Comparative Guides

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Banking Regulation

OPEN ALL

1. Legal framework

1.1 Which legislative and regulatory provisions govern the banking sector in your jurisdiction?

Canada

Gowling WLG

Answer ... The Bank Act, which is a federal statute enacted by the Parliament of Canada, is the primary statute that governs the banking sector in Canada. The Bank Act regulates:

- domestic banks (Schedule I);
- foreign subsidiary banks that are controlled by eligible foreign institutions (Schedule II); and
- bank branches of foreign institutions (Schedule III).

It has been supplemented by numerous regulations made under its authority, which elaborate on the rules and principles it contains.

Provincial legislation generally does not apply to the banking activities of banks, as federally regulated financial institutions. However, provincial provisions may apply to banking activities as long as they do not "in any way impair any activities that are 'vital or essential to banking' such that Parliament might be forced to specifically legislate to override the provincial law" (*Bank of Montreal v Marcotte*, [2014] 2 SCR 725, at para 66)

Contributors

Topic

Banking Regulation

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SCR 723, at para 66).

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The main regulatory framework for the banking sector is the Financial Business Act (Consolidated Act 937 of 6 September 2019), which contains the overall regulation of all financial institutions (banks, mortgage credit institutions, insurance companies and investment firms). Among other things, it regulates the permitted activities, licensing requirements, duties and responsibilities of financial institutions and their management, as well as containing provisions on the supervision and the supervisory powers of the Danish Financial Supervisory Authority (FSA).

The Financial Business Act as such is to a large degree based on EU legislation and implements a number of the key directives in respect of the financial sector (see question 1.2).

The regulatory framework of the Financial Business Act is supplemented by a substantial number of executive orders issued by the FSA which contain more specific and detailed provisions in relation to a number of key areas, such as outsourcing, management and governance, recovery plans, remuneration, risk labelling of investment products and good business practices for financial institutions.

In addition, the FSA has issued a number of guidance papers which further elaborate how the various provisions should be interpreted and applied in practice.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... As Germany is an EU member state, the regulatory framework is in many instances based on EU regulations and directives. Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms (Capital Requirements Regulation (CRR)) is particularly important. It sets out the rules for calculating capital requirements, reporting and general obligations for liquidity requirements. Further, the Capital Requirements Directive IV (2013/36/EU) (CRD IV) sets out stronger prudential requirements for banks, requiring them to keep sufficient liquidity and capital reserves, and to avoid insufficient capital reserves and insufficient short and long-term liquidity.

Additionally, the EU has actively contributed to developing the Basel Committee on Banking Supervision standards at the Bank for International Settlements on capital, liquidity and leverage. It aims to ensure that major European banking specificities and issues are appropriately addressed. In response to Basel III, the European Union carried out a major overhaul of the existing regulatory framework, which came into effect on 1 January 2014. The rules introduced in the European Union through the CRD IV package therefore respect the balance and ambition of the Basel III framework.

Canada

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MERCURY


The German laws covering the banking sector are in particular:

- the Banking Act, which sets out the requirements and duties of credit institutions and financial services institutions;
- the Payment Services Oversight Act, which covers the supervision of payment services and implements the European Payment Services Directive into German law;
- the Supervision of Financial Conglomerates Act;
- the laws covering savings banks;
- the Cooperative Societies Act;
- the Deposit Guarantee Act;
- the Investor Protection Act;
- the Capital Investment Code, which covers the provision of investment services and implements the Undertakings for Collective Investment in Transferable Securities Directive (2014/91/EU), as well as the Alternative Investment Fund Managers Directive (2011/61/EU);
- the Money Laundering Act;
- the Credit Institution Reorganisation Act;
- the Recovery and Resolution Act;
- the Securities Trading Act; and
- laws covering specialised institutions, such as mortgage banks and building societies.

Ancillary laws and regulations also accompany these statutes, most of which deal with specific regulatory aspects (i.e. the Regulation Governing Large Exposures, the Solvency Regulation).

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The primary legislation regulating the Irish banking system is:

- the Single Supervisory Mechanism Regulation (SSMR) (Regulation (EU) 1024/2013);
- the Central Bank Acts 1942–2018 (as amended) (the **Central Bank Acts**); and
- various statutory instruments and regulatory codes issued by the Central Bank of Ireland (CBI).

Under the SSMR, the European Central Bank (ECB) is the lead regulator, with the CBI as the competent authority in Ireland.

Irish banks are also subject to the European Union (Capital Requirements) Regulations 2014 (SI 158/2014) (transposing EU Directive 2013/36 (CRD IV) (the Irish Capital Regulations) and EU Regulation 575/2013 (CRR) (given full effect in Ireland by the European Union (Capital Requirements) (No 2) Regulations 2014 (SI 159/2014)).

EU legislation that is not directly effective is mainly transposed into Irish law by secondary legislation – that is, statutory instruments (eg, the Irish Capital Regulations transposing CRD IV).

The Central Bank Reform Act 2010 (the **2010 Act**) modified the regulatory framework in Ireland, including the CBI's supervisory culture and approach. The CBI's enforcement powers were further enhanced through the Central Bank (Supervision and Enforcement) Act

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United States

enhanced through the Central Bank (Supervision and Enforcement) Act 2013 (the **2013 Act**).

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (**AML4**) is the primary legislation governing anti-money laundering in Ireland and implements the EU Money Laundering Directives. The CBI is the competent authority for monitoring compliance with this legislation by banks and other financial services providers.

The CBI also issues various codes, including the Consumer Protection Code 2012 (the **CPC**) , which regulate the provision of services and products to bank customers.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The main law governing credit institutions in Luxembourg is the Law of 5 April 1993 on the financial sector, as amended ('Banking Act'), which covers:

- access to professional activities in the financial sector (including the authorisation of credit institutions established under Luxembourg law, and the authorisation for the establishment of branches and freedom to provide services in Luxembourg by credit institutions governed by foreign law);
- professional obligations, prudential rules and rules of conduct in the financial sector;
- prudential supervision of the financial sector;
- prudential rules and obligations in relation to recovery planning, intra-group financial support and early intervention; and
- sanctions.

As Luxembourg is an EU member state, European banking regulations are also applicable to Luxembourg credit institutions - in particular, 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, as amended (CRR). The Banking Act implements into Luxembourg law, among others, 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 (CRD IV).

Many specific laws and regulations (at both a European and Luxembourg level) also apply, depending on the activities pursued by Luxembourg credit institutions (eg, investment services, securitisation, over-the-counter derivative transactions, securities financing transactions, regulation of benchmarks).

Luxembourg credit institutions are also subject to the Law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes ('BRR Law'), which implements 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

(BRRD); and to the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions governed by the laws of Luxembourg ('Accounts Law').

The legal framework is completed by grand-ducal regulations, *Commission de Surveillance du Secteur Financier* (CSSF) regulations and CSSF circulars on a variety of specific topics. One of the most important circulars is CSSF Circular 12/552 on the central administration, internal governance and risk management of credit institutions, investment firms and professionals performing lending operations, as amended. At the date of publication, an update to CSSF Circular 12/552 is imminent.

The words 'credit institution' and 'bank' are used interchangeably throughout this Q&A.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The financial market legislation governing the banking sector in Switzerland derives from a number of sources. The key statutes include:

- the Financial Market Supervision Act of 2007;
- the Banking Act of 1934;
- the Financial Institutions Act of 2018;
- the Financial Services Act of 2018;
- the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 2015;
- the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 1997; and
- the Collective Investment Schemes Act of 2006.

These statutes are supplemented by various implementing ordinances enacted by the Federal Council or the Swiss Financial Market Supervisory Authority FINMA (FINMA). Their practical application is further specified by FINMA in corresponding circulars.

In addition, the Swiss Bankers Association and other industry associations have issued regulations in many areas, some of which have been adopted by FINMA as binding minimum standards.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The main legislative and regulatory provisions that govern the Turkish banking system are as follows:

- the Banking Law (5411);
- the Law on the Central Bank of the Turkish Republic (1211);
- the Capital Markets Law (6362);
- the Commercial Code (6102);
- the Code of Obligations (6098);
- the Mortgage Law (5582);
- the Bank Cards and Credit Cards Law (5464);
- the Financial Leasing Law (3226);
- the Law on the Protection of the Value of the Turkish Currency

- the Law on the Protection of the Value of the Turkish Currency (1567); and
- other applicable laws and regulations.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

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Answer ... The principal statutes governing the banking industry in the United Kingdom are:

- the Financial Services and Markets Act (FSMA) 2000 (as amended);
- the Banking Act 2009;
- the Financial Services (Banking Reform) Act 2013; and
- the Bank of England and Financial Services Act 2016.

A number of regulations - generally expressed in statutory instrument form - as well as the Prudential Regulation Authority (PRA) Rulebook and the Financial Conduct Authority (FCA) Handbook contain detailed rules applicable to the banking industry in the United Kingdom.

The Payment Services Regulations 2017 (SI 2017/752) (PSR) govern the provision of payment services in the United Kingdom. Those providing such services are required to adhere to the business conduct provisions laid out in PSR.

The primary regulatory framework for consumer credit activities is set out in the FSMA 2000 and in the Consumer Credit Act 1974 (as amended).

The Banking Act 2009 established a Special Resolution Regime (SRR) to facilitate the orderly resolution of banks in financial distress. It includes pre-insolvency stabilisation options, a bank insolvency procedure and a bank administration procedure. An insolvency regime that applies to investment banks (including banks carrying on investment banking activities) is set out in the Investment Bank Special Administration Regulations 2011.

On 1 January 2018, the Benchmarks Regulation (Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (Regulation (EU) 2016/1011) (BMR) came into force. The FCA is the United Kingdom's national competent authority under the BMR. The principal objectives of the BMR are restoration of investor and consumer confidence in the accuracy, robustness and integrity of indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and the benchmark setting process itself. The BMR aims to achieve this by ensuring that benchmarks are not subject to conflicts of interest, are used appropriately and reflect the actual market or economic reality that they are intended to measure.

On 27 February 2018, the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (SI 2018/135) (Benchmarks Regulations) came into force in the United Kingdom. The Benchmarks Regulations:

- designate the FCA as the UK competent authority for the purposes of the BMR;

- permit the FCA to exercise powers over persons who are not authorised and are involved in the provision of, or contribution of input data to, a benchmark, but are not benchmark

  administrators as defined in the BMR as 'miscellaneous BM persons';
- empower the FCA to impose requirements on persons needing them to administer or contribute to a benchmark; and
- provide for the FCA to regulate benchmark administrators, including the recognition of third-country administrators.

The Benchmarks Regulations amend secondary legislation - including the Financial Services and Markets Act 2000 (Exemption) Order 2001 (SI 2001/1201) and the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013) - to reflect the BMR. In addition, they make a minor amendment to Section 293 of the FSMA 2000 relating to the implementation of the EU Cybersecurity Directive (2016/1148/EU).

The Financial Services (Banking Reform) Act 2013 (Commencement No 12) Order 2018 (SI 2018/1306) was published on 5 December 2018; as were the Bank of England (Amendment) EU Exit) Regulations 2018 (SI 2018/1297).

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... The US commercial banking sector operates under a dual banking system. US banks can be chartered by one of the 50 state banking agencies or at the federal level by the Office of the Comptroller of the Currency (OCC) (collectively, the 'chartering authorities'). If a US bank is chartered by a state, it will still generally have at least one federal supervisor as well as a state banking regulator. As a practical matter, all banks are subject to federal statutes and regulations, whether a bank is chartered by a state or the OCC.

Key federal banking statutes include:

- the National Bank Act;
- the Federal Reserve Act of 1918;
- the Federal Deposit Insurance Act;
- the Glass-Steagall Act;
- the Bank Holding Company Act of 1956;
- the Bank Secrecy Act of 1970;
- the International Banking Act of 1978;
- the Federal Deposit Insurance Corporation Improvement Act of 1991;
- the Foreign Bank Supervision Enhancement Act of 1991;
- the Gramm-Leach Bliley Act; and
- the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

These statutes are supplemented by regulations and guidance issued by the three primary federal banking agencies. These key regulatory agencies are discussed further in question 1.3.

For more information about this answer please contact: Jerome Roche from Linklaters

from Linklaters

1.2 Which bilateral and multilateral instruments on banking have effect in your jurisdiction? How is regulatory cooperation and consolidated supervision assured?

Canada

Gowling WLG

Answer ... Global regulatory bodies have regulatory impact on Canadian financial institutions. Both the Office of the Superintendent of Financial Institutions (OSFI) and the Bank of Canada participate in the Basel Committee on Banking Supervision (BCBS) as part of their role as members of the Bank for International Settlements. While the BCBS does not issue binding regulation, it has influence internationally through its role in standard setting for prudential regulation of banks, including capital adequacy and liquidity requirements. The BCBS's recommendations are generally implemented in Canada by OSFI and the Bank of Canada.

In addition, prudential regulators such as OSFI publish guidelines and advisories for the purpose of ensuring compliance with requirements under federal financial institution legislation. The guidelines and advisories fall into four general categories:

- capital adequacy requirements (ie, Tier 1 and 2 capital and liquidity and leverage ratios);
- limits and restrictions on lending;
- accounting and disclosure; and
- sound business and financial practices.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Danish banking regulation is to a large degree harmonised with the rest of the European Union on the basis of numerous EU directives and EU regulations within the financial services area. Within the banking sector, the EU directives have primarily been implemented into Danish law through incorporation in the Financial Business Act, while the EU regulations are directly applicable.

The FSA cooperates with EU regulators in respect of cross-border banking activities, with the home-state regulator being primarily responsible for overall supervision and the host-state regulator having a secondary role in the supervision of local branches and so on.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The EU Single Supervisory Mechanism (SSM) set out in Regulation (EU) 1024/2013 was set up as the first pillar of the European banking union, alongside the Single Resolution Mechanism (SRM) and the European Deposit Insurance Scheme. The three pillars rest on the foundation of a single rulebook, which applies to all EU countries. The European banking supervision mechanism aims to contribute to the safety and soundness of credit institutions and to the stability of the

EU financial system by ensuring that banking supervision across the European Union is of a high standard and is consistently applied to all banks. While retaining ultimate responsibility, the European Central Bank (ECB) carries out its supervisory tasks within the SSM, comprising

the ECB and national competent authorities (NCAs) – in Germany, the Federal Financial Supervisory Authority (BaFin). This structure provides for strong and consistent supervision of all relevant entities across the euro area, while making the best use of the local and specific expertise of the national supervisor. Within the SSM, composed of the ECB and NCAs, the ECB carries out its supervisory tasks. The ECB is responsible for the effective and consistent functioning of the SSM, with a view to carrying out effective banking supervision and contributing to the safety and integrity of the banking system and the stability of the financial system.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Banks operating in Ireland are subject to all EU regulations and directives applicable to the operation of their business and the provision of their banking services, including those mentioned in question 1.1. Banks also are cognisant of and comply with:

- standards issued by the Basel Committee on Banking Supervision, the Financial Action Task Force, the International Financial Consumer Protection Organisation; and
- international tax conventions such as the Organisation for Economic Co-operation and Development's Common Reporting Standards and The Foreign Account Tax Compliance Act.

Following the introduction of the Single Supervisory Mechanism (SSM) on 4 November 2014, the ECB became the competent authority for authorising and supervising EEA banks operating in Ireland.

Under the SSM, banks designated as 'significant' are supervised by a joint supervisory team led by the ECB and comprising members from the ECB and the CBI. There are currently six Irish banks designated as significant. Banks designated as 'less significant' are directly supervised by the CBI in the first instance; but the ECB has the power to issue guidelines or instructions to the CBI and to take over direct supervision of any less significant bank if necessary.

Pursuant to the provisions of the CRR, the CBI is responsible for supervision on a consolidated basis, including when it has authorised a bank and the parent of the bank is one of the following:

- a parent financial holding company in a member state;
- a parent mixed-financial holding company in a member state;
- an EU parent financial holding company; or
- an EU mixed-financial holding company in a member state.

The CBI in its consolidated supervisory role works with the European Banking Authority (the **EBA**) and competent authorities in other member states to facilitate consistent supervision and application of the applicable provisions of CRD IV.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... A number of international organisations are working on topics that are of relevance to the financial sector as a whole, and to credit institutions in particular.

Luxembourg is a member state of the Organisation for Economic Cooperation and Development (OECD), which works on establishing norms and better policies for a wide range of subjects, such as corruption and tax avoidance. Luxembourg is also a member of the Financial Action Task Force (FATF), which sets standards, makes recommendations and promotes effective implementation of legal, regulatory and operational measures for the fight against money laundering and terrorist financing.

The CSSF is one of the bank supervisors that are members of the Basel Committee on Banking Supervision, which is the primary global standard-setter for the prudential regulation of banks.

The European Commission, the European Central Bank (ECB) and the OECD are members of the Financial Stability Board (FSB), which is an international organisation that monitors and makes recommendations for the global financial system.

The work performed by these organisations typically influences European legislation, which is applicable to credit institutions in Luxembourg. For instance, the Basel Framework is transposed via CRD IV and CRR; and the FATF Recommendations are implemented at the European level via Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended.

The EU financial system is supervised via the European System of Financial Supervision (ESFS). The ESFS consists of:

- the European Systemic Risk Board, which is responsible for the macro-prudential oversight of the EU financial system and the prevention and mitigation of systemic risk;
- the three European Supervisory Authorities - the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority; and
- national supervisory authorities.

Banking supervision is further ensured via the Single Supervisory Mechanism (SSM), which comprises the ECB and the national supervisory authorities and which, together with the Single Resolution Mechanism, form the EU Banking Union.

The different authorities forming part of the ESFS are required under their respective regulations to cooperate with each other and to ensure the flow of appropriate and reliable information between them. Similarly, the regulations establishing the SSM require cooperation between the ECB and the ESFS, as well as cooperation within the SSM between the ECB and the national supervisory authorities.

Finally, specific EU directives and regulations, such as CRD IV and CRR, include specific provisions on cooperation between authorities and consolidated supervision. The Banking Act (which implements CRD IV

in Luxembourg) includes a number of provisions with respect to cooperation, coordination and exchange of information between competent authorities (see in particular question 5.1).

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Switzerland participates in several international bodies which have a significant influence on Swiss banking regulation – in particular:

- the Financial Stability Board;
- the Bank of International Settlements;
- the Basel Committee on Banking Supervision (BCBS); and
- the International Organization of Securities Commissions.

Furthermore, Switzerland is a member of the Financial Action Task Force (FATF) and the Organisation for Economic Co-operation and Development (OECD).

Among others, Switzerland has implemented:

- the capital adequacy rules of the Basel Accord (Basel I, II and III) issued by the BCBS;
- the recommendations of the FATF relating to anti-money laundering; and
- the automatic exchange of information based on the common reporting standard of the OECD.

Furthermore, Switzerland has entered into an intergovernmental agreement with the United States for cooperation to facilitate the implementation of the Foreign Account Tax Compliance Act.

In order to ensure the effective supervision of internationally active financial institutions, FINMA works with foreign supervisory authorities and participates in specific supervisory and enforcement proceedings, as well as in the resolution of issues concerning financial institutions within the framework of international supervisory cooperation. This takes place on the basis of the Swiss legal provisions, some of which are supplemented by international treaties or specified in non-binding international administrative agreements.

For further details on consolidated supervision, please see question 5.1.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... In the Turkish banking system, regulatory cooperation and consolidated supervision are assured by the Banking Regulation and Supervision Agency (BRSA). The Savings Deposit Insurance Fund, the Capital Markets Board, the Undersecretariat of the Treasury, the Central Bank and the Financial Crimes Investigation Board are other

significant institutions.

The lead bank regulator is the BRSA. It regulates the operations of the institutions that are subject to its supervision and carries out the functions of supervision and enforcement in a safe and sound manner.

The BRSA acts in a way that is compatible with the practices of foreign supervisory authorities. It also has connections with multinational institutions such as the World Bank, the International Monetary Fund and the World Trade Organization. Furthermore, the BRSA is a member of institutions such as the Basel Committee on Banking Supervision, the Islamic Financial Services Board and the Standing Committee on Supervisory and Regulatory Cooperation (Auditing and Cooperation Committee).

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

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Answer ... A number of bilateral and multilateral instruments are relevant - in particular:

- standards issued by the Basel Committee on Banking Supervision; and
- international tax standards, such as the Organisation for Economic Co-operation and Development's Common Reporting Standards.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters

Answer ... The US banking agencies participate in several international bodies that influence US banking regulation, including:

- the Basel Committee on Banking Supervision;
- the Financial Stability Board;
- the Organisation for Economic Co-operation and Development;
- the Financial Action Task Force; and
- the Bank for International Settlements.

The US bank regulatory agencies – the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System and the OCC – implemented the Basel III accords in the United States in 2013–14. US capital adequacy standards require banks and bank holding companies (BHCs) subject to them to calculate their risk-based capital ratios under both the 'standard' and 'advanced' approaches (with respect to large banks and BHCs subject to the 'advanced' approaches).

In addition to participating in the organisations listed above, the US banking agencies have a number of bilateral relationships with individual foreign regulators that provide for cooperation and coordination as to regulatory actions, enforcement matters and cross-border insolvency.

For more information about this answer please contact: Jerome Roche from Linklaters

1.3 Which bodies are responsible for enforcing the applicable laws and regulations? What powers (including sanctions) do they have?

Canada

Gowling WLG

Answer ... OSFI and the Financial Consumer Agency of Canada (FCAC) are the primary regulatory bodies for banks. OSFI is responsible for prudential regulation and conducts regular reviews of banks regarding compliance with the guidelines it establishes for capital, reporting and business practices. FCAC is responsible for consumer protection and oversees banks' compliance with certain voluntary codes of conduct.

Both OSFI and FCAC have the power to impose administrative monetary penalties for violations of their enabling legislation - that is, the Financial Consumer Agency of Canada Act and the Office of the Superintendent of Financial Institutions Act, respectively. OSFI can also enforce penal sanctions under the Bank Act: the sanctions for contraventions include fines of up to C$5 million (C$1 million for a natural person) and imprisonment for up to five years. The sanctions will vary depending on the severity of the infraction and the size of the bank.

In addition to imposing monetary sanctions, the two regulators often require banks to improve their internal controls and governance, and have even required that directors and officers be replaced if they were involved in the wrongdoing or failed in their supervisory duties.

Several other regulatory bodies are also involved in enforcing the laws and regulations that apply to banks in Canada. The Department of Finance (Canada) is the government body responsible for banks; it proposes changes to the legislation and adopts new regulations that govern banks. Banks are also reporting entities under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, subject to reporting and compliance obligations relating to anti-money laundering and terrorist financing . These requirements are enforced by the Financial Transactions and Reports Analysis Centre of Canada.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The primary regulator is the FSA, whose overall objective is to ensure financial stability and confidence in the financial institutions and markets.

To this end, the FSA monitors compliance with the Financial Business Act, among others – partly through the issuance of executive orders and guidance notes and ongoing open dialogue with financial institutions, and partly through regular on-site inspections of financial institutions.

In relation to the supervision of banks, the FSA's primary focus is on capital adequacy and solvency requirements; compliance in other areas is monitored on the basis of a risk-based approach, with high-risk areas monitored more closely than low-risk areas.

The FSA has wide-ranging supervisory powers in relation to

enforcement of the Financial Business Act and other supplemental legislation. The FSA can require banks to submit all information and documentation it deems necessary in order for it to monitor compliance with the Financial Business Act, either in connection with

an inspection or on a standalone basis. Such requests are in addition to the ongoing regular reporting requirements in respect of solvency, liquidity and similar matters.

In addition, the FSA can order an investigation of a bank in respect of a particular area of interest either by the FSA itself or by external experts if deemed necessary by the FSA. The costs of such investigations are for the account of the relevant financial institution.

Banks which are found to be in severe or repeated breach of the Financial Business Act are normally put under so-called 'increased supervision', which results in a more onerous reporting regime, among other things.

The FSA provides for a number of sanctions for non-compliance with the Financial Business Act. Violations of the Financial Business Act are normally sanctioned by public reprimands. In severe cases, administrative fines may be issued. If the violation is ongoing, the FSA will either order the relevant bank to refrain from the activities which violate the Financial Business Act or otherwise order the bank (typically within a certain timeframe) to take corrective actions.

Ultimately, the FSA may remove the management of the bank by withdrawing their 'fit and proper' approval or may withdraw the banking licence altogether.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... German banks are supervised under the SSM by the ECB and BaFin, or both, and by the Deutsche Bundesbank. The responsibility of either the ECB or BaFin depends on the allocation of competencies set out in the SSM. The ECB is competent to supervise all German credit institutions with respect to licensing and assessment of notifications of acquisitions and disposals of qualifying holdings in such credit institutions. Additionally, the ECB is competent for the supervision of credit institutions that are deemed 'significant', where:

- a credit institution has a total asset value of more than €30 billion;
- total assets exceed €5 billion and the ratio of total assets to German gross domestic product exceeds 20%;
- BaFin and the ECB mutually decide that the credit institution should be deemed significant;
- the ECB decides that a credit institution with subsidiaries in Germany and other EU member state(s), and whose cross-border assets or liabilities represent a significant part of its total assets or liabilities, should be deemed to be significant; or
- a credit institution has requested or received financial assistance directly from the European Financial Stability Facility or the European Stability Mechanism (ESM).

The ECB directly supervises 117 'significant' institutions and banking groups in the European Union (including 21 German institutions and banking groups) from 1 January 2020, and supervises member states'

banking groups) from 1 January 2020, and supervises member states regulatory authorities, which directly supervise less significant institutions and banking groups. BaFin supervises banking, financial

service institutions and insurance companies and remains the authority responsible for dealing with anti-money laundering law and the supervision of payment services providers.

The Deutsche Bundesbank is responsible for receiving and analysing data submitted by the banks. It cooperates closely with BaFin and the ECB with regard to banking supervision. If a problem occurs, the Deutsche Bundesbank will promptly involve BaFin. The ECB, BaFin and the Bundesbank cooperate closely, sharing observations and findings necessary for the performance of their respective tasks. In their internal relationship, the ECB or BaFin takes the final decision about whether supervisory measures must be taken or how to construe the law.

Because of the comprehensive responsibility, which BaFin has for the banking, insurance and securities sectors, there are no other supervisory authorities besides the Deutsche Bundes- bank regulators in Germany specifically relevant to the financial services industry, although the German Deposit Protection Fund has a special role. Banks are subject to enhanced audit requirements and external auditors assess compliance of annual accounts with accounting principles, as well as the bank's compliance with its regulatory obligations. The annual audit report is a very important tool for BaFin in exercising its supervisory duties. It is common for the managers of a bank to be invited to a meeting with BaFin to discuss the report annually. Where the audit report identifies any deficiencies or there is any other reason for BaFin to believe that a bank is not fully compliant, BaFin can order a special audit by the Deutsche Bundesbank or another auditing firm.

Ultimately, BaFin can take various supervisory measures under the Banking Act. The most common measures are preventative in nature and may include a request for information, the submission of documents and the ordering of (*ad hoc*) audits. However, if a bank is conducting unauthorised business, BaFin can conduct inspections, prohibit the continuation of such business and order the liquidation of the existing business. BaFin may also impose administrative fines aimed at warning parties to comply with their statutory obligations. It can further issue warnings against managers and demand their dismissal if they do not have the adequate professional qualifications or are considered unreliable.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The ECB has the power to issue guidelines or instructions to the CBI and to take over direct supervision of any less significant bank if necessary.

The CBI has broad enforcement powers designed to deter institutions from acting recklessly and to promote behaviours consistent with those expected in the reformed financial system. The 2013 Act introduced an administrative sanctions regime which included

increased monetary penalties. The penalties may be imposed on individuals and regulated firms. Relevant individuals are subject to fines of up to €1 million and regulated firms subject to fines of up to the greater of €10 million or 10% of the previous year's turnover.

Irish banks are also subject to the oversight of other regulatory authorities, such as the Data Protection Commission, who is responsible for the enforcement of data protection legislation. The sanctions available to the Data Protection Commission include the imposition of fines and criminal liability.

The Financial Services and Pensions Ombudsman (FSPO) is a statutory officer, which deals independently with consumers regarding their individual dealings with financial services providers, including banks. The FSPO is the arbiter of unresolved disputes and is impartial. Its decisions – which include directions for compensation payments – are final, but can be appealed to the Irish High Court.

The Competition and Consumer Protection Commission (CCPC) is the statutory body responsible for the enforcement of consumer complaints and merger control in Ireland. The CCPC can issue compliance notices in respect of contraventions of consumer protection legislation and can seek civil and/or criminal sanctions for breaches of competition law.

The Irish Takeover Panel is the statutory body responsible for monitoring and supervising takeovers and other relevant transactions in listed companies, including banks.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... **CSSF:** The Luxembourg regulator for the financial sector is the CSSF, which falls under the authority of the Luxembourg Ministry of Finance.

The powers of the CSSF include the right to:

- have access to any document in any form whatsoever and receive a copy of it;
- request information from any person and, where necessary, summon any such person in order to obtain information;
- carry on on-site inspections or investigations with respect to persons subject to its prudential supervision;
- require existing telephone records or other existing electronic communication or data traffic records;
- require the cessation of any practice that is contrary to the provisions of the CRR, the Banking Act and their implementing measures, and take measures to prevent the repetition of such practices;
- request the freezing and/or sequestration of assets with the district court of Luxembourg;
- impose a temporary prohibition of professional activity with respect to persons subject to its prudential supervision, as well as members of the management body, employees and tied agents linked to these persons;
- require approved statutory auditors of the persons subject to its prudential supervision to provide information;

- adopt any type of measure necessary to ensure that the persons subject to its prudential supervision continue to comply with the requirements of the CRR, Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on

  markets in financial instruments, the Banking Act and their implementing measures;
- refer information to the state prosecutor for criminal prosecution;
- require approved statutory auditors or experts to carry out on-site verifications or investigations of persons subject to its prudential supervision, at the expense of the person concerned;
- issue a communication to the public;
- suspend the marketing or sale of financial instruments or of structured deposits in certain specific cases;
- require the removal of a natural person from the board of a credit institution;
- subject to certain conditions, require electronic communication and communications network providers to hand over records of electronic communications; and
- generally require from any person subject to its supervision any information that may be useful to the pursuit of its supervisory mission.

The CSSF also has powers of injunction and suspension, whereby it may enjoin a person subject to its supervision, within a specific timeframe, to remedy any situation or cease any practice that is contrary to legal, regulatory or statutory provisions, or to cease any conduct and refrain from repeating any conduct that would be contrary to such provisions. Where the situation in question has not been remedied within the timeframe imposed, the CSSF may:

- suspend the members of the management body or any other persons;
- suspend the exercise of voting rights attached to shares held by shareholders or members in the supervised entity; or
- suspend the supervised entity's business or a particular area of such business.

The CSSF may issue circulars and regulations on specific topics relating to its supervisory powers.

The CSSF may impose administrative penalties on legal persons subject to its supervision and the members of the management body, the effective managers or the persons responsible for a breach of these legal persons if:

- they fail to comply with applicable laws, regulations, statutory provisions or instructions;
- they refuse to provide accounting documents or other requested information;
- they have provided documentation or other information that proves to be incomplete, incorrect or false;
- they preclude the performance of the powers of supervision, inspection and investigation of the CSSF;
- they contravene the rules governing the publication of balance sheets and accounts;
- they fail to act in response to injunctions from the CSSF; or
- they act such as to jeopardise the sound and prudent management of the relevant supervised entity.

In such cases, the CSSF may impose the following penalties:

- a warning;
- a reprimand;

- a fine of between €250 and €250,000;
- a temporary or permanent prohibition on the execution of any number of operations or activities, as well as any other restrictions on the activities of the person or entity; and/or
- a temporary or permanent prohibition on participation in the profession by the directors or senior managers of persons or entities subject to the CSSF's supervision.

These sanctions may be published.

The Banking Act further contains a number of specific sanctions that may be imposed for:

- specific breaches of the Banking Act;
- specific breaches committed by CRR institutions; or
- specific breaches relating to the provision of investment services, the performance of investment activities or the provision of data reporting services.

Such sanctions include:

- administrative pecuniary penalties of up to 10% of the total annual net turnover;
- administrative pecuniary penalties of up to €5 million; or
- administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach.

Other sanctions may be set out in specific laws.

ECB: The ECB plays a central role in the supervision of credit institutions within the framework of the SSM. The ECB is, in particular, responsible for:

- granting and withdrawing credit institution licences;
- assessing acquisitions and disposals of qualifying holdings (see question 9.2);
- ensuring compliance with EU prudential requirements;
- ensuring compliance with EU governance requirements; and
- conducting supervisory reviews, on-site inspections and investigations.

The ECB is also responsible for the effective and consistent functioning of the SSM. The ECB directly supervises a number of 'significant' credit institutions; whereas 'less significant' credit institutions are supervised by their national supervisory authorities in cooperation with the ECB.

The ECB may adopt regulations. The ECB has the power to impose sanctions in case of failure by institutions to comply with obligations arising from ECB decisions or regulations, as set out in Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions. Such sanctions include fines and periodic penalty payments.

Banque Centrale du Luxembourg (BCL): The BCL is the Luxembourg central bank and forms part of the European System of Central Banks. The BCL implements the decisions taken by the ECB in Luxembourg

The BCL implements the decisions taken by the ECB in Luxembourg and is competent for monetary policy operations in favour of Luxembourg credit institutions.

The BCL is also responsible for:

- supervising the general liquidity situation on the markets and of market operators;
- ensuring the efficiency and safety of payment systems and securities settlement systems, as well as the safety of payment instruments; the BCL may ask payment systems and securities settlement systems to provide information and may also perform on-site visits in this respect;
- contributing to ensuring financial stability by cooperating with prudential supervision authorities; and
- collecting statistical information from the competent national authorities or directly from economic agents, including credit institutions; the BCL may perform spot checks on the information provided.

The BCL has regulatory power and may issue regulations and circulars on subject matters relating to its tasks. It also enforces ECB decisions and implements the sanctions imposed by the ECB.

***Commissariat aux Assurances* (CAA):** The CAA is the Luxembourg regulator responsible for the insurance sector. Credit institutions that provide insurance-related services may be subject to the CAA's supervision for those services.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... FINMA is the single integrated financial market supervisory authority, responsible for the supervision of banks, securities firms, stock exchanges and collective investment schemes, as well as for the private insurance sector.

FINMA's primary tasks are:

- to protect the interests of creditors, investors and policyholders; and
- to ensure the proper functioning of the financial markets.

To this effect, FINMA is responsible for licensing, prudential supervision, enforcement and regulation.

Under the dual supervisory system in the banking sector, FINMA largely relies on the work of recognised audit firms, which carry out direct supervision and on-site audits; while FINMA retains responsibility for overall supervisory and enforcement measures.

FINMA can also appoint an independent and suitably qualified person to investigate circumstances relevant for supervisory purposes at a supervised person or entity, or to implement supervisory measures that it has ordered (an investigating agent).

Where a supervised person or entity violates the provisions of legislation or where there are any other irregularities, FINMA must ensure the restoration of compliance with the law. In case of serious violations of supervisory provisions, FINMA may impose the following

sanctions:

- issue a declaratory ruling;
- prohibit the person responsible from acting in a management capacity at any supervised entity;
- publish its supervisory ruling;
- confiscate any profits that a supervised person or entity or a person in a management position has made; and
- revoke the licence of a supervised person or entity, or withdraw its recognition or cancel its registration.

The Swiss National Bank (SNB) is primary responsible for the determination of systemically important banks and their systemically important functions (please also see question 5.2). Furthermore, the regulatory framework stipulates that capital requirements may be increased temporarily in certain cases. Decisions on the activation, deactivation and level of this countercyclical capital buffer will be made by the Federal Council, upon the proposal of the SNB (please also see question 4.2). Other than that, the SNB controls the money supply by giving commercial banks access to central bank money (deposit accounts) and thus influencing credit formation within the banking system. In this role, it can also act as a 'lender of last resort'. It is also responsible for facilitating and ensuring the operation of cashless payment systems. Finally, the SNB collects statistical data – including from banks – for the following purposes:

- to fulfil its monetary policy functions;
- to fulfil its oversight functions with respect to payment and securities settlement systems;
- as part of its contribution to the stability of the Swiss financial system;
- on behalf of international organisations of which Switzerland is a member; and
- for its balance of payments and for statistics on the international investment position.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The BRSA is responsible for enforcing applicable laws and regulations. The BRSA, as per Article 93 of the Banking Law, is authorised to issue regulations and communiqués for the implementation of the Banking Law. It makes national regulations in line with international standards, and applies EU directives, Basel II and International Accounting Standards.

The BRSA prepares regulations and communiqués regarding banking. It may make changes to the legislation according to the evolving needs of the sector. In case of uncertainty about regulatory activities, it assists in identifying solutions by providing opinions. The BRSA has the authority to implement both prudential and conduct supervision. It has the power to ask the relevant institution to take necessary measures after an audit. According to Articles 146 and 149 of the Banking Law, the BRSA is entitled to impose financial penalties and certain extreme sanctions on banks. Additionally, Articles 150 and 161 of the Banking Law state that shareholders and members of the board of directors can also be subject to sanctions and penalties.

The Central Bank is responsible for managing monetary and exchange rate policies in Turkey. It is responsible for:

- achieving and sustaining price stability and financial stability;
- determining the exchange rate regime;
- printing and issuing banknotes; and
- overseeing payment systems.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The UK banking sector is regulated for prudential purposes by:

- the PRA, which is part of the Bank of England, the UK central bank; and
- the FCA for conduct purposes.

The Financial Policy Committee (FPC), which operates from within the Bank of England, acts as the macro-prudential regulator for the UK financial system.

The FSMA 2000, as amended, sets out the PRA's and the FCA's statutory objectives. The PRA's principal objective is to promote the safety and soundness of the firms it regulates. On 28 March 2018, the PRA published Supervisory Statement (SS)1/18, "International banks: the Prudential Regulation Authority's approach to branch authorisation and supervision", which replaces SS10/14, "Supervising international banks: the Prudential Regulation Authority's approach to branch supervision". SS 1/18 is relevant to all PRA-authorised banks and designated investment firms not incorporated in the United Kingdom that form part of a non-UK headquartered group (international banks) and which are operating in the United Kingdom through a branch, as well as any such firm looking to apply for PRA authorisation in the future. The new approach came into effect on 29 March 2018.

For European Economic Area firms currently branching into the United Kingdom under 'passporting' arrangements and intending to apply for PRA authorisation in order to continue operating in the United Kingdom after its withdrawal from the European Union, this approach will be relevant to authorisations. The PRA will keep the policy under review to assess whether any changes will be required due to changes in the UK financial system or regulatory framework, including those arising once any new arrangements with the European Union take effect after the United Kingdom's withdrawal from the European Union, which will take place on 31 January 2020.

The FCA's strategic objective is to ensure that the relevant markets function well. The FCA's operational objectives are:

- the consumer protection objective;
- the integrity objective; and
- the competition objective.

The FPC's primary responsibility is to protect and enhance the resilience of the United Kingdom's financial system. This involves identifying, monitoring and taking action to reduce systemic risks. Its secondary objective is to support the economic policy of the government.

The PRA is responsible for the prudential regulation and supervision of the banking sector. Under the FSMA 2000 (as amended), it is a criminal offence for a person to carry on a 'regulated activity' in the United Kingdom unless authorised to do so or exempt from the authorisation requirement. Regulated activities are defined in secondary legislation. Deposit taking is a regulated activity that requires authorisation. Other regulated activities that require authorisation include:

- dealing in investments as principal;
- dealing in investments as agent;
- arranging deals in investments;
- managing investments;
- safeguarding and administering investments (ie, custody); and
- providing investment advice and mortgage lending.

Investments include:

- shares;
- debentures (including *sukuk*);
- public securities;
- warrants;
- futures;
- options;
- contracts for difference (ie, swaps); and
- units in collective investment schemes.

On 20 December 2018, the PRA and the Bank of England published a joint consultation paper on further Brexit-related changes to the PRA Rulebook and binding technical standards (Consultation Paper 32/18).

The FCA is the conduct regulator of businesses in the banking sector. The FCA acts a prudential regulator for persons that are not prudentially regulated by the PRA. The FCA took over the responsibility of regulating consumer credit firms in 2014, with these firms being subject to the FCA's consumer protection rules and principles of business. The Bank of England aims to ensure that if and when a bank fails, it does so in an orderly manner, with as little impact on the UK financial system as a whole as reasonably practicable and in line with the SRR. The Treasury is responsible for drawing up the Code of Practice as guidance on how and when the SRR is to be used. The payment services regulator is responsible for the payment services in the UK banking sector.

The FCA has a 'free-standing duty' in respect to financial crime, to which it must have regard when discharging its general functions (Section 1B(5) of the FSMA 2000, as amended). By virtue of this duty, the FCA must have regard to the importance of taking action intended to minimise the extent to which it is possible for business carried on by FSMA-authorised firms to be used for a purpose connected with financial crime. The FCA is responsible for supervising compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and for taking enforcement action for violations. On 13 December 2018, the FCA published guidance on financial crime systems and controls: insider dealing and market manipulation (Finalised Guidance 18/5). On 20 December 2018, the FCA published an evaluation paper (Evaluation Paper 18/3) on reducing barriers to entry to the UK banking sector.

For more information about this answer please contact: Edite Ligere

For more information about this answer please contact: Luke Eggers from 1 Crown Office Row

United States

Linklaters

Answer ... The Federal Reserve is the US central bank. In addition to its role in US monetary policy, the Federal Reserve has supervisory oversight over:

- BHCs;
- state-chartered banks that are members of the Federal Reserve System;
- foreign banks with a US commercial banking branch, agency, subsidiary or representative office (commonly referred to as a 'foreign banking organisation');
- depository institutions organised or authorised under the Federal Reserve Act that engage in international activities (commonly referred to as 'edge act corporations' or 'agreement corporations'); and
- systemically important non-bank financial institutions ('non-bank SIFIs') designated by the federal Financial Stability Oversight Council (FSOC).

The FDIC is the primary regulator for state-chartered banks that are not members of the Federal Reserve. In addition, it:

- insures bank deposits; and
- acts as the receiver or conservator of FDIC-insured banks under the Federal Deposit Insurance Act or systemically important financial institutions under the Dodd-Frank Act's Orderly Liquidation Authority in the event of their insolvency.

The OCC is an independent bureau of the US Department of Treasury responsible for chartering national banks, licensing federally chartered branches of foreign banks, and supervising and regulating both types of institutions.

FSOC is responsible for conducting comprehensive monitoring of the US financial system's stability. Its powers include:

- identifying and responding to emerging risks threatening US financial stability;
- designating non-bank SIFIs;
- requesting data and analyses from the Federal Reserve's Office of Financial Research;
- facilitating regulatory coordination and information sharing among member agencies to reduce gaps within the regulatory structure;
- designating financial market utilities that perform payment, clearing or settlement activities as systemically important;
- recommending specific risk management and oversight standards; and
- breaking up firms that 'pose a grave threat' to US financial stability.

In addition, each state has a banking regulator that charters, supervises and regulates state-chartered banks and licenses, supervises and regulates the branches of foreign banks.

For more information about this answer please contact: Jerome Roche

from Linklaters

1.4 What are the current priorities of regulators and how does the regulator engage with the banking sector?

Canada

Gowling WLG

Answer ... The current priorities of the OSFI and FCAC are to monitor and address the evolving economic situation with COVID-19. As a result, both regulators are taking a number of steps to reprioritise their work and requirements to allow banks to focus on their resilience efforts.

OSFI is engaging with the banking sector by maintaining frequent contact with banks to assess their operational capacity and actions to address the current environment. It is also publishing various notices to the sector on its website.

These notices indicate the changes that OSFI is implementing to its regulatory requirements during this time as it reprioritises. For example, OSFI has suspended all of its consultations and policy development on new or revised guidance until conditions stabilise. Further, OSFI has adjusted a number of regulatory reporting requirements, and has encouraged banks to use their capital and liquidity buffers as appropriate. OSFI has also prioritised supporting the efforts of the BCBS to provide additional operational capacity for banks and supervisors to respond to the immediate financial stability priorities, outlining how these will be implemented domestically to ensure they are fit for purpose in the Canadian context.

Similarly, FCAC is engaging with the banking sector by publishing and updating an online notice adjusting its regulatory expectations in the current environment. FCAC has committed to working closely with banks to minimise the impact of regulatory requirements on their efforts to deliver essential services to Canadians.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... In general, capital adequacy and solvency requirements are a top priority for the FSA. During the COVID-19 crisis, the FSA has in particular focused on whether banks hold sufficient capital to withstand the current economic downturn, which is expected to lead to higher losses for banks.

Other top priorities include anti-money laundering, outsourcing, IT security and an increased focus on the viability of certain banks' business models in a low-interest rate environment.

The FSA is proactively engaging with the banking sector – both formally through its regular inspections, the issuance of executive orders and so on, and informally by attending sector-specific seminars, giving speeches and so on.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The cooperation between BaFin and the Deutsche Bundesbank in terms of ongoing supervision of institutions is regulated by Section 7 of the Banking Act. This states that the Bundesbank is responsible for the vast majority of operational banking supervision and has an important part to play in crisis management – for example, evaluating the documentation, audit reports and annual financial statements submitted by financial institutions, as well as performing and evaluating on-site inspections. Additionally, BaFin's guidelines on ongoing supervision are issued in agreement with the Deutsche Bundesbank pursuant to Section 7(2) of the Banking Act. The guidelines aim to produce harmonised and high-quality banking supervision and ensure the transparent and unambiguous division of tasks.

The Brexit referendum result from June 2016 could have potentially significant implications for the financial sector in Germany. As it stands, it cannot be excluded that the EU-UK negotiations will result in a 'hard Brexit', which means that the United Kingdom will leave the European single market without a negotiated agreement in place. Supervised credit institutions and financial services institutions that are located in the United Kingdom will have to be prepared for the possibility of no longer being able to conduct regulated business in the European Union or with European Economic Area (EEA) member states. Specifically, such institutions may, post-Brexit, no longer be able to rely on the European passport regime, which enables them to conduct business on a cross-border basis without any other local licences. If they wish to continue conducting such business, they may need to consider relocating from the United Kingdom to another EU or EEA state.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The most pressing priority for Irish regulators relates to the impact and eventual recovery from the fallout after the COVID-19 pandemic. This has and will continue to put significant and unprecedented pressure on the Irish banking system and the economy generally. Dealing with the outbreak will require a collective approach to be taken by Irish banks and regulators to stabilise and support the Irish banking system, and facilitate an orderly and acceptable approach when dealing with customers who have been impacted due to the COVID-19 crisis.

Separately, some of the pre-existing sources of risk to Irish financial stability (some of which will only have increased due to the COVID-19 outbreak) are:

- ongoing Brexit-related risks due to Ireland's close economic links with the United Kingdom;
- mortgage arrears;
- changes in the international trading and tax environment;
- a re-emergence of sovereign debt sustainability concerns in the Eurozone (which will inevitably be put under strain throughout

the European Union's attempts to deal with the COVID-19 outbreak via stimulus packages and the pressure Eurozone countries will come under in order to tackle this ongoing global emergency); and

- the potential for elevated risk taking when the profitability of banks and other financial institutions remains below market expectations.

The CBI operates the Probability Risk and Impact System (PRISM), which is designed to determine the risk and potential impact of banks on financial stability and consumers. Under the framework of PRISM, banks are categorised as 'high impact', 'medium-high impact', 'medium-low impact' or 'low impact'. The category a bank falls into will determine the number of supervisors allocated to that bank and the level of supervisory scrutiny to which it will be subject. Some of the key objectives of the PRISM framework are to:

- operate a supervisory risk assessment framework in line with international best practice;
- ensure that action is taken to mitigate unacceptable risks in firms;
- have a tool for the allocation of resources based on the impact of the firm on the economy and consumers;
- ensure a minimum level of supervisory engagement for different classes of firms; and
- have a tool that requires actions to mitigate risks and tracks progress against these objectives.

In exercising its supervisory role, the CBI:

- monitors compliance with prudential standards, primarily through examining prudential returns (weekly, monthly and annual), financial statements and annual reports, and conducting regular review meetings with the banks, including on-site inspections;
- implements systems and procedures to monitor activities and detect non-compliance with regulatory obligations;
- issues guidance notes to industry participants; and
- assists with the development of domestic legislation and implementing EU regulations and international standards.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The CSSF's current priorities are as follows:

- The upcoming visit of the FATF to Luxembourg: The CSSF has organised conferences, together with the Luxembourg Bankers' Association, in order to raise awareness within the financial sector about the upcoming visit and explain the methodology which is used by the FATF.
- Brexit: The Luxembourg legislature passed two laws on 8 April 2019 regarding measures to be taken in relation to the financial sector in the event of a withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union ('Brexit Laws'). The purpose of the Brexit Laws was to anticipate the loss by firms established and authorised in the United Kingdom, including credit institutions, of the benefit of their

passporting rights in case of a 'hard' Brexit (as they will be considered 'third country firms' following Brexit), and to ensure the continuity of existing contracts and the orderly functioning and the stability of the financial markets by allowing UK firms to continue their activities in Luxembourg during a transitional

period. The CSSF issued two press releases on 15 July 2019 (as well as follow-up press releases) providing details on the transitional period and how to file a request to be able to benefit from such transitional period. As Brexit took place on 31 January 2020 and the Brexit agreement was approved, the 'hard' Brexit which the Brexit Laws anticipated did not happen. The CSSF issued a press release on 31 January 2020 stating that the individual decisions taken under the Brexit Laws to grant UK entities the benefit of a transitional period would now lapse, and that the transitional period under the Brexit agreement applies instead. The Luxembourg financial sector is therefore now in a waiting period until 31 December 2020; and there has been no confirmation yet from the CSSF that a process similar to that set out under the Brexit Laws will be applied after that date.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... In November 2016 FINMA published its strategic goals and priorities for the period 2017 to 2020. These include:

- ensuring that banks and insurance companies have strong capitalisation;
- making a sustainable positive impact on the conduct of financial institutions, especially in money-laundering prevention;
- mitigating the 'too big to fail' problem through viable emergency plans and credible resolution strategies;
- contributing to the protection of creditors, investors and insureds through structural change in the financial industry;
- pushing for the removal of unnecessary regulatory obstacles to innovative business models;
- promoting principle-based financial market regulation and equivalence with relevant international requirements; and
- ensuring that the cost of supervision remains stable and further efficiency gains can be achieved.

FINMA has also published its latest risk monitor report in December 2019. The risk monitor report provides an overview of what FINMA believes are the most important risks currently faced by supervised institutions and describes the resulting focus of its supervisory activity. The six principal risks identified by FINMA for supervised institutions and the Swiss financial industry are:

- the persistent low interest rate environment;
- a possible correction in the real estate and mortgage market, especially in the investment property segment;
- cyberattacks;
- the disorderly abolition of London Inter-bank Offered Rare benchmark interest rates;
- money laundering; and
- increased impediments to cross-border market access, particularly in the European Union.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey
AKTAY Legal

Answer ... The current priority of the regulators is to deal with the detrimental economic effects of the COVID-19 pandemic. The pandemic has put significant pressure on the Turkish economy and is affecting almost all institutions in Turkey. Currently, the regulators are trying to consolidate the Turkish banking system and minimise the detrimental effects of the pandemic.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK
1 Crown Office Row

Answer ... At present, regulators are focused on redefining and strengthening the role of the City of London post-Brexit - a task made significantly more challenging in a COVID-19 world. Given the significant pressure on the banking sector as well as the wider economy triggered by the COVID-19 pandemic, regulators may need to develop new approaches to address the evolving requirements of the current economic landscape in which the banking sector plays a vital role.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters

Answer ... The US banking agencies' current priorities include the following:

- integrating fintech companies into their existing regulatory framework;
- ensuring the safety and soundness of the banking system;
- maintaining US financial stability;

2. Form and structure

2.1 What types of banks are typically found in your jurisdiction?

Canada
Gowling WLG

Answer ... There are three types of banks in Canada:

- Schedule I banks: domestic banks, authorised under the Bank Act to accept deposits, which may be eligible for deposit insurance provided by the Canadian Deposit Insurance Corporation;
- Schedule II banks: foreign bank subsidiaries, authorised under the Bank Act to accept deposits, which may be eligible for deposit insurance provided by the Canada Deposit and Insurance Corporation. Foreign bank subsidiaries are controlled by eligible foreign institutions; and
- Schedule III banks: foreign banks that have been authorised under the Bank Act to operate branches in Canada. The activities of a branch may be restricted to lending or may be 'full service', which includes the offer of retail deposit accounts.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The Danish banking sector is made up of banks, savings banks and mortgage credit institutions.

Banks are organised as limited liability companies, are often publicly listed and provide finance for everything from private individuals over small businesses to large Danish and international corporations. Traditionally, Danish banks have been organised as universal banks and therefore there are no specific distinctions between commercial banking and investment banking (although investment banking activities, for practical purposes, are often separated into special departments or divisions within the banks).

Historically, savings banks have been owned by their customers and have traditionally provided finance for private persons and small businesses within a certain area. Therefore, they often have a strong local or regional presence. However, within the last few years, a number of savings banks have been converted into limited liability companies and have been listed in order to make their business models more viable and access to capital easier.

Mortgage credit institutions are essentially 'niche banks', in the sense that they only finance real estate. Unlike banks, they fund themselves not through deposits, loans and similar, but solely through the issuance of mortgage-backed bonds in the form of covered bonds. The stable funding enables mortgage credit institutions not only to offer very attractive interest rates, but also to offer fixed-rate mortgage loans with maturities of up to 30 years. The Danish mortgage system offers one of the lowest interest rates to borrowers in Europe and the lowest borrowing costs for the first priority tranche of the property value, due to Denmark's unique mortgage credit system. The combination of a tightly regulated framework, credit and risk management and wholesale funding through a pass-through system provides close to capital markets funding conditions through the issuance of individually matched bonds for each individual borrower. The high liquidity and the attractiveness of the bonds due to their high security level result in very low and competitive prices for borrowers.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... German banks and financial institutions are permitted to conduct all types of banking activities described in Section 1 of the Banking Act, if respectively licensed. Universal banks in Germany can be divided into three main types of institutions: commercial banks, public sector banks belonging to the savings bank sector and cooperative banks.

Commercial banks: Commercial banks are part of the private sector and can be further sub-divided into:

- large nationwide (major) banks;
- regional banks; and
- other financial institutions, including the branch offices of foreign

banks.

Commercial banks are corporations and mostly operate as universal banks. Other than their legal form and business aims, the principal difference in the types of universal banks is the number of legally

independent institutions they have and the number of branch office locations.

In terms of total assets, the four major German commercial banks (Deutsche Bank AG, Commerzbank AG, UniCredit Bank AG and Deutsche Postbank AG) account for nearly 65%. This reflects their particular importance. Commercial banks are mainly privately owned and private shareholder representatives are members of the supervisory board. There are three large universal banks in Germany: Deutsche Bank AG, Commerzbank AG and HypoVereinsbank, which is owned and controlled by its Italian parent, UniCredit. In addition, there are a number of specialised institutions:

- mortgage banks, which primarily focus on real estate finance;
- auto and other consumer finance banks, which also compete for deposits;
- securities banks, which have an emphasis on brokerage and custody;
- subsidiaries and branches of foreign banking groups, with diverse business focuses; and
- private banks with a concentration on asset management.

Cooperative banks: Cooperative banks are cooperative societies that carry out all types of banking and related services. A cooperative society is one in which the number of members is not fixed and which serves to promote the business or economic interests of its members through jointly owned business operations. Cooperative banks have become less member-centric, as they are now permitted to establish business relations with non-members. Since the repeal of the identity principle for lending transactions, they no longer have to restrict themselves to business with members, so they now differ very little from other universal banks. Still, in accordance with the Cooperative Societies Act, which applies to all German cooperative banks, they must promote the interests of their members. In contrast to commercial banks, maximising profits is not their highest priority. Cooperative banks have a different governance structure. The equity holders have equal voting rights independent from their equity share. At the end of 2018, there were 875 cooperative banks, with combined assets exceeding €934 billion and a market share of roughly 13%. To overcome any disadvantage of a fragmented structure, the cooperative banks had founded two cooperative central banks, DZ Bank and WGZ Bank, which merged in 2016. Following the merger, the cooperative sector has one large financial head institution, DZ Bank in Frankfurt, which provides services to its constituent institutions.

