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ROMANIA

By

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A. INTRODUCTION

i. Banking Reform

Banking reform was initiated in 1990, by the establishment of certain banks, such as the Bank for Small Industry and Free Initiative (MINDBANK) and the Bank for Cooperative Loans (BANKCOOP), as well as by the organization of four specialized state banks as joint-stock companies in which the Romanian state was the sole shareholder.

At the same time, subsidiaries or branches of foreign and mixed banks were opened in Romania, such as the branch of Banque Franco-Roumaine.

The reform was materialized by Law Number 33/1991 on Banking Activity and Law Number 34/1991 on the National Bank of Romania Statutes. As a result, the legal framework was established so that the National Bank of Romania became independent and resumed the traditional functions of a central bank, commercial activities being transferred to commercial banks.

ii. Reorganization of Banking System

In 1998, regulations were passed for the harmonization of Romanian banking laws with European standards. Banking Law Number 58/1998 repealed the previous regulation (Law Number 33/1991) and reorganized the banking system according to new principles, mainly aiming at securing the banking circuit and strengthening financial discipline.

Law Number 58/1998 stipulated that banking activity in Romania takes place through authorized credit institutions in accordance with the law. According to Law Number 58/1998, credit institutions were either:

1. Entities developing professionally the activity of attracting deposits or other repayable funds from the public and granting loans on their own account; or

2. Electronic currency issuing entities, other than that provided above, i.e., electronic currency issuing institutions.

Law Number 58/1998 provided for the operations that banks were allowed to perform in Romania, the procedures for their authorization by the National Bank of Romania, and banking merger and de-merger rules.

Law Number 58/1998 also provided for the conditions for the professional qualification of bank managers and directors, as well as conditions for becoming a bank shareholder. Strict bank prudence rules also were stipulated to prevent risks and ensure the stability of the banking system. The thorough control of banking activities represented a priority, the National Bank of Romania having the power to issue special bank supervision and management measures.

Subsequently, Law Number 58/1998 was repealed by Government Emergency Ordinance 99/2006, as amended and approved via Law 227/2007 (GEO Number 99/2006), which constitutes the current banking law.

The replacement of another law, i.e., Law Number 101/1998 on the National Bank of Romania Statutes, triggered another significant change in the banking legal framework. Law Number 101/1998 repealed Law Number 34/1991 and increased the National Bank of Romania's power to supervise commercial banks. Subsequently, Law Number 101/1998 was repealed by Law Number 312/2004, the current law on the National Bank of Romania Statutes.

iii. Organization of Banking System

As of 1 January 2007, Government Emergency Ordinance Number 99/2006 on Credit Institutions and Capital Adequacy (GEO Number 99/2006) entered into force and replaced the previous legal framework mainly represented by Banking Law Number 58/1998. In July 2007, GEO Number 99/2006 was approved and amended by Law Number 227/2007.

GEO Number 99/2006 was set in place with a view to implement into the Romanian legislation Directive 2006/48/EC 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 Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions.

GEO Number 99/2006 generally provides for the conditions to be fulfilled by credit institutions to be granted access to banking activity in Romania, prudential supervision of the credit institutions and of the financial investment services companies, and supervision of payment systems and of settlement of the operations performed with financial instruments.

GEO Number 99/2006 applies to Romanian credit institutions and their branches established abroad, foreign credit institutions with regard to their activity performed in Romania, and certain financial investment services companies and asset management companies.

iv. Institutional Structure of Banking System

The National Bank of Romania Register¹ includes, under the section entitled “Romanian Credit Institutions”, 30 banks, two banks for savings and loans granted in the residential field, and 49 credit cooperative organizations and, under the section entitled “Branches of Foreign Credit Institutions”, 10 branches of European Union (EU) credit institutions.

The state controls only two of the banks authorized to operate in Romania, namely, ECC Bank SA, which is 100 per cent state-owned, and the Bank of Import and Export of Romania (*Banca de Export Import a Romaniei*, EXIMBANK SA), with the state and private Romanian companies as majority shareholders.

Previously, the state held a higher number of banking companies, but many were privatized, including:

1. The BancPost, taken over by GE Capital, which later transferred a part of its shares to two other foreign banks;
2. The Romanian Bank for Development (*Banca Romana pentru Dezvoltare*), taken over by Socit Generale;
3. The Agricultural Bank (*Banca Agricola*), the majority share stock acquired by a consortium of Raiffeisenbank and the Romanian–American Investment Fund; and
4. The Romanian Commercial Bank (*Banca Comerciala Romana*), taken over by Erste Bank.

B. BANKING SYSTEM

i. Legal Framework

The following main laws and regulations provide for the general legal framework for the banking system:

1. Government Emergency Ordinance Number 99/2006 on Credit Institutions and Capital Adequacy, as approved and amended by Law Number 227/2007;

1 The National Bank of Romania Register is a computerized record system consisting of a list of Romanian credit institutions and branches of foreign credit institutions, as well as of non-banking financial institutions and other credit institutions.

2. Law Number 312/2004 on the Statutes of the National Bank of Romania, as amended;
3. Law Number 31/1990 on Commercial Companies, as republished and amended (the “Company Law”);
4. National Bank of Romania Regulation Number 18/2006, regarding Own Funds of Credit Institutions and of Investment Companies;
5. National Bank of Romania Regulation Number 11/2007, regarding the Authorization of Romanian Credit Institutions and of Romanian Branches of Third Party States’ Credit Institutions;
6. National Bank of Romania Regulation Number 6/2008, regarding Amendments to the Status of Credit Institutions, Romanian legal persons and Romanian Branches of Third-Party States’ Credit Institutions;
7. National Bank of Romania Norm Number 6/1998, as amended by National Bank of Romania Norm 25/2006, on the Notification of Opening Representative Offices in Romania by Foreign Banks;
8. National Bank of Romania Norm Number 5/2000 on Bank Merger and De-Merger;
9. Government Emergency Ordinance Number 113/2009 regarding payment services, as approved and amended by Law Number 197/2010;
10. Competition Law Number 21/1996 (the “Competition Law”), as republished and amended;
11. Government Ordinance Number 10/2004, regarding the Procedure for Judicial Reorganization and Bankruptcy of Credit Institutions, as amended;
12. Law Number 83/1997 on Privatization of Commercial Banking Companies Where the State Is Shareholder, as amended; and
13. Government Emergency Ordinance Number 51/1998 on Recovery of Certain State Assets, as republished and amended.

