

**ANSWER:**

Please refer to document WT/ACC/HRV/9.

**QUESTION 170:**

**When does Croatia intend to submit a comprehensive services offer?**

**ANSWER:**

Croatia will submit a Service offer in due course.

**QUESTION 171:**

**As it is mentioned in answer to question 14, foreign companies and foreign sole traders wishing to perform a business activity in the Republic of Croatia, including supply services, must establish a subsidiary or a joint-stock company, provided that such activity has a long-term character (Company Law). How can the delegation of Croatia explain this answer considering the answer to Question 35: "A foreign enterprise may carry on business in Croatia only in the form of branch office"? Have those two contradictory remarks to do with the notion of "carry on business" in the case of branches? (WT/ACC/HRV/7)**

**ANSWER:**

The two answers are indeed contradictory due to the lack of legal terms employed in the answer to question 14. on services. If you please refer to the answer to question 126 WT/ACC/HRV/3. The access to market in service sector is under Company law not restricted by establishing a subsidiary or joint-stock company. Foreign enterprise or trader have a free choice between choosing subsidiary form in which case they establish a fully or partially owned company or branch office form. The "imposition" of establishing a branch applies in the case of "carrying on business" in the strict sense as defined in the Company law : carrying on business is commercial activity carried out independently, on one's own account, at one's own risk, regularly and with intention of making profit by production of goods and services. ( Article 1 in relation to Article 612 (2) of The Company Law).

These provisions do not prejudice the freedom of contract among foreign and domestic entities and freedom of choice of applicable law and forum. The contracts concluded by a branch is valid although it is considered to be concluded with the foreign company which has founded a branch. Branch has no legal existence separate from its parent company. As a consequence, their contracts are considered as international contracts and foreign law and forum can be negotiated as applicable.

**TRADE IN SERVICES (WT/ACC/HRV/9)**

**1. GENERAL**

**QUESTION 172:**

**In the note on services, Croatia state that new laws are envisaged to govern the provision of certain services and to introduce a more liberal approach. Could Croatia identify the services sectors where changes are most likely? Does Croatia intend to make use of staged commitments and phase-in arrangements in the pursuit of liberalisation?**

**ANSWER:**

In general, the former Yugoslavian laws and regulations are being modified to liberalize the current system, across all service sectors.

**Banking and Other Financial Services**

**Banking**

**QUESTION 173:**

We would appreciate copies, if they exist in English, German or French of the laws currently applying to the financial services sector:

- the Banks and Savings Institutions Act (Official Gazette n 94/93);
- the Law on the Foreign Exchange System, Foreign Exchange Operations and Gold Transaction (Official Gazette no. 91A/93).

**ANSWER:**

The Law on Banks and Savings Banks was submitted to the WTO Secretariat in July of 1995. Please refer to document WT/ACC/HRV/4. The Law on the Foreign Exchange System, Foreign Exchange Operations and Gold Transaction will be submitted in English to the WTO Secretariat after translation.

**QUESTION 174:**

What plans has Croatia made in the area of structural reform in the banking sector, for example, to overhaul financially troubled banks, or to adopt international rules and disciplines?

It is stated that Croatia's most important banks are undergoing a process of transformation. Could Croatia explain about such a process?

**ANSWER:**

The Government of Croatia has taken three steps to reform the banking sector and to channel new flows of resources to a wider segment of sound borrowers at lower costs. First, the banks that were in financial trouble had to be financially "cleaned up", i.e. from exposures to their largest problem customers. After the balance sheets of these troubled banks were cleaned and reflected international reporting standards, the banks were privatized. Second, the issue of enterprise ownership (for all enterprises were socially-owned prior to Croatia's independence) was resolved by the privatization of banks. Lastly, banks which had large exposure problems, thus, not credible for privatization were transferred to the Bank Rehabilitation Agency. The legislation, the Bank Rehabilitation Law and the Law Establishing the Bank Rehabilitation Agency, enacted by the Croatian Parliament in June of 1994 enabled the Croatian Government to carry out this bank reform program.

**QUESTION 175:**

The current Croatian legislation states that establishment of foreign companies in the banking sector is ruled by reciprocity conditions. However, we understand that Croatia will not seek an MFN exemption in this regard. Could Croatia confirm this ?

