agencies' regulations impose granular requirements for monitoring, testing and reporting liquidity risk as enhanced prudential standards applicable to the USA's largest banks.

8. Insolvency, Recovery and Resolution

8.1 Legal and Regulatory Framework

The FDIC is the US banking agency charged with the resolution of an FDIC-insured bank or thrift. In the USA, many banks and thrifts, including all of the largest ones, have holding companies, and, in insolvency, these holding companies are generally subject to the Bankruptcy Code. Following the 2008 financial crisis, however, Congress created a special resolution regime for systemically significant bank holding companies that was modelled on the FDIC bank insolvency regime.

With respect to a US FDIC-insured institution, the most common means of resolving a failing bank is for the FDIC to be appointed receiver of the bank – usually, after closing the bank at the end of business on a Friday – and then entering into a purchase-and-assumption agreement under which certain assets and liabilities of the insolvent bank are transferred to a healthy institution over the weekend. (The closing process begins earlier, with the FDIC soliciting bids for the assets to be transferred well before the bank is closed.) Most general unsecured liabilities of the failed bank remain in the receivership, with general unsecured creditors receiving fractional payment of their claims. The FDIC deposit insurance fund makes depositors whole up to USD250,000 for all of their deposits in the failed bank. Depositors with higher balances are most often made whole because the assuming bank agrees to take all of their deposits, but at times such claims may be haircut. Under the

FDIA, US domestic depositors have a preference over general unsecured creditors.

An exception to this general approach may occur in the case of an insolvency that threatens systemic risk, such as in the 2023 cases of Silicon Valley Bank and Signature Bank. There, because of the size of the institutions and concerns that their failure could bring down other banks of a similar size and risk profile, the FDIC created a “bridge bank” to operate the institutions for a period of time after they were declared insolvent and guaranteed all of the banks' deposits. After stabilising the institutions for a period of time, the bridge bank entered into purchase-and-assumption transactions with two healthy banks.

As noted above, the Bankruptcy Code generally applies to the insolvency of a bank or thrift holding company. However, Title II of the Dodd-Frank Act created an “orderly liquidation authority” (OLA) under which the FDIC may be appointed the receiver of a bank or thrift holding company if its insolvency would threaten systemic risk. The application of the OLA requires an affirmative vote of the Federal Reserve and the FDIC's board of directors. The OLA takes most of its provisions from the FDIC's bank resolution regime, and at a high level, the process is similar. The FDIC would be appointed receiver of the insolvent holding company, seek to stabilise it, and then transfer its significant operating subsidiaries' assets and liabilities to healthy institutions.

In order to carry out the goals of the OLA, the largest bank and thrift holding companies are required to create resolution plans to aid the FDIC in the case of a future insolvency. These plans focus on assuring that a holding company's significant operating subsidiaries have sufficient liquidity to maintain operations notwithstanding the holding company's insolvency, and that those subsidiaries' interconnections to other parts of the holding company are well known so as to facilitate eventual transfers by the FDIC. Certain of the largest holding companies have also been required, as part of the resolution planning process, to “pre-position” intercompany liquidity and maintain it in sufficient amounts to allow for an orderly resolution. The OLA has not yet been tested; although the holding company for Silicon Valley Bank had significant assets

on a consolidated basis, it entered a Bankruptcy Code proceeding while the bank itself was resolved by the FDIC.

9. ESG

9.1 ESG Requirements

Currently, the US bank regulators have not mandated ESG requirements. For example, early in 2025, the OCC, Federal Reserve and FDIC brought to a halt the climate risk-related measures that they had begun to undertake under the Biden administration.

Moreover, in the current environment, banks have been cautioned not to permit ESG concerns to lead them to deny banking services to disfavoured customer groups, such as digital asset companies, gun manufacturers, or oil and gas companies (so-called “debanking”). This follows the lead of certain US states, such as Florida, which passed their own versions of “anti-ESG” statutes affecting the financial sector during the Biden administration.

