

Chapter 8

Banking system

1. General

The Romanian banking system is two-folded: the National Bank of Romania, on one side, acting as the central bank of the Romanian State, and the commercial banks, on the other side.

The breakthrough from the specific transition legal framework to regulations suitable for a workable and efficient banking system based on market economy principles was represented by the Banking Law no. 58/1998, which repealed the former Law no. 33/1991 on banking activity.

As of January 1st 2007, Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy (“GEO no. 99/2006”) has entered into force and replaced the previous relevant legal framework mainly represented by Banking Law no. 58/1998. Further on, in July 2007, GEO no. 99/2006 has been approved and amended by Law 227/2007.

GEO no. 99/2006 has been set in place with a view to implement into the Romanian legislation the Directive 2006/48/CE of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and of the Directive 2006/49/CE of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions.

Moreover, Law no. 83/1997 ensured the legal framework for the privatization of State-owned banks. Such framework led to certain major investors entering the Romanian banking market, such as GE Capital, Société Générale, Raiffeisen Bank and International Financial Corporation (IFC), European Bank for Reconstruction and Development (EBRD) and Erste Bank, by means of acquiring State-owned shares in Banc Post, Banca Romana de Dezvoltare, Banca Agricola and Banca Comerciala Romana (BCR).

2. Main regulations

- Law no. 312/2004 on the Statutes of the National Bank of Romania (“Law no. 312/2004”)
- GEO no.99/2006 on credit institutions and capital adequacy, approved and amended by Law 227/2007 (“GEO no. 99/2006 “);
- Law no. 83/1997 on the privatization of commercial banks where the State is one of the shareholders, with its subsequent amendments and completions (“Law no. 83/1997”);
- Government Emergency Ordinance no. 51/1998 concerning the capitalization of bad banking assets, as republished (“GEO no. 51/1998”).

3. The National Bank of Romania

The National Bank of Romania was established in 1880, as a joint-stock company with both public and private capital. In 1901, the sale of the equity owned by the State in the National Bank of Romania was approved, its shares were sold and the bank became a private bank under privileged status, the State maintaining its control over the bank.

Before 1989, the National Bank of Romania used to be a State bank, with certain commercial powers.

According to Law no. 312/2004, the National Bank of Romania is an independent public institution with legal status. The National Bank of Romania is entitled to establish branches and agencies all over the Romanian territory.

3.1. National Bank of Romania's powers

The National Bank of Romania has the following main statutory powers:

- a) to issue and apply the monetary and exchange rate policy;
- b) to authorize, regulate and supervise the credit institutions from the prudential point of view, as well as to promote and monitor the good functioning of the payment system in order to ensure financial stability;
- c) to issue currency as legal payment means on the Romanian territory;
- d) to establish the foreign currency regulations and supervise the observance of the same;
- e) to administrate the international reserves of Romania.

Mention should be made that the National Bank of Romania has wide regulatory powers in the banking sector and it has the role to sustain the State general economic policy in view of maintaining macroeconomic stability.

3.2. Operations performed by the National Bank of Romania

- (i) Operations with credit institutions:
 - settlement, deposit, discount and payment services;
 - lending operations;
 - opening and operating current accounts for credit institutions and settlement houses and for other resident or non-resident legal entities, as per National Bank of Romania regulations;
 - monitoring, authorizing and supervising the payments system;
 - performing paid services, upon the express request of credit institutions, regarding collection and transmission of payment incidents and credit risk;
 - establishing the regime of the minimum compulsory reserves, which credit institutions need to maintain with NBR;
 - supervising credit institutions.
- (ii) Operations with the State treasury:
 - opening and operating State treasury's current account;

- acting as state agent for establishing the credit institutions which are eligible to accept and maintain deposits of the State treasury;
- acting as State agent for performing discounts on the general current account of State treasury.

(iii) Operations with treasury bills on the primary market

Based on various protocols concluded with the Ministry of Finance, NBR may act as a State agent with regard, *inter alia*, to: (i) placements with third parties of treasury bills and other Romanian state negotiable instruments; and (ii) registration, deposit and transfer of treasury bills as well as payments of related principal, interest and bank commissions.