State-owned banks: The German banking sector also includes several large state-owned banks. The state banks (*Landesbanken*) are central institutions of the Savings Banks Finance Group (*Sparkassen-Finanzgruppe*). Following the privatisation of HSH Nordbank (renamed Hamburg Commercial Bank), which was completed in early 2019, only the much smaller SaarLB remained in the *Landesbank* sector, in addition to the four larger institutions: Landesbank Baden-Württemberg, Bayerische Landesbank, Landesbank Hessen-Thüringen and Norddeutsche Landesbank. This part of the German banking

market has thus been reduced to five institutions.

In addition to the *Landesbanken*, there are several special purpose banks (eg, Kreditanstalt für Wiederaufbau, Landwirtschaftliche Rentenbank) which are directly or indirectly owned by the federal or state governments (with some exemptions).

Further, the public bank sector is characterised by around 380 savings banks (Sparkassen), which in most cases are owned by local municipalities or their countries. Savings banks are committed by their municipal ownership to serving their local region. Profits not needed to further strengthen their capital bases are used for the benefit of society. Rather than focusing on financial figures, savings banks concentrate on benefiting the welfare of the people and businesses in the areas they serve. Accordingly, the business policy of the savings banks focuses on sustainable economic growth and social development in their regions. For this reason, the business of the savings banks revolves around transactions centred on the real economy, instead of international financial markets. This commitment to the community does not mean that savings banks must forgo making a profit. Making a profit is not their main goal, but rather a means of fulfilling their public mandate. Savings banks do not engage in international banking business. They play an important role in offering banking services to Germany's population outside the larger cities, where private commercial banks are not keen to set up local branches.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Irish law does not distinguish between different types of banks in terms of authorisation or regulation. A bank is permitted to engage only in the activities which have been approved by the CBI subject to the conditions of its authorisation. The grant of a banking licence allows a bank to pursue a wide range of activities which would otherwise require individual authorisation. As well as banking business, a licensed bank can carry out, among other things, the activities specified in Annex 1 of CRD IV, including:

- payment services, as set out in Directive 2015/2366/EU; and
- investment services, as set out in Directive 2014/65/EU on markets in financial instruments and the accompanying MiFID II regulation.

Banking licence holders must comply with legislation covering the conduct of business and prudential matters, as well as codes of practice which cover a varied range of services and issues. If a bank wishes to engage in an activity which did not form part of its application for authorisation, it must submit an application to the CBI to extend its authorisation.

There are a number of Irish authorised banks focusing on the corporate or institutional markets, or operations designed to meet the needs of non-Irish consumers. These include subsidiaries and branches of European and US-based parents.

There are no 'global systemically important institutions' authorised in Ireland. The CBI has determined that six Irish authorised banks are

considered to be 'other systemically important institutions'. As of 2020, these are AIB Group plc, Bank of Ireland Group plc, Citibank Holdings Ireland Limited, Bank of America Merrill Lynch International DAC, Barclays Bank Ireland plc and Ulster Bank Ireland DAC.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The Law of 5 April 1993 on the financial sector, as amended ('Banking Act') covers two types of banks: universal banks and banks issuing mortgage bonds.

As of 2 January 2020, the Luxembourg banking sector was composed of 129 banks, including:

- 83 universal banks;
- two banks issuing mortgage bonds;
- 13 branches of third country credit institutions; and
- 31 branches of credit institutions established in the European Union.

Corporate banking, private banking, investment funds servicing and custody are the main business areas for banks in Luxembourg.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Currently, there are 248 licensed banks in Switzerland, of which:

- two are big banks that are global systemically relevant banks (UBS AG and Credit Suisse AG), and three are systemically relevant banks or banking groups (Zurich Cantonal Bank, Raiffeisen Switzerland and PostFinance);
- 24 are (partly) state-owned cantonal banks;
- 60 are regional banks or savings banks;
- 71 are foreign-controlled banks (ie, controlled by significant foreign shareholders); and
- 24 are Swiss branch offices of foreign banks.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to Turkish law, banks are categorised as either deposit banks or development and investment banks. Deposit banks consist of:

- state-owned banks;
- privately owned banks;
- banks under the Savings Deposit Insurance Fund; and
- foreign banks.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Retail/commercial and investment banks which are subject to the same authorisation process and regulatory requirements.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... There are more than 5,000 Federal Deposit Insurance Corporation-insured banks in the United States. The vast majority of those banks are considered 'community banks', with assets of under $10 billion. Just over 100 US commercial banks have assets in excess of that amount and 12 have assets in excess of $250 billion.

As noted above, deposit-taking banks may be chartered by either the federal or state governments. In addition, US law provides for certain other types of deposit-taking institutions, including credit unions, savings banks, thrifts and industrial loan companies.

For more information about this answer please contact: Jerome Roche from Linklaters

2.2 How are these banks typically structured?

Canada

Gowling WLG

Answer ... Schedule I and Schedule II banks are structured as corporations.

Any acquisitions of significant interest - that is, of a level that is greater than 10% of a class of shares - in a bank must be approved by the minister of finance.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Banks and mortgage credit institutions are organised as limited liability companies.

Savings banks have traditionally been organised as independent institutions owned by their own customers. While there are still some traditional savings banks left, there has been an increased trend for them to convert into limited liability companies – although some of them, for historic reasons, have retained the 'savings bank' label as part of their name.

A very small number of credit institutions are still organised as credit cooperatives under special legislation. These will most likely disappear in time, given that their governance and funding structure in practice limit their size.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Banks are organised as either public owned banks or cooperative banks, or are corporations or partnerships. The most

common private law legal forms for a bank or financial institution are stock corporations (*Aktiengesellschaft* (AGs)) and limited liability companies (*Gesellschaft mit beschränkter Haftung* (GmbHs)). The most significant difference between an AG and a GmbH is the internal governance structure. An AG has a largely independent management board, appointed by the supervisory board. The shareholders elect the supervisory board. Managing the day-to-day business of an AG is the exclusive duty of the management board. Neither the supervisory board nor the shareholders can give directions to the management board. However, the supervisory board can issue guidelines under which extraordinary transactions require its prior consent. Co-determination – that is, representation of employees on the supervisory board – is mandatory once an institution has more than 500 employees. In contrast, in a GmbH, the managers generally must follow shareholder directions. This makes the GmbH a more suitable instrument for a banking subsidiary of a larger group.

Some smaller private banks are limited partnerships or even general partnerships.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The majority of banks in Ireland are established as limited liability companies. If a bank is not a limited company, this must be explained to the CBI as part of the application for authorisation process. The 'heart and mind' of the bank must be present in Ireland (ie, the day-to-day operations of the bank must be managed from Ireland).

The Irish domestic banks are typically owned by a publicly listed holding company, being the owner of the general banking entity that provides the banking services. The shares in banks that are not wholly owned subsidiaries of broader banking groups are generally held by a mix of institutional investors (including investment funds and pension funds) and a large number of retail investors.

Where a bank operating in Ireland is foreign owned, it is typically owned or controlled by an entity within a foreign banking group. These can be European Economic Area (EEA) or non-EEA banking groups.

Following the financial crisis in 2008, the Irish state acquired and continues to hold material interests in a number of the domestic Irish banks. Following the introduction of the EU/International Monetary Fund Programme of Support for Ireland in November 2010, the Irish banking system was radically restructured and the Irish government became a substantial shareholder in AIB, Bank of Ireland and Permanent TSB. As of April 2020, the Irish government owns 71% of AIB, 14% of Bank of Ireland and 74.92% of Permanent TSB. After AIB and Bank of Ireland, Ulster Bank is the third largest Irish retail bank and is a wholly owned subsidiary of the Royal Bank of Scotland group.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... A Luxembourg credit institution must be a legal entity incorporated under Luxembourg law in the form of a public law

institution, a public limited liability company, a corporate partnership limited by shares or a cooperative society.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Swiss banking regulation does not prescribe a specific legal form for banks. In practice, however, most banks are structured as corporations, while some are organised as cooperatives. Furthermore, cantonal banks generally operate as entities subject to cantonal public law.

Partnerships and even sole proprietorships may also run a banking business (so-called 'private bankers'). The distinguishing feature of private bankers is that one or more individuals bear unlimited personal liability for the bank's commitments. This is the main reason why only five banks are structured in this way in Switzerland.

The term 'private banker' is not to be confused with the term 'private bank', which mainly describes the focus of the latter's business activities on asset management and investment advice for wealthy private clients (ie, private banking services). As opposed to 'private bankers', the typical 'private bank' is structured as a corporation, which limits the liability of its owners.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... There is no uniform structure of banks in Turkey; instead, each bank adopts the organisational structure that will allow it to provide the best service to its customers and benefit from the expertise of its staff at the highest level. However, the main structure is the same, as all banks are joint stock companies. The highest decision-making body of banks is the general assembly.

As with other organisations, the highest body at the management level of banks after the general assembly is the board of directors. The board of directors may delegate credit extension authority to the credit committee or the general directorate within the framework of the procedures and principles to be determined by the Banking Regulation and Supervision Agency (BRSA). The general directorate is the largest executive body of banks and can also use its delegated credit allocation authority through other units, regional offices and branches.

The audit committees of banks are regulated under Article 24 of the Banking Law. This body monitors the bank's compliance with banking principles and legislation; while the board of auditors is responsible for identifying differences and deviations between the bank's goals and practices and the reasons therefor.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The Prudential Regulation Authority (PRA) requires a deposit-taker to be either a body corporate or a partnership. UK-

headquartered banks are generally UK public limited companies or private limited companies.

The main requirements on management and organisation are found in the General Organisational Requirements Part of the PRA Rulebook. Organisational systems should be proportionate to the nature, scale and complexity of a bank's business.

A bank must have:

- decision-making procedures and an organisational structure that clearly specify and document reporting lines and allocate functions and responsibilities;
- adequate internal control mechanisms to secure compliance with decisions and procedures at all levels of the bank;
- effective internal reporting and communication of information at all levels; and
- appropriate and effective whistleblowing arrangements.

Banks should segregate the duties of individuals and departments so as to reduce opportunities for financial crime or contravention of regulatory requirements and standards (eg, front-office and back-office duties should be segregated to prevent a single individual initiating, processing and controlling transactions). Responsibility should be segregated in a manner that supports the bank's compliance obligations on conflicts of interest, remuneration structures and prevention of market abuse.

The General Organisational Requirements implement Capital Requirements Directive IV organisational requirements for the management body, such as:

- board composition;
- time commitments; and
- in the case of significant firms, limits on the number of additional directorships and a requirement to have separate risk, nomination and remuneration committees.

The PRA and the Financial Conduct Authority require prospective banks to meet their respective threshold conditions

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... US banks are chartered as banks rather than as corporations that acquire a banking licence. US banks are often subsidiaries of a bank holding company and are often affiliated with other types of regulated financial institutions.

For more information about this answer please contact: Jerome Roche from Linklaters

2.3 Are there any restrictions on foreign ownership of banks?

Canada

Gowling WLG

Answer ... Foreign ownership is generally permitted under the Bank Act. However, it will be taken into account by the Office of the

Act. However, it will be taken into account by the Office of the Superintendent of Financial Institutions (OSFI) in applications to acquire a significant interest or more in a bank.

If the applicant is a national of a country that is not a member of the World Trade Organization, prior to granting approval for the applicant to acquire more than 10% of the shares of a bank, the minister of finance must be satisfied that reciprocal treatment would be available for Canadians under the laws of that jurisdiction. Additionally, no foreign government, political subdivision of a foreign country or agent of a foreign government or entity controlled by a foreign government may be issued shares of a bank.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... There are no explicit restrictions on foreign ownerships of banks. However, any shareholder acquiring a so-called 'qualifying interest' (ie, 10% or more or the shares or voting rights or any other shareholding that gives the shareholder a material influence over the bank's management) must be approved as 'fit and proper' by the Financial Supervisory Authority (FSA).

As part of the 'fit and proper' approval, the FSA will assess, among other things:

- whether the acquisition of a qualifying interest will lead to the bank becoming part of a group structure (eg, by becoming a subsidiary), and whether such structure still enables the FSA to supervise it effectively; and
- whether the FSA can exchange and cooperate with the relevant competent authority of the parent undertaking.

Where the acquirer is an EU-regulated entity or an entity regulated by a competent authority in a country with which the European Union has a cooperation agreement in place, this will be less of a concern. However, if the acquirer is situated in a third country, the 'fit and proper' approval will be subject to more scrutiny.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... German law requires any person intending to acquire a qualifying holding in a bank or financial institution to notify the Federal Financial Supervisory Authority (BaFin) and the Deutsche Bundesbank. A 'qualifying holding' is a direct or indirect holding in an undertaking that represents 10% or more of the capital or of the voting rights, or which makes it possible to exercise significant influence over the undertaking's management.

If the notification relates to a participation in a credit institution within the meaning of the Capital Requirements Regulation, BaFin itself does not decide on the intended acquisition, but instead prepares a draft decision and submits this draft to the European Central Bank (ECB)

decision and submits this draft to the European Central Bank (ECB), which makes the final decision. To implement standardised procedures for cooperation between the ECB and other national regulators, a central unit within BaFin was set up. Related amendments to the Ownership Control Regulation are expected.

Overall, there are no general restrictions and the ECB cannot refuse the acquisition of a qualifying holding in a German bank on the basis of the prospective acquirer's nationality. Acquisitions from some jurisdictions may be more difficult, particularly from countries where BaFin or the ECB has no established contacts with regulators/supervisory authorities. Prospective acquirers from jurisdictions that have a reputation for money laundering or tax avoidance may also find it difficult to obtain ECB approval. Under certain circumstances, BaFin or the ECB may object to the intended acquisition of a qualifying holding. This includes the assumption that:

- the acquirer is not trustworthy;
- the institution will not remain able to meet the requirements of supervision; or
- a future managing director is not reliable or qualified.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... There are no restrictions on the foreign ownership of Irish banks. Investors from jurisdictions outside of Ireland, whether based in other EU countries or otherwise, have the same rights and obligations as domestic investors as a matter of Irish law. If a foreign entity is establishing an Irish credit institution, it will be subject to the same application criteria as domestic investors. In particular:

- the day-to-day management and operation of an Irish credit institution must be conducted within Ireland; and
- the other criteria regarding regulatory capital, risk management and so on must be satisfied prior to the CBI authorising a credit institution, whether or not foreign owned.

The acquisition of a stake in a credit institution may be subject to prior approval from the CBI. Investors seeking to acquire a shareholding or other interest that would either give them a 'qualifying holding' in a credit institution (authorised or licensed in Ireland), or increase their control above certain levels (20%, 33% or 50%), must first obtain the approval of the CBI. A 'qualifying holding' is defined as a direct or indirect holding that:

- represents 10% or more of the capital of, or voting rights in, a target entity;
- confers a right to appoint and remove members of the board of directors or management; or
- otherwise allows that person to exercise a 'significant influence' over the direction or management of the target entity.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... There are no restrictions on the foreign ownership of banks. To the extent that a foreign entity acquires or disposes of a

Luxembourg bank, the provisions on acquisitions and disposals of qualifying holdings (see question 9) apply.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... If foreigners directly or indirectly hold more than half of the voting rights or in any other way exercise a controlling influence over a bank to be organised in accordance with Swiss law, the Swiss Financial Market Supervisory Authority (FINMA) may make the corresponding licence contingent on additional conditions. In particular, FINMA may require that:

- the country in which the foreigners controlling the bank are domiciled guarantee reciprocity (not applicable to member states of the General Agreement on Trade and Services of the World Trade Organization; or
- the bank's corporate name does not indicate or suggest that the bank is in some way Swiss.

If a bank is part of a financial group or financial conglomerate, FINMA may make the licence dependent on the agreement of the relevant foreign supervisory authority. Furthermore, FINMA may request that the bank be subject to adequate consolidated supervision by a foreign supervisory authority.

For the purpose of the above, a 'foreigner' is:

- a natural person who possesses neither Swiss citizenship nor a Swiss residence permit; or
- a legal entity or partnership that is domiciled abroad or, if it is domiciled in Switzerland, that is controlled by persons as defined above.

An additional licence must be obtained if the bank comes under a controlling foreign influence after its inception. In this regard, please also see question 9.2.

Analogous restrictions apply to banks organised under foreign law that seek to obtain a licence for a Swiss branch or representative office.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to Articles 10 and 48 of the Turkish Constitution, banking entities established in Turkey must enjoy equal treatment. Therefore, the same rules as apply to banks based in Turkey will apply to foreign entities that seek to operate a bank by setting up a subsidiary. This is further supported by Article 3 of the Foreign Direct Investment Law (4875), which states that foreign investors must be treated equally to domestic investors. However, foreign banks and financial institution shareholders must submit several additional documents when applying for permission to establish in Turkey.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

1 Crown Office Row

Answer ... Apart from sanctions imposed by the United Nations, the European Union and the United Kingdom on specified persons and countries, there are no restrictions on foreign ownership of UK banks.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Federal banking laws do not generally restrict foreign ownership or control of US banks. However, as discussed below, establishing or acquiring a bank in the United States, or establishing an office of a foreign bank, requires the approval of the Federal Reserve and potentially other federal or state agencies. The Federal Reserve will evaluate the foreign acquirer's home country regulation in connection with such an approval.

Certain foreign investments in US banks may be subject to review and potentially rejection by the Committee on Foreign Investment in the United States.

For more information about this answer please contact: Jerome Roche from Linklaters

2.4 Can banks with a foreign headquarters operate in your jurisdiction on the basis of their foreign licence?

Canada

Gowling WLG

Answer ... Banks with a foreign headquarters must obtain authorisation under the Bank Act to have a financial establishment in Canada . This includes establishing a Canadian subsidiary or a bank branch, as well as other permitted entities in Canada.

A foreign bank may also apply to OSFI to register a representative office in Canada and - with the approval of the governor in council and subject to any terms and conditions that are attached to the approval - locate its head office in Canada and, from that office, issue directions and do all other things reasonably necessary for the conduct of its banking business outside Canada.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... EU and European Economic Area (EEA) banks can in general provide banking services in Denmark either on a cross-border basis or through a Danish branch office under the EU passporting regime. The relevant bank must be duly licensed in its home country and its home-state regulator must be notified accordingly, which in turn will notify the Danish FSA.

The bank will continue to be subject to the supervision of its home-state regulator, but the FSA will monitor the branch in respect of the conduct of business regulation and will also monitor the branch in order to assist the home-state regulator in its supervision.

Banks from non-EU/EEA countries cannot rely on the EU passporting regime and will need to establish either a branch or a full subsidiary if they wish to offer the full spectrum of banking services.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Banks headquartered and licensed in the European Economic Area (EAA) can conduct regulated banking business in Germany without a German banking licence under the EU notification procedure, through a branch or on a cross-border basis.

Other foreign banks can either:

- conduct banking business in Germany through a branch (which is, however, subject to the full licensing requirements); or
- apply to BaFin for an exemption from the licensing requirements to provide cross-border services, provided that the bank is effectively supervised in its home country under internationally recognised standards.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Entities licensed as credit institutions in other EU member states can passport into Ireland without establishing a subsidiary in Ireland. Subject to notification requirements in a credit institution's home state and in Ireland, passporting into Ireland can be affected through either the establishment of a branch (subject to notifying the CBI) or the provision of services (ie, no physical presence is established in Ireland), subject to the notification requirement provided in Articles 35 and 39 of CRD IV.

There are a number of passporting regimes; for credit institutions within the SSM wishing to establish a branch or provide services within the SSM, the ECB will be the home authority for significant banks and the CBI will be the home authority for less significant banks. The notification forms used by the CBI are based on Commission Implementing Regulation (EU) 926/2014 with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services.

For non-EEA foreign headquartered and licensed credit institutions, should they wish to operate a branch in Ireland, they must obtain authorisation under Section 9A of the Central Bank Act, 1971 (as amended) (the 1971 Act). The considerations on which the CBI's decision will be predicated include:

- the equivalency of regulatory and supervisory oversight in the home state to Ireland;
- the nature of the activities by the branch; and
- the systemic impact on the Irish financial system and the Irish economy if the branch became insolvent.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... It is possible for banks established in a foreign jurisdiction to operate in Luxembourg. However, a distinction is made between banks established in an EU member state and banks established in a jurisdiction outside of the European Union (a third country).

Banks established in an EU member state: Credit institutions established and authorised in another EU member state may operate in Luxembourg via cross-border provision of services, via the establishment of a branch in Luxembourg or via the use of a tied agent, to the extent that the activities to be exercised in Luxembourg are covered by their licence and are listed in Annex I or Sections A or C of Annex II of the Banking Act (see question 3.1). In this case no authorisation from the Luxembourg authorities is required and the European passporting regime applies. Financial institutions as defined under Article 4(1)(26) of the 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, as amended may also operate in Luxembourg, subject to a number of specific conditions.

Banks established in a third country: Third country credit institutions that wish to establish a branch in Luxembourg in order to exercise their banking activities are subject to the same licensing requirements as Luxembourg credit institutions. Where the applicant third country credit institution intends to perform activities involving the management of funds of third parties, it must have own funds which are separate and distinct from the assets of its shareholders. The branch must also have at its permanent disposal an endowment capital or capital base equivalent to that required of a person governed by Luxembourg law performing the same activities.

Credit institutions from a third country which are not established in Luxembourg, but which occasionally and temporarily come to Luxembourg in order, among other things, to collect deposits and other repayable funds from the public and to provide any other service subject to the Banking Act, must obtain authorisation. Obtaining authorisation requires that the credit institution from the third country be subject to equivalent authorisation and supervisory rules as those of the Banking Act in its home jurisdiction.

Specific conditions apply where a third country credit institution intends to provide investment services in Luxembourg. If the third country credit institution intends to provide investment services to eligible counterparties and to professional clients within the meaning of Section A of Annex III of the Banking Act (ie, professional clients *per se*, which are certain types of entities that are considered to be professional clients by virtue of the Banking Act), it may establish a branch in Luxembourg that is subject to the same licensing requirements as Luxembourg law credit institutions and investment firms. However, it may also operate in Luxembourg without establishing a branch if:

- it is authorised in its home jurisdiction to provide the investment services it intends to provide in Luxembourg;
- either the European Commission (under Article 47 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFIR)) or the

Commission de Surveillance du Secteur Financier (CSSF) has adopted an equivalence decision confirming that the legal and supervisory regime of the third country establishes prudential and business conduct rules that are equivalent to those of MiFIR, Directive 2014/65/EU of the European Parliament and of the Council of 15

May 2014 on markets in financial instruments, 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 or the Banking Act, as applicable; and

- cooperation arrangements have been established between the European Securities and Markets Authority or the CSSF, as applicable, and the relevant competent authority of the third country.

If the third country credit institution intends to provide investment services to retail clients or to professional clients within the meaning of Section B of Annex III of the Banking Act (ie, clients that are not professional clients *per se*, but that have requested to be treated as professional clients), it must establish a branch in Luxembourg which is subject to the same licensing requirements as Luxembourg law credit institutions and investment firms and to a number of additional conditions.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Switzerland generally does not accept the passporting of foreign licences into Switzerland. Therefore, all foreign banks wishing to establish a physical presence in Switzerland – whether through a subsidiary, a branch or a representative office – must first obtain a licence from FINMA.

However, foreign banks that provide financial services to Swiss-based customers merely on a cross-border basis (ie, without establishing a physical presence in Switzerland) are not required to obtain a licence from FINMA. Instead, their client advisers must be registered on a Swiss advisers register, as stipulated in the Financial Services Act. Exemptions are available for client advisers of foreign banks that are subject to prudential supervision in their home country, provided that they limit their service offering in Switzerland to professional and institutional clients within the meaning of the Financial Services Act.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... Banks with a foreign headquarters can operate in Turkey by opening a branch, which will be subject to Articles 6 and 9 of the Banking Law. Provided that the conditions stipulated in the Banking Law are fulfilled, permission will be granted by decision taken by the vote of at least five of the seven BRSA board members. According to Article 9 of the Banking Law, any bank established abroad that seeks to operate in Turkey by opening a branch within the framework of the principles and procedures set out by the BRSA must meet the following conditions:

- Its primary activities must not be prohibited in the country in

which it is headquartered;
- The supervisory authority in the country in which it is headquartered should not have a negative view of its proposed operation in Turkey;

- The paid-in capital reserved for Turkey should not be less than the amount indicated in Article 7 of the Banking Law;
- The members of the board of directors should have adequate professional experience to be able to satisfy the requirements laid down in the corporate governance provisions and to conduct the planned activities;
- It must submit an activity programme indicating work plans for the fields of activity covered by the permission, a budgetary plan for the first three years and details of its structural organisation; and
- The group including the bank must have a transparent partnership structure.

Banks with foreign headquarters can open a representative office with the permission of the BRSA, provided that they do not accept deposit or participation funds and operate according to the principles determined by the BRSA.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Foreign banks may operate in the United Kingdom by way of a UK-authorised branch. A non-European Economic Area bank seeking to establish a UK branch must submit a detailed branch authorisation application to the PRA and obtain its consent before establishing a branch in the United Kingdom.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... No. Foreign banks must obtain regulatory approval in order to establish a US office. Generally, a foreign bank cannot conduct a deposit-taking business on a cross-border basis, though in some circumstances a foreign bank may be able to make commercial loans to US legal entity borrowers without obtaining any licence.

The International Banking Act of 1978 requires that a foreign bank seeking to establish a US commercial bank branch, agency, subsidiary or representative office obtain approval from the Federal Reserve System (or, in some cases, the Office of the Comptroller of the Currency). In assessing such a request, the Federal Reserve will consider whether the foreign bank's home country regulator subjects that bank to 'comprehensive and consolidated supervision'.

The US regulators generally apply the concept of 'national treatment' with respect to their regulation of foreign banks with a US commercial banking presence. Generally, such banks are treated to the same types of restrictions on non-banking activities as US banks and bank holding companies with respect to their US operations. As a practical matter, however, US banking law often has extraterritorial effect. Foreign banks subject to capital standards based on Basel III generally are not subject to US regulatory capital standards, though a foreign bank's

3. Authorisation

3.1 What licences are required to provide banking services in your jurisdiction? What activities do they cover?

Canada

Gowling WLG

Answer ... No bank or bank branch can carry on the business of banking in Canada without first obtaining the approval of the minister of finance and the Office of the Superintendent of Financial Institutions (OSFI). In order for a bank to be authorised under the Bank Act, it requires both:

- the issuance of letters patent by the minister of finance; and
- the making of an order by OSFI.

The Bank Act provides that a bank can carry on only those activities that are considered to be the 'business of banking' and business generally related to banking. These activities include:

- taking deposits and making loans;
- providing any financial service;
- acting as a financial agent;
- providing investment counselling services and portfolio management services;
- issuing payment, credit or charge cards; and
- operating a payment, credit or charge card plan in cooperation with others (including other financial institutions).

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... In order to provide traditional banking services (deposit taking and lending), a banking licence is required pursuant to Section 7 of the Financial Business Act.

A Danish banking licence covers the following activities:

- acceptance of deposits and other repayable funds;
- lending, including:
  - consumer credit;
  - mortgage credit;
  - factoring and discounting; and
  - commercial credits (including forfaiting);
- financial leasing;
- payment services covered by Annex 1 of the Payments Act;
- issue and administration of other means of payment (eg, travellers' cheques and bankers' drafts);
- guarantees and collateralisation;
- dealing for own account or for the account of clients in:
  - money market instruments (eg, cheques, bills, certificates of deposit);
  - foreign exchange;
  - financial futures and options;
  - exchange and interest-rate instruments; and

    - transferable financial instruments;
- participation in issuing financial instruments and provision of related services;
- advice to undertakings on capital structure, industrial strategy and related questions and advice, as well as services relating to mergers and acquisitions;
- money broking;
- portfolio management and advice;
- safekeeping and administration of financial instruments;
- credit reference services;
- safe custody services; and
- issuance of electronic money.

The above list sets out the permitted activities for a bank holding a Danish banking licence. EU/EEA banks which have been passported into Denmark are subject to a slightly different list of permitted credit institution activities (see Annex 2 of the Financial Business Act).

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Generally, the European Central Bank (ECB) and the Federal Financial Supervisory Authority (BaFin) are responsible for banking licence applications. BaFin also supervises financial services and payment services that are not included in the definition of standard banking transactions. As the risk to financial stability and consumer protection varies depending on the specific type of activity that is subject to supervision, BaFin banking licence requirements differ accordingly. Of importance are reliable management, a sound business plan and compliance with anti-money laundering regulations and activity-specific compliance rules.

When the statutory requirements for the issuance of a German banking licence are met, the applicant has a legally enforceable right to be issued that licence. In this context, it will be up to BaFin to decide whether the details provided are sufficient to issue a licence under supervisory law. Where complex or innovative business models are concerned, many queries or clarifications may be necessary. Consequently, a great deal of care and accuracy should be applied when drafting the licence application, to avoid a lengthy procedure and ensure that the licence is received as quickly as possible. The banking licence, once granted, is a public law permit and belongs to the institution itself, and is not transferable as if it were a civil law right. In particular, a banking licence does not transfer to the surviving body in a merger by way of universal succession.

Any company which commences an activity requiring a licence without holding one takes a great risk. Such a company faces fines and even prosecution by the public prosecutor. Even if the infringement is due to negligence, prison sentences of up to three years can be imposed on the management. In addition, the company's business may be restricted or prohibited by formal decision of BaFin.

Since payment services have become subject to different rules following implementation of the EU Payment Services Directive, it has become more common to license specialised payment institutions. A universal bank with a comprehensive licence is also allowed to perform payment services as an ancillary business.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Banks operating in Ireland must be authorised as a credit institution. Licences for credit institutions are granted pursuant to Section 9 of the 1971 Act. An authorisation confers the ability to provide banking services, including the taking of deposits, and potentially to provide a full range of regulated financial services, in Ireland. In addition, the activities which can be carried out by a bank licensed in Ireland include the activities set out in Annex I of CRD IV.

The principal areas considered in evaluating banking licence applications include the following:

- overview of the parent/group to which the applicant belongs;
- consolidated supervision of parent/group entities;
- ownership structure;
- the applicant's objectives and proposed operations;
- the legal structure;
- the organisation of the applicant (eg, corporate governance arrangements, fitness and probity of key personnel);
- risk oversight;
- capital, funding and solvency projections;
- financial information and projections; and
- business continuity.

The CBI's precise requirements in relation to each of these headings are contained in the application checklist produced by the CBI for the purpose of the licence application.

Applications for authorisation of banks in Ireland are submitted to the CBI. If the application is satisfactory, the CBI will submit the application to the ECB with a recommendation that it be approved. The final authority to grant or refuse the application rests with the ECB.

The authorisation of branches of banks from outside the European Union is dealt with by the CBI pursuant to domestic legislation. Banks from EU member states are permitted to operate in Ireland with or without establishing a branch in Ireland, pursuant to the EU 'passporting' procedure. This requires notification to the bank's home state regulator and compliance with Irish conduct-of-business rules.

Banks are not permitted to engage in any lines of business which have not been approved by the CBI/ECB during the authorisation process

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... No person established under Luxembourg law can carry out the business of a credit institution without holding a written authorisation from the minister of finance. Entities authorised as a credit institution in Luxembourg hold a so-called 'universal banking licence'.

Credit institutions are authorised to:

- perform the following banking activities:

    - acceptance of deposits and other repayable funds;
    - lending;
    - financial leasing;
    - provision of payment services;
    - provision of guarantees and commitments;
    - trading for own account or for account of customers in money market instruments, foreign exchange, financial futures and options, exchange and interest-rate instruments and transferable securities;
    - participation in securities issues and provision of services related to such issues;
    - advice to undertakings on capital structure, industrial strategy and related questions and advice, as well as services relating to mergers and acquisitions;
    - money broking;
    - portfolio management and advice;
    - safekeeping and administration of securities;
    - credit reference services;
    - safe-custody services; and
    - issuance of electronic money;
- provide the following investment services and perform the following investment activities:
    - receipt and transmission of orders in relation to financial instruments;
    - execution of orders on behalf of clients;
    - dealing on own account;
    - portfolio management;
    - investment advice;
    - underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
    - placing of financial instruments without a firm commitment basis;
    - operation of multilateral trading facilities; and
    - operation of organised trading facilities;
- provide ancillary services such as:
    - safekeeping and administration of financial instruments for the account of clients;
    - the granting of credits or loans to investors to allow them to carry out a transaction in one or more financial instruments;
    - advice to undertakings on capital structure, industrial strategy and related matters;
    - foreign exchange services, where they are connected to the provision of investment services;
    - investment research and financial analysis or other forms of recommendation relating to transactions in financial instruments; and
- services related to underwriting; and
- perform any other activity falling under the scope of the Law of 5 April 1993 on the financial sector, as amended ('Banking Act') (including activities as registrar agent, professional depositary of financial instruments, professional depositary of assets other than financial instruments, operator of a regulated market authorised in Luxembourg, currency exchange dealer, debt recovery, professional performing lending operations, professionals performing securities lending, family office, mutual savings fund administrator, domiciliation agent, professional providing company incorporation and management services, client communication agent, administrative agent of the financial

sector, primary IT systems operator of the financial sector, secondary IT systems and communication networks operator of the financial sector, dematerialisation service provider of the financial sector, conservation service provider of the financial sector).

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Under the Banking Act, 'banks' are defined as enterprises that are active principally in the field of finance and that:

- accept or offer to accept deposits from the public on a professional basis (ie, from more than 20 persons) of more than CHF 100 million to finance any number of persons or companies with which they do not form an economic unit;
- accept or offer to accept deposits from the public on a professional basis of up to CHF 100 million and invest or pay interest on the public deposits; or
- refinance themselves significantly with loans from more than five banks that do not own any significant holdings in them to finance any number of persons or companies with which they do not form an economic unit of their own.

The Banking Act provides for two types of licences:

- Banking licence: A banking licence must be obtained by enterprises that intend to engage in any of the activities described above.
- Fintech licence (also known as a banking licence 'light'): Fintech licences are granted for companies that are mainly involved in the financial sector and intend to accept public deposits on a commercial basis of up to CHF100 million without investing, paying or promising to pay interest on these deposits (ie, 'fintech companies'). While fintech companies are not technically considered 'banks', they are subject to a similar – though less restrictive – regulatory regime.

Banks and fintech companies must obtain authorisation from the Swiss Financial Market Supervisory Authority (FINMA) before engaging in business operations.

Natural persons and legal entities without a banking licence are prohibited from using the term 'bank' or 'banker' in their company name, and from accepting deposits from the public on a professional basis.

The Swiss banking system is based on the model of universal banking. This means, in principle, that every bank can provide all core and ancillary banking services, including:

- deposit taking;
- lending;
- asset management (with respect to both individual client portfolios and collective assets);
- investment advice; and
- payment services.

The specific activities that a bank actually performs must be described in its articles of association and organisational regulations, which are

subject to approval by FINMA. This means that any expansion of the service offering initially approved in the licensing process must be re-approved by FINMA.

Up until the implementation of the Financial Institutions Act, banks engaged in securities trading required not only a licence under the Banking Act, but also a separate licence as securities dealer under the former Stock Exchange Act. Pursuant to the licensing cascade introduced by the Financial Institutions Act, such double licensing is no longer necessary for banks.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... An establishment permit and operation licence must be obtained from the Banking Regulation and Supervision Agency (BRSA) to establish a bank or a branch of a foreign bank, and to carry out banking, financial leasing and/or factoring activities in Turkey.

Upon obtaining a licence for banking services, a bank may carry out the following activities:

- accepting participation funds and deposits;
- conducting lending activities such as cash or non-cash loans, and providing factoring and financial leasing services;
- providing capital market-related services such as issuance or public offerings of capital markets instruments and conducting foreign exchange and derivative transactions;
- trading money market instruments and carrying out foreign exchange transactions;
- providing investment counselling services;
- providing insurance agency and individual private pension fund services; and
- conducting other activities to be determined by the BRSA.

However, the activities that may be carried out may vary depending on the type of bank.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The relevant licence for banking in the United Kingdom is a Part 4A permission under the Financial Services and Markets Act (FSMA) 2000 to carry on deposit-taking (and any other relevant regulated activities). Applications are made to the Prudential Regulation Authority (PRA) and include a number of detailed application forms, including a permission table

that sets out Part 4A permissions by function and (in certain cases) by client type. Although the PRA manages a single administrative process, the Financial Conduct Authority (FCA) also assesses the applicant firm from a conduct perspective and authorisation is granted only if both regulators are satisfied.

As well as the basic application forms, an applicant must provide:

- a business plan, including details of the rationale for the business;

- a business plan, including details of the rationale for the business;
- details on the ownership of the bank;
- a business strategy;
- details of financial resources;
- details of non-financial resources;

- the management structure;
- responsibilities;
- controls and governance arrangements; and
- significant additional detail about the bank's:
  - policies;
  - capital;
  - liquidity;
  - financial projections;
  - IT systems and processes;
  - compliance;
  - internal audit;
  - outsourcing arrangements;
  - senior managers; and
  - owners and influencers.

Any prospective bank planning to apply for a deposit-taking permission should arrange a pre-application discussion with the PRA. The PRA and FCA are expected to be in communication with the applicant throughout the process. Firms other than deposit-taking institutions (which in practice include some investment banks) usually apply only to the FCA, as the PRA's jurisdiction is limited to deposit-taking banks and certain designated investment firms classified by the PRA as being of systemic importance.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... As noted above, a bank must be chartered as a bank by either a state banking agency (under the relevant state banking law) or the Office of the Comptroller of the Currency (OCC) (under the National Bank Act). The choice of chartering authority is largely up to the founders of a bank. Virtually all banks – whether organized under state or federal law – must obtain deposit insurance from the Federal Deposit Insurance Corporation (FDIC), and so as a practical matter organising a new bank requires the approval of that agency as well.

Generally, a bank charter entitles a bank to engage in the 'business of banking', including:

- acceptance of cash deposits;
- the issue of loans and other extensions of credit;
- discounting promissory notes and other evidence of indebtedness;
- custodial services;
- the purchase and sale of bullion; and
- certain types of related activities that are 'incidental' to the business of banking, including trading in certain derivatives.

Deposit-taking banks may also engage in trust and fiduciary activities, although they generally require a separate approval from their chartering authority to do so. Deposit-taking banks and their subsidiaries are significantly limited in their ability to engage in securities trading or other types of non-commercial banking activities;

though as discussed below, banking groups organised as BHCs may have broader authority to do so outside of the 'bank chain'.

While a bank is typically limited to the activities permitted by the statute under which it is chartered, as a practical matter, the list of activities permissible for a US bank tends not to vary by virtue of its chartering authority. State banking laws often have so-called 'wildcard statutes' that permit state-chartered banks to engage in the same activities as national banks chartered by the OCC, while the Federal Deposit Insurance Corporation Improvement Act typically bars a state-chartered bank from engaging in any activity as principal that is not allowed for a national bank.

For more information about this answer please contact: Jerome Roche from Linklaters

3.2 What requirements must be satisfied to obtain a licence?

Canada

Gowling WLG

Answer ... OSFI assesses applications for the incorporation of banks and makes recommendations to the minister of finance, who makes the ultimate determination. To do so, the minister of finance takes into account a number of factors, including:

- the nature and sufficiency of the financial resources of the applicant(s) as a source of continuing financial support for the bank;
- the soundness and feasibility of the plans of the applicant(s) for the future conduct and development of the business of the bank;
- the business record and experience of the applicant(s);
- the character and integrity of the applicant(s) or, if any applicant is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good character and integrity;
- whether the bank will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution;
- the impact of any integration of the businesses and operations of the applicant(s) with those of the bank on the conduct of those businesses and operations;
- the extent to which the proposed corporate structure of the applicant or applicants and their affiliates may affect the supervision and regulation of the bank, having regard to the nature and:
    - the proposed financial services activities to be carried out by the bank and its affiliates; and
    - the degree of supervision and regulation applying to the proposed financial services activities to be carried out by the affiliates of the bank; and
- the best interests of the financial system in Canada.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The applicant must fulfil the following requirements in order to obtain a banking licence:

- It has a paid-in share capital of at least €5 million;
- The board of directors and the management are deemed 'fit and proper';
- Shareholders holding a 'qualifying interest' (see question 2.3) are equally deemed 'fit and proper';
- There are no close links between the applicant and any undertakings or persons which hold a substantial stake in the applicant which could otherwise complicate or hinder supervision by the Danish Financial Supervisory Authority (FSA);
- There is no third-country legislation applicable to an undertaking or person with close links to the applicant which would otherwise complicate or hinder supervision by the FSA;
- Appropriate administrative procedures and controls are in place; and
- The applicant has its headquarters and registered office in Denmark.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Anyone wishing to conduct banking business in Germany requires a written permit from BaFin (Sections 32 and 33 of the Banking Act). To do so, certain requirements must be met. Some examples are outlined below:

- When a new institution is created, a minimum initial capital must be proven, depending on the type of business that is intended. In the case of securities trading banks, for example, the required initial capital is at least €730,000; and in the case of deposit-taking banks, at least €5 million.
- The institution must have at least two professionally qualified and reliable managers with joint responsibility for the institution. 'Professional suitability' means that the person concerned has acquired sufficient theoretical knowledge and practical experience in his or her previous professional career. 'Sufficient experience' generally means at least three years in a leading position at a bank of similar size and type. BaFin examines the suitability by using information from the Federal Central Register, the Transparency Register and the Commercial Register.
- The application must include a three-year business plan, which BaFin and the ECB will carefully review for viability. Since most start-ups show losses in the first year or two, the ECB has published further guidance on how much capital it expects to be paid up in full at the time of authorisation and how much capital must be otherwise available (eg, capital commitments by the founding shareholders). In addition, for the first three years, BaFin will typically ask the ECB to set a minimum regulatory capital standard well above that for more mature institutions.
- Every person holding a direct or indirect interest of 10% or more in a financial institution is subject to a reliability and financial soundness test. This is not an issue if the shareholder is a bank domiciled and regulated in another country with a reputable bank supervisory system. Things become more difficult if an acquirer or

supervisory system. Things become more difficult if an acquirer or founder of a bank is from, for example, an emerging economy. In this case, BaFin requires a full personal record, with comprehensive information on the source of funds invested in the future German bank.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The key matters to be considered when making an application to be authorised as a credit institution in Ireland are as follows:

- The central control and management must be located in Ireland. While outsourcing is permitted, it must be appropriately documented and cannot be in respect of core risk and management functions.
- The fitness and probity of individuals in key positions must be validated.
- A detailed description must be provided of all products and services that will be offered by the applicant.
- Applicable procedures and policies for the applicant must be developed that will be implemented once authorised.
- A minimum capital requirement of €5 million must be satisfied, with CRD IV considerations potentially requiring more than the initial minimum capital.
- Following authorisation, the bank must perform an internal capital adequacy assessment process on an ongoing basis, and meet extensive reporting requirements and corporate governance for credit institutions.

Any new applicant should be aware of the administrative sanctions that may be imposed for failure to comply with regulatory and supervisory requirements.

In relation to applications for authorisation by relevant credit institutions headquartered in a non-EEA country or territory, referred to as 'third-country branches', the CBI is the competent authority for granting such authorisations pursuant to Section 9A of the 1971 Act.

An applicant for a licence must complete a checklist of information which is available on the CBI's website. The checklist is divided into 21 separate sections, some of which are summarised in question 3.1. In terms of ownership, it is key for the application process that the applicant has access to additional capital if required, and that the applicant is independent of dominant interests.

In reviewing applications, there is a particular focus on corporate governance and oversight arrangements, risk management, internal controls, the business plan and capital and financial projections. In this regard, all applicants must operate in accordance with the information provided in support of the application for a banking licence.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The Banking Act sets out a number of base requirements that an institution must comply with in order to obtain authorisation

as a credit institution. The proposed credit institution must be established in one of the legal forms set out under question 2.2.

The applicant must evidence the existence in Luxembourg of the central administration (meaning both the decision-making centre and the administrative centre) and the registered office of the proposed credit institution. Certain administrative aspects may be outsourced or performed abroad by affiliates if the applicant is in a group context. The credit institution must have robust internal governance arrangements, including:

- a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- effective processes to identify, manage, monitor and report the risks they are or might be exposed to; and
- adequate internal control mechanisms, including sound administrative and accounting procedures and remuneration policies and practices allowing and promoting a sound and effective risk management, as well as control and security arrangements for information processing systems.

Specific organisational requirements must be met if the credit institution provides investment services and/or performs investment activities.

The applicant must provide the *Commission de Surveillance du Secteur Financier* (CSSF) with the identity of its shareholders, whether direct or indirect and whether natural or legal persons, that have qualifying holdings in the institution to be authorised or, where there are no qualifying holdings, of the 20 largest shareholders. The CSSF assesses the shareholding of the institution to be authorised and verifies whether:

- the sound and prudent management of the credit institution can be ensured;
- the shareholders are of good professional repute and have sufficient knowledge, skills and experience;
- the prudential supervision can be exercised without hindrance and the supervision on a consolidated basis is ensured;
- the shareholding structure is transparent and well organised;
- the shareholders are financially sound; and
- there are reasonable grounds to suspect that money laundering or terrorist financing activities are being undertaken or have been undertaken, or there is an increased risk of such activities.

The members of the management body must at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.

The applicant must have a share capital of at least €8.7 million (see question 4.2).

The institution must have its annual accounts audited by one or more approved statutory auditors. Typically, one of the 'Big Four' is appointed for this purpose.

The authorisation is also subject to the proposed credit institution's membership in the Luxembourg deposit guarantee scheme (*Fonds de*

Garantie des Dépôts Luxembourg) (see question 10.2) and the Luxembourg investor protection scheme (*Système d'Indemnisation des Dépôts Luxembourg*).

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... For a banking licence to be granted, the applicant must demonstrate that it meets all licensing requirements – in particular, the following:

- fully paid-up minimum capital of at least CHF 10 million (according to law; in practice, FINMA generally requires at least CHF 20 million);
- a business plan showing that compliance with capital adequacy, risk diversification and liquidity rules may be ensured at all times;
- a guarantee of irreproachable business activity by qualified participants and members of the board of directors and the executive management;
- a precise factual and geographical description of the business in the articles of association, partnership agreement and business rules;
- the management of the bank from Switzerland;
- separation of the board of directors and the executive management;
- effective separation of internal functions – in particular lending, trading, asset management and settlement;
- effective risk management – in particular appropriate identification, limitation and monitoring of market, credit, default, settlement, liquidity, reputational, operational and legal risks;
- an effective internal control system, including independent risk control, compliance and internal audit functions;
- the appointment of a recognised audit firm for the application process;
- the appointment of a recognised regulatory audit firm for ongoing supervision;
- for applicants under foreign control, reciprocal rights on the part of the countries in which qualified participants are domiciled; and
- if the bank is part of a financial group, adequate consolidated supervision by a recognised supervisory authority.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The establishment permit requirements set out in Article 7 of the Banking Law are as follows:

- The bank should be established as a joint stock company;
- Its shares should be issued against cash and to name;
- The founders must meet the necessary requirements;
- The members of the board of directors must hold the qualifications set out in the corporate governance provisions in the Banking Law, and must have the professional experience required to carry out the planned activities;
- The bank's envisaged fields of activity must be harmonised with its planned financial, managerial and organisational structure;

its planned financial, managerial and organisational structure;
- The minimum share capital must not be less than TRY 30 million;
- The articles of association must comply with the provisions of the Banking Law;

- There should be a transparent and open partnership structure and organisational chart;
- There should be no element that hampers its consolidated supervision; and
- The work plans for the envisioned fields of activity and the projections regarding the financial structure of the institution – including capital adequacy, the budgetary plan for the first three years and an activity programme including internal control, risk management and internal audit systems showing the structural organisation – must be submitted.

A bank that obtains an establishment permit must satisfy the following requirements to commence operations:

- Its capital must be paid up in cash and should be at a level to carry out the planned activities;
- The applicant must provide a document stating that at least one-quarter of 10% of the minimum capital specified in Article 10/2(b) of the Banking Law has been deposited in the Savings Deposit Insurance Fund before commencing operations, as the fee for the founders to enter the system, and a commitment document stating that the remainder will be paid into the fund in three monthly instalments;
- It must comply with corporate governance provisions and have sufficient personnel and technical equipment;
- The managers must have the qualifications specified in the corporate governance provisions; and
- The BRSA must be of the opinion that the bank has the necessary qualifications to carry out the proposed activities.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The PRA and the FCA require that prospective banks meet their respective threshold conditions. These include the following:

- Deposit takers must be a body corporate or a partnership;
- A UK-incorporated corporate body must maintain its head office and, if one exists, its registered office in the United Kingdom;
- The applicant must conduct its business in a prudent manner, which includes having appropriate financial and non-financial resources. The applicant's non-financial resources must be appropriate in relation to the regulated activities it seeks to carry on, having regard to the FCA's operational objectives;
- The applicant must satisfy the PRA and the FCA that it is a fit and proper person in all circumstances to conduct a regulated activity. The applicant's management must have adequate skills and experience and act with integrity. The applicant must have appropriate policies and procedures in place and appropriately manage conflicts of interest;
- The applicant's business model must be suitable for a person carrying on the regulated activities it undertakes or seeks to carry on and does not pose a risk to the FCA's objectives; and

- The applicant must be capable of being effectively supervised by the PRA and the FCA. Any close links of the applicant must be disclosed and unlikely to prevent effective supervision of it.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters
Answer ... While each chartering authority has different requirements to grant a bank charter, the organisers of a new bank can generally expect to be required to provide at least the following information:

- biographical and financial information for each organiser, director, officer and shareholder (including experience, business familiarity and compliance and risk management record);
- proposed compliance policies with respect to regulatory, corporate governance and risk requirements;
- a business plan and financial projections, including a plan with respect to soliciting deposits;
- an explanation of how the newly organised bank will serve the community;
- evidence of sufficient capital to support the organisation's initial operations and operate in a safe and sound manner; and
- articles of association (or equivalent constitutional document) and bylaws.

US banking agencies exercise significant discretion in assessing an application to charter a new bank. They generally review such an application to assess whether, among other things:

- the proposed bank will have sufficient financial resources;
- the organisers, directors and executive officers are sufficiently experienced to operate the proposed bank;
- the proposed bank will adequately serve the needs of the community in which it operates;
- the proposed bank will comply with all applicable laws and regulations; and
- the business plan and projections are reasonable and indicate that the proposed bank will be profitable and able to operate in a safe and sound manner.

For more information about this answer please contact: Jerome Roche from Linklaters

3.3 What is the procedure for obtaining a licence? How long does this typically take?

Canada
Gowling WLG
Answer ... The application process is outlined in OSFI's Guide for Incorporating Banks and Federally Regulated Trust and Loan Companies and is comprised of three phases:

- pre-application;
- letters patent; and
- order.

Pre-application (Phase 1):

- The applicant meets with OSFI to discuss the proposed application.
- The applicant submits the Phase 1 information requirements outlined in OSFI's guide (above) to OSFI.

- The applicant meets with OSFI to discuss its submissions and business plan.
- OSFI issues a letter to the applicant setting out its preliminary views and expectations.

Letters patent (Phase 2):

- The applicant publishes a notice of intention to apply for letters patent.
- The applicant submits its applications for letters patent and an order to OSFI.
- OSFI may request further information and will meet with the applicant.
- OSFI submits its recommendation to the minister regarding issuing letters patent.

Order (Phase 3):

- If letters patent are issued by the minister, OSFI will continue its review of the application with respect to issuing an order.
- OSFI may make additional requests for information and will have further meetings with the applicant.
- OSFI will carry out its onsite review.
- If any material issues or concerns identified have been adequately addressed, OSFI will issue the order.

The timeline for the assessment of each application depends on the specific facts and circumstances. However, for a newly incorporated bank, the Bank Act specifies that OSFI will not make an order more than one year after the issuance of letters patent incorporating the bank. The timing relating to the making of an order largely depends on the on-site review readiness of the bank.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... In order to obtain a banking licence, the applicant must submit a written application to the FSA. There is no prescribed format for the application, but it must contain all information and documentation necessary in order for the FSA to assess whether the requirements for obtaining a banking licence are met. In general, the application should cover the following:

- the applicant's articles of association and minutes from the incorporation for the company;
- information about the share capital and evidence that it has been fully paid-in;
- the opening balance sheet and budgets for the first three years;
- a description of the business model/business plan;
- information on the IT structure and statements from the applicant accountant in respect of IT and so on;

- rules of procedure for the board of directors and management instruction;
- written procedures for relevant activities, risk management, conflicts of interest, internal controls, IT security and so on;

- the name of the proposed auditor of the applicant;
- a timetable for the application and commencement of permitted activities; and
- fit and proper applications for the board of directors, management and shareholders with a qualifying interest (or information on the 20 largest shareholders, if no single shareholder has a qualifying interest).

The FSA has six months to process the application, assuming that the application contains all necessary information and documentation; otherwise, the deadline will be postponed until all information is at hand.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... **Timing and basis of decision:** The time from filing the application to receipt of the licence is usually six to 18 months, in addition to the time taken to prepare the application. Where the new bank has a complex business plan or ownership structure – for example, through various holding companies – collecting information about direct and indirect shareholders and their individual directors can significantly extend the overall timeframe.

Cost and duration: The application for a BaFin licence is subject to a fee, the amount of which depends on the type of banking transactions or financial services applied for. In this respect, Section 14(1) and Section 17 b of the Financial Services Supervision Act and Section 2(1) of the Cost Ordinance, in conjunction with the attached schedule of fees, are decisive. According to these provisions, the fee for permission to provide financial services such as investment brokerage or financial portfolio management ranges between €5,045 and €10,725.

If the applicant additionally applies for a licence to conduct banking business (eg, a deposit or lending business), the fee ranges between €5,000 and €20,000 and may increase to up to €30,000. In any case, the fees may nonetheless be charged if the applicant withdraws its application for a licence or if BaFin issues a negative decision on the application. In addition to the application fee, legal fees for work incurred by lawyers advising on the application process can range between €75,000 and €150,000 (plus value added tax). While there is no end date for banking licences (and so renewal costs are not applicable), other costs for supervision by BaFin are applicable.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The principal stages for authorisation applications are as follows.

- Exploratory phase: During this phase, the potential applicant must first determine whether it requires an Irish banking licence. It

then engages in discussions with the CBI, following which it submits a proposal (containing the same level of detail as a bank licence application) to the CBI. The CBI will undertake (in conjunction with the ECB in certain circumstances) a detailed review of the proposal and issue comments or request additional information required in relation to the proposal. The purpose of the review is to determine whether the proposal will meet the required standard for authorisation.
- Formal application: Should the proposal meet the required standard for authorisation, the applicant will submit an application for authorisation. Both the CBI and the ECB will complete their assessment of the application, which may involve further clarification being sought from the applicant.
- Final decision: A decision on whether to grant a banking licence is issued.

There is no specific timeframe for the assessment of applications. The total time spent in obtaining a licence will depend upon:

- the time taken by the applicant to respond to comments issued on each draft of the proposal and application;
- the quality of the responses received and whether they address all issues raised;
- any changes made by the applicant during the authorisation process; and
- the time taken by any relevant third parties to respond to queries in relation to the application.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The authorisation procedure typically starts with a meeting between the applicant and the CSSF to discuss the request for authorisation as a credit institution. The CSSF recommends that such preliminary discussions take place prior to the official submission of the application file.