In October 2025, the OCC and the FDIC issued a proposed regulation that would formalise their new policy position of not using “reputation risk” to criticise, formally or informally, or take adverse action against, the banks they regulate. The proposed regulation would also prevent these agencies from requiring, instructing or encouraging a bank to modify a product or service based on the person’s or entity’s political, social, cultural or religious views or beliefs, constitutionally protected speech, or solely on the basis of the third party’s involvement in politically disfavoured but lawful business activities perceived to present reputation risk.

In addition, in September 2025, the OCC stated in a bulletin to the banks it regulates that it would consider a bank’s past record and current policies and procedures to avoid engaging in politicised or unlawful debanking in licensing matters that required OCC approval, such as the creation of certain new subsidiaries. It further stated that it would assess debanking considerations in determining a national bank’s rating under the Community Reinvestment Act. A less than

satisfactory rating can limit a bank’s ability to enter into merger and acquisition transactions.

10. DORA

10.1 DORA Requirements

In the USA, banking agencies do impose certain cybersecurity requirements as a prudential regulatory matter. These requirements depend on a particular institution’s primary regulators, but they can include provisions relating to risk assessments; independent audits of the institution’s cybersecurity programme based on the risk assessment; monitoring of anomalous activity; periodic approvals of an institution’s cybersecurity programme by a senior officer or board of directors; data retention; remote access, systems and network security monitoring, security awareness and training; and periodic testing.

Special responsibilities may be placed on an institution’s chief information security officer, such as being required to timely report to an institution’s board of directors on significant cybersecurity events and significant cybersecurity programme changes. Boards of directors, in turn, have the responsibility to exercise effective cybersecurity-related oversight including by requiring that the institution’s executive management develop, implement and maintain the institution’s cybersecurity programme.

In addition, banking institutions must have business continuity and disaster recovery (BCDR) plans that cover such areas as identifying essential documents, data, facilities, infrastructure, services, personnel and competencies; identifying all senior personnel responsible for BCDR implementation; identifying means of communicating with essential persons in the event of a cybersecurity disruption; maintaining procedures for timely recovery of critical data and systems and resumption of operations; maintaining procedures for backing up the information essential to the institution’s operations and storing such information off-site; and identifying third parties necessary to continued operations of the institution’s information systems.

Material cybersecurity incidents, moreover, must be promptly notified to regulators. These include cyber-

security incidents affecting an institution's third-party service providers.

11. Horizon Scanning

11.1 Regulatory Developments

The principal regulatory developments that should affect banks in the USA in the near term are the finalisation of the so-called Basel III Endgame, the implementation of certain final requirements of the Basel III capital accord; new approaches to the manner in which the Federal Reserve "stress tests" capital at the nation's largest banks, and the degree to which banking agency heads are successful in realising their goals of streamlining bank supervision.

The USA has still to implement certain requirements of the Basel III Capital Accord that were developed following the 2008 financial crisis – these requirements relate primarily to operational risk, market risk and certain risks relating to derivative contracts. At the end of the first Trump administration, progress had been made by the banking agencies in developing an implementation proposal for this Endgame that would be close to capital neutral – that is, it would not materially increase capital requirements above existing levels. Under the Biden administration, however, the banking agencies issued an Endgame proposed rule that would drastically increase capital requirements for the nation's largest banks. This proposal met with significant criticism. It is expected that in 2026 the banking agencies will re-propose the rule in a manner that will be more in line with the original proposal on the ground that current levels of capital in the US banking system are adequate (and likely higher than in other developed countries) and that mandating additional capital will constrain lending and economic growth.

Since the 2008 financial crisis, the Federal Reserve has required the nation's largest banks to undergo

annual "stress tests" of their portfolios. This exercise seeks to determine the size of potential losses in the event of a severely adverse economic scenario such as a deep recession with corresponding losses in the financial markets. In recent years, moreover, the performance of the banks subject to the tests has been relevant in setting their capital requirements, because these banks are required to have a capital buffer equivalent to their economic losses in the tests.