(iv) Gold and foreign assets operations such as:

- establishing and maintaining the State's international reserves;
- entering transactions with gold bars and other precious metals, as well as with currencies and treasury notes;
- entering transactions with foreign currency;
- entering transactions on the secondary market with treasury bills and other titles issued or secured by foreign governments or by inter-governmental financial organizations;
- opening and maintaining accounts with foreign central banks and monetary authorities, credit institutions or international financial institutions.

3.3. Legal status of the National Bank of Romania

The National Bank of Romania's activity is governed by GEO no. 99/2006 and Law no. 312/2004 on the approval of the National Bank of Romania By-laws.

The National Bank of Romania Board of Directors' members and employees are bound to ensure professional confidentiality of all information in their possession, which is not intended for public purposes.

The National Bank of Romania is allowed to make real estate investments only for its own functioning needs or for the needs of its personnel, as established by the Board of Directors.

4. Commercial banks

The second tier of the Romanian banking system is made-up of credit institutions, distinctively regulated depending on their status of Romanian or foreign legal entities.

4.1. Concept of "Credit Institution" and "Bank" under GEO no. 99/2006. Credit institution types

Under GEO no. 99/2006 a credit institution is defined as follows:

- a) an entity having as scope of activity the drawing of deposits or other reimbursable funds from the public and the granting of loans on its own behalf;
- b) an entity, other than the one provided for under point a) above, which issues payment means in the form of electronic currency and is referred to as an electronic currency issuing institution.

According to GEO 99/2006, the “**bank**” is defined as a credit institution having universal vocation and which may perform any of the activities permitted to a credit institution. General provisions applicable to credit institutions are totally applicable to banks as well.

Depending on the nature of the credit institution share capital, the following types of credit institutions operate in Romania:

1. Public credit institutions, which are state-owned, such as the Savings House (*Casa de Economii si Consemnatiuni*), reorganized as a joint-stock banking company;
and
2. Private credit institutions, being those with private capital (domestic and/or foreign).

Romanian credit institutions are incorporated and function as: (a) banks; or (b) credit cooperative organizations; or (c) banks for savings and loans granted in the residential field; or (d) mortgage loans banks; or (e) electronic currency issuing institutions.

4.2. Incorporation and operation of Romanian credit institutions

4.2.1. Incorporation

GEO no.99/2006 establishes the principle whereby no entity may carry out banking activities on the Romanian territory without the National Bank of Romania’s authorization.

The general procedure for the authorization of banks has three stages, namely:

1. Bank establishment clearance granted by the National Bank of Romania, according to the provisions of GEO no. 99/2006 and the Company Law;
2. Registration with the Trade Register; and
3. Operational authorization.

According to Romanian law, commercial banks may only be established as joint-stock companies.

For the incorporation purpose the approval of the National Bank of Romania is necessary. Pursuant to the bank’s incorporation, the National Bank of Romania grants the operational authorization. Pursuant to GEO no. 99/2006 a minimum share capital of Euro 5,000,000 is required in view of establishing a bank. However, NBR may establish a higher minimum value of the share capital. Currently, in accordance with the NBR Regulation no.18/2006, the minimum share capital upon incorporation of a bank is of RON 37,000,000 (approximately EUR 10,277,777, at an exchange rate of RON 3.6/EUR). The subscribed share capital must be fully paid in cash at the time of subscription.

Romanian commercial banks may establish branches and other secondary headquarters (agencies and other similar secondary seats) on the Romanian territory, in accordance with the National Bank of Romania regulations.

4.2.2. Changes in the banks’ status

As provided under NBR Regulation no.6/2008, the prior approval of NBR is required in case of the following changes in the status of a Romanian credit institution:

- (i) extension or reformulation of its object of activity;
- (ii) changes regarding its leaders and/or directors;
- (iii) changes regarding the financial auditor;

- (iv) opening of branches in third states;
- (v) opening of new branches in Romania, if the NBR had initially prohibited the extension of branch network, following a negative evolution of banking prudence indexes;
- (vi) acquiring qualified participations in legal entities from third states, if pursuant to such acquiring the legal entity would be included in the supervision on a consolidated basis of the credit institution, as well as the increase of such participation.

The following changes in the status of a Romanian credit institution are subject to NBR notification within 10 days as of their occurrence:

- (i) change of name;
- (ii) change of headquarters;
- (iii) reduction of the object of activity;
- (iv) share capital increase or reduction;
- (v) change of significant shareholders;
- (vi) change of persons in special relations with the bank;
- (vii) change of the functions of an approved leader;
- (viii) opening and closing of branches, agencies and business units on the Romanian territory;
- (ix) any other amendments to the Constitutive Act of the bank.

