Source: Thomson Reuters, Practical Law, Country Q&A Comparison Tool: Banking Regulation

https://uk.practicallaw.thomsonreuters.com/QACompare/Builder/Country?originationContext=document&transitionType=PLDocumentLink&contextData=(sc.Default)&comp=pluk&firstPage=true&bhcp=1

Jurisdiction	What is the legal framework for banking regulation?	What Licence(s) are required to conduct banking services	Can banks headquartered in other jurisdictions operate in your jurisdiction on the basis of their home state banking licence?
Australia	The main acts governing authorised deposit-taking institutions are: Banking Act 1959 (Banking Act). Reserve Bank Act 1959 (RBA Act). Financial Sector (Shareholdings) Act 1998 (FSSA). Corporations Act 2001 (Corporations Act). Financial Sector (Collection of Data) Act 2001 (FSCODA). Financial Sector (Transfer and Restructure) Act 1999 (FSTRA).	The Banking Act restricts an entity from conducting banking business in Australia without authorisation from the Australian Prudential Regulation Authority (APRA). An authorisation from APRA to carry on banking business in Australia may be subject to conditions. A branch of a foreign bank authorised as an authorised deposit-taking institution (ADI) is not permitted to accept initial deposits or other funds from individuals and non-corporate institutions of less than AU$250,000. Such branches can accept deposits and other funds in any amount from incorporated entities, non-residents and their employees. APRA does not generally require a foreign bank to obtain a licence to conduct business with Australian counterparties from its offshore offices, provided the foreign bank does not: Maintain an office or permanent staff in Australia, including staff employed by another entity within the banking group that conducts business on its behalf; Solicit business from retail customers in Australia; Breach section 66 of the Banking Act (see below). All business contracts and arrangements must be clearly transacted and booked offshore, and are subject to an offshore legal and regulatory jurisdiction.	The Australian Prudential Regulation Authority (APRA) generally takes the position that foreign banks soliciting and operating an active business in Australia should be subject to Australian prudential regulation and supervision. Australia does not have a passporting regime. An entity wishing to exercise banking business through a branch in Australia will therefore require authorisation to operate as a foreign authorised deposit-taking institution (ADI).

France	Three main layers of rules and regulations apply to banking activities: • **EU law**. Principally the CRD IV package, which transposes the global standards on bank capital (Basel III agreement)- Directive 2013/36/EU on capital requirements (CRD IV) and Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms. • **French legislation**. Most of this is codified into the Monetary and Financial Code (Code Monétaire et Financier). In addition: o Ordinance of 23 June 2016 implemented Directive 2014/65/EU on markets in financial instruments (MiFID II) o Ordinance of 1 December 2016 reinforced money laundering rules by implementing the provisions of Directive 2015/849/EU o Law of 9 December 2016 (Loi Sapin II) principally aimed at fighting corruption. o Ordinance No. 2017-748 of 4 May 2017 reforming the status of the security agent; o Ordinance No. 2017-970 of 10 May 2017 reforming the French bond issuance regime. o Ordinance No. 2017-1432 of 4 October 2017. • **Regulatory authority regulations**. Detailed regulations enacted by regulatory authorities like the European Central Bank (ECB), the Prudential and Resolution Control Authority (Autorité de Contrôle Prudentiel et de Résolution) (ACPR) or the AMF.	The conduct of banking and financial activities in France is restricted to French and European licensed institutions that are subject to specific supervision. Credit institution licences are granted by the Prudential and Resolution Control Authority (ACPR). Regulations of means of payment were transformed by Directive 2007/64/EC on payment services in the internal market (Payment Services Directive) (transposed into French law by an ordinance published on 16 July 2009) and Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (Electronic Money Directive) (transposed into French law by Law No. 2013-100 of 28 January 2013). The provision of payment services and the issuance of electronic money are no longer exclusively covered by the monopoly of credit institutions, as specific categories of financial institutions regulated by the ACPR and benefitting from the European passport can also perform these activities (that is, payment institutions that perform payment services and electronic money institutions can issue electronic money). As an exception, credit institutions still have a monopoly in respect of the performance of banking payment services, but this essentially just consists of the issuance of cheque books. An institution can apply to the ACPR for a limited payment institution licence (établissement de paiement simplifié) if both: It is expected that the payment volumes handled by the institution will not exceed a monthly average of EUR3 million; The institution does not plan to provide a fund transmission service, a payment initiation service or account information services. Similarly, if it is expected that the volume of electronic money in circulation will not exceed a monthly	Under the mutual recognition principle EU and EEA institutions can carry out in France the activities referred to in the CRD IV package and in Directive 2014/65/EU on markets in financial instruments (MiFID II). Mutual recognition includes the freedom of establishment (for example, through a branch) and the freedom to provide services (without establishing a permanent presence in France). The creation in France of a foreign bank, whether in the form of a branch or a subsidiary, is subject to similar conditions to those applying to French banks. Non-European banks seeking to establish a presence for the first time in France are generally required to establish a French subsidiary and to apply for a banking licence.

