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Croatia

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Croatia.

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CROATIA BANKING & FINANCE



1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

In Croatia, there are three main industry regulations:

1. The Croatian National Bank (the “**CNB**”);
2. The Croatian Agency for Deposit Insurance (the “**CADI**”); and
3. The Croatian Financial Services Supervisory Agency (the “**FSSA**”).

The Croatian National Bank is a competent regulatory authority for regulation, supervision and resolution in banking sector in Croatia. The CNB is also the competent regulatory authority for supervision of the application and implementation of the Croatian Credit Institutions Act (the “**CIA**”). The CNB is the central bank of the Republic of Croatia and part of the European System of Central Banks. The primary objective of the CNB is maintaining price stability and the stability of the financial system as a whole. The Croatian National Bank executes monetary policy, manages international reserves of the Republic of Croatia, issues the Croatian currency - the kuna, issues authorizations of credit institutions, credit unions, housing credit intermediaries, payment institutions and electronic money institutions and supervises their operation. The CNB also issues authorizations of authorized exchange offices. The Croatian National Bank is autonomous and independent in achieving its objective and carrying out its tasks. The CNB reports on its work to the Croatian Parliament.

The Croatian Agency for Deposit Insurance is a specialized financial institution whose primary functions are management of the deposit insurance system in Croatia, management of the Deposit Insurance Fund and the Rehabilitation Fund, as well as the exercising powers in compulsory liquidation procedures of credit institutions in accordance with the applicable compulsory liquidation of credit institutions regulations.

The Croatian Financial Services Supervisory Agency is a competent authority for regulation, supervision and

resolution of the provision of financial services by financial institutions and a competent authority for financial institutions in general, *i.e.* granting and revoking licenses to financial institutions for financial services (*e.g.* factoring license).

2. Which type of activities trigger the requirement of a banking licence?

Activities which trigger the requirement for having a banking license would be providing banking services as defined by the CIA (*i.e.* accepting deposits or other repayable funds from public and granting credits from such funds, for own account), as well as certain financial services.

3. Does your regulatory regime know different licenses for different banking services?

A credit institution may be incorporated as a bank, savings bank or a housing savings bank and a credit institution referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013. The CNB grants a license to an entity to operate as a bank, savings bank, a housing savings bank and a credit institution referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013. Such license allows an entity to provide banking services. The banking license may also contain a license to provide specific basic and additional financial services (such as the license for provision of financial services).

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

The banking license contains an authorization for the provision of banking services (*i.e.* receiving deposits or other repayable funds from the public and granting loans from these funds) and may also contain an authorization

for the provision of basic and additional financial services. If a credit institution intends to provide financial services that are not covered by the banking license, it must obtain the approval of the CNB for the provision of these services before registering these services in the court register.

Additionally, provisions of the CIA envisage basic and additional financial services that may be provided by the credit institutions to which the CNA has issued an approval for the provision of these services.

Principal financial services are:

- taking of deposits or other repayable funds;
- lending, including consumer credit, mortgage credit and, where permitted by a special law, financing of commercial transactions, including export financing based on the purchase at a discount without recourse of non-current, non-matured receivables collateralized with a financial instrument (forfeiting);
- repurchase of receivables with or without recourse (factoring);
- financial leasing (leasing);
- issuance of guarantees or other commitments;
- trading for own account or for the accounts of clients in:
 - money market instruments;
 - transferable securities;
 - foreign exchange, including currency exchange transactions;
- financial futures and options;
- exchange and interest-rate instruments;
- money transmission services in accordance with special laws;
- credit reference services, such as collection, analysis and provision of information on the creditworthiness of legal and natural persons that conduct their business independently;
- issuing and administering other means of payment;
- safe custody services;
- money broking;
- participation in issues of financial instruments as well as the provision of services relating to issues of financial instruments in accordance with the law governing the Capital Market Act;
- portfolio managements and advising;
- safekeeping of financial instruments and services related to the safekeeping of financial instruments in accordance with the Capital Market Act;
- advising legal persons on capital structure,

business strategy and related issues as well as the provision of services relating to mergers and the acquisition of shares and holdings in other companies;

- issuance of electronic money; and
- investment and ancillary services and activities prescribed by the Capital Market Act and not included in services referred above.