The official request for authorisation is introduced via a written application to be submitted to the CSSF, both electronically and in paper format. The application must be accompanied by all information required for the assessment thereof and by a programme of operations indicating the type and volume of business envisaged and the administrative and accounting structure of the institution. The minimum content of the application file, as well as the list of documents to be provided with the banking licence application file, is available on the CSSF's website.

The European Central Bank (ECB) is competent to authorise all credit institutions established in the EU member states participating in the Single Supervisory Mechanism (including Luxembourg). The CSSF notifies the receipt of an application file to the ECB, and the application file is assessed by both the CSSF and the ECB. If the CSSF considers the application file to be satisfactory, it will make a proposal to the ECB to authorise the credit institution and the ECB will then grant the authorisation and notify the CSSF thereof.

The CSSF must notify its decision within six months of receipt of the application or, if the application is incomplete, within six months of

receipt of the information needed for the adoption of the decision. The absence of a decision within six months shall be deemed to be a refusal. In any event, a decision shall be adopted within 12 months of receipt of the application, and the absence of a decision is deemed to be a notification of refusal.

The authorisation is granted for an unlimited period.

The application is subject to an initial fee of €15,000. Annual licensing fees apply depending on the size of the credit institution's balance sheet. An annual lump sum is also payable for the participation in the Luxembourg deposit guarantee scheme (*Fonds de Garantie des Dépôts Luxembourg*), depending on the amount of covered deposits.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... To obtain a banking licence, a respective application must be filed with FINMA in an official Swiss language (ie, German, French or Italian). The application must cover general information on the applicant as well as information on specific aspects, including:

- direct and indirect participations;
- members of the board of directors and the executive management;
- business activities and internal organisation;
- business plan;
- regulatory auditors;
- application auditors;
- additional requirements for foreign controlled banks or securities dealers; and
- additional requirements for applicants belonging to a group operating in the financial business sector.

The application must be supplemented by detailed supporting documentation. The content of the application and the necessary supporting documents are described in detail in corresponding guidance published on FINMA's website.

Prior to filing the application with FINMA, an audit of the intended set-up must be performed by a recognised audit firm (application audit).

Furthermore, applicants are generally advised to arrange a meeting with FINMA representatives to present their licensing projects and receive initial feedback before submitting their application.

The licensing process typically takes about six to nine months from initial filing of the application. The length of this process depends on the quality, completeness and complexity of the application. Applications from entities outside Switzerland must also take into account the time it takes to obtain a response from the competent foreign supervisory authorities.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The applicant must first prepare its application for an establishment permit for submission to the BRSA. According to Article 4 of the Regulation on Operations of Banks Subject to Permission and

4 of the Regulation on Operations of Banks Subject to Permission and Indirect Shareholding ('Permission Regulation'), the applicant must provide several documents and pay a system entrance fee equal to 10% of its paid-up capital in cash. The necessary documents for opening the first branch of a foreign bank are stated in Article 5 of the

Permission Regulation. Both articles state that the BRSA has the right to request additional documents. The establishment permit must be approved by at least five of the seven BRSA board members.

After obtaining an establishment permit, an operation licence must be obtained from the BRSA in line with Article 7 of the Permission Regulation. The application for an operation permit must be submitted within nine months of the date of publication in the *Official Gazette* of the BRSA's decision regarding the establishment permit. An operation permit fee of TRY 423,536 (regulated under Tariff 8, attached to the Law of Fees (492)) must also be paid, both during the operation permit application process and for each year of banking activities. After the BRSA has conducted its evaluation in line with Article 7 of the Permission Regulation, it will grant operating permission within three months of the date of receipt of the application for permission. The permissions given become valid from the date of publication in the *Official Gazette*.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The PRA and the FCA must make their decision within six months of receipt of the completed application, but can deem an application incomplete and require further information, which defers the start of the six-month period. In practice, the licensing process may take up to one year to complete. If the regulators grant permission, each can impose such requirements or limitations on that permission as it considers appropriate.

An applicant for a banking licence must pay a non-refundable application fee, which varies according to the type of banking business to be carried on. Once authorised, UK banks must pay an annual licensing fee to the PRA or FCA, based on a number of factors, including annual income and types of banking business. Banks with a retail client base need to pay additional fees to cover the levies imposed by the Financial Ombudsman Service and the Financial Services Compensation Scheme. Banks may be required to pay other one-off fees in connection with changes to regulatory permissions or waivers. Banking licences are granted for an indefinite period, although the PRA retains powers to suspend or revoke licences and/or to impose financial penalties.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... The process for obtaining a licence can vary among the chartering authorities, and can last from a few months to a couple of years, depending on:

- the complexity of the proposed bank's business;
- the proposed activities of the bank; and
- the potential regulatory concerns that arise in connection with

the application.

A notice of the filing of the application must generally be published in a newspaper of the area in which the proposed bank will operate. A chartering authority may also require additional information beyond that included in the original charter application, and may request a meeting with the proposed bank's organisers to discuss the application.

In addition, most newly chartered US banks must obtain deposit insurance from the FDIC. In addition, many banks become members of the Federal Reserve System and must obtain approval to do so.

For more information about this answer please contact: Jerome Roche from Linklaters

4. Regulatory capital and liquidity

4.1 How are banks typically funded in your jurisdiction?

Canada

Gowling WLG

Answer ... Canadian banks fund their activities through a variety of sources. They can borrow from the Bank of Canada for short-term borrowing, daylight loans and liquidity requirements. Large banks may also have stable deposit bases and issue term deposits, bank deposit notes and bankers' acceptances.

For foreign banks, funding depends on whether they have a full-service branch or a lending branch in Canada. Foreign bank full-service branches cannot accept retail deposits, but can otherwise access the Canadian markets to fund their activities. Lending branches cannot take any deposits in Canada and have no access to funding via the Canadian markets. They must get funding from outside of Canada or borrow money from other financial institutions.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Banks are normally funded through a combination of share capital supplemented by various forms of tier 2 capital.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The funding strategies of German banks have changed substantially as a result of the 2008 financial crash. Conceptually,

commercial banks fund their balance sheets in layers, starting with a capital base comprising equity, subordinated debt and hybrids of the two, plus medium and long-term senior debt. The next layer consists of customer deposits, which are assumed to be stable in most

circumstances, even though they can be requested with little or no notice. The final funding layer comprises various shorter-term liabilities, such as commercial paper, certificates of deposit, short-term bonds, repurchase agreements, swapped foreign exchange liabilities and wholesale deposits. This layer is managed on a dynamic basis, as its composition and maturity can change rapidly with cash-flow needs and market conditions. This funding structure is usually relatively stable.

The Federal Financial Supervisory Authority (BaFin) and Deutsche Bundesbank continue, on an ongoing basis, to monitor whether German banks have sufficient funds for the risks assumed from balance-sheet assets and off-balance-sheet transactions – for example, from claims, securities, derivatives or equity investments. In addition to default and market risks, operational risks must be backed by their own adequate funds. Institutions must also hold funds for the capital maintenance buffer, the countercyclical capital buffer and, if so ordered, for the capital buffer for systemic risks, the capital buffer for globally systemically important institutions and the capital buffer for institutions with other systemic relevance (Sections 10c to 10i of the Banking Act). This buffer may be ordered by BaFin for risks exposures located in Germany or in another non-European Economic Area state. Details regarding the calculation of risks and banks' own funds are set out in the Capital Requirements Regulation (CRR).

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Following the financial crisis in 2008, all of the main Irish banks were recapitalised by the Irish state. A number of Irish banks are still subject to a significant level of state ownership. The Irish banks are funded through a number of different sources. The nature of the funding provided to the Irish banks is contingent on the capital requirements promulgated by the CBI. Funding is provided through a mixture of:

- equity share capital;
- debt instruments comprising both senior and subordinated bonds meeting the requirements of the CRR and CRD IV;
- securitisations;
- derivative financial instruments;
- disposals of non-performing loan books; and
- corporate and personal deposit accounts.

The types of capital that qualify for capital adequacy purposes are:

- common equity tier 1, comprising ordinary share capital and reserves;
- additional tier 1, comprising perpetual subordinated debt instruments which contain certain specified features, including restrictions on redemption and automatic triggers for write-down of the debt or conversion of the debt into equity; and
- tier 2, comprising subordinated debt with an original maturity of

at least five years.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Consistent with other Euro-area banks following the 2008 financial crisis, customer deposits represent the single largest source of funding. In 2016 deposits owed to customers represented 45.82% of total liabilities; this figure rose steadily to 48.84% in 2018. These deposits are sourced from non-financial and financial undertakings, private and/or retail customers, and the current accounts of investment funds. The second major area of funding for banks in Luxembourg is interbank liabilities, which represented 31.08% of total liabilities in 2018.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... As regards debt financing, the main funding sources for banks are money market instruments, interbank funding, customer savings accounts, other customers' deposits and bonds. As regards equity financing, please see question 4.2.

The most appropriate funding for a specific bank depends on the bank's size and business activity, among other things.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... Turkish banks are funded through several different sources. While the primary sources of funding are equity share capital and borrowed funds, banks also raise funds through issuing bonds, debentures, cash certificates and so on.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The Capital Requirements Directive (CRD) IV implements Basel III at an EU level, updating the previous Basel Accord. CRD IV has two components: the Capital Requirements Regulation (575/2013) (CRR) and the CRD. The CRR is a regulation and is directly applicable in the United Kingdom; while the CRD is implemented in the United Kingdom mainly through the Prudential Regulation Authority (PRA) and Financial Conduct Authority rules.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Banks are typically initially capitalised and funded by investors and organisers. Once operational, a bank is typically funded by equity investments along with deposits, loans and debt securities. In addition, banks (particularly large banks) may obtain short-term funding through overnight loans and repurchase agreements

funding through overnight loans and repurchase agreements.

For more information about this answer please contact: Jerome Roche from Linklaters

4.2 What minimum capital requirements apply to banks in your jurisdiction?

Canada
Gowling WLG
Answer ... Banks must maintain adequate capital and adequate and appropriate forms of liquidity pursuant to Section 485(1) of the Bank Act. This is measured by compliance with the Office of the Superintendent of Financial Institutions' (OSFI) Capital Adequacy Requirements Guideline.

Banks must maintain a level of capital at least equal to Tier 1 capital (subject to adjustments). However, minimum capital requirements are greater for certain large financial institutions in Canada. OSFI designates banks that are domestic systemically important banks (D-SIBs), which are of domestic systemic importance based on OSFI's assessment of a range of indicators such as:

- asset size;
- intra-financial claims and liabilities; and
- the banks' roles in domestic financial markets and in financial infrastructures.

D-SIBs will be subject to a common equity Tier 1 capital (CET1) surcharge equal to 1% of risk-weighted assets (RWA). The 1% capital surcharge is periodically reviewed in light of national and international developments. This is consistent with the levels and timing set out in the Basel Committee on Banking Supervision (BCBS) D-SIB framework.

Finally, OSFI has adopted the BCBS framework for the assessment of global systemically important banks (GSIBs). The assessment methodology for GSIBs follows an indicator-based approach agreed by the BCBS that will determine which banks are to be designated as GSIBs and subject to additional loss absorbency requirements that range from 1% to 2.5% CET1, depending on a bank's global systemic importance. For Canadian banks that are designated a GSIB, the higher of the D-SIB and GSIB surcharges will apply in determining the buffer.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark
Carsted Rosenberg Advokatfirma
Answer ... The minimum capital requirement for banks is a paid-in share capital of €5 million.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany
Squire Patton Boggs LLP
Answer ... German banks must at all times meet at least a hard-core capital ratio of 4.5%, a core capital ratio of 6% and a total capital ratio of 8%. In addition, BaFin and the ECB check whether liquidity is sufficient – that is, whether the institutions invest their funds in such a

sufficient – that is, whether the institutions invest their funds in such a way that sufficient solvency is guaranteed at all times (Section 11 of the Banking Act). As part of the supervisory review process (SRP), BaFin also monitors those risks that are not required to be backed by their own funds under the CRR (Section 6b of the Banking Act). The core

elements of the SRP are the establishment of adequate risk management systems and their monitoring by the supervisory authority. For example, institutions must set up an internal capital adequacy assessment process, which ensures that they have sufficient internal capital to cover all material risks.

The enforcement of such capital adequacy guidelines falls within the supervisory mandate of the supervisory authorities. This means that BaFin, and/or the European Central Bank (ECB) can take measures to improve the institution's own funds and liquidity. Furthermore, in cases of danger (eg, if the discharge of an institution's obligations to its creditors is endangered), the authorities can take temporary measures to avert that danger. In particular, the authorities may issue instructions for the management of the institution's business or prohibit the acceptance of deposits, funds or securities from customers and the granting of loans.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Irish banks must maintain financial resources equal to or greater than a percentage of their risk weighted assets (RWA).

The own funds of an institution must at all times be in excess of the initial capital amount (currently €5 million) required at the time of its authorisation. Irish banks are subject to the following capital requirements:

- The Pillar 1 requirement relates to a regulatory minimum amount of capital which the banks must hold. This is a total capital ratio of 8% of RWA. A minimum of 4.5% of RWA must be common equity tier 1 and at least 6% of RWA comprising tier 1 capital.
- The Pillar 2 requirement is an additional capital requirement that applies on a case-by-case basis, specifically tailored to a bank's individual business model and risk profile.
- The CBI also applies individual buffers, being:
  - the capital conservation buffer, fixed at 2.5% of a bank's total RWA; and
  - the global/other systemically important institution (GSII/OSII) buffer. The six banks regulated by the CBI are subject to the OSII buffer, ranging from 0% to 1.5%. The OSII buffer in Ireland is subject to a phase-in period to be completed by July 2021;
- the counter-cyclical capital buffer which is currently at 1% in Ireland (but reduced to zero as a result of COVID-19); and
- the systemic risk buffer (SRB), which is designed to mitigate long-term, non-cyclical risk that may have serious adverse consequences for the economy. The SRB has not yet been implemented in Ireland.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Luxembourg

Loyens & Loeff

Answer ... Credit institutions must have a share capital of at least €8.7 million which is subscribed, fully paid up and compliant with the relevant provisions of 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, as amended (CRR) (Articles 28 and, where applicable, 29). They are also subject to specific rules on capital adequacy and must maintain a number of capital buffers.

Under the CRR, credit institutions must maintain, at all times, a total capital ratio (ie, the own funds of the credit institution expressed as a percentage of the total risk exposure amount, as calculated in accordance with the relevant provisions of the CRR) of 8%. The capital ratio must be composed of 4.5% of Common Equity Tier 1 capital, 1.5% of Additional Tier 1 capital and 2% of Tier 2 capital (each as defined under the CRR).

Under the Law of 5 April 1993 on the financial sector, as amended, credit institutions must maintain a capital conservation buffer composed of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount calculated in accordance with the CRR, and an institution-specific countercyclical capital buffer composed of Common Equity Tier 1 capital which is equivalent to their total risk exposure amount calculated in accordance with the CRR multiplied by the weighted average of the countercyclical buffer rates. The CSSF is responsible for setting the countercyclical buffer rates applicable in Luxembourg. As per CSSF Regulation 19-08 of 1 October 2019, the countercyclical buffer rate for the fourth quarter of 2019, which is applicable as from 1 January 2020, is 0.25%.

Credit institutions may also, under certain conditions, be required to maintain a systemic risk buffer of Common Equity Tier 1 capital.

'Globally systemically important institutions' and 'other systemically important institutions' (as defined in question 5.2(b)) must maintain the additional capital buffers set out in question 5.2(b).

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The fully-paid up share capital of a Swiss bank must amount to at least CHF 10 million. However, in practice, the Swiss Financial Market Supervisory Authority (FINMA) generally requires a bank to have additional capital of CHF 10 million or more, depending on the intended scope of the bank's business activities.

In addition, banks are subject to capital adequacy requirements based on the Basel III framework, which have been further specified in the Capital Adequacy Ordinance and in various circulars issued by FINMA. Pursuant to the ordinance, banks must hold a minimum required capital of at least 8% of their risk-weighted assets. Depending on its supervisory category, a bank must, in principle, hold an additional capital buffer of between 2.5% and 4.8% of its risk-weighted positions. Furthermore, the Swiss Federal Council may, upon request of the Swiss National Bank, require banks to hold a countercyclical buffer of a maximum of 2.5% of their risk-weighted positions in Switzerland to

counteract excessive credit growth or to enhance the banking sector's resilience against the risk of excessive credit growth. Currently, the countercyclical buffer has been set at 2%. Certain banks with a balance-sheet amount of at least CHF 250 billion must also hold an extended countercyclical buffer of up to 2.5% of their risk-weighted positions. In addition, FINMA may require a bank to hold additional capital if the minimum required capital and countercyclical buffer do not sufficiently cover the specific risks of the bank. Finally, a bank must also maintain a 3% minimum leverage ratio based on non-risk-weighted assets.

For systemically important banks, additional requirements apply. In particular, they must:

- have sufficient own funds to be able to continue their business activities even in the event of major losses (going-concern capital requirements); and
- permanently hold additional funds to ensure a possible restructuring and winding-up (gone-concern capital requirements).

On the other hand, small banks in supervisory Categories 4 and 5 that are particularly liquid and well capitalised can apply to FINMA for an exemption from the detailed capital adequacy requirements described above. Following a pilot phase of several months, the so-called 'small banks regime' has been formally implemented, effective as from 1 January 2020. To qualify for the small banks regime, a bank must satisfy the following conditions:

- simplified leverage ratio of at least 8%;
- average liquidity ratio of at least 110%; and
- refinancing ratio of at least 100%.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to Article 7 of the Banking Law, a bank's fully paid-in capital stock should be at least TRY 30 million. It is also possible to accept higher amounts of establishment capital than 25% of the fully paid-in capital stock of TRY 30 million. However, this rule is valid for new banks only; there is no obligation for banks in operation to increase their capital to this amount.

At the same time, the Banking Regulation and Supervision Agency requires a fully paid-up capital of at least $300 million for a new commercial banking licence.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... UK-incorporated banks are subject to high-level, qualitative and quantitative liquidity requirements. Branches of foreign banks are subject to high-level requirements only. Detailed common reporting requirements also apply. All banks are subject to PRA Fundamental Rule 4, which requires a firm to maintain adequate financial resources.

The qualitative requirements for UK banks focus on:

- governance and senior management oversight of liquidity risk;
- measurement and management of liquidity risk;
- stress testing; and
- contingency funding plans.

The quantitative regime for UK banks implementing the Basel III liquidity coverage ratio (LCR) in the European Union entered into force in January 2015 under Delegated Regulation EU 2015/61. This ensures that banks hold a buffer of unencumbered high-quality liquid assets to meet liquidity needs under a 30-day stress scenario.

The reporting regime requires UK banks to provide liquidity data to the PRA, including daily liquidity reports, weekly mismatch reports, weekly pricing data, monthly marketable assets reports, monthly funding concentration reports, quarterly retail funding reports, and quarterly systems and controls questionnaires. All UK banks are subject to the 'overall liquidity adequacy rule' (ie, every UK-authorised bank must be self-sufficient in terms of liquidity adequacy). This supplements the LCR and CRD IV reporting process, and is also supported by PRA rules implementing the Pillar 2 liquidity framework in accordance with CRD IV.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... US banks and bank holding companies (BHCs) are subject to capital standards based on the Basel III accords, as noted above.

For more information about this answer please contact: Jerome Roche from Linklaters

4.3 What legal reserve requirements apply to banks in your jurisdiction?

Canada

Gowling WLG

Answer ... Banks must maintain a capital conservation buffer, which establishes a safeguard above the minimum capital requirements and can only be met with CET1.

D-SIBs are subject to an additional capital buffer to protect against risks in the financial system. Referred to as the 'domestic stability buffer', it has been set at 1% of total risk-weighted assets, effective 13 March 2020. It is not a Pillar 1 buffer and breaches will not result in banks being subject to automatic constraints on capital distributions. If a D-SIB breaches the buffer (ie, dips into the buffer when it has not been released), OSFI will require a remediation plan.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The board of directors and the management of a bank must at all times ensure that the bank holds sufficient capital to cover its risks (eg, credit risk, market risk, operational risk). As part of this assessment, among other things, they are required to calculate the bank's individual solvency requirement and hold sufficient capital to

cover this requirement. The Danish Financial Supervisory Authority may increase the individual solvency requirement and order the bank to increase its own funds if it deems that the solvency requirement set by the bank is insufficient to cover its risk exposure.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The ECB requires German credit institutions to hold compulsory deposits on accounts with the Deutsche Bundesbank. These are called 'minimum' or 'required' reserves and the amount to be held by each institution is determined by its reserve base.

In order to determine an institution's reserve requirement, the reserve base is multiplied by the reserve ratio. The ECB applies a uniform positive reserve ratio to most of the balance-sheet items included in the reserve base. This reserve ratio was set at 2% at the start of Stage Three of European Economic and Monetary Union and was lowered to 1% from 18 January 2012. As noted above, the reserve requirement for each individual institution is calculated by applying the reserve ratio to the reserve base. Institutions must deduct a uniform lump-sum allowance of €100,000 from their reserve requirement. This allowance is designed to reduce the administrative costs arising from managing very small reserve requirements.

In order to meet their reserve requirements, German credit institutions must hold balances on their current accounts with the Deutsche Bundesbank. This means that compliance with minimum reserve requirements is determined on the basis of the average daily balances on the counterparties' reserve accounts over one reserve maintenance period. Data on the amount of required minimum reserves and their fulfilment is published in the statistical section of the Monthly Report of the Deutsche Bundesbank.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The amount of reserves to be held by each Irish banking institution is determined by its reserve base, comprising deposits and issued debt securities, and is calculated on the basis of the bank's balance sheet prior to the start of the relevant maintenance period. Interbank liabilities to credit institutions subject to the Eurosystem's minimum reserve requirements and liabilities to the ECB and euro area national central banks are excluded from the reserve base.

All credit institutions resident in Ireland must submit a minimum reserve calculation based on their balance-sheet data as at the last working day of each month. This calculation, which must be submitted to the statistics division of the CBI by the tenth working day of the end of the month, determines an institution's reserve requirement for the following maintenance period. Reserve holdings that exceed the required minimum reserve shall be remunerated at 0% or the deposit facility rate, whichever is lower. Compliance with these requirements is determined on the basis of institutions' average daily holdings of reserves over the maintenance period, which is usually around six weeks The legal framework for the determination of minimum reserves is provided in Regulation (EC) 1745/2003 on the application on

reserves is provided in Regulation (EC) 1745/2003 on the application of minimum reserves.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The European Central Bank requires credit institutions established in the euro area to hold deposits on accounts with their national central bank. These are called 'minimum' reserves. The reserve requirements are set out in Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2013 on the application of minimum reserves, as amended. In this respect, is should be noted that:

- branches in the euro area of credit institutions established outside the euro area are also subject to the minimum reserve requirements; and
- branches of euro area credit institutions which are located outside the euro area are not subject to the minimum reserve requirements.

Since 18 January 2012, the reserve ratio is:

- 1% for overnight deposits, deposits with agreed maturity or period of notice up to two years, debt securities issued with maturity up to two years and money market paper; and
- 0% for deposits with agreed maturity or period of notice over two years, repos and debt securities issued with maturity over two years.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The quantitative and qualitative requirements for the minimum liquidity for banks are set out in the Liquidity Ordinance, which implemented Basel III's liquidity requirements into Swiss law. The provisions of the ordinance have been further specified in FINMA Circular 2015/2 "Liquidity Risks – Banks".

With the revision of the ordinance as of 1 January 2015, a liquidity coverage ratio (LCR) has been introduced for short-term liquidity in accordance with international liquidity standards. The LCR requires banks to hold sufficient high-quality liquid assets to survive for at least 30 days in the event of a liquidity stress scenario. Banks must report their LCR on a monthly basis to the Swiss National Bank (SNB).

Banks which hold deposits that are subject to depositor preferences (privileged claims) must maintain additional liquid assets to cover their respective obligations. Further, the National Bank Ordinance requires banks to keep minimum reserves consisting of Swiss franc denominated coins, banknotes and sight deposit accounts with the SNB. The corresponding reserve requirement is currently set at 2.5% of the bank's relevant Swiss franc denominated liabilities as defined in the ordinance.

Following delays in the introduction of a net stable funding ratio (NSFR) on the EU and US financial markets, the implementation of an NSFR in Switzerland had also been postponed so far. However, given

NSFR in Switzerland had also been postponed so far. However, given that the European Union will now be introducing the NSFR by mid-2021, it is currently planned to revise the Liquidity Ordinance and bring the NSFR into force in Switzerland within the same timeframe.

For systemically important banks, additional requirements apply. In particular, they must have enough liquidity to meet their payment obligations even in exceptionally stressful situations.

On the other hand, small banks benefit from less restrictive LCR requirements as further described in FINMA Circular 2015/2 "Liquidity Risks – Banks".

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to the Communiqué on Reserve Requirements (*Official Gazette* 25 December 2013, No 2013/15), based on Article 40-II of the Law on the Central Bank of the Republic of Turkey as amended by the Banking Law, banks must maintain required reserves at the Central Bank for their liabilities.

Based on the accounting standards and recording order to which banks are subject, the following balance-sheet items constitute Turkish lira and foreign currency liabilities subject to reserve requirements as per Article 4 of the Communiqué on Reserve Requirements:

- deposit/participation fund;
- funds from repo transactions;
- borrowings;
- securities issued;
- debt instruments not included in the capital calculation;
- payables from credit card payments; and
- funds of borrowers.

Some exclusions and discounts apply to the above. The required reserve ratios in Turkish lira and foreign currency are regulated in Article 6 of the Communiqué on Reserve Requirements. According to Article 8 of the communiqué, required reserves must be met within 14 days. This period starts on Friday two weeks after the date on which the liabilities are calculated and ends on the Thursday of the second week. The Central Bank may change the calculation period of required reserve liabilities and the maintenance period of required reserves, provided that this is announced in advance.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... A bank must maintain at all times financial resources equal to or greater than its risk-weighted assets as a cushion of cash, reserves, equity and subordinated liabilities available to the bank to absorb losses during periods of financial stress. CRD IV raised the threshold in terms of the quantity and quality of capital that a bank is required to hold, with only two categories of permitted financial resources:

- Tier 1 (broadly, equity consisting of Common Equity Tier 1 and

- Tier 1 (broadly, equity consisting of Common Equity Tier 1 and Additional Tier 1); and
- Tier 2 (broadly, subordinated debt).

There are limits placed on the amounts of Additional Tier 1 and Tier 2 capital that are recognised as financial resources and the uses to which such capital can be put.

Capital requirements apply to the trading and non-trading books. To calculate capital requirements in the non-trading book, banks can follow the standardised approach or (subject to regulatory approvals) adopt the 'internal ratings based' approach. Under the standardised approach, used by most small banks, assets are given a pre-determined risk weighting set according to the type of asset in question. The trading book attracts a set of rules covering:

- market risk;
- position risk requirements for interest rate risk;
- equity risk;
- commodities risk;
- currency risk; and
- risks associated with options and collective investment schemes.

The market risk rules allow for a variety of approaches to risk weighting, depending on the sophistication of the bank, including models-based approaches. The PRA has discretion to impose additional capital requirements (and has historically exercised it liberally with respect to banks) under Pillar 2.

The PRA places the burden on banks to assess their own capital requirements and the systems and controls necessary to satisfy them, under the Internal Capital Adequacy Assessment Process (ICAAP).

In line with Basel III, CRD IV requires the implementation by member states of a regime for the imposition of capital conservation and countercyclical capital buffers. The Financial Policy Committee has delegated authority from the Bank of England for setting the policy framework and rates for the countercyclical buffer.

Under Pillar 3 requirements, banks must make disclosures about:

- capital structure;
- capital adequacy.;
- credit risk and equities in the non-trading book;
- credit risk mitigation;
- securitisation;
- market risk;
- operational risk and interest rate risk in the non-trading book;
- leverage risk;
- capital buffers;
- use of external credit assessment institutions;
- governance arrangements;
- risk management; and
- remuneration policy.

Additionally, institutions holding more than £25 billion in deposits should maintain an additional systemic risk capital buffer (SRB) above the minimum quantitative requirements applicable to UK banks under the Capital Requirements Directive (CRD) IV. SRB rates generally fall

within 1% to 3% of risk-weighted assets. The SRB is intended to co-exist alongside the global systemically important institution and other systemically important institution buffers, but only the highest of these buffer requirements will apply. The quantitative capital

requirements under the CRD/Capital Requirements Regulation are supplemented by the obligation, introduced by the EU Bank Recovery and Resolution Directive (BRRD), for banks to satisfy at all times a minimum requirement for own funds and eligible liabilities (MREL).

MREL requirements are specified by the Bank of England on a case-by-case basis. Certain liabilities are excluded from the application of bail-in powers, including:

- protected deposits;
- secured liabilities; client assets; and
- most employee and pensions liabilities, trade and short-term liabilities.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... US banks must hold reserves of a particular proportion of their deposits to ensure the availability of cash to fulfil depositor demands. Reserves generally must be held as vault cash or cash on deposit with the Federal Reserve. The Federal Reserve sets the minimum reserve rate. In light of the COVID-19 pandemic, the Federal Reserve has reduced the reserve rate to 0%; though in doing so, it has noted that "this is largely irrelevant because banks currently hold far more than the required reserves".

A bank's liquidity is also regulated under the US implementation of Basel III's liquidity coverage ratio (LCR). The LCR requires US banks and BHCs to maintain sufficient liquid assets to cover a 30-day run on the bank. A bank's liquidity is also regulated prudentially by the bank's chartering authority and/or primary federal regulator. The strength of a bank's liquidity position plays a key role in US banking agencies' supervisory assessment of the bank in connection with annual examinations. If an agency believes that the bank lacks sufficient liquidity, it may impose sanctions on the bank or limitations on its ability to engage in activities.

For more information about this answer please contact: Jerome Roche from Linklaters

5. Supervision of banking groups

5.1 What requirements apply with regard to the supervision of banking groups in your jurisdiction?

Canada

Gowling WLG

Answer ... Under the Bank Act, directors have a general duty to manage or supervise the management of the business and affairs of the bank. Directors also have specific duties to establish an audit committee and a conduct review committee, and to maintain policies

for, among other things, disclosure to customers, resolving conflicts of interest, and dealing with complaints (see Section 157 of the Bank Act).

Members of the board of directors of a bank can be held personally responsible for infractions under the Bank Act, which provides that offences may be imputed to officers and directors who participate in the offence or assent to or encourage the commission of the offence. Directors can also be held personally liable where they fail to act in good faith and knowingly turn a blind eye to an offence or allow it to continue to be committed.

Additionally, the Office of the Superintendent of Financial Institutions (OSFI) requires disclosure from all federally regulated banks on a monthly, quarterly and annual basis, and examines each bank on an annual basis to determine its compliance with the Bank Act and to assess its financial condition.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Banking groups are supervised on a consolidated basis in accordance with the Financial Business Act and on the basis of the Capital Requirements Regulation.

If the parent company in the banking group is situated in another EU/European Economic Area country, the Danish Financial Supervisory Authority will primarily supervise the Danish branch or subsidiary and will otherwise assist the home-state regulator in the overall supervision of the banking group.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The European Central Bank (ECB) and the Federal Financial Supervisory Authority (BaFin) supervise banking groups as well as individual institutions. A group generally falls under the jurisdiction of the ECB or BaFin if the parent undertaking:

- is a credit institution incorporated in Germany; or
- is a financial holding company or a mixed financial holding company, and both the holding company and the bank subsidiary are incorporated in Germany, or the holding company is incorporated in another EU member state and the German subsidiary is subject to consolidated supervision in accordance with the EU Capital Requirements Directive IV.

Requirements: The most important requirement is that the minimum regulatory capital standards also be maintained at group level. For this purpose, the regulatory capital and risk weighted assets of individual institutions and group members are consolidated. Although each institution in a group may be sufficiently capitalised, consolidation of group capital may produce a regulatory capital gap – in particular, if the group includes entities that are not subject to the same capital

the group includes entities that are not subject to the same capital adequacy rules as banks on a solo basis, but that incur risks that need to be covered by the owned funds of the consolidated group.

The credit institution at the top of the group or, in the case of a group headed by a financial holding company or a mixed financial holding company, the largest subsidiary credit institution in the group is generally responsible to the supervisory authority for making sure that the group has sufficient regulatory capital.

Similar rules apply to financial conglomerates. These groups include financial institutions and insurance companies.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The CBI is responsible for supervision on a consolidated basis in a number of circumstances as set out in the CRR. For example, the CBI will act as consolidated supervisor where it has authorised a bank which is a parent bank in Ireland or an EU parent bank. The CBI is also responsible for supervision on a consolidated basis when it has authorised a bank and the parent of the bank is one of the following:

- a parent financial holding company in a member state;
- a parent mixed-financial holding company in a member state;
- an EU parent financial holding company; or
- an EU mixed-financial holding company in a member state.

Each bank supervised by the CBI must have in place adequate risk management processes and internal control mechanisms, including robust reporting and accounting procedures to identify, monitor, measure and control transactions with its parent mixed-activity holding company and its subsidiaries, as appropriate. Banks must also report significant transactions to the CBI.

The CBI, as part of its supervisory role, carries out the following functions:

- processing applications from financial services providers for authorisation in Ireland;
- monitoring compliance with prudential standards, primarily through examining prudential returns (weekly, monthly and annual), financial statements and annual reports, and conducting regular review meetings and on-site inspections;
- developing systems and procedures to monitor activities and detect non-compliance by banks;
- issuing guidance notes to enhance its supervisory oversight due to continued growth and changes in financial markets; and
- supporting the development of domestic legislation and implementing EU regulations and international standards.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The Law of 5 April 1993 on the financial sector, as amended ('Banking Act') – which implements, among others, Directive 2013/36/EU of the European Parliament and of the Council of 26 June

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 (CRD IV) and Directive 2002/87/EC of the European Parliament and of the Council of

16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, as amended – contains provisions on:

- the supervision of credit institutions carrying on business in more than one EU member state;
- the supervision of credit institutions subject to 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, as amended (CRR) on a consolidated basis; and
- the supplementary supervision of credit institutions in a financial conglomerate.

The CRR also includes provisions with respect to prudential consolidation to which credit institutions may be subject.

The prudential supervision of Luxembourg credit institutions by the *Commission de Surveillance du Secteur Financier* (CSSF) covers the activities performed by such credit institution in other EU member states via the establishment of branches or the cross-border provision of services. The Banking Act also sets out the CSSF's powers with respect to Luxembourg branches of credit institutions from other EU member states, and the respective rights and competence of the CSSF and other competent authorities.

There are certain cases where the CSSF is required to exercise prudential supervision on a consolidated basis, meaning on the basis of the situation that results from applying the CRR requirements to a credit institution as if that credit institution formed, together with one or more other entities, a single institution. Such consolidated supervision applies, for instance:

- to Luxembourg parent credit institutions;
- to Luxembourg parent financial holding companies having as a subsidiary a Luxembourg credit institution; and
- under certain conditions, where the relevant group includes a Luxembourg credit institution and such credit institution shows the largest balance-sheet total.

The consolidated supervision covers, for instance, the items referred to in Article 11 of the CRR (eg, requirements with respect to own funds and eligible liabilities, capital requirements, large exposures and leverage), capital adequacy, internal governance requirements, certain intra-group transactions, risk management processes and internal control mechanisms, and the professional repute, experience, knowledge and skills of the members of the management body of a financial holding company or mixed financial holding company.

The CSSF must identify any group of companies that constitutes a financial conglomerate as defined in the Banking Act. The CSSF exercises supplementary supervision over Luxembourg credit institutions that belong to a financial conglomerate if the CSSF assumes the role of 'coordinator' for the supervision of regulated entities in that financial conglomerate. The Banking Act sets out the different scenarios in which the CSSF may act as coordinator; this is

different scenarios in which the CSSF may act as coordinator, this is the case, for instance, where:

- the financial conglomerate is headed by a credit institution or an investment firm authorised in Luxembourg;

- it is headed by a mixed financial holding company which is the parent of a credit institution or investment firm authorised in Luxembourg; or
- a Luxembourg credit institution or investment firm belongs to a financial conglomerate, subject to certain specific conditions.

All the financial sector entities within a financial conglomerate - whether regulated or not and whether established in an EU member state or in a third country - fall within the scope of the supplementary supervision of the CSSF. The supplementary supervision to be carried out by the CSSF covers the financial position of the financial conglomerate, and in particular the capital adequacy, risk concentration, intra-group transactions, internal control mechanisms and risk management processes.

The Banking Act contains rules on:

- cooperation, coordination and exchange of information between competent authorities;
- access to and verification of information;
- the powers and enforcement measures of competent authorities; and
- the measures at the disposal of the CSSF in order to effectively exercise its supervision.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Under the Banking Act, two or more companies are deemed to be a financial group if:

- at least one company acts as a bank or securities firm;
- they are active primarily in the financial sector; and
- they form an economic unit and, due to the circumstances, it is assumed that one or more individual companies are legally obliged or factually forced to assist other group companies.

The Swiss Financial Market Supervisory Authority (FINMA) may subject a financial group to group supervision if the group manages a Swiss bank or securities firm in Switzerland, or if the group is actually managed from Switzerland.

As part of its consolidated supervision, FINMA reviews, among other things, whether the financial group:

- is adequately organised;
- has an adequate internal control system;
- adequately records, mitigates and monitors risks in connection with its business activities;
- is managed by individuals that guarantee proper business conduct;
- adheres to the capital adequacy regulations; and
- disposes of adequate liquidity.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to Article 65 of the Banking Law, the Banking Regulation and Supervision Agency (BRSA) is entitled to supervise and regulate the Turkish banking system. Before the BRSA's establishment, supervision operations were conducted by the Treasury and the Central Bank. After the establishment of the BRSA in 1999, the supervisory powers and responsibilities were transferred to the BRSA.

The BRSA performs duties regarding the supervision of the banking system in accordance with the Banking Law and other relevant laws and regulations. Furthermore, it determines the appointment of independent audits. Audits are carried out annually, quarterly and when necessary. The BRSA has the power to obtain all documents and records of banks and their subsidiaries, and maintains continuous communications between audit teams and bank representatives at different levels. The BRSA has the right to send its authorities to the general assembly meetings of banks. The BRSA also has the power to implement both prudential and conduct supervision. It has the power to ask the relevant institution to take necessary measures after an audit, as stated in Articles 67 to 72 of the Banking Law. According to Articles 150 and 161 of the Banking Law, the BRSA can impose sanctions not only on banks, but also on the administration and the board of directors. In practice, the BRSA does not frequently implement remedial and corrective actions. In general, the BRSA tends to apply administrative fines.

In addition, according to Article 66 of the Banking Law, the following shall be subject to consolidated supervision:

- the parent company, subject to limitations and standard ratios on a consolidated basis;
- domestic and foreign subsidiaries;
- jointly controlled undertakings; and
- branches and representative offices.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... As consolidated supervision in the United Kingdom is ultimately derived from the principles and standards of the Basel Committee on Banking Supervision, it performs the same role in the United Kingdom as it does elsewhere: to ensure that prudential supervision of a bank looks to the strength of the bank's group, and not just the bank itself.

The Capital Requirements Regulation (CRR) rules define the scope of a group and the prudential requirements that apply to it. The CRR sets out the calculations of both group capital requirements and group capital resources. Capital requirements are set and reporting is made at the level of the relevant group, as well as the particular entity within the group.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... As noted above, many US banking organisations are often structured under bank holding companies (BHCs). A 'BHC' is defined as any company that 'controls' (as defined in the Bank Holding Company Act (BHCA)) a US bank or another BHC. The Federal Reserve is responsible for supervising, monitoring, inspecting and examining BHCs to ensure that they comply with applicable laws and regulations, and that they operate their subsidiary US banks in a safe and sound manner. Supervision for BHCs is tailored based on the institution's size, complexity and activities. In addition, BHCs must act as a source of financial and managerial strength for their bank subsidiaries. Under certain circumstances, this can require a BHC to provide additional capital to an insolvent or undercapitalised bank subsidiary.

BHCs are generally subject to significant restrictions on the types of activities that they and their non-bank subsidiaries may engage in. Specifically, a BHC generally is limited to owning US banks and engaging in activities that are 'closely related to banking' provided that they obtain Federal Reserve approval. Such activities include:

- engaging in lending activities;
- acting as a securities or derivatives broker or placement agent;
- dealing in certain types of derivatives;
- providing investment and economic advice; and
- underwriting and dealing in obligations of the US federal and state governments (though not other securities).

A BHC may obtain approval from the Federal Reserve to become a 'financial holding company' (FHC) under the BHCA and the Gramm-Leach-Bliley Act, which permits it to engage in a wider array of financial activities, including:

- underwriting and dealing in all types of securities;
- operating an insurance underwriting business; and
- making merchant banking investments in non-financial companies, subject to certain limitations on the length of the FHC's investment and the ability of the FHC to participate in the management of the portfolio investment.

In addition, significant quantitative caps and qualitative requirements apply to many transactions between US banks and many of their affiliates. Among other things, any credit exposure by such a bank to an affiliate must be collateralised (or, in some circumstances, overcollateralised). The aggregate value of transactions between a US bank and its affiliates is generally capped at 10% of the bank's capital and loan loss reserves with respect to any single affiliate, and 20% of its capital and reserves with respect to all affiliates. Further, all such affiliate transactions must be on 'arm's-length' terms.

For more information about this answer please contact: Jerome Roche from Linklaters

5.2 How are systemically important banks supervised in your jurisdiction?

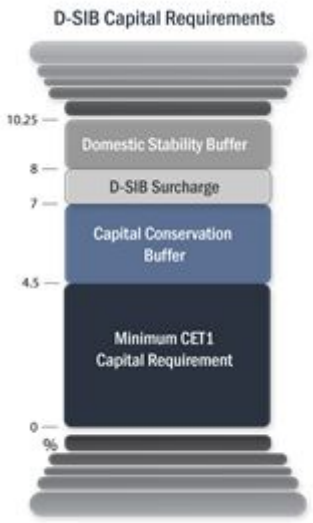
Canada

Gowling WLG

Answer ... As of March 2020, the Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada, and Toronto-Dominion Bank are

currently designated as domestic systemically important banks (D-SIBs).

D-SIBs are subject to enhanced supervision by OSFI, including more frequent reviews and regular stress testing for capital and liquidity, and D-SIBs are subject to a CET1 surcharge equal to 1% of risk-weighted assets (RWA). The 1% capital surcharge will be periodically reviewed in light of national and international developments. This is consistent with the levels and timing set out in the Basel Committee on Banking Supervision D-SIB framework. In addition, D-SIBs are subject to an additional capital buffer to protect against risks in the financial system. The buffer, referred to as the 'domestic stability buffer', was initially established at a rate of 2.25% of total RWA.



Source: Office of the Superintendent of Financial Institutions (Canada)

Recently, due to COVID-19, it has been reduced from 2.25% to 1% of total RWA.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Systemic important financial institutions (SIFIs) and global systemic important financial Institutions (G-SIFIs) are subject to the special regulatory regime set out in Chapter 19 of the Financial Business Act. Chapter 19 contains detailed provisions on how SIFIs and G-SIFIs are identified (ie, the qualification criteria), as well as the specific requirements that apply if a bank qualifies as a SIFI. The requirements include the following:

- an obligation to maintain a specific SIFI capital buffer;
- an obligation to identify key personnel;
- an obligation to establish committees on remuneration, nomination and risk;
- limits on the number of other board and management positions that a board member in a SIFI/G-SIFI may have besides his or her current position; and
- various restrictions and requirements in relation to bonus schemes and variable remuneration.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Germany is part of the Single Supervisory Mechanism established in all EU member states. Its purpose is to centralise the prudential supervision of banks. In particular, the ECB:

- directly supervises 117 institutions and banking groups in the European Union that are considered significant (including 21 German institutions and banking groups); and
- supervises member states' regulatory authorities that directly supervise less significant institutions and banking groups.

In Germany, the day-to-day supervision is conducted by joint supervisory teams, which comprise staff from both BaFin and the ECB. BaFin continues to conduct the direct supervision of less significant institutions, around 3,500 entities, subject to the oversight of the ECB. The ECB can also take on the direct supervision of less significant institutions if this is necessary to ensure the consistent application of high supervisory standards. The ECB is also involved in the supervision of cross-border institutions and groups, either as a home supervisor or a host supervisor in colleges of supervisors. Moreover, the ECB participates in the supplementary supervision of financial conglomerates in relation to the credit institutions included in a conglomerate and assumes the responsibilities of the coordinator referred to in the Financial Conglomerates Directive.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... 'Other systemically important institutions' are identified by the CBI on the basis of the following criteria:

- size;
- importance to the economy of the European Union or the state;
- significance of cross-border activities; and
- interconnectedness of the institution or group with the financial system.

The EBA Guidelines, applied by the CBI, establish a scoring process for assessing the systemic importance of an institution based on the above criteria. With respect to size, the total assets of an institution are taken into consideration. Importance is considered from a domestic and European perspective, taking into account the substitutability of the activities of the institution with respect to its role in the payments system, the provision of loans to, and the taking of deposits from, the private sector. Cross-jurisdictional activities are used to assess significance and complexity of the institutions activities; while the interconnectedness of an institution or group is reviewed considering intra-financial system assets and liabilities.

The ECB directly supervises the significant institutions in Ireland through joint supervisory teams formed under the SSM. These teams comprise staff from the ECB and the CBI, and are responsible for the day-to-day supervision of these institutions. The SSM takes a risk-based approach to supervision, which is based on both qualitative and

quantitative approaches, and involves judgement and forward-looking critical assessments.

Among other duties, these teams are responsible for:

- the ongoing assessment of an institution's risk profile, solvency, liquidity and recovery planning; and
- the preparation of draft decisions to be presented to the supervisory board of the SSM.

Significant institutions are subject to in-depth onsite inspections of individual risk areas, risk controls and governance.

As a member of the SSM, decisions of the CBI relating to the application of the 'other systemically important institution' buffers are made in conjunction with the ECB.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... 'Systemically important' banks must be distinguished from 'significant' banks, as these concepts entail different consequences.

Significant and less significant institutions: The European Central Bank (ECB) directly supervises 'significant' credit institutions; whereas 'less significant' credit institutions are supervised by their national supervisory authorities in cooperation with the ECB. A credit institution will be considered as significant if it fulfils at least one of the significance criteria set out in Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities and Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. These criteria include:

- the credit institution's size;
- its economic importance for the European Union as a whole or a specific EU member state;
- the significance of its cross-border activities;
- whether it has requested direct public financial assistance from the European Stability Mechanism or the European Financial Stability Facility; and
- whether the credit institution is one of the three most significant credit institutions established in an EU member state.

The ECB maintains a list of significant credit institutions.

Systemically important institutions: CRD IV defines 'globally systemically important institutions' (G-SIIs) and 'other systemically important institutions' **(O-SIIs)**. The CSSF is the authority designated to identify the systemically important institutions authorised in Luxembourg, which include G-SIIs and O-SIIs. The CSSF takes its decisions in this respect after consultation with the Banque Centrale du Luxembourg **(**BCL) and the Luxembourg Systemic Risk Committee.

G-SIIs and O-SIIs are subject to additional capital requirements. G-SIIs must maintain an additional capital buffer (the G-SII buffer) that

consists of Common Equity Tier 1 capital and varies between 1% and 3.5%, depending on the degree of systemic importance of the bank. O-SIIs may, subject to certain conditions, be required by the CSSF to maintain an additional capital buffer (the O-SII buffer) that consists of

Common Equity Tier 1 capital. According to CSSF Regulation 19-09 of 29 October 2019 concerning systemically important institutions authorised in Luxembourg, there are as at the date of this publication no G-SIIs in Luxembourg. Eight O-SIIs have been identified, which are subject to O-SII buffers between 0.5% and 1% (depending on the institution) as of 1 January 2020.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The Swiss National Bank (SNB) has designated five banks or banking groups as systemically important. Two of these are global systemically important banks and three are other systemically important banks.

Since the financial crisis, several amendments to the banking regulations have been implemented that address capital adequacy requirements, leverage ratios and liquidity requirements, with specific and more stringent requirements for SIBs (please also see question 4). In addition, the FINMA is putting more emphasis on risk management and corporate governance requirements.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The Regulation on Systemically Important Banks (*Official Gazette* of 23 February 2016, No 29633) lays down the procedures and principles on the identification of systemically important banks and the measurement and evaluation of their capital adequacy. It aims to ensure that these banks have sufficient capital to balance their losses in relation to the possible risks to which they are exposed. These banks are divided into three groups, which represent their systemic significance based on their overall score. Different capital levels and requirements apply to each group. The threshold scores and group score ranges that will determine whether a bank is systemically important are set by the BRSA. Banks identified as systemically important must have systemic bank buffers for the following year. In addition to the core capital requirement, these banks must keep additional core capital, determined according to the systemically important bank buffer ratio corresponding to the group in which the bank is categorised.

The BRSA also has the authority to change the grouping of systemically important banks and to add or remove a bank by evaluating other issues of relevance.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Under CRD IV, from 2016, global systemically important institutions (G-SIIs) and other systemically important institutions (O-

SIIs) have been required to maintain, on a consolidated basis, a buffer of Tier 1 common equity (the SII Buffer). The European Banking Authority has developed guidelines for national supervisors to determine G-SII and O-SII status and maintains lists notified to it by

national supervisors. The Prudential Regulation Authority is responsible for the designation of institutions within its jurisdiction and for setting and publishing the applicable buffer rates on an annual basis.

G-SIIs must maintain a leverage ratio buffer, which is set at a firm-specific level for G-SIIs and applies in addition to the minimum quantitative leverage ratio requirements applicable to all CRR firms. From 2019, UK banks that qualify as G-SIIs will become subject to the UK implementation of the Financial Stability Board's standards on total loss-absorbing capacity. The Financial Conduct Authority categorises firms from C1 to C4 according to the risk posed to their statutory objectives. Systemically important financial institutions and other high-impact firms are likely to fall into C1 and C2, which are subject to closer monitoring and supervision.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Any BHC with assets of $50 billion or more is subject to enhanced prudential standards; and additional standards are imposed on BHCs with assets of greater than $100 billion and $250 billion. In addition, systemically important non-bank financial institutions ('non-bank SIFIs') may be subject to such enhanced standards imposed by the Federal Reserve. These enhanced standards include:

- Federal Reserve and company-administered stress testing and related minimum capital requirements;
- corporate governance and risk committee requirements;
- heightened risk management requirements;
- heightened liquidity risk management and liquidity risk stress testing requirements; and
- single counterparty credit limits.

In addition, BHCs that are deemed to be 'global systemically important banks' (G-SIBs) under the Federal Reserve's regulations are subject to additional requirements, including requirements:

- to maintain an additional 'G-SIB buffer' of regulatory capital;
- to maintain 'total loss absorbing capacity' (based largely on the FSB's standard); and
- to include contractual language in certain of their financial contracts.

In addition, US banks and BHCs with assets of $10 billion or more, while not considered 'systemically important', are often subject to closer regulatory scrutiny and supervision than smaller institutions.

For more information about this answer please contact: Jerome Roche from Linklaters

5.3 What is the role of the central bank?

Canada

Gowling WLG

Answer ... Established under the Bank of Canada Act, the Bank of Canada:

- regulates credit and currency matters;
- oversees clearing and settlement systems; and
- creates Canada's monetary policy.

In addition, it consults, on an informal and confidential basis, with senior officers of banks. In its role as lender of last resort, the Bank of Canada also has the authority to provide liquidity to banks and markets to stabilise the financial sector.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The main objectives of the Danish central bank (*Nationalbanken*) are to contribute to ensuring:

- stable prices;
- safe payments; and
- a stable financial system.

These objectives are met by:

- committing to a fixed exchange rate policy *vis-à-vis* the euro which enables the central bank to keep inflation low (through a combination of monetary and exchange rate policies);
- acting as a banker for all Danish banks, which ensures that interbank payments can be settled in a safe manner; and
- overseeing and assessing financial stability in Denmark

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The German national central bank is the Deutsche Bundesbank. In banking supervision, the Deutsche Bundesbank works in close cooperation with BaFin and the ECB. Because of its role in the EU System of Central Banks, the EU system and its participation in the EU payment system TARGET2, it has genuine access to large amounts of data relating to banks. In addition, regular reporting by the financial sector is addressed by the Deutsche Bundesbank, which performs a quantitative analysis of a financial institution's figures. If a problem occurs, the Deutsche Bundesbank will promptly involve BaFin.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The CBI has an express statutory mandate to maintain and promote a healthy financial system in Ireland, the CBI has the following roles:

- subject to the requirements of the SSM, authorising and supervising banks operating in Ireland;

supervising banks operating in Ireland;
- contributing to eurosystem effectiveness and price stability through its participation on the governing counsel of the ECB;
- monitoring the macro-prudential policy framework by developing a suite of indicators to assess risks, this includes the operation of

  the Central Credit Register, which is a register of loans to individuals and businesses;
- ensuring that the best interests of consumers are being protected through the issue of various codes and by encouraging a more consumer-focused culture within banks;
- carrying out enforcement or administrative sanctions for prescribed contraventions of legislation or regulatory rules;
- providing economic advice and financial statistics for the purpose of the development of economic policy by the Irish government and other; and
- developing and overseeing resolution regimes to facilitate the orderly resolution of distressed banks and other financial institutions. This includes banks having recovery plans in place detailing the measures that they would adopt in a financial distress scenario.

In addition to the above, the CBI is a member of the European System of Central Banks (ESCB). The ESCB comprises the ECB and the national central banks of each EU member state. The role of the ESCB includes:

- conducting foreign exchange operations;
- managing official currency reserves within each member state; and
- promoting the smooth operation of financial institutions.

The governor of the CBI is also a member of the ECB Governing Council. The ECB Governing Council is the body with responsibility for setting EU monetary policy that maintains price stability and to maintain inflation at or below 2%.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... See question 1.3(c) above for the role of the BCL in general. As mentioned under question 5.2, the BCL also has a consultation role with respect to the supervision of systemically important institutions.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The SNB has no specific role in the supervision of banking groups as such. With respect to its involvement in the supervision of systemically important banks, please see questions 1.3, 4.2 and 5.2.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The Central Bank commenced operations in 1930 in accordance with the Law on the Central Bank of the Turkish Republic. Its main goals are to achieve and maintain price stability and foreign exchange rate stability. The Central Bank directly determines the

monetary policy and tools to be used for this purpose – in other words, it has unique, completely independent '*sui generis*' legal status. It is responsible for:

- determining monetary policy and instruments;
- protecting the value of the Turkish lira;
- issuing banknotes;
- granting advances to the Savings Deposit Insurance Fund;
- advising the government;
- managing official gold and foreign exchange reserves; and
- monitoring financial markets.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The Bank of England, the UK central bank, has two core purposes:

- ensuring monetary and financial stability; and
- undertaking the following key roles in banking regulation:
  - overseeing the interbank payment systems regime, by seeking to reduce risks that could be posed to the UK financial systems and prioritising its activities according to the risks posed by each system;
  - overseeing the Special Resolution Regime, which gives the relevant authorities a framework for dealing with distressed banks; and
  - being the provider of liquidity and lender of last resort to the banking sector. This is not prescribed in rules - it is a discretionary power.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... The Federal Reserve is the US central bank. The Federal Reserve's role is to provide services to financial institutions and the federal government, oversee monetary policy, and provide additional functions such as handling cheques and managing currency movement. With respect to monetary policy, the Federal Reserve is tasked with ensuring both price stability and high levels of employment.

Historically, the Federal Reserve has used reserve rates and interest rates charged on funds lent to banks as key monetary policy tools. More recently, however, the Federal Reserve has employed the 'federal funds rate' – which is the rate that the Federal Reserve targets for interbank lending – in connection with its monetary policy. The Federal Reserve trades in US treasuries and certain other securities to effect its monetary policy.