With regard to the approval by the National Bank of Croatia which is needed to establish a subsidiary of a foreign bank in the country, is Croatia able to abide by GATS Article 2 (MFN), 6 (reasonable, objective and impartial administration of measures), 16 (market access) and 17 (national treatment)?

**ANSWER:**

The approval by the National Bank of Croatia needed to establish a subsidiary of a foreign bank in Croatia abides by GATS Article 6 (reasonable, objective and impartial administration of measures), 16 (market access) and 17 (national treatment). According to the Law on Banks and Savings Institution, the establishment of a bank, a savings bank, a branch and a representative office by foreign

natural and legal persons is ruled by reciprocity conditions. Therefore, Croatia intends to seek an MFN exemption in this regard.

**QUESTION 176:**

**Could Croatia indicate in which law and articles the principal of reciprocity is provided for? Could Croatia explain about the principle of reciprocity in a concrete manner?**

**ANSWER:**

As to the reciprocity measure, the Law on Banks and Savings Banks prescribes that foreign physical and legal persons may be the founders of a bank, foreign bank's branch and representative office of a foreign bank provided that principle of reciprocity is observed, which means that legal and physical persons, coming from the Republic of Croatia, are also allowed to establish a bank, branch or representative office in the country of a foreign legal person or a bank wishing to set up a bank, branch or representative office in the Republic of Croatia. This reciprocity is assumed, meaning that it is assumed that mutuality or reciprocity exists, but if in doubt, certificate on existence of reciprocity is issued by the Ministry of Justice.

Since the reciprocity principle has been deeply rooted in the international law, our opinion is that this measure, prescribed by the Law on Banks and Savings Banks, cannot be classified under or characterized as discriminatory measure as the way the question is put might imply.

**QUESTION 177:**

**It is stated that "such a branch cannot perform banking activities under Article 3 of the Banks and Savings Institutions Act". Could Croatia elaborate on this? Which areas are prohibited or restricted for foreign financial institutions to perform banking and other financial services?**

**ANSWER:**

The statement which reads "such a branch cannot perform banking activities under Article 3 of the Banks and Savings Institutions Act" is incorrect. There is a typing error in this statement, thus it should read "such a branch can perform banking activities under Article 3 of the Banks and Savings Institutions Act".

**QUESTION 178:**

**We would appreciate additional information on the forms of establishment that foreign banks have access to? Could the Croatian banking authorities specify whether a foreign bank can establish a branch directly onto Croatian territory with full banking competence? Or whether it should incorporate under Croatian law as a subsidiary? Are foreign banks permitted access to local currency and the interbank market, and to provide full banking facilities?**

**What is the specific meaning of "Subsidiaries and representative offices do not have the characteristic of a legal entity?"**

**ANSWER:**

Foreign natural and legal persons may be founders of a bank in the Republic of Croatia. Accordingly, a foreign bank may found a bank in the Republic of Croatia. Foreign banks may establish a bank as a joint stock company or as a limited liability company.

In order to found a bank a foreign bank shall comply with the provisions of the Law on Banks and Savings Banks and provide the founder's capital which shall amount to no less than 5,000,000 DM in the national currency equivalent, calculated at the NBC exchange rate on the date of submitting the application for court registration. If the bank intends to engage in payment transactions and credit

relations with foreign countries the founder's capital of a bank should amount to no less than 15,000,000 DM in the national currency equivalent.

Foreign legal and natural persons may establish a savings bank in the Republic of Croatia. The savings bank may be established as a joint stock company or as a limited liability company. The founder's capital of the savings bank to be established may not be less than the counter value of 1,000,000 DM in the national currency. However, the scope of operations savings banks may engage in is quite limited compared to the scope of operations that banks are allowed to perform.

A foreign bank may found a branch in the Republic of Croatia. The branch may engage in all or only specific banking operations pursuant to the authorizations of the parent bank. According to the provisions of the Law on Banks and Savings Banks the branch shall be considered the domestic/resident bank and shall be affected by the relevant provisions of the above mentioned Law, which means that the branch may engage in all the operations a bank usually performs. The required founder's capital of the branch shall amount to no less than the equivalent of 2,500,000 DM in the national currency.

