

Chapter 8

Banking System

1. General

Romania has a banking system with, on one side, the National Bank of Romania, acting as the national central bank, and on the other, the commercial banks and financial institutions.

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and efficient banking system, based on market economy principles was represented by Banking Law No. 58/1998, which repealed the former Law No. 33/1991 on banking activity.

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

GEO No. 99/2006 was set in place with a view to implement into Romanian legislation Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006, relating to the take-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. The aforementioned Directives were repealed by Directive 2013/36/EU of the European Parliament, and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (“**Directive 2013/36/EU**”), whose provisions are to be read together with Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (“**Regulation (EU) 575/2013**”). The provisions of these enactments were implemented into Romanian banking legislation, including in GEO No. 99/2006.

Moreover, Law No. 83/1997 ensured the legal framework for the privatization of State-owned banks. Such a 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;
- 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 valuation of certain banking assets, as republished (“**GEO No. 51/1998**”);

- Government Ordinance No. 39/1996 on the creation and operation of the Bank Deposit Guarantee Fund, as republished (“GO No. 39/1996”).

3. The National Bank of Romania

The National Bank of Romania (“NBR”) 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 NBR was approved, the bank thus becoming a private bank under privileged status, but with the State maintaining control over the bank.

Before 1989, NBR used to be a State-owned bank, with certain commercial powers.

According to Law No. 312/2004, NBR is an independent public institution with legal status. NBR is entitled to establish branches and agencies all over Romanian territory.

3.1. The National Bank of Romania’s powers

NBR has the following main statutory powers:

- (i) to issue and apply the monetary and exchange rate policy;
- (ii) to authorize, regulate and supervise credit institutions from a prudential perspective, as well as to promote and monitor the good functioning of payment systems in order to ensure financial stability;
- (iii) to issue currency as a legal payment means on Romanian territory;
- (iv) to establish the foreign currency regime and to supervise the observance of the same;
- (v) to manage the international reserves of Romania.

NBR retains wide regulatory powers in the banking sector, with the role of sustaining the State’s general economic policies and the maintenance of 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, settlement houses and for other resident or non-resident legal entities, as per NBR’s regulations;
 - regulating, monitoring, authorizing and supervising the payments systems;
 - performing paid services, upon the express request of credit institutions, regarding collection and transmission of data and information related to payment incidents and credit risk within credit institutions system;

- establishing credit conditions and the regime of the minimum compulsory reserves that credit institutions need to maintain with NBR;
 - supervising credit institutions.
- (ii) Operations with the State treasury:
- opening and operating the State treasury's current account;
 - acting as State agent for establishing credit institutions which are eligible to accept and maintain deposits of the State treasury;
 - acting as the State agent for performing discounts on the general current account of the State treasury.
- (iii) Operations with treasury bills on the primary market:

Based on various protocols previously concluded with the Ministry of Public 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; (ii) registration, deposit and transfer of treasury bills, as well as (iii) payments of principal and related 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 coins and other precious metals, as well as with foreign currencies;
 - entering transactions on the secondary market with treasury bills, bonds 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.

NBR's activity is governed by GEO No. 99/2006 and Law No. 312/2004 on the approval of the NBR's statute.

The Board of Directors' members and the employees of NBR are bound by professional secrecy with respect to all information not intended for public purposes gained in the course of their activity at the institution.

NBR is allowed to make real estate investments only for its own functioning needs or for the collective 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 as Romanian or foreign legal entities.

4.1. Concept of “Credit Institution” under Regulation (EU) 575/2013 and GEO No. 99/2006. Credit institutions types

Under its current form, GEO No. 99/2006 no longer defines “*credit institutions*”, but makes reference to the related definition contained in Regulation (EU) No. 575/2013, according to which a credit institution is defined as an undertaking whose business is to take deposits or other repayable funds from the public, and to grant credits for its own account.

Depending on its share capital structure, the following types of credit institutions operate in Romania:

- (i) public credit institutions, which are state-owned, such as the Savings House (in Romanian, “Casa de Economii si Consemnatiuni”), reorganized as a joint-stock banking company; and
- (ii) private credit institutions, with private capital (domestic and/or foreign private capital).

Romanian credit institutions may be incorporated and may function as: (a) banks; (b) credit cooperative organizations; (c) saving and lending banks in the residential field, or (d) secured loans banks.

4.2. Incorporation and operation of Romanian credit institutions

4.2.1. Incorporation

GEO No. 99/2006 establishes the principle according to which no credit institution may carry out banking activities on Romanian territory without the NBR’s authorization.

The general procedure for the authorization process of credit institutions entails three stages, as follows:

- (i) obtaining the set-up approval from NBR;
- (ii) registration of the credit institution with the Trade Registry; and
- (iii) obtaining the operational authorization from NBR.