Additional financial services are:

- activities related to the sale of insurance policies in accordance with the law governing insurance;
- payment systems management services in accordance with the provisions of a special law;
- other services which a credit institution may provide in accordance with the provisions of a special law;
- trading in gold;
- the services of data submission in accordance with the regulations governing the capital market; and
- other services or activities that are, in terms of the manner of the provision and risk to which a credit institution is exposed, similar to core financial services.

Financial services, such as factoring, leasing etc., may also be conducted by the legal entities (different than a credit institution) after obtaining a license from the FSSA.

5. Is there a “sandbox” or “license light” for specific activities?

A sandbox, in terms of a regulatory mechanism for developing banking and/or financial regulations, was not yet introduced in Croatia by the competent authorities or the legislative body.

Light banking licenses and/or light licensing of specific financial services are not envisaged in the Croatian legislation, so there are no minimum thresholds for triggering licensing requirements.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

The Croatian Money Laundering and Terrorist Financing Prevention Act (the “**AMLA**”) prescribes anti-money laundering obligations to entities engaged in exchanging

virtual currencies for fiat currencies and vice versa, as well as providers offering custodial services linked to virtual currencies.

Pursuant to the provisions of the AMLA, competent authority for supervision of entities engaged in exchanging currencies for virtual currencies and vice versa, as well as providers offering custodial services linked to virtual currencies is the FSSA. Respective entities were obliged to notify the FSSA by 31 January 2020, or no later than 30 days from the date of their incorporation or registration, that they are engaged in providing abovementioned services. In the event that any of the respective entity fails to inform FSSA within the prescribed period, the AMLA envisage misdemeanor liability and financial sanctions.

7. What is the general application process for bank licenses and what is the average timing?

The Croatian credit institutions need to file an application, accompanying by the supporting documentation, to the CNB requesting to be granted a banking license. If a credit institution intends to provide financial services in addition to the banking services, it must indicate in the application the exact types of the financial services it intends to provide. The license shall be granted, *provided that* the conditions prescribed by the CIA are fulfilled, such as the qualified shareholder or the first 20 shareholders meet the adequacy or financial status criteria, if the supervision of operations would not be made difficult or impossible, management board members meet the determined criteria, the credit institution meets the prescribed initial share capital, physical presence in Croatia is met, there is no provisions of Articles of Association contrary to the statutory provisions, organizational, technical and personnel criteria are met as well as that management system is established and other criteria for provision of banking and/or financial services are met.

According to the publicly available information, it follows that the CNB is obliged to decide on the application for the issuance of a banking license within 6 (six) months from receiving the complete application and no later than 12 (twelve) months from the submission of the application.

8. Is mere cross-border activity permissible? If yes, what are the requirements?

Credit institution from another EU member state may

provide banking services in Croatia if it incorporates a branch in Croatia. Also, credit institution from another member state may start directly providing mutually recognized services in Croatia subject to the CBI receiving notification thereabout. Notification must include a list of services intended to be provided in the Republic of Croatia.

Credit institution from a third country may provide services in Croatia through an incorporated branch in Croatia, if the branch obtains a license from the CNB for the provision of banking services in Croatia.

9. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Credit institutions in Croatia may only be incorporated in the form of a joint-stock company. The Croatian Companies Act and the CIA further prescribe the incorporation and corporate governance terms of the Croatian joint stock company.