A foreign bank may found a representative office in the Republic of Croatia. The representative office shall not be a legal person and may not engage in banking operations.

Foreign natural and legal persons, so foreign banks as well, may found a bank, a savings bank, a branch and a representative office in the Republic of Croatia subject to reciprocity.

The bank, the branch and the savings bank founded by a foreign bank (that has its domicile outside the territory of the Republic of Croatia) and domiciled in the Republic of Croatia shall perform banking operations pursuant to the legislation that equally applies to domestic and foreign banks and savings banks, shall have free access to the national currency and to the interbank market and may provide the same banking facilities that the domestic banks and savings banks do pursuant to the conditions prescribed hereof and pursuant to the law.

**QUESTION 179:**

**In order to establish a representative office, foreign banks must be entered in the Register of Foreign Bank Branches in the Republic of Croatia and such a branch cannot perform activities under Article 3 of the Banks and Savings Institutions Act. Subsidiaries. Could the delegation of Croatia provide us with precise information on the restrictions applied to those foreign banks?**

**Can you confirm that foreign banks can establish a commercial presence in Croatia in the form of either a subsidiary, a branch or a representative office without any limitations on the foreign capital participation (including wholly foreign-owned banks)?**

**ANSWER:**

Foreign banks may establish a commercial presence in Croatia in the form of either a subsidiary, a branch or a representative office without any limitations on the foreign capital participation, providing that the level of required initial capital is met. For further details please refer to the attachment "The Establishment of Banks, Branches and Representative Offices in the Republic of Croatia". (WT/ACC/HRV/16)

Furthermore, please note that a record on foreign banks' representative offices is made and no registration whatsoever is required. They are not considered to be legal entities, since legal personality is acquired with us by entry into registry with a competent commercial court, and they cannot perform banking activities provided for by the Law on Banks and Savings Banks, but they only maintain contacts

in compliance with needs of the bank that is their founder, while real deals are made by their founder-bank.

Foreign banks may be involved in commercial transactions in Croatia through their branches here, but according to the afore-said not through their representative offices. It is worth pointing out that foreign banks, as foreign legal persons in the Republic of Croatia, may establish a bank which is, based on the afore-mentioned, in its operation on a fully equal footing with domestic banks.

**QUESTION 180:**

**In relation to the debt market, are foreign permitted full access to Treasury bonds, corporate bonds and other debt issues?**

**ANSWER:**

In relation to debt markets a foreign bank cannot directly access T-bond actions, but needs a local operating presence or a local intermediary. However, a foreign bank may directly obtain such issues in a secondary market.

**QUESTION 181:**

**On Securities, could Croatia provide details of the regulatory system regarding the establishment and operation of brokerages, and securities houses? Are foreign companies permitted to trade on their own account, or do they need a local intermediary? Can foreign companies manage and underwrite share issues? Are there any limits on the types/amount/percentage of shares they can buy (on own account or for domestic/international clients)?**

**ANSWER:**

Capital requirements for brokers and dealers are 200,000 kunas and 400,000 kunas respectively, must be a legal person and must have at least one person with a brokers license employed and permission from the CROSEC (Croatian Securities and Exchange Commission). For further information, please refer to the Law on Securities Articles 27 and 29, which was submitted to the WTO Secretariat on April 1, 1996.

Foreign companies need a local intermediary.

Foreign companies can manage and underwrite share issues only if they have a operating presence in Croatia. Otherwise they need a local partner as was the case with PLIVA/UBS/Zagrebacka Banka.

There are no limitations provided they can be bought on the market.

**QUESTION 182:**

**In the area of foreign exchange, is Croatia able to abide by GATS Articles 11 and 12?**

**ANSWER:**

Croatia is able to abide by GATS Articles 11 (payments and transfers) and 12 (restrictions to safeguard the balance of payments) with regard to foreign exchange.

**Insurance**

**QUESTION 183:**

**What laws currently govern the provision of insurance services in Croatia? Are foreign insurance companies permitted to establish branches and/or subsidiaries in Croatia, and if so, are there any qualifications to national treatment?**