

An overview on Italian legal requirements  
for foreign financial entities  
to carry on financial activity in Italy



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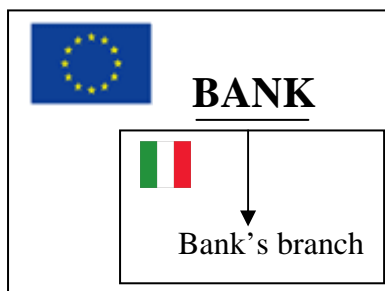
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Under Italian legal system the financial activity is reserved only to Banks pursuant to article 10 of Legislative Decree September 1, 1993 no. 385 (“Banking Law”) or to Financial Intermediaries registered pursuant to article 106 of Banking Law and according to the provision summarized here below. The following is a brief summary of the requirements set forth by Italian law for the carrying out in Italy of financial activity by the foreign banks.

## 1. – Foreign Banks

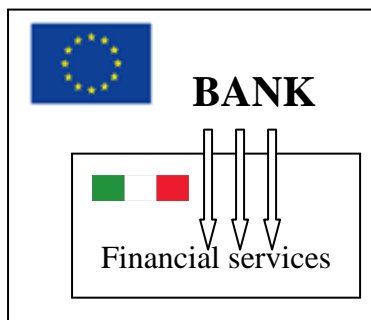
### 1.1. EU Banks

(a) Pursuant to Article 15 §3 of Banking Law (in accordance with article 19 of EU Directive 89/646), EU banks may establish branches in Italy. The establishment of the first branch shall be preceded by a notice to the Bank of Italy from the competent authorities of the home member state. The branch shall commence its activities two months after the notice has been given; within said two month term the Bank of Italy may indicate to the foreign authority the conditions to which, due to public interests, the activity of the branch in Italy is subject.



Banking Law does not set forth any explicit provisions concerning the establishment of further branches by EU banks which have already established a first branch pursuant to Article 15 §3. However, in light of the principle established by EU Directive 2000/12, Article 1, Definitions, no. 3, the places of business established in Italy by an EU bank are to be regarded altogether as a single branch. The establishment of further branches by an EU bank is subject only to the concerned provisions set forth in the home member state and to the requirements set forth in Italy in relation to the entry in the Corporate Registry and in the Bank Registry held by the Bank of Italy, according to Article 13 of Banking Law. (“*Albo*”).

(b) Pursuant to the EU principle of the freedom to provide services, Article 16 §3 of Banking Law establishes that EU banks may carry on the activities subject to mutual recognition in Italy without establishing a branch after the Bank of Italy has been informed by the competent authorities of the home member state.



(c) Please note that, pursuant to Article 1.2.(f) of Banking Law, the definition of “activities subject to mutual recognition” includes:

- Acceptance of deposits and other repayable funds;
- Lending, including, inter alia: consumer credit, mortgage credit, factoring, financing of commercial transactions, including forfeiting;
- Financial leasing;
- Money transmission services;
- Issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts);
- Guarantees and commitments;
- Trading for own account or for account of customers in:

- (i) money market instruments;
- (ii) foreign exchange;
- (iii) financial futures and options;
- (iv) exchange and interest-rate instruments;
- (v) transferable securities;

- Participation in securities issues and the 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 the purchase of undertakings;

- Money broking;
- Portfolio management and advice;

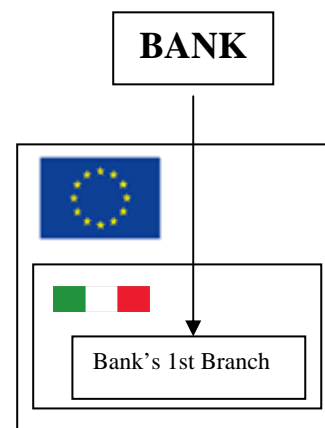
- Safekeeping and administration of securities;
- Credit reference services;
- Safe custody services;

- further activities to be included according to EU regulations.

