

Chapter 9

Currency regulations

1. General

The currency regulations are paramount to a consistent framework of the currency market, repatriation of currency, currency control or of the possibility of owning and using the currency in cash or accounts in RON by non-residents. Currency regulations are also material to foreign investments on performance of international trade contracts as well as on the international trade, financing sector etc.

Having in view the fact that in 2007 Romania has joined the European Community and the Romanian Government had tried to align the Romanian legislative system to the European legislative system in 2005 and 2006 the currency market was liberalized by the National Bank of Romania.

2. Main regulations

- NBR Regulation no. 4/2005 regarding currency operations, with the subsequent modifications („Currency Regulation”);
- NBR Norms no. 17/2002 regarding the statistical reporting to NBR of long and medium term currency capital operations of long and medium term private external debt type, with the subsequent modifications („NBR Norms no. 17/2002”);
- EC Regulation no. 1889/2005 of the European Parliament and of the Council, on control of cash entering or leaving the Community (“EC Regulation no. 1889/2005”).

3. Currency operations

The existing regulations define currency operations as including, but not limited to:

- (i) the execution and performance of transactions and transfers deriving from these transactions;
- (ii) all financial techniques available on the market in order to realize certain operations – spot transactions, derivatives transactions, opening accounts or placing funds into accounts;
- (iii) winding up or assignment of assets that were acquired following certain investments or operations, repatriation of the profits and utilization of these profits
- (iv) refunding of loans and credits.

Currency operations may be:

- 3.1. Current** – operations performed between residents and non residents and arising, without limitation, from:
- (i) international trade transactions with immediate reimbursement, including transactions performed with the purpose of covering the currency price risks etc. arising from international trade transactions;
 - (ii) repatriation of net revenues in the form of interests, dividends etc. deriving either from current/capital operations;
 - (iii) repatriation of petty cash deriving from legal obligation of supporting family members – husband, wife, children or other persons that are in custody;
 - (iv) other transactions, other than currency capital operations (see section 3.2. below), such as: taxes and fees – other than succession fees, commissions, royalties, fines, trial expenses, technical assistance, amounts deriving from social security rights, including allowances, in a public or private system, gains from gambling, operational leasing, expenses incurred with the maintenance of property owned abroad, representation expenses, government spending, subscriptions with publications, membership in organizations, clubs;
 - (v) expenses, other than currency capital operations, incurred by residents traveling abroad with the purpose of education, religion, entertainment, vacation, sport, business, visits at friends, missions, meetings, conferences, health care, etc.

The current currency operations are not subject to reporting at NBR, unlike some capital currency transactions, as further detailed below.

- 3.2. Capital operations** – currency operations performed between residents and non-residents, arising from:
- (i) direct investments;
 - (ii) real estate investments (other than direct investments) – investing in real estate related to a direct investment;
 - (iii) transactions with financial instruments currently exchanged on the capital market that are not enclosed at letters a), d), or e), below;
 - (iv) transactions with financial instruments currently traded on the money market operations;
 - (v) transactions with units of the collective investment bodies (OPC);
 - (vi) credits related to international trade where a resident is involved;

- (vii) financial credits and loans, not included at the letters a), f) and l) that do not represent loans with personal character;
- (viii) guarantees;
- (ix) operations in current accounts;
- (x) operations in deposit accounts;
- (xi) transfers related to the carrying out of life insurance and credit contracts, representing subsidies, annuities, secured amounts, allowances;
- (xii) capital transfers with personal character;
- (xiii) physical import and export of financial assets;
- (xiv) other capital movements.

3.3 Reporting of some capital operations with the NBR

For statistical and informational purposes, individuals and legal entities concluding contracts with non-residents for capital operations of the long and medium term private external debt type are compelled to notify the respective transaction with the Statistic Division within the NBR.

The following transactions are considered currency capital operations of long and medium term private external debt type:

- (i) financial credits and loans granted by non-residents to residents with reimbursement terms longer than 1 year on a contractual basis such as standard credit/loan, syndicated credit, financing line, financial leasing, consumer and mortgage loan and other similar operations;
- (ii) credits related to international trade granted by non-residents to residents with reimbursement terms longer than 1 year, respectively credits contracted during international trade operations, including installment payments based on execution phases at suppliers request, or payments made at a certain term since the delivery of the goods/performance of the service, no matter if trade effects were issued, rescheduling of such payments, or financing such credits by third parties;
- (iii) primary trading of credit deeds with reimbursement term longer than one year (bonds and other financial instruments with fixed income) issued by residents on a foreign capital market.