4.2.3. Operations

Romanian banks and Romanian-based subsidiaries of foreign banks may undertake the following main activities, within the limits of their granted authorizations:

- (i) to receive deposits;
- (ii) to grant various types of loans, as well as, *inter alia*, factoring and forfeiting operations;
- (iii) financial leasing;
- (iv) transfers of cash funds;
- (v) issuance and management of payment instruments;
- (vi) issuance of guarantees and assuming commitments;
- (vii) transactions on its own account or on its clients' account with:
 - negotiable instruments (checks, bills of exchange, deposit certificates);
 - hard currency;
 - financial derivatives;
 - interest rate and exchange rate instruments;
 - securities.
- (viii) intermediation in securities investment and provision of related services;

- (ix) consultancy *inter alia* on business strategy and related issues;
- (x) intermediation on the inter-bank market;
- (xi) management of clients' portfolios and related consultancy;
- (xii) securities custody and management;
- (xiii) providing information and reference regarding loan activity;
- (xiv) renting of safe deposit boxes;
- (xv) collective investment fund management;
- (xvi) acting as operator for the Electronic Archive of Movable Security Interests.

4.3. Organization of foreign credit institutions' activity

Foreign banks may perform banking activities in Romania either by incorporating a subsidiary in Romania, which will be a Romanian bank and shall thus conduct its banking activity based on the NBR authorization, or by establishing branches in Romania, which are subject to NBR authorization procedure in case the parent bank is a non-EU credit institution. Additionally, foreign banks may establish representative offices in Romania.

As regards EU credit institutions, GEO no. 99/2006 implements the EU passport principle according to which EU based credit institutions may provide banking services in Romania via a branch or directly, based on the free provision of services principle, without NBR authorization being required.

4.3.1. Subsidiaries of foreign banks

Romanian subsidiaries of foreign banking corporations are established, operate and are liquidated in accordance with the Romanian relevant legislation.

Subsidiaries of foreign banks established in Romania are Romanian legal entities, subject to authorization by the National Bank of Romania and to the Romanian banking legislation (they are subject to the same requirements as to capital, organization etc., as any bank having Romanian legal personality which operates in Romania).

4.3.2. Branches of foreign banks

4.3.2.1. Branches of EU-based banks

According to GEO 99/2006, credit institutions authorized and controlled by the relevant authority from one of the member states, may perform through branches, banking activities in Romania within the limits of the authorization granted by the relevant authorities from their country of origin, without a prior authorization from the National Bank of Romania being necessary and without an endowment capital for the branch being required.

The establishment of a branch in Romania by a EU based credit institution, must be notified to the National Bank of Romania via the central bank in the origin country of the parent company along with certain information, *inter alia*, regarding the banking services to be provided in Romania. Within 2 months from receipt of such information, NBR communicates the special conditions (if any) to be complied with by the branch in carrying its business in Romania.

The above communication of the NBR or the lapse of the 2 months period without receipt of any reply from NBR, entitles the branch to start operating.

- a) Pursuant to GEO no.99/2006 the following provisions shall apply to branches of EU credit institutions:
- b) banking secrecy;
- c) opening of current account with the NBR;
- d) minimum requirements for customer identification;
- e) NBR regulations on supervision of liquidity of credit institutions;
- f) NBR regulations on monetary policy and statistics.

4.3.2.2. Branches of foreign banks based in non-EU states

According to GEO no.99/2006 and NBR Regulation 11/2007, credit institutions incorporated outside the European Union may establish branches in Romania only subject to the National Bank of Romania's authorization.

On establishment, the above-mentioned foreign credit institutions' branches must own an endowment capital - the equivalent in the national currency of EUR 5,000,000. The conditions, terms, and procedures for a branch of a non-EU credit institution to be granted an operational authorization in Romania are essentially the same as those required for Romanian credit institutions/banks.

4.3.3. Representative offices

The representative office is established by means of the parent company's decision and is not subject to the National Bank of Romania's authorization. However, the opening and operation of foreign banks' representative offices in Romania, is subject to, *inter alia*, the notification of the National Bank of Romania.

Foreign banks' representative offices' activity is limited to informative, representation as well as market research and client contacting activities. Foreign banks' representative offices may not perform any kind of banking operations (credits, deposits, etc.).