The banking industry has criticised the Federal Reserve for a lack of transparency both in creating the severely adverse economic scenario as well as in the models it uses for predicting bank losses, which the industry has described as a "black box". Responding to a lawsuit filed in December 2024, the Federal Reserve in October 2025 issued a proposed rule under which it would publish more information about the tests and its models in advance and permit interested parties to comment on that information and the Federal Reserve's assumptions. Depending on how the proposal is finalised, it could result in a reduction in overall capital at the nation's largest banks.

Finally, during the course of 2025, banking agency heads have outlined in certain of their public statements ambitious goals of streamlining how banks are supervised and examined, in order to reduce regulatory burdens. This has included seeking to reduce the types of risk that bank examiners consider in evaluating institutions, such as the elimination of consideration of reputation risk, and seeking to focus supervision on evaluating material financial risks. In addition, banking agency heads have announced that they will be substantially reducing the number of supervisory staff. Given the discretionary nature of bank supervision, it is too early to tell the extent to which the banking agencies will ultimately fulfil these goals, but it does appear that "lighter touch" regulation is on its way.

Trends and Developments

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Latham & Watkins LLP is an international firm with over 3,500 lawyers in major financial centres around the globe. Its bank regulatory practice is centred in New York, but it also has partners and counsel in its London, Frankfurt and Tokyo offices. The core team has approximately 20 lawyers, but when adjacent fields such as financial regulatory enforcement and securities and derivatives regulatory advice are considered, it counts approximately 250 lawyers. The principal US bank regulatory issues on which it advises US and non-US bank clients include “control”

questions under the Bank Holding Company Act, the Federal Reserve’s implementation of the Dodd-Frank Act’s enhanced prudential standards requirements, bank capital requirements, the Volcker Rule, resolution planning, and novel issues related to stablecoins and digital assets. Its clients consist primarily of major US and non-US banks, broker-dealers, companies active in the fintech and digital assets space, and non-bank institutions that invest in banking institutions.

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With the return to office of President Donald Trump and his appointments to the US bank regulatory agencies, there have been four principal developments in US bank regulation: (1) significant deregulatory efforts; (2) a focus on greater transparency and regulatory accountability; (3) increased bank consolidation; and (4) an emphasis on innovation. The President's appointees for the Comptroller of the Currency, the chief regulator of US national banks, including most of the nation's largest, and for the Vice Chair of the Federal Reserve Board for Supervision, the chief regulator of bank holding companies and non-US banks with US operations, have been confirmed by the Senate. In addition, Trump personnel are serving as the acting heads of the other two US federal banking agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Deposit Insurance Corporation (FDIC).

Deregulation

The Trump administration has engaged in the most ambitious deregulatory agenda for the banking industry in history. This has taken the form of substantial reductions in the staffs of bank regulatory agencies, rescission of existing regulations and guidance, and new regulatory proposals.

In terms of personnel, the Trump administration has sought significant cuts at all of the bank regulatory agencies. The most pronounced of these reductions has been at the CFPB, where the Trump administration has sought a staff reduction of over 80%, but there have been reductions at the other agencies as well – the number of employees at the OCC and FDIC is expected to shrink by 25%–30%, and the Federal Reserve Board announced that it was seeking to reduce its supervisory staff by 30%. These staff reductions have been accompanied by statements from agency heads that they wish to “tailor” supervision more closely to the risks posed by particular institutions in order to reduce regulatory burdens on smaller banks.

The Trump banking agencies have also been active in rescinding previously promulgated regulations and guidance that they determined were too burdensome or conflicted with the Trump administration's policy goals. Regulatory guidance related to climate change risks is a principal example. The banking agencies

also rescinded a Biden administration rule under the Community Reinvestment Act, a statute that requires FDIC-insured banks to meet the credit needs of low and middle-income communities in the geographies that they serve. In addition, the OCC and the FDIC stated that they were eliminating reputational risk as an examination focus, on the grounds that banks had used avoiding reputational risk as an excuse to deny services to particular types of customers such as oil and gas companies and digital asset firms.