Further, in extraordinary circumstances, the Federal Reserve may extend credit to non-financial companies, as it did during the 2007–08 financial crisis and has during the COVID-19 pandemic. Since the adoption of the Dodd-Frank Act, such credit may be extended only in connection with credit facilities that are made broadly available to borrowers rather than to individual institutions or borrowers.

As noted above, the Federal Reserve also regulates and supervises many US financial institutions, including BHCs, FHCs, foreign banking organisations, non-bank SIFIs and US banks that are members of the Federal Reserve System.

6. Activities

6.1 What specific regulations apply to the following banking activities in your jurisdiction: (a) Mortgage lending? (b) Consumer credit? (c) Investment services? and (d) Payment services and e-money?

Canada

Gowling WLG

Answer ... ***(a) Mortgage lending?***

Federal statutes - including the Bank Act, SC 1991, c 46 (Bank Act) and its regulations, and the Trust and Loan Companies Act, SC 1991, c 45 (Trust and Loan Companies Act) and its regulations - set out a number of consumer protection provisions applicable to federally regulated mortgage lenders. The applicable provisions set out requirements relating to issues such as:

- credit business practices;
- disclosure requirements regarding charges;
- the cost of borrowing;
- prepayment and interest;
- notice requirements;
- complaints; and
- the establishment of consumer-focused procedures.

The Financial Consumer Agency of Canada (FCAC) has oversight of federal consumer protection legislation applicable to federally regulated financial institutions, including provisions of the Bank Act, the Trust and Loan Companies Act and their regulations.

Furthermore, mortgage lending by provincially regulated entities is governed by consumer protection legislation and/or mortgage brokerage legislation, depending on the jurisdiction (ie, credit unions and private lenders), as follows:

- British Columbia: the Mortgage Brokers Act, RSBC 1996, c 313;
- Alberta: the Real Estate Act, RSA 2000, c R-5;
- Saskatchewan: the Mortgage Brokerages and Mortgage Administrators Act, SS 2007, c M-20.1; the Trust and Loan Corporations Act, 1997, SS 1997, c T-22.2;
- Manitoba: the Mortgage Brokers Act, CCSM c M210;
- Ontario: the Mortgage Brokerages, Lenders and Administrators Act, 2006, SO 2006, c 29; Quebec: the Civil Code of Quebec, CQLR c CCQ-1991;
- Newfoundland and Labrador: the Mortgage Brokers Act, RSNL 1990, c M-18;
- Nova Scotia: the Mortgage Brokers and Lenders Registration Act, RSNS 1989, c 291;
- New Brunswick: the Mortgage Brokers Act, RSNB 2014, c 41; Cost of Credit Disclosure and Payday Loans Act, SNB 2002, c C-28.3;
- Prince Edward Island: the Business Practices Act, RSPEI 1988, c B-7; the Consumer Protection Act, RSPEI 1988, c C-19; the Unconscionable Transactions Relief Act, RSPEI 1988, c U-2;
- Yukon: the Consumers Protection Act, RSY 2002, c 40;
- Northwest Territories: the Consumer Protection Act, RSNWT 1988,

c C-17; the Cost of Credit Disclosure Act, SNWT 2010, c 23; and
- Nunavut: the Consumer Protection Act, RSNWT (Nu) 1988, c C-17.

The licensing and registration requirements vary by province with respect to the lending, brokering and administration of mortgages on property in that province. There are nuances for each province and territory on the procedures for registering mortgages on title to property and the priority of such registered mortgages.

There is debate as to the extent of application of the federal Interest Act, RSC, 1985, c I-15 to today's mortgage industry in Canada.

By: Leila Burden Nixon (Partner, Toronto)

(b) Consumer credit?

The Bank Act and its regulations and the Trust and Loan Companies Act and its regulations set out a number of consumer protection provisions applicable to federally regulated financial institutions. The legislation sets out requirements relating to issues such as:

- credit business practices;
- disclosure requirements regarding charges;
- the cost of borrowing and interest;
- notice requirements;
- complaints; and
- the establishment of consumer-focused procedures.

FCAC has oversight of federal consumer protection legislation applicable to federally regulated financial institutions, including provisions of the Bank Act, the Trust and Loan Companies Act and their regulations. Similarly, most provinces and territories have a provincial body that oversees compliance of consumer protection matters, as discussed below.

Consumer credit is also regulated by provincial and territorial consumer protection legislation and their regulations, as follows:

- British Columbia: the Business Practices and Consumer Protection Act, SBC 2004, c 2;
- Alberta: the Consumer Protection Act, RSA 2000 c C-26.3; the Unconscionable Transactions Act, RSA 2000, c U-2; SK: the Consumer Protection and Business Practices Act, SS 2013, c C-30.2; the Cost of Credit Disclosure Act, RSS 1978, c C-41; the Unconscionable Transactions Relief Act, RSS 1978, c U-1;
- Manitoba: the Business Practices Act, CCSM c B120; the Consumer Protection Act, CCSM C 200; the Unconscionable Transactions Relief Act, CCSM c U20;
- Ontario: the Consumer Protection Act, 2002, SO 2002, c 30, Sch A; the Unconscionable Transactions Relief Act, RSO 1990, c U2;
- Quebec: the Consumer Protection Act, CQLR c P-40.1;
- Newfoundland and Labrador: the Consumer Protection and Business Practices Act, SNL 2009, c C-31.1;
- Nova Scotia: the Consumer Protection Act, RSNS 1989, c 92; the Unconscionable Transactions Relief Act, RSNS 1989, c 481; the Consumer Creditors' Conduct Act, RSNS 1989, c 91;
- New Brunswick: the Cost of Credit Disclosure and Payday Loans Act, SNB 2002, c C-28.3; the Provincial Offences Procedure Act,

SNB 1987, c P-22.1; the Unconscionable Transactions Relief Act, RSNB 2011, c 233;
- Prince Edward Island: the Business Practices Act, RSPEI 1988, c B-7; the Consumer Protection Act, RSPEI 1988, c C-19; the

  Unconscionable Transactions Relief Act, RSPEI 1988, c U-2;
- Yukon: the Consumers Protection Act, RSY 2002, c 40;
- Northwest Territories: the Consumer Protection Act, RSNWT 1988, c C-17; the Cost of Credit Disclosure Act, SNWT 2010, c 23; and
- Nunavut: Consumer Protection Act, RSNWT (Nu) 1988, c C-17.

This consumer protection legislation must be considered regardless as to whether the lender is provincially or federally chartered (for more information on the interaction between federal and provincial consumer credit legislation, see question 10.1 below). Generally, provincial and territorial Consumer Protection Acts:

- provide statutory rights to consumer borrowers;
- set out specific requirements regarding the content (ie, default terms) and performance of consumer credit contracts; and
- provide detailed obligations regarding proper disclosure of the cost of consumer credit.

There are a number of notable differences between provinces with regard to the requirements of consumer protection legislation as it applies to consumer credit lenders. For example, certain provinces (ie, Saskatchewan, New Brunswick, Nova Scotia and Prince Edward Island) require lenders governed by provincial legislation to obtain 'lending' licences. Furthermore, the legislation in Alberta, British Columba and Saskatchewan includes additional requirements and restrictions for 'high-cost credit', and sets the maximum amount of 'interest' that can be charged to consumers in those provinces.

In addition, all loans in Canada are governed by the cost of credit provisions contained under the Criminal Code, RSC, 1985, c C-46, and are subject to the provisions of the Interest Act, RSC, 1985, c I-15.

Finally, provincial legislation contains additional, specific statutory requirements for certain consumer credit products, such as pay-day loans and motor vehicle loans. These provisions either are found under free-standing legislation or form part of various consumer protection statutes.

Although provincial laws dealing with consumer credit are substantially similar across provinces and territories, the specific language of each applicable act should be consulted for the particular requirements in each province.

By: Neil S. Abbott (Partner, Toronto) and Leila Burden Nixon (Partner, Toronto)

(c) Investment services?

Many different types of investment vehicles are offered and available in Canada, including annuities, treasury bills, guaranteed income certificates, exchange-traded funds, mutual funds, segregated funds, securities and stocks.

Financial institutions such as banks, credit unions, *caisses populaires* and trust companies can offer registered and unregistered accounts, and other deposit or saving type products for investment purposes

and other deposit or saving-type products for investment purposes.

Federally regulated financial institutions are governed by federal legislation such as the Bank Act and its regulations, and the Trust and Loan Companies Act and its regulations. Provincially regulated entities,

such as credit unions, are governed by provincial legislation applicable in their incorporating jurisdiction. All registered accounts must comply with the federal Income Tax Act, RSC 1985, c 1 (5th Supp).

Investments in other investment vehicles - such as stocks, bonds or gold - can be made through brokers or with brokerage firms. These entities are regulated by the following provincial securities laws:

- British Columbia: the Securities Act, RSBC 1996, c 418;
- Alberta: the Securities Act, RSA 2000, c S-4;
- Saskatchewan: the Securities Act, 1988, SS 1988-89, c S-42.2;
- Manitoba: the Securities Act, RSM 1988, c S50, CCSM, c S50;
- Ontario: the Securities Act, RSO 1990, c S.5;
- Quebec: the Securities Act, CQLR, c V-1.1;
- Newfoundland and Labrador: the Securities Act, RSN 1990, c S-13;
- Nova Scotia: the Securities Act, RSNS 1989, c 418;
- New Brunswick: the Securities Act, SNB 2004, c S-5.5;
- Prince Edward Island: the Securities Act, SPEI 2007, c 17;
- Yukon: the Securities Act, SY 2007, c 16;
- Northwest Territories: the Securities Act, SNWT 2008, c 10; and
- Nunavut: the Securities Act, SNu 2008, c 12

The provincial securities regulatory authorities, which administer the securities laws applicable in their province are as follows:

- British Columbia: the British Columbia Securities Commission;
- Alberta: the Alberta Securities Commission;
- Saskatchewan: the Financial and Consumer Affairs, Saskatchewan;
- Manitoba: the Manitoba Securities Commission;
- Ontario: the Ontario Securities Commission;
- Quebec: the *Autorité des marchés financiers du Québec*;
- Newfoundland and Labrador: the Securities Commission of Newfoundland and Labrador;
- Nova Scotia: the Nova Scotia Securities Commission;
- New Brunswick: the Financial and Consumer Services Commission of New Brunswick;
- Prince Edward Island: the Office of the Superintendent of Securities of Prince Edward Island;
- Yukon: the Office of the Yukon Superintendent of Securities;
- Northwest Territories: the Office of the Superintendent of Securities Government of Northwest Territories; and
- Nunavut: the Office of the Superintendent of Securities for Nunavut.

These entities make up the Canadian Securities Administrators (CSA). The CSA's objective is to improve, coordinate and harmonise the regulation of Canadian capital markets. The CSA enacts national instruments and national policies, and is responsible for developing the 'passport' system.

Furthermore, self-regulatory organizations such as the Investment Industry Regulatory Organization of Canada and the Mutual Funds Dealers Association of Canada, as well as the stock exchanges in Canada, also serve a regulatory function. Banks often team up with

Canada, also serve a regulatory function. Banks often team up with provincial brokerages (which operate nationally) in order to offer a wider selection of products to clients under the bank umbrella.

By: Leila Burden Nixon (Partner, Toronto)

(d) Payment services and e-money?

Payments Canada (formerly the Canadian Payments Association) was created under the Canadian Payments Act, RSC, 1985, c C-21 to:

- establish and operate national systems for the clearing and settlement of payments among member financial institutions;
- facilitate the interaction of its clearing and settlement systems with other systems;
- and facilitate the development of new payment technologies.

Membership of Payments Canada is mandatory for most financial institutions.

Payments Canada owns and is responsible for operating the two national payment systems in Canada:

- the Automated Clearing Settlement System (ACSS); and
- the Large Value Transfer System (LVTS).

Payments Canada sets bylaws and rules and has created payment system procedures for both the ACSS and LVTS. These rules and procedures govern the daily operations of participants in the national clearing and settlement system. Under the Canadian Payments Act, the minister of finance has authority to review or amend such payment rules, and issue directives to make, amend or repeal bylaws, rules or standards.

Payment Canada's LVTS and ACSS are overseen by the Bank of Canada by virtue of the Payment Clearing and Settlement Act, SC 1996, c 6, Sch. The act assigns the Bank of Canada with responsibility for overseeing automated clearing and settlement systems for the purpose of controlling systemic risk or payments systemic risk.

In addition, the Bills of Exchange Act provides the statutory framework governing cheques, promissory notes and other bills of exchange.

Finally, the Bank Act and other federal financial institution statutes contain a number of payments-related provisions.

By: Neil S. Abbott (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... ***(a) Mortgage lending?***

Mortgage credit institutions which provide the bulk of all mortgage lending are regulated by the Financial Business Act as such. Mortgage lending in itself is – to the extent that the mortgage loans are provided by mortgage credit institutions – regulated by Consolidated Act 1188 dated 19 September 2018 on Mortgage Loans and Mortgage Bonds. The Mortgage Loan Act partly regulates the mortgage loans themselves (security, maturity and repayment, loan-to-value, valuation of the properties), and partly the issuance of the mortgage bonds

of the properties), and partly the issuance of the mortgage bonds which funds the mortgage loans.

(b) Consumer credit?

Consumer credit is regulated by Consolidated Act 817 dated 6 August 2019 on Credit Agreements. The Credit Agreement Act implements a number of EU directives within the consumer credit sphere and contains detailed provision on consumer credit agreements, but also more general provisions on title retention arrangements in connection with the provision of credit.

(c) Investment services?

Investment services are primarily regulated by the Financial Business Act, which regulates investment firms as such, as well as the executive order on investor protection in relation to the provision of investment services and so on.

(d) Payment services and e-money?

Payment services and the provision of such services are regulated by Consolidated Act 1024 dated 3 October 2019 on Payments, which implements the EU Second Payment Services Directive (2015/2366) and sets out the licensing requirements and similar in relation to e-money and payment services.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... ***(a) Mortgage lending?***

The European Mortgage Credit Directive (MCD) of 4 February 2014 was transposed into German law through the Act Implementing the MCD as at 21 March 2016. To ensure the protection of consumers raising real estate loans, a large number of requirements have been set out across different pieces of legislation, in particular in the Civil Code and the Introductory Act to the Civil Code. Other changes can also be found in the Business Code, the Payment Services Oversight Act, the Insurance Supervision Act and the Banking Act.

A new Section 18a has been added to the Banking Act, which specifies a large number of obligations that banks must meet when granting consumer real estate loans. They include, in particular, requirements in terms of:

- (pre-)contractual information obligations;
- the assessment of creditworthiness;
- the independence of appraisers from the lending process; and
- adequate qualifications of bank employees who work in lending.

The Federal Financial Supervisory Authority (BaFin) has set out the requirements for the qualifications and expertise of internal and external employees in dedicated regulations.

The new provisions of the MCD Directive led to uncertainty at the credit institutions, especially in relation to the creditworthiness assessment. For this reason, the legislature is planning to specify the requirements in greater detail.

(b) Consumer credit?

Unlike many other jurisdictions, lending in Germany is generally a regulated activity that requires a banking licence pursuant to Section 1 of the Banking Act if performed commercially or in a manner requiring a commercial business organisation. The licensing requirement applies irrespective of whether loans are granted to consumers or to non-consumers. According to the administrative practice of BaFin, the licensing requirement also applies to lenders domiciled abroad if they actively approach borrowers domiciled in Germany to grant loans. Not only the granting of a new loan, but also the mere restructuring of a loan that has been acquired from the original lender (eg, by extending maturity and/or adjusting interest rates), may qualify as lending activity requiring a banking licence.

(c) Investment services?

The definition of what are deemed 'investment services' (part of financial services) is set out in Section 1(1a), sentence 2, numbers 1 to 12, sentences 3 and 4 of the Banking Act. Accordingly, financial services comprise the following:

- Number 1: The brokering of business involving the purchase and sale of financial instruments (investment broking);
- Number 1a: Providing customers or their representatives with personal recommendations in respect of transactions relating to certain financial instruments where the recommendation is based on an evaluation of the investor's personal circumstances or is presented as being suitable for the investor and is not provided exclusively via information distribution channels or for the general public (investment advice);
- Number 1b: Operating a multilateral facility, which brings together the interests of a large number of persons in the purchase and sale of financial instruments within the facility according to set rules in a way that results in a purchase agreement for these financial instruments (operation of a multilateral trading facility);
- Number 1c: The placing of financial instruments without a firm commitment basis (placement business);
- Number 2: The purchase and sale of financial instruments on behalf of and for the account of others (contract broking);
- Number 3: The management of individual portfolios of financial instruments for others on a discretionary basis (portfolio management);
- Number 4: Property trading:
    - continuously offering to purchase or sell financial instruments at self-determined prices in an organised market or a multilateral trading facility;
    - frequent organised and systematic conduct of trading for its own account outside of an organised market or a multilateral trading facility, by providing a system accessible to third parties in order to conduct business transactions with them;
    - the purchase or sale of financial instruments for its own account as a service for others; or
    - the purchase or sale of financial instruments for own account as a direct or indirect participant in a domestic organised

market or multilateral trading facility by means of a high-frequency algorithmic trading strategy that is characterised by the use of:

    - an infrastructure for minimising network latencies and other delays in order transmission (latencies), which includes at least one of the following devices for the input of algorithmic orders: collocation, proximity hosting or high-speed direct electronic access;
    - the ability of the system to initiate, generate, transmit or execute an order without human intervention within the meaning of Article 18 of Commission Delegate Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31 March 2017, p 1), as amended; and
    - a high volume of intraday notifications within the meaning of Article 19 of Delegate Regulation (EU) 2017/565 in the form of orders, course details or cancellations;
- Number 5: The brokering of deposit business with undertakings domiciled outside the European Economic Area (EEA) (non-EEA deposit broking); and
- Number 7: Dealing in foreign notes and coins (foreign currency dealing).

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... A broad array of legislation affects the provision of credit and the provision of investment services by Irish banks. The responses to the following questions do not address provisions of the Central Bank Acts 1942 to 2018, the Companies Act 2014 (as amended), the Land and Conveyancing Law Reform Act 2009 (as amended), the Bankruptcy Act 1988 (as amended), the Personal Insolvency Act 2012 (as amended), the Taxes Consolidation Act 1997 (as amended) and other legislation that must be considered when providing credit in the Irish market. The responses focus solely on codes and legislation that narrowly apply to the below queries from a financial regulatory perspective.

(a) Mortgage lending?

- The Consumer Credit Act 1995 (CCA);
- The Credit Reporting Act 2013 (CRA);
- The European Communities (Consumer Credit Agreement) Regulations 2010;
- The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (as amended) (ECUTR);
- The European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (ECDMR);
- The Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015;
- The European Union (Consumer Mortgage Credit Agreements)

- The European Union (Consumer Mortgage Credit Agreements) Regulations 2016;
- The CPC; and
- The Code of Conduct on Mortgage Arrears.

(b) Consumer credit?

- The CAA;
- The CRA:
- The ECUTR;
- The ECDMR;
- The European Communities (Consumer Credit Agreement) Regulations 2010;
- The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013;
- The CPC; and
- The Consumer Protection Code for Licensed Moneylenders.

(c) Investment services?

- The CCR;
- EU Directive 2013/36;
- The Investment Intermediaries Act 1995 (as amended);
- The European Union (Markets in Financial Instruments) Regulations 2017;
- The ECDMR;
- Regulation (EU) No 600/2014 on markets in financial instruments and the Markets in Financial Instruments Transaction Reporting Directive; and
- The CPC.

(d) Payment services and e-money?

- The Payment Services Directive (EU 2015/2366), which was transposed into Irish law by way of the European Union (Payment Services) Regulations 2018;
- The European Communities (Electronic Money) Regulations 2011;
- The ECUTR;
- The ECDMR, and
- The CPC.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... **Mortgage lending:** Mortgage credit is one of the activities listed in Annex I of the Law of 5 April 1993 on the financial sector, as amended ('Banking Act') that credit institutions are authorised to perform.

Specific provisions on mortgage lending have been introduced in the Luxembourg Consumer Code by the Luxembourg law of 23 December 2016 which implements Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property.

See question 10.1 concerning specific requirements for consumer protection.

The Banking Act was amended by the law of 4 December 2019 on

macro-prudential measures concerning residential mortgages. This law was adopted following a recommendation by the European Systemic Risk Board in order to prevent the overheating of the mortgage lending market in Luxembourg. The new provisions allow the *Commission de Surveillance du Secteur Financier* (CSSF) - in collaboration with the BCL, the *Commissariat aux Assurances* and the Luxembourg Systemic Risk Committee - to impose on credit institutions, insurance companies and other professionals of the financial sector additional guidelines on credit criteria for mortgage loans relating to residential real estate located in Luxembourg. These measures can be taken only where they are required to counter the dysfunction of the national financial system or reduce the risks for the national financial stability stemming from developments in the real estate sector in Luxembourg.

Consumer credit: Consumer credit is one of the activities listed in Annex I of the Banking Act that credit institutions are authorised to perform.

Specific provisions on consumer credit have been introduced in the Consumer Code by the Luxembourg law of 8 April 2011 which implements Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers.

See question 10.1 concerning specific requirements for consumer protection.

Investment services: At a European level, investment services are regulated by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II) and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFIR).

MiFID II has been implemented in Luxembourg by the law of 30 May 2018 on markets in financial instruments ('MIFID Law'), which amends the Banking Act.

Credit institutions are authorised to perform MiFID II investment services subject to the provisions of the Banking Act, the MIFID Law and MiFIR (see question 3.1).

Payment services and e-money: Payment services and the activity of electronic money institutions are governed by the Luxembourg law of 10 November 2009 on payment services, on the activity of electronic money institutions and settlement finality in payment and securities settlement systems, as amended ('2009 Law') which implements into Luxembourg law the provisions of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market and of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

Credit institutions are authorised to provide payment services as defined in the 2009 Law and to issue electronic money within the meaning of the 2009 Law, subject to the provisions of the Banking Act and the 2009 Law.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Answer ... ***(a) Mortgage lending***

Mortgage lending is primarily governed by the following regulations issued by the Swiss Bankers Association (SBA), which have been recognised by the Swiss Financial Market Supervisory Authority (FINMA) as binding minimum standards:

- SBA Guidelines on Minimum Requirements for Mortgage Financing: These regulate the minimum requirements for the application of the lower risk weighting of mortgage-secured positions in accordance with the provisions of the Capital Adequacy Ordinance.
- SBA Guidelines on Assessing, Evaluating and Processing Mortgage-backed Loans: These contain the key principles to be reflected in a bank's internal policies with respect to the lending activity, credit monitoring and reporting.

(b) Consumer credit

Consumer credits are governed by the Consumer Credit Act of 23 March 2001 and its implementing ordinance (please also see question 10.1).

The Consumer Credit Act governs various types of credit, including cash loans, current account overdraft facilities, accounts overdrawn with the tacit acceptance of the bank, credit cards and customer cards with credit options, non-cash loans (in particular consumer finance and hire purchase), payment extensions and similar financing facilities, as well as certain leasing agreements. On the other hand, credit arrangements that are properly secured or amount to less than CHF 500 or more than CHF 80,000, or that must be repaid within three months, are generally not within the scope of the act.

The Consumer Credit Act is designed to offer borrowers improved protection against overindebtedness resulting from consumer credits. The main elements of the legislation are as follows:

- a mandatory check of the borrower's credit capacity, to be carried out by the lender;
- an obligation on the part of the lender to report the consumer credit granted to a dedicated information office;
- an obligation to comply with the maximum interest rate set by the Federal Council;
- a right of revocation on the part of the borrower; and
- a ban on aggressive advertising for consumer credit.

(c) Investment services

The Financial Services Act of 15 June 2018 and its implementing ordinance establish the requirements for honesty, diligence and transparency in the provision of financial services, and govern the offering of financial instruments. Among other things, the act includes regulations on client segmentation and rules of conduct regarding client information, suitability and appropriateness testing, documentation and accountability and best execution.

Banks are generally subject to the Financial Services Act whenever

they provide the following 'financial services':

- the acquisition or disposal of financial instruments;
- the receipt and transmission of orders relating to financial instruments;
- the administration of financial instruments (portfolio management);
- the provision of personal recommendations on transactions with financial instruments (investment advice); and
- the granting of loans to finance transactions with financial instruments.

(d) Payment services and e-money

The Swiss regulations contain no specific provisions governing payment services or e-money. Instead, Switzerland relies on the flexibility and technology neutrality of existing financial market regulations.

Consequently, it must be assessed in each individual case whether a payment service provider falls within the scope of Swiss financial market laws. In particular, the Banking Act, the Financial Institutions Act, the Anti-Money Laundering Act, the Consumer Credit Act and the National Bank Act may apply. Moreover, the implementing ordinances of these laws and the circulars of FINMA must be taken into account.

In order to ease the Swiss regulatory regime for providers of innovative financial technologies, various amendments have recently been introduced to the Swiss banking regulation specifically exempting certain activities from the requirement to obtain a banking licence (please see question 15.2). Depending on the individual circumstances, providers of payment services may also benefit from these exemptions.

Notwithstanding the foregoing, if deemed necessary for the proper functioning of the financial market or the protection of financial market participants, payment systems that are not operated by banks may require a specific licence from FINMA under the Financial Market Infrastructure Act of 19 June 2015.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... ***(a) Mortgage lending?***

- The Turkish Civil Code (4721);
- The Banking Law (5411);
- The Mortgage Law (5582);
- The Communiqué on Asset-Backed and Mortgage-Backed Securities (*Official Gazette* of 9 January 2014, No 28877); and
- The Regulation on Rules and Procedures of Re-financing of Loans in the Scope of Housing Finance (*Official Gazette* of 29 September 2007, No 26658).

(b) Consumer credit?

- The Law on Consumer Protection (6502);
- The Bank Cards and Credit Cards Law (5464);
- The Consumer Loan Agreements Regulation (*Official Gazette* of 22

May 2015, No 29363); and
- The Regulations on the Amendments of Regulation on Banks' Loan Transactions (*Official Gazette* of 26 February 2019, No 30698).

(c) Investment services?

- The Foreign Direct Investment Law (4875);
- The Capital Market Law (6362);
- The Communique on the Basis of Investment Services and Activities, Ancillary Services (*Official Gazette* of 11 July 2013, No 28704);
- The Communiqué on the Principles of Investment Funds (*Official Gazette* of 9 July 2013, No 28702); and
- The Communiqué Amending the Communiqué (*Official Gazette* of 12 March 2019, No 30712).

(d) Payment services and e-money?

- The Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (6493);
- The Regulation on Payment Services and Electronic Money Issuance and Payment Institutions (*Official Gazette* of 27 June 2014, No 29043);
- The Communique on the Management and Supervision of Information Systems of Payment Institutions and Electronic Money Institutions (*Official Gazette* of 27 June 2014, No 29043); and
- The Circular of the Banking Regulation and Supervision Agency (12509071-010.06.02-2)

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The Prudential Regulation Authority is responsible for the prudential regulation and supervision of the banking sector. Under the Financial Services and Markets Act 2000 (as amended), it is a criminal offence for a person to carry on a 'regulated activity' in the United Kingdom unless authorised to do so or exempt from the authorisation requirement. Regulated activities are defined in secondary legislation. Deposit taking is a regulated activity that requires authorisation. Other regulated activities that require authorisation include:

- dealing in investments as principal;
- dealing in investments as agent;
- arranging deals in investments;
- managing investments;
- safeguarding and administering investments (i.e., custody); and
- providing investment advice and mortgage lending.

Investments include:

- shares;
- debentures (including *sukuk*);
- public securities;
- warrants;
- futures;
- options;
- contracts for differences (i.e., swaps); and
- units in collective investment schemes.

For more information about this answer please contact: Edite Ligere

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... ***(a) Mortgage lending?***

Both federal and state law impose significant obligations on both banks and non-banks that engage in mortgage lending. Among other things, non-bank mortgage lenders and individuals involved in the mortgage business must be licensed and are subject to ongoing supervision and, in the case of individuals, training and educational requirements. Mortgage lending is also subject to significant disclosure and substantive regulations under federal and state consumer protection statutes, including the Truth in Lending Act. Further, the Fair Housing Act prohibits discrimination or differential treatment in mortgage lending.

Banks engaged in mortgage lending must generally obtain appraisals of the property against which they lend in order to assure the quality and safety of such loans. Further, the Dodd-Frank Act requires financial institutions which sponsor a securitisation of mortgage loans to retain 5% of the risk of such a securitisation.

(b) Consumer credit?

Both US banks and non-bank lenders are subject to licensing, disclosure and other substantive requirements with respect to their consumer lending. While US banks are generally permitted to extend consumer credit in any state, most states require non-bank lenders to obtain a licence to extend consumer credit.

In addition, consumer lenders are subject to the regulations of the Consumer Financial Protection Bureau (CFPB), which implement a number of federal statutes governing consumer credit and credit rating agencies. The CFPB also has the authority to supervise and examine certain financial institutions to ensure compliance with its regulations.

(c) Investment services?

Securities brokers and dealers, and investment advisers, are subject to licensing and regulation by the Securities and Exchange Commission (SEC). Banks may engage in limited securities activities without registering with the SEC, such as the provision of securities custodial services; but are otherwise not exempt from such licensing.

Commodity and derivatives brokers, dealers, investment advisers and large investors are regulated by the Commodity Futures Trading Commission (CFTC). As with securities activities, banks may be subject to CFTC registration if they engage in the foregoing derivatives activities.

As noted above, US banks and bank holding companies (BHCs) are subject to significant limitations on their ability to provide certain types of investment services. Approval to engage in such activities from a US banking agency is generally required in addition to any required SEC or CFTC licensing.

In addition, investment and trading activities of US banks, BHC and foreign banking organisations are subject to the Volcker Rule, which broadly prohibits proprietary trading and investments or sponsorship

of certain types of private fund vehicles, subject to a number of exceptions.

(d) Payment services and e-money?

Non-bank companies involved in the payments and e-money sector may be subject to regulation under both federal and state statutes. Most states require a non-bank company that provides payment services to register as a 'money transmitter'. Those statutes typically also impose a number of requirements on money transmitters, including with respect to consumer protection, custody of customer assets, minimum capital requirements, reporting and recordkeeping.

E-money services may also be subject to regulation as money transmission, depending on exactly how they are structured and what types of instruments are involved. For instance, certain states regulate the transmission and trading of cryptocurrency as money transmission to the same extent as fiat currency, while others limit their statutes to fiat transactions.

In addition, money transmitters – including those involved in the cryptocurrency space – are considered 'money services businesses' under the Bank Secrecy Act and as such are required to register with the federal Financial Crimes Enforcement Network (FinCEN). FinCEN regulations require money services businesses to establish an anti-money laundering programme, maintain certain records and report certain types of transactions to FinCEN.

US banks generally are not subject to state money transmitter statutes or registration as a money services business under the Bank Secrecy Act.

For more information about this answer please contact: Jerome Roche from Linklaters

7. Reporting, organisational requirements, governance and risk management

7.1 What key reporting and disclosure requirements apply to banks in your jurisdiction?

Canada

Gowling WLG

Answer ... Banks must file regular corporate returns and financial returns throughout the year . A listing of financial returns is found on the website of the Office of the Superintendent of Financial Institutions (OSFI) (www.osfi-bsif.gc.ca/Eng/fi-if/rtn-rlv/fr-rf/Pages/dti_req.aspx).

Certain financial information filed by banks is publicly accessible on OSFI's website.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Banks are subject to a number of ongoing reporting

requirements in respect of their capital, solvency and so on, and may be subject to additional reporting requirements if deemed necessary by the Danish Financial Supervisory Authority (FSA).

In addition, banks must disclose summarised versions of the inspection reports from the FSA on their website once an inspection has been concluded. The summaries must contain the FSA's key findings, any orders or reprimands issued by the FSA as well as certain risk information, among other things.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Banking supervisory law – in particular, the Ordinance on Notification – sets out a number of corporate governance rules, including the following:

- Committees must be established in an institution's supervisory board;
- Managing directors must fulfil their roles and personal tasks;
- Specialised internal functions must be established, such as compliance, risk control and internal audit;
- In addition to institutions' annual reports, one of the banking supervisors' main sources of information is the audit reports, which external auditors or audit associations produce as part of their auditing of the annual reports;

Institutions must regularly file condensed balance sheets, from which the major balance-sheet items, risk positions and changes thereto can be identified;

- Institutions must also report major changes, such as net losses of 25% of the equity capital as defined under the Capital Requirements Regulation or changes in the management board, in their domestic and foreign branch networks or in holdings of more than 10%. They must also report their large exposures and loans of €1 million or more; and
- Investment services enterprises, trading venue operators (including operators of multilateral and organised trading facilities), German central counterparties and subsidiaries are obliged since 3 January 2018 under the Markets in Financial Instruments Directive (2014/65/EU- MiFIR II) and the Regulation (EU) 600/2014 (MiFIR) to notify BaFin of all on-exchange and off-exchange dealings in financial instruments, such as securities and derivatives. MiFID II and MiFIR ensure fairer, safer and more efficient markets and facilitate greater transparency for all participants. The protection of investors is strengthened through the introduction of new requirements on product governance and independent investment advice, the extension of existing rules to structured deposits, and the improvement of requirements in several areas, including on the responsibility of management bodies, inducements, information and reporting to clients, cross-selling, remuneration of staff, and best execution.

BaFin has adapted its minimum requirements for the compliance function (MaComp) to the amendments of MiFID II and published the amendment in March 2018. BaFin has also adapted existing modules

and added new modules by which it has implemented ESMA guidelines under Article 16 ESMA Regulation (ESMA-VO). All modules have been adapted in terms of language and content to the new legal bases in the German Securities Trading Act and Delegate Regulation (EU) 2017/565.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Banks authorised by the CBI are required to comply the prudential reporting requirements set out under the CRR and Implementing Technical Standard 680/2014 on supervisory reporting (as amended). The data collected under these reports relates to own funds, financial information, losses from property collateralised lending, large exposures, leverage ratio, liquidity ratios, asset encumbrance, additional liquidity monitoring metrics, supervisory benchmarking and funding plans.

The Central Credit Register is a secure system for collecting personal and credit information on loans of €500 or more. It is operated by the CBI under the CRA. This obliges all lenders in scope to submit personal and credit information on applicable loans to the Central Credit Register.

Banks must submit details on new customers (or the resignation of existing customers) in the context of monitoring large exposures. This reporting is to ensure that risks arising from large exposures to individual clients or groups of connected clients are kept to an acceptable level as part of the CBI's prudential supervision.

Pursuant to the Code of Practice on Lending to Related Parties 2013 (the **RP Code**), banks must also submit reports regarding related-party lending to the CBI. This reporting must, among other things, ensure that the limits provided in the RP Code are adhered to.

In addition to the above, banks must report on:

- exposures to various industry sectors, including agriculture, manufacturing, utilities, construction, retail, hospitality, education, private households and public administration and defence; and
- details of the amount of non-performing loans held by a bank.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Banks are subject to extensive reporting requirements, and in particular prudential reporting requirements under 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, as amended (CRR). This includes reporting on own funds, financial information, large exposures, leverage, liquidity, losses stemming from lending collateralised by immovable property and asset encumbrance. The content and format of the reporting are harmonised by Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to the CRR.

There are additional reporting requirements covered by Luxembourg provisions. Banks must, for instance, provide:

- information on participating interests and subordinated loans;
- information on staff expenses and taxes;
- a list of their head offices, agencies, branches and representative offices;
- an analysis of shareholdings; and
- a list of persons responsible for certain functions and activities.

Ad hoc reports may also be requested by the *Commission de Surveillance du Secteur Financier* (CSSF).

In order to assist banks with their reporting obligations, the CSSF published Circular 14/593, as amended, on supervisory requirements applicable to credit institutions, as well as Circular 19/731, which lists the documents to be submitted to the CSSF and the European Central Bank on an annual basis, as well as the appropriate timing for submission. The CSSF also published a guide on reporting requirements for credit institutions.

Depending on their activities, banks may also be subject to specific reporting requirements under specific regulations. For instance, Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories requires settlement internalisers (ie, credit institutions which execute transfer orders on behalf of clients or on their own account other than through a securities settlement system) to report to the CSSF on a quarterly basis the aggregated volume and value of all securities transactions that they settle outside securities settlement systems. Likewise, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories and Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse require banks that are counterparties to derivative contracts and securities financing transactions, respectively, to report the details of such contracts and transactions to trade repositories.

Banks have an obligation to publish their duly approved annual accounts together with the management reports and the reports from the persons responsible for auditing the accounts in accordance with the Accounts Law. Banks are further subject to periodic statistical reporting to the Banque Centrale du Luxembourg.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Banks are subject to various reporting requirements, including with regard to the Swiss National Bank (SNB), the Swiss Financial Market Supervisory Authority (FINMA), Swiss trading venues and trade repositories.

In particular, banks must submit detailed financial data to the SNB on a semi-annual basis in accordance with FINMA Circular 2008/14 “Supervisory Reporting – Banks”. Such data is processed by the SNB

and forwarded to FINMA for the latter's supervisory activities. In addition, banks must periodically provide statistical data to the SNB. Among other things, this includes:

- reporting on interest rate risk (quarterly);
- reporting on minimum reserves/liquidity (monthly);
- reporting on large exposures (quarterly); and
- reporting on new mortgages (quarterly).

Further, banks must notify FINMA of any changes in the facts on which FINMA based its authorisation (eg, changes in the organisation or business activity). If the changes are of material significance, the bank must obtain prior authorisation from FINMA.

Finally, banks must generally report transactions in securities that are admitted to trading on a trading venue in Switzerland to the venue's disclosure office. Likewise, where a bank engages as a counterparty in certain over-the-counter derivatives transactions, such transactions must be reported to a recognised trade repository.

In addition to the reporting and notification requirements described above, banks must generally provide adequate information to the public. To this effect, FINMA has issued FINMA Circular 2016/1 – "Disclosure Requirements – Banks" specifying the disclosure obligations in relation to:

- capital adequacy;
- liquidity;
- corporate governance;
- interest rate risk; and
- remuneration.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... It is mandatory for banks to publish their annual year-end financial statements in the *Official Gazette* by the end of April each year. These statements must include both consolidated and non-consolidated year-end financial statements. A legal obligation arising from the Banking Law and the Regulation on Principles and Procedures of Accounting Practices of Banks and of Retention of Documents in Banks (*Official Gazette* of 1 November 2006, No 2633) ('Accounting Regulation') also requires banks to submit these statements to the Banking Regulation and Supervision Agency (BRSA). Additionally, as per the Regulation on the Principles and Procedures Concerning the Preparation of and Publishing Annual Report by Banks (*Official Gazette* of 1 November 2006, No 26333), banks must publish their annual activity reports on their websites by the end of May each year following the relevant financial period. Another requirement arising from this regulation is that banks must keep their year-end and interim period financial statements on their websites for a five-year period.

In addition, the following must be submitted to the BRSA and the Banks Association and the Participation Banks Association of Turkey in electronic form as per the Accounting Regulation:

- unconsolidated interim financial reports, within 45 days of the end of each quarter of the respective year; and

end of each quarter of the respective year; and
- consolidated interim financial reports and a copy of balance sheets and income statements, within 30 days of the end of each month.

Moreover, the public disclosure of financial statements through the Public Disclosure Platform (*Kamuyu Aydýnlatma Platformu*) is another requirement for banks that conduct capital markets activities as per Communiqué II-14.1 issued by the Capital Markets Board (CMB).

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK
1 Crown Office Row

Answer ... Banks must comply with the prudential reporting requirements in the EU Capital Requirements Regulation (CRR) and Implementing Technical Standard 680/2014 on supervisory reporting (as amended). The data collected under these reports relates to:

- own funds;
- financial information;
- losses from property collateralised lending;
- large exposures;
- leverage ratio;
- liquidity ratios;
- asset encumbrance;
- additional liquidity monitoring metrics;
- supervisory benchmarking; and
- funding plans.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters

Answer ... US banks, bank holding companies (BHCs) and foreign banking organisations (FBOs) are subject to extensive reporting and disclosure requirements. Among other things, such financial institutions must periodically disclose balance sheets, organisational structure and regulatory capital ratios. In addition, systemically important banks, BHCs and FBOs are subject to even more onerous disclosure requirements, including with respect to developing and periodically disclosing the contents of resolution plans and more detailed financial data.

In addition, US banking agencies, in the course of conducting supervisory examinations and reviews, may require banks, BHCs and FBOs to disclose additional information that the agency believes may be relevant to its examination. Among other things, this could include a review of loan files, trading records, personnel files and commercial agreements.

For more information about this answer please contact: Jerome Roche from Linklaters

7.2 What key organisational and governance requirements apply to banks in your jurisdiction?

Canada
Gowling WLG

Answer ... Corporate governance is a set of relationships between a

Answer: Corporate governance is a set of relationships between a bank's management, its board of directors, its shareholders and other stakeholders. It also provides the structure through which the

objectives of the bank are set, and through which the means of attaining those objectives and monitoring performance are determined.

According to OSFI, the quality of bank corporate governance practices is an important factor in maintaining the confidence of depositors.

The role of the board is to approve decisions and provide oversight relating to:

- strategy, including major strategic decisions such as M&A activity, risk management and internal controls;
- appointment, performance review and compensation of senior officers;
- succession planning; and
- internal and external audits of the bank.

The board is not responsible for the ongoing and detailed operationalisation of its decisions; this is the responsibility of senior officers of the bank. On the other hand, the board is expected to provide challenge, advice and guidance to the senior officers, as appropriate . Overall, the board should be satisfied that the decisions and actions of senior officers are consistent with the board-approved business plan, strategy and risk appetite of the bank, and that the corresponding internal controls are sound.

A bank that is part of a larger corporate group (another bank or company in Canada, or another company abroad) may be subject to or may adopt certain policies of the parent. In this situation, the subsidiary board should be satisfied that these policies are appropriate for the Canadian bank's business plan, strategy and risk appetite, and comply with specific Canadian regulatory requirements.

According to OSFI, the hallmarks of an effective board include demonstrated sound judgement, initiative, proactivity, responsiveness and operational excellence. Board members should strive to facilitate open communication, collaboration and appropriate debate in the decision-making process.

OSFI expects boards to demonstrate relevant financial industry and risk management expertise; and collectively, they should be independent from management and the operations of the bank . OSFI recommends that role of the board chair should be separate from the CEO, as this is critical in maintaining the board's independence and its ability to execute its mandate effectively.

Finally, OSFI promotes diversity on boards, which is a factor included in the checklist of assessment criteria (see www.osfi-bsif.gc.ca/Eng/Docs/09-Board_of_Directors.pdf).

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Pursuant to Section 70 of the Financial Business Act, the board of directors of a bank has overall responsibility for the management of the bank and the supervision of the management. Its primarily role is to:

- specify which business activities the bank should be engaged in;
- identity and quantify significant risk to which the bank is exposed and determine the bank's risk profile;
- adopt policies on how the bank should manage its business activities and the associated risk; and
- adopt a diversity policy for the board of directors which ensures sufficient diversity as to qualifications and competences among the board members.

In addition to these more general duties, the board of directors must issue detailed written guidelines to the management on how these policies are to be implemented in the day-to-day management.

Section 71 of the Financial Business Act specifies how the bank should be organised on a general level. In this regard, Section 71 requires, among other things, that the bank have:

- a clear organisational structure with a well-defined, transparent and consistent division of responsibilities;
- good administrative and accounting practices;
- written procedures for all significant areas of activity;
- effective procedures to identify, manage, monitor and report the risks to which the undertaking is or can be exposed;
- the necessary resources to carry out its activities and appropriate use of these;
- procedures with a view to separating functions in connection with management and prevention of conflicts of interest;
- full internal control procedures;
- adequate IT control and security measures; and
- the staff and financial resources which are necessary to secure sufficient possibilities of introduction and continuing professional development courses for members of the board of directors or board of management.

Sections 70 and 71 are supplemented by an executive order on the management of governance of banks issued by the FSA.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The Capital Requirements Directive IV (CRD IV) stipulates guidelines for corporate governance principles for institutions in accordance with Article 3. Furthermore, in Recital 54 of the CRD IV the legislature sets out specific principles. The effective implementation of these corporate governance principles requires the assistance of legal, regulatory and institutional frameworks. Such guidelines tend to guide the actions of the senior leadership of a diverse range of banks in a number of countries with varying legal and regulatory systems. However, there are significant differences in the legislative and regulatory frameworks across countries, which may restrict the application of certain principles or provisions therein.

In Germany, some of these corporate governance principles have already been implemented into German law. First, Section 25a of the Banking Act addresses special organisational duties in relation to the institutions to which the Banking Act applies (eg, credit institutions

and financial services institutions). Section 25a(1) of the Banking Act stipulates that an institution must have a proper business organisation which ensures compliance with the legal provisions to be adhered to by the institution. According to Section 25a(1) of the Banking Act , a proper business organisation comprises, in particular, appropriate and effective risk management, on the basis of which an institution must continuously ensure its risk tolerance.

Second, Sections 25c and 25d of the Banking Act extend such duties to the managing directors and the supervisory body of an institution: the managing directors of an institution must be professionally qualified and reliable, and devote sufficient time to the performance of their duties. Members of the management must have adequate theoretical and practical knowledge of the business concerned, as well as managerial experience. Section 25c of the Banking Act also states that, with a view to their overall responsibility for the proper business organisation of the institution according to Section 25a of the Banking Act, the managing directors of an institution must ensure that the institution has the statutory strategies, processes, procedures, functions and concepts in place. According to Section 25d of the Banking Act, the members of the administrative or supervisory body must:

- be reliable;
- have the expertise required to exercise the control function and assess and supervise the business conducted by the institution; and
- devote sufficient time to the performance of their duties.

Such rules of conduct and organisational requirements are especially important for investor protection and for properly functioning financial markets. Rules of conduct lay down minimum standards for investment services in order to avoid conflicts of interest between clients, investment services enterprises and their employees, and to prevent investors from being disadvantaged as a result.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The registered office and head office of Irish banks must be located within the jurisdiction. The minimum initial capital is €5 million. The management and 'decision-making unit' of the bank must be located in Ireland. The minimum key functions that must be located in Ireland include chief executive officer, chief financial officer, financial control, risk, credit, treasury and compliance.

Every bank authorised by the CBI must have comprehensive strategies, policies and processes to assess and maintain the amounts, types and distribution of internal capital required to cover the risk exposure of the bank. Banks' governance arrangements must also include:

- 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; and
- 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.

The CBI's Corporate Governance Requirements for Credit Institutions 2015 (the **Governance Requirements**)set out minimum governance standards for all banks authorised by the CBI and include augmented requirements for institutions that may be deemed high impact by the CBI. The governance arrangements must be sufficiently sophisticated to ensure effective oversight of the activities of the bank taking into account the nature, scale and complexity of the bank's business.

The board of a bank must be of sufficient size and expertise to oversee the operations of the bank and must have a minimum of five directors, with a majority of the board being independent non-executive directors ('ineds'). For banks that are subsidiaries, there must be at least two ineds.

The Governance Requirements also provide that directors must have sufficient time to devote to the role and cannot be a director of more than five other banks or insurance undertakings. The Governance Requirements further set out the requirements and roles of the chairperson, the chief executive officer, the ineds, the chief risk officer (CRO), the board generally and board committees.

In addition, the CBI's Fitness and Probity Standards set out minimum standards of competence and knowledge/experience (fitness) and good character and financial soundness (probity) that must be met by anyone who performs a controlled function (CF) role. There are also approximately 41 senior positions designated as pre-approval controlled functions (PCFs). A PCF/CF must be competent and capable, honest and ethical; must act with integrity; and must be financially sound. A person must have a level of fitness and probity appropriate to the performance of his or her particular function. CFs and PCFs must agree to abide by the minimum standards.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Generally, credit institutions must have in place effective policies and procedures to ensure compliance with their legal obligations and avoid conflicts of interest. From a systems perspective, credit institutions must invest appropriately to ensure continuity and regularity of services, and have appropriate risk management and security systems in place. Outsourcing is permitted; however, it must be contractualised and banks remain fully liable for any outsourced functions. Banks must ensure accurate recordkeeping for all services and transactions and ensure that, in respect of client assets, those assets' ownership rights are protected. Client financial instruments may not be used on own account, except where a client has provided express permission.

The Law of 5 April 1993 on the financial sector, as amended and the CRR require the management body of institutions to define, oversee

and be accountable for the implementation of governance arrangements. The key accountabilities include the strategic objectives, risk strategy, and internal governance. In addition, the management body must ensure the integrity of the financial reporting system and exercise effective oversight of the daily management of the bank. There is a prohibition against combining the role of chair of the management body and chief executive officer. In respect of the composition of the management body, particular attention must be paid to the experience, skills, and knowledge of individual members, but also of the management body as a whole. There are detailed requirements in respect of time commitment and the number of directorships which may be held simultaneously. Credit institutions must also ensure that adequate human and financial resources are dedicated to the induction and training of members of the management body.

In addition, CSSF Circular 12/552 sets out detailed requirements relating to internal governance arrangements and specific requirements for the finance and IT functions. Banks must have appropriate internal communication and whistleblower arrangements and must also have put in place crisis management protocols, which have been tested. All governance arrangements must be documented in writing. Following the implementation of CSSF Circular 12/552 in late 2012, this was a major area of focus for banks in Luxembourg.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The organisational and governance requirements applicable to banks are stipulated in the Banking Act and Banking Ordinance, and are further concretised in Circular 2017/1 – "Corporate Governance – Banks", issued by FINMA.

Among other things, banks must generally have a board of directors consisting of three or more members, none of whom may also be a member of the executive management. Furthermore, at least one-third of the board members must be independent (ie, without any other relevant business or ownership ties to the bank). Larger banks must implement a risk committee and an audit committee; while systemically important banks must also establish a nomination and compensation committee at a group level.

The executive management of a bank must consist of at least two members, including a chief executive officer and a chief financial officer. Systemically important banks must also appoint a chief risk officer to the executive management.

Furthermore, banks must ensure effective internal segregation between the lending business, trading, asset management and settlement, and must implement an effective internal control system. The latter includes, among other things:

- control activities that are integrated into work processes;
- appropriate risk management and compliance processes; and
- adequate control functions – in particular, an independent risk control and compliance function.

In addition, an internal audit function must be implemented.

Finally, the bank's business activities and corresponding processes must be properly described in the bank's internal policies and guidelines.

According to the principle of proportionality, these requirements must be implemented taking into account the size, complexity, structure and risk profile of the individual bank.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to Article 22 of the Banking Law, the structure, processes and principles on the corporate governance of banks are determined by the BRSA, taking into account the opinions of the CMB and its associations. The Regulation on the Principles of Corporate Governance of Banks (*Official Gazette* of 1 November 2006, No 26333) is another key regulation that sets out the organisational and governance requirements for banks.

Turkish banks must establish:

- a board of directors;
- a corporate governance committee;
- a remuneration committee;
- an audit committee;
- an internal systems unit;
- a compliance unit in relation to compliance with anti-money laundering legislation; and
- a credit committee (if the board of directors delegates its credit-related duties).

There must be at least five members (including the general manager) of the board of directors. Board members should have qualifications such as professional competence, independence and efficiency, as per the Banking Law.

The audit committee, to be established by the board of directors, must have at least two members. Members will be appointed from among the board members, but cannot have an executive position. Qualifications such as professional competence, independence and efficiency are also required for the members of the audit committee.

According to Article 25 of the Banking Law, general managers must have a bachelor's degree in law, economics, finance, banking or business administration, or related fields, or an undergraduate degree in engineering together with a graduate degree in one of these fields, together with 10 years of professional experience in banking or business administration. Deputy general managers must have at least seven years of professional experience; and at least two-thirds of the deputy general managers of a bank must have at least an undergraduate degree in one of the above fields.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Directors of a bank incorporated as a company are subject to general duties, which are now largely codified in the Companies Act

to general duties, which are now largely codified in the Companies Act 2006. Directors of a UK-authorised bank listed in the United Kingdom or abroad are also subject to the principles of good governance contained in the UK Corporate Governance Code. Banks must comply with:

- the Prudential Regulation Authority's (PRA) Fundamental Rules and Principles, which address the interests of customers and the broader market as stakeholders in a bank; and
- the General Organisational Requirements Part of the PRA Rulebook.

Most of the requirements on governance are framed in high-level and non-prescriptive terms.

Banks must have robust governance arrangements, including:

- clear organisational structure with well-defined, transparent and consistent lines of responsibility; and
- effective processes to identify, manage, monitor and report risks, and internal control mechanisms.

Senior personnel must be of sufficiently good repute and experience to ensure the sound and prudent management of the bank. A bank must ensure that at least two such people undertake its management, and that at least two independent minds should formulate and implement its policies.

In 2016, new management and governance requirements for banks were implemented through the Senior Managers and Certification Regime (SMCR), which introduced enhanced standards for UK banks in respect of key responsibilities and associated individual accountability.

The majority of the requirements on management and organisation are found in the General Organisational Requirements part of the PRA's Rulebook. Organisational systems should be proportionate to the nature, scale and complexity of a bank's business.

In addition to the points mentioned in question 2.1, banks should segregate the duties of individuals and departments so as to reduce opportunities for financial crime or contravention of regulatory requirements and standards (eg, front-office and back-office duties should be segregated to prevent a single individual initiating, processing and controlling transactions). Responsibility should be segregated in a manner that supports the bank's compliance obligations on conflicts of interest, remuneration structures and prevention of market abuse. The General Organisational Requirements implement Capital Requirements Directive IV organisational requirements for the management body, such as:

- board composition;
- time commitments; and
- in the case of significant firms, limits on the number of additional directorships and mandate the establishment of separate risk, nomination and remuneration committees.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... The organisational and governance requirements applicable

to banks vary depending on their chartering authority. The directors of a national bank chartered by the Office of the Comptroller of the Currency, for instance, generally must be US citizens and must reside in or near the state in which the national bank is located. Directors are subject to the same duties of loyalty and care as the directors of a corporation. Directors are required to hold at least some equity in the bank. Boards of directors are required to include an appropriate number of independent directors.

Among other things, a national bank's board is required to provide effective oversight of the bank's activities, exercise independent judgement and provide a credible challenge to the judgment of the bank's management. It is also required to approve and review the effectiveness of the bank's compliance programmes. The board must also review the bank's financial performance and the performance of its management team.

Under federal law, the US banking agencies will typically require US banks and BHCs to maintain or conduct, among other things:

- internal and external audits;
- board audit and risk committees;
- internal control systems; and
- compliance policies and guidelines.

For more information about this answer please contact: Jerome Roche from Linklaters

7.3 What key risk management requirements apply to banks in your jurisdiction?

Canada
Gowling WLG

Answer ... OSFI's Corporate Governance Guideline requires banks to develop an enterprise-wide, board-approved risk appetite framework that outlines the risk-taking activities of the bank and the benchmarks and limits for the amount of risk that the bank is willing to accept. It is intended to be forward looking and should consider the material risks to the bank, in addition to its reputation. The policies, practices and procedures of the bank should all support the risk appetite framework.

Depending on the nature and size of the bank, OSFI advises the board of directors to establish a board risk committee to oversee risk management on an enterprise-wide basis. All committee members, including the chair, should be non-executives of the bank, to ensure that risk management activities are independent from operational management of the bank. The board risk committee receives reports on significant risks of the bank and its exposures relative to its risk appetite. It provides input on how material exceptions or breaches to risk policies and controls are identified, measured, monitored, controlled and addressed.

OSFI also advises that a bank should also have a senior officer (the chief risk officer) who is responsible for overseeing all risks on an enterprise-wide and disaggregated level. Like the board risk committee, the chief risk officer should work independently of the business lines or operational management, providing regular reports to the board of directors, the board risk committee and senior management on whether the bank is operating within the risk appetite

framework.