According to article 13 of Banking Law, the Bank of Italy shall enter banks authorised in Italy and branches of EU banks established in Italy in the *Albo*.

## 1.2 - Non-EU banks:

(a) Pursuant to Article 14 of Banking Law the establishment of the first branch in Italy of a non-EU bank shall be authorized by the Bank of Italy.



The authorisation shall be subject to satisfaction of the following conditions:

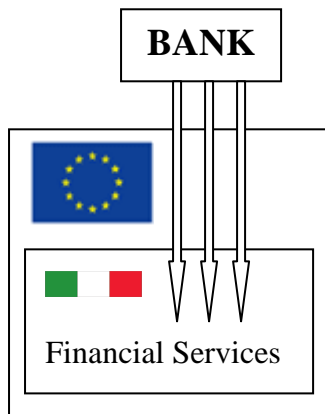
- (1) The paid-up capital is not less than that established by the Bank of Italy;
- (2) A programme of operations has been submitted together with the instrument of incorporation and by-laws;
- (3) The persons performing administrative, managerial or control functions satisfy the experience and integrity requirements pursuant to Article 26 of Banking Law.

Moreover, the authorization shall be granted having regard also to reciprocity.

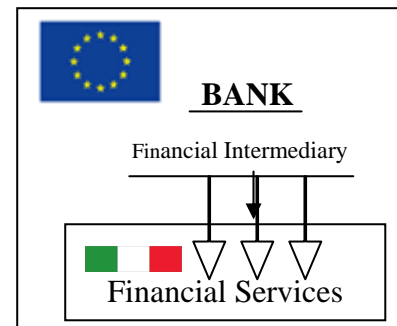
Non-EU banks which have already established a branch in Italy may establish other branches

subject to the authorization of the Bank of Italy (Article 15 §4 of Banking Law).

(b) Pursuant to Article 16 §4 of Banking Law non-EU banks may operate in Italy without establishing branches subject to the authorization issued by the Bank of Italy, Consultation with Consob is compulsory in case of trade of securities business.



b)



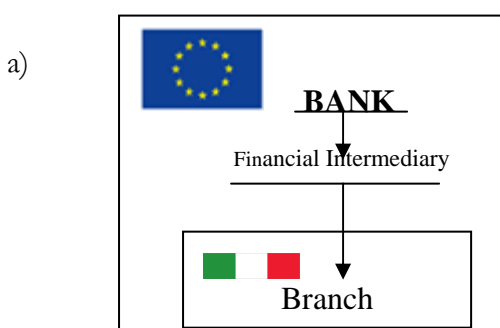
The conditions to enjoy the mutual recognition are those set forth by Article 19 of Directive 2000/12/CE and therefore a financial intermediary from another member state can provide financial services in Italy, either by the establishment of a branch or by way of the provision of services, provided that each of the following conditions are met:

## 2. – Foreign Financial Intermediaries

### 2.1. - EU Financial Intermediaries

#### (a) EU Financial Intermediaries subject to mutual recognition

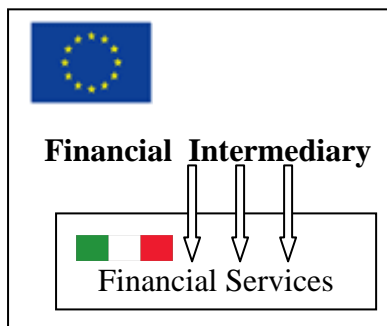
Article 18 of Banking Law expressly extends the provisions of: (a) Article 15 §3 (see Section 1.1.(i)) and (b) Article 16 §3 (see Section 1.1.(ii)), also to Financial Intermediaries having the registered office in a member state if the controlling interest is held by one or more banks whose registered offices are in the same member state.