Finally, the banking agencies have taken certain regulatory actions consistent with their deregulatory agenda. The Federal Reserve Board adopted a rule that changes the way that it gives supervisory ratings to large bank holding companies, which would permit such bank holding companies to continue to enjoy the regulatory benefits of being considered “well managed” even though certain of their examination ratings demonstrated increased risk. The OCC and the FDIC issued a rule proposal that would focus bank examinations on issues that posed “material financial risks” to the institution as opposed to regulatory or compliance foot faults. The Federal Reserve Board, the OCC and the FDIC finalised a proposal that will reduce the so-called “enhanced supplementary leverage ratio” capital requirement applicable to the nation's largest banks, on the ground that doing so will free up more lending capacity.

Transparency and Regulatory Accountability

Transparency

Current banking agency heads have made transparency a critical goal of their programmes, in a break from traditional approaches. One example relates to so-called “confidential supervisory information” (CSI). Bank regulators have long insisted that their supervisory processes must operate outside of public view – a bank's ratings, which show its financial strength (or weakness), are confidential, and it is a violation of US federal criminal law for them to be disclosed. This criminal prohibition, moreover, extends not only to a bank's ratings and its regulators' reports of examination, but to all supervisory communications between a bank and its regulators. Exceptions to the prohibition against disclosure are narrow.

Notwithstanding this long-held view, which has been recently criticised by the banking industry, it is likely that the future will see a change in approach, at least to some degree. Since being appointed Vice Chair for Supervision, Federal Reserve Governor Michelle Bowman has advocated for a new approach to CSI. She has argued that bank supervisory practices often escape public and internal scrutiny and that these practices would be more effective if they were accompanied by revisions to the definition and scope of CSI, which would promote greater regulatory accountability.

A second example of push towards transparency came in October 2025, when the Federal Reserve Board issued a proposal that would drastically change the manner in which it carries out so-called “stress tests” of the nation’s largest bank holding companies. The “stress tests” were developed following the 2008 financial crisis; they are intended to demonstrate how the largest bank holding companies’ financial position would fare in a hypothetical severely adverse economic environment. Under the first Trump administration, the “stress tests” took on even more significance because the results of the tests would determine capital requirements, in that the bank holding companies subject to the tests would need to hold capital equivalent to their hypothetical losses in them.

The banking industry, however, had long criticised the Federal Reserve Board’s methodology for conducting the tests. The industry argued that the tests violated US administrative law requirements because the Federal Reserve Board did not make its economic models for assessing particular banks’ performance under the tests available for public comment, and because those models were an arbitrary “black box” that did not appropriately measure bank losses in the hypothetical severely adverse economic environment. In December 2024, the banking industry sued the Federal Reserve Board on these administrative law grounds.

The Federal Reserve Board responded in October 2025 by issuing rule proposals that would provide for significantly greater disclosure and an opportunity for public comment with respect to both the economic scenarios used in the tests and the models that predict banks’ hypothetical losses. Vice Chair for Super-

vision Bowman stated that the proposals were necessary to provide due process and to avoid the potential misalignment of capital requirements with actual risks.

Regulatory accountability

The theme of regulatory accountability has been evidenced by the Trump administration’s assertions that even independent regulatory agency leaders must be subject to removal by the President. Under the so-called “unitary executive” theory of the US Constitution, the entire executive power of the USA resides in the President, because he or she is subject to election by the people, and congressional attempts to place limits on the President’s removal authority by creating independent federal regulatory agencies are unconstitutional. With respect to the US federal banking agencies, three out of the four of which Congress designed to be independent, President Trump has advanced his “unitary executive” approach by attempting to fire Lisa Cook, one of the Governors of the Federal Reserve Board, under the statutory standard of “cause”, for allegedly making false statements in mortgage loan documents. The Supreme Court stayed Governor Cook’s removal until it decides the question, but it agreed to hear arguments on the issue in January 2026. Even in the absence of exercising removal authority, the Trump administration has largely circumvented the independent nature of the FDIC in not making appointments for the two Democratic seats on the FDIC’s five-member board, and the OCC and CFPB are being run by Trump appointees.