10. What are the organizational requirements for banks, including with respect to corporate governance?

In terms of corporate governance, a credit institution needs to, in proportion to the type, scope and complexity of the operation it performs and the risks inherent to the business model, establish and implement an effective and reliable management system that includes: (i) a clear organizational structure with a well-defined, transparent and consistent line of authority and responsibility within the credit institution, established to avoid conflicts of interest; (ii) effective management of all risks to which it is exposed or could be exposed in its business; (iii) appropriate internal control systems that include appropriate administrative and accounting procedures; (iv) remuneration policies that are consistent with adequate and effective risk management that promote adequate and effective risk management and that are gender neutral; and (v) a recovery plan

In general, a credit institution will be deemed to have a clear organizational structure with a well-defined, transparent and consistent line of authority and responsibility within the credit institution, by which conflict of interest is avoided, if it:

- 1) facilitates effective communication and cooperation at all organizational levels, including an adequate information flow within the credit institution,
- 2) limits and prevents conflicts of interest, and

3) establishes a clear and documented decision-making process.

A credit institution is obliged to timely identify areas of operation in which there is a potential conflict of interest and ensure that any conflict of interest is adequately prevented.

The CNB may reject the application for granting a license or can revoke the license granted for the provision of banking and/or financial services if the credit institution does not meet the organizational criteria.

There are many other organizational criteria which need to be met, such as the following: the credit institution's supervisory board, which is significant in terms of size, internal organization and the type, scope and complexity of the operation it performs, is required to establish a remuneration committee, an appointing committee and a risk committee. If the credit institution is not significant in terms of size, internal organization and type, scope and complexity of its operations and does not have a remuneration committee or a nominating committee, the supervisory board shall perform the tasks of a remuneration committee and the appointing committee.

Moreover, provisions of the CIA envisage that the CNB shall issue a regulation which will regulate in more detail organizational requirements for the banks. In that regard, the CNB has rendered a Decision on Management System, which has to be applied by the credit institution and branches of a foreign credit institutions operating in Croatia.

11. Do any restrictions on remuneration policies apply?

A credit institution that contracts a payment of variable remuneration contrary to the provisions of the CIA or the provisions of other applicable by-law, may not pay the contracted variable remuneration, and the stipulated provisions are considered null and void.

If a credit institution needs to establish a remuneration committee, a supervisory board of a credit institution has to establish a remuneration committee in a way to enable it to make an expert and independent judgments about remuneration policies and practices and the impact of remuneration on risk, capital and liquidity management.

The remuneration committee's obligations are: 1) to prepare supervisory board decisions regarding employee benefits, including decisions that have an impact on the credit institution's exposure to risk and on risk management; and 2) to perform other tasks specified by

the regulations.

In performing its activities, the remuneration committee shall take into account the long-term interests of the shareholders, investors and other interested parties in the credit institution and the public interest.

If a credit institution does not mandatory need to establish a remuneration committee, the supervisory board shall perform the tasks of a remuneration committee.

12. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

Basel III was implemented in the Croatian legislation through the CIA and its by-laws, while the other aspects of Basel III are directly applicable on the basis of the Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (the "CRR").

13. Are there any requirements with respect to the leverage ratio?

Yes, a credit institution needs to calculate the leverage ratio in accordance with the Article 429 of CRR and submit to CNB correct and complete data on the leverage ratio.

14. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

The CIA generally prescribes that a credit institution is obliged to operate in a manner that it is at all times able to meet its monetary obligations (liquidity principle) in a timely manner, and that it is permanently able to fulfill all its other obligations (solvency principle).

Furthermore, Croatia has implemented the Basel III liquidity requirements through the CRD IV package, and these apply to Croatian banking entities as well.

15. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Yes, financial statements are published in the Registry of

Annual Financial Statements and are publicly available.

Within 15 days as of receipt of the audit report, and not later than three months after the end of the business year to which annual financial statements refer to, the credit institution is obliged to submit to the CNB the following reports:

- Audit report of the audit of annual financial statements, including such financial statements;
- Annual report and consolidated report in accordance with the regulations governing the content of those reports;
- Audit report for the CNB's purposes.

The credit institution is obliged to publish its annual financial statements on its website, and make them available no later than four months after the end of the business year to which those statements refer.

Parent credit institution in Croatia (or EU) is obliged to publish consolidated annual financial statements for the entire group, in accordance with the above rules.