		average of EUR5 million, it is possible for an institution to be licensed as an electronic money institution with light regime. In both cases, the prudential requirements are adjusted, notably in terms of initial capital, capital requirements and internal control.	
Germany	As an EU member state, Germany's regulatory framework is based on EU directives and regulations, most importantly Directive 2013/36/EU on Capital Requirements (Capital Requirements Directive CRD IV) and Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms (Capital Requirements Regulation). The main item of German banking regulation is the Banking Act. It covers, in particular, licensing requirements, ownership control and supervision. For capital adequacy, the main law is now the Capital Requirements Regulation. Various other laws cover specialised institutions, such as building societies and institutions operating investment funds. In response to the EU Payment Services Directive, payment services have been consolidated into a new law, the Act on the Supervision of Payment Services. The regulatory framework is complemented by a number of regulations setting out more detailed compliance rules.	The Banking Act prohibits the conduct of banking business without a licence. A banking licence is a permit under public law. The requirements for obtaining a licence are clearly defined in the Banking Act. Anyone satisfying these requirements is entitled to be granted a licence. There is no discretion with respect to the economic need for another financial institution, except that the business case presented with the licence application must be credible and viable.	Banks headquartered and licensed in the European Economic Area (EEA) can conduct regulated banking business in Germany without a German banking licence under the EU passporting regime, 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); 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.
India	Banking business and related financial services are governed primarily by the Banking Regulation Act, 1949 (Banking Regulation Act). The Reserve Bank of India Act, 1934 (RBI Act) empowers the Reserve Bank of India (RBI) to issue rules, regulations, directions and guidelines on a wide range of issues relating to banking and the financial sector. The RBI is the central bank of India, and the primary regulatory authority for banking. Cross-border	An entity intending to carry out banking business in India must obtain a licence from the RBI. A licensed banking company can also conduct certain ancillary business such as borrowing and lending, trade finance, guarantee and indemnity business, financial leasing and hire purchase and securitisation. An entity proposing to deal in foreign exchange is also required to obtain a separate licence as an authorised dealer from the RBI. This licence is issued	Foreign banks must obtain a banking licence in India before carrying on banking business in India, regardless of whether they are licensed to carry on such activities in their home state.