ii. National Bank of Romania

a. Powers

The National Bank of Romania’s main goal is to assure and maintain price stability. The National Bank of Romania has authority over the circulation of money, foreign currency, lending and payment policy, and prudential banking authorization and supervision. The National Bank of Romania Statutes and banking legislation grant the National Bank the power to:

1. Set and supervise monetary and lending policy;

2. Regulate banking activities by its own regulations issued for the enforcement of the banking legislation;
3. Grant and withdraw operational authorizations to commercial banks;
4. Control bank compliance with the provisions of the banking legislation and the regulations for the enforcement thereof;
5. Request from credit and financial institutions the information that is required for the exercise of its functions;
6. Participate, on behalf of the state, in international negotiations on financial, monetary, foreign currency, loan, and payment issues, as well as on banking authorization and supervision issues;
7. Serve as the sole Romanian institution authorized to issue money; and
8. Draft regulations on the supervision and control of foreign currency transactions in Romania and issue authorizations for international transfers, currency markets transactions, and other specific operations.

b. Operations

Operations with Banking Companies and Other Credit Institutions The National Bank of Romania's operations with banks consist of:

1. Granting loans to credit institutions;
2. Opening current accounts for credit institutions, the State Treasury, compensation entities, and other resident and non-resident entities, established on the basis of regulations issued by the National Bank of Romania;
3. Setting the official discount tax and refinancing rate;
4. Establishing the regime of minimum mandatory reserves that banks must maintain in accounts opened with the National Bank of Romania;
5. Regulating and supervising payment systems;
6. Offering set-off, deposit, and payment services; and
7. Preventing and limiting payment and loan risks.

Operations with the State Treasury The National Bank of Romania operations on the State's account are essentially to keep the current account of the State Treasury.

Monetary Market Operations The National Bank of Romania's monetary market operations are made at the initiative of the National Bank. The National Bank of Romania is prohibited from acquiring from the primary market receivables of the state, central, and local public authorities, *regies autonomes*, national companies, and other majority state-owned companies.

As of Romania's accession to the EU, the above prohibition also applies in respect of acquisition of receivables of other organisms and public companies in the member states.

However, the National Bank of Romania may conduct on the secondary market, provided that the aforementioned interdiction is observed, reversible operations, direct purchases/sales, or may accept as security, on granting of collateralized loans, pledges over receivables or titles of the state, central, or local public authorities, *regies autonomes*, national companies and other majority state-owned companies, credit institutions, or other legal persons, or may conduct currency swaps, or issue deposit certificates and attract deposits from the credit institutions, under such terms it may deem as necessary, to achieve the monetary policy objectives.

Gold and Foreign Assets Operations The National Bank of Romania sets and maintains international reserves and is authorized to:

1. Purchase, sell, and otherwise deal with gold ingots and coins and other precious metals, foreign currencies, Treasury bills, bonds, and other titles issued or guaranteed by foreign governments or inter-governmental financial organizations, and securities issued or guaranteed by central banks, international financial institutions, and banking and non-banking companies;
2. Open and maintain accounts with central banks and monetary authorities, banking companies, and international financial institutions; and
3. Open and maintain accounts and perform corresponding operations for international financial institutions, central banks and monetary authorities, financial and banking companies, inter-governmental international financial organizations, and foreign governments and their agencies.

iii. Concepts of "Credit Institution" and "Bank"

a. *In General*

The "Credit Institution" Concept According to GEO Number 99/2006 (the "banking legislation"), the term "credit institution" is defined as follows:

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

Romanian credit institutions are incorporated and function as banks, credit cooperative organizations, banks for savings and loans granted in the residential field, mortgage loans banks, and electronic currency issuing institutions.

According to GEO Number 99/2006, the term “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. Banks may open subsidiaries. An entity may be deemed the subsidiary of a bank if the parent company:

1. Holds directly and/or indirectly the majority of the voting rights in such entity;
2. Is entitled to appoint or revoke the majority of the members in the administration or control bodies or the majority of the managers of that entity and is a shareholder or associate in such entity;
3. Is entitled to exercise a dominating influence over such entity, in which it is a shareholder or associate, based on certain clauses included in the agreements concluded with such entity or of certain provisions comprised in constitutive acts of the respective entity, if the legislation governing the statute of the subsidiary allows the existence of such clauses or provisions;
4. Is a shareholder or associate of such entity and during the latest two years it appointed alone, as a result of the exercise of its voting rights, the majority of the members of the administration or control bodies or the majority of the managers of such entity; and
5. Is a shareholder or associate of such entity, and is solely in control of the majority of the voting rights in such institution, based on an agreement concluded with the other shareholders or associates.

An entity also may be deemed the subsidiary of a bank if the parent company and the subsidiary are governed on a unique basis by the parent company.

According to the banking legislation, credit institutions also may open branches, which are operational units without legal personality performing directly all or some of the credit institutions’ activities, within the limits granted by the parent credit institution.

Credit Institution Types Depending on the nature of the credit institution’s share capital, the following types of credit institutions operate in Romania:

1. Public credit institutions, which are state-owned, such as ECC Bank SA, reorganized as a joint-stock banking company; and
2. Private credit institutions, being those with private capital (domestic and/or foreign).