The Corporate Governance Guideline also specifies that the chief risk officer and the board risk committee should not be directly involved in revenue generation or in the management and financial performance

of any business line or product of the bank. In addition, the chief risk officer's compensation should not be linked to such performance.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Risk management is an integral part of the overall governance requirements (see Section 70 of the Financial Business Act). In practice, banks must establish a risk management function and appoint a person who has overall responsibility for all risk management.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The requirements are based on guidelines issued by BaFin relating to the Minimum Requirements for Risk Management (MaRisk). MaRisk provides a comprehensive framework for the management of all significant risks based on Section 25a of the Banking Act, which governs the organisational requirements for institutions regarding internal risk management. MaRisk provide a principles-based framework that gives institutions the flexibility to implement solutions individually. Moreover, MaRisk contains clauses which ensure that smaller institutions can also comply with the requirements in a flexible way.

MaRisk has a modular structure. The General Section (AT modules) contains basic requirements for internal risk management, including outsourcing standards. Special requirements regarding the organisation of the internal control system for particular types of business and types of risk, and the organisation of the internal audit function, are set out in the Special Section (BT modules). MaRisk has undergone several revisions due to recent developments and international regulatory initiatives. BaFin has published the current valid version as Circular 09/2017 (BA) . MaRisk addresses a variety of issues on controlling business and organisational risks of financial institutions. These include the responsibility of management to:

- develop a risk management system suitable to identify and control risks;
- meet the requirements of appropriate staff resources;
- install internal controls;
- meet organisational requirements for lending and trading business;
- identify and address market, liquidity and operational risks; and
- ensure basic specifications for the compliance function, the risk control function and the internal audit function.

MaRisk specifies the more general risk management standards set out

in Section 25a of the Banking Act. Compliance with MaRisk is subject to the external audit. Any material deficiencies exposed by the audit report can lead to BaFin requiring corrective measures or imposing sanctions.

Like MaRisk, the Banking Supervisory Requirements for IT (*Bankaufsichtliche Anforderungen an die IT* (BAIT)) specifies the statutory requirements laid down in Section 25a of the Banking Act. BAIT describes what BaFin considers to be suitable technical and organisational resources for IT systems, with particular regard to information security and suitable contingency plans. As institutions are increasingly obtaining IT services from third parties, including as part of outsourcing arrangements, BAIT also set out the requirements for the external procurement of IT services.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Banks must have a risk committee and a designated CRO. The risk management must operate on a solo and a consolidated basis and promote an appropriate risk culture at all levels of the bank, subject to regular internal review. Banks must have a clear policy and organisational chart in place to have clear responsibilities, lines of reporting and persons accountable for respective areas.

A bank must have procedures and guidelines which identify, measure, monitor, control and mitigate each area of risk (in relation to each of its business lines). A bank's risk management systems must be commensurate with the nature, scale and complexity of its activities, and associated risks must be enforced and in place – whether through ongoing monitoring and controlling of risk, reliable information systems or effective audit and control procedures.

The CRO is responsible for the risk management function and for maintaining and monitoring the bank's risk management system. If a bank is not designated as high impact and its operations do not justify a dedicated CRO function, another PCF may fulfil that role. The CRO must have relevant expertise, qualifications and background, or undertake relevant and timely training. The responsibilities of the CRO are set out in detail in the Governance Requirements.

In addition to the CRO, banks must have a separate risk committee of at least three members with relevant expertise with responsibility for risk oversight and advice to the board, and the strategy for addressing such risks.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Banks in Luxembourg must have adequate internal control systems in place to promote sound and effective risk management. The CSSF recommends that larger or more complex institutions have a risk committee to assist the management body in order to facilitate effective risk control at management body level. CSSF Circular 12/552 requires the management body to approve a risk policy which implements the risk strategy of the institutions. This policy must include:

- the institution's risk tolerance determination;
- an internal limits system with limits risk taking in accordance with the risk tolerance;
- measures aimed to promote a sound risk culture;
- the existence of a risk control function and management arrangements for limits breaches and corrective measures for such breaches;
- the definition of a risk management information system; and
- crisis management and business continuity arrangements.

Further, the management body must set a capital and liquidity policy which:

- defines internal standards in relation to the management, scope and quality of the regulatory and internal own funds and liquidity reserves;
- defines processes to ensure reliable management information;
- ensures the permanent adequacy of the regulatory and internal own funds and liquidity reserves;
- effectively manages stress situations; and
- designates the functions in charge of the management, functioning and improvement of the processes, limit systems, procedures and internal controls.

CSSF Circular 12/552 requires the establishment of three distinct internal control functions (risk, internal audit and compliance). The risk and compliance functions form part of the second line of defence, while the internal audit function constitutes the third line of defence. Each of the three control functions shall be under the responsibility of a separate head of function (who, for the risk control function, is referred to as the 'chief risk officer'). The principle of proportionality applies and it is therefore possible to merge the risk management and compliance functions on a case-by-case basis. The risk management function (as well as the compliance and audit functions) must be permanent and independent, and hold sufficient authority. The chief risk officer must have direct access to the members of the management body or its chair (or chair of the risk committee), the external auditor and the CSSF. The bank shall ensure that individuals working within the risk management function have a high level of professional experience and that the function is appropriately resourced. It is not permissible to outsource the risk management function. Under the principle of proportionality, a full-time chief risk officer may not be required for smaller institutions and this is evaluated on a case-by-case basis.

There are a number of important tasks which fall within the remit of the risk management function:

- monitoring risk limits and their compatibility with the strategies, activities and organisational and operational structure of the bank;
- systematic production of accurate risk management information for authorised management to understand the risks to which the institution is or may be exposed;
- the development of effective terminology, methods and technical resources to anticipate risk, as well as to identify, measure, report, manage, and monitor risks;
- the development of conservative assumptions in particular

regarding dependencies between risks; and
- the anticipation and recognition of risks arising in a changing environment.

An annual risk management report relating to the tasks of the risk management function is prepared and submitted to the management body, in addition to regular and *ad hoc* reporting. Any serious problems, shortcomings or irregularities must be reported immediately by the risk management function to authorised management and the management body. It is also noteworthy that Luxembourg credit institutions must take risks into account when assessing new or expanded product offerings.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The key risk management requirements applicable to banks are stipulated in the Banking Act and Banking Ordinance, and are further concretised in Circular 2017/1 – "Corporate Governance – Banks" issued by FINMA.

In general, banks must address the main features of risk management, as well as the responsibilities and the procedure for approving transactions involving risk in their internal policies and guidelines. In particular, they must record, limit and monitor market, credit, default, settlement, liquidity and reputational risks, as well as operational and legal risks. To this effect, the executive management must develop a risk policy, as well as the basics of the institute-wide risk management for approval by the board of directors.

Additional requirements with respect to the handling of specific risks are outlined in various FINMA circulars, such as:

- FINMA Circular 2008/20 – "Market Risks – Banks";
- FINMA Circular 2008/21 – "Operational Risks – Banks";
- FINMA Circular 2015/02 – "Liquidity Risks – Banks";
- FINMA Circular 2017/07 – "Credit Risks – Banks"; and
- FINMA Circular 2019/02 – "Interest Rate Risks – Banks".

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... Banks must establish and implement their risk policies as set by the BRSA, which regulates the main principles for the risk management systems of banks.

Under the Regulation on the Internal Systems of Banks (*Official Gazette* of 28 June 2012, No 28337), the measurement, monitoring, control and reporting of risks are defined as risk management activities. In accordance with the risk evaluation of the internal audit unit, the implementation of an internal audit system is required. The following will be taken into account in determining the risk management policy and implementation procedures under the regulation:

- strategies and implementation policies regarding the bank's activities;
- compliance with the volume, nature and complexity of the

- compliance with the volume, nature and complexity of the activities and level of risk that may be taken;
- risk monitoring and management capacity;
- previous experience and performance;

- levels of specialisation of the managers of the bank's different units; and
- obligations under the Banking Law and other applicable legislation.

The limits for quantifiable risks – such as credit, market, interest rate and liquidity risk – arising from the bank's activities must be determined by banks and are subject to the BRSA's approval. The main parameters for banks in determining these risk limits include:

- the level of risk to be taken;
- the bank's activities;
- the size and complexity of the bank's products and services;
- the bank's staff and departments; and
- the bank as a whole or the group of which it is a member.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The United Kingdom has an approval regime split between the PRA and the Financial Conduct Authority (FCA) for senior managers carrying out specified senior management functions (SMFs) in a bank. The SMCR, which replaced the approved persons regime, entered into force on 7 March 2016. Senior managers of UK banks who have overall responsibility for one or more senior management functions must obtain prior approval from the PRA and/or FCA before carrying out SMFs (including executive director functions, head of risk, internal audit, compliance and operations/technology, and certain business unit heads). Non-executive directors require approval where they carry out specific SMF roles, such as head of the remuneration or nominations committee. Banks are expected to perform initial due diligence on prospective senior managers (including employment references and criminal record checks) before applying for regulatory approval.

The appropriate regulator may grant approval only if it is satisfied that the person in question is fit and proper to perform the function(s) in terms of honesty, integrity, reputation, competence, capability and financial soundness.

A second-tier, in-house certification regime applies to certain other individuals in banks who are not senior managers, but whose roles or activities may pose a risk of 'significant harm' to the bank or its customers. These individuals must be certified by the bank as fit and proper to perform the role(s) in question, taking into account similar fitness and propriety indicators as for senior managers. As part of their assessment, banks must request a regulatory reference from all of the person's previous employers covering the past six years of employment.

Each senior manager must have a statement of individual responsibilities for each SMF which must be approved by the FCA as part of the application and regularly updated for any significant

changes. Banks must maintain a detailed 'management responsibilities map' setting out management and governance arrangements, including individual accountability and reporting lines for all business lines and functions.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters

Answer ... Since the 2008 financial crisis, large US banks and BHCs have become subject to increasingly stringent risk-management requirements.

US banks and BHCs with $50 billion or more in total consolidated assets must

- designate a chief risk officer (CRO);
- develop a risk management framework; and
- create a board risk committee that includes at least one risk management expert and an independent member.

The bank or BHC's board must review and approve the institution's risk management framework. A CRO should generally have clear reporting lines to the bank or BHC's CEO or board of directors.

Lastly, US banking agencies often use stress tests as a supervisory practice for large banking organisations to assess their potential resilience during difficult economic times. As noted above, depending on their complexity and size, US BHCs may be required to run company-run stress tests and undergo supervisory-run stress tests, annually or biannually. Smaller institutions may not be subject to a formal requirement, but are expected to consider the consequences of and prepare for economic downturns.

For more information about this answer please contact: Jerome Roche from Linklaters

7.4 What are the requirements for internal and external audit in your jurisdiction?

Canada
Gowling WLG

Answer ... The Bank Act requires that each bank establish an audit committee comprised of non-employee directors, a majority of whom are not 'affiliated' with the bank. The statutory duties of the audit committee include:

- reviewing the bank's annual statements;
- evaluating and approving internal control procedures; and
- providing input on the effectiveness of the bank's internal controls and the adequacy of practices for reporting and determining financial reserves.

It also approves the bank's internal and external audit plans.

OSFI's Corporate Governance Guideline stipulates that the audit committee is responsible for overseeing the performance of the bank's internal audit function - whether or not part or all of the audit is outsourced. This responsibility includes:

- recommending to the shareholders the appointment or removal

of an external auditor (as well as the scope and terms of this auditor); and
- reporting annually to the board of directors on the effectiveness of the external auditor and the overall results of the audit.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... All banks must have external auditors, which must audit the bank's financial statements. In addition, banks which for two consecutive financial years have had 125 or more full-time employees must also have an internal audit. Smaller banks may also have an internal audit if decided by the board of directors.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Internal audit is part of the ongoing monitoring of the bank's system of internal controls and of its internal capital assessment procedure. As such, the internal audit function assists senior management and the board of directors in the efficient and effective discharge of their responsibilities. The scope of internal audit activities should include the examination and evaluation of the effectiveness of the internal control, risk management and governance systems and processes of the entire bank, including the organisation's outsourced activities and its subsidiaries and branches. The internal audit function should independently evaluate:

- the effectiveness and efficiency of internal control, risk management and governance systems in the context of both current and potential future risks;
- the reliability, effectiveness and integrity of management information systems and processes (including relevance, accuracy, completeness, availability, confidentiality and comprehensiveness of data);
- the monitoring of compliance with laws and regulations, including any requirements from supervisors; and
- the safeguarding of assets.

The head of internal audit is responsible for establishing an annual internal audit plan that can be part of a multi-year plan. The plan should be based on a robust risk assessment (including input from senior management and the board), and should be updated at least annually (or more frequently to enable an ongoing real-time assessment). The board's approval of the audit plan implies that an appropriate budget will be available to support the internal audit function's activities. The budget should be sufficiently flexible to adapt to variations in the internal audit plan in response to changes in the bank's risk profile.

Together with the Deutsche Bundesbank, BaFin produces a risk profile for each less significant institution (LSI) – that is, the credit institutions it supervises directly. BaFin updates the risk profile of each of these LSIs at least once a year. It uses the risk profile of an individual LSI to

determine how closely it supervises the institution. In addition to the findings of the audit report for the annual financial statements, current risk analyses and knowledge obtained from special audits and requests for information are included in the assessment.

BaFin allocates each institution to a risk class on the basis of its risk profile. This risk classification is based on the quality of the institution and potential impact of a solvency or liquidity crisis of the institution on the stability of the financial sector. In comparison with 2016, there have been only marginal changes in the allocations to the individual risk classes – while the quality of the institutions showed a slight downward trend, their impact increased slightly.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... A bank must have an appropriate and properly staffed internal audit function in place, which has direct access to the board of directors, or an appropriate sub-committee of the board that reports to the board. The bank's internal audit team should report and present quarterly reports to the board. A bank must submit to the CBI, on the internal audit team's behalf, its internal audit charter, risk assessment methodology, internal audit plan, organisational chart of risk functions and the profile of the head of internal risk.

The Companies Act 2014 specifies certain requirements regarding persons that can be appointed as auditors which oblige companies (including banks) to appoint an external auditor. External auditors provide the annual financial statements. Auditors have a duty to submit a written report to the CBI within one month of the date of the auditor's report on the bank's financial statements. This report is sent directly to the CBI and is a statement to the CBI that there is no matter, not already reported in writing to the CBI by the auditor, that has come to the attention of the auditor during the ordinary course of the audit that gives rise to a duty to report to the CBI. Where matters have already been reported to the CBI, such matters should be referred to in the statutory duty confirmation.

Under Section 47 of the Central Bank Act 1989 (as amended), a bank's auditor must notify the CBI without delay of any matters going to the financial soundness of the bank being audited and any material deficiencies in the financial reporting and accounting systems and controls within the bank; it must also notify the CBI without delay if it decides to resign as the bank's auditor.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... **External audit:** Credit institutions must have their annual accounts audited by one or more approved statutory auditors. One of the 'Big Four' is typically appointed in order to perform this task. Any change in the approved statutory auditor must be authorised in advance by the CSSF.

The Accounts Law specifies the content that must be included in the report of the approved statutory auditors. The approved statutory auditors must also express an opinion concerning the consistency of

the management report with the annual accounts and provide an audit opinion stating clearly whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and whether the annual accounts comply with the applicable statutory requirements.

Internal audit: As mentioned under question 7.3, CSSF Circular 12/552 requires the establishment of three distinct internal control functions, which includes an internal audit function.

The internal audit function shall be under the responsibility of a specific head of function (the 'chief internal auditor'). The appointment and removal of the person in charge of the internal audit function must be approved by the board of directors of the bank and reported in writing to the CSSF. The 'chief internal auditor' must have direct access to the members of the management body or its chair, the external auditor and the CSSF.

The internal audit function must be permanent, independent and objective, and have sufficient authority. It must be able to express itself freely and access all relevant external and internal data in order to fulfil its mission. The members of the internal audit function must individually and collectively possess high professional skills in the field of banking and financial activities, and be able to cover all activities of the institution; ongoing training must be organised. The internal audit function must be appropriately resourced.

The main task of the internal audit function is to review and assess the central administration and the internal governance arrangements of the credit institution and to ensure that they are adequate and operate effectively. The internal audit function shall in particular assess:

- the monitoring of compliance with applicable laws and regulations and the prudential requirements imposed by the CSSF;
- the efficiency and effectiveness of internal controls;
- the adequacy of the administrative, accounting and IT organisation;
- the safeguarding of securities and assets;
- the adequacy of the segregation of duties and of the execution of transactions;
- the accurate and complete registration of transactions;
- the provision of accurate, complete, relevant and understandable information to the board of directors, relevant committees, authorised management and the CSSF, as applicable;
- the implementation of decisions taken by the authorised management and by the persons acting by delegation and under its responsibility;
- compliance with the procedures governing the adequacy of the regulatory and internal own funds and liquidity (reserves);
- the adequacy of the risk management; and
- the operation and effectiveness of the compliance and risk management functions.

Each internal audit mission must be documented and subject to a written report. An annual internal audit report relating to the tasks of

written report. An annual internal audit report relating to the tasks of the internal audit function must also be prepared.

The internal audit function may be outsourced by smaller credit institutions whose risk profile is low and non-complex. Such outsourcing is subject to an assessment by the CSSF. The internal audit function may not be outsourced to the approved statutory auditor which is appointed as external auditor.

CSSF Circular 12/552 contains additional details on the organisation and responsibilities of the internal control functions, including the internal audit function, and the way in which they must execute their work.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... As part of their internal control system, banks must establish an internal audit function that is independent of the executive management and that reports to the board of directors (or the audit committee, if applicable). The tasks of the internal audit function may be performed by an internal team or outsourced to a qualified external service provider.

The internal audit function must meet the qualitative requirements of the Swiss Association for Internal Audit. Its work is based on the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors.

In addition to an internal audit, banks must appoint an independent audit firm recognised by FINMA to act as regulatory auditors. The regulatory auditors are appointed by the bank's board of directors and are tasked with assessing whether the bank is in compliance with the Banking Act, as well as other relevant regulations and self-regulatory guidelines. The regulatory auditors are themselves supervised by the Federal Audit Oversight Authority and typically also act as statutory auditors responsible for auditing the bank's financial statements.

The audit report of the regulatory auditors is submitted to the bank's board of directors and to FINMA. If the audit reveals any irregularities with respect to applicable legislation or regulations, the auditors set a deadline for the bank to remedy the issue. If such deadline lapses unused (or immediately, in the case of serious violations or irregularities that may jeopardise the interests of the bank's creditors), the auditors must inform FINMA.

While FINMA has increased its own on-site audit activity over the last couple of years, it heavily relies on the audit work performed by the regulatory auditors. For this reason, the regulatory auditors are often referred to as 'the extended arm of FINMA'.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The main principles for internal and external audits are set out in the Banking Law. Other regulations that specify the procedures

out in the Banking Law. Other regulations that specify the procedures and principles of internal and external audits include:

- the Regulation on the Internal Systems of Banks;
- the Regulation on Independent Audits of Banks (*Official Gazette* of 2 April 2015, No 29314); and
- the Regulation on Bank Information Systems and Banking Processes Audits to be Performed by External Audit Institutions (*Official Gazette* of 13 January 2010, No 27461).

Banks must establish an internal audit system covering the consolidated accounts of all units, branches and subsidiaries, to ensure compliance of banking activities with the legislation, articles of association, internal regulations and banking principles.

At least once every three months, an internal audit report – which must be independent and prepared by an adequate number of auditors, exercising due professional care – must be submitted by the internal audit unit and the authorised inspector to the board of directors.

According to Article 33 of the Banking Law, a list of independent audit firms is issued by the BRSA. If an independent audit firm detects any matters that may endanger the existence of the bank or suggest that the managers have violated the Banking Law or articles of association during the audit, it must inform the BRSA immediately.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... A bank must appoint an independent auditor to perform an annual external audit of the bank's accounts and report to the FCA on the bank's client assets. The General Organisational Requirements may require a bank to form an audit committee and independent internal audit function to:

- oversee the bank's internal systems and controls, policies and procedures;
- issue recommendations; and
- verify compliance with those recommendations.

The FCA is not prescriptive about other experts, but notes that a bank's management - in particular, any board-level risk committee - should ensure that it obtains expert advice and the support necessary to meet their risk responsibilities.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... A bank's internal audits must generally be conducted in line with the complexity and risks posed by the bank. Audit committees are typically tasked with oversight responsibilities for the internal audit function and, with respect to systemically important banks and BHCs, may be subject to specific requirements for the composition and independence of such a committee. Institutions should have an internal audit function, plan, programme and report that demonstrates a detailed risk assessment for that institution

demonstrates a detailed risk assessment for that institution.

Heightened standards applicable to large banks require that its audit function be led by the CRO. The CRO must report regularly to the board of directors and the audit committee.

For more information about this answer please contact: Jerome Roche from Linklaters

8. Senior management

8.1 What requirements apply with regard to the management structure of banks in your jurisdiction?

Canada

Gowling WLG

Answer ... The Office of the Superintendent of Financial Institutions' (OSFI) Corporate Governance Guideline creates a critical distinction between the responsibilities of a bank's board of directors and the responsibilities of its senior management. While the board of directors sets the direction and general oversight of the management and operations of the entire bank, the senior management implements the board of directors' decisions and directs and oversees the operations of the bank.

Banks are expected to inform OSFI of changes to its senior officers and describe the mandates of any senior management committees it uses.

Senior officers are the chief executive officer (CEO) and individuals who are directly accountable to the CEO. These can include the heads of the bank's oversight functions, such as the chief financial officer, chief risk officer, chief compliance officer, chief internal auditor and chief actuary; as well as the heads of major business platforms or units.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Danish banks operate with a two-tier management system, consisting of:

- a supervisory board of directors, which has overall responsibility for the management of the bank on a strategic level, in addition to control and oversight responsibility; and
- the management – sometimes referred to as the management board – which is responsible for the day-to-day management of the bank.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The Banking Act imposes stringent requirements regarding the qualifications of management board members. The bank or financial institution must provide to the Federal Financial Supervisory

Authority (BaFin):

- the names of the senior managers (Section 32(1), sentence 2, number 2 of the Banking Act);
- all information required to assess the trustworthiness of the applicants and of the senior managers (Section 1(2), sentence 1 and Section 32(1), sentence 2, number 3 of the Banking Act). For this purpose, the following are required from each applicant or senior manager:
    - the form "Disclosures relating to the reliability of designated managers";
    - an excerpt from the Federal Business Record Register if they were or are self-employed or if, in the course of their professional activities, they were or are the authorised representative of a businessperson or charged with managing a business or the manager of any other commercial enterprise; and
    - a "criminal record check for submission to an authority" or "European criminal record check for submission to an authority" or equivalent documents from another country; and
- the information required to assess the professional qualifications of the proprietors and the senior managers (Section 32(1), sentence 2, number 4 of the Banking Act). Each proprietor and senior manager should submit (along with the references from any employment relationship that has ended within the last three years) a complete, signed CV containing all given names, name at birth, date and place of birth, home address and nationality, as well as a detailed description of relevant education and training, the names of all undertakings for which the manager/proprietor has worked and details of the nature and duration (in months and years) of the functions performed there, particularly with relevance to the business for which authorisation is being sought, including any secondary activities, except for those performed in an honorary capacity. When describing the nature of the functions performed, in particular, the powers of representation, internal decision-making authority and the divisions within the undertaking overseen by the manager/proprietor must be specified.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The management structure and staff should have the adequate experience, skills and knowledge to carry out their jobs effectively. The majority of the directors shall be independent directors. The board must include a CFO, a CRO and a chief outsourcing officer.

The CBI introduced the Fitness and Probity Regime under the 2010 Act. This regime applies to persons in senior positions as controlled functions (CFs) and pre-approval controlled functions (PCFs) within banks. The core function of the fitness and probity regime is to ensure

banks. The core function of the fitness and probity regime is to ensure that persons in senior positions within a bank are competent, capable, honest and ethical; have integrity; and are financially sound. The CBI has also published a statutory code (the Fitness and Probity Standards)

and guidance documents to assist institutions, including banks and individuals performing CF and PCF roles, in complying with their fitness and probity obligations.

In addition to the fitness and probity requirements, individuals who are to be appointed to a PCF role must first be approved by the CBI. The individual must complete an online questionnaire which is approved by the proposing bank and then submitted to the CBI.

In a report issued in July 2018 entitled "Behaviour and Culture of the Irish Retail Banks", the CBI recommended reforms to establish a new 'Individual Accountability Framework'. The proposed new framework will consist of four distinct but complementary elements:

- new conduct standards;
- a Senior Executive Accountability Regime (SEAR);
- enhancements to the existing Fitness and Probity Regime; and
- changes to the CBI's enforcement process.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... In Luxembourg, both shareholders and members of the management body must be able to demonstrate that they possess sufficiently good repute and that the members of the management body possess sufficient knowledge, skills and experience to perform their duties. These requirements are applicable both on licence application and on a continuing basis. At least two individuals must be responsible for the management of the credit institutions and those individuals must typically reside in or near Luxembourg.

The board of directors entrusts authorised management with the daily running of the bank, which includes the implementation of all guiding principles and internal governance arrangements approved by the board. The board of directors is responsible for monitoring and overseeing the effectiveness of authorised management. Each member of authorised management is responsible for personally overseeing the activities and functions which fall under their direct responsibility on a regular basis.

There must be a sufficient number of directors so that their collective competencies are appropriate for the nature, scale and complexity of the bank's activities. The board of directors may create dedicated board committees (membership drawn from members of the board of directors) in the fields of audit, risk, compliance, remuneration, nomination and so on. The determination of which committees are required and which topics are discussed are made by the institution having regard to its business activities. Larger institutions typically have a number of board committees. Smaller institutions may not require a board committee.

Commission de Surveillance du Secteur Financier (CSSF) Circular 12/552 also requires the creation of internal control functions: internal audit, compliance and risk. Larger institutions require a dedicated IT officer

compliance and risk. Larger institutions require a dedicated IT officer as well as an information security officer. Smaller institutions may assign responsibility for these roles to a member of authorised management, who is then assisted by external advisers.

To the extent that a credit institutions comprises multiple legal entities, it must be structured in an appropriate manner having regard to the strategy and guiding principles of the bank. At a group level, clear limits on powers and delegation should be established (with appropriate monitoring) and a comprehensive management information system must be put in place to ensure effective communication between legal entities, the board of directors, authorised management, internal control functions and the CSSF.

It should be noted that the concept of a 'board of directors' as used in question 7 above and throughout this question 8 shall not be read in a strict company law sense, as banks may adopt a legal form that does not provide for a board of directors. Where the relevant bank has a board of supervisors, the references to a 'board of directors' shall be read as references to the board of supervisors.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The Banking Act requires the adequate internal organisation of a bank, which means – among other things – that the corporate bodies for supervision and management must be functionally and personally segregated. The board of directors and the executive management of the bank must therefore be two separate corporate bodies with no personal overlaps (ie, no member of the board of directors may be part of the executive management and vice versa).

For further details, please also see question 7.2.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to the Regulation on the Corporate Governance Principles of Banks (*Official Gazette* of 1 November 2006, No 26333), banks may determine their corporate governance structures and processes based on the principles included in the annex to the regulation. In determining corporate governance structures and processes, the activities and structure of the bank must be considered, and the principles and procedures set out in the Banking Law and the regulations issued thereunder must be followed. The basic principles stated in the regulation include the following:

- The corporate values and strategic goals must be determined;
- The vision and mission of the bank must be determined;
- The board of directors must determine the strategies which direct the bank's ongoing business and establish ethical principles to guide its own activities and those of senior management and other employees; and
- Authorisations and obligations must be directly determined and implemented.

For more information about this answer please contact: Faruk Aktay

from AKTAY Legal

UK
1 Crown Office Row

Answer ... The management structure and staff should have adequate experience, skills and knowledge to carry out their jobs effectively. The majority of the directors must be independent directors. The board must include a chief financial officer, a chief risk officer and a chief outsourcing officer.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters

Answer ... Regulatory requirements as to a bank's management structure may vary based on the size and complexity of the bank, and the bank's chartering authority. The National Bank Act permits a national bank to have a board of between five and 25 directors, and imposes certain qualifications applicable to those directors, as discussed above.

Beyond formal requirements, the US banking agencies generally expect that the structure of a bank's board and management is appropriate for its business and size. Directors and senior management officials should have appropriate experience and sufficient time to devote to a bank or bank holding company (BHC). A US banking agency's assessment of the quality of a bank or BHC's management plays a key role in the agency's annual examination score for the institution and also influences the agency's exercise of its discretion to permit the institution to expand its operations, engage in new activities or make acquisitions.

In connection with their authority to enforce the US banking laws, the US banking agencies may bar individuals that they have found to have violated those laws from working for or being associated with US banks in the future. Further, if a US bank is in financial distress, its regulators may direct the bank to terminate certain management employees even if they are not subject to such an industry bar.

For more information about this answer please contact: Jerome Roche from Linklaters

8.2 How are directors and senior executives appointed and removed? What selection criteria apply in this regard?

Canada
Gowling WLG

Answer ... The directors and senior executives of a bank are appointed and removed according to the bank's bylaws - typically, at annual meetings, shareholders elect and remove directors, and directors appoint and remove officers. As part of OSFI's ongoing supervisory process of banks, a bank should notify OSFI as early as possible in the process of any potential changes to the membership of the board of directors and senior management, and the process and criteria used by the bank to select its directors and executives should be transparent to OSFI.

The Bank Act requires a bank to have at least seven directors. At least one-half of the directors of a bank that is a subsidiary of a foreign bank

and a majority of the directors of any other bank must, at the time of each director's election or appointment, be resident Canadians. Various persons are disqualified from being directors of a bank, due to factors such as the following:

- age;
- having the status of a bankrupt;
- not being a natural person; and
- being a governmental minister.

No more than 15% of the directors of a bank may, at each director's election or appointment, be employees of the bank or a subsidiary of the bank. However, up to four persons who are employees of the bank or a subsidiary of the bank may be directors of the bank if those directors constitute not more than one-half of the directors of the bank.

A director of a bank may be appointed to any office of the bank. The Bank Act also specifically requires the directors of a bank to appoint from their number a CEO who must be ordinarily resident in Canada.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The board of directors is elected and can be removed by the shareholders of the bank. The managing director of a bank is appointed and removed by the board of directors.

The Danish Financial Supervisory Authority may require that the board of directors remove a senior executive if he or she is no longer deemed 'fit and proper', and may also require that a board member resign if he or she is no longer deemed 'fit and proper'.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... According to Section 24(1) number 1 of the Banking Act, the institution must notify BaFin and the Deutsche Bundesbank, without delay, of its intention to appoint a (managing) director or to confer sole power on a person to represent the institution. In addition, facts that are essential for assessing the reliability, professional competence and availability of time to perform the duties in question must be provided. Further, pursuant to Section 24(1) number2 of the Banking Act. the institute must notify BaFin and the Deutsche Bundesbank, without delay, of the resignation of a (managing) director and the withdrawal of the sole power to represent the institution across its entire business area.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The appointment and removal of directors of banks that are incorporated under or subject to the Companies Act 2014 are governed

by the provisions of Irish company and employment law. The appointment and removal of directors and senior executives must be conducted in accordance with the Governance Requirements and, in the case of appointment to CF and PCF positions, in accordance with the Fitness and Probity Regime discussed in question 8.1.

Directors and senior executives are typically proposed to the board for consideration when being appointed after a selection process. As noted in question 8.1, the board must take into consideration the candidates' past experience, skill set and industry knowledge when deciding to appoint a new director or executive.

Directors may be removed by ordinary resolution of the members of the company. A director can be deemed to have vacated his or her office if various circumstances arise such as the following:

- The director resigns;
- The director becomes bankrupt or makes any compromise or arrangement with his or her creditors generally;
- The director is absent from board meetings for a specified period (typically six months);
- The director is subject to a disqualification order or a restriction under Irish company law; or
- The director's appointment exceeds the maximum permitted number of directorships.

Senior executives can be replaced in the normal manner by the board (where appropriate based on the position and role of the party), in a manner based on the business's interests. Any removal of a senior executive will be subject to the provisions of Irish employment law.

The removal from office of the head of a control function shall be subject to prior board approval. Any decision to remove the head of a control function shall be reported within five working days to the CBI with clear rationale for the underlying rationale for the removal.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Members of the board of directors, both individually and collectively, must have the necessary professional competence (expertise, understanding and experience), professional standing and personal qualities required according to the bank's guiding principles governing the election and succession of the board. There must not be a majority of directors who take on an executive role within the institution. Depending on the institution's type and size, there may be a requirement in Luxembourg to have one or more directors who either are appointed by the Luxembourg state or represent the staff. In such cases, there are detailed rules for determining the number of directors required and the ratio of executive to non-executive directors.

Members of authorised management, both individually and collectively, must have the necessary professional competence (expertise, understanding and experience), professional standing and personal qualities to manage the institution and effectively determine the business direction. Specific qualities which are required include commitment, availability, objectivity, critical thinking and independence.

On appointment and on a continuing basis, the Law of 5 April 1993 on the financial sector, as amended ('Banking Act') and CSSF Circular 12/552 require members of the board of directors and authorised management (as well as internal control function heads) to evidence

professional standing and good repute, assessed on the basis of police records and any other evidence requested. Depending on whether an institution is classified as 'significant' or 'less significant', a personal declaration must also be completed with different levels of information required from nominees regarding conflicts of interest, personal shareholdings, professional experience, time commitment and applicable skills.

On removal of a member of the board of directors or authorised management (as well as internal control function heads), different scenarios apply:

- For resignations, the CSSF must be notified immediately and provided with a copy of the letter of resignation; and
- For removals, the CSSF must be notified and receive detailed, written justifications for the decision together with a copy of the termination/revocation letter.

In addition to the foregoing, standard company law requirements for appointing and removing members of the board of directors and authorised management also apply.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Members of the board of directors may be appointed and removed only by the shareholders of the bank. This requires a duly called shareholder meeting with an agenda providing for the respective appointment or removal. Significant shareholders are entitled to request the board to convene an extraordinary shareholders' meeting and put the requested items on the agenda. In contrast, members of the executive management are generally appointed or removed by the board of directors by means of a corresponding resolution.

The selection criteria for board members must consider applicable banking regulations and supervisory practice (see in particular Swiss Financial Market Supervisory Authority (FINMA) Circular 2017/1 – "Corporate governance – banks"). This means that the board of directors in its totality must have adequate management expertise and the prerequisite specialist knowledge and experience of the banking and financial services sector. It must also be diversified to the extent that all key aspects of the business – including finance, accounting and risk management – are adequately represented. Moreover, at least one-third of the board of directors must consist of independent members with no relevant (current or former) commercial links to or participation in the bank, as further defined in FINMA Circular 2017/1.

Both members of the executive management individually and the overall body must have adequate management expertise, as well as the specialist knowledge and experience of banking and financial services required to ensure compliance with licensing requirements in

the context of the bank's operational activities.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... There are no specific regulations on the appointment or removal of directors or senior executives in the Banking Law. Therefore, as banks are joint stock companies, the provisions of the Turkish Commercial Code will apply. According to Article 363 of the code, in case of a vacancy on the board of directors, the board must elect a new person as a temporary member and submit this for approval at the first general assembly. Upon approval, the new member will complete the term of his or her predecessor. Article 363 also states that if any member of the board of directors loses the legal requirements for membership or the qualifications stipulated in the articles of association, he or she will be dismissed from the board of directors. Even if the members of the board of directors are appointed by the articles of association, they can always be dismissed by decision of the general assembly in case of a relevant agenda or for just cause, even if there is no relevant agenda.

According to Article 370 of the code, the board of directors may delegate its representative authority to one or more managing directors or third parties as directors. At least one member of the board of directors must have the power of representation. The board of directors may appoint those who are affiliated with the company with an employment contract as senior executives or other managers with limited authority as per Article 370 of the code.

According to Article 4-5-6-7 of the Regulation on the Directors of Banks (*Official Gazette* of 1 November 2006, No 26333), the Banking Regulation and Supervision Agency (BRSA) must be notified within seven business days of the election or appointment of directors or senior executives. The notification must include several documents containing information required for the position.

Members of the board of directors and members and the chairman of the board of managers must take an oath upon their election or appointment and before commencing their duties. The general manager, who is an ordinary member of the board of directors, and the persons who will represent him or her must take an oath as per Article 9 of the Regulation on the Directors of Banks. The oath must be taken in the commercial court and the document prepared thereafter sent to the BRSA. According to Article 10 of the regulation, directors and senior executives must declare their property.

For non-executive board members to be elected to the audit committee, several other requirements must be satisfied as stated in Decision 1918 of the BRSA Board of 4 July 2006.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The appointment and removal of directors and senior executives are governed by contract and employment law, as well as by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) rules.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Director and management appointments and removals are primarily a question of the laws and regulations of the chartering authority. With respect to national banks, the Office of the Comptroller of the Currency has issued general guidance for director selection criteria, which include the following:

- Exercise independent judgement and provide credible challenge to management's decisions;
- Possess knowledge of the banking industry, financial regulatory system and laws and regulations that govern the bank's operation;
- Accept fiduciary duty obligations and additional responsibility, including prioritising the bank's interests over personal interests;
- Avoid conflicts of interest;
- Maintain firm commitments to attending and preparing for board and committee meetings;
- Possess background knowledge and experience in business or another field to facilitate bank oversight; and
- Possess knowledge and background about the community the bank serves.

Directors must also be periodically elected by shareholders, as is the case with corporations, although a board of directors may fill vacancies that occur.

Directors may appoint and remove a bank's management. The qualifications of bank's management are discussed in question 8.1.

For more information about this answer please contact: Jerome Roche from Linklaters

8.3 What are the legal duties of bank directors and senior executives?

Canada

Gowling WLG

Answer ... The Bank Act provides that the directors of a bank manage or supervise the management of the business and affairs of the bank. Their responsibilities include, but are not limited to:

- establishing the audit committee;
- establishing the conduct review committee;
- establishing procedures to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information;
- designating a committee of the board of directors to monitor the procedures referred regarding conflicts of information and the use of confidential information;
- establishing procedures to provide for the disclosure of information to customers of the bank that is required to be disclosed by the Bank Act and for dealing with complaints;
- designating a committee of the board of directors to monitor the procedures referred to for the disclosure of information and satisfy themselves that they are being adhered to by the bank; and
- establishing investment and lending policies, standards and

procedures.

The directors of a bank may, subject to the bank's bylaws, specify the duties of the bank's officers and delegate to them powers to manage the business and affairs of the bank.

Every director and officer of a bank, in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer, is required by the Bank Act to:

- act honestly and in good faith with a view to the best interests of the bank; and
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

They must also comply with the Bank Act and its regulations, the bank's incorporating instrument and its bylaws. No contract, resolutions or bylaws can relieve any directors or officers of the bank from those duties, or from liability if they breach them.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The bank management is responsible for the day-to-day management of the bank, in accordance with the policies and guidelines laid down by the board of directors.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... According to Section 25a(1), sentence 2 of the Banking Act, the directors are responsible for the implementation, establishment, maintenance and further development of proper business organisation. All managers are jointly responsible for compliance with the requirements of Section 25a of the Banking Act. The combined responsibility of the managers for the organisation of the bank is also defined in Section AT 3 of the Minimum Requirements for Risk Management (*Mindestanforderungen für das Risikomanagement* 2012 AT 3, p. 4).

A specially appointed director is responsible for:

- providing a regular overview of the overall risk profile and definition of the business and risk strategy;
- reporting on the risk situation to the management; and
- reporting to the supervisory board any instances of serious misconduct.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Directors are ultimately responsible for managing the company on behalf of its shareholders. Under Irish law, directors have certain fiduciary duties, such as the following:

- acting in good faith in the interests of the company;
- acting honestly and responsibly in their conduct of the company's affairs;
- acting in accordance with the company's constitution and the law;

- not using property or information gathered from their role for their own benefit, or that of a third party;
- avoiding any conflict of interest;
- having regard to the interests of the shareholders and employees; and
- exercising the skill, care and diligence that would be expected by a reasonable person with the knowledge and experience in that industry and the knowledge and experience which the respective director already has.

These duties are owed to the company; and if there is a breach thereof, the director may be found liable to account to the company for any gain which he or she made directly or indirectly. Any director who is entering into a contract with the company must declare his or her interests.

The Fitness and Probity Standards require that senior executives be competent and capable, honest and ethical; act with integrity; and be financially sound. In addition, senior executives require the qualifications, experience, competence and capacity appropriate for their particular role.

In addition, SEAR will be introduced by the CBI, which will augment the current Fitness and Probity Regime.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The legal duties of Luxembourg bank directors and executives are similar to those in other major financial centres. The duties are derived both from Luxembourg company law and from financial regulation. The Luxembourg law of 10 August 1915 on commercial companies, as amended requires that directors:

- act in the best interest of the company;
- exercise independent judgement;
- exercise reasonable care, skill, and diligence;
- avoid conflicts of interest;
- declare interests;
- ensure confidentiality; and
- act within corporate objects and powers.

Luxembourg as a jurisdiction has a high number of banking subsidiaries. In respect of acting within the best interests of the company, it is important to consider director duties in the context of the Luxembourg subsidiary, acknowledging that there may be instances where the interests of the group conflict. Potential claims against directors can be brought in Luxembourg by the state prosecutor (in respect of criminal matters), by liquidators/receivers/administrators and by the company itself. There is also a possibility for shareholders to make a claim against directors on behalf of the company.

In addition to Luxembourg company law and associated jurisprudence

In addition to Luxembourg company law and associated jurisprudence, the Ten Principles of Corporate Governance issued by the Luxembourg Stock Exchange (last updated in December 2017) also have persuasive value in determining appropriate courses of action for directors and contain detailed criteria, including those related to independence.

CSSF Circular 12/552 places overall responsibility for the entire credit institution on the board of directors. The board is responsible for ensuring execution of activities and preserving business continuity. It must put in place a sound central administration and internal governance arrangements. Additional specific responsibilities of the board of directors include setting out, in writing:

- the business strategy of the institution, taking into account the bank's long-term financial interests, solvency and liquidity situation;
- the risk strategy;
- the regulatory and internal own funds and liquidity strategy;
- the guiding principles of a clear and consistent organisational and operational structure regarding the creation and maintenance of legal entities, information systems, security, communication and whistleblowing;
- the guiding principles relating to the internal control functions, remuneration, and escalation and settlement of any improper behaviours within the bank;
- the human and material resources required to implement the bank's strategies and guiding principles;
- the strategies for business continuity management and crisis management;
- the guiding principles for the appointment and succession of key senior individuals within the credit institution; and
- the arrangements to delegate and oversee management's implementation of the bank's strategies.

The role of the board of directors and corporate governance in general is a priority for the CSSF and the European Central Bank. Lack of appropriate governance arrangements is a frequent finding by the CSSF in relation to sanctions it has issued in recent years.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The bank's board of directors is the governing body for guidance, supervision and control. In this role, it has in particular the following duties (see FINMA Circular 2017/1 – "Corporate governance – banks"):

- Business strategy and risk policy: The board of directors sets out the business strategy and defines guiding principles for the bank's corporate culture. It is also responsible for issuing internal regulations, establishing and monitoring an effective risk management function and managing overall risks.
- Organisation: The board of directors is responsible for establishing an appropriate business organisation and issues the rules and regulations required to achieve this.
- Finances: The board of directors bears ultimate responsibility for the financial situation and development of the bank. This means that the board must approve/sign off the capital and liquidity plans, the annual report, the annual budget, the interim financial

statements and the financial objectives for the year.

- Personnel and other resources: The board of directors is responsible for ensuring that the bank has appropriate levels of personnel and other resources (eg, infrastructure and IT), and

  oversees the personnel and remuneration policies. If required, the board appoints and removes the members of its committees, the members of the executive management, the chair of the executive board and the chief risk officer.
- Monitoring and control: The board of directors must oversee the work of the executive management. It is thus responsible for ensuring that there is both an appropriate risk and control environment within the bank and an effective internal control system. Moreover, it appoints and monitors the internal audit function, mandates the regulatory audit firm and assesses its reports.
- Major structural changes and investments: The board of directors is responsible for decisions on major changes to the bank and group structure, major changes in significant subsidiaries and other strategically important projects.

The bank's executive management is responsible for operational business activities which reflect the business strategy and the targets and resolutions of the board of directors. This means it has in particular the following duties (see FINMA Circular 2017/1):

- managing day-to-day business, operational revenue and risk management, including managing the balance-sheet structure and liquidity and representing the bank *vis-à-vis* third parties in operational matters;
- submitting applications regarding transactions for which the bank's board of directors is responsible or for which its approval is required, and issuing rules for regulating business operations; and
- developing and maintaining effective internal processes, an appropriate management information system, an internal control system and the necessary technological infrastructure.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The legal duties of bank directors and senior executives are regulated under the Regulation on Corporate Governance. Directors and senior executives must perform their duties in a fair, transparent, accountable and responsible manner. The regulation imposes the following obligations on directors and senior executives:

- to ensure that the bank's business is carried out within the framework of its mission, vision, goals and policies;
- to act in accordance with the financial and operational plans approved by the board of directors;
- to comply with the Banking Law, regulations issued thereunder and other legislation, articles of association and in-bank regulations;
- not to accept gifts, directly or indirectly, or provide an unfair advantage in relation to the bank's business;
- to ensure transparency in corporate governance;
- to ensure that remuneration policies are in line with the ethical values, strategic goals and internal balances of the bank; and

- to observe customer rights in the marketing of bank products and services, and during the service relationship.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK
1 Crown Office Row
Answer ... The duties of directors are set out in Sections 171 to 177 of the Companies Act 2006. They include the duty to:

- act within their powers;
- promote the success of the company;
- exercise independent judgement, reasonable care, skill and diligence;
- avoid conflicts of interest;
- not accept benefits from third parties; and
- declare any interest in a proposed transaction or arrangement with the company.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters
Answer ... Generally, bank directors and management are obliged to discharge duties owed to their institutions, the shareholders and creditors of their institutions while complying with applicable laws and regulations. Directors and executives owe duties of loyalty and care, and must administer bank affairs with candour, honesty and integrity. Directors and executives are also prohibited from advancing the personal interests or business interests of themselves or others at the expense of the bank.

Directors are responsible for:

- selecting, monitoring and evaluating competent management;
- establishing business strategies and policies;
- monitoring and assessing the progress of business operations;
- establishing and monitoring adherence to policies and procedures required by statute, regulation and principles of safety and soundness; and
- making business decisions based on fully informed and meaningful deliberation.

Executives are responsible for running the day-to-day operations of the institution in compliance with applicable laws, rules, regulations and the principles of safety and soundness. This responsibility includes implementing appropriate policies and business objectives.

For more information about this answer please contact: Jerome Roche from Linklaters

8.4 How is executive compensation in the banking sector regulated in your jurisdiction?

Canada
Gowling WLG
Answer ... The Bank Act provides that the directors of a bank may fix the remuneration of the directors, officers and employees of a bank or bank holding company.

Executive compensation is subject to disclosure rules under Canadian securities laws if the bank is a public issuer.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

The board of directors must adopt a remuneration policy which applies to the board of directors, the management and other persons whose activities have a significant impact on the bank's risk profile. The remuneration policy must be reviewed at regular intervals and must contain appropriate principles for the remuneration, taking into account the size of the bank, the complexity, conflict of interest issues and so on. In addition, the Financial Business Act and the relevant executive order on remuneration in banks contain fixed restrictions on the variable part of the overall remuneration package, which in general must not exceed a specific percentage of the overall pay package for board members and members of management (50%) or persons whose activities significantly affect the bank's risk profile (100%).

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... In accordance with Section 25a(1), sentence 3, number 6 of the Banking Act, the remuneration systems for managers and staff should be appropriate and transparent, and geared towards the sustainable development of the institution. In accordance with Section 25a(5) of the Banking Act, the variable and fixed remuneration of employees and managing directors must be appropriately proportioned and balanced. Furthermore, the variable remuneration must not exceed 100% of the fixed remuneration, although an exception in Section 25a(5), sentence 5 of the Banking Act permits the ratio to be increased to a maximum of 200%.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... In Ireland, the remuneration practices of credit institutions are regulated by the CBI. Regulation is based on CRD IV which contains rules on the remuneration policies of credit institutions and the EBA's guidelines on sound remuneration policies in Articles 74(3) and 75(2) of CRD IV. The objective of these rules is to ensure that credit institutions develop risk-based remuneration policies and practices that are aligned with the long-term interests of the institution and avoid short-term incentives that can lead to excessive risk-taking.

The Irish Department of Finance separately, among other things, carries out reviews of the remuneration policies in place for Irish banks and proposes changes to the remuneration policies in place. The final decision lies with the CBI to accept and implement these changes. Currently, there is a total compensation limit of €500,000 that applies to senior executive positions in Irish banks.

A bank's remuneration policy must promote sound and effective risk

A bank's remuneration policy must promote sound and effective risk management and must not encourage risk taking that exceeds the bank's level of tolerated risk. The policy must apply to all staff whose professional activities have a material impact on the risk profile of the bank, including senior management, risk takers, staff engaged in

control functions and any employees whose total remuneration takes them into the same pay bracket as senior management and risk takers.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Executive compensation is a key lever used to promote sound and effective risk management within the Luxembourg and EU regulatory framework. CSSF Circular 17/658 adopts the European Banking Authority Guidelines on sound remuneration policies under 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 (CRD IV) and disclosures under 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, as amended. Additionally, the Banking Act has transposed the relevant restrictions relating to compensation contained in CRD IV. Credit institutions are obliged to develop remuneration policies addressing both variable and non-variable compensation. Certain remuneration and governance data must also be made available on the institution's website. In respect of firms which are significant (in terms of size, internal organisation and the nature, scope and complexity of their activities), there is a requirement to form both a nomination and remuneration committee, which must include non-executive directors.

The credit institution's remuneration policy must identify staff who have the ability to materially influence the risk position of the bank. As a rule, these include all members of the board of directors, senior management and other key senior staff. The policy must have a structure in place to govern the performance assessment of employees and provide a clear link to the bank's risk strategy. Remuneration policies must clearly distinguish between fixed and variable compensation. Variable compensation is capped at twice fixed compensation, with an exception process and regulatory notification procedure for any amounts in excess of such cap.

Additionally, the remuneration payout process requires multi-year deferrals over certain thresholds. Risk-based adjustments related to compensation already granted are also foreseen: institutions must be able to apply *malus* or clawback arrangements of up to 100% of the total variable remuneration and any adjustments must be performance and risk related. Remuneration policies must use performance and risk criteria and specifically consider:

- evidence of misconduct or serious error;
- whether the business subsequently suffers a significant downturn it its financial performance;
- whether the business in which the staff member works suffers a significant failure of risk management;
- significant increases in the institution's economic or regulatory capital base; and

- any regulatory sanction where the conduct of the staff member was a contributing factor.

As at the end of 2017 (most recent data), there were 20 high earners in Luxembourg (ie, staff who were awarded €1 million or more in annual remuneration).

Practically speaking, detailed guidance is required when establishing a Luxembourg bank's remuneration policy to ensure its compliance with EU-level requirements and local employment law.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... As one of the regulator's responses to the financial crisis of 2008/09, FINMA Circular 2010/1 – "Minimum standards for compensation schemes of financial institutions" entered into force on 1 January 2010 and was amended as per 1 January 2017. This circular aims to increase the transparency and risk orientation of compensation schemes in the financial sector and contains 10 remuneration principles.

These principles impose no absolute or relative cap on compensation. However, FINMA requires that variable remuneration (ie, any part of the compensation that is at the discretion of the employer or contingent on performance criteria) depends on long-term sustainable business performance, considering assumed risks and costs of capital. Consequently, a significant portion of the remuneration must be payable under deferral arrangements. Moreover, the bank's compensation policy must be disclosed to FINMA on an annual basis.

At present, the compensation principles defined in FINMA Circular 2010/1 are mandatory only for banks with capital or solvency requirements in excess of CHF 10 billion (currently only UBS AG and Credit Suisse AG). However, other banks are recommended to take into account the compensation principles as best practice guidelines for their internal remuneration policies. In justified cases, FINMA may require a bank which is not obliged to fulfil the compensation principles to implement some or all of these standards. This may be appropriate in view of the risk profile of the bank, its business activities or its business relationships, or if its remuneration scheme entails excessive risks.

For listed banks, as for other listed companies in Switzerland, the provisions of the Ordinance against Excessive Compensation in Stock Exchange Listed Companies of 1 January 2014 apply. In particular, this ordinance provides that the general assembly must vote on an annual basis on the remuneration for the members of the board of directors, board of advisers and executive board. In addition, certain payments are prohibited, including severance packages, bonuses for internal restructuring and advance payments.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... On 31 March 2016, the BRSA published the Guide on Good Remuneration Practices in Banks to provide a better salary system for bank employees, including executives and qualified staff. The guide sets out principles and minimum standards to follow in determining all kinds of material benefits for bank employees and managers.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Banks are subject to both the PRA and FCA Remuneration Codes, which together implement the remuneration requirements of the Capital Requirements Directive (CRD) IV. The PRA and FCA codes must be globally applied at group, parent undertaking and subsidiary undertaking levels. The codes apply to all employees, although there are particular provisions applicable to code staff, which include senior managers and other material risk takers. These are classified according to qualitative and/or quantitative eligibility criteria, and will typically include heads of business units and other individuals whose activities could materially affect the bank's risk profile or expose the bank to material harm. Code staff may include individuals whose total remuneration puts them in the same bracket as senior managers and/or exceeds £500,000 per annum, although potential exemptions are available for staff who meet only the quantitative criteria.

Under the codes, various principles are applicable to an employee's 'remuneration' (which includes all forms of salary and benefit payments, including in-kind benefits). They the following principles:

- There must be an appropriate ratio of fixed to variable components of remuneration.
- At least 50% of variable remuneration should be equity, equity-linked or equivalent instruments.
- At least 40% of variable remuneration must be deferred and vest over a period of three to seven years in line with the business and associated risk, and the individual's activities (with senior managers being subject to the highest standards).
- At least 60% of variable remuneration must be deferred when variable remuneration is particularly high (eg, total remuneration of more than £500,000).
- Banks should adjust non-vested deferred amounts to reflect actual outcomes.
- Guaranteed bonuses should be exceptional and limited to new staff.
- Contract termination payments should not reward failure.
- Banks should have policies and procedures in place to ensure that code staff do not engage in personal investment strategies that undermine the code principles, such as insurance or hedging against the risk of performance adjustment.

As a result of CRD IV, the codes include bonus cap rules which cap variable pay at 100% of fixed remuneration (or 200% with shareholder approval).

The FCA and PRA have supplemented the codes with policy statements and guidance for different types of banks and other firms, which enables certain quantitative requirements to be disapplied for non-code staff and/or staff whose remuneration falls below *de minimis* levels.

For smaller institutions (banks with total assets below £15 billion), the PRA and FCA can also disapply certain rules on proportionality grounds at group-wide level.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... While the Dodd-Frank Act permitted the US federal banking agencies to adopt regulations governing executive compensation, including permitting an institution to 'claw back' previous compensation, those agencies have not yet done so. There are no general caps applicable to bank executive compensation, though US banks and BHCs generally must ensure that compensation arrangements are compatible with their obligation to operate their institutions in a 'safe and sound' manner.

The US federal banking agencies have issued guidance on bank executive compensation that generally require US banks and BHCs to abide by certain principles in connection with establish compensation policies:

- Incentive compensation should provide employees with incentives that appropriately balance risk and financial results, and may not encourage employees to expose their institutions to imprudent risk;
- Incentive compensation should be compatible with effective controls and risk management; and
- Incentive compensation should be supported by strong corporate governance, including board oversight.

For more information about this answer please contact: Jerome Roche from Linklaters

9. Change of control and transfers of banking business

9.1 How are the assets and liabilities of banks typically transferred in your jurisdiction?

Canada

Gowling WLG

Answer ... The Bank Act provides a process for the transfer by a Canadian bank of all or substantially all of its assets to another Canadian financial institution or a foreign bank licensed to operate a branch in Canada, provided that the purchasing financial institution or authorised foreign bank assumes all or substantially all of the liabilities of the Canadian bank.