- the parent company or companies are authorized as credit institutions in the member state by the law of which the subsidiary is governed;
- the financial activities are actually carried on within the territory of the above member state;
- the parent company or companies hold 90% or more of the voting rights attaching to shares in the capital of the subsidiary;
- the parent company or companies satisfy the competent authorities regarding the prudent management of the subsidiary and have declared, with the consent of the relevant home member state competent authorities, that they jointly and severally guarantee the commitments entered into by the subsidiary;
- the subsidiary is effectively included in the consolidated supervision of the parent company, or of each of the parent companies, in particular for the calculation of the solvency ratio, for the control of large exposures and for the purpose of the limitation of holdings.

(b) EU Financial Intermediaries not subject to mutual recognition

The matter is regulated by the Ministerial Decree 28 July 1994, according to which the pursuit of financial activity in Italy by EU Financial Intermediary not subject to mutual recognition pursuant to above-mentioned Article 18 (see Section 2.1.(i)), is subject to the entry in the General Registry held by the *Ufficio Italiano Cambi* according to article 106 of Banking Law.



Entry in the General Registry of a EU financial intermediary is subject to fulfilment of the following conditions:

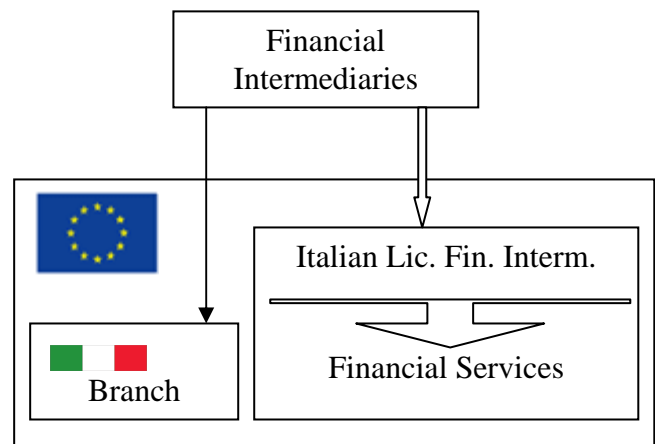
- (1) pursuit in Italy exclusively of financial activity; constitution of an endowment fund of an amount at least equal to the share capital required by Banking Law for Financial Intermediaries having their registered office in Italy (currently equal to Euro 500.000,00); satisfaction of the experience and integrity requirements requested by Banking Law for persons performing managerial functions in the organization operating in Italy; and
- (2) existence in the home country of regulations equivalent to that provided for in Title V of the Banking Law.

In compliance with the EU principles and pursuant to the consolidated European Court of

Justice Case law, EU Financial Intermediaries not subject to mutual recognition should be allowed to carry on financial activities in Italy also without the opening of an Italian branch or other permanent establishment. It is in any case clear that also the Financial Intermediaries that, pursuant to the principle of freedom to provide services, act in Italy with a branch or other permanent establishments need to be enrolled in the General Registry.

**2.2. - Non-EU Financial Intermediaries:**

The pursuit of financial activities in Italy by Non-EU Financial Intermediaries is subject to the entry in the General Register.



The entry of Non-EU Financial Intermediaries in the General Register shall be subject to fulfilment of the following conditions:

- (1) satisfaction of the requirements referred in subparagraph a) above in relation to EU Financial Intermediaries;
- (2) issue by the company's legal representative of a statement attesting the compliance with the principles and safeguards set out in the Recommendations of the Financial Action Task Force (FATF) on Money Laundering.

The Non-EU Financial Intermediaries are prevented from carrying on financial activities without a permanent establishment.

Please note that *Ufficio Italiano Cambi*, has clarified that the pursuit in Italy of financial activities by foreign Financial Intermediaries through a

permanent establishment pursuant to the Ministerial Decree 28 July 1994 is required when the main centre of the interests is focused in Italy. In the opposite case, foreign intermediaries without a permanent establishment in Italy can legitimately perform financial activities in Italy through Italian licensed Financial Intermediaries.