Permitted Banking Operations The banking legislation allows credit institutions to perform certain types of operations, namely:

1. Financial operations, including operations made directly by credit institutions, such as accepting fund deposits and other repayable funds, granting loans (e.g., consumer loans and mortgage loans), financing commercial transactions, factoring, discount and forfeiture operations, financial leasing, issuance and management of payment instruments (e.g., credit cards, traveler's checks, and e-currency), offering fund transfer services, issuing guarantees and undertaking engagements, offering financial and banking consultancy services, engaging in agency operations, and undertaking transactions on own account or the account of customers with instruments of the monetary market (e.g., checks, bills of exchange, promissory notes, and deposit certificates), foreign currency, futures and options agreements, instruments based on the currency exchange rate and the interest rate, securities, and other financial instruments;
2. Operations specific to ABS transactions in accordance with the relevant special legislation; and
3. Non-financial operations provided that they represent at most 10 per cent of the credit institution's income, such as non-financial operations based on the mandate granted in respect thereof by other entities from the same group with the respective credit institution, asset management operations with respect to movable and immovable assets owned by the credit institution, and specific services provided to the credit institution's clientele which represent an extension of the banking operations.

Prohibited Banking Operations The banking legislation prohibits the performance by credit institutions of operations such as:

1. Dealing with movable or immovable goods, except for those expressly accepted to be performed by credit institutions under certain conditions provided by the banking legislation;
2. Pledging its own shares on account of the credit institution's debts;
3. Granting loans or providing other services to customers on condition that they sell or buy bank shares;
4. Receiving deposits or other reimbursable funds, titles, or other values from the public when the credit institution becomes insolvent;
5. Granting loans conditioned on the client's acceptance of other services that are not related to such a crediting operation; and
6. Granting loans secured with the shares issued by the credit institution or an entity of the same group with that credit institution.

Legal Form of Credit Institutions Credit institutions, as Romanian legal entities, may be established as joint-stock companies, subject to the prior approval of the National Bank of Romania. Credit institutions must comply with the Company Law and the specific banking legislation depending on them being incorporated as banks, banks for savings and loans granted in the residential field, mortgage loan banks, electronic currency issuing institutions, or credit cooperative organizations, as well as with National Bank of Romania Norms.

It is generally forbidden for any other entity which is not authorized as a credit institution to use the name of a bank, bank for savings and loans granted in the residential field, mortgage loan bank, electronic currency issuing institution, or credit cooperative organization, or any name deriving or any translations thereof. Subsidiaries functioning in Romania may use the name of their parent credit institutions or other similar identification elements.

Share Capital Credit institutions organized as joint-stock companies may be established by full and simultaneous subscription of the share capital by the signatories of the constitutive act.

The minimal share capital is set by the National Bank of Romania by regulations, provided that it is not lower than the equivalent in the national currency of 5-million. Each shareholder must pay up in full and in cash the value of the subscribed shares, prior to establishment.

Any person who intends to acquire, directly or indirectly, a qualified participation in the share capital of a Romanian credit institution shall previously notify such intention to the National Bank of Romania, mentioning the specific participation that it intends to acquire. Banking legislation defines the concept of qualified participation as the direct or indirect participation in the share capital of a credit institution, representing at least 10 per cent of its share capital or of its voting rights, or that enables the performance of a significant influence with regard to the administration of such credit institution.

Any person that intends to increase a qualified participation in a credit institution to reach or exceed the levels of 20 per cent, 33 per cent, or 50 per cent of the share capital or the voting rights of a Romanian credit institution, or in order that the latter becomes one of its subsidiaries, must notify such intention to the National Bank of Romania. Within three months as of receipt of such notification, the National Bank of Romania may dispute or admit the applicant's request.

The National Bank of Romania must be informed if a person intends to waive a qualified participation or the percentage of its voting rights so that it represents less than 20 per cent, 33 per cent, or 50 per cent of the share capital or

of the voting rights of a Romanian credit institution or if the latter ceases to be one of its subsidiaries.

b. Credit Institution and Bank Authorization

Authorization of Romanian Legal Entities Generally, credit institutions that are Romanian legal entities may operate subject to the authorization of the National Bank of Romania. Also, branches of credit institutions incorporated in countries outside the European Union may operate in Romania based on the authorization of the National Bank of Romania. Subsidiaries of foreign banks with offices in Romania also are deemed to be Romanian banks with legal personality.

The banking legislation provides for procedures regarding the authorization of each type of credit institution. However, the procedure for authorization of banks is the general one, applicable also to the other types of credit institutions to which in each case some additional special conditions are added. 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 the banking legislation and the Company Law;
2. Registration with the Trade Register; and
3. Operational authorization.

Obtaining Establishment Clearance To obtain the establishment clearance for a bank, the following documents must be submitted to the National Bank of Romania:

1. Notarized power-of-attorney or a lawyer's delegation signed by all direct shareholders of the bank, whereby they designate the persons that will represent them in relation with the National Bank of Romania during the preparation of the authorization file;
2. Draft of the bank's constitutive act;²
3. Information on the share capital quota and the voting rights held by the direct shareholders and qualified indirect shareholders and information on the direct shareholders and qualified indirect shareholders;
4. Business plan, which provides the feasibility of the project, accepted by the persons proposed as managers, directors, or members of the supervision board or of the directorate;

2 If secondary offices are opened at the same time with the bank's incorporation, the draft constitutive act also must mention the object of activity of such secondary offices, identification data of the management thereof, as well as the limit of the relevant mandate.

5. Information on persons designated to perform the administration and/or leadership of the credit institution in their capacity as directors, managers, and members of the supervision board or the directorate;
6. Information on persons who have close relationships with the bank, other than the direct shareholders, significant shareholders, and directors and/or managers; and
7. Any other information that the founding members consider useful for the viability of the project proposed.