	transactions and related activities are governed by the Foreign Exchange Management Act, 1999. This provides for, among other things, certain banking and other institutions to be licensed as authorised dealers in foreign exchange.	under the Foreign Exchange Management Act. Authorised dealers are granted wide-ranging powers to monitor and facilitate foreign exchange and cross-border transactions. All remittances of foreign currency from or into India are routed through such authorised dealers.	
Japan	The principal source of banking regulation is Act No. 59 of 1981, as amended (Banking Act), to which all commercial banks are subject. The Banking Act also regulates holding companies whose subsidiaries include banks. Investment banking activities (as opposed to commercial banking activities) are regulated under Act No. 25 of 1948, as amended (Financial Instruments and Exchange Act). Under the Banking Act, commercial banks can only engage in limited securities business (see Question 6). It is securities firms (rather than banks) that mainly engage in investment banking business in Japan.	A licence from the Prime Minister must be obtained to engage in banking business (paragraph 1, Article 4, Banking Act). A person who engages in banking business without a licence may be subject to a criminal penalty of up to three years' imprisonment and/or a fine of not more than JPY3 million (item 1, Article 61, Banking Act). The following activities constitute the core business that must not be undertaken without a banking licence: Acceptance of deposits or instalment savings; Loans of funds or discounting of bills. As an exception, this can be carried out by a non-bank registered as a money lender; Remittance of funds. As an exception, this can be carried out by a non-bank registered as a fund transfer businesses operator who can remit funds not exceeding JPY1 million; (Paragraph 1, Article 10, Banking Act.). A bank can engage in certain additional business activities, such as the guaranteeing of obligations, the sale and purchase of certain debt instruments, securities lending and so on (paragraph 2, Articles 10 and 11, Banking Act). A bank cannot engage in any business other than the core business and additional business activities (Article 12, Banking Act).	A foreign bank cannot conduct banking business in Japan on the basis of its home state banking licence. However, a foreign bank can obtain a licence from the Prime Minister by establishing a branch office in Japan (paragraph 1, Article 47, Banking Act) (see Foreign applicants).
South Africa	The banking capital requirements in the Banks Act, 1990 (Banks Act) and its subordinate legislation, together with the exchange control regulation enforced in South Africa by the national treasury. The Financial Sector Regulation	An entity cannot conduct the business of a bank unless it is a public company registered as a bank under the Banks Act (section 11(1), Banks Act). To register: Firstly, the relevant entity must apply to the PA for authorisation to	Banks headquartered in other jurisdictions can operate in South Africa through a representative office or a branch of that foreign bank. Each is subject to the Banks Act

	Act, 2017 (FSR Act) was signed into law on 21 August 2017, giving effect to the implementation of the "Twin Peaks" model of regulation in the South African financial sector. The Minister of Finance determined that the FSR Act (with the exception of a few transitional periods) would commence on 1 April 2018. As a result of the commencement of the FSR Act, and in particular of section 290, read with Schedule 4, of the FSR Act, the Banks Act has been amended to replace references to the Registrar of Banks at the Bank Supervision Department of the South African Reserve Bank (SARB) with the newly established Prudential Authority (PA). Accordingly, the PA is responsible for supervising the operation of banks in South Africa, and ensuring compliance by banks with the Banks Act.	establish a bank; Secondly, it must apply for registration as a bank. A bank must also obtain an annual licence. Once an entity has been registered and licensed as a bank under the Banks Act, it can carry out "the business of a bank" as defined in section 1 of the Banks Act, in particular to conduct deposit taking business in South Africa. A public company cannot be formed under the Companies Act to conduct the business of a bank without the PA's approval (section 15(1), Banks Act). The PA will grant approval if he/she believes that the company will probably be eligible for registration as a bank (section 15(2)). The Companies and Intellectual Property Commission (Commission) cannot register a company's memorandum of incorporation unless the application for registration is accompanied by the PA's approval (section 15(3)). A branch of a foreign bank can also register to conduct the business of a bank in South Africa, under section 18A of the Banks Act. The Banks Act and the Regulations relating to Banks (Regulations) apply equally to branches, unless stated otherwise. The Banks Act provides for the registration of representative offices of foreign banks. Representative offices cannot conduct the business of a bank (section 34, Banks Act).	and the regulatory oversight of the SARB. A representative office promotes and assists the business of the foreign bank but cannot conduct the business of a bank in South Africa. A branch of a foreign bank established in South Africa must meet the requirements set out in Section 18A of the Banks Act. This includes prior written approval of the PA. A branch of a foreign bank must comply with capital adequacy requirements provided in the Banks Act and must register as a company under the Companies Act. The consent of the PA is required for registration as a representative office or as a branch of a foreign bank. Therefore, a foreign bank cannot operate as a bank in South Africa solely because it holds a foreign banking licence.
Switzerland	The Swiss financial market legislation is spread over numerous laws and ordinances. The principal law is the Financial Market Supervisory Act (FINMASA), which serves as an "umbrella law" for the other legislation regulating financial market supervision. Accordingly, it is of outstanding importance. Under this umbrella law, the following statutes are relevant: Mortgage Bond Act (MBA); Collective Investment Schemes Act (CISA); Banking Act (BA); Stock Exchange Act (SESTA); Insurance	Banks must obtain authorisation from FINMA before engaging in business operations. There are two types of licences for services which banks offer or intend to offer in Switzerland, which are the: Banking licence. A Swiss bank must apply for a banking licence for authorisation to take deposits from the public on a professional basis; Securities dealer licence. A securities dealer licence is required if a bank also intends to engage in the business of securities trading or the underwriting of securities.	All foreign banks wishing to establish a presence must first obtain a licence under Swiss laws and regulations from FINMA.