Increased Bank Consolidation

2025 has been a banner year for bank consolidation for all but the largest industry players. Large regional banks have sought to become even larger, and there has been significant merger activity among community banks. PNC Financial Services, with assets of over USD550 billion, announced that it would be acquiring a USD27 billion target, FirstBank. Huntington Bancshares, with assets of little over USD200 billion, announced that it would be acquiring Cadence Bank, which has assets of approximately USD50 billion. Fifth Third Bancorp will be acquiring Comerica, in a deal which will create an approximately USD300 billion institution.

This consolidation has been given the green light by the banking agencies. The Trump OCC and FDIC rescinded the bank merger guidelines promulgated under the Biden administration, which suggested a complex and lengthy process for evaluating bank mergers. In addition, there has been no suggestion that the Antitrust Division of the Department of Justice will be changing its approach to bank mergers, under which anti-competitive concerns are generally remediable by the acquiror's agreeing to branch divestitures in areas where there is significant competitive overlap. And indeed, given that the nation's largest banks have only grown in asset size since the 2008 financial crisis, the current acquirors will plausibly argue that their increased size is necessary to maintain competition against the largest industry players.

Emphasis on Innovation

Finally, the Trump banking agencies have put a premium on encouraging innovation in the financial sector. This is particularly the case with respect to digital assets, where the agencies have departed significantly from the cautious approach of the Biden administration regulators, but it also extends to the chartering of new banks that seek to be financial innovators.

On digital assets, the Trump banking agencies have reversed prior policies under which the digital asset industry was permitted to be a disfavoured industry when it came to seeking banking services. Under 2025 agency pronouncements, banks have been warned not to deny banking services to particular industries and commanded to make individualised risk determinations on a case-by-case basis. Similarly, whereas digital asset banking companies had been denied the ability open master accounts at Federal Reserve Banks in the Biden administration, Federal Reserve Board Governor Christopher J. Waller, a Trump appointee, proposed in October 2025 the creation of a special purpose master account at the Federal Reserve Banks that could serve the payment system needs of digital asset companies, in an effort to spur innovation. The Office of the Comptroller of the Currency (OCC) has agreed to accept numerous

applications to charter national trust banks to engage in custody and related activities for digital assets, in another example of a Biden administration position being reversed.

There will be additional opportunities for the banking agencies to encourage innovation when they promulgate rules to develop a regulatory scheme for stablecoins under the recently passed GENIUS Act. Previously considered as potentially creating financial stability and other risks, stablecoins rapidly became embraced by the Trump administration and are increasingly seen as an alternative to bank deposits, in the form of a 100%-secured instrument as opposed to a government-guaranteed one. Given their similarity to bank deposits, it is not surprising that the regulatory regime created by Congress in the GENIUS Act borrows heavily from traditional bank regulation. As a result, many regulated stablecoin issuers will be bank-like institutions subject to regulatory examinations, capital and liquidity requirements, and other restrictions borrowed from existing banking law.

Focusing on innovation, however, has not been limited to digital assets. The heads of both the OCC and the FDIC have stated publicly that it has become too difficult to gain approval for a new bank charter, and a recent applicant for an innovative bank charter, Erebor Bank, received conditional approval from the OCC in record time. It is likely that this trend of faster-than-previously-granted approvals for new banks will continue.

Conclusion

2025 has been a year of intense activity from the Trump banking agencies. The administration's desires to continue deregulation, to foster transparency and accountability, and to encourage innovation show no signs of slowing down. Although some actions may (or may not) be tempered by the US Supreme Court and other courts, these three themes of 2025 – and accompanying industry consolidation – are almost certain to continue for at least the next three years.

USA - NEW YORK



Trends and Developments

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Moses Singer has, for over 100 years, provided legal services to a diverse range of clients, including leading banks, companies, individuals and families. Its client base spans industries such as banking and finance, entertainment, media, real estate, advertising and technology. It advises both emerging entrepreneurs and well-established businesses on corporate transactions and financing matters. Its core focus lies in banking, corporate, litigation, intellectual property,

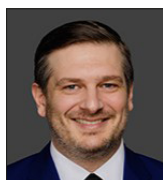
real estate, private clients, AI and data law, and bankruptcy and restructuring. Many of the attorneys are seasoned professionals who are highly respected in their fields. Some have built their entire legal careers at the firm, contributing to a culture grounded in excellence, integrity and sound judgement. This depth of expertise and long-standing stability enables the firm to deliver high-quality, practical and personalised legal services to its clients.