The purchaser and seller must enter into a written agreement, under which the consideration for the transfer of assets may be cash or fully paid securities of the purchaser, or any other consideration that is provided for in the agreement.

The agreement must first be submitted to the Office of the Superintendent of Financial Institutions (OSFI) for approval. If approved, the selling bank must next submit the agreement to its shareholders to approve by special resolution (ie, not less than two-

thirds of the shareholders of the bank entitled to vote). If approved by special resolution, the selling bank then has three months to submit the agreement to the minister of finance. The agreement is of no force and effect unless and until it is approved by the minister of finance.

The Bank Act sets out no rules on customer consent to transfers of a bank's assets and liabilities. These issues are, generally speaking, contractual matters between a bank and its customers.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The reason for the transfer determines how assets and liabilities are transferred. If the bank is distressed, the bank will be assumed by the Financial Stability Company to pursue a controlled dissolution in lieu of outright bankruptcy (see question 14). The Danish Financial Supervisory Authority (FSA) will ordinarily issue a notice to the distressed bank on a Friday afternoon with a view to having the bank's assets transferred by Sunday evening, thus avoiding a 'bank run'. The transfer to another bank of all or part of the distressed bank's activities is the primary objective; only if no market-based solution can be found will the dissolution process be initiated.

In the ordinary course of events, outside a distressed scenario, a transfer of banking activities can take place by way of merger or acquisition. Whether an asset or a share deal is chosen depends on the specific circumstances of the acquisition. The transfer will be governed by the Financial Business Act and will require close coordination with the regulator to obtain approval (see Section 204 of the act). Approval must be notified within a two-month timeframe and can be rejected, for example, on public order grounds (see Section 204(3) of the act).

A successful outcome will depend on the contractual framework governing the bank's activities (eg, whether there are any clauses on the hybrid tier 2 capital that would require prior note holder consent). In practice, convening a meeting of the noteholders to obtain consent will often be impractical or futile, and mergers have taken place without prior consent of the note holders despite the theoretical risk of a technical cross-default.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... In Germany, shareholder control procedures apply to banks and financial institutions. They allow the Federal Financial Supervisory Authority (BaFin), working with the European Central Bank (ECB), to assess in advance the suitability of potential investors. The procedure applies to investors which, either individually or together with other persons or companies, wish to acquire a 'significant holding' in a regulated German entity. A 'significant holding' means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights, or a holding which makes it possible to exercise a significant influence over the management of that undertaking. Several investors acting in concert – that is, coordinating

the exercise of their voting rights to influence a target – can also reach the 10% threshold. Persons or entities intending to acquire a significant holding, or to increase their holding to exceed 20%, 30% or 50% of the voting rights or capital, must notify this intention

immediately to BaFin and the Deutsche Bundesbank. The first notification must be accompanied by a business plan, statements of reliability and further extensive information on the acquirer, its management, its investors and its group. The authorities have up to 90 working days to review the filings, which begins to run only once all required documentation has been submitted. In practice, this leaves the authorities with significant discretion as to when the 90-working-day period actually starts. While no formal approval of the acquisition by the authorities is required, authorities may, within the assessment period, prohibit the transaction. Thus, they have *de facto* a veto right.

Investors in all sorts of financial institutions should be aware that the shareholder control procedure is in many cases time consuming and onerous in terms of paperwork – in particular, if the target is a bank and the investor does not yet own a financial institution in the European Union. In the case of banks, authorities also sometimes use their veto power to require from investors certain guarantees that are not explicitly provided for by law, such as a certain capitalisation of the target bank. While the shareholder control procedure should therefore be taken very seriously and be prepared carefully, it should also be stressed that in the recent past it has been successfully completed by a number of investors other than traditional European banks. This shows that the authorities recognise that the German banking system can strongly benefit from outside investors and their financial strength. Although it is generally assumed that a veto by BaFin/the ECB would not make the acquisition of an interest in a financial institution invalid under civil law, such acquisition before clearance can qualify as an administrative offence which may be heavily sanctioned by BaFin or the ECB. Therefore, the lapse of the assessment period or a certificate of non-objection by BaFin will generally be agreed as a condition precedent to closing of a transaction.

The ECB can prohibit the acquisition of a significant holding in a German credit institution only if any of the following conditions are met:

- The prospective acquirer is considered unsuitable to be a major shareholder in a financial institution;
- The institution would no longer be able to comply with its regulatory obligations;
- The institution would become a subsidiary of a foreign institution whose regulator does not cooperate with BaFin or the ECB;
- The future management would be unreliable;
- There are reasonable grounds to suspect that money laundering or terrorism financing is being conducted through the institution, or the acquisition would increase the risk of this; or
- The prospective investor cannot provide financial support to the institution when needed.

During their review of a notification, BaFin and the ECB will investigate the ultimate purchaser(s) as well as any intermediate holding companies and their management. Further, BaFin and the ECB will require evidence of the source of funds used for the acquisition, to combat money laundering. Compliance with these regulatory

requirements generally involves long-term planning and careful preparation.

An asset deal allows the purchasers to select the assets (and liabilities) which they want to buy. However, the purchaser must ensure that the purchasing entity possesses a BaFin issued licence, which is required to conduct the purchased business at the time of the closing. If entire agreements are to be transferred, including outstanding obligations of the seller, the contracting party must approve of the transfer.

The advantage of a share deal in comparison to an asset deal is that the licence of the target entity remains unaffected – that is, an entity with an existing licence will be acquired. The purchaser must, however, undergo the shareholder control procedure(s), as described above. All agreements of the target generally also remain unaffected. However, agreements can contain change-of-control clauses, which can lead to their termination or to termination rights. This is particularly relevant for financing agreements and must be thoroughly analysed in the legal due diligence.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The assets and liabilities of banks are typically transferred by way of a share sale, the sale of a business unit of the bank, or the sale of all or part of the assets and liabilities of the bank. In recent years most transfers have occurred by way of asset sales rather than share sales.

Sellers and purchasers of banking entities must consult with the CBI where there is a transaction involving the change of ownership of shares or voting rights of the bank. An entity proposing to acquire a bank must provide an Acquiring Transaction Notification Form for Credit Institutions (ATNF) to the CBI with prior notification of a proposed acquisition or disposal. This gives the CBI an opportunity to review the proposed transaction based on prudential grounds.

An ATNF notification to the CBI must be made where a direct or indirect holding in a bank will increase or decrease past 10% of the capital or voting rights of the bank.

A notification will also be necessary:

- Ii respect of a direct or indirect holding of the capital or voting rights of less than 10% which allows the proposed acquirer to exercise a 'significant influence' over the management of the bank;
- where a holding increases or decreases past subsequent notifiable thresholds of 20%, 33% or 50%; or
- in the case of a person that is a company or other body corporate, where the bank would either become or cease to be that person's subsidiary.

The CBI must acknowledge receipt of the ATNF within two working days and notify the ECB within a further five working days. The ECB will be involved where the bank is subject to the SSM, irrespective of whether the bank is 'significant' or 'less significant'

whether the bank is 'significant' or 'less significant'.

When acknowledging receipt, the CBI must inform the proposed acquirer of when the assessment period will end (the assessment must be completed within 60 working days). The assessment period may be

extended by up to 20 working days (for EEA-based acquirers) and 30 working days (for non-EEA-based acquirers) if additional information is requested by the CBI.

The application is then considered by the ECB, the CBI and any other relevant regulatory authority. The CBI will propose a draft decision to the ECB as to whether to approve the proposed acquisition. The final decision rests with the ECB. The proposed acquirer will be notified by the ECB, rather than the CBI, of the outcome.

Where merger control requirements are applicable, it may be necessary to seek the approval of the Competition and Consumer Protection Commission. Approval of the Irish Takeover Panel may also be required.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... There are no particular provisions with respect to the transfer of assets and liabilities of banks in the Law of 5 April 1993 on the financial sector, as amended ('Banking Act'). A transfer of assets and liabilities will typically be subject to an asset purchase agreement. Where a change of control of a target entity is involved, the conditions set out under question 9.2 must be complied with. Certain transfers may be subject to specific provisions of the Luxembourg law of 10 August 1915 on commercial companies, as amended.

From a regulatory perspective, the entities involved in the transfer must assess whether the specific assets and liabilities in question constitute a regulated activity requiring an authorisation and ensure that the acquiring entity has the appropriate authorisation. Both the seller and the acquirer must update their respective business plans in order to reflect the change of business resulting from the disposal and acquisition of an activity, respectively (the provision of a business plan is part of the licensing process for Luxembourg credit institutions, and any change to the activities of the credit institution will be a change to the conditions of the initial authorisation which must be notified to the *Commission de Surveillance du Secteur Financier* (CSSF)).

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Traditionally, most transactions taking place in the Swiss banking industry are structured as share deals. However, in recent years an increasing number of transactions have been structured as asset deals.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... Article 19 of the Banking Law requires permission from the

Banking Regulation and Supervision Agency (BRSA) for the transfer of assets and liabilities of banks. It further states that if the relevant bodies of banks do not make a decision and commence procedures in

accordance with Articles 7, 11, 15 and 19 of the Regulation on the Merger, Transfer, Division and Share Exchange of Banks within three months of receiving permission, the permission will be null and void.

Following the transfer procedure, all assets and liabilities will be transferred to the transferee bank, the legal person statuts of the transferor bank will be annulled and the transferor bank will be deleted from the Commercial Register.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Part VII of the Financial Services and Markets Act (FSMA) 2000 (as amended) sets out a court-approved transfer mechanism. For example, as part of its Brexit planning, in January 2019 Barclays Bank received approval from the High Court to transfer certain business sections to Barclays Bank Ireland under Part VII of the FSMA 2000 (as amended).

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Most acquisition transactions are structured as share transactions rather than asset deals. However, banks and bank holding companies (BHCs) frequently sell individual assets to other financial institutions in the form of asset deals.

For more information about this answer please contact: Jerome Roche from Linklaters

9.2 What requirements must be met in the event of a change of control?

Canada

Gowling WLG

Answer ... The minister of finance must approve any transaction that would result in a change of control of a bank. The definition of 'control' in the Bank Act includes any direct or indirect influence that, if exercised, would result in the person having 'control in fact' over the bank. The application to the minister of finance for such a transaction must be filed with OSFI and must contain various information prescribed by OSFI (see www.osfi-bsif.gc.ca/Eng/fi-if/app/aag-gad/ti-io/tinda-iona/Pages/rpto23.aspx).

OSFI lists the following requirements that must be met for it to recommend that the minister of finance grant an approval:

- The applicant has sufficient resources to provide continuing financial support to the bank;
- The applicant's business record and experience are appropriate;
- The applicant is of good character and integrity and has a good reputation;
- Any concerns raised by the application relative to Canada's national security, international relations and international legal

obligations have been addressed;
- The proposed changes to the bank's business plan are sound and feasible;

- The prospective new managers and directors of the bank have the necessary experience and competence to fulfil their roles;
- Any integration of the applicant's businesses and operations with those of the bank is appropriate for the bank;
- Any supervisory concerns presented by the proposed ownership structure of the bank are addressed;
- Any legislative compliance or public policy issues raised by the application are addressed; and
- The applicant's acquisition or increase of a significant interest in, and/or acquisition of control of, the bank, will be in the best interests of the financial system in Canada.

In addition, a Canadian bank cannot transfer more than 10% of the total value of its assets to any single person without the consent of OSFI - with some limited exceptions.

The Bank Act also prohibits a person from controlling either a bank or a bank holding company that has more than C$12 billion of equity.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... A change of control must be notified to the FSA and the acquirer must be deemed 'fit and proper' by the FSA. This requirement is triggered by an acquisition of a 'qualifying interest' (see question 2.3). An additional 'fit and proper' approval requirement is triggered if the shareholding is subsequently increased to 20%, 33% or 50%, of if the bank otherwise becomes a subsidiary of the acquirer.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... German law requires any person that intends to acquire a qualifying holding in an institution to notify BaFin and Deutsche Bundesbank, without undue delay, of its intention. A 'qualifying holding' is a direct or indirect holding in an undertaking that represents 10% or more of the capital or of the voting rights, or which makes it possible to exercise significant influence over the management of that undertaking.

If the notification relates to a participation in a credit institution within the meaning of the Capital Requirements Regulation, BaFin does not decide on the intended acquisition itself, but instead prepares a draft decision and submits this draft to the ECB, which is responsible for taking the final decision. In order to implement standardised procedures for cooperation with the ECB and other national regulators involved in cross-border transactions, a central unit within BaFin has been established.

Besides the regulatory ownership control procedure, it may be

Besides the regulatory ownership control procedure, it may be necessary under the Foreign Trade Regulation to file an application for approval with the Federal Ministry for Economic Affairs and Energy (BMWi) if an investor from a non-EU state intends to acquire, directly or indirectly, 25% of the voting rights in an institution that engages in

critical infrastructure such as payment systems, cash supply, insurance business or settlement and clearing of securities. In December 2018 the BMWi significantly tightened the notification requirements for the acquisition of a company that operates 'critical infrastructure' by purchasers from third-party countries. A reporting obligation already applies to the acquisition of 10% of the voting rights, instead of the above-mentioned 25%. In other cases, it is possible to seek the BMWi's approval on a voluntary basis. This may make sense since the BMWi can object to transactions (and order the reversal of transactions) or impose certain restrictions if there is a threat to public policy or public security.

As with all EU banks, German banks are obliged to secure deposits by way of membership in a statutory deposit guarantee scheme (see question 10.2). The statutory deposit protection scheme guarantees the deposits of (most) customers up to an amount of €100,000. From the purchaser's point of view, it is advisable that the purchase agreement provides approval of the Federal Association of German Banks to the continued membership of the target in the statutory deposit guarantee scheme as a condition precedent to the closing of the transaction.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... In assessing any acquisition, the Joint Guidelines on the Prudential Assessment of Acquisitions and Increases of Qualifying Holdings in the Financial Sector, published by the European Supervisory Authorities, must be considered. The CBI will also consider:

- the ownership of the proposed acquirer;
- the rationale for the proposed acquisition;
- how the acquisition will be financed; and
- the impact of the proposed acquisition on the day-to-day operations of the target bank.

The proposed buyer or acquirer must submit an ATNF as detailed in question 9.1. Supporting documentation must be included with the ATNF, including:

- organisational charts detailing the current ownership, the proposed post acquisition structure, the capital and voting rights (in percentage terms), and highlighting where significant influence exists;
- detailed corporate information about each acquirer and its directors or controllers;
- where the proposed acquisition will involve a change in control, a business plan, including:
    - a strategic development plan setting out the reasons for the proposed acquisition, the medium-term financial goals, any changes that the proposed acquirer plans to introduce within the target bank and details of how the target will be

integrated within the group structure of the acquirer;
    - estimated financial statements for the target bank, on both a solo basis and a consolidated basis, for a three-year period; and

    - details of the corporate governance and general organisational structure of the target bank, with a particular focus on its board and committees, its administrative and accounting procedure and internal controls, its information technology systems, and its policies on subcontracting and outsourcing; and
- where the proposed acquisition will not involve a change in control, a strategy document, whose content will vary depending on whether the holding to be acquired is less than 20%, or between 20% and 50%.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... According to the Banking Act, any natural or legal person - whether acting alone or in concert with other persons that have taken a decision either to acquire, directly or indirectly, a qualifying holding (ie, 10% or more of the voting rights or of the capital) in a Luxembourg bank - shall first notify in writing the CSSF of their intention to acquire such qualifying holding.

The CSSF will conduct a review of the acquisition documentation in order to assess:

- the professional standing of the acquirers;
- the professional standing and the professional qualifications of the persons who will direct the daily business of the bank;
- the financial soundness of the acquirers;
- the capacity of the bank to keep complying with the prudential requirements under the Banking Act, pursuant to its change of control; and
- the absence of suspicion of money laundering of terrorist financing by the acquirers.

The CSSF has up to 60 working days (which can be extended up to 90 working days) as from the notification in order to assess these elements and to declare whether it is opposed to the acquisition.

The notification to the CSSF must include written submissions describing the intended acquisition and requesting its prior approval, as well as several documents such as commercial register excerpts, structure charts, corporate documentation relating to the acquirer(s), consolidated accounts, the share purchase agreement and a business plan.

The CSSF carries out its assessment in accordance with the principle of proportionality. It also reviews the proposed acquisition in light of the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector published by the Joint Committee of the European Supervisory Authorities (JC/GL/2016/01, 20 December 2016).

In case of changes to the composition of the target's management body and its senior staff, the CSSF's approval is also required. The

body and its senior staff, the CSSF's approval is also required. The candidate(s) must complete an application form and provide the CSSF with several supporting documents (eg, identity documents, a

curriculum vitae, a recent criminal record extract, a declaration of honour, a copy of the highest diploma and a copy of the corporate documentation appointing the candidate).

The seller of a qualifying holding in a credit institution must also notify the CSSF and credit institutions must inform the CSSF without delay of any acquisitions or disposals of holdings in their capital that exceed or fall below certain thresholds.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... According to the Banking Act, individuals or legal entities must notify the Swiss Financial Market Supervisory Authority (FINMA) prior to directly or indirectly acquiring or selling qualified equity interests in a bank. A person or entity holds a qualified equity interest if it holds at least 10% of the capital or voting rights of a bank or otherwise influences the bank in a significant manner. Such notification requirement also applies whenever qualified equity interests are increased or decreased and thus reach, exceed or fall below the threshold of 20%, 33% or 50% of the capital or voting rights, respectively. Moreover, the bank itself must notify FINMA of persons that fall under this requirement as soon as it has knowledge and at least once a year.

Since FINMA has the authority to refuse a person as a shareholder of a bank, it is highly recommended to obtain approval before the closing of a transaction.

Generally, there are no restrictions on the types of entities or individuals that may hold a qualified equity interest in a bank. However, individuals or legal entities that hold, directly or indirectly, a qualified equity interest in a bank must ensure that their influence will not have a negative impact on the prudent and reliable business conduct of the bank. Thus, the bank's shareholders and their activities may be of relevance for the granting and maintenance of a banking licence. The following may constitute a negative influence:

- a lack of transparency or integrity;
- unclear organisation;
- financial difficulties; or
- a link to a criminal or sanctioned organisation.

Should FINMA conclude that the conditions for the banking licence are no longer met due to a (new) shareholder with a potentially negative impact, it may suspend the voting rights in relation to that qualified equity interest or, as a last resort, withdraw the licence.

If the bank becomes subject to foreign control (ie, if foreigners hold, directly or indirectly, more than one-half of the voting rights or have otherwise a controlling influence on the bank), a new additional licence must be obtained (Article 3ter of the Banking Act). The Banking Act defines a 'foreigner' as:

- an individual who is not a Swiss citizen and has no permanent residence permit for Switzerland; or
- a legal entity or partnership that has its registered office outside of Switzerland or, if it has its registered office in Switzerland, is

  controlled by individuals as defined in the first point above.

It is the duty of the Swiss bank to obtain the requisite additional licence before completing a transaction. Licensing requirements include the following:

- The corporate name of the (newly) foreign-controlled Swiss bank must not indicate or suggest that the bank is controlled by Swiss individuals or entities; and
- The country in which the owners of a qualified equity interest are domiciled must grant reciprocity (ie, it must be possible for Swiss residents and Swiss entities to operate a bank in the respective country).

Moreover, FINMA may request that the bank be subject to adequate consolidated supervision by a foreign supervisory authority if it forms part of a financial group or conglomerate.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to Article 18 of the Banking Law, the following types of share acquisitions require the BRSA's approval:

- the direct or indirect acquisition of shares representing 10% or more of the capital of a bank;
- the direct or indirect acquisition of shares representing or exceeding 10%, 20%, 30% or 50% of the capital of a bank; and
- a reduction on shareholding below 10%, 20%, 30% or 50% of the capital of a bank.

Article 18 states that, irrespective of the percentage of the share acquisition or transfer, approval from the BRSA is required for the issue or transfer of privileged shares, which confer the right to appoint a member to the board of directors or the audit committee. As a condition to obtaining the BRSA's permission, the transferee must pay a transfer fee equal to 1% of the nominal value of the shares to be transferred in all transfers of bank shares to the Savings Deposit Insurance Fund (SDIF).

Shareholders with qualified shares must meet the criteria applicable to founders. Shareholders with qualified shares that no longer meet those criteria will not benefit from shareholder rights, other than dividends.

Where such shares are transferred without the permission of the BRSA, the shareholder rights stemming from these shares, other than dividends, become exercisable by the SDIF.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Part 12 of the FSMA 2000 (as amended) implements the

requirements of the EU Acquisitions Directive (2007/44/EC) into English law. A person intending to acquire or increase 'control' over the shares or voting power of a UK-authorised bank or its parent undertaking above 10%, 20%, 30% or 50% must notify and obtain consent from the

Prudential Regulation Authority (PRA) prior to acquiring or increasing control. Failure to do so is a criminal offence. The PRA must consult the Financial Conduct Authority before deciding whether to approve a proposed change of control.

Change of control forms are detailed and require disclosure of information about the ultimate beneficial owner of the proposed acquisition.

A person wishing to decrease control of the shares or voting power in a UK-authorised bank or its parent undertaking below 50%, 30%, 20% or 10% must notify the regulator of the intention to do so. Failure to notify is an offence. There is no requirement for regulatory consent to the reduction of control.

The PRA has 60 business days from receipt of the application to approve the acquisition or increase of control (with or without conditions), or to object. This period may be interrupted once by up to 20 business days in cases where the PRA requires further information.

The Acquisitions Directive was supplemented with Level 3 Guidelines published by the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators (together, the Level 3 Committees). The Level 3 Guidelines updated on 1 October 2017 contain guidance on general concepts such as the meaning of the term 'acting in concert' and the process for determining acquisitions of indirect holdings.

In considering the approval of an acquisition, the regulator will have regard to:

- the ownership of the proposed acquirer;
- the rationale for the proposed acquisition;
- how the acquisition will be financed; and
- the impact of the proposed acquisition on the day-to-day operation of the target.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Regulatory approval with respect to a change of control or merger may be required under the following statutes:

- The Bank Holding Company Act (BHCA) requires any company that acquires 'control' (as defined under the BHCA) of a US bank or BHC to seek approval to become a BHC;
- An existing BHC must seek approval under the BHCA to acquire 5% or more of the voting shares of an additional US bank;
- For transactions not required to be approved under the BHCA, certain acquisitions of the shares of a US bank – including many minority investments – must be approved by the bank's primary federal regulator under the Change in Bank Control Act;
- Mergers of two banks must generally be approved by the relevant

federal regulator; and
- A chartering authority's regulations may require the approval of the chartering authority in addition to any of the approvals listed above.

For more information about this answer please contact: Jerome Roche from Linklaters

10. Consumer protection

10.1 What requirements must banks comply with to protect consumers in your jurisdiction?

Canada
Gowling WLG

Answer ... Banks in Canada must comply with both:

- the consumer protection provisions of applicable federal legislation including the Bank Act and the Trust and Loan Companies Act, as well as mandates from the Financial Consumer Agency of Canada (FCAC); and
- requirements of provincial and territorial consumer protection legislation and their regulations.

Both the Bank Act and Trust and Loan Companies Act and their respective regulations provide direction to federally regulated financial institutions under the auspices of FCAC. FCAC is an independent agency of the government of Canada created under the Financial Consumer Agency of Canada Act, SC 2001, c 9. FCAC is responsible for ensuring compliance with the consumer protection provisions of federal statutes that address matters including the proper disclosure of cost of borrowing charges and complaint procedures. In October 2018 FCAC released a new Supervision Framework. The Supervision Framework provides FCAC stakeholders with a description of a general approach to typical supervision matters.

In addition, all of the provinces and territories in Canada have enacted consumer protection legislation that regulate businesses dealing with consumer credit and debt, as follows:

- British Columbia: the Business Practices and Consumer Protection Act, SBC 2004, c 2;
- Alberta: the Consumer Protection Act, RSA 2000 c C-26.3; the Unconscionable Transactions Act, RSA 2000, c U-2;
- Saskatchewan: the Consumer Protection and Business Practices Act, SS 2013, c C-30.2; the Cost of Credit Disclosure Act, RSS 1978, c C-41; the Unconscionable Transactions Relief Act, RSS 1978, c U-1;
- Manitoba: the Business Practices Act, CCSM c B120; the Consumer Protection Act, CCSM C 200; the Unconscionable Transactions Relief Act, CCSM c U20;
- Ontario; the Consumer Protection Act, 2002, SO 2002, c 30, Sch A; the Unconscionable Transactions Relief Act, RSO 1990, c U2;
- Quebec: the Consumer Protection Act, CQLR c P-40.1;
- Newfoundland and Labrador: the Consumer Protection and Business Practices Act, SNL 2009, c C-31.1;
- Nova Scotia: the Consumer Protection Act, RSNS 1989, c 92; the Unconscionable Transactions Relief Act, RSNS 1989, c 481; the Consumer Creditors' Conduct Act, RSNS 1989, c 91;
- New Brunswick: the Cost of Credit Disclosure and Payday Loans Act, SNB 2002, c C-28.3; the Provincial Offences Procedure Act,

SNB 1987, c P-22.1; the Unconscionable Transactions Relief Act, RSNB 2011, c 233;
- Prince Edward Island: the Business Practices Act, RSPEI 1988, c B-7; the Consumer Protection Act, RSPEI 1988, c C-19; the Unconscionable Transactions Relief Act, RSPEI 1988, c U-2;
- Yukon: the Consumers Protection Act, RSY 2002, c 40;
- Northwest Territories: the Consumer Protection Act, RSNWT 1988, c C-17; the Cost of Credit Disclosure Act, SNWT 2010, c 23;
- Nunavut: the Consumer Protection Act, RSNWT (Nu) 1988, c C-17.

Banks governed by the federal Bank Act (and other federally regulated entities) may take the position that they are not required to comply with provincial laws. However, the Supreme Court of Canada has repeatedly undermined this position in several distinct situations (eg, see *Bank of Montreal v Marcotte,* 2014 SCC 55). While it is incorrect to say that federally regulated banks are not subject to provincial laws, the extent to which they need to comply with provincial laws is unclear. Provincial laws regulate private dealings within the province and between residents of the province. Accordingly, banks must comply with provincial laws to the extent required to carry on their business within each province. It would therefore be prudent for banks to comply with the requirements of consumer protection legislation where possible.

Provincial consumer protection legislation sets out both general rules applicable to all interactions with consumers (eg, prohibitions regarding unfair practices) and detailed rules that regulate how specific consumer agreements, including credit agreements, are to be carried out. See question 6.1(b) for additional detail on the applicability of consumer protection legislation to consumer credit.

Although consumer protection legislation is substantially similar across provinces and territories, the specific language of each applicable act should be consulted for the particular requirements in each province.

By: Neil S. Abbott (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... In general, banks must treat all their customers fairly, including consumers (see the general standard of good business practice in Section 43 of the Financial Business Act). This general principle is supplemented by a number of more specific requirements, depending on the specific business area (eg, consumer credit, financial services).

The acceptance of guarantees by banks and the content of such guarantees from non-commercial customers (ie, consumers and private individuals) are specifically regulated in the Financial Business Act.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... Since the Retail Investor Protection Act came into force, collective consumer protection has been part of the supervisory

collective consumer protection has been part of the supervisory objective of the Federal Financial Supervisory Authority (BaFin). Collective consumer protection means that BaFin protects consumers

as a whole. By contrast, the protection of individual consumer interests is the task of ombudsmen, dispute resolution entities and the courts.

In order to manage collective consumer protection efficiently and effectively, BaFin has modified its organisational structure. At the turn of 2016, the new Consumer Protection Department commenced operations, with a total of seven divisions. Although it is part of the Securities Supervision Directorate in Frankfurt am Main, its focus is not on investor protection, but rather on all topics relevant to consumer protection which are within the remit of BaFin. This means that it also deals with the protection of bank customers and insureds. The department is divided between BaFin locations in Frankfurt am Main and Bonn.

BaFin endeavours to ensure that the range of financial products, insurance products and financial services on offer is transparent and comprehensible. The aim is to ensure that consumers are in a position where they can understand the functioning and risks of products and services, and can evaluate their actual costs correctly. The content and form of the information made available by providers – whether it is legally required or voluntary – must be designed in such a way that the information satisfies the needs and knowledge requirements of consumers. Only then can consumers keep pace with the informational advantage that providers enjoy.

BaFin can issue orders on the basis of Section 4(1a) of the Act Establishing the Federal Financial Supervisory Authority in order to prevent or rectify irregularities if it becomes apparent that a general clarification is advisable in the interests of consumer protection. On the basis of the new Section 15 of the Securities Trading Act, BaFin can even restrict or prohibit certain sales practices and the sale of products in serious cases – specifically, if investor protection or the functioning or integrity of the financial markets is jeopardised.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The CBI has a dedicated Consumer Protection Directorate (CPD) which develops, implements and supervises the conduct of business by banks. As part of its role the CPD develops guidance to ensure that consumers' interests are protected and banks are treating their customers in a fair and transparent way. The CPC sets out the requirements that regulated firms must comply with when dealing with consumers in order to ensure a similar level of protection for consumers, regardless of the type of financial services provider.

The CPC provides the umbrella framework within which banks must operate when dealing with consumer customers. A consumer for the purpose of the CPC includes individuals and incorporated bodies with an annual turnover of not more than €3 million.

The CPC sets out requirements regarding the suitability of products,

arrears, content of advertising, errors and complaints resolution and records and compliance requirements The CPC sets out a set of 12 general principles that banks must comply with when dealing with consumers. These principles include a requirement:

- to act honestly, fairly and professionally in the best interests of its customers and the integrity of the market;
- to act with due skill, care and diligence in the best interests of its customers; and
- not to recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The Luxembourg Consumer Code includes a number of requirements that must be complied with by professionals when dealing with consumers. These include requirements with respect to information to be provided to consumers, unfair business practices and specific requirements in relation to contracts entered into with consumers, including mortgage loan agreements and consumer credit agreements.

With respect to consumer credit and mortgage lending, the Luxembourg Consumer Code:

- requires professionals to provide certain information to consumers prior to entering into a contract with them, includes certain conditions with respect to advertising (in particular, specific information that must be mentioned, and the way in which it must be displayed);
- prohibits certain advertising practices (eg, advertisements that specifically focus on the ease and speed with which credit can be obtained, that make consumers believe that the credit will improve their financial situation, or that mention an attractive interest rate without specifying the conditions to which such rate is subject);
- obliges lenders to provide consumers with explanations allowing them to compare different offers and to decide whether the relevant credit is suitable to their needs;
- obliges lenders to assess the solvency of consumers and includes specific provisions on how to perform such assessment;
- sets out the mandatory minimum content of consumer credit agreements;
- obliges lenders to provide information on the interest rate and includes specific rules with respect to variable interest rates;
- sets out requirements with respect to overdraft facilities and overdrafts on current accounts;
- sets out the right for the consumer to withdraw from the credit agreement during a period of 14 calendar days;
- gives the consumer the right to prepay a loan, includes rules for the calculation of the effective global annual interest rate;
- requires mortgage lenders to provide explicit information as to whether advisory services are provided or will be provided;
- includes specific provisions with respect to late payment and the right for lenders to enforce/attach assets; and
- includes specific rules of conduct for mortgage lending, as well as

- includes specific rules of conduct for mortgage lending, as well as knowledge and skill requirements for staff of mortgage lenders.

Any clause or combination of clauses in a consumer credit agreement or a mortgage loan that breaches the Consumer Code is deemed to be void. The Consumer Code also includes administrative and criminal sanctions for lenders and intermediaries.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Swiss regulatory law does not provide for a bank-specific legal framework for consumer protection.

However, credits granted to individuals for purposes other than business or commercial activities, in the range of CHF 500 to 80,000, are subject to the Consumer Credit Act, provided that the consumer is not obliged to reimburse the credit within less than three months. The Consumer Credit Act also applies to leases and credit cards where the consumer has the right to pay the outstanding balance in instalments. In this regard, please also see question 6.1(b).

A consumer credit contract must be concluded in writing and include various mandatory provisions, including a right of revocation and the effective annual interest rate, taking into account all costs. The maximum effective annual interest rate permissible for consumer credits is defined by the Federal Council on an annual basis (Article 14 of the act). This is currently set at 10% for cash loans and 12% for credit cards.

Moreover, the new Financial Services Act of 2018, which entered into force as of 1 January 2020, aims to strengthen investor protection rights – in particular, in relation to retail clients. The act introduced new rules of conduct and extensive disclosure obligations for banks and other financial services providers. The level of client protection differs according to the client's classification (retail, professional or institutional) under the act. The act also contains measures designed to facilitate the enforcement of clients' rights. Particularly worth mentioning are:

- the client's right to be provided with a comprehensive copy of all documents and records of the service provider concerning the client relationship; and
- the ombudsman system, requiring all service providers – not only banks – to be affiliated with an ombudsman recognised by the Federal Department of Finance.

Finally, in relation to national and international banking transactions with consumers under the Swiss Code of Civil Procedure, the Lugano Convention or the Swiss Private International Law Act, depending on the countries involved, specific consumer protection rules may apply to determine the competent jurisdiction.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

Answer ... Given the current structure of the Turkish financial system, the Banking Regulation and Supervision Agency (BRSA), the Capital Markets Board (CMB), the Treasury, the Central Bank and the Savings

Deposit Insurance Fund (SDIF) are considered as responsible and relevant institutions for the protection of financial consumers.

Within the framework of consumer protection, the Financial Consumer Relations Department – a subsidiary of the BRSA – was established for the sole purpose of evaluating consumer information requests and resolving their complaints. Public institutions and organisations, financial institutions, professional associations and non-governmental organisations are all relevant parties in this regard.

There are no specific regulations on the protection of financial consumers in Turkey. However, special provisions on financial products and services are included within the legal regulations on consumer protection. In addition to general issues relating to consumer protection, financial products and services are covered by special provisions in the Consumer Protection Law (6502). For instance, according to Article 4 of the law:

> *an additional fee cannot be claimed from the consumer for the acts that are among the legal obligations of the party drafting the contract and which the consumer rightly expects relative to the good or service presented to the consumer, and for the expenses made in line with the benefits of the party drafting the contract. All types of fees, commissions and expenses that will be claimed from the consumer, other than interest, and the principles and rules related to such for goods or services provided to the consumer by banks, financial institutions offering consumer credits or issuing cards, shall be regulated by the Banking Regulation and Supervision Agency, obtaining the opinion of the Ministry, in line with the spirit of this Law and in a manner that protects the consumer*.

In this context, the Regulation on Procedures and Principles Regarding the Fees to be Received from Financial Consumers (*Official Gazette* of 3 October 2014, No 29138), which was published by the BRSA, introduced important changes regarding banking fees which have since been the subject of intense complaints.

In addition to the Consumer Protection Law, many laws and sub-regulations – especially the Banking Law, the Bank Cards and Credit Cards Law (5484) and the Insurance Law (5684) – contain provisions that protect the rights and interests of financial consumers. This fragmented structure is also reflected in the public institutions that are responsible for protecting financial consumers. The financial markets are variously regulated and supervised by the BRSA, the CMB, the Treasury and the Central Bank. As a result, responsibility and authority for the protection of financial consumers are shared among these institutions and organisations. It is very important for these organisations to engage in strong cooperation and coordination during regulatory and policy development. The Financial Stability Committee plays an important role in this regard.

Customer orientation rating (*Müþteri Odaklýlýk Derecesi*) (COR) is a tool that can be used to evaluate the performance of financial institutions, creating a consumer satisfaction index based on consumer complaints. In this context, the BRSA has developed a COR to compare banks'

In this context, the BRSA has developed a COR to compare banks compliance with banking principles on individual service and product delivery. The COR measures banks' level of transparency and fairness

towards financial clients, with the aim of minimising the information asymmetry between banks and customers – in particular, in relation to:

- individual financial services;
- the prices of products and services marketed to consumers;
- interest rates;
- early payment terms; and
- the enforcement of contractual violations.

The COR is an evaluation system created by harmonising foreign applications with local needs and covers four main topics:

- the adequacy of disclosures and information provided by the bank;
- fair pricing principles;
- the quality of customer relations management; and
- consumer perception research results.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The Consumer Rights Act 2015 (CRA 2015) deals with:

- unfair terms in contracts;
- the level of information to be provided to consumers;
- the rights and remedies available to consumers in the event that their rights are breached; and
- sanctions on those who breach consumer rights.

The Supply of Goods and Services Act 1982 deals with consumer protection in the context of the supply of goods and services. Banks are required to comply with these consumer protection rules, just as any other service provider. The Financial Conduct Authority (FCA) is responsible for enforcing the consumer protection framework - including distance selling and consumer credit provisions - in the banking sector. Its primary objective is to ensure that consumers of financial services are appropriately protected and to promote effective competition in the interests of consumers. Banks in the United Kingdom are subject to the FCA's Treating Customers Fairly regime, which is enforced vigorously.

Where banks fail to participate in the effective promotion of competition, the FCA and the Competition and Markets Authority (CMA) have the power to investigate and take enforcement action against such breaches. The FCA has the power to require the disclosure of information about suspected breaches and refer this to the CMA for a more detailed investigation. On 17 July 2018, the FCA published "Our Approach to Consumers", which sets out its approach to consumer protection.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

United States

Linklaters

Answer ... US banks are subject to a myriad of consumer protection statutes and regulations at both the state and federal level. Among other things, these laws require banks to:

- disclose material information to borrowers and depositors;
- not engage in any unfair or deceptive practices; and
- not discriminate against customers based on their race, gender, national origin or other factors.

The following represent examples of applicable consumer protection requirements:

- Banks must prominently disclose the interest rates, fees and certain other terms and conditions applicable to deposit accounts;
- Consumer lending regulation typically requires the disclosure of interest rates, loan charges and other terms and conditions concerning the repayment of credit;
- Banks may also be subject to a requirement to make a good-faith determination of a consumer borrower's ability to repay credit extended;
- Under the Community Reinvestment Act, US banks must adopt policies and plans to meet the credit needs of the communities in which they operate and from which they draw deposits;
- The Federal Reserve's margin regulations limit the amount of credit that a US bank may extend to a borrower to purchase securities; and
- US banks are generally forbidden from 'tying' a banking product to any of the products of the bank or any of its affiliates by, for instance, conditioning the provision of a loan by the bank on the borrower's willingness to establish a securities brokerage account with the bank's broker-dealer affiliate.

For more information about this answer please contact: Jerome Roche from Linklaters

10.2 How are deposits protected in your jurisdiction?

Canada

Gowling WLG

Answer ... Federally, the Canada Deposit Insurance Corporation (CDIC) protects deposits. The CDIC is a federal crown corporation that provides deposit insurance against the loss of eligible deposits at member financial institutions up to C$100,000. Members of the CDIC include federally regulated deposit-taking institutions, including banks, federally regulated credit unions, and loan and trust companies and associations governed by the Cooperative Credit Associations Act, SC 1991, c 48. The terms and conditions of CDIC deposit protection are set out under the Canada Deposit Insurance Corporation Act, RSC 1985, c C-3 and its regulations.

The province of Quebec has its own deposit insurance plan under the administration of *l'Autorité des marchés financiers* (AMF). Financial institutions that are members of both the CDIC and AMF plan are subject to an agreement between the two insurers that requires that deposits made in Quebec with provincially incorporated CDIC members are insured by AMF, and deposits made outside of Quebec with AMF members are insured by CDIC.

In addition, provincial deposit insurance plans cover deposits with

regard to provincially regulated credit unions, *caisses populaires*, or trust and loan companies. For example, in Ontario, the Deposit Insurance Corporation of Ontario, established under the Credit Unions and *Caisses Populaires* Act, 1994, SO 1994, c 11, protect depositors of

Ontario credit unions and *caisses populaires* from loss of their deposits. Deposit insurance plans vary between the ten Canadian provinces and customers should contact provincial deposit insurers directly to determine how deposits are protected through these various plans.

By: Neil S. Abbott (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Ordinary deposits are covered by the Danish Guarantee Fund for Depositors and Investors up to €100,000 per customer. Certain other types of deposits, such as deposits in connection with real estate, are covered up to €10 million.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The Deposit Protection Fund (DPF) of the Association of German Banks secures the deposits of every customer at the private commercial banks up to a ceiling of 15% of the relevant liable capital of the respective bank as at the date of the last published annual financial statements. The minimum equity capital of a bank in Germany is €5 million. In this case, €750,000 per customer will be protected. From 1 January 2025, this figure will change to 8.75% of the liable capital of the bank relevant for deposit protection. There is one exception: the protection ceiling for banks joining the scheme is in principle only €250,000 up to the end of the third calendar year of their participation in the DPF.

The protection extends to all deposits held by 'non-banking institutions' – that is, deposits held by private individuals, business enterprises and public bodies. The deposits protected are, for the main part, demand, term and savings deposits and registered savings certificates. Liabilities in respect of which bearer instruments such as bearer bonds and bearer certificates of deposits have been issued by a bank are not protected. For almost all depositors, this protection concept means virtually full protection for all deposits at private commercial banks. If a bank ceases to participate in the DPF, there are provisions for depositors to be informed in good time so that arrangements can be made while still enjoying deposit protection. Furthermore, deposits are protected until the next due date – that is, possibly well beyond the date on which a bank's participation in the fund ends.

Alongside the DPF, there exists a statutory deposit protection scheme, the Compensation Scheme of German Banks (*Entschädigungseinrichtung deutscher Banken* (EdB)), which was set up in 1998. The EdB performs the tasks of the compensation scheme required under the German Deposit Guarantee Act in relation to private commercial banks and private building and loan associations. The protection provided by the EdB is limited to €100,000 per depositor. The DPF only covers deposits

and depositors if and to the extent that the EdB does not already cover them.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The Deposit Guarantee Scheme (DGS) is part of the CBI's strategy to ensure that the best interests of consumers of financial services are protected. The legislation governing the DGS is the European Union (Deposit Guarantee Schemes) Regulations 2015 and the Financial Services (Deposit Guarantee Scheme) Act 2009 (as amended).

The DGS is administered by the CBI and is funded by the credit institutions covered by the scheme. The DGS protects eligible depositors in the event of a bank authorised by the CBI being unable to pay deposits. Deposits of up to €100,000 per person per institution are covered by the DGS.

The following is a non-exhaustive list of deposit types that may be considered eligible for protection under the DGS:

- current accounts;
- demand deposit accounts;
- fixed-term deposit accounts; and
- credit balances on credit cards issued by credit institutions.

Individuals, sole traders, partnerships, clubs, associations, charities, self-administered pensions and funds held in trust in client accounts by solicitors and other professionals will have their deposits protected. The residency of the depositor is not a factor in determining the eligibility of the DGS. A depositor need not be resident in Ireland or be an Irish citizen to be eligible for DGS compensation.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Deposits are protected by the *Fonds de Garantie des Dépôts Luxembourg* (FGDL), which is a public body that was established by Law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes ('BRR Law'). The FGDL ensures the repayment to depositors in case of unavailability of their deposits, up to €100,000 per person and per institution. The standard €100,00 protection may be increased to €2.5 million in certain specific cases and subject to specific conditions (eg, deposits resulting from real estate transactions relating to private residential properties). The FGDL must normally repay within seven working days. Certain deposits are excluded from protection (eg, deposits made by other credit institutions on their own behalf and for their own account, deposits by financial institutions, deposits by investment firms, deposits by insurance and reinsurance undertakings, deposits by undertakings for collective investment, deposits by pension and retirement funds and deposits by public authorities).

All Luxembourg credit institutions, as well as Luxembourg branches of

credit institutions having their registered office in a third country, must be members of the FGDL. The FGDL collects contributions from member institutions on an annual basis and the amount of each institution's contribution is calculated based on the amount of covered deposits and the degree of risk incurred by the institution. The FGDL reached the initial target level of available financial means equivalent to 0.8% of the amount of covered deposits of member institutions at the end of 2018. The FGDL will continue to collect contributions until 2026, in order to reach a level of available financial means equivalent to 1.6% of the amount of covered deposits of member institutions.

There is also an investor compensation scheme (*Système d'indemnisation des investisseurs Luxembourg*) which, subject to certain conditions, protects customers holding financial instruments.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Depositor protection in Switzerland is based on a three-tiered system. As a first step, bank deposits (excluding retirement savings) of up to CHF 100,000 per client (privileged deposits) are immediately paid out from the remaining liquidity of the failed bank (Article 37a of the Banking Act). With regard to the applicable liquidity requirements in general, please see question 4.3.

If the bank's available liquidity is insufficient to cover all privileged bank deposits which are booked in Switzerland, the depositor protection scheme is used as a second step to pay out privileged deposits (so-called 'secured deposits'). All banks domiciled in Switzerland accepting client deposits are legally required to participate in the depositor protection scheme (Article 37h of the Banking Act).

As a third step, privileged deposits are treated preferentially. They are paid out at the same time as other second creditor class claims in the event of bankruptcy. Unlike cash deposits, assets such as shares, units in collective investment schemes and other securities held in custodial accounts qualify as client property. In the event of bankruptcy, all such assets are segregated and released to the client (Article 37d of the Banking Act).

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... According to Article 63 of the Banking Law, the savings deposit and participation funds belonging to real persons with accounts held in credit institutions are insured by the SDIF, in an amount which is decided by the SDIF Board with the approval of the Central Bank, the BRSA and the Treasury. For 2020, saving deposits and participation funds which have not arisen from commercial transactions are insured up to TRY 100,000 per individual. The tariff, collection time, method and other conditions of the risk-based insurance premium are established by the SDIF upon consulting the BRSA.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Deposits held in banks, building societies and credit unions (including in Northern Ireland) that are authorised by the Prudential Regulation Authority are protected up to £85,000 under the Financial

Services Compensation Scheme, which is funded by contributions from the banking sector.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... As noted above, US banks must generally be insured by the Federal Deposit Insurance Corporation, which covers $250,000 of each depositor's money. In addition, the insolvency regimes applicable to US banks provide for 'depositor preference', under which a depositor will generally rank senior to all of the unsecured creditors of a bank with respect to their entire deposit (whether insured or uninsured). As a result, depositors rarely lose any of their money – even if it was uninsured – in a bank insolvency.

11. Data security and cybersecurity

11.1 What is the applicable data protection regime in your jurisdiction and what specific implications does this have for banks?

Canada

Gowling WLG

Answer ... In Canada, the Federal Personal Information Protection and Electronic Documents Act, (PIPEDA), applies to the collection, use and disclosure of personal information in the course of commercial activity, and personal information regarding employees of federal works or undertakings, including banks. Under PIPEDA, 'personal information' includes any information "about an identifiable individual". This includes information where there is a serious possibility it can identify an individual.

PIPEDA is based on fair information principles, including accountability, consent, limiting collection, use, disclosure and retention of personal information, and security.

When collecting, using or disclosing personal information, subject to prescribed exceptions, PIPEDA requires the informed consent of the individual. For the consent to be valid, it must be reasonable to believe that the individual understands the "nature, purpose, and consequences" of what they are agreeing to. In recent Guidelines for Obtaining Meaningful Consent", the Office of the Privacy Commissioner of Canada (OPC) emphasised that to obtain consent, individuals must be provided with clear information emphasising:

- what personal information is being collected;
- the purposes for which the personal information is being collected, used and disclosed;
- what third parties the personal information may be shared with; and
- any associated risk of harm.

Organisations are responsible for information under their control, and must implement physical, technological and organisational security appropriate to the sensitivity of the information. Highly sensitive information, including financial information, will require higher

security.

Where an organisation experiences a breach of its safeguards resulting in a "real risk of significant harm to an individual", there is a requirement to report the breach to the OPC, the affected individuals and any organisation that may reduce the risk of harm.

By: Christopher Oates (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Danish banks are in general subject to the General Data Protection Regulation (GDPR), as well as Danish Act 502 dated 23 May 2018 on Data Protection, which supplements the GDPR.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The applicable data protection regime for banks is based on the Banking Act, General Data Protection Regulation (GDPR), the German Data Protection Act and the Payment Services Oversight Act regarding bank account information. The GDPR stipulates in very concrete terms how the collection, selection, archiving and processing of personal data is to be carried out. In addition, bank secrecy aspects apply.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The General Data Protection Regulation (GDPR) provides the governing framework for data protection in Ireland.

The implications of GDPR apply to breaches, complaints, any failures to comply with data subject access requests and excessive data collection for example. Additionally, banks are required under anti-money laundering laws to comply with know-your-customer guidelines, which require them to collect substantive amounts of personal data in a bid to safeguard against money laundering.

Personal data should be regularly monitored and erased where it is no longer necessary for the original purpose. GDPR has furthermore given bank customers more access to their collected by their bank. This places additional obligations on banks to produce documents and information when requested. Where a bank's various IT systems do not 'talk' to each other, it can be very time consuming and costly for a bank to meet its obligations under the GDPR. While compliance has undoubtedly been costly for bank, non-compliance will likely be costlier still. Banks in breach of their GDPR obligations could receive fines up to €20 million or 4% of their global turnover.

Banks doing business in Ireland should ensure that they have documented a lawful basis for processing an individual's data only for a specific legal purpose. The data subject must be told:

- what data the bank will be collecting;
- what it is being used for;

- what it is being used for;
- how long it will be retained; and
- whether it will be shared with any third parties.

Banks must have a data protection officer to oversee compliance with the GDPR. Most banks operating in Ireland have detailed information on their websites regarding how data is collected, used and held, and the rights of customers in respect of their personal data.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... In the European Union, the protection of personal data is governed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR).

The GDPR defines the concept of 'personal data' and establishes rules relating to the processing of such personal data, including a number of obligations to be complied with by controllers and processors of personal data. It:

- sets out the conditions under which the processing of personal data is deemed to be lawful and principles applicable to personal data processing (eg, lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality);
- includes specific conditions in order to evidence the consent given by data subjects to such processing;
- sets out rules applicable to the processing of special categories of personal data;
- gives rights to data subjects with respect to their personal data (eg, the right to information, right of access, right of rectification, right to erasure, right to restriction, right to data portability, right to object);
- sets out the respective responsibilities of controllers and processors of personal data;
- introduces the concepts of data protection by design and by default;
- includes the obligation to ensure the security of the personal data;
- sets out conditions with respect to the notification of data breaches;
- obliges controllers to perform data protection impact assessments for certain activities;
- includes rules concerning the appointment of a data protection officer;
- regulates transfers of personal data; and
- includes the obligation for controllers to maintain records of processing activities (mapping of data flows).

The GDPR entered into force on 25 May 2018. Prior to its entry into force, banks established extensive GDPR compliance projects in order to assess their personal data processing activities, map personal data flows both within and outside their organisations, and ensure compliance with the new requirements. As the potential sanctions for

GDPR breaches include fines of up to €20 million or 4% of the total worldwide annual turnover of the preceding financial years, and in

light of the reputational risk involved in case of personal data breaches, compliance is taken seriously by banks, which now need to integrate personal data protection into their day-to-day operations.

Challenges faced by banks during the implementation phase include:

- the collection of user consent;
- the concepts of 'controller' and 'processor', and the correct allocation of responsibilities in webs of service providers, data storage and data deletion, which may be complex in matrixed institutions with numerous electronic backups;
- data classification and mapping of data flows within complex international groups; and
- the need to adapt business practices.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The Swiss legal framework does not provide for a specific data protection regime applicable to banks or other financial institutions. The protection of the privacy and the fundamental rights of individuals and legal entities in relation to their data is set out in the Federal Act on Data Protection of 1992. The act is based on the concept that not more client-related information than required may be collected (principle of proportionality and data minimisation). Furthermore, it defines the legal requirements for permissible data processing in order to protect data against possible abuses.

Data protection aims to protect the right to informational self-determination. This refers to the principle that individuals and legal entities should be able to determine for themselves the disclosure and use of their own data. The Federal Act on Data Protection therefore contains various possibilities for data subjects to exercise their privacy rights.

The requirements under the act apply only to the processing of so-called 'personal data'. Such data is legally defined as "all information relating to an identified or identifiable natural person" (eg, by reference to an identifier such as a name, an identification number, location data or an online identifier, or to one or more factors specific to the identity of that natural person).

Pursuant to Article 7 of the Federal Act on Data Protection personal data must be protected against unauthorised processing through adequate technical and organisational measures. Applicable minimum standards are set forth in the Federal Data Protection Ordinance. For banks, relevant security standards are further specified in Swiss Financial Market Supervisory Authority (FINMA) Circular 2008/21 – "Operational risks – banks". Annex 3 of this circular sets out nine principles for the proper handling of electronic client data (so-called 'client identifying data' (CID)). The requirements stipulated therein are primarily of a technical nature and include the issues of managing an independent supervisory body, appropriate security standards for

infrastructure and technology, and risk identification and control in relation to CID confidentiality. Against this background, banks must establish a comprehensive framework for ensuring the confidentiality of client data in the age of digitalisation and globalisation.

Finally, in March 2019 the Swiss Bankers Association (SBA) published guidelines for the use of cloud services in the banking sector. The SBA guidelines aim to define the conditions under which banks can migrate CID to a cloud environment. In order to achieve this aim, the SBA provides its interpretation of certain relevant laws and regulations, including Article 47 of the Banking Act ('banking secrecy'), the Federal Act on Data Protection and FINMA Circulars 2018/03 – "Outsourcing – banks and insurers" and 2008/21 – "Operational risks – banks".

According to the SBA guidelines, it is permissible to allow a cloud provider and/or its subcontractors to process CID in cleartext (ie, neither encrypted nor anonymised/pseudonymised), provided that such processing is necessary for the secure and reliable operation of the cloud and is subject to strict conditions (eg, in terms of frequency and duration of the processing, reasons for the processing). The position of the SBA is based on the view that the cloud provider and its subcontractors must be considered as agents within the meaning of Article 47, paragraph 1 of the Banking Act, and are therefore bound by banking secrecy. In case of a cloud provider located in Switzerland, this argument seems reasonable. However, if the cloud provider is based abroad, the matter is more complex – particularly in the case of data requests from local authorities – and legal uncertainties remain.

With respect to banking secrecy matters, please see question 12.2.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... While the main rules on data protection are set out in the Law on Protection of Personal Data (6698) (*Official Gazette* of 7 April 2016, No 29677), Article 73 of the Banking Law also includes specific regulations regarding banking activities.

Article 73 of the Banking Law regulates 'customer secrets', defined as data of natural and legal persons which is gathered after they have entered into a customer relationship with a bank specific to banking activities. Given that the definition of 'personal data' included in the Law on Protection of Personal Data covers only information relating to natural persons, banks must take the definition of 'customer secrets' set out in the Banking Law seriously. According to Article 73, customer secrets cannot be disclosed or transferred to any third party, located either in Turkey or abroad, without a request or instruction from the customer. Exemptions from this rule include the mandatory legal provisions in other laws and information that must be disclosed to certain ministries as listed in Article 73 of the Banking Law.

Additionally, the Banking Regulation and Supervision Agency (BRSA) is authorised to prohibit the transfer of customer secrets or bank secrets to third parties abroad after assessing the economic security of those customer secrets. The BRSA is authorised to issue decisions on the information systems used by banks to carry out their activities and their backups in Turkey.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK
1 Crown Office Row

Answer ... The General Data Protection Regulation (GDPR) sets out the framework for data protection in the United Kingdom. It is applicable to breaches, complaints, any failures to comply with data subject access requests and excessive data collection. The data subject must be told:

- what data the bank will be collecting;
- what it will be used for;
- how long it will be retained; and
- whether it will be shared with any third parties.

Personal data must be destroyed when no longer necessary for the original purpose. Banks in breach of their GDPR obligations are subject to substantial fines as well as reputation risk.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters

Answer ... The US federal banking agencies have issued extensive guidance concerning their expectations of US banks with respect to cybersecurity. Among other things, those agencies expect such institutions to have a robust IT risk management policy and procedures to identify potential sources of risks and ways to mitigate such risks. The guidance also requires such institutions to establish controls and oversight of its IT risk management and establish and maintain training programs for employees. As described below in the response to question 12.2, the US federal banking agencies have also issued guidance relating to safeguarding customer information in both digital and paper-based forms. Certain states may have stricter rules on consumer data privacy and cybersecurity applicable to banks chartered under their laws or active within their borders.