Credit institution's branch from another Member State (or third country) is obligated to publish, in Croatian language, within 45 days from the expiry of the deadline for publishing the financial statements pursuant to laws of its founder's country, audited (consolidated) financial statements and the annual report including the audit report of its founder/shareholder.

Credit institutions need to report to the CNB in accordance (i) with the CIA and the underlying implementation regulations, (ii) with the CRR and the underlying implementation regulations, and (iii) other EU regulations governing the credit institutions' operations.

16. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

The CRR directly applies in Croatia, while the Croatian CIA regulates in detail the area of the consolidated supervision. Hence, consolidated supervision does exist in Croatia. This means that, in principle, the CNB, in addition to the individual supervision, also conducts supervision on a consolidated basis, as defined by the CRR, when acting in the capacity of the consolidated supervisor. Furthermore, considering that the competent regulatory authorities are obliged to coordinate their work so that only one authority act as the main point of contact and is responsible for the group, the CNB's authorities differ depending whether the CNB is the consolidating supervisor or not.

When acting as a consolidated supervisor, the CNB also coordinates the collection of relevant data between competent authorities involved in consolidated supervision and coordinates and plans the consolidated supervision in addition to its regular duties pursuant to CIA and CRR.

17. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

The holder of a qualifying holding may only be a legal or natural person, and persons acting jointly, who have obtained the prior approval of the CNB for the acquisition of the qualifying holding, to the extent the respective consent envisages it.

Pursuant to the CRR, the qualifying holding means a direct or indirect holding in an undertaking which represents 10% or more of the share capital or of the voting rights or which makes it possible to exercise a significant influence over the management of such undertaking.

In case that the acquirer would gain direct or indirect control or a dominant influence in the credit institution, the Croatian Competition Agency should also grant its approval for such acquisition, if the prescribed thresholds are met.

18. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

The CNB shall reject the application for prior approval to acquire a qualifying holding if it considers that the suitability or financial condition of the acquirer of the qualifying holding does not meet the criteria set out in the CIA, such as: the reputation, the lack of the management's adequate expertise and capabilities, financial status of the acquirer, existence of the justified reasons for suspecting the acquirer shall adhere to the AML regulations, and similar reasons.

19. Are there specific restrictions on foreign shareholdings in banks?

When deciding on the approval to acquire a qualifying holding, the CNB shall consult the respective supervisory authority, if the applicant is a credit institution / (re)insurance institution/UCITS management company/pension or an investment company which has been authorized in another Member State or another

supervisory authority competent for granting such authorization. The same applies when the potential holder of such qualifying holding is a natural person in control of the aforementioned institutions/companies or their parent companies.

20. Is there a special regime for domestic and/or globally systemically important banks?

Since 2016, the other systemically important institutions buffer (O-SII) is applied to all banks which, due to their size, interconnectedness and significant cross-border activities, were rated as significant or systemically important. The CNB determines the O-SII rate for each other systemically important institution in the maximum amount of 3% of the total risk exposure. Pursuant to the Notification on the results of the review of the systemic importance of credit institutions in the Republic of Croatia dated 10 December 2020, the O-SII was determined at 2% for 5 (five) credit institutions and at 0.5% for the two (2) institutions.

In addition, the CNB also uses the globally systematically important institutions buffer (G-SII) for those financial institutions which were identified by the G-SIFI criteria agreed among G-20 members. There are no globally systemically important institutions in Croatia currently, but some mother-company banks of Croatian banks have this status.

21. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

The sanctions vary depending on the breaching party (whether it is a globally systemically important credit institution, other systematically important credit institution, a credit institution, a credit institution group, a legal entity using the term credit institution without having a license etc.) and depending on the type of rules being violated. For severe breaches, the CNB may impose a fine of up to 10% of the total annual turnover. Also, the CNB may revoke the issued credit institution's license.