4.3.4. Free provision of services by European Union credit institutions

According to GEO no. 99/2006, credit institutions, authorized and supervised by the relevant authority from one of the member states, may provide banking services in Romania directly, based on the free provisions of services principle. The direct provision of services by a credit institution authorized and surveyed in another member state may take place only based on a notification sent to the National Bank of Romania by the relevant authority in the member state of origin, including the activities that the credit institution intends to perform in Romania.

4.4. Banking secrecy

GEO no. 99/2006 includes specific provisions with regard to banking secrecy. As such, banks must observe the confidential nature of banking transactions and services rendered, including the identity of account holders.

According to GEO no. 99/2006, each member of the board of directors, as well as all individuals participating in the bank's activities are bound by professional secrecy. All these persons may not use or disclose, neither during their activity, nor after termination of their activity, facts or information, which, if becoming public, might affect the interests and the prestige of the bank or of any client of the bank.

Any banking information subject to banking secrecy shall only be disclosed under the

following circumstances:

- (i) to the holder of the deposit account, the heirs of the same, including the legal or corporate representatives, or with the account holder's express consent;
- (ii) the bank proves a legitimate interest in respect of the disclosure;
- (iii) upon written request of an authority or institution, or *ex officio*, in case, a special law provides for such authority and/or institution entitled to require banking information and such information subject to disclosure is clearly identified, in order that said authorities or institutions to perform their specific attributions;
- (iv) upon written request of depositor's spouse, if the same proves the existence of a legal action of common goods division before a court, or upon such court's request;
- (v) upon the request of a court of a law, for the settlement of various issues related to a lawsuit;
- (vi) upon the request of the court bailiff in order to carry out the foreclosure on the debtors' accounts.

The bank's personnel may not use directly or indirectly banking privileged information to their own benefit or to the benefit of other persons. In criminal cases, upon written request of the district attorney, of the police (with the district attorney's approval) or of the court, banks shall provide banking privileged information.

4.5. Prudential requirements

According to GEO no. 99/2006, credit institutions are required to observe prudential requirements, on an individual or consolidated level, as the case may be, in accordance with NBR regulations, including but not limited to:

- (i) solvency;
- (ii) liquidity;
- (iii) maximum exposure towards a single debtor and maximum aggregate exposure;
- (iv) exposure towards persons that are in special relations with the bank;
- (v) currency risk;
- (vi) quality of assets, establishment and use of risk provisions;
- (vii) organization and internal control.

The indexes related to the requirements provided at items (i) and (iii) – (v) above are established depending on the level of the own funds. This level cannot be lower than the minimum level of the initial capital, established by the NBR regulations.

The bank cannot pay dividends out of profits if, as a result of such a payment, the bank shall have a solvency level beyond the minimum one established by the NBR.

The value of a qualified participation held by a Romanian credit institution, in entities, others than credit institutions, financial institutions, insurance companies and ancillary services providing institutions shall not exceed 15% of its own funds; while the total amount of qualified participations of a Romanian credit institution cannot exceed 50% of its own funds. The above thresholds may be exceeded only in extraordinary cases, in which case the National Bank of Romania may instruct the relevant credit institution to increase its own funds or take other similar actions.

4.6. Prohibited transactions

According to GEO no.99/2006, credit institutions are forbidden to enter into, *inter alia*, the following operations:

- (i) creating pledges over the bank's own shares to secure the bank's debts;
- (ii) granting loans or rendering other types of services to clients conditioned by the sale or purchase of the bank's shares or by the client's acceptance of other services unrelated to the loan or the product/service required;
- (iii) granting loans secured with shares issued by the bank or another entity from the group;
- (iv) accepting deposits, securities or other values, provided that the bank has ceased payments.

5. Privatization of State-owned banks

5.1. Privatization methods

Banks may be subject to privatization under any of the following methods:

- a) increase of registered capital by private capital contribution in cash, pursuant to public offer or private placement;
- b) sale of shares managed by the Authority for State Assets Recovery ("AVAS"), only against cash with payment in full;
- c) combination of the two methods described above.

Upon the joint proposal of the National Bank of Romania, AVAS and the Ministry of Public Finance, in view of bank's privatization process, appoint a privatization commission in charge with the banks privatization and the observance of transparency and objectivity principles. The privatization commission must be endorsed by means of Government decision. The privatization of banks is based on valuation reports and feasibility studies concluded by specialized entities, in accordance with the international standards.