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Regulatory Technology

Introduction

RegTech, or “regulatory technology”, refers to the technologies that enhance and streamline compliance by financial institutions with federal and state legally mandated regulations. The development of RegTech procedures for use by financial institutions and their regulators has been driven by the implementation of digital technology by regulated financial institutions (“Financial Institutions”).

By way of background, prior to the widespread use of digital technology by Financial Institutions (ie, the practice of digitising and possibly also encrypting data, and then storing the digital data in various locations such as on site, in the cloud, in secure data centres for core systems and in separate disaster recovery centres), data and records were maintained based on analogue technology (ie, the process of taking data and recording it on a physical medium such as paper). Minimal encryption or no encryption may be applied to physical data, and the physical record was maintained by the Financial Institution, typically in a location believed to be secure. Utilisation of digital technology typically results in improved security, precision and accuracy of recorded data, significantly increases storage capacity of records, and allows for the adoption of modifications to facilitate third-party and government interaction. In addition, all modern digital payment systems require digital data format for transaction initiation, authentication, processing and settlement (ie, payment methods other than cash or cheques require digital data).

The technologies frequently employed to create compliance programmes will include:

- **Artificial intelligence (AI):** A computer program to perform tasks that normally require human intelligence, such as learning, problem solving and decision-making, by accessing large amounts of data and analysing the data to identify problems and make predictions;
- **Blockchain:** A decentralised, distributed digital ledger that is shared across a network of computers that creates batches of transactions, linked together chronologically using cryptography;
- **Cloud-based data storage:** A cloud computing model that enables the storing of data and files on the internet through a third-party cloud computing provider to save data for various regulatory and commercial purposes;
- **Big data processing:** An exceptional volume of data (both from internal transaction records and from third-party information, such as sanctions lists) that is stored in a manner that can facilitate real-time data processing; and
- **Robotic process automation:** The use of software robots to automate repetitive, rules-based tasks,

(referred to herein collectively as the “Digital Technologies”).

The absence of a unified set of US banking regulations applicable to Digital Technologies has resulted in multiple overlapping regulations, particularly with respect to data privacy and cybersecurity. The issue is further complicated by the need to create two separate data pools – one containing the data reportable to US government agencies (which is extensive and subject to its own privacy guidelines) and one containing the data otherwise retained by the Financial Institution in the ordinary course of its business (which is subject

to different privacy guidelines). As discussed in further detail below, the CCPA Regulations (defined below) and similar state regulations present overlapping and inconsistent privacy standards with respect to which there is no clear resolution.

Applicable law and regulations

The use of Digital Technologies in connection with regulatory compliance by Financial Institutions raises legal issues in the realm of data privacy, cybersecurity, intellectual property, allocation of rights with respect to components of the digital data, and allocation of liabilities arising from the use of the digital data. The operation of Digital Technologies in a cross-border setting may also raise jurisdictional issues and the need to comply with multiple legal regimes. This review does not discuss the extensive intellectual property issues associated with Digital Technologies and does not include a discussion of the more extensive privacy and security laws that have been enacted in Europe and the UK. We have focused on the data privacy and cybersecurity regulations currently applicable to Financial Institutions in the USA.

Data privacy

We begin with an overview of the federal regulations specifically applicable to any customer information collected by Financial Institutions and the guidelines with respect to third-party access to such information. None of the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) or the Board of Governors of the Federal Reserve System (“Federal Reserve” and, together with the OCC and the FDIC, collectively, the “Principal US Bank Regulators”) has issued detailed regulations as to how Digital Technologies should be implemented by regulated banks. Instead, the Principal US Bank Regulators address the use of digital technology as a component of safety and soundness standards (a majority of the applicable regulations were implemented pursuant to the Gramm-Leach-Bliley Act (5 USC §§ 6801–6809, §§ 6821–6827)).