Within four months as of receipt of a bank authorization application, the National Bank of Romania must approve the establishment or reject the application and inform the applicant in writing on the decision and reasons for such decision. The clearance for the establishment of the bank means that the founders are allowed to proceed toward establishment of the bank, but it does not guarantee that operational authorization will be obtained.

Registration with the Trade Register After having obtained the National Bank of Romania clearance for legal establishment, the bank must be registered with the Trade Register of its headquarters. The following documents must be submitted:

1. Constitutive act of the bank;
2. National Bank of Romania bank establishment clearance;
3. Proof of bank name reservation;
4. Proof that the contributions have been deposited exclusively in cash;
5. Proof of declared registered office over the location that will serve as headquarters;
6. For the founders, directors, representatives, and auditors appointed by the constitutive act, statement attesting that they have the legal capacity to hold these positions;
7. Evidence that the operations concluded on the company's account are approved by the founders, if not provided in the constitutive act;
8. Copy of the registration of the founder legal entity and decision of the statutory body as to participation in the company's establishment, as well as the authorization of the person who signed the constitutive act for and on behalf of the founder legal entity;
9. The fiscal records for Romanian individuals and/or legal entities which are shareholders and directors and, if such persons are foreign individuals and/or legal entities, statements stipulating that they are not residents of Romania and have no fiscal debts;

10. Proof that the tax for publishing the registration preliminary approval was published in the *Romanian Official Gazette*;
11. Proof that the legal stamp tax and the Trade Register operations taxes have been paid; and
12. For persons who file the registration application, notarized proxies or powers-of-attorney.

Obtaining Operational Authorization Within two months from communication of the establishment clearance, the documents attesting the legal establishment of the bank must be submitted to the National Bank of Romania, together with:

1. The constitutive act;³
2. A letter from the trustee of the funds for the share capital establishment, confirming the amount paid by each shareholder into an account opened especially for collecting the share capital and which was blocked until the bank registration;
3. Documents attesting that the amount paid by each shareholder in the account mentioned at item 2, above, has been transferred via credit institutions or financial institutions subject to supervision by competent authorities from EU member states or third states' authorities considered to have equivalent systems of fighting against money laundering;
4. Information on the share capital and the voting rights held indirectly by significant shareholders, under the signature of the representatives of the founding members;
5. Updated information for each direct and indirect qualified shareholder, as well as for direct shareholders that do not hold a qualified participation, except for Romanian credit institutions and non-banking financial institutions registered with the special registry;
6. The identity of the independent auditor;
7. A certified copy of the registration certificate issued by the Trade Registry Office and the Trade Registry decision;
8. Information on the existence of the bank's own operation regulations, under the signature of the representatives of the founding members; and
9. The auditor's report on the existence of the information technology system and the adequacy of the same in respect of the specificity and volume of activity to be performed by the respective bank in its first three years of activity.

3 The constitutive act must be concluded in notarized form or with an acknowledged date, the notarization date, or the acknowledged date representing the moment of the share capital subscription.

The National Bank of Romania may request an applicant to submit additional information and documents. However, the cases when additional information or documentation is requested are exceptional. The National Bank of Romania must decide on the authorization of a bank operation within four months as of receipt of documents.

Failure to grant the operational authorization automatically entails the revocation of the bank establishment clearance. The bank establishment clearance also may be revoked in case documents related to the operational authorization are not submitted in due time.

A new authorization application may be filed with the National Bank of Romania if the deficiencies that caused the rejection of the initial project have been remedied. A bank may start to perform banking activities as of the date of the operational authorization issuance.

Authorization of Romanian Branches of Credit Institutions Incorporated in Countries Outside the European Union According to the banking legislation and National Bank of Romania Regulation Number 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 equal to that provided for the minimal share capital of Romanian credit institutions, i.e., the equivalent in the national currency of 5-million. The conditions, terms, and procedures for a branch to be granted an operational authorization in Romania are essentially the same as those required for Romanian credit institutions/banks.

Notification of Romanian Branches of Credit Institutions Incorporated in the European Union and Free Provision of Services by European Union Credit Institutions According to GEO Number 99/2006, credit institutions, authorized and controlled by the relevant authority from one of the member states, may perform, either directly based on the free provisions of services principle, or 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 an EU-based credit institution, as well as the intention to provide banking services in Romania based on the free provision of services, 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 concerning the banking services to be provided in Romania.

Within two months from receipt of such information, the National Bank of Romania communicates the special conditions (if any) to be complied with by the branch in carrying on its business in Romania. The above communication of the National Bank of Romania or the lapse of the two-month period without receipt of reply from the National Bank of Romania entitles the branch to start operating.

Withdrawal of Authorization The National Bank of Romania may withdraw the authorization of a credit institution or foreign credit institution branch as a sanction when the credit institution and/or any of the directors, executive managers, or auditors infringe the banking legislation and orders issued by the National Bank of Romania for the enforcement of the banking legislation or conditions or restrictions provided in the authorization. The authorization also may be withdrawn at the credit institution's request.

Authorization of Foreign Credit Institutions' Representative Offices Representative offices of credit institutions that are not headquartered in Romania are authorized to operate in Romania by the Ministry of Economy, Commerce, and Business Environment. In addition, foreign credit institutions must notify the National Bank of Romania on the opening of representative offices.

Representative offices may only perform informational, contact, or representation activities. Banking operations are prohibited to such offices.

Performing Banking Operations Abroad Romanian credit institutions may perform their banking or other financial activities abroad, within the limit of the authorization granted by the National Bank of Romania, only by way of a branch. Opening new branches abroad is subject to the prior approval of the National Bank of Romania.

Their activities must comply with both the National Bank of Romania regulations and the law of the state where they will operate.

c. Prudential Requirements

Credit institutions must comply with the prudential requirements provided by the National Bank of Romania, generally encompassing:

1. Credit risk;
2. Liquidity risk;
3. Market risk;
4. Operational risk;
5. Large exposures;
6. Exposure to persons having special relations with the credit institution;

7. Qualified participations of the credit institutions;
8. Capital adequacy towards risks;
9. Quality of assets and risk provisions;
10. Establishment and use of risk provisions; and
11. Internal organization and control.