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

For incorporation purposes, the set-up approval of NBR is mandatory. Pursuant to the credit institution’s incorporation, NBR decides the granting of operational authorization.

According to GEO No. 99/2006, a minimum share capital of Euro 5,000,000 is required when establishing a credit institution. However, NBR may establish a higher minimum value of share capital. 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 Romanian territory, in accordance with the NBR regulations.

4.2.2. Changes in credit institutions status

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

- (i) any change of its scope of business;

- (ii) changes regarding the persons appointed to carry out administrative and/or management duties;
- (iii) changes regarding the financial auditor;
- (iv) setting-up of branches in third countries;
- (v) setting-up of new branches and secondary headquarters, if NBR initially prohibited the establishment of branches and secondary headquarters, as a result of a negative evolution of banking prudence indicators;
- (vi) amendments related to the “General business terms” and “General terms for saving-crediting agreements”, in the case of saving-credit banks acting in the residential field, as well as introducing other types of agreements;
- (vii) amendments to the articles of association drawn up by a central house of credit co-operatives;
- (viii) replacing persons holding medium level management positions related to highly important activities;
- (ix) acquisition of qualified participations in an entity of a third country, if, pursuant to such acquisition, such entity would fall under supervision on a consolidated basis of the acquiring credit institution, as well as the increase of such participation;
- (x) reduction of the share capital or the acquisition of its own shares by credit institutions resulting in the reimbursement of capital to the shareholders.

The following changes in the status of a Romanian credit institution are subject to NBR notification, within 10 days as of their occurrence or as of the proper registration with the Trade Registry:

- (i) change of name and logo;
- (ii) change of headquarters;
- (iii) limitation of its scope of business;
- (iv) share capital increase or reduction;
- (v) change of persons tightly connected to the credit institution;
- (vi) changing an officer from a management position to another management position;
- (vii) setting-up and closing of branches and other secondary headquarters on Romanian territory;
- (viii) change of the qualified participations held by credit institutions, other than those that must be submitted to the prior approval of NBR, and the increase of such participations;
- (ix) any other amendments of a credit institution’ articles of incorporation, other than those which must be submitted to prior approval of NBR.

4.2.3. Allowed activities

Romanian credit institutions and Romanian-based subsidiaries of foreign credit institutions may perform the following main activities, within the limits of their granted authorization:

- (i) acceptance of deposits and other repayable funds;
- (ii) lending, including, inter alia, consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting);
- (iii) financial leasing;
- (iv) money transfer services;
- (v) issuance and management of payment instruments (e.g., credit cards, travelers' cheques, etc.);
- (vi) issuing guarantees and assuming commitments;
- (vii) trading for their own account or for the account of the customers:
 - negotiable instruments (cheques, bills of exchange, deposit certificates);
 - foreign currency;
 - futures contracts and financial options;
 - interest rate and exchange rate instruments;
 - tradable securities.
- (viii) participation in securities investment and provision of related services;
- (ix) advice to undertakings on capital structure, business strategy and related issues and advice with respect to business, as well as services relating to mergers and acquisitions and performing other consultancy services;
- (x) intermediation on the inter-bank market;
- (xi) management of clients' portfolios and related consultancy;
- (xii) securities custody and administration;
- (xiii) providing information and references regarding lending activity;
- (xiv) renting of safe deposit boxes;
- (xv) issuing electronic money;
- (xvi) transactions with precious metals and stones and objects made from these;
- (xvii) acquisition of shareholdings in other entities.

4.3. Organization of foreign credit institutions' activity

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

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 the requirement of NBR authorization.

4.3.1. Subsidiaries of foreign credit institutions

The Romanian subsidiaries of foreign credit institutions are established, operate and liquidated in accordance with the relevant Romanian legislation.

The subsidiaries of foreign credit institutions established in Romania are Romanian legal entities, subject to authorization by NBR and to the Romanian banking legislation (they are subject to the same requirements as to capital, organization, etc., as any credit institution having a Romanian legal personality and operating in Romania).

4.3.2. Branches of foreign credit institutions

a) Branches of EU-based credit institutions

According to GEO No. 99/2006, credit institutions authorized and controlled by the relevant authority from one of the Member States may perform banking activities in Romania, by setting-up branches, within the limits of the authorization granted by the competent authorities from their country of origin, without a prior authorization from NBR being necessary, and without an endowment capital for the branch being required.

However, the establishment of a branch in Romania by an EU based credit institution, must be notified to NBR by the competent authority from the country of origin, the notification being mandatorily accompanied by certain data and information, regarding, *inter alia*, the banking services to be provided in Romania. Prior to commencing activity, within 2 months from the receipt of such information, NBR will communicate to the credit institution concerned, if necessary, the list of Romanian regulations pertaining to the particular conditions under which certain activities may be carried out.

