

Chapter 9

Currency Regulations

1. General

The currency regulations are the principal factor in a consistent framework for 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 in the performance of international trade contracts as well as in the international trade, financing sector etc.

In view of the fact that, in 2007, Romania joined the European Union and the Romanian Government tried to align Romanian laws to European laws in 2005 and 2006, the currency market was liberalized by the National Bank of Romania (“NBR”).

2. Main regulations

- NBR Regulation No. 4/2005 regarding currency operations, with the subsequent modifications (“**Currency Regulation**”);
- NBR Regulation No. 4/2014 regarding the reporting of data and statistical information to NBR (“**NBR Regulation No. 4/2014**”);
- 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 to realize certain operations – spot transactions, derivatives transactions (forward, options, swap, futures), opening accounts or placing funds into accounts;
- (iii) winding up or assignment of assets acquired following certain investments or operations, repatriation of the profits and utilization of these profits;
- (iv) refunding of loans and credits.

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;

- (v) repatriation of net revenues in the form of interests, dividends, etc., deriving either from current or capital operations;
- (ii) remittance of amounts to cover current expenses deriving from the legal obligation of supporting family members – husband, wife, children or other persons in custody;
- (iii) 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;
- (iv) expenses, other than currency capital operations, incurred by residents traveling abroad with the purpose of education, religion, entertainment, vacation, sport, business, visiting friends or family, missions, meetings, conferences, health care, etc.

The current currency operations are not subject to reporting to 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 which are not included in letters (i) above, (iv) or (v), below;
- (iv) transactions with financial instruments currently traded on the money market;
- (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 in the letters (i), (vi) and (xii) that represent loans of a personal nature;
- (viii) guarantees;
- (ix) operations in current accounts;
- (x) operations in deposit accounts;
- (xi) transfers related to the realisation of life insurance and credit contracts, representing subsidies, annuities, secured amounts, allowances;
- (xii) capital transfers with a personal character;

- (xiii) physical import and export of financial assets;
- (xiv) other capital movements.

3.3. Reporting of some capital operations to the NBR

For statistical and information purposes, residents such as 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 Statistics 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, consisting of refundable financing on a contractual basis such as a standard credit/loan, syndicated credit, financing line, financial leasing, consumer and mortgage loans 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 the suppliers request, or payments made at a certain term as of the delivery of the goods/performance of the service, regardless whether trade effects were issued or not, rescheduling of such payments, or financing such credits by third parties;
- (iii) primary trading of credit deeds with reimbursement terms longer than one year (bonds and other financial instruments with fixed income) issued by residents on a foreign capital market and acquired by non-residents.

The above mentioned individuals or legal entities who have notified currency capital operations are still compelled to notify the NBR of the change of the registered office, the termination of the contract or the amendment in respect of the initial notification of the creditor, the debtor and of the value of the credit during the performance of the transaction. Mention should be made that in case the debtor is changed, the assignor debtor has the obligation to notify and report the respective external obligation.

Residents such as 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 individuals and legal entities that are in the course of reporting the currency operations of the external private type with the NBR at the date of entry into force of NBR Regulation No. 4/2014, they are obligated to continue statistical reporting only if expressly requested to by the NBR.

4. Currency market

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

The inter-banking currency market concerns the operations and 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 based on the Currency Regulation and NBR Norms No. 3/2005.

5. Participants in the currency market

According to the Currency Regulations, participants in the currency market may be residents or non-residents.

5.1. Residents are:

- (i) individuals – Romanian citizens, foreign citizens and stateless citizens, domiciled in Romania with identity cards 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 in 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 entities registered and/or authorized in Romania;
- (iv) embassies, consulates and other representative offices and permanent missions of Romania abroad.
- (v) individuals – Romanian citizens, foreign citizens and stateless citizens, domiciled abroad with identity cards issued in accordance with the law;
- (vi) 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;
- (vii) branches, agencies, representative offices and offices of foreign legal entities as well as of any other foreign entity registered and/or authorized outside Romania;
- (viii) embassies, consulates and other representative offices and permanent missions of foreign states in Romania, as well as international organisations and representative offices of such organisations in Romania.

6. Cash in/out of the European Union

Following 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 EU and carrying cash of a value of EURO 10,000 or more must declare that sum to the competent authorities of the Member State through which he is entering/leaving the EU. The obligation to declare is not deemed fulfilled if the information provided is incorrect or incomplete.

In October 2012, the National Agency for Fiscal Administration issued Order No. 2028/2012 to determine the EU exclusive form to be used when declaring the cash at the frontier.

Non-declaration to custom authorities by individuals at the entry/exit in/from the EU 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 exceeding the limit provided by EC Regulation No. 1889/2005; (ii) fines ranging from RON 3,000 (approx. EUR 670) to RON 8,000 (approx. EUR 1,800).

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 the currency market and 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 Regulations. Banks are 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. NBR monitors and controls compliance with the provisions of the Currency Regulations by residents and non-residents. Non-observance of the Regulation provisions leads to various sanctions consisting of:

- (i) written warning;
- (ii) fine of the bank or of the directors or managers of the bank;
- (iii) suspension of the bank authorization for a period of maximum 90 days;
- (iv) withdrawal of the banks managers/directors approval;
- (v) withdrawal of the bank authorization.