A credit institution cannot distribute dividends out of its profit if, pursuant to this allocation, the credit institution solvency level declines below the minimum level required by the National Bank of Romania.

Any qualified participation of a credit institution in entities, other than credit institutions, financial or insurance institutions, or companies providing auxiliary or connective services, cannot exceed 15 per cent of the credit institution's own funds. The total value of the qualified participations stipulated above may not exceed 50 per cent of the credit institution's own funds.

The acquisition by a Romanian credit institution of any qualified participation in an entity incorporated in a state outside the EU is subject to the prior approval of the National Bank of Romania, provided that, as a result of such acquisition, the entity would become part of the Romanian credit institution's prudential consolidation area according to the applicable regulations.

Loans granted to persons having special relations with the credit institution or granted to its personnel, including their families, may only be allowed under the conditions set by the National Bank of Romania.

d. Banking Supervision

Prudential Banking Supervision To supervise the activity of credit institutions, the National Bank of Romania reviews the reports received from credit institutions and performs inspections at the headquarters of credit institutions, branches, and other secondary offices in Romania and abroad.

Infringements Committed by Credit Institutions or Their Management

According to the banking legislation, the following are prohibited:

1. Infringing the banking legislation or regulations or orders issued by the National Bank of Romania or the internal regulations of the credit institution;
2. Infringing conditions or restrictions provided in the authorization granted to the credit institution;
3. Performing fictitious and hidden operations;
4. Failing to report, delaying reporting, or reporting false data on banking prudential indicators or other indicators provided in the National Bank of Romania's regulations;

5. Failing to comply with measures established by or pursuant to inspections; and
6. Endangering the credit institution's credibility and viability by poor management of funds entrusted to it.

If the National Bank of Romania finds that a credit institution and/or any of the directors, executive managers, or the persons designated to provide the management of the departments have committed an infringement, it may:

1. Issue a warning in writing to the credit institution;
2. Impose a fine on the credit institution between 0.05 and one per cent of the share capital of the credit institution or on the persons designated to perform administration or management activities ranging from one to six average net salaries;
3. Withdraw the clearance granted to the credit institution managers and/or administrators of the credit institution; or
4. Withdraw the credit institution's authorization.

The National Bank of Romania may:

1. Require the credit institution to establish a plan for the credit institution's own funds' increase;
2. Request the credit institution to improve the administration's framework, i.e., the strategies, processes, and mechanisms implemented;
3. Request the credit institution to apply a specific provisioning policy or a specific treatment of the exposures, from the perspective of the requirements and own funds;
4. Restrict or limit the activity, operations, or networks of branches of the credit institution, including by withdrawing the approval granted for the setting up of branches abroad;
5. Request the credit institution to reduce the risks related to the operations, products, or systems;
6. Require the credit institution to replace the persons appointed to ensure the management of the departments within the credit institution or its branches;
7. Institute special surveillance or special administration of the credit institution;
8. Limit the qualified participations to financial or non-financial entities, in which case the credit institution is obliged to sell them; and
9. Require the credit institution to draft and approve an operational recovery plan in order to ensure the risks' management correctly and/or to remedy the relevant deficiencies.

Special Credit Institution Supervision and Management The National Bank of Romania may establish special credit institution supervision and management measures if the law or the prudential regulations are infringed or if it determines that a credit institution is in a precarious financial condition. Special credit institution management measures may be ordered if the National Bank of Romania finds that:

1. The special supervision measures did not yield results within three months;
2. Prudential and financial performance indicators show a significant deterioration or such deterioration is predictable, being likely to jeopardize the credit institution's capacity to observe the prudential requirements and the shareholders have not taken the necessary measures in order to remedy such situation;
3. Serious deficiencies have been noted in connection to the credit institution's administration and/or management or severe and repeated breaches of the legal provisions and/or regulations issued for their application which seriously jeopardize the depositors' interests;
4. The credit institution has not ensured the entire, within the established period of time, implementation of one or more measures taken, such situation being likely to jeopardize the credit institution's liquidity and/or its own funds;
5. The credit institution's operations jeopardize the stability or the level of its own funds or the banking system's stability or the credit institution registers a liquidity crisis which jeopardizes its depositors' or creditors' interests;
6. The credit institution has not submitted, within the period requested by the National Bank of Romania a recovery plan or the recovery plan is considered to be unfeasible or the credit institution has not complied with the provisions of such plan or the deficiencies regarding its liquidity or own funds level cannot be remedied via a recovery plan;
7. The special management is requested by the board of directors or by the supervision board or by the general meeting of shareholders; and
8. The National Bank of Romania declared unavailable the credit institutions' deposits, in accordance with the provisions of Government Ordinance Number 39/1996 regarding the setting-up and functioning of the guarantee fund for deposits in the banking system.

Additionally, if the credit institution's own funds are less than 75 per cent of the requested share capital, the National Bank of Romania is obliged to institute the special management, except for the case it decides to withdraw the authorization of the credit institution and to file an insolvency claim with the competent court.

Credit Institution Records Under the banking legislation, credit institutions must draft and keep, at their main headquarters, documents and records in Romanian, including:

1. The articles of association and statutes and all addenda whereby they have been amended;
2. A register of shareholders except for the cases in which shareholder records are held by an independent register company, according to law;
3. The minutes and decisions of the general meeting of shareholders;
4. The minutes of the meetings and decisions of the board of directors and the committees provided by the law or by the regulations of the National Bank of Romania and the committees established by decision of the statutory bodies of the credit institution;
5. The accounting books and records that clearly and accurately show the status of the credit institution's activities and explain its transactions and financial status;
6. The regulations regarding the performance of activities and all amendments thereto; and
7. Other records required under the banking legislation or the National Bank of Romania's regulations.

iv. Independent Auditor

a. In General

The annual financial situations of credit institutions, as well as the consolidated financial situations, must be audited by financial auditors according to international practices and standards.

b. Credit Institution Merger and De-Merger

General Conditions To merge or de-merge, credit institutions must comply with certain general conditions. In a merger, all companies taking part in the merger must be authorized credit institutions; the credit institutions must have obtained the Competition Council's clearance to merge and the National Bank of Romania's approval in this respect.