Individuals and legal entities selected on statistical criteria by NBR, as contract holders regarding external engagements for the evaluation of the private external debt of Romania, are compelled to submit, at the summoning of the NBR, data regarding the performing of these operations. As regards the individuals and legal entities that are in course of reporting the currency operations of the external private type with the NBR, they have the obligation to continue the statistical reporting only if expressly requested by the NBR.

The ones not urged according to the above mentioned, as well as those that have notified currency capital operations are still compelled to notify the NBR of the change of the registered office, of the cancellation of the contract and of the modification of the initial notification, of the creditor, the debtor and of the value of the credit on the whole period the transaction is performed. It should be mentioned that in case of changing the debtor, the assignor debtor will be in charge with the notification procedure, while the new debtor is assuming the notification or reporting obligation in relation to the respective external obligation.

4. Currency market

The currency market is the market where currency exchange operations are performed and gathers inter-banking currency market, exchange houses currency market and special entities currency market.

The inter-banking currency market is that part of the currency market, which concerns the operations and the connections of the main authorized dealers of the currency market – the banks.

The organization and the functioning of the inter-banking currency market in Romania is done based on the Currency Regulation and NBR Norms no. 3/2005.

The following supplementary norms are issued based on the Regulation:

- (i) norms on the operation of the inter-banking currency market – Norms no. 3/2005;
- (ii) norms on currency exchange operations – Norms no. 4/2005.

5. Participants to the currency market

According to the Currency Regulation, the participants to the currency market are residents and non-residents.

5.1. Residents are:

- (i) individuals – Romanian citizens, foreign citizens and stateless citizens, domiciled in Romania with identity card issued in accordance with the law;
- (ii) legal entities and any other entities headquartered in Romania, as well as individuals, Romanian citizens, foreign citizens and stateless citizens, domiciled/resident in Romania and authorized and/or registered as economically involved on the Romanian territory as provided by law;
- (iii) branches, agencies, representative offices and offices of foreign legal entities as well as of any other foreign entity registered and/or authorized in Romania;
- (iv) embassies, consulates and other representatives and permanent missions of Romania abroad.

5.2. Non-residents are:

- (i) individuals – Romanian citizens, foreign citizens and stateless citizens, domiciled abroad with identity card issued in accordance with the law;
- (ii) legal entities and any other entities headquartered outside Romania, as well as individuals, Romanian citizens, foreign citizens and stateless citizens, domiciled/resident outside Romania and authorized and/or registered as economically involved outside Romanian territory as provided by law;
- (iii) branches, agencies, representative offices and offices of foreign legal entities as well as of any other foreign entity registered and/or authorized outside Romania;
- (iv) embassies, consulates and other representatives and permanent missions of foreign states in Romania, as well as international organizations and representatives of such organizations in Romania.

6. Cash in/out of the European Union

Pursuant to Romania's accession to the EU, EC Regulation no. 1889/2005 became directly applicable in Romania.

In accordance with Regulation no. 1889/2005 any natural person entering or leaving the Community and carrying cash of a value of EURO 10,000 or more shall declare that sum to the competent authorities of the Member State through which he is entering/ leaving the Community. The obligation to declare is not deemed fulfilled if the information provided is incorrect or incomplete.

In August 2007, the National Agency for Fiscal Administration has issued Order no. 7541/ 6 august 2007 for approving the standard form to be used for declaring the cash at the frontier and the filling in and use instructions of such form.

Non-declaration to custom authorities by individuals at the entry/exit in/from the European Union of their cash amounts exceeding EUR 10,000 leads to penalties. In this respect, the Regulation for the application of the Romanian Customs Code approved via Government Decision no. 707/2006, as amended to date, provides the following applicable sanctions: (i) confiscation of the cash not declared in writing that exceeds the limit provided by EC Regulation no. 1889/2005; (ii) fine ranging from RON 3,000 to 8,000.

7. Non-residents right to hold amounts in RON

Since the currency market is completely liberalized, non-residents are entitled to obtain, hold and use financial assets expressed either in RON or in foreign currency. The amount held by non-residents in RON or other listed currencies may be freely converted through currency market and the non residents may also:

- (i) open and hold accounts with credit institutions either in RON or in foreign currency;

- (ii) repatriate and transfer their financial assets.

8. Currency operation control

Residents and non-residents must perform currency operations according to the provisions of the Currency Regulation. Banks shall be liable for the correct application of the Regulation as far as their clients' operations are concerned. For this purpose, the banks may claim the necessary information and evidence from their clients. The National Bank of Romania monitors and controls the compliance with the provisions of the Currency Regulation by residents and non-residents. Non-observance of the Regulation provisions leads to various sanctions consisting in:

- (i) written warning;
- (ii) fine of the bank or of the directors or managers of the bank;
- (iii) withdrawal of the banks managers/directors approval;
- (iv) withdrawal of the bank authorization.