	Supervision Act (ISA); Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA). These laws regulate the conditions for approval and licences for their corresponding activities, as well as their oversight and monitoring by the supervisory authorities. The following additional laws are also relevant: National Bank Act (NBA), which primarily focuses on the stability of the Swiss financial system, but also contains regulations setting bank supervisory standards; Anti-Money Laundering Act (AMLA) and its related Swiss Financial Market Supervisory Authority FINMA (FINMA) Ordinance, which also provide for supervisory standards, but with more limited scope; Consumer Credit Act (CCA), which provides regulatory standards for lending.	Banks (as defined in the Banking Act) are enterprises that are active principally in the field of finance, and which: Accept or offer to accept deposits from the public on a professional basis (that is, from more than 20 persons) to finance any number of persons or companies with which they do not form an economic unit; 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. Types of banks that need authorisation for their business activities are: Every bank legally organised and domiciled in Switzerland (including those whose business operations are conducted exclusively abroad, but whose entity is incorporated or its management is performed in Switzerland); Banks set up under Swiss law which are controlled by foreign shareholders. FINMA can make the grant of authorisation dependent on further conditions, such as the following: either the country of residence of the foreign bank or the country of the foreign controlling corporate or individual shareholder (or both) must guarantee reciprocity (not applicable to member states of the General Agreement on Trade and Services (GATS) of the World Trade Organization (WTO)); and the corporate name of the foreign-controlled bank in no way indicates or suggests that the bank is Swiss-controlled. Foreign banks that hold a bank licence in a foreign country or that apply the term "bank" or "banker" in the company name, purpose of business or in correspondence, which are deemed to be corporations organised according to foreign law. These banks require a licence if they employ persons in Switzerland who are active for the bank on a permanent and commercial	

		basis, and thereby establish (legally or factually) a branch, a representative office or an agency in Switzerland. Except for representative offices or agencies of foreign banks, all three types of banks are considered fully-fledged banks according to Swiss law after obtaining a banking licence from FINMA. Natural persons and legal entities that are not subject to the Banking Act (BA) are prohibited from using the term "bank", "banker" or "savings" in their company name, and accepting deposits from the public on a professional basis.	
United Kingdom	The primary source of framework legislation governing the regulation of banking and financial services in the UK is the Financial Services and Markets Act 2000 (FSMA). While the current UK regulatory framework derives mainly from the FSMA and related implementing legislation and rules, it is also substantially influenced by, and to some degree implements, various European laws which set minimum requirements for the regulation of banks and banking services in the European Economic Area (EEA). An increasing proportion of the framework is established by European regulations, which are of direct effect in the UK, in particular Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms (Capital Requirements Regulation) (CRR) together with Directive 2013/36/EU on capital requirements (Capital Requirements Directive IV) (CRD IV), which implement Basel III, the main primary source for capital, liquidity and leverage requirements in the EEA. Other relevant EU regulations include: Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation); Directive (EU) 2015/2366 on payment services in the internal market, amending Directives	No person can carry on "regulated activities" by way of business in the UK unless authorised or exempt (section 19, FSMA). The regulated activities are specified in the FSMA (Regulated Activities) Order 2001 (RAO). The UK regime regulates accepting deposits as the core regulated banking activity. This is consistent with the EU regulatory framework, in which only deposit-takers are "credit institutions" under EU law, although CRD IV also applies to investment banks and some asset managers. Accepting deposits is a regulated activity if money received by way of deposit is lent to others or any other activity of the person accepting the deposit is financed out of the capital of or interest on money received by way of deposit (Article 5, RAO), subject to certain exclusions. Other regulated activities include, among others: Issuing electronic money; Investment-related activities including dealing (as principal or agent) in, arranging deals in, managing, safeguarding and administering and advising on certain investments; Consumer lending and certain related actives; Lending secured by a mortgage over UK residential property and other home finance activity; Insurance mediation;	Non-EEA banks seeking to provide services from a place of business in the UK must generally be authorised under FSMA, although exemptions can apply in limited circumstances. The legal position for foreign banks operating in the UK on a purely cross-border basis (without a UK place of business) is more complicated and varies across activities. For certain types of wholesale financial services, foreign banks can deal on a cross-border basis without triggering licensing requirements where they limit marketing (for example under the exclusion for investment business conducted by "overseas persons").