In a de-merger, the company to be de-merged must be an authorized credit institution, and the credit institutions must have obtained the National Bank of Romania's approval to de-merge.

Procedure and Documentation Based on a decision of the general meeting of shareholders of each credit institution participating in the merger or de-merger, the directors must draft a merger or de-merger plan.

According to the Competition Law, if the cumulated turnover of the companies exceeds the equivalent in RON of 10-million and at least two of the companies involved obtain in Romania each a turnover that exceeds the equivalent in RON of 4-million, the operation must be notified to the Competition Council. As an exception, in the case of credit institutions, the minimal threshold above which notification becomes compulsory does not refer to turnover but to one-tenth of the balance sheet value of the credit institutions involved.

The balance sheets of the year prior to the merger will be taken into account. Therefore, the Competition Council must be notified as to the mergers for which one-tenth of the balance sheet value of the credit institutions involved exceeds the equivalent in RON of 10-million and whether with regard to at least two of the credit institutions involved one-tenth of each of these two credit institutions' balance sheets values reflecting operations performed in Romania exceeds the equivalent in RON of 4-million. The Competition Council may issue three types of decisions, namely:

1. An acceptance decision, when it concludes that the notified merger does not infringe the Competition Law;
2. A non-objection decision, when it finds that, although the merger falls under the scope of the Competition Law, there are no reasons to reject it; and
3. An investigation-opening decision, when it finds that the merger falls under the scope of the Competition Law and it has serious doubts as to its compatibility with a normal competitive environment.

Credit institutions participating in a merger or de-merger must obtain the authorization of the National Bank of Romania. In a merger between a Romanian credit institution and a foreign credit institution, the supervision authority in the foreign credit institution's country of origin also must give its approval.

If the foreign credit institution participating in the merger does not have a branch or a subsidiary which is a Romanian credit institution authorized to operate in Romania, the documentation submitted must be completed with a description of the foreign credit institution, accompanied by the last three annual reports certified by independent auditors, a description of the regulation system of the country of origin, and the statement of the supervision authority.

Within three months as of receipt of the authorization application, the National Bank of Romania must authorize the merger or de-merger or reject the application. The merger or de-merger plan, signed by the representatives of participating companies, must be submitted to the Trade Register where each company is registered, accompanied by the statement of the company that ceases to exist concerning the manner of setting off its liabilities.

c. *Bankruptcy*

In General A credit institution is deemed to be bankrupt if:

1. It has not paid in full a certain, liquid, and outstanding debt for at least seven business days as of the maturity date (the term is 30 days for the other credit institutions);
2. The solvency indicator, computed according to the level of the credit institution's capital, falls below two per cent;⁴ or
3. The operational authorization of the credit institution is withdrawn, in accordance with legal provisions due to incapacity of financial recovery of the credit institution.

Procedure The bankruptcy procedure will be initiated based on a petition filed by the debtor's credit institution or its creditors or by the National Bank of Romania in its capacity of banking supervision authority.

However, the petition filed by the relevant debtor credit institution or by its creditors must be accompanied by the prior approval of the National Bank of Romania.

The National Bank of Romania may reject the request of the debtor credit institution or that of its creditors when it considers that this is not insolvent. In such case, the National Bank of Romania may decide to institute the special management, provided the legal requirements for such measurements are met.

The court having jurisdiction over the debtors' credit institution's headquarters is the only competent authority that may institute a bankruptcy procedure for a credit institution in one of the above-mentioned cases. A bankruptcy procedure is essentially initiated to liquidate the credit institution's assets and pay its debts.

The liquidator has the power to manage and control the credit institution and to liquidate the credit institution's assets and for an optimal capitalization of such assets.

Effect of Procedure The initiation of a bankruptcy procedure cancels the debtor's credit institution's manager's right to represent the credit institution, manage its goods, and dispose of them. During liquidation, the rights of all management and control bodies are revoked. The creditors' receivables from a credit institution undergoing bankruptcy will be paid in the following order:

1. Taxes, stamp duties, and other costs related to the bankruptcy procedure, including necessary expenses for conservation and administration of

4 The solvency indicator is computed according to National Bank of Romania regulations.

the debtor's credit institution's assets, and payment of remuneration to persons employed in accordance with legal provisions, including the liquidator;

2. Receivables resulting from secured deposits, including those of the Fund for securing the deposits in banking systems resulting from compensation payments to secured depositors, as well as receivables resulting from employment relations made within six months prior to the opening of the bankruptcy procedure;
3. Receivables resulting from the debtor's activity after the initiation of the bankruptcy procedure;
4. State receivables, receivables of the Fund for securing the deposits in the banking system, other than those mentioned at item 2, above, as well as National Bank of Romania receivables from loans granted to the credit institution;
5. Receivables arising from treasury operations, inter-banking operations, customer operations, title operations, other banking operations, and those arising from product deliveries, provisions of services or other work, and leases;
6. Subordinated receivables, in the following preference order: (a) facilities granted to the debtor by a shareholder holding at least 10 per cent of the share capital and (b) receivables arising from free-of-title deeds; and
7. Receivables of the shareholders in the credit institutions undergoing bankruptcy and receivables of the cooperative members of the credit cooperatives affiliated to the central house of the credit cooperative undergoing bankruptcy, resulting from their participations in the share capital.