5.2. Privatization process limits

Romanian or foreign individuals or legal entities acting directly or indirectly, individually, or jointly with third parties, may not acquire more than 20% of total share capital of banks earmarked for privatization, except for reputable international financial banking institutions.

The law also forbids the following operations:

- a) anticipated share sale and purchase agreements, as well as any other agreements concluded prior to privatization;
- b) loans granted by Romanian-based banks for payment of shares acquired from AVAS or for payment of the subscribed shares in case of a share capital increase of banks earmarked for privatization;
- c) shares in banks earmarked for privatization may not be purchased with proceeds owed in Romania to this end;
- d) loans obtained abroad may be used to purchase such shares, but said shares cannot be pledged as security for the loan repayment.

6. Organization and operation of the Authority for State Assets Recovery

Government Emergency Ordinance no. 51/1998 sets up the legal framework for the recovery of assets of the banks having the State as major shareholder, in view of preparing them for privatization, of increasing their solvency level, internal and external creditworthiness or settling their financial problems in view of maintaining a viable banking system, as well as for the purpose of accelerating the recovery of the assigned receivables.

The Authority for State Assets Recovery (“AVAS”) is organized as a specialized institution with legal status of the central public administration, and subordinated to the Government.

AVAS aims for the recovery of bad banking assets taken over from the majority State-owned banks, in view of preparing them for privatization and reducing the State’s financial effort in such operations. In view of reaching its goals, AVAS main powers focus on taking-over, recovering and managing banking assets and debts associated with the same.

The receivables titles and their accessories assigned to AVAS are enforceable titles, just like any other deeds or instruments entered by the latter for the recovery of bank receivables. AVAS may organize its division of officers to act solely for the enforcement of such enforceable titles.

Any litigation involving AVAS in relation to bad banking debts taken over will be settled based on the observance of the special rules provided for by Government Emergency Ordinance no. 51/1998 (short judgment terms, special forced execution procedures, etc.), accordingly completed by the provisions of the Civil Procedure Code. Additionally, the requests formulated by AVAS and any other procedural acts performed by and on behalf of AVAS in connection with state assets recovery are exempted from stamp fees and taxes.

7. Bank deposits protection fund

The bank deposits protection fund (the “Fund”) was established as a public legal entity organized and operating based on its own statutes approved by the National Bank of Romania, upon the proposal of the Fund’s board of directors. The Fund aims to secure repayment of deposits made with banks by individuals, under certain conditions and within certain limits. Thus, should a bank not be able to reimburse the clients their deposits, the Fund guarantees the repayment of their deposits up to the limit of EUR 50.000 in case of individuals and EUR 20.000 in case of legal entities or other joint ventures lacking legal personality.

The financing resources out of which the Fund guarantees the deposits consist mainly in compulsory contribution of all Romanian banks and Romanian-based branches of foreign banks authorized, as well as in loans, incomes from debt liquidation or incomes from investing its resources or other revenues (donations, budgetary subsidies).

EU based credit institutions providing banking services in Romania either directly or via a branch are not bound to participate to the Fund and in such case depositors are secured via the fund organism the parent credit institution participates to.

8. The Credit Bureau (Biroul de Credit)

The Credit Bureau is incorporated as a joint stock company, in accordance with the relevant corporate legislation. The purpose of its incorporation consists of the creation of a monitoring vehicle in the financial and banking market, by establishing a centralised informatic data base system containing information regarding the financial conduct of individuals, clients of credit

institutions, of other financial and insurance institutions, or of non-financial companies (the « Participants »).

The supply by the Participants of the Credit Bureau with said information is made based on Participation Agreements to the Credit Bureau System concluded between the Participants and the Credit Bureau.

The Credit Bureau provides financial and banking consulting services and collects, manages and processes information regarding the Participants clients portfolio.

The Participants provide the Credit Bureau with information regarding the financial conduct of their clients, in view of identification and quantification of the credit risk, of credit quality increase within the Romanian banking system, and of the decrease of fraude risk and creditors' protection.

The Credit Bureau establishes uniform clients evaluation criteria, entitled *clients scoring*, drafts and promotes specific standard clients evaluation criteria from the credit risk perspective.