	2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) 1093/2010, and repealing Directive 2007/64/EC (PSD2); Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (MiFID II) and Regulation (EU) 600/2014 on markets in financial instruments (amending Regulation (EU) 648/2012) (Markets in Financial Instruments Regulation) (MiFIR); Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation) (EMIR); Regulation (EU) 236/2012 on short selling and certain aspects of credit default swaps (Short Selling Regulation); Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation (EU) 648/2012 (Securities Financing Transactions Regulation); Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014) (Benchmarks Regulation).	Certain related activities and administering or providing information in relation to a specified benchmark (although the Treasury has power to specify other benchmarks). Lending is not regulated as such except for consumer credit and home finance activity (both regulated under the FSMA). Forms of lending that incorporate financial instruments (such as securities, funds or derivatives) are generally regulated under the Directive 2014/65/EU on markets in financial instruments (MiFID II) regime for investment activities. Many banks also have various investment permissions under MiFID to enable them to provide other financial services such as securities brokerage and providing investment advice. A bank that is authorised to accept deposits under the FSMA is generally also licensed to provide payment services under the PSRs and to issue e-money under the EMRs. Under Directive 2006/48/EC and Directive 2006/49/EC (Capital Requirements Directive (CRD)), certain banking activities are subject to mutual recognition among EEA member states. Under this process, known as "passporting", EEA-authorised banks are entitled to conduct business for which they are authorised in their home state into the UK and vice versa.	
USA (National/ Federal)	The type of legislation that governs each bank depends on the kind of charter the bank has received. A bank chooses state law (for example, the New York Banking Law) or federal law (generally the National Bank Act) for a charter, which determines its powers. The principal federal banking laws include: Bank Holding Company Act which governs the activities of bank holding companies, their subsidiaries and affiliates; International Banking Act	There is a dual banking system, so that either the Office of the Comptroller of the Currency (OCC) or a state government can charter a bank. Powers given to banks vary depending on the chartering authority. However, over the years there has been a convergence on the permissible powers of banks so that they are becoming standardised between the different authorities.	Non-US banks from other jurisdictions can open a branch, agency or representative office or establish/acquire a subsidiary bank in the US but cannot rely on their home country licence. Such banks must undergo a new licensing process. The US regulators consider the rigour and adequacy of the home country regulatory framework (that is, its

	which governs the US activities of non-US banks and the non-US activities of US banking organisations; Various securities laws govern the separate roles of banking organisations as securities issuers and market participants. Federal Deposit Insurance Act which: specifies the qualifications and requirements for Federal Deposit Insurance Corporation (FDIC) insurance; and authorises the FDIC to act as both a supervisor and regulator. The above laws have been amended by (among others) the: Glass-Steagall Act, which prohibited banks from affiliating with securities dealers/underwriters and is largely repealed; Foreign Bank Supervision Enhancement Act, which heightened scrutiny of non-US banks in the US and which was part of the Federal Deposit Insurance Corporation Improvement Act; Gramm-Leach-Bliley Act, which allows banks to affiliate with securities dealers and with underwriters, insurance and other financial services firms; Sarbanes-Oxley Act, which strengthened corporate governance and reporting requirements; Dodd-Frank Act, which adopted multiple consumer, financial institution and systemic protections after the financial crisis. Other laws on the state and federal levels (for example, commodities, pension and consumer protection laws) govern other activities and products.		Comprehensive Consolidated Supervision) when evaluating a proposal. The same kinds of considerations applied to a national or state bank charter apply to a branch or agency charter. In addition to the chartering authority's approval, Federal Reserve approval is generally required. The Federal Reserve has the right to examine state licensed offices of non-US banks and to require periodic reports of their financial condition. There are interagency applications to avoid duplication of effort. A non-US bank can engage in a broader range of activities than a bank holding company (BHC) or financial holding company (FHC) if it is a Qualifying Foreign Banking Organisation which meets certain requirements to ensure that more than half of its non-US business derives from banking and more than half of its banking business derives from outside the US.