As a practical matter, concerns about data protection and cybersecurity have become more and more important in recent years. Banks, particularly large ones, generally make significant investments in systems to safeguard customer's data and generally communicate breaches in any data security to regulators. US banking agencies regularly examine such institutions to ensure that their data security policies are robust and appropriately scaled to each institution's activities. In addition, a bank that experiences a data breach or inappropriate disclosure may be subject to litigation.

For more information about this answer please contact: Jerome Roche from Linklaters

11.2 What is the applicable cybersecurity regime in your jurisdiction and what specific implications does this have for banks?

Canada
Gowling WLG

Answer ... PIPEDA applies to the collection, use, and disclosure of personal information in commercial activity, regardless of the medium in which such processing occurs. PIPEDA will apply to personal information collected or processed though digital means.

PIPEDA requires organisations to implement security for personal information in their control that includes physical, organisational and technological measures, and that is appropriate to the sensitivity of the information. Where personal information is in electronic form, technological security will be particularly important, including measures such as encryption and access logging. Relevant industry standards, including the Payment Card Industry Data Security Standard, must also be considered.

Federally regulated financial institutions, including banks, are also subject to the requirements of the Office of the Superintendent of Financial Institutions (OSFI). OSFI has issued guidelines on cybersecurity, including Cyber Security Self-Assessment Guidance and Technology and Cyber Security Incident Reporting Requirements.

The OSFI self-assessment guidance sets out key properties of a cybersecurity programme that organisations can assess themselves against. The assessment includes consideration of:

- the organisation's accountability and ownership of its cybersecurity program;
- whether it has implemented processes to review the risks it faces;
- the situation within the organisation with respect to its users, devices and applications;
- whether it has implemented controls to detect and prevent data loss and to rapidly respond to cybersecurity incidents; and
- the organisation's governance policies and practices.

The Cyber Security Incident Reporting Requirements oblige institutions to report to OSFI if they experience a technology or security incident they determine is reaches a "high or critical security level". The organisation must consider factors including:

- the incident's potential operational impact;
- its impact on customer data;
- disruption to business systems;
- potential for negative reputational impact;
- potential effect on other financial institutions or the Canadian financial system; and
- whether the matter has been reported to other regulatory authorities.

These requirements will apply in addition to those to which the institution may be subject under PIPEDA.

By: Christopher Oates (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... While there has been an increase in cyberattacks against banks in the past couple of years, cybersecurity in the Danish financial sector is still considered to be best in class in Europe. The Danish financial sector – partly aided by the Danish central bank – has invested considerable resources in ensuring a secure and efficient IT infrastructure.

The adoption across the board of a digital signature solution for all

citizens and businesses has significantly increased the use of electronic transactions and solutions. NemID is a common secure login for internet services, to be used for online banking, self-service, obtaining information from the public authorities and engaging with one of the many businesses that use NemID. The official digital signature is combined with a statutory email inbox to be used by all citizens and businesses. This will also be used for communication with bank customers. The result is a high degree of digitalisation, which in turn has resulted in a high degree of resilience during the COVID-19 crisis, as most transactions and communication could be maintained without significant interruption. Banks will therefore have to apply the national NemID solution for online banking for both businesses and citizens.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The applicable data protection regime is the EU Cybersecurity Act and GDPR, especially Sections 32 and 33 of the GDPR. However, there are also special regulations for the banking sector, such as:

- Section 25a(1), number 5 of the Banking Act, which requires an appropriate contingency plan for IT systems;
- the minimum requirements for the security of internet payments of the Federal Financial Supervisory Authority; and
- the banking supervisory requirements for IT supervision (see question 7.3).

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The CBI published a Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks in September 2016. The CBI notes that the risks associated with IT and cybersecurity are a key concern, given their potential to have serious implications for the Irish banking system. The CBI expects that the boards and senior management of banks recognise their responsibilities in relation to IT and cybersecurity governance and risk management. This includes having cybersecurity as a standing agenda item at board meetings Given the development of technological innovations in the provision of banking services, the interconnectivity of firms, systems and outsourcing service providers creates an increased exposure to the risk of cyberattacks.

Irish banks must:

- have comprehensive, up-to-date IT systems that are fit for purpose;
- have appropriate firewalls and other security features; and
- ensure that staff are appropriately trained and that any IT related outsourcing is subject to thorough due diligence.

The implementation of new or upgraded systems has had substantial cost implications for banks operating in Ireland.

Additional management time is required to ensure the implementation of an IT strategy, an IT risk management framework

implementation of an IT strategy, an IT risk management framework and a disaster recovery framework, and that an IT security risk conscious culture is developed and advocated within the bank. The CBI also requires banks to have robust governance structures in place to manage IT risk.

The Criminal Justice (Offences Relating to Information Systems) Act 2017 introduces a range of offences relating to cybercrime. The primary purpose of the act was to give effect to the provisions of EU Directive 2013/40/EU on attacks against information system.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... At the EU level, a number of initiatives have been presented or are currently ongoing in the area of cybersecurity. The European Commission issued a recommendation on coordinated response to large-scale cybersecurity incidents and crises (Commission Recommendation (EU) 2017/1584 of 13 September 2017), and more recently a recommendation on cybersecurity of 5G networks (C(2019) 2335 final).

In terms of legislation, Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification was published in the *Official Journal of the EU* on 7 June 2019, and aims to achieve a high level of cybersecurity, cyber resilience and trust within the European Union. It has reformed ENISA, which supports EU member states, EU institutions, bodies, offices and agencies in improving cybersecurity; and has introduced a framework for the establishment of European cybersecurity certification schemes for the purpose of ensuring an adequate level of cybersecurity for ICT products, services and processes in the European Union. The first EU piece of legislation on cybersecurity was Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union which had to be implemented by the EU Member States by 9 May 2018.

At the national level, Luxembourg published its third national cybersecurity strategy for the 2018-2020 period ('NCSS III'). The NCSS III includes guidelines on strengthening public confidence in the digital environment, the protection of digital infrastructure and the promotion of the economy, with objectives such as:

- the dissemination of information on risks;
- the combating of cybercrime;
- the identification of critical digital infrastructure;
- the adaptation of the emergency response plan for cyberattacks;
- the development of skills and abilities in the field of cyber defence;
- the improvement of risk management and training; and
- the promotion of start-ups to develop the digital security ecosystem.

As banks handle very sensitive information, cybersecurity is particularly important to the banking sector. The Law of 5 April 1993 on the financial sector, as amended contains a general requirement

for credit institutions to have in place effective control and security arrangements for information processing systems, as well as sound security mechanisms designed to guarantee the security and authentication of the means of transfer of information, to minimise the risk of data corruption and of unauthorised access and to prevent information leakage in order to maintain the confidentiality of data at all times. The *Commission de Surveillance du Secteur Financier* (CSSF) issued a number of circulars which address issues related to confidentiality, IT and security, including:

- CSSF Circular 12/552;
- CSSF Circular 15/603 on security of internet payments;
- CSSF Circular 17/654 on IT outsourcing relying on a cloud computing infrastructure; and
- several circulars related to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSD2), including CSSF Circular 19/713 concerning the European Banking Authority Guidelines on the security measures for operational and security risks of payment services under PSD2.

These circulars include:

- requirements to be complied with in case of IT and cloud outsourcing;
- the obligation to have backup and recovery plans and ensure business continuity;
- the obligation to monitor security vulnerabilities;
- the requirement to have an IT function (including an information security officer);
- specific requirements in the field of security of internet payments (eg, the implementation of a security policy, the performance of a risk assessment, incident monitoring, the implementation of security measures and the use of strong customer authentication);
- the obligation to ensure data and systems integrity; and
- reporting and auditing requirements.

The growing importance of data, the increased risk of cyberattacks and the related regulatory requirements mean that banks will need to continue to invest in their cybersecurity capabilities and IT infrastructure.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The Swiss legal framework does not provide for a specific cybersecurity regime. As far as banks are concerned, FINMA Circular 2008/21 – "Operational risks – banks" contains provisions on technological infrastructure including critical aspects of dealing with cyber risks.

The circular requires banks to adopt an integrated and systematic approach to countering threats in the virtual world. The approach must include specific measures for the governance, identification, protection, detection, response and recovery of threatened systems and services in connection with cyber risks and attacks.

For more information about this answer please contact: Patrick Meyer

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... In Turkey, cybersecurity is not regulated under a single legislative instrument, but is rather regulated under different sector-specific regulations. The Communiqué on the Principles to be Considered in Bank Information Systems Management (*Official Gazette* of 15 March 2020, No 31069) requires banks to establish cyberattack management and response processes, in order to address and track cyberattacks that take place as a result of cyber incidents. Banks must also:

- establish an institutional cyberattack response team (ICART), composed of members with sufficient technical and operational skills; and
- ensure that the current contact details of the ICART are notified to the BRSA and that cyberattacks are reported to the relevant management units.

The ICART is responsible for conducting routine penetration tests on computing assets and routinely monitoring track records through the record management system interface prior to any cyberattack. It is also responsible for managing the intervention of the information systems function and coordinating the relevant staff involved in this function in the event of a cyberattack.

In the event of a cyberattack that results in the breach or disclosure of personal data or sensitive data (which does not have the same meaning as 'special categories of personal data' under the Law on the Protection of Personal Data), banks must notify their customers following an internal assessment.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... On 13 March 2019 the Basel Committee on Banking Supervision (BCBS) published its statement on crypto-assets, expressing the view that the continued growth of crypto-asset trading platforms and new financial products related to crypto-assets has the potential to raise financial stability concerns and increase risks faced by banks. While crypto-assets (not to be confused with the digital currencies of central banks) are at times referred to as 'crypto-currencies', the BCBS is of the view that such assets do not reliably provide the standard functions of money and are unsafe to rely on as a medium of exchange or store of value. Crypto-assets are not legal tender, and are not backed by any government or public authority. The BCBS's statement was intended to set out its prudential expectations relevant to the exposures of banks to crypto-assets and related services, particularly for those jurisdictions that do not prohibit such exposures and services.

The BCBS concluded that crypto-assets have exhibited a high degree of volatility and are considered an immature asset class, given the lack of standardisation and constant evolution. They present a number of risks for banks, including:

- liquidity risk;
- credit risk;
- market risk;
- operational risk (including fraud and cyber risks);
- money laundering and terrorist financing risk; and
- legal and reputation risks.

Accordingly, the BCBS expects that if a bank is authorised and decides to acquire crypto-asset exposures or provide related services, the following minimum requirements should be met:

- Due diligence: Before acquiring exposures to crypto-assets or providing related services, a bank should conduct comprehensive analyses of the risks noted above. The bank should ensure that it has the relevant and requisite technical expertise to adequately assess the risks stemming from crypto-assets.
- Governance and risk management: The bank should have a clear and robust risk management framework that is appropriate for the risks of its crypto-asset exposures and related services. Given the anonymity and limited regulatory oversight of many crypto-assets, a bank's risk management framework for crypto-assets should be fully integrated into the overall risk management processes, including those related to anti-money laundering and combating the financing of terrorism and the evasion of sanctions, and heightened fraud monitoring. Given the risk associated with such exposures and services, banks are expected to implement risk management processes that are consistent with the high degree of risk of crypto assets. Its relevant senior management functions are expected to be involved in overseeing the risk assessment framework. Board and senior management should be provided with timely and relevant information related to the bank's crypto-asset risk profile. An assessment of the risks described above related to direct and indirect crypto-asset exposures and other services should be incorporated into the bank's internal capital and liquidity adequacy assessment processes
- Disclosure: A bank should publicly disclose any material crypto-asset exposures or related services as part of its regular financial disclosures and specify the accounting treatment for such exposures, consistent with domestic laws and regulations.
- Supervisory dialogue: The bank should inform its supervisory authority of actual and planned crypto-asset exposure or activity in a timely manner, and provide assurance that it has fully assessed the permissibility of the activity and the risks associated with the intended exposures and services, and how it has mitigated these risks.

The BCBS continues to monitor developments in crypto-assets, including direct and indirect exposures of banks to such assets. The BCBS is coordinating its work with other global standard-setting bodies and the Financial Stability Board (FSB).

In June 2019 Facebook confirmed its intended launch of a global cryptocurrency known as Libra in 2020. As a consequence of regulatory scrutiny, on 15 July 2019 Facebook announced that Libra will not launch until all regulatory concerns have been met and Libra has the appropriate approvals.

On 31 May 2019 the FSB published a report on crypto-assets which was

delivered to the G20 finance ministers and central bank governors at their meeting in Fukuoka, Japan on 8-9 June 2019. The report recommended that the G20 keep the topic of regulatory approaches to crypto-assets and potential gaps - including the question of whether more coordination is needed - under review.

In January 2019 the Monetary and Economic Department of the Bank for International Settlements (BIS) published "Proceeding with caution – a survey on central bank digital currency" (CBDC) (BIS Paper 101). The paper is based on a survey of 63 central banks. Although a majority of central banks are researching CBDCs, this work is primarily conceptual and few central banks intend to issue a CBDC in the short to medium term. On 9 January 2019 the European Securities and Markets Authority (ESMA) published its Advice on Initial Coin Offerings and Crypto-Assets, which sets out ESMA's concerns about the risks to investor protection and market integrity - the most significant being fraud, cyber-attacks, money laundering, and market manipulation. Pursuant to a request by the European Commission to evaluate developments in crypto assets, on 9 January 2019 the European Banking Authority published the results of its assessment of the applicability and suitability of EU law to crypto-assets. Typically, crypto-asset activities do not constitute regulated services within the scope of EU banking, payments and electronic money law, and risks exist for consumers that are not addressed at the EU level. Crypto-asset activities may give rise to other risks, including money laundering.

Cybersecurity remains a hot topic, particularly following the cyberattacks on LBG, HSBC Plc, Tesco Bank and RBS Group Plc, and the identification of cyber vulnerabilities known as Meltdown and Spectre.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Please see question 11.1.

For more information about this answer please contact: Jerome Roche from Linklaters

12. Financial crime and banking secrecy

12.1 What provisions govern money laundering and other forms of financial crime in your jurisdiction and what specific implications do these have for banks?

Canada

Gowling WLG

Answer ... The Canadian regime covering anti-money laundering (AML) and counter-terrorist financing (CTF) is established in accordance with the following AML and CFT legislation:

- the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA);
- the Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations;
- the Proceeds of Crime (Money Laundering) and Terrorist Financing

Regulations;
- the Cross-Border Currency and Monetary Instruments Reporting Regulations;

- the Proceeds of Crime (Money Laundering) and Terrorist Financing Registration Regulations;
- the Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations; and
- the Criminal Code.

In addition, banks abide by guidance issued by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) which enforces the PCMLTFA and its regulations.

AML/CTF policies and procedures for banks are also designed to achieve compliance with all Canadian sanctions laws and regulations, including the following:

- the United Nations Act;
- the Special Economic Measures Act;
- the Freezing Assets of Corrupt Foreign Officials Act; and
- the Justice for Victims of Corrupt Foreign Officials Act.

The PCMLTFA requires a bank to:

- apply know your client measures to all persons who open an account or otherwise enter into a business relationship with the bank;
- conduct regular AML and CFT risk assessments to identify risks in its operations and identify areas that must be reviewed and possibly changed;
- monitor transactions and submit suspicious transaction reports to FINTRAC where the bank has reasonable grounds to believe that money laundering, terrorist financing or illicit behaviour has been committed or attempted, or is about to be committed. The bank must also submit reports to FINTRAC with respect to certain transactions or assets based on the regulations under the PCMLTFA;
- maintain records relating to its customer transactions and the measures taken to comply with the requirements of the PCMLTFA; and
- ensure that international funds transfers (outbound and inbound, to the extent possible) and SWIFT messages in Canada contain originator information.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Danish banks are subject to Consolidated Act 380 dated 2 April 2020 on Measures to Prevent Money Laundering and Financing of Terrorism (AML Act). The AML Act requires banks to assess the risk of being used to launder money or finance terrorism, as well as to implement appropriate risk management procedures. As part of these procedures, banks must:

- adopt strict 'know-your-customer' procedures;
- monitor customers' transactions; and
- investigate and potentially report suspicious transactions to the Public Prosecutor for Serious Economic and International Crime.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The German Money-Laundering Act governs money laundering. Additionally, Sections 54 to 60d of the Banking Act concern, for example, prohibited business transactions, acting without permission and breach of the obligation to notify the relevant authorities of insolvency or over indebtedness. The Federal Financial Supervisory Authority (BaFin) has published interpretative and application notes for the implementation of due diligence and internal safeguard measures to prevent money laundering. Depending on the gravity of the crime, BAFin may revoke required licences as a result of a violation of anti-money laundering provisions (Section 35(2), number 6 of the Banking Act). Furthermore, BaFin may demand the dismissal of the responsible managers and prohibit them from carrying out their activities at institutions organised as a legal person (Section 36(4) of the Banking Act).

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Ireland has implemented the Fourth EU Money Laundering Directive (2015/849/EU). The Fifth EU Money Laundering Directive (2018/843/EU) is expected to be fully implemented shortly (the deadline for implementation was 10 January 2020). This will be followed by implementation of the Sixth EU Money Laundering Directive ((EU) 2018/1973) which is due to be implemented by December 2020. As required by Article 30(1) of the Fourth Directive, a central register of beneficial ownership of corporate entities has been established. A central register of beneficial ownership of trusts is expected to be established soon. The CBI has been particular active in are of anti-money laundering (AML) enforcement and has issued six-figure fines to a number of banks in recent years.

In terms of specific implications for banks operating in Ireland are:

- to ensure that it has implemented robust systems in place for detecting AML and terrorist financing activity. Employee training programmes, internal guidance and monitoring systems should all be up to date on the latest risks;
- to regularly review its approach to risk assessment in light of any legal or operation changes that may increase or change the potential risk of an AML breach; and
- have well documented investigation procedures and outcomes with thorough records of any decision to freeze funds and file a report with the relevant authorities. If no report is filed, it is essential that the reasons for this be fully documented.

The implementation of the above requires time spent training staff, producing policies and procedures, employing designated AML officers and ensuring that the bank's IT systems are sufficiently up to date and compliant with the General Data Protection Regulation to properly

compliant with the General Data Protection Regulation to properly identify AML risks and store the AML documents required to be held in accordance with the banks policies and procedures.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Luxembourg follows the Financial Action Task Force recommendations, implemented in the European legal framework by Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended (AMLD 4), as amended by Directive (EU) 2018/843 (AMLD 5) and Directive (EU) 2018/1673 (AMLD 6).

AMLD 4 has been implemented in Luxembourg by the law of 12 November 2004 on the fight against money laundering and terrorist financing (AML/CTF), as amended ('AML Law'). The specific requirements (eg, the types of information or documentation that must be requested by banks in order to identify customers) are detailed in grand-ducal regulations, *Commission de Surveillance du Secteur Financier* (CSSF) regulations and CSSF circulars. Two of the most important texts in this respect are the Grand-Ducal Regulation of 1 February 2010 providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended; and CSSF Regulation 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing

Credit institutions are 'professionals' within the meaning of the AML Law, and must in particular:

- identify each customer and verify its identity on the basis of documents, data or information obtained from a reliable and independent source;
- identify the beneficial owner and take measures to verify his or her identity;
- take measures to understand the ownership and control structure of each customer;
- assess and, to the extent appropriate, obtain information on the purpose and the intended nature of the business relationship;
- conduct ongoing due diligence of the business relationship to ensure that the transactions being conducted are consistent with the credit institution's knowledge of each customer, its business and its risk profile; and
- ensure that the documents, data and information held are kept up to date.

One important characteristic of the current AML/CTF regime is the requirement for professionals to adopt a risk-based approach in order to determine the extent of the measures they are applying to ensure compliance with the AML/CTF requirements.

A register of beneficial owners (*Registre des bénéficiaires effectifs* (RBE)) has been introduced in Luxembourg further to the law of 13 January 2019 creating a register of beneficial owners and implementing Article 30 of AMLD 4 ('UBO Law'). The UBO Law obliges entities registered with

the Luxembourg trade and companies register (RCS) to provide the RBE with certain information concerning their ultimate beneficial owner(s) and to provide such information to professionals in the context of the performance of their customer due diligence obligations

under the AML Law. The requirement to provide information with respect to beneficial owners to the RBE also applies to credit institutions, which are registered with the RCS.

On 20 December 2019, the CSSF published Circular 19/732 concerning clarifications on the identification and verification of the identity of the ultimate beneficial owners in order to provide guidance to all professionals subject to AML/CTF obligations on the practical implementation of the identification requirements of the ultimate beneficial owner(s), as well as on the reasonable measures that should be taken to verify their identity.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Switzerland has strict regulations in place to combat money laundering and terrorist financing, based on the international standards of the Financial Action Task Force. The backbone of the Swiss anti-money laundering framework is the Federal Act on Combating Money Laundering and Terrorist Financing of 1997, including its implementing ordinances. For banks, the duty to identify contracting parties and determine the identity of beneficial owners is further specified in the Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence (CDB). The CDB is revised periodically and exists in its current version as CDB 20. It is enacted by the Swiss Banking Association as self-regulation in the form of a code of conduct and approved by the Swiss Financial Market Supervision Authority (FINMA).

Banks and other financial intermediaries must comply with a range of due diligence and disclosure requirements in relation to combating money laundering and terrorist financing, including the following:

- Verify the identity of the contracting partner and establish the beneficial owner of the assets brought in;
- Clarify the financial background and purpose of the business relationship or transactions, if the business relationship or transaction appears unusual or if there are indications that the funds stem from criminal activity or serve to finance terrorism;
- Record and clarify in greater detail business relationships and transactions with increased risk, such as business relationships with clients in high-risk countries or with politically exposed persons;
- Implement the necessary organisational measures to prevent money laundering and financing of terrorism, including issuing internal directives, training staff and performing inspections; and
- Report to the Money Laundering Reporting Office (of the Federal Department of Justice and Police) if there is any suspicion of money laundering in a business relationship.

Audit firms recognised by FINMA monitor compliance with these requirements on an annual basis. Moreover, FINMA may also perform own on-site inspections or mandate third-party experts for such

investigations. If FINMA discovers any breach of the law or other irregularity, it will take measures to correct them and may implement sanctions as provided by law.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... Most of the criminal law provisions are set out in the Criminal Law (5237). Other laws that contain provisions on financial crimes include:

- the Law on the Prevention of Laundering Proceeds of Crime (5549);
- the Anti-terror Law (3713);
- the Law on the Prevention of the Financing of Terrorism (6415);
- the Tax Procedural Code;
- the Capital Markets Law (6362);
- the Banking Law;
- the Law on Asset Declaration and Fighting Against Bribery and Corruption (3628); and
- the Anti-Smuggling Law (5607).

Article 282 of the Criminal Law and the Law on the Prevention of Laundering Proceeds of Crime govern the crime of money laundering and preventive measures. The general principles of the Criminal Procedure Law and the Law on the Prevention of the Financing of Terrorism govern terrorist financing.

Legal entities also face a fine of up to TRY2 million where money laundering, terrorist financing and other such crimes are committed by an individual within them. The following security measures specific to legal entities may also be imposed under Article 60 the Criminal Code:

- revocation of a licence or permit;
- confiscation of property or material interests;
- imposition of administrative fines, as per Article 43/A of the Turkish Misdemeanour Code (5326); and
- a prohibition against participating in public tenders.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The Financial Conduct Authority (FCA) has a 'free-standing duty' in respect to financial crime, to which it must have regard when discharging its general functions (Section 1B(5) of the Financial Services and Markets Act (FSMA) 2000, as amended). By virtue of this duty, the FCA must have regard to the importance of taking action intended to minimise the extent to which it is possible for business carried on by FSMA-authorised firms to be used for a purpose connected with financial crime. The FCA is responsible for supervising compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and for taking enforcement action for violations. On 13 December 2018, the FCA published guidance on financial crime systems and controls: insider dealing and market manipulation (Finalised Guidance 18/5). On

20 December 2018, the FCA published an evaluation paper (Evaluation Paper 18/3) on reducing barriers to entry into the UK banking sector.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... The Bank Secrecy Act (BSA) is the primary US law governing anti-money laundering (AML). Under the BSA, each US bank must establish an AML policy and compliance programme that is appropriate for its business and activities. This must include a programme for identifying customers, including the beneficial owners of legal entity customers. An AML programme must also ensure that the names of customers and beneficial owners are compared to lists of sanctioned individuals, and that the AML programme subjects customers and beneficial owners from high-risk jurisdictions or which are in certain high-risk industries to more rigorous scrutiny.

Under the BSA, a US bank must also report certain types of transactions to the Financial Crimes Enforcement Network of the US Treasury Department (FinCEN). Among other things, such an institution must file a suspicious activity report (SAR) with respect to any potential violations of law that it detects in connection with its regular AML monitoring. Generally, a US bank may not disclose to any third-party information related to a SAR that it has filed with FinCEN, including the contents of the SAR, the basis for the SAR and the fact that a SAR has been filed.

For more information about this answer please contact: Jerome Roche from Linklaters

12.2 Does banking secrecy apply in your jurisdiction?

Canada

Gowling WLG

Answer ... Canada does not have specific legislation governing bank secrecy. However, if banks collect customer data in Canada, they must comply with certain laws, which include:

- the common law duty of confidentiality (and in Quebec the civil law obligation to respect privacy), which banks owe to their customers;
- the Personal Information Protection and Electronic Documents Act (SC 2000, c 5); and
- certain provisions of the Bank Act which protect disclosure of customer data in certain situations and ensure that communication between banks and the Office of the Superintendent of Financial Institutions is strictly confidential.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Yes, pursuant to Section 117 of the Financial Business Act, financial institutions (including banks) may not divulge or otherwise utilise confidential information about their customers. The banking secrecy principle is subject to certain exemptions (eg, consent

secrecy principle is subject to certain exemptions (eg, consent, erroneous transfer of money, disclosure of certain information for administrative and risk management purposes), and is subject to overriding provisions of law (eg, disclosure of information to tax authorities).

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The application of banking secrecy in the German jurisdiction depends on the field of law. In civil law or contract law, banking secrecy applies at least as a secondary obligation or as an obligation of consideration based on Section 311 or 241 of the Civil Code. However, in criminal law or tax law, banking secrecy does not (always) apply.

Under the Anti-Money Laundering Act the obliged banks are exempt from the reporting obligation if the reportable matter relates to information they received in the context of a client relationship subject to professional secrecy. However, the reporting obligation continues to exist if the obliged entity knows that the contracting party has used or is using the relationship for the purpose of money laundering or terrorist financing or another criminal offence.

With an enforcement and seizure order or search warrant, and in compliance with the principle of proportionality, the German Code of Criminal Procedure allows for breach of the secrecy obligation. The right of professional secrecy holders to refuse to testify in accordance with Section 53 of the code does not cover banks or their employees.

Section 30a of the German Fiscal Code protected bank customers until its abolition in 2017 by the German Tax (Combat) Avoidance Act. According to Section 93 of the Fiscal Code, the tax authorities must be provided with information required to establish facts that are relevant for taxation.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... There are no specific bank secrecy laws in Ireland. Irish banks have a common law obligation to keep customer information confidential. Irish common law implies a duty of confidentiality on a bank in its relationship with its customer, unless the terms of the contract with the customer provide otherwise or the bank is compelled by law to disclose.

The Irish courts have recently reconfirmed that it is an implied term of any contract between a banker and its customer that the banker will not divulge to third parties, without the customer's express or implied consent:

- the state of the customer's account or the amount of his or her balance;
- securities offered and held;
- the extent and frequency of transactions; or
- any information acquired by the bank during or by reason of its relationship with the customer.

This duty is not absolute, however – it is qualified in the following

This duty is not absolute, however – it is qualified in the following circumstances:

- Disclosure was under compulsion of law (eg, to tax authorities or for legal proceedings);
- There was a duty to the public to disclose (eg, reporting criminal activity);
- The interests of the bank required disclosure; and
- The disclosure was made with the express or implied consent of the customer.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Yes. Pursuant to Article 41 of the Law of 5 April 1993 on the financial sector, as amended ('Banking Act'), natural and legal persons subject to the prudential supervision of the CSSF or established in Luxembourg and subject to the supervision of the European Central Bank or a foreign supervisory authority for the exercise of an activity referred to in the Banking Act, as well as members of the management body, directors, employees and any other persons working for these natural or legal persons, shall keep secret all information entrusted to them in the context of their professional activity or their mandate. The disclosure of such information is punishable, under Article 458 of the Luxembourg Criminal Code, by a prison term of between eight days and six months and a fine of between €500 and €5,000.

There are a number of exceptions to the secrecy requirement. This is the case, for instance, where the revelation of information is required or authorised by applicable law, or where information must be provided to national, European or international supervision or resolution authorities, subject to certain conditions.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... According to Article 47 of the Banking Act, banks incorporated in Switzerland (including Swiss branches and representative offices of foreign banks) are subject to a duty of confidentiality (banking secrecy) towards their clients. The disclosure of client information to third parties is prohibited in this context.

However, banking secrecy is not absolute and may be waived by the client. Moreover, it does not apply under certain exceptional circumstances, such as in the event of disclosure obligations to a Swiss public or judicial authority. In this context, practical cases include:

- civil proceedings (eg, pertaining to inheritances or divorces);
- debt recovery and forced liquidation proceedings;
- criminal proceedings (particularly in the case of tax fraud);
- proceedings by the supervisory authority; and
- proceedings relating to the cross-border exchange of information.

In particular, in relation to tax matters, bank-client confidentiality has recently undergone a far-reaching transformation. Driven by developments at the international level, greater importance has been given to transparency in Switzerland *vis-à-vis* tax and supervisory

authorities. With the implementation of the automatic exchange of information for tax purposes (AEO»), Swiss banks have become subject to new obligations imposed by the legal framework which relies on the Common Reporting and Due Diligence Standard issued by the

Organisation for Economic Co-operation and Development. With AEOI, bank and safekeeping account information is automatically submitted to the tax authorities in the participating countries on an annual basis.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... With the exception of information belonging to third parties, documents and information – such as figures, tables, charts, programmes, budgets, projects, contracts, decisions and bank correspondence – which are not required to be disclosed and published according to law, and which do not have general and abstract features, constitute bank secrets. The Banking Law requires the protection of the secrets of banks, affiliates, subsidiaries and jointly controlled partners. The scope of their secrets includes:

- their relationship with the bank;
- financial, economic, cash and credit conditions; and
- information and documents that must remain confidential, such as management principles, operating strategy, technical features of production, pricing policies, marketing tactics, income and expense situations, and market shares.

As customer secrets and bank secrets are protected under Article 73 of the Banking Law, breach of the confidentiality obligation specified in Article 73 of the Banking Law constitutes a criminal offence. Articles 159 and 161 of the Banking Law will apply to those who breach Article 73.

Additionally, the disclosure of bank secrets and customer secrets to unauthorised persons is also subject to penalties under Article 239 of the Turkish Criminal Law.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... No. Banking 'secrecy' should not be confused with confidentiality, data protection and privacy considerations, which do apply.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... Most prominently, the Gramm-Leach-Bliley Act (GLBA) establishes a privacy regime applicable to US financial institutions, including US banks, with respect to their relationships with US consumers. Under the GLBA, a US bank must provide a notice to consumers describing the bank's privacy policies, including the identification of any third parties to which the bank may disclose information concerning the consumer. The bank must also provide the consumer with the opportunity to opt out of such disclosure. The bank

must also provide further notices of its privacy policy on an annual basis, again permitting consumers to opt out of such disclosure.

If a consumer opts out of such disclosure, the bank will be permitted to share information about the consumer only under the exemptions provided by the GLBA, which includes sharing such information with the bank's affiliates and third-party service providers in connection with the provision of services to the consumer.

13. Competition

13.1 What specific challenges or concerns does the banking sector present from a competition perspective? Are there any pro-competition measures that are targeted specifically at banks?

Canada

Gowling WLG

Answer ... The criminal prohibitions, civil reviewable practices and merger review provisions of the Competition Act apply generally with equal force and effect to all sectors of the Canadian economy, including banking. The act also specifically prohibits in Section 49 certain agreements or arrangements between federal financial institutions, such as the kinds of services provided to a customer and the charges for such services, while setting out a number of exemptions, including for joint customers where the customer has knowledge of the agreement.

Banking in Canada is highly regulated. This has been credited as creating one of the soundest financial systems in the world, but has also raised concerns - including from Canada's Competition Bureau - as it limits competition, innovation and consumers' choices. For example, foreign ownership restrictions have been criticised for insulating the Canadian banking sector from outside competitive pressures.

The financial services sector has recently emerged as a significant area of focus for the bureau's advocacy initiatives. In December 2017 the bureau published an extensive market study on fintech. The study focused on three broad service categories:

- retail payments and the retail payments system;
- lending and equity crowdfunding; and
- investment dealing and advice.

It resulted in 30 recommendations to regulators and policy makers for fostering innovation. More recently, in February 2019 the bureau submitted a response to the Department of Finance's public consultation on the topic of open banking, asserting that greater financial technology adoption would promote competition among banks and likely result in a broader range of services for consumers. Another area of keen interest for the bureau has been 'big data' and the oversight of companies that collect and use consumer data, including banks. The bureau released a discussion paper on the topic in September 2017, followed by a final report in February 2018 that summarised its enforcement approach.

By: Ian MacDonald (Partner, Toronto) and Elad Gafni (Associate, Ottawa)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

The Danish banking sector is quite concentrated, with a few banks having a dominant position, which could potentially give rise to concerns. However, so far there is no evidence of any particular issues in this regard.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The European Central Bank (ECB) can prohibit the acquisition of a qualifying holding in a German credit institution only if any of the following conditions are met:

- The prospective acquirer is considered unsuitable to be a major shareholder in a financial institution;
- The institution would no longer be able to comply with its regulatory obligations;
- The institution would become a subsidiary of a foreign institution whose regulator does not cooperate with the Federal Financial Supervisory Authority (BaFin) or the ECB;
- The future management would be unreliable;
- There are reasonable grounds to suspect that money laundering or terrorism financing is being conducted through the institution, or the acquisition would the risk of this; or
- The prospective investor cannot provide financial support to the institution when needed.

During their review of a notification, BaFin and the ECB will investigate the ultimate purchaser(s), as well as any intermediate holding companies and their management. Further, BaFin and the ECB will require evidence of the source of funds used for the acquisition, to combat money laundering. Compliance with these regulatory requirements generally involves long-term planning and careful preparation.

Non-financial organisations are not prevented from acquiring and owning banks in Germany. Similarly, German banks are generally allowed to acquire minority or controlling investments in other banks and non-financial organisations. However, qualifying holdings held by banks in undertakings outside the financial sector that exceed certain thresholds will receive a risk weight of 1.25% and thus must be fully funded with own funds of the institution to avoid contagion risk.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The Competition and Consumer Protection Commission (CCPC) has highlighted that Irish banks do not compete aggressively for customers and as a result, consumers and small businesses lose out on interest rate reductions and pay higher charges than they would if there were more choice in the market.

The introduction of new online players and payment processors to the

Irish market has contributed to increased competition for market share. The possible fast-tracking of licence applications by financial institutions such as these may help create new opportunities for related markets in the near future.

In the aftermath of the banking crisis of 2008, which resulted in a substantial injection of state funds to support the banking system, Ireland committed to implement a package of measures to restore competition in the Irish banking market. This package has facilitated the entry by new competitors and enhanced the consumer protection. The package includes a number of initiatives to facilitate entry:

- To incentivise electronic banking which has a lower cost of entry than establishing a traditional retail banking franchise, Section 45 of the CCA was amended to recognise electronic communications relating to credit agreements in the same way as written and allow the use of electronic signatures with respect to credit agreements.
- The Central Credit Register was established under the supervision of the CBI to provide a centralised comprehensive database of credit information on all individuals and businesses. This is aimed at addressing the information asymmetry faced by new lenders.
- The CPC was revised to provide more detail on switching current accounts and the rules around bundling of products.
- The CCPC was required to provide a page to show consumers banking cost comparisons and to provide better comparative information on banking products.

Pursuant to Sections 149 of the CCA, banks operating in Ireland must notify the CBI if they wish to impose new charges or increase existing charges for the provision of the following services:

- making and receiving payments;
- providing foreign exchange facilities;
- providing and granting credit; and
- maintaining and administrating transaction accounts.

New entrants are exempt from Section 149 of the CCA for the first three years of operation in the market, after which time they must also notify their charges to the CBI.

A credit institution cannot impose a new charge or an increase to an existing charge without the prior approval of the CBI. These charges are assessed by the CBI in accordance with the following criteria:

- the promotion of fair competition;
- the commercial justification submitted in respect of the proposal;
- the impact that new charges or increases in existing charges will have on customers; and
- whether costs are passed on to customers.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Luxembourg benefits from an AAA credit rating and is home to 129 international banks. In addition, the banking industry is supported by specialised accountants, consultants, law firms and IT specialists with a multilingual and diverse international workforce. As a financial centre, it has positioned itself as a gateway to EU markets

a financial centre, it has positioned itself as a gateway to EU markets for non-EU financial participants. Specialties include cross-border private and corporate banking, fund administration, custody, wealth management, and treasury services.

The Luxembourg government continues to adopt a pragmatic and efficient approach with respect to the financial sector, taking measures to ensure the reliability, predictability and competitiveness of the industry as required. The financial sector is of strategic importance to Luxembourg and its competitiveness globally is constantly assessed with measures taken as appropriate to retain that standing.

As in other jurisdictions, competition for traditional banking is largely from fintech companies and other 'disruptors' seeking to disintermediate the classical bank-client relationship. There are no specific pro-competition measures in place and the competition which the banking sector faces is very similar to other large markets.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... In recent years, the trend of consolidation in Swiss banking has continued at a steady rate. The number of regional and foreign-controlled banks fell by 50% in a little more than two decades. The main reason for this decline is the pressure on margins in retail banking. In particular, banks are challenged by tougher regulations, leading to substantially higher costs for risk management and compliance. Moreover, in light of the new automatic exchange of information for tax purposes, foreign-controlled banks in Switzerland have reconsidered their business. Given this, the trend towards fewer but larger banks is unsurprising.

The competition regulations applicable to banks are no different from these applicable to other industries. In particular, no pro-competition measures are targeted specifically at banks. The backbone of the Swiss competition is the Federal Act on Cartels and other Restraints of Competition original of 1995.

Like companies from other sectors, banks are supervised by the Competition Commission and its Secretariat in relation to the control of:

- agreements between undertakings (Article 5 of the Cartel Act);
- abuses of a dominant position (Article 7 of the Cartel Act); and
- concentrations between undertakings (Articles 9 and following of the Cartel Act).

Nevertheless, two main peculiarities applicable to the banking sector must be taken into account.

First, the Competition Commission must in principle be notified of a concentration between undertakings where, in the year preceding the concentration, the participating undertakings:

- realised a worldwide turnover of CHF 2 billion or a turnover in Switzerland of CHF 500 million Swiss francs; and
- at least two of the participating undertakings realised a turnover of CHF 100 million in Switzerland (Article 9, paragraph 1 of the

Cartel Act).

In the case of banks that are subject to the accounting rules set out in the Banking Act, it is not the turnover but the gross income from ordinary business activities that must be considered when calculating the turnover.

Second, the Swiss Financial Market Supervisory Authority (FINMA), rather than the Competition Commission, is competent to approve the merger of banks if the merger is likely to cause prejudice to the banks' creditors; the Competition Commission must be invited to submit an opinion in this regard (Article 10, paragraph 3 of the Cartel Act). This notwithstanding, every bank merger must also be reported to the Competition Commission. In order to preserve the competence of FINMA in individual cases, the Competition Commission must inform FINMA immediately of any notification of proposed mergers of banks within the meaning of the Banking Act.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... The heavily regulated nature of the banking sector poses a challenge in terms of competition law. The main rules are set out in the Law on the Protection of Competition. Article 4 provides that decisions or agreements that restrict competition, concerted actions and associations of undertakings are unlawful. It applies to all such transactions that cause or are likely to result in a restriction of competition in terms of their purpose and effect. Concerted actions, on the other hand, will be examined by the Turkish Competition Board where the existence of an agreement between undertakings cannot be proven. Concerted actions include conscious coordination or consensus that aims to reduce or eliminate competition. The Turkish Competition Board has examined many claims of concerted actions in relation to file expenses and credit card interest rates. In its Decision 13-13/198-100 of 8 August 2013, the board investigated allegations of competition violations in the credit and credit card markets, and imposed administrative fines totalling TRY 1,116,957,468.76 on 12 banks.

Article 5 (abuse of dominant position) and 7 (control of anti-competitive mergers and acquisitions) of the Competition Law are also notable in this regard.

While there are no pro-competition measures that are targeted specifically at banks, the Banks Association and the Participation Banks Association of Turkey have stated that banks must safeguard ongoing trust in the banking sector, ensure its continued development and act in accordance with the spirit of competition law (Banking Ethical Principles of 20 August 2014).

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Where banks fail to participate in the effective promotion of competition, the Financial Conduct Authority (FCA) and the Competition and Markets Authority (CMA) have the power to investigate and take enforcement action against such breaches. The

FCA has the power to require the disclosure of information about suspected breaches and refer this to the CMA for a more detailed investigation.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... While the United States has several very large banks that represent a significant proportion of the US banking market, it also has thousands of smaller banks and other deposit-taking institutions that compete with those large banks in local banking markets across the country. The largest US banks have, however, increased their share of the nation's total banking assets in recent years.

US. banks are subject to the US antitrust laws, which, among other things, empower the US Department of Justice and other government agencies to scrutinize the competitive effects of large companies in US markets. As a practical matter, however, most competition concerns in the US banking market tend to be addressed under the US banking laws, which also generally impose competition standards on banks and bank holding companies. Among other things, when a US banking agency considers a request to approve a new bank merger or acquisition, or certain other types of regulatory approvals, it will, among other things, consider the effects such a transaction will have on competition in the relevant markets. In evaluating such effects, the US banking agency will typically take into consideration the same types of factors as competition regulators.

The Dodd-Frank Act imposes a restriction barring the approval of any mergers or acquisitions by a US bank, bank holding company or non-US bank with a US bank branch, agency or subsidiary that would result in that institution controlling more than 10% of the aggregate liabilities of US financial institutions. This provision does not necessarily prevent an existing bank from growing above that 10% limit.

In addition, US banking agencies may also limit a US bank or bank holding company's growth or impose limits on its ability to engage in new activities, through sanctions in connection with an enforcement proceeding or through more informal pressure in connection with an agency's supervision of the institution. An agency may apply such limitations with respect to mergers or new acquisitions, as well organic growth of an institution.

In addition, US banks are subject to a strong anti-tying regime under which they are strictly prohibited from conditioning the provision of one product on a customer's acceptance of another product offered by the bank or its affiliates. For instance, a US bank cannot generally condition the provision of a loan on a borrower's willingness to appoint the bank's broker-dealer affiliate to underwrite the borrower's offering of securities. This restriction on bank ties applies regardless of the bank's market power.

For more information about this answer please contact: Jerome Roche from Linklaters

14. Recovery, resolution and liquidation

14. Recovery, resolution and liquidation

14.1 What options are available where banks are failing in your jurisdiction?

Canada

Gowling WLG

Answer ... The mandate of the Office of the Superintendent of Financial Institutions (OSFI) includes monitoring the viability of Canadian banks and conducting risk-based assessments to identify where increased supervision or corrective action or intervention is required. Where a bank is identified as experiencing difficulties, there are a variety of flexible tools available to address the situation.

The last resort of a failing bank is winding-up under the Winding-up and Restructuring Act. However, the Canadian Deposit Insurance Corporation (CDIC) Act establishes CDIC as the resolution authority for regulated deposit-taking institutions, including banks. In addition to insuring deposits, CDIC has available to it a variety of tools to resolve a failing bank. CDIC may, for example:

- take temporary control or ownership of a failing bank;
- sell of otherwise dispose of a failing bank's assets;
- transfer certain the failing bank's assets and deposits to a 'bridge institution';
- convert preferred shares and debt to equity by way of a 'bail-in' transaction; and/or
- cause a failing bank to engage in a restructuring transaction or transactions.

CDIC may also be appointed as the receiver of a bank.

Banks that are designated by OSFI as being systemically important, which include Canada's six largest banks, must prepare a resolution plan that is reviewed and, if necessary, implemented by CDIC.

Canada has endorsed the Financial Stability Board's (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions and CDIC's approach to the resolution of failing banks is aligned with the FSB's Key Attributes.

By: E. Patrick Shea (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... Pursuant to Section 71a of the Financial Business Act, banks must prepare and maintain recovery plans that contain, among other things, a broad range of recovery models which can be implemented if the bank becomes distressed. The recovery plan must be submitted for approval to the Danish Financial Supervisory Authority (FSA). If a bank is failing and if no alternative measures are likely to prevent its failure, the Danish Financial Stability Company may resolve the situation by intervening. The resolution tools available to the bank are:

- a sale of the bank or its assets;
- the establishment of a bridge institute which will acquire all or part of the assets and liabilities of the relevant bank;
- a separation of performing and non-performing assets of the bank; and

- a bail-in.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... In 2014 the European Commission, the European Parliament and the EU member states reached agreement on a Single Resolution Mechanism (SRM) for all EU member states whose currency is the euro, including the establishment of a Single Resolution Fund (SRF) of up to €55 billion, to be raised from 2016 to 2023 through contributions by EU banks.

Germany was one of the first countries to introduce a recovery and resolution regime into its regulatory framework. The Banking Act was changed with the implementation of Directive 2014/59/EU on Bank Recovery and Resolution (BRRD) as of 1 January 2015, and the entry into force of the SRM as of 1 January 2016. The centrepieces of the new resolution regime for banks are the SRM Regulation and the Act on the Recovery and Resolution of Institutions and Financial Groups. The regime has two major parts: recovery planning and resolution planning, and the actual resolution of a bank that is failing or likely to fail. Resolution planning and taking resolution decisions fall within the decision power of specific resolution authorities as part of the SRM. In the SRM, similar to the Single Supervisory Mechanism, competencies and tasks are shared between the Single Resolution Board (SRB), an EU authority, and national resolution authorities of the EU member states participating in the SRM. The SRB is competent for resolution planning and actual resolution of all banks that are directly supervised by the ECB because they are deemed significant. When a bank is failing or likely to fail, and to avoid a bail-out, the SRB and the Federal Financial Supervisory Authority (BaFin) can use resolution tools to restructure the bank and safeguard public interest, through ensuring the continuity of the bank's critical functions and financial stability while incurring minimal costs for taxpayers.

The core resolution tool is the bail-in tool, by which a bank's equity, debt instruments and other unsecured liabilities can be written down, including to zero, or converted into new equity, in order that shareholders and creditors participate in the losses and the recapitalisation of the bank. To be prepared for a bail-in, banks must have a sufficient amount of unsecured liabilities that can be bailed-in during times of crisis (minimum requirement for own funds and eligible liabilities). International recognition of resolution measures remains a critical issue. To minimise the risk of non-recognition, German institutions must include a clause in contracts governing their liabilities by which the creditor recognises that the liability is subject to the bail-in tool if the liability is governed by the laws of non-EU country.

International cooperation between resolution authorities in the Eurozone is organised within the SRM. With certain non-EU resolution authorities, the SRB concluded bilateral resolution cooperation arrangements, which provide a basis for the exchange of information and cooperation in resolution planning and in the implementation of resolution measures.

For more information about this answer please contact: Andreas

Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The CBI is designated as the national resolution authority for credit institutions under the European Union (Bank Recovery and Resolution) Regulations 2015, which transposed the EU Bank Recovery and Resolution Directive into Irish law, and for the purposes of the Single Resolution Mechanism Regulation within the context of the Single Resolution Mechanism.

In accordance with the provisions of the Companies Act 2014, the options for failing banks are liquidation or, if the bank has a chance of survival, examinership.

Resolution tools will generally be used where, for example, the failure of an institution could cause financial instability or could disrupt critical functions. In these situations, placing an institution into liquidation would be sub-optimal.

The resolution tools are as follows:

- Bail-in: This allows for the write-down and/or conversion into equity of the bank's liabilities;
- Sale of the business: This provides for the sale (whether through a share or asset sale) of all of part of the bank's business without shareholder consent;
- Bridge institution: This provides for the sale of the shares of the bank or some of its assets and liabilities to a special purpose, limited life bridge institution controlled by the CBI; and
- Asset separation: This provides for the transfer of the assets and liabilities of the bank to a separate asset management entity which would be fully or partially owned by the State.

The use of resolution tools or liquidation is a final resort for dealing with a failing institution.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... The failure of banks is governed by the Law of 5 April 1993 on the financial sector, as amended ('Banking Act') and the Law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes ('BRR Law'). The Banking Act contains prudential rules and obligations in relation to recovery planning, intra-group financial support and early intervention; the BRR Law covers the resolution of banks.

Recovery: Credit institutions must draw up and maintain a recovery plan that provides for measures to be taken by the credit institution to restore its financial position following a significant deterioration of its financial situation, which must be updated at least once a year and is subject to an assessment by the *Commission de Surveillance du Secteur Financier* (CSSF). The recovery plan must include a number of elements, including:

- a communication and disclosure plan outlining how the bank

intends to manage any potentially negative market reactions;
- a range of capital and liquidity actions required to maintain or restore the viability and financial position of the bank;

- a detailed description of how recovery planning is integrated into the corporate governance structure of the bank;
- arrangements and measures to conserve or restore the own funds of the bank;
- arrangements and measures to ensure the bank has adequate access to contingency funding sources; and
- arrangements and measures to restructure liabilities or business lines.

The Banking Act includes specific provisions for group recovery plans. Recovery plans must be kept confidential and may be shared only with third parties which have participated in their drafting and transposition. The failure to draw up, maintain and update recovery plans is subject to specific administrative penalties, which include fines of up to 10% of the total annual net turnover of the bank in the preceding business year, or up to €5 million for individuals.

The Banking Act also includes provisions regulating the entry into group financial support agreements, which may be entered into only subject to specific conditions and with the authorisation of the relevant competent authorities.

Where a bank infringes or is likely in the near future to infringe the requirements of 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, as amended (CRR), the Banking Act, their implementing measures or certain provisions of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, the CSSF may take a number of early intervention measures. The CSSF may:

- require the management body of the bank to:
  - update the recovery plan;
  - implement one or more of the arrangements or measures of the recovery plan;
  - prepare an action plan to address the situation and a timetable for its implementation;
  - convene a meeting of the bank's shareholders; or
  - draw up a plan for the negotiation on restructuring of debt;
- require the bank to remove or replace one or more members of the management body or authorised management, change its business strategy or change its legal or operational structures; and
- acquire, including through on-site inspections, all information necessary to update the resolution plan and prepare for the possible resolution of the bank.

Where there is a significant deterioration in the financial situation of a bank, or where there are serious infringements of applicable laws or regulations or of the statutes of the bank, or serious administrative irregularities, and the taking of early intervention measures is not sufficient to reverse that deterioration, the CSSF may also require the removal of the authorised management or management body.

Finally, where the replacement of the authorised management or management body is deemed to be insufficient, the CSSF may appoint a temporary administrator to temporarily replace the management

body or temporarily work with the management body. The powers, role and duties of the temporary administrator are determined by the CSSF.

Resolution: The BRR Law contains extensive provisions on the resolution of credit institutions. Any reference in this Q&A to the 'Resolution Board' is a reference to the CSSF acting in its capacity as resolution authority in Luxembourg. The Resolution Board carries out its resolution functions independently from the CSSF's supervisory functions.

Prior to any resolution, the Resolution Board must prepare a resolution plan and perform a resolvability assessment for each credit institution. Specific provisions apply for groups. The resolution plan provides for the resolution actions that the Resolution Board may take where the relevant credit institution meets the conditions for resolution. Its content is detailed in the BRR Law.

The Resolution Board shall take a resolution action where all the following conditions are met:

- 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 the institution within a reasonable timeframe; and
- A resolution action is necessary in the public interest.

The Resolution Board has a number of resolution tools, resolution powers and other powers at its disposal. These include:

- the power to appoint a special manager to replace the management body of the institution under resolution, which shall have all the powers of the shareholders and of the management body;
- the power to transfer to a purchaser shares or other instruments of ownership issued by, and/or all of any assets, rights or liabilities of, the bank 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 Board, shares or other instruments of ownership issued by, and/or all of any assets, rights or liabilities of, the bank under resolution (the 'bridge institution' tool);
- the power to transfer assets, rights or liabilities of the bank under resolution or of a bridge institution to one or more asset management vehicles (the 'asset separation' tool);
- write-down and conversion powers in relation to liabilities of the bank under resolution (the 'bail-in' tool);
- the power to write down or convert relevant capital instruments;
- a number of general and ancillary powers, including:
    - the power to take control of an institution;
    - the power to transfer rights, assets or liabilities of an institution;
    - the power to reduce the principal amount of eligible liabilities;

liabilities;
    - the power to convert eligible liabilities into ordinary shares or other instruments of ownership;
    - the power to cancel debt instruments;
    - the power to amend or alter the maturity of debt instruments; and
    - the power to close out or terminate financial or derivatives contracts;
- the power to require an institution or any of its group entities to provide any services or facilities;
- powers in respect of assets, rights, liabilities, shares and other instruments located in a third country;
- the power to suspend any payment or delivery obligations pursuant to any contract;
- the power to restrict the enforcement of security interests;
- the power to temporarily suspend termination rights of any party to a contract with an institution under resolution;
- the power to require an institution to contact potential purchasers in view of the resolution of the institution; and
- information-gathering and investigatory powers.

The objectives of resolution (which must be taken into account by the Resolution Board when applying the resolution tools and exercising its resolution powers) are:

- the continuity of critical functions;
- the avoidance of significant adverse effect on the financial system;
- the protection of public funds;
- the protection of depositors; and
- the protection of client funds and client assets.

The Resolution Board must also take into account certain general principles set out in the BRR Law. For instance, the shareholders of the institution under resolution shall bear first losses, creditors in the same class shall be treated in an equitable manner and covered deposits shall be fully protected.

The Resolution Board may impose administrative penalties on banks, members of their management body and other natural persons responsible in case of specific infringements with respect to resolution as set out in the BRR Law. These penalties include:

- warnings;
- public statements;
- orders requiring the cessation of a specific conduct;
- temporary or permanent bans from exercising certain functions;
- temporary bans from carrying out certain activities;
- suspension of voting rights; and
- fines (which can reach up to 10% of the total annual net turnover of the bank in the preceding business year or, for individuals, up to €5 million).

The BRR Law established the Luxembourg Resolution Fund (*Fonds de Résolution Luxembourg* (FRL)), the purpose of which is to collect contributions due under the BRR Law, manage the financial means so collected and participate in the financing of the resolution of failing institutions. The FRL must have adequate financial means, which must reach 1% of the amount of covered deposits of all the institutions

reach 1% of the amount of covered deposits of all the institutions authorised under the Banking Act by 31 December 2024. In order to collect these financial means, the FRL collects annual *ex ante* contributions from banks, among others. Where the FRL's financial

means are not sufficient to cover the losses, costs or other expenses incurred, the FRL may raise extraordinary contributions *ex post*. The FRL may also borrow money.

The resolution of Luxembourg banks is further subject to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The Swiss Financial Market Supervisory Authority (FINMA) is responsible for measures to stabilise banks in the event of a crisis, including the execution of restructuring, liquidation and insolvency proceedings.

If there is substantiated concern that a bank is overindebted or has serious liquidity problems, or if it does not meet the relevant capital adequacy requirements, FINMA may initiate restructuring proceedings if there is a realistic chance of the bank's recovery or ability to continue individual banking services.