No interest, penalty, or expense may be added to receivables as of the date of opening the procedure.

d. Privatization of Credit Institutions

Preparation for Privatization The State Assets Recovery Authority takes over non-performing banking assets, against payment of their net value, and then capitalizes them at their market value. The main banking assets subject to capitalization are:

1. Non-performing debts;
2. Movable and immovable goods that became part of a credit institution's assets pursuant to forced execution procedures or by executing the security; and
3. Commercial receivables associated with the undertaken bad debts.

To capitalize assets, the State Assets Recovery Authority re-evaluates the receivables taken over at their nominal value.

Privatization Methods The privatization of a credit institution with majority state capital may be performed by:

1. An increase in the share capital by contribution of private capital, in cash, based on a public offer or a private placement;
2. The sale of shares managed by the State Assets Recovery Authority; or
3. A combination of the above.

Limitations in the Privatization Process Romanian or foreign individuals or legal entities, acting directly or indirectly, individually or jointly, and in relation to third parties, cannot acquire ownership rights over shares representing more than 20 per cent of the aggregate share capital of a credit institution to be privatized, except for reputable international credit institutions. In the privatization process, certain transactions and operations are prohibited, such as:

1. Undertaking early share sale-purchase contracts, as well as any other understandings made prior to the privatization;
2. Granting loans in Romania for the payment of shares acquired from the State Assets Recovery Authority or the payment of shares subscribed in case of an increase in the share capital of credit institutions undergoing privatization;
3. Using loans obtained in Romania for the acquisition of shares in credit institutions undergoing privatization; and
4. Pledging the shares to be acquired to guarantee loans obtained abroad.

v. Credit Cooperatives

a. In General

Credit cooperative organizations are credit cooperatives and central houses authorized to operate in accordance with GEO Number 99/2006.

A credit cooperative is a credit institution established as an autonomous association of individuals, voluntarily associated to fulfill common economic, social, and cultural needs and aspirations. Registration of credit cooperatives with the Trade Registry must be made before the National Bank of Romania grants operational authorization.

b. Credit Cooperative Activities

Credit cooperatives may perform, within the limit of the authorization granted, the following activities:

1. Attracting deposits or other repayable funds from the cooperative members, as well as from individuals or legal persons or other entities

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- that through their domicile, residence, or work have the registered office and perform their activity in the territory of the credit cooperative;
2. Unrolling credits, in the name and on behalf of the state, from amounts made available for credit cooperative members or meant to finance projects for the development/rehabilitation of economic and social activities in the territorial area of operation of the credit cooperative;
 3. Granting credits, including consumer credits and mortgage loans,⁵ to individuals, legal entities, or other entities without legal capacity residing or having their work place's registered office or performing its activity in the credit cooperative territorial area, at a level not exceeding 25 per cent of the credit cooperatives' assets;
 4. Payment services;
 5. Issuing and managing of payment instruments, such as credit cards, traveler's checks, and similar, including electronic currency issue;
 6. Issuing guarantees and assuming undertakings;
 7. Trading securities and other financial instruments, including foreign currency, on its own account or on the clients' account;
 8. Offering consultancy services regarding capital structure, business strategy, and other commercial business-related aspects, services related to mergers and acquisitions, and supply of other consultancy services;
 9. Offering safety box rental; and
 10. Issuance of e-money.

C. FINANCIAL INSTITUTIONS

i. In General

Four types of financial institutions are authorized to operate in Romania, namely:

1. Open investment funds;
2. Investment companies;
3. Companies for investment management; and
4. Depositories.

ii. Legal Framework

The relevant legislation includes:

1. Law Number 297/2004 regarding the capital market;

⁵ Credit cooperatives may grant credits to their members, with priority.

2. Regulation Number 15/2004 of the National Securities Commission, regarding the authorization and functioning of the companies for investment management of collective investment bodies and depositories; and
3. The Company Law.

iii. Open Investment Funds

a. In General

According to Law Number 297/2004, open investment funds are securities' collective investment bodies with no legal personality established under a civil agreement, whose fund units make the object of continuous issuance and buy-back.

b. Authorization

An open investment fund will be authorized following the prior authorization of the rules of the fund by the National Securities Commission. The National Securities Commission must issue regulations in relation to the content of the rules of an open investment fund.

The National Securities Commission must grant authorization to an open investment fund, as well as authorization for the initiation and development of the continuous public offer of participation titles, within 30 days as of receipt of the entire documentation provided by the applicable regulations. Failing authorization, the Commission must state the reasons for denial.

Subsequent to obtaining authorization, the open investment fund must be registered with the National Securities Commission Register. The prospectus and simplified prospectus of an open investment fund should contain sufficient information so that the investors are fully aware of the investment proposed and the risks it involves. The prospectus must include a clear and easily understandable description of the fund's risk profile.

The National Securities Commission must issue regulations regarding the minimum content and format of the prospectus and simplified prospectus. It is not mandatory that the prospectus include the information contained in the fund's regulations attached to the prospectus. The simplified prospectus should be offered to its subscribers free of charge, before the conclusion of the contract. Subscribers must make a declaration confirming the receipt, reading, and understanding of the prospectus.

iv. Investment Companies

a. In General

Investment companies may be managed by a board of directors according to their constitutive acts or by a company for investment management.

The initial share capital of a self-managed investment company shall be calculated according to the regulations of the National Securities Commission and is equivalent to at least 300,000, calculated at the reference exchange rate communicated by the National Bank of Romania.

b. Securities Collective Investment Bodies

Exclusive Activity Established as open investment funds or investment companies, securities collective investment bodies use their mobilized resources mostly for investing in securities, under National Securities Commission regulations.

Securities collective investment bodies have as their sole purpose the performance of collective investments by investing their pecuniary resources into liquid financial instruments as set forth by Law Number 297/2004 and by operating on the principle of risk diversification and prudential management, and their participation titles are redeemable continuously from their assets. At subscribers' request, participation titles are continuously redeemable from the assets of the respective bodies.