22. What is the resolution regime for banks?

Croatia has implemented, among others, the Directive 2014/59/EU (the "**BRRD**") by adopting the Act on the Resolution of Credit Institutions and Investment Firms (the "**RCIIF**"), thereby creating a national legal

framework in order to avoid adverse effects on the financial system and ensure the continuity of critical functions carried out by the institution. The RCIIF regulates (i) rules, procedures and instruments within the resolution proceeding, (ii) powers of competent resolution authorities and (iii) management, financing and use of resolution fund.

The authorities empowered to exercise the decision-making powers and apply the resolution tools in the Republic of Croatia are as follows:

- The CNB, as the authority in charge of the credit institutions which are not part of a group and groups in which at least one member is a credit institution;
- The CFSSA, as the authority in charge of the investment firms which are not part of a group and groups in which at least one member is an investment firm.

The Croatian Ministry of Finance is the ministry competent for the exercise of the tasks under the RCIIF.

23. How are client's assets and cash deposits protected?

The CADI is the competent authority responsible for the management of the deposit insurance system in the Republic of Croatia and for carrying out the procedures prescribed by the Deposit Insurance System Act (the "**DISA**"). When the CNB issues a decision on the unavailability of deposits or when a competent court adopts a decision opening a bankruptcy proceeding against a credit institution, the ADIBR assumes the obligation to pay compensations to the depositors.

Deposits covered by insurance are deposits of natural persons, enterprises, non-profit organizations and units of local and regional self-government with maximum budgets in the previous year of HRK 3,750,000 (EUR 500,000), in credit institutions authorized by the CNB and in branches of these credit institutions in other member states.

The insured amount is the amount held by a depositor in a credit institution on the date of the occurrence of the insured event. The maximum amount covered is EUR 100,000 in the Croatian Kuna equivalent, calculated using the mid exchange rate of the CNB on the date of occurrence of the insured event.

24. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities

are covered?

The bail-in tool is one of four instruments used by the CNB and the Croatian Financial Services Supervisory Agency in implementing the decision on resolution of the credit institution pursuant to the RCIIF. Bail-in tool may be applied to all liabilities except those specifically excluded under the RCIIF. The most important examples for exceptions to the scope of application of the bail-in are protected deposits, secured liabilities and liabilities against employees. By introducing bail-in tool shareholders and creditors of an institution are encouraged to monitor institution's operations with due care.

25. Is there a requirement for banks to hold gone concern capital ("TLAC")?

Pursuant to the Basel III, Croatian banks are required to hold the gone concern capital, *i.e.* the Tier 2 capital in accordance with the CRR.

Furthermore, the RCIIF implements both the Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

26. In your view, what are the recent trends in bank regulation in your jurisdiction?

With respect to the COVID-19 crisis, the CNB's efforts in 2020 were mainly focused on ensuring long-term liquidity enabling credit institutions to meet demands of all sectors for long term loans in euros and Croatian Kunas. In order to adjust to the extremely difficult

economic situation, the banking regulation in 2020 was primarily focused on possibilities of deferred payment of loans, granting loans to preserve liquidity and rescheduling existing loans.

On a more general note, in July 2020, Croatia joined the European Exchange Rate Mechanism (ERM II), and will be a part of it for at least two following years, during which time it must meet the criteria of nominal convergence in order to successfully enter the Eurozone. The adoption of EUR as the official currency will inevitably also lead to a certain degree of legislative changes.

Furthermore, regulatory handling of new market participants in the FinTech sector and associated phenomena such as crypto currencies and token-generating events are taking place. These innovations by now have the full attention of regulatory and legislative bodies. It is fair to expect that the legislation in relation to crypto assets will be enacted in very soon.

27. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

Apart from challenges imposed by the COVID-19 crisis, the credit institutions are facing challenges created by new ways of digitalization and data processing technology within the field of banking operations and investment service providers, as there are FinTech companies steadily entering credit institutions traditional sectors of ancillary financial services.

Other endangering effect on the credit institutions' business operations is the further development of the court proceedings in relation to validity of long term loans in CHF. Taking into account the current development and the most recent cases adopted by the Croatian Constitutional Court and the Supreme Court, it can be presumed that the banks could bear a fair amount of damages from the CHF-related consumer claims.

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