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

Pursuant to GEO No. 99/2006, the following provisions (as detailed therein), shall apply to branches of EU credit institutions:

- (i) banking secrecy;
- (ii) opening of a current account with NBR;

- (iii) minimum data and information of the respective branch contained by all its official documents for proper identification purposes.

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

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

4.3.3. Representative offices

Representative offices are established through the parent company's decision and are not subject to NBR's authorization. However, the set-up and operation of foreign credit institutions representative offices in Romania are subject to notification of NBR.

Foreign credit institutions representative offices' activity is limited to market research, representation and publicity activities. Foreign credit institutions representative offices may not perform any kind of banking operations (credits, deposits, etc.).

4.3.4. Free provision of services by EU 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 provision of services principle. Direct of services provision by a credit institution authorized and surveyed in another Member State may only take place based on a notification sent to NBR 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 per these provisions, credit institutions must observe the confidential nature of banking transactions and services rendered, including the identity of the account holders.

According to the same GEO No. 99/2006, every person with management or leading responsibilities, as well as all individuals participating in a credit institution's activity, are bound by professional secrecy. All these persons are not allowed to use or disclose, either during or after termination of their activity within the credit institution, facts or data which, in the event of becoming public, might affect the interests or the reputation of the credit institution or of any of its clients.

Information subject to banking secrecy may only be disclosed if the purpose for which it is requested is deemed justified, under the following circumstances:

- (i) upon the request of the account holders or their legal heirs, including their legal and/or statutory representatives, or with their express consent;
- (ii) in cases when the credit institution proves a legitimate interest;

- (iii) upon the written request of an authority or institution, or *ex officio*, in case a special law entitles such an authority and/or institution to require and/or receive such information and the respective information subject to disclosure is clearly identified, in order for the said authorities or institutions to perform their specific attributes;
- (iv) upon the written request of the account holder's spouse, if the latter proves the submission with the relevant court of a legal action of common goods division or upon the request of a court vested with such claim;
- (v) upon the request of a court of law, for the settlement of various issues related to a lawsuit;
- (vi) upon the request of a court bailiff in order to carry out the enforcement procedure on the debtors' accounts;
- (vii) upon the request of a notary public, in order to carry out the notarial inheritance procedure.

The personnel of a credit institution may not directly or indirectly use privileged banking information, acquired in any manner, for their personal benefit or for the benefit of other persons.

In the case of criminal proceedings, upon the request of the prosecutor or of the court, credit institutions are compelled to provide such privileged banking information.

4.5. Prudential requirements

According to GEO No. 99/2006, credit institutions are required to observe the prudential requirements provided by Regulation (EU) 575/2013, on an individual and/or consolidated or sub-consolidated basis.

Credit institutions must, to the extent and as per the terms and conditions set out through the relevant regulations, provide their own funds that are at all times more than or equal to the sum of capital requirements provided by Regulation (EU) 575/2013.

In cases where credit institutions do not hold their own funds at least at the minimum level required by the law, they will be subject to distribution limitations, such as are provided by law.

Romanian credit institutions may not acquire qualified participations (*i.e.*, an amount which exceeds 15% of their own funds), if in this manner they will exercise control over such an entity, in the following cases:

- (i) a financial sector entity;
- (ii) an undertaking, which is not a financial sector entity, carrying out activities which the competent authority considers to be any of the following:
 - a direct extension of banking;
 - ancillary to banking;
 - leasing, factoring, the management of unit trusts, the management of data processing services or any other similar activity.

At the same time, as per the provisions of Regulation (EU) 575/2013, the total amount of qualified participations of a Romanian credit institution cannot exceed 60% of its own funds.

4.6. Prohibited transactions

According to the banking legislation, credit institutions are not permitted to enter into, *inter alia*, the following activities:

- (i) dealing with movable or immovable assets, except for those expressly allowed to for credit institutions under certain conditions provided by the banking legislation;
- (ii) creating pledges over its own shares to secure the credit institution's debts;
- (iii) granting loans secured by shares, other equity instruments or bonds issued by the credit institution, or another entity from the credit institution's group;
- (iv) accepting deposits or other repayable funds, titles or other values, from the public, when the credit institution is undergoing insolvency proceedings.

5. Privatization of State-owned banks

5.1. Privatization methods

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

- (i) increase of the share capital by private capital contribution in cash, pursuant to a public offer or a private investment, according to the legal provisions in force;
- (ii) sale of shares administered by the Authority for State Assets Administration ("ASAA"), only in exchange for cash paid in full;
- (iii) a combination of the two methods described above.

Upon a joint proposal of NBR, ASAA and the Ministry of Public Finance to begin a bank's privatization process, a privatization commission in charge of the privatization and the observance of transparency and objectivity will be set up by Government decision.

Privatization of banks is based on valuation reports and feasibility studies