The Interagency Guidelines Establishing Information Security Standards set forth at 12 CFR Part 30, Appendix A set out the “safety and soundness” guidelines generally adopted by the Principal US Bank Regulators. In essence, the “safety and soundness”

criterion is evaluated by an examination of (i) internal controls and information systems, (ii) internal audit systems, (iii) loan documentation practices, (iv) credit underwriting practices, (v) interest rate exposure, (vi) asset quality and (vii) earnings. The guidelines focus on the federal regulations that mandate collection and maintenance of a significant amount of information on each customer, and the information disclosure requirements that arise under the Anti-Money Laundering Act (AML), the Bank Secrecy Act (BSA), the reporting requirements of the Financial Crimes Enforcement Network (FinCEN), and the reporting and sanctions regulations issued by the Office of Financial Asset Control (OFAC).

Pursuant to 12 CFR 208.63 (b)(2), 211.5 (m)(2) and 211.24 (j)(2) (Federal Reserve); 12 CFR 326.8 (b) (2) (FDIC); 12 CFR 21.21 (c)(2) (OCC); and 31 CFR 1020.220 (FinCEN), all Financial Institutions must have a Customer Identification Program (CIP) which is incorporated into the institution’s BSA and AML compliance programme. CIPs require the institution to collect base-line identification of any account holder (such as name, address and federal identification number (social security number for individuals, and tax identification numbers for all other account holders)), with few exceptions. Additional information is required for customers in certain lines of business. The CIP data collected must be verified by the Financial Institution.

The CIP process must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organisations issued by any federal government agency and designated as such by the US Treasury Department in consultation with the Principal US Bank Regulators. For example, the procedures must require the Financial Institution to review the CIP data in accordance with the identification and reporting procedures mandated under or by the ALMA, BSA, FinCEN and OFAC and to follow all federal directives issued in connection with such lists (31 CFR § 1020.220).

As a result of the above-referenced reporting requirements, prior to the opening of an account at a Financial Institution, the customer data collected for an account holder may have been disclosed to the US Treasury

Department (pursuant to ALMA and BSA regulations) as well as FinCEN and OFAC (such data referred to herein as “Government Regulatory Data”). Disclosure of Government Regulatory Data to third parties requires the submission of an application pursuant to the Freedom of Information Act (5 USC § 552), which grants the public the right to request access to agency records unless they fall under specific exemptions. The exemptions include: (i) information required to be withheld pursuant to other federal statutes (see below regarding privacy rights of consumers pursuant to other federal laws); (ii) foreign policy that has been classified; (iii) records that are “related solely to the internal personnel rules and practices of an agency”; (iv) information that would reveal “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential”; (v) “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency”; (vi) personal privacy interests in records contained in personnel, medical and similar files when disclosure of such records would constitute “a clearly unwarranted invasion of personal privacy”, such as access to information such as home addresses, third-party names, phone and social security numbers, and medical information contained in personnel files; (vii) “records or information compiled for law enforcement purposes”; (viii) matters that are “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions”; and (ix) geological and geophysical information and data, including maps, concerning wells.

Information that is not Government Regulatory Data is subject to federal privacy laws and, in certain cases, state privacy laws (such data referred to herein as “Generic Customer Data”). With respect to Generic Customer Data, all Financial Institutions are subject to the consumer privacy regulations issued by the Federal Trade Commission (FTC) (16 CFR Part 313) and the Consumer Financial Protection Bureau (CFPB) (12 CFR Part 1016). For the purposes of the FTC and CFPB regulations, a “consumer” is someone who obtains or has obtained a financial product or service from a financial institution that is to be used primarily

for personal, family or household purposes. The term “consumer” does not apply to commercial clients.