Authorization A securities collective investment body may operate only with the National Securities Commission's authorization.

The National Securities Commission must authorize either the investment management company, the issuance prospectus, or the depository if it is established as an open investment fund, or the issuance prospectus and the depository if it is constituted as an investment company.

Operating Conditions The assets of a securities collective investment body must be entrusted to a depository to be safely kept. The depository may be a credit institution authorized by the National Bank of Romania according to the banking legislation or the Romanian branch of a credit institution authorized by a member state, so authorized by the National Securities Commission.

Law Number 297/2004 stipulates that securities investment bodies cannot be changed into other types of collective investment bodies. In addition, securities investment bodies must buy back their participation titles on receiving a buy-back application. The buy-back price shall be calculated on receiving the buy-back application and the payment of the buy-back price must be made within a reasonable period, but no longer than 10 business days as of receipt of the application.

The bodies may invest only in certain categories of securities, debentures, and marketable loan notes, as provided by Law Number 297/2004. However, Law Number 297/2004 expressly provides for certain exceptions from the aforementioned provisions.

A securities investment body must request the approval of the National Securities Commission for loans with a cumulated value of maximum 10 per cent of the value of its assets. Law Number 297/2004 also establishes the obligation to comply with rules regarding transparency and advertising.

v. International Standards

a. In General

The banking legislation is harmonized with the provisions of European Community (EC) Directive 2006/48/EC relating to the taking up and the pursuit of business of credit institutions. Most prudential regulations issued by the National Bank of Romania are generally compatible with the provisions of the Directive.

To define loan activity risks more clearly and approach them from a single perspective, according to the EC Directive, as well as to reflect faithfully the financial condition of Romanian credit institutions, the National Bank of Romania issued Regulation Number 2/2000, regulating the classification of loans and inter-banking investments, as repealed by National Bank of Romania Regulation Number 5/2002.

The concern for ensuring banking system health was extended to credit cooperatives, the National Bank of Romania being charged with their authorization, regulation, and supervision.

With the technical assistance of a consortium of central banks (the Bank of France, the Bank of The Netherlands, and the Bank of Italy), the National Bank of Romania has issued other banking prudence regulations in response to the need for harmonizing Romanian legislation with European and international standards.

b. Prudential Supervision

To improve banking supervision, the National Bank of Romania envisaged the compliance with the measures and structures set in this respect at an international level, its latest actions focusing especially on improving the legislative framework of the Fund for the Deposit Guarantee in the banking system.⁶

The National Bank of Romania also seeks to improve the Unitary Banking Rating and Early Warning System (CAAMPL), implemented in 1999, to promote efficient banking supervision in accordance with international practices and standards. The National Bank of Romania also established the Banking Risks Center, specialized in collecting, storing, and centralizing information on the exposure of each credit institution in the Romanian banking system.

⁶ The Fund for the Deposit Guarantee in the banking system was established by Government Ordinance Number 39/1996, as amended.

D. NON-BANKING FINANCIAL INSTITUTIONS**i. In General**

A non-banking financial institution is a legal entity incorporated with a view of performing professional credit activity and which uses in respect thereof either its own financing resources, or resources borrowed from credit institutions or other financial institutions, or other resources as provided by relevant laws.

ii. Legal Framework

The relevant legislation includes:

1. Law Number 93/2009 regarding Non-banking Financial Institutions;
2. National Bank of Romania Norm Number 2/2006 on Minimum Share Capital of Non-banking Financial Institutions;
3. National Bank of Romania Norm Number 3/2006 on General Registry, Special Registry, and Evidence Registry;
4. National Bank of Romania Norm Number 4/2006 regarding the Procedure for Notification and Registration of Non-banking Financial Institutions;
5. GEO Number 99/2006; and
6. The Company Law.

iii. Permitted Activities

Non-banking financial institutions may perform the following activities:

1. Credit activities including, without limitation to, consumer loans, mortgage loans, real estate loans, micro-credits, commercial transaction financing, factoring, forfeiting, and discount activities;
2. Financial leasing;
3. Issuance of letters of guarantee, including credit and financing securitization;
4. Credit activities in favor of members of a non-profit association organized based on the free consent of employees/retired personnel in view of supporting via financial loans their members by these entities organized as retirement mutual funds; and
5. Other types of financing (credit type).

iv. Prohibited Activities

Non-banking financial institutions may not perform the following activities:

1. Engaging in deposit activities or other reimbursable funds;
2. Issuing bonds, except for public offers addressed to qualified investors, as per relevant capital market legislation;
3. Engaging in transactions with movable assets and real estate, except for those related to credit activity or those necessary for the entity's adequate operational conditions;
4. Granting loans under the condition of selling or purchasing of the non-banking financial institution's shares; and
5. Granting loans under the condition of acceptance by the clients of other services not related to the respective credit activity.

v. Legal Requirements

Before starting to perform credit activity, a non-banking financial institution must notify the National Bank of Romania in view of its registration with the latter. The National Bank of Romania keeps three types of relevant registries, namely:

1. A General Registry;
2. A Special Registry; and
3. An Evidence Registry in which mutual assistance houses and pledge houses are registered.

Non-banking financial institutions which meet the following general conditions are registered under the General Registry:

1. On incorporation, they have a share capital in amount of at least the equivalent in Romanian national currency of 200,000, respectively 3,000,000 for non-banking financial institutions which grant mortgage loans, and it is paid in full subscription;
2. The issued shares are exclusively nominal shares;
3. The managers meet certain conditions, such as having a university degree and relevant experience;
4. They operate based on internal norms regarding credit activity;
5. They create and use credit risk provisions; and
6. They report to the National Bank of Romania their loan portfolio structure, as well as any other information required by the latter.

vi. Branches Established by Foreign Non-Banking Financial Institutions

The above-mentioned legal requirements are accordingly applicable to branches established in Romania by foreign non-banking financial institutions.