In such case FINMA will appoint a restructuring administrator, who will draw up a restructuring plan (Article 28 of the Banking Act). This restructuring plan is subject to approval by FINMA and must be publicly announced. In particular, the plan must ensure that the bank will fulfil the licensing requirements upon completion of the restructuring. If the restructuring plan provides measures that interfere with creditors' rights, the creditors may reject the plan, provided that they jointly represent more than one-half of all third-class claims, according to Article 219, paragraph 4 of the Swiss Debt Collection and Bankruptcy Act of 1989. If the plan is rejected, FINMA may initiate bankruptcy proceedings. An exception applies for systematically important banks, where creditors have no right to reject the restructuring plan.

Possible restructuring tools include the partial or complete transfer of assets and liabilities, as well as contractual relationships, of the bank to another legal entity or to a transitional bank. Moreover, FINMA may initiate capital measures, such as the reduction or creation of new equity, the conversion of debt into equity (debt-to-equity swap), or the write-down of liabilities. The latter two measures are jointly defined as a 'bail-in', which requires both the owners and creditors to carry the costs of recapitalisation. To increase the potential for a bail-in, in 2016 Switzerland implemented the Total Loss-Absorbing Capacity Term Sheet of the Financial Stability Board, requiring internationally active systematically important banks to build-up 'bail-in-able' capital until 2020, in an amount equivalent to at least 14.3% in relation to risk-weighted assets and 4.5% in relation to leverage ratio (subject to potentially receiving a rebate). In 2019, this requirement was extended

to domestic systematically important banks, but set at a rate of 40% of the requirements applicable for internationally active systematically important banks, to be built up over eight years.

In addition, the Financial Market Infrastructure Act of 2015 recently included a provision in the Banking Act that allows FINMA to forcibly postpone the termination of agreements. The purpose of this provision is to allow FINMA to take safeguard or restructuring measures without triggering any contractual rights of termination or rights according to Article 27 of the Banking Act. This provision ensures the continuation of contractual relationships during stress situations such as restructurings. Thus, banks must ensure that any new contracts or amendments to existing contracts which are governed by foreign law or provide for foreign jurisdiction are agreed upon only if the counterparty recognises the possibility that FINMA may postpone the termination of agreements where necessary.

The resolution regime in Switzerland, which allows a bank to be restructured rather than liquidated, has been continuously amended over the past few years. For internationally active systemically important banks, the obligation to prepare a recovery plan was introduced in 2013. They were obliged to present their final recovery plans to FINMA by the end of 2019. This obligation was recently extended to nationally active systemically important banks.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... If a bank has failed to take the measures outlined in question 14.2, if its liabilities exceed the total value of its assets or if a case mentioned in Article 71 of the Banking Law arises, the Banking Regulation and Supervision Agency (BRSA) may revoke its operating permissions or transfer the shareholder rights, except dividends, and the management and supervision of the bank to the Savings Deposit Insurance Fund (SDIF), for the purpose of transferring, selling or merging them, partially or fully, on condition that the loss will be deducted from the capital of the existing partners.

According to Article 106 of the Banking Law, if the permission of a bank is revoked, its management and supervision shall be transferred to the SDIF and the SDIF shall pay for the insured deposits and the insured participation funds, and seek the bank's direct bankruptcy, instead of the deposit and participation fund owners. If a bank is directly transferred to the SDIF, the relevant process described in Article 107 of the Banking Law will be followed.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The Prudential Regulation Authority (PRA) requires UK banks and banking groups to develop recovery and resolution plans (known as 'living wills').

A recovery plan comprises a series of measures that the bank or its group could take to turn the business around following adverse trading conditions, and sets out a range of options that the bank could

take to return to adequate levels of liquidity and capital. Recovery options may include:

- disposals;
- raising new equity;
- elimination of dividends;
- liability management; or
- sale of the bank.

Recovery plans are developed by banks. However, their adequacy and potential practical efficacy are evaluated by the PRA. Banks must produce a resolution pack that sets out information required by the appropriate resolution authorities to enable them to draw up a resolution plan to resolve the bank in the event of its failure.

The Banking Act 2009 and subsequent legislation prescribe the UK bank resolution regime. The resolution objectives in the Banking Act 2009 give effect to the Financial Stability Board's (FSB) Key Attributes of Effective Resolution Regimes, which G20 leaders agreed in 2011. The Banking Act 2009 equips the Bank of England with a variety of statutory powers (known as resolution tools) to enable it to effect resolutions. The Treasury's Code of Practice provides guidance on how and when the Special Resolution Regime (SRR) is to be used.

When exercising the resolution powers, the Bank of England's statutory objectives are to:

- ensure that critical banking functions remain available;
- protect and enhance financial stability;
- protect and enhance public confidence in the financial system's stability;
- protect public funds;
- protect depositors and investors covered by the Financial Services Compensation Scheme (FSCS);
- protect (where relevant) client assets; and
- avoid interfering with property rights.

The PRA expects a bank's recovery plan, as well as the processes for producing resolution proposals, to be subject to oversight and approval by the board or a senior governance committee and subject to review by the audit committee. Banks must nominate an executive director who has overall responsibility for the bank's recovery and resolution plan, as well as overseeing governance arrangements. As a bank comes under increasing stress, the PRA will assess its 'proximity to failure', which is captured by the bank's position within the PRA's Proactive Intervention Framework (PIF), which is designed, in part, to guide the Bank of England's contingency planning as resolution authority. The PIF assessment is derived from a firm's ability to manage the following risks:

- external context;
- business risk;
- management and governance;
- risk management and controls; and
- capital and liquidity.

There are five stages of PIF, describing different proximity to failure, as follows:

- low risk;

- moderate risk;
- risk to viability absent action by the firm;
- imminent risk to viability of the firm; and
- the firm is in resolution or being wound up.

Each bank will be allocated to a particular stage. If a bank moves to a higher risk category (eg, the PRA determines that the bank's viability has deteriorated), the intensity of supervision will increase proportionality.

The PRA's recovery and resolution framework is based on Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD), which entered into force on 2 July 2014. The United Kingdom implemented the BRRD through changes to primary and secondary legislation, new PRA and Financial Conduct Authority rules and amendments to the Treasury's SRR Code of Practice. On 20 December 2018, the Treasury published the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (SI 2018/1394).

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters
Answer ... US banks with deposit insurance from the Federal Deposit Insurance Corporation (FDIC) are subject to insolvency under the Federal Deposit Insurance Act (FDIA). US banks may not commence a bankruptcy proceeding under the US Bankruptcy Code.

Under the FDIA, the FDIC is appointed as receiver or conservator of a failed bank, and in that capacity has the authority to rehabilitate or wind up the operations of the failed bank. Typically, the FDIC attempts to arrange for a sale of the assets and liabilities of a failed bank to another institution and has the authority to provide financial support for such a transaction. The FDIC may also employ other strategies to resolving a failed bank, including the establishment of a bridge bank to which the 'good assets' of the failed bank may be transferred.

Other types of financial companies are generally subject to insolvency under the US Bankruptcy Code, though systemically important US bank holding companies (BHCs) and other financial companies may be subject to resolution under the Orderly Liquidation Authority (OLA) adopted as part of the Dodd-Frank Act. OLA is modelled after the FDIA, and as in an FDIA proceeding, the FDIC will be appointed receiver of the systemically important BHC. The OLA has not yet been used to resolve an insolvent BHC.

For more information about this answer please contact: Jerome Roche from Linklaters

14.2 What insolvency and liquidation regime applies to banks in your jurisdiction?

Canada
Gowling WLG
Answer ... The Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act - the standard legislation in Canada applicable to the liquidation and reorganisation of insolvency businesses - do not apply to banks. The only formal insolvency liquidation procedure that is available to an insolvent bank in Canada

is winding-up under the Winding-up and Restructuring Act. This act does not include any mechanism by which an insolvent bank can be reorganised.

By: E. Patrick Shea (Partner, Toronto)
For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... A bank may be either:

- liquidated by way of a solvent liquidation on the shareholders or (in some instances) the FSA's initiative pursuant to the Financial Business Act and the Companies Act; or
- liquidated or reconstructed through a bankruptcy or reconstruction procedure pursuant to the Financial Business Act and the Bankruptcy Act.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... If an institution becomes insolvent or overindebted, the managing directors must report this and submit informative documentation to BaFin without undue delay. The Act on the Recovery and Resolution of Institutions and Financial Groups transposes the BRRD into German law. The act provides for detailed provisions regarding the recovery and resolution of banks.

Pursuant to Section 12 of the Act on the Recovery and Resolution of Institutions and Financial Groups, institutions are obliged to prepare a recovery plan once the supervisory authority has asked them to do so. The time limit for the preparation of the recovery plans may not exceed six months. However, an institution may apply for an extension of up to six months. The recovery plans must contain the measures that will ensure or restore the financial stability in case of a crisis. The act provides a detailed description of the content of these plans. The aim of such recovery plans is to give an institution the tool for handling a crisis through its own efforts. In doing so, the resolution of institutions right from the outset may be avoided. BaFin assesses institutions' recovery plans and suggests improvements thereto. Where plans do not meet the requirements under the Act on the Recovery and Resolution of Institutions and Financial Groups, BaFin can request a revised recovery plan.

Another key section of the Act on the Recovery and Resolution of Institutions and Financial Groups covers the resolution of institutions and financial groups. Pursuant to Section 62, certain conditions must be fulfilled in order to implement resolution measures. One condition, for example, is that the institution is failing or is likely to fail. An institution is deemed to be failing if:

- it breaches the requirements associated with the Banking Act in a way that would justify the suspension of a licence by BaFin;
- its assets are below the level of its liability; or
- it is overindebted.

Another condition is that the measure is in the public interest and that the failure of the institution cannot be equally prevented by other

means within the available timeframe. Once these conditions are met, resolution measures can be implemented. There are four resolution measures: sale of business, transfer to a bridge institution, asset separation and bail-in.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... The Companies Act 2014 (as amended by the Central Bank and Credit Institutions (Resolution) Act 2011) governs the liquidation of banks in Ireland.

The CBI may apply to the Irish High Court for an order to liquidate a bank in a number of circumstances, including where:

- the CBI believes that liquidation would be in the public interest;
- the bank has failed to comply with a direction of the CBI;
- the bank's licence or authorisation has been revoked; or
- the CBI considers that it is in the interest of deposit holders that it be wound up.

No person other than the CBI may apply to have a bank wound up without giving the CBI 10 days' notice and receiving the approval of the CBI. Only a liquidator approved by the Central Bank may wind up a bank. As soon as practicable after the court makes a winding-up order, the Central Bank will appoint a liquidation committee to oversee the winding up of the bank.

The liquidator of a bank has two objectives:

- to facilitate the CBI in ensuring that each eligible depositor receives the prescribed amount payable under the deposit guarantee scheme; and
- to wind up the bank in a manner to achieve the best results for the creditors of that bank as a whole.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... In addition to resolution, the BRR Law covers the reorganisation and winding up of credit institutions. In terms of specific procedures, the BRR Law covers suspension of payments, voluntary liquidation and judicial winding-up proceedings. The BRR Law further specifies that the following do not apply to credit institutions:

- Book III of the Luxembourg Commercial Code (which covers bankruptcy and suspension of payments, among other things);
- the provisions of the Law of 4 April 1886 on court-approved compositions and arrangements with creditors aimed at preventing bankruptcy; and
- the provision of the Grand-ducal Decree of 24 May 1935 supplementing the legislation relating to suspension of payments, compositions and arrangements with creditors aimed at preventing bankruptcy and bankruptcy following on from the setting-up of a controlled management scheme.

Suspension of payments: Suspension of payments proceedings may

Suspension of payments: Suspension of payments proceedings may be started where:

- the bank has lost its creditworthiness or has reached an impasse regarding liquidity, whether it is in a state of cessation of

  payments or not;
- the execution of the bank's commitments is compromised; or
- the authorisation of the bank has been withdrawn and the decision in this respect is not yet final.

Only the CSSF or the bank concerned may apply for suspension of payments proceedings. The application is lodged with the *Tribunal d'Arrondissement* (district court) of Luxembourg sitting in commercial matters. Where the application is made by the bank, the bank shall, under penalty of inadmissibility of the application, inform the CSSF prior to bringing the matter before the court. The lodging of the application results in the suspension of all payments by the bank and a prohibition of all acts other than precautionary measures pending a final decision. The BRR Law details the procedure. The judgment determines, for a period not exceeding six months, the conditions and arrangements for the suspension of payments and appoints one or more administrators, who shall be in charge of the management of the bank's assets. The written authorisation by the administrator(s) is required for all acts and decisions of the bank. The suspension of payments has universal effect and applies to branches and assets of the institution located abroad.

Voluntary liquidation: A bank may start voluntary liquidation proceedings only after notifying the CSSF of its intention to do so; the notification must be made at least one month prior to convening the general meeting which shall decide on the voluntary liquidation. Specific publication requirements apply to the notice convening the meeting. A report on the completion of the voluntary liquidation and the arrangements of such voluntary liquidation must be transmitted to the CSSF.

Judicial winding-up: The dissolution and winding-up of a bank may take place where:

- it is apparent that the suspension of payments set out above cannot rectify the situation that caused it;
- the financial situation of the bank is affected to such an extent that the bank will no longer be able to comply with the commitments with respect to the rights of holders of claims or participations; and
- the authorisation of the bank has been withdrawn and the decision in this respect became final.

Only the CSSF or the state prosecutor may apply to the *Tribunal d'Arrondissement* of Luxembourg sitting in commercial matters to order the dissolution and winding-up of a bank. When ordering the winding-up, the *Tribunal d'Arrondissement* appoints an official receiver and one or more liquidators, determines the winding-up method and may make applicable the general rules governing bankruptcy. The liquidators inform the known creditors located abroad of the winding-up. Any creditor has the right and obligation to deposit its claim with the registry of the *Tribunal d'Arrondissement*.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The liquidation of insolvent banks is regulated by the Banking Act and the Bank Insolvency Ordinance issued by FINMA.

If there is no prospect of restructuring or if efforts at restructuring fail, FINMA will withdraw the bank's licence, order its liquidation and make this public. Under this order, the bank is no longer entitled to dispose of its assets. FINMA will then appoint a liquidator, who is responsible for conducting and implementing the liquidation proceedings, or will act as liquidator itself.

Claims against the bank (which are recorded in the bank's books) need not be additionally logged by the creditors. They will be automatically considered by the liquidator when drawing up a schedule of claims.

Claims of bank customers are privileged up to the amount of CHF 100,000. These claims are paid out immediately and without the right to set-off (if possible), and rank senior to general creditors in liquidation (see question 10.2). Other than this, no creditor protection or creditor preference regime exists in Switzerland.

If FINMA decides that there is a realistic chance that a bank may be successfully restructured, it may order restructuring proceedings rather than liquidation (see question 14.1).

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... If a bank's assets are unlikely to meet its obligations, its profitability is insufficient to reliably perform its activities, its funds are inadequate under the provisions pertaining to capital adequacy or any of the above is likely to occur, the measures set out in Articles 68, 69 and 70 of the Banking Law must be taken. These measures can be corrective, restrictive or rehabilitative. If the bank does not take such measures, if its liabilities exceed the total value of its assets or if a case mentioned in Article 71 of the Banking Law arises, the BRSA may revoke its operating permissions or transfer the shareholder rights, except dividends, and the management and supervision of the bank to the SDIF, for the purpose of transferring, selling or merging them, partially or fully, on condition that the loss will be deducted from the capital of the existing partners.

According to Article 106 of the Banking Law, if the permission of a bank is revoked, its management and supervision shall be transferred to the SDIF and the SDIF shall pay for the insured deposits and the insured participation funds, and seek the bank's direct bankruptcy, instead of the deposit and participation fund owners.

If a bank is directly transferred to the SDIF, according to Article 107 of the Banking Law, the SDIF will exercise its powers in relation thereto under Article 71 of the Banking Law, in line with principles aimed at ensuring cost efficiency and maintaining the security and stability of the financial system. Within this framework, the SDIF may:

- request termination of the operating permission of the bank, either partially or fully;
- provide financial support and take over the losses; or
- decide on other options as set out in Article 107 of the Banking

- decide on other options as set out in Article 107 of the Banking Law.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK
1 Crown Office Row

Answer ... By virtue of the Banking Act 2009, the Bank of England has responsibility for the resolution of a failing bank, and their group companies. The SRR applies to banks, building societies, systemically important investment firms, recognised central counterparties and banking group companies. The SRR prescribes a number of stabilisation powers that are exercisable in relation to a bank. The aim of the SRR is to provide a mechanism for resolving failing banks that will only be used in situations where failure is imminent and other powers of the relevant UK authorities are inadequate. The measures available include the transfer of all or part of the bank in question to a 'bridge bank' owned by the Bank of England or the temporary public ownership of the bank in question or its holding company.

On 29 April 2019 the FSB published its thematic Review on Bank Resolution Planning (www.fsb.org/wp-content/uploads/P290419.pdf). On 31 August 2018 the PRA published Supervisory Statement 19/13, "Resolution Planning", which sets out the resolution planning information that banks are expected to provide to the PRA.

In October 2017 the European Banking Authority consulted on changes to the Implementing Technical Standards (ITS) on information for resolution planning, with the aim of further harmonising data collections and facilitating data exchange within resolution colleges. The ITS was submitted to the European Commission for approval on 17 April 2018. Banks are expected to start reporting using the new templates by the end of May 2019.

Bank nationalisation in the United Kingdom is rare. Northern Rock was nationalised on 22 February 2008; Bradford & Bingley was nationalised on 28 September 2008, although the deposits and branch network were sold to the Santander Group. The interests of depositors were fully protected. In the event of a bank's insolvency, deposits protected by the FSCS are 'super-preferred' in the creditor hierarchy. Employees may be protected under employment law where a business unit is transferred or where redundancies are made. Certain employee claims rank as preferred debts if a bank is wound up.

Under the Banking Act 2009, if the Treasury decides to take a bank or a bank holding company into public ownership, it must pay compensation if shareholders suffer a loss compared to the position they would have been in had the failed bank been subject to insolvency proceedings (referred to as the 'no creditor worse off' safeguard). No account is taken of any financial assistance provided by the Bank of England or the Treasury in valuing the shares of the bank.

The SRR consists of the following pre-insolvency stabilisation options for banks:

- the transfer of all or part of a bank to a private sector purchaser (PSP);
- the transfer of all or part of a bank to a bridge bank owned by the Bank of England;

- the transfer of a bank or a bank's holding company into temporary public ownership (TPO);
- the asset separation tool, which allows assets and liabilities of the failed bank to be transferred to a separate asset management vehicle, with a view to maximising their value through an eventual sale or orderly wind-down; and
- a bail-in to absorb the losses of the failed firm, and recapitalise that firm (or its successor) using the firm's own resources.

A stabilisation power may be exercised only if the PRA is satisfied that:

- the bank is failing, or is likely to fail, to satisfy the threshold conditions for authorisation under the Financial Services and Markets Act 2000; and
- having regard to timing and other relevant circumstances, it is not reasonably likely that action will be taken to satisfy those conditions.

In exercising any of the stabilisation powers or the insolvency procedures, the relevant authorities must have regard to a number of specified objectives. These are:

- ensuring the continuity of banking services and critical functions in the United Kingdom;
- protecting and enhancing the stability of the UK financial system;
- ensuring the stability of the UK banking system;
- protecting depositors;
- protecting public funds and client assets; and
- avoiding unjustified interference with property rights.

The Bank of England may exercise the PSP or bridge bank powers if it is satisfied (after consultation with the Treasury and the PRA) that it is necessary having regard to:

- the public interest in the stability of the UK financial systems;
- the maintenance of public confidence in the stability of the UK banking system; or
- the protection of depositors.

The Treasury may exercise the TPO power only if it is satisfied (after consultation with the Bank of England and the PRA) that either:

- exercise of the power is necessary to resolve or reduce a serious threat to the stability of the UK financial system; or
- it is necessary to protect the public interest where the Treasury has previously provided financial assistance to a bank.

The stabilisation powers are supplemented by a broad range of powers to transfer shares or property (including foreign property) and overriding contractual rights that could interfere with the transfer.

A bank insolvency procedure provides for the orderly winding up of a failed bank. It facilitates the FSCS in satisfying depositor claims or the transfer of their accounts to another institution. The Bank of England, the PRA or the secretary of state may apply to the court to make a bank insolvency order. An order may be made if:

- the bank is unable, or is likely to be unable, to pay its debts;
- winding up the affairs of the bank would be in the public interest; or

- winding up the bank would be 'fair' ('just and equitable' in the Insolvency Act 1986).

In order to participate in the bank insolvency procedure, the bank must have depositors eligible to be compensated under the FSCS. Once a bank insolvency order is made, the liquidator has two objectives:

- to work with the FSCS to ensure, as soon as is reasonably practicable, that accounts are transferred to another bank, or that eligible depositors receive compensation under the FSCS; and
- to wind up the affairs of the bank.

The general law of insolvency applies, with some modifications, to bank insolvency. The liquidator has similar powers to access the bank's assets and, once the eligible deposits have been transferred or compensation paid, creditors will receive a distribution in accordance with their rights. A resolution for voluntary winding-up has no effect without prior approval of the court.

The SRR includes a bank administration regime, which puts the part of a failed bank that is not transferred to the bridge or private sector purchaser (known as the residual bank) into administration. The purpose of bank administration (which should not be confused with administration under the Insolvency Act 1986) is principally to ensure that the non-sold or transferred part of the bank continues to provide services to enable the purchaser or bridge bank to operate effectively. Once the Bank of England notifies the bank administrator that the residual bank is no longer required, the bank will proceed to a normal administration, where the objective is either to rescue the residual bank as a going concern or, if this is not possible, to achieve a better result for the bank's creditors as a whole than in a winding-up.

Insolvency procedures for banks carrying on an investment banking business are set out in Statutory Instrument (SI) 2011/245 (as amended by the Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017 (SI 2017/443)). On 4 December 2018 the Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (SI 2018/1285) were published by the Treasury.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States
Linklaters

Answer ... Please see question 14.1.

For more information about this answer please contact: Jerome Roche from Linklaters

15. Trends and predictions

15.1 How would you describe the current banking landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in

the next 12 months, including any proposed legislative reforms?

Canada

Gowling WLG

Answer ... Bill C-86 will introduce a comprehensive financial consumer protection framework to the Bank Act . Its entry into force has yet to be determined and we expect detailed regulations to be elaborated in many broad areas as permitted by the bill . The framework establishes new rules for fair and equitable dealings with customers and the public, with a focus on:

- sales practices, product suitability, remuneration relating to sales and application of the rules when products and services are offered by affiliates;
- opening and operation of retail deposit accounts;
- consumer lending, including provisions relating to mortgage renewals, credit cards and other consumer credit;
- prepaid payment products and charges and the requirement for express consent;
- optional products and the requirement for express consent; and
- complaints and designated complaints bodies.

In certain cases where a bank has imposed charges or penalties that are not provided for in or are contrary to an agreement, or that concern a product or service no expressly consented to, the bank is required to refund the amounts plus interest . The framework sets out separately revised disclosure requirements that apply to banks which must be made "using language, that is clear, simple and not misleading" and in writing, unless permitted otherwise by this part of the framework. Once in force, banks will be required to disclose information boxes on its application forms and agreements with customers . Particular disclosure rules (some of which are new; others which are similar to the current requirements) are provided for:

- deposit accounts;
- deposit insurance and mortgage insurance;
- deposit-type instruments and principal protected notes;
- credit agreements;
- prepaid payment products;
- product renewals and optional products and services; and
- advertising.

The bill also establishes a whistleblowing regime for employees of banks to report wrongdoing, including contraventions of:

- the Bank Act and its regulations;
- the voluntary codes of conduct that the bank has committed to adopt; and
- the policies or procedures of the bank.

In addition, the Bank of Canada has signalled an interest in innovation in the banking market, which has included investigations and considerations of digital currency, open banking and similar tools. Payments Canada, which operates the Canadian payment system, is in the midst of a multi-year modernisation. The replacement of the London Inter-Bank Offered Rate as an offering rate has led the Bank of Canada to indicate support for a replacement for the Canadian Dollar Offering Rate using an overnight repo rate.

The recent Canada-Mexico-US trade agreement also contains provision for increased cross-border banking activity, including cross-border data flows.

By: Michael Garellek (Partner, Montreal), Olivia Lifman (Associate, Toronto) and Christopher N. Alam (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... For the past couple of years, there has been an increased focus on compliance, bank management and even the behaviour and culture in banks and management. The expectation is that this trend will continue.

To this end, the Danish Financial Supervisory Authority (FSA) has increased its focus on the 'fit and proper' approval of board members and members of the management. Most recently, the FSA has issued a set of very detailed recommendations in respect of its 'fit and proper' approval of senior management, including detailed guidelines on the required level of experience, seniority and so on of potential members of senior management.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The German banking market has proved to be fundamentally consistent and Deutsche Bank once again leads the top 10 banks, followed by DZ Bank, which maintained this position after a merger with WGZ Bank in July 2016. Apart from Commerzbank, which is ranked fourth, the top tier of the German banking industry is dominated by German branches of large international banks (UniCredit Bank, ING-DiBa), development banks (KfW Group, NRW Bank) and state banks (Landesbank Baden-Württemberg, Bayerische Landesbank, Landesbank Hessen-Thüringen, Norddeutsche Landesbank).

Most cooperative institutions are Volks- and Raiffeisenbank institutions. The consolidation in the industry has led to a continuous reduction in the number of such institutions. The consolidation is somewhat stronger in terms of numbers than in the savings bank sector (*Sparkassen*). From an asset perspective, a trend towards the formation of larger institutions can be recognised in this banking group. For comparison: the average total assets in the cooperative banking sector amount to approximately €1 billion, whereas those in the savings banks sector amount to around €3.3 billion.

New rules and regulations include the following:

- Amendments to the German Placement Agent Regulation will come into force in August 2020. The regulation is relevant for all financial investment brokers and fee-based financial investment advisers. They will become subject to the Banking Act and the Federal Financial Supervisory Authority (BaFin) will become the supervisory authority.
- The Act Implementing the Amending Directive on the Fourth EU

Anti-Money Laundering Directive came into force in January 2020. Members of the public are no longer obliged to prove a legitimate interest in order to access information regarding ultimate beneficial owners in the German Transparency Register. Increased due diligence requirements for high-risk countries apply.

- A new regulation for investment screenings in the European Union, including a framework regulation for foreign investment screenings by EU member states, was adopted in March 2019. It will be directly applicable as of October 2020 and a further reform of the German provisions is expected as part of its implementation.
- Since November 2019, there has been new momentum to establish a European Deposit Insurance Scheme. It has been suggested the different performance of national deposit guarantee schemes could be offset by a European reinsurance system. It is likely that Germany will push for a compromise during its upcoming European Council presidency in the second half of 2020.
- Although they have been applicable since 2019, further Delegated Regulations (eg, on transparency requirements for originators, sponsors and securitisation special purpose entities) are expected to be published in relation to the Securitisation Regulation during the course of 2020.
- BaFin has published the outstanding Module C of the new edition of the Issuer Guidelines for German and foreign issuers whose securities are admitted to trading on a German stock exchange. The new Module C reflects the changes brought into force by the Market Abuse Regulation.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... At the time of writing, Ireland is attempting to manage the global COVID-19 pandemic. As in other countries, the pandemic has put the Irish banking sector, among many others sectors, under enormous strain. Thousands have lost their jobs across almost all industries and the inevitable knock-on effect that the pandemic will have on the banking industry is difficult to predict in the medium term.

The Irish government has introduced emergency legislation in an attempt to tackle the COVID-19 outbreak. The legislation deals with numerous issues, such as a nationwide rent freeze, a ban on evictions and temporary income support schemes by way of government contributions to wage costs, allowing employers to continue paying their employees. Managing the spillover effects of the COVID-19 epidemic will likely take centre stage for any government considerations until at least Q2 2021.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... In terms of anti-money laundering/counter-terrorist financing (AML/CTF), and especially in light of the upcoming vising of the Financial Action Task Force to Luxembourg, one major focus is the implementation of Directive (EU) 2018/843 (AMLD 5). The latest update in this respect is the publication on 23 December 2019 of Draft Bill 7512 establishing a central electronic data retrieval system for

7512 establishing a central electronic data retrieval system for payment accounts and bank accounts identified by an international bank account number, as well as safe-deposit boxes held by Luxembourg credit institutions.

From a regulatory perspective, credit institutions must prepare for the amendments to banking regulation that result from the latest EU Banking Reform Package. In particular, Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending CRD IV (CRD V), Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending 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, as amended (CRR) (CRR II) and Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending BRRD (BRRD II) entered into force on 20 June 2019. The new rules and requirements include:

- a binding leverage ratio;
- a net stable funding ratio;
- new rules with respect to market risk;
- the introduction of proportionality;
- rules with respect to environmental, social and governance (ESG) related risks; and
- rules on intermediate EU parent undertakings and financial holding companies.

The growth of the Luxembourg fintech ecosystem is also an interesting development. An increasing number of players in payments, lending and investments may compete with services traditionally offered by banks. On the other hand, fintechs specialised in cybersecurity and authentication, big data, artificial intelligence and regtech, for instance, may provide opportunities for banks in Luxembourg.

Luxembourg, like other EU countries, is affected by 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 and Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks. In addition, it will be following the current EU Proposal on the establishment of a framework to facilitate sustainable investment 2018/0178. Together, these initiatives will affect the manner in which banks lends funds and require changes to internal approval processes and monitoring systems. CRR II and CRD V also contain measures which will require credit institutions to take into account ESG risks. This will affect both the supervision of credit institutions and the evaluation of assets against specific ESG criteria.

The Luxembourg Stock Exchange distinguished itself internationally by launching the Luxembourg Green Exchange (LGX) in 2016. This is the world fs first dedicated green bond exchange and lists 50% of the world fs green bonds. The platform currently supports bonds and funds, and intends to extend to indexes. At the end of 2018, more than $120 billion worth of green bonds from around the world were listed on the LGX. This initiative, together with EU-level sustainable finance regulation, has positioned Luxembourg for success as sustainable finance evolves from the headlines to regulatory and operational

reality.

According to recent surveys in the banking sector, banks expect that costs will increase the most in compliance and IT, and decrease the most in operations over the next three years. Some of the most important topics identified by banks as being part of their transformation agenda are process optimisation, digital banking platforms, upskilling of employees and outsourcing/insourcing.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... Following the financial crisis of 2007/2008, the focus of the Swiss regulator has been on efforts to stabilise and strengthen the Swiss financial system, with new and more restrictive rules in particular for systemically important banks (please also see questions 4 and 5.2).

On the other hand, the Swiss Financial Market Supervisory Authority (FINMA) has increased its efforts to ease the regulatory burden for smaller banks. To this effect, it has introduced the 'small banks regime', effective as of 1 January 2020. This regime seeks to increase efficiency in regulation and supervision for small institutions – in particular, liquid and well-capitalised institutions (please also see question 4.2).

The new Financial Services Act, which became effective as of 1 January 2020, introduces new standards of conduct for all providers of financial services (including banks) to improve client protection in line with international standards (in particular Directive 2014/65/EU). It was originally planned to harmonise the requirements for licensing and supervision of all financial services providers in the new Financial Institutions Act, which also entered into force on 1 January 2020. However, it was argued that the existing framework applicable to banks was still adequate. For this reason, banks have been carved out from the scope of application of the Financial Institutions Act.

Finally, various regulations have been introduced to facilitate innovative business models, including fintech models (please see question 15.2).

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... While the Turkish economy was already struggling due to exchange rate issues, COVD-19 has now put the banking sector under severe strain. The Turkish government had introduced emergency regulations to protect the economy against the exchange rate issues, but the situation has now been exacerbated by the COVID-19 pandemic.

Although credit demands already exceeded the amounts that could be met by banks, the government has forced banks to grant more credit to the public in order to help the economy recover. It is still difficult to predict what regulations may be introduced to protect the banks or stimulate the economy, but due to the pandemic it is clear that the situation will remain difficult for the foreseeable future.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The economic and social chaos triggered by the global COVID-19 pandemic has not left the banking sector unscathed. At present, individuals and corporations are relying on bank loans for survival in a COVID-19 world. This has had, and continues to have, a material adverse impact on the banking sector and the wider economy. It is too early to predict what, if any, legislation or additional regulatory powers may be necessary to aid recovery from this crisis.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... In the near term, it is likely that the US banking agencies will focus on the banking industry's response to the COVID-19 crisis, and whether that poses any significant threats to the safety and soundness of the banking sector or the financial stability of the United States. The agencies have also been focused on anti-money laundering, cybersecurity, privacy and fintech issues in the recent past, and it is likely that they will maintain this focus going forward.

While the last four years have seen a limited rollback of certain post-crisis banking reforms, the agenda of the federal banking agencies going forward will likely depend significantly on the results of the presidential election in November 2020.

For more information about this answer please contact: Jerome Roche from Linklaters

15.2 Does your jurisdiction regulate cryptocurrencies? Are there any legislative developments with respect to cryptocurrencies or fintech in general?

Canada

Gowling WLG

Answer ... Although Canada allows the use of cryptocurrencies, the Financial Consumer Agency of Canada has provided guidance that cryptocurrencies are not considered to be legal tender in Canada; only the Canadian dollar is considered official currency in Canada. The Currency Act defines 'legal tender' to mean "bank notes issued by the Bank of Canada under the *Bank of Canada Act*" and "coins issued under the *Royal Canadian Mint Act*".

The Canadian Securities Administrators (CSA) - the collective of Canada's provincial securities regulators - along with the Investment Industry Regulatory Organization of Canada, is drafting a regulatory framework applicable to crypto-asset trading platforms as they review the comments and responses to their Joint Consultation Paper 21-402, Proposed Framework for Crypto-Asset Trading Platforms. They anticipate publishing a summary of comments and responses along with guidance on the regulatory framework later this year.

Additionally, on 16 January 2020, the CSA issued CSA Staff Notice 21-327, Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets. The guidance provides that a cryptocurrency exchange operating in Canada or serving Canadian

users is likely subject to Canadian securities legislation.

In January 2019 the Minister of Finance Advisory Committee on Open Banking conducted a first phase review on the merits of open banking, in which it identified a need for the development of more secure infrastructure to use and move financial data. In second phase, the committee will continue its work on open banking (which it prefers to call 'consumer-directed finance') with stakeholders, to consider potential solutions and standards to enhance data protection such as Canada's Digital Charter, consumer protection in the financial sector and cybersecurity. In January 2020 the Bank of Canada noted that getting to grips with digital currency would be on the Bank of Canada's agenda for the year, continuing prior investigations into this subject matter.

By: Michael Garellek (Partner, Montreal), Olivia Lifman (Associate, Toronto) and Christopher N. Alam (Partner, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... There is no specific law on cryptocurrencies, as they are instead governed by the general financial regulatory regime. However, the Danish FSA has set up various workshops within the fintech area, working with various fintech start-ups in respect of the various regulatory requirements, including a sandbox solution. In general, the high degree of digitalisation in Danish society serves as fertile ground for cryptocurrencies, but always tempered by the mandatory requirements for transparency, taxation and the prevention of money laundering and terrorist financing.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The Act Implementing the Amending Directive on the Fourth EU Anti-Money Laundering Directive has incorporated crypto-custody business into the regime of the Banking Act as a new financial service. As of 1 January 2020, when this statute entered into force, companies seeking to provide such services require prior authorisation from BaFin. However, the law includes transitional provisions for companies that conducted such business before the law took effect – that is, before such business activities became subject to authorisation requirements. BaFin provides potential institutions with information on the legal situation with regard to the crypto-custody business and its website is updated on an ongoing basis.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... There is no specific cryptocurrency regulation in Ireland; nor is there any specific prohibition on any activities related to cryptocurrency, save for the usual anti-money laundering financial sanctions and proceeds of crimes prohibitions. The CBI is the competent authority to regulate financial services including electronic money, payment services and securities law in Ireland.

In Ireland, cryptocurrencies are not regarded as money or currency and are not therefore considered legal tender by the CBI. However, they may be subject to regulation as securities, possibly pursuant to the European Union Markets in Financial Instruments Directive 2014.

The main source of regulation for fintechs in Ireland currently is generally the Payment Services Directive (PSD), but this will understandably depend on the business sector of that respective fintech. Therefore, ancillary services provided in connection with cryptocurrency could be subject to regulation under the PSD.

We expect that some EU guidance or regulations will be introduced in relation to the regulation of cryptocurrencies. The Irish government intends to legislate and provide a clear framework for the fintech environment as soon as possible, in order to promote start-ups and hold onto existing businesses located in the jurisdiction. However, this will likely be done in the context of broader European developments to ensure a harmonised approach with other member states.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... Cryptocurrencies as such are not currently subject to specific regulation in Luxembourg.

On 14 March 2018 the *Commission de Surveillance du Secteur Financier* (CSSF) issued a warning on virtual currencies and a warning on initial coin offerings (ICOs) and tokens. In these warnings, the CSSF explained what virtual currencies and ICOs are, and informed supervised entities and the public about the different risks associated therewith (eg, volatility and price bubble risk, lack of protection and risk of theft, liquidity shortage, operational disruption, misleading information, lack of transparency, risk of price manipulation, fraud and money laundering, loss of capital). The CSSF also stressed in both warnings that the warnings concern only virtual currencies and fundraising through ICOs as such, without questioning the underlying technology; the CSSF recognises that the underlying blockchain technology can bring certain benefits to financial sector activities.

In terms of legislative developments, a law of 1 March 2019 has amended the law of 1 August 2001 on the circulation of securities in order to introduce the recognition of the maintenance of securities accounts, and the crediting of securities to securities accounts, within or through secured electronic registration mechanisms, including distributed electronic ledgers or databases.

With respect to fintech in general, the CSSF issued Circular 17/654 on IT outsourcing relying on a cloud computing infrastructure, which sets out requirements to be complied with where cloud computing infrastructures are used. It also issued a position on robo-advice, where it explained what comprises robo-advice and how this fits within the existing regulatory landscape; and a FAQ on AML/CTF and IT requirements for specific customer on-boarding/know-your-customer methods which focuses on identification and verification of identity through video chat and the requirements that must be complied with when such a video system is used by professionals subject to AML/CTF obligations (eg, credit institutions). In December 2018 the CSSF published a white paper on artificial intelligence and related

opportunities, risks and recommendations for the financial sector.

There is no specific licence for fintechs in Luxembourg, but the activities performed by fintechs may be subject to licensing requirements under the Law of 5 April 1993 on the financial sector, as amended or other applicable laws and regulations.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The Swiss regulatory framework does not specifically address fintech businesses. Instead, new regulations governing certain requirements for fintech companies have been designed in accordance with the regulator's technology-neutral approach. This means that business activities with comparable characteristics are generally subject to the same regulatory requirements, regardless of whether they involve new technologies such as distributed ledger technology (DLT) and blockchain applications.

To ease the Swiss regulatory regime for providers of innovative financial technologies (including fintech), the following amendments and additions have been made to the Banking Act and its implementing ordinance:

- Settlement accounts: No banking licence is required if third-party moneys are accepted on interest-free accounts for the purpose of settlement of customer transactions, if the moneys are held for a maximum of 60 days (formerly, the maximum holding period was seven days).
- Sandbox: Companies accepting deposits from the public are exempt from the requirement to obtain a banking licence if:
  - the deposits accepted do not exceed CHF 1 million;
  - no interest margin business is conducted; and
  - the depositors have been informed that the company is not regulated by FINMA and that the deposits are not subject to the depositor protection scheme.
- Fintech licence: Companies mainly involved in the financial sector that intend to accept public deposits on a commercial basis of up to CHF 100 million without investing, paying or promising to pay interest on these deposits (ie, fintech companies) require a licence from FINMA. While such companies are not technically considered banks, they are subject to a similar – though less restrictive – regulatory regime.

Furthermore, FINMA issued guidelines on initial coin offerings (ICOs) in 2018 which were supplemented by additional guidelines in 2019. In these guidelines, FINMA explains its position regarding the supervisory and regulatory framework for ICOs, and provides market participants with information on how it will deal with respective enquiries. In particular, FINMA defines the following three categories of coins/tokens:

- Payment tokens: Payment tokens (synonymous with cryptocurrencies) are tokens which are intended to be used, now or in the future, as a means of payment for acquiring goods or services, or as a means of money or value transfer. Cryptocurrencies give rise to no claims on the issuer. Given that payment tokens are designed to act as a means of payment and

are not analogous in function to traditional securities, FINMA will not treat payment tokens as securities and, thus, the corresponding securities regulations generally will not apply. However, they are generally subject to anti-money laundering regulation.

- Utility tokens: Utility tokens are tokens which are intended to provide digital access to an application or service by means of a blockchain-based infrastructure. Utility tokens are considered securities only if they have an investment purpose. As long as the main reason for issuing utility tokens is to provide access rights to a non-financial application of blockchain technology, they are also not subject to anti-money laundering regulations.
- Asset tokens: Asset tokens represent assets such as a debt or equity claim on the issuer. Asset tokens promise, for example, a share in future company earnings or future capital flows. In terms of their economic function, therefore, these tokens are analogous to equities, bonds or derivatives. Tokens which enable physical assets to be traded on the blockchain also fall into this category. Asset tokens are generally treated as securities. Consequently, securities and anti-money laundering regulations generally apply.

Finally, the Federal Council issued draft legislation on the further improvement of the framework conditions for DLT/blockchain in November 2019. The proposal is aimed at increasing legal certainty, removing barriers for applications based on DLT and reducing the risk of abuse. This federal legislation, which is designed as a blanket framework, proposes specific amendments to nine federal acts, covering both civil law and financial market law.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... As the Banking Regulation and Supervision Agency (BRSA) stated in an announcement issued on 25 November 2013, cryptocurrencies are not e-money as defined under the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions (6493), and thus are not regulated and audited by the BRSA. The BRSA issued its statement after the introduction of the law, which regulates payment and electronic money services. The law – in which the concept of electronic money was officially recognised for the first time – includes general provisions on payment and electronic money markets in parallel with EU directives. However, there are no provisions of Turkish law that currently prohibit or otherwise regulate cryptocurrencies.

On 28 July 2019, the Grand National Assembly of Turkey approved the 11th Development Plan, which aimed to create a digital central bank currency based on blockchain technology by 2023.

The Financial Crimes Investigation Board has also updated its Suspicious Transaction Reporting Guideline (11 September 2019) for the banking sector. According to the guideline, suspicious transactions include the following:

- money transfers to customer accounts as a result of the sale of cryptocurrencies whose source is unknown or which are suspected to be inconsistent with the customer's financial profile; and

- money transfers from customer accounts to domestic and foreign cryptocurrency stock markets or to the accounts of individuals or legal persons for the purpose of purchasing cryptocurrencies, at a frequency and in an amount which are inconsistent with the customer's financial profile.

If a profit is made by buying and selling cryptocurrencies, this will be regarded as commercial earnings in terms of the tax legislation and will be subject to income tax. The trading of cryptocurrencies is subject to value added tax (VAT) within the scope of Article 1 of the VAT Law (3065). Earnings generated by cryptocurrency companies will be subject to corporate tax.

Fintech institutions are subject to different regulations based on their activities. While the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions is the main statute that applies to payment activities, the Bank Cards and Credit Cards Law is the main statute that applies to credit and bank card activities. Know-your-customer and anti-money laundering regulations are set out in the Law on the Prevention of Laundering Proceeds of Crime (5549), among others.

On 15 March 2020, the BRSA announced the Regulation on Banks' Information Systems and Electronic Banking Services, which establishes the legal infrastructure of open banking. This will help both fintech companies and banks to design their systems and implement customised products and interfaces according to clients' needs.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... The UK approach to the regulation of cryptocurrencies has been conservative. Although, at present, there are no specific cryptocurrency laws in the United Kingdom, cryptocurrencies are not considered legal tender in the United Kingdom and cryptocurrency exchanges have registration requirements.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... As discussed in response to question 6.1(d), cryptocurrencies are currently regulated by some states and by FinCEN. There is no single regulator with the authority to license cryptocurrency businesses on a nationwide basis, though the Office of the Comptroller of the Currency has been considering the establishment of such a licence for a number of years.

A number of states have adopted or are considering legislation targeted at the cryptocurrency space. Some states have attempted to make their markets more attractive to institutions operating in the cryptocurrency space, while others have imposed more stringent requirements on such institutions. It is likely that this will remain an area of significant legal change for the foreseeable future.

For more information about this answer please contact: Jerome Roche from Linklaters

16. Tips and traps

16.1 What are your top tips for banking entities operating in your jurisdiction and what potential issues would you highlight?

Canada

Gowling WLG

Answer ... Financial regulation is complicated and this tends to be the case in most jurisdictions. On the other hand, in our experience, the objectives of regulators are straightforward and transparent: protecting the public and their confidence in the Canadian financial system and financial markets. Regulations are protective of foreign entries into the Canadian market without compliance with law. With this in mind, we encourage financial institutions to engage proactively in dialogue with regulators.

By: Michael Garellek (Partner, Montreal) and Olivia Lifman (Associate, Toronto)

For more information about this answer please contact: Kelby Carter from Gowling WLG

Denmark

Carsted Rosenberg Advokatfirma

Answer ... The Danish Financial Supervisory Authority (FSA) actively encourages open dialogue with the financial sector and the entities which are subject to its supervision. Any banks entering the Danish market should reach out to the FSA relatively early in the process to present themselves and their business plans in Denmark. While such early interaction is not required from a strict legal perspective, it often smooths the subsequent application process.

For more information about this answer please contact: Andreas Tamasauskas from Carsted Rosenberg Advokatfirma

Germany

Squire Patton Boggs LLP

Answer ... The European Parliament passed a legislative package for amendments to the Capital Requirements Regulation (CRR) and the Capital Requirements Directive IV (CRD IV), as well as Directive 2014/59/EU on Bank Recovery and Resolution (BRRD) and the Single Resolution Mechanism, in April 2019. The legislation package aims to eliminate certain weaknesses identified in the banking regulation system, while taking into account the role that banks play in the economy. It includes measures agreed by the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board.

Among the amendments is a binding advantage ratio of 3% for all institutions that fall within the scope of the CRD IV, with adjustments being possible under specific circumstances. A requirement for stable funding based on the ratio of an institution's stable funding to the required stable funding over a one-year period (net stable funding

ratio) is introduced, in order to prevent institutions from relying on excessive amounts of short-term wholesale funding to finance long-term activities. This requirement will become effective from 28 June 2021. The rules for calculating the capital requirements for market risk, which are applicable to trading book positions, will be amended as from 28 June 2023 to reflect more accurately the actual risk to which banks are exposed. However, to allow for a more proportionate solution, there are derogations for banks with small trading books and a simplified standardised approach for medium-sized banks. Furthermore, the European Commission's implementing power is replaced by a delegated power, enabling the commission to exempt entities from the CRD where certain conditions are fulfilled and to decide on whether such institutions fall within the scope of the CRD or CRR again once these criteria are no longer fulfilled.

To improve the effectiveness of resolution and to protect public funds, global systemically important banks are now required to hold sufficient amounts of capital and other instruments that absorb losses in case of a resolution (total loss-absorbing capacity). Moreover, the package provides for an EU harmonised approach to a bank creditor's insolvency ranking. To this end, a new statutory category of unsecured debt that ranks just below the most senior debt and other senior liabilities is introduced. BRRD II also includes a moratorium tool that enables the suspension of certain contractual obligations for a short period. Several changes are intended to enhance proportionality (ie, small institutions will be subject to less frequent and less extensive reporting and disclosure requirements).

Further, the Brexit referendum result of June 2016 could have potentially significant implications for the financial sector in Germany. As it stands, EU-UK negotiations may result in a so-called 'hard Brexit'. Supervised credit institutions and financial services firms that are located in the United Kingdom must be prepared for the possibility that they will no longer be able to conduct regulated business in other EU or EEA member states from the United Kingdom in future. Specifically, post-Brexit, such institutions may no longer be able to rely on the EU passporting regime, which enables them to conduct business on a cross-border basis without any other local licences. If they wish to continue conducting such business, they need to consider relocating out of the United Kingdom to another EU or EEA member state. The German Federal Ministry of Finance published a draft bill at the end of 2018 that would enable the Federal Financial Supervisory Authority to allow credit institutions and financial services firms from the United Kingdom to continue their business activities in Germany to a certain extent for a transitional period of up to 21 months after a hard Brexit. This law came into force on 21 March 2019.

In order to address the current uncertainties and work out the consequences of the COVID-19 pandemic for any given bank, an individual scenario analysis will need to be carried out to determine just how the crisis has and will affect the profit and loss, balance-sheet and operating model of the respective institution. In addition, the bank's loan portfolio should be actively reviewed and appropriate measures taken to mitigate risk. Specific short, medium and long-term savings potential and measures can then be identified on that basis. In the absence of significant countermeasures on the cost side, operating result (before risks, write-downs and impairment losses) will probably fall by as much as 25% in 2020 (or even 30% in 2021). In the 'profound recession' scenario, a decline of up to 40% in 2020 (or as much as 50%

in 2021) can be expected. To proactively address this eventuality, banks must now make themselves fit for the future. Undertaking a

systematic review of the loan portfolio and preparing to increase the number of restructuring and liquidation units are just as important as active cost management.

The Group of Governors and Heads of Supervision, the steering committee of the BCBS, decided on 27 March 2020 to extend the implementation timetable of the Basel III finalisation package. This should free up additional operational capacity for banks during the COVID-19 crisis. It was important that banks and supervisors focus their resources on providing critical banking services to the real economy and stabilising the financial system. The Basel Committee postponed the date by which Basel Committee on Banking Supervision members must fully implement the Basel III standards of December by one year to 1 January 2023. The transition periods for the output floor now apply until 1 January 2028 instead of 1 January 2027. The new implementation date for the Market Risk Framework and Pillar 3 disclosure requirements is 1 January 2023.

For more information about this answer please contact: Andreas Fillmann from Squire Patton Boggs LLP

Ireland

Dillon Eustace

Answer ... Creating a good working relationship with the CBI will stand to the benefit of any bank established in Ireland. We would advise the implementation of an effective governance framework that meets the standards set by the CBI and that is responsive and quick to act when remedying same. The CBI has increased its use of sanctions recently and will not hesitate to investigate and audit entities within the scope of its current agenda for review.

In order to achieve and maintain a high level of corporate governance within a bank, it must meet its requirements for hiring staff with the necessary skillset and implement an internal framework of auditing and reporting on areas such as risk and stress testing for example.

Banks must continue to meet their obligations and responsibilities under not just primary and secondary legislation, but also the codes published by the CBI which have been designed to ensure the fair treatment of customers. Any queries over a bank's non-compliance with the various codes will be investigated by the CBI and could lead to broad and disruptive investigations for banks. It is far better in these circumstances to have an effective governance framework in place which reduces potential future issues, rather than dealing with CBI investigations and opening up the business to further instances of non-compliance falling foul of sanctions.

For more information about this answer please contact: Keith Robinson from Dillon Eustace

Luxembourg

Loyens & Loeff

Answer ... **Outsourcing**: Luxembourg offers a flexible environment to outsource back to group companies, which is a very common operating model and makes Luxembourg an attractive EU hub, especially post-Brexit. A number of requirements must be taken into

account and specific rules apply in case of IT outsourcing and use of cloud computing infrastructure.

Substance: Luxembourg offers a great deal of flexibility in terms of substance, but 'letterbox' entities are not acceptable. Applicable regulations provide for proportionality in certain cases, but minimal substance - especially with respect to risk and compliance - is required. Parties typically seek local advice to understand the appropriate balance.

Exemptions from the Law of 5 April 1993 on the financial sector: Not all activities require a banking licence. Lending activities, for instance, could be performed under a different and less onerous licence. Relevant entities can also benefit from exemptions - for instance, where they perform a one-off transaction or provide regulated services within their group. A common practice is to obtain a clearance letter from the *Commission de Surveillance du Secteur Financier* confirming that an authorisation is not required for a particular activity or structure.

For more information about this answer please contact: Michael Schweiger from Loyens & Loeff

Switzerland

Mercury Compliance AG

Answer ... The Swiss Financial Market Supervisory Authority (FINMA) has increased its enforcement action recently, in particular in relation to breach of market conduct rules and anti-money laundering regulations. While FINMA's enforcement practice originally focused on banks as entities, it is now putting greater emphasis on actions against the individual executives responsible for violations. Corresponding sanctions include professional bans, publication of decisions ('naming and shaming') and the seizure of illegitimate gains.

In addition, and in line with international developments and discussions, FINMA continues to focus more closely on systemic risk issues.

Finally, the sustainable growth of the fintech sector and related innovative business models is likely to be the core challenge for providers of traditional banking services. Therefore, digitalisation of the banking processes should be top of the strategic agenda.

For more information about this answer please contact: Patrick Meyer from Mercury Compliance AG

Turkey

AKTAY Legal

Answer ... In recent years, the Turkish economy has not lived up to the expectations of the previous decade. The devaluation of the Turkish lira and the ongoing pandemic have prompted the government to take more drastic measures and introduce further regulation in the banking field. However, the crisis could also present a unique opportunity for foreign investment. Those entities that establish effective governance frameworks, that have executives with deep experience of the Turkish economy and good working relationships with the Banking Regulation and Supervision Agency (BRSA) and other authorities, and that operate in accordance with the BRSA's highly regulated standards stand to benefit significantly. Compliance with the

BRSA's regulations and guidelines will forestall possible investigations and result in a healthier process. Achieving these high levels of corporate governance requires the recruitment of experienced staff.

Turkey's young population, which is open to new technological developments in banking, also affords a real chance for rapid growth.

For more information about this answer please contact: Faruk Aktay from AKTAY Legal

UK

1 Crown Office Row

Answer ... Banks and other financial institutions are under increasing pressure to engage in a meaningful discussion with all relevant stakeholders about environmental and wider social responsibility considerations. A number of hot topics will affect the financial system in the coming year. These include:

- recovery from the United Kingdom's lockdown triggered by the COVID-19 pandemic in March 2020;
- the expected persistence of the low interest rate environment;
- rapid ongoing technological change (automation, machine learning and advances in the development of artificial intelligence) in the real economy, as well as in the financial services sector;
- sustainable/green finance in response to the accelerating climate emergency; and
- the societal role of financial institutions.

In terms of the operation and global reach of the City of London in a post-Brexit world, the role of the Bank of England, its cooperation with other central banks and relevant international institutions are likely to be redefined under Andrew Bailey's leadership of the Bank of England and that of the European Central Bank, which since 1 November 2019 is headed by its first female president, the former head of the International Monetary Fund, Christine Lagarde.

For more information about this answer please contact: Edite Ligere from 1 Crown Office Row

United States

Linklaters

Answer ... A key consideration for any company or individual considering entering the U.S. banking market is the significant restrictions applicable to US banks and their affiliates, which are typically much more significant than is the case in many other countries. As discussed above, a US bank is limited solely to the business of banking and a limited number of other financial activities, while a US bank's affiliates are generally permitted to engage in a longer – though still short – list of financial activities. The boundary between 'banking' on the one hand and (non-financial) 'commerce' on the other is strictly policed in the United States. Further, foreign banks seeking to establish US commercial banking operations should carefully consider the extraterritorial effects of the US banking laws.

Another key consideration is the nature of the supervision to which US banks and bank holding companies are subject. Supervision of a large institution is an ongoing relationship between the institution and its regulators, and US regulators often maintain permanent on-site examiners at such an institution and have real-time access to

information about an institution's activities. While those regulators have recourse to more common tools to ensure compliance (eg, enforcement actions, industry bars), they also influence an institution through less formal means in connection with the supervisory process.

Because of the significant transparency between a regulator and a US bank, bank holding company or US branch of a foreign bank, the regulator is often able to constrain the institution without resorting to formal proceedings (and without being subject to the procedural requirements attached to such proceedings). As a practical matter, US banking organizations generally find that they have little choice but to comply with such less formal constraints because failure to do so would likely attract additional regulatory scrutiny and the potential for significant fines.

For more information about this answer please contact: Jerome Roche