The FTC and CFPB regulations protect a consumer’s “nonpublic personal information” (NPI) (15 USC 6809 (4)(A)). NPI is any “personally identifiable financial information” that a financial institution collects about an individual in connection with providing a financial product or service, unless that information is otherwise “publicly available”. Financial Institutions must give consumers a “clear and conspicuous” written notice describing their privacy policies and practices (known as a “Privacy Notice”). If a Financial Institution wishes to share NPI with non-affiliated third parties, the consumer must be given (i) an “opt-out” notice explaining the individual’s right to direct the Financial Institution not to share their NPI with non-affiliated third parties; (ii) a reasonable way to opt out; and (iii) a reasonable amount of time to opt out before the Financial Institution discloses their NPI. The Privacy Notice must be given to consumers on an annual basis.

State-based consumer privacy regulations generally exempt large banks for data and activities already regulated by federal law, and many state consumer privacy laws have exemptions relating to Financial Institutions or data otherwise covered by federal law. However, California’s consumer privacy laws (the California Privacy Rights Act (CPRA) (Cal. Civ. Code § 1798.100 et seq) and the California Consumer Privacy Act Regulations (“CCPA Regulations”)) have a narrower, data-level exemption (meaning that while NPI collected or processed pursuant to applicable federal law is exempt, any other data a bank collects would be subject to state regulation). As a result, the CCPA Regulations present overlapping and inconsistent privacy standards with respect to which there is no clear resolution (potentially requiring a review of all data, whether initially classified as Government Regulatory Data or Generic Customer Data, for compliance with the CCPA Regulations).

Cybersecurity

As noted above, the Principal US Bank Regulators have not issued detailed regulations as to how cybersecurity should be implemented by regulated banks. The federal information security guidelines applicable to Financial Institutions are set forth in 16 CFR § 314.3,

which requires each Financial Institution to develop, implement and maintain a comprehensive information security system that contains administrative, technical and physical safeguards that are appropriate to the Financial Institution's size and complexity, the nature and scope of the Financial Institution's activities, and the sensitivity of any customer information at issue. In 2022, the Federal Financial Institutions Examination Council (FFIEC) issued an updated [Cybersecurity Resource Guide for Financial Institutions](#). This guide outlines resources to assist Financial Institutions in strengthening their resilience to cyber threats, but the use of the guidelines and resources is voluntary.

Financial Institutions that have issued publicly traded securities are also subject to regulations issued by the Securities Exchange Commission (SEC) that require registered companies to implement robust cybersecurity risk management and governance, conduct regular risk assessments, have an incident response plan, and report significant cyber incidents within 72 hours (see [SEC Press Release 2023-139](#)). In the context of credit and payment cards, the PCI Security Standards Council has adopted various guidelines as to standards for the maintenance of firewalls, the use of encryption and strong authentication practices such as multifactor authentication (www.pcisecuritystandards.org/standards/).

Accordingly, the cybersecurity guidelines applicable to Financial Institutions arise from the FFIEC, the SEC (with respect to issues of public securities) and the PCI Security Standards Council (with respect to credit and payment cards).

Conclusions and recommendations

A single regulation (addressing both privacy and cybersecurity issues) should be issued to cover all Government Regulatory Data, and the consolidated regulations should clarify the cases in which the Government Regulatory Data may also be subject to the FTC and CFPB regulations applicable to Generic Customer Data.

With respect to cybersecurity regulations, the Principal US Bank Regulators should issue one set of standards applicable to all Financial Institutions and clearly identify exceptions to the general rule. In light of the number of states that have different views on this issue, it is likely that consolidated cybersecurity regulations may take quite a while.

The drafting of consolidated privacy and cybersecurity regulations should begin with the formation of a banking industry panel ("Industry Panel") to present data collection and distribution issues to the Principal US Bank Regulators. The drafting of the final regulations (and any necessary laws that must be passed by Congress to permit such regulations) should include the direct involvement of the Industry Panel and the Principal US Bank Regulators. To facilitate cross-border compliance, consideration should be given to alignment (or at least clear cross-referencing) of the US regulations with those already issued by the European Union, referred to as the General Data Protection Regulation (Regulation (EU) 2016/679).

We look forward to any questions or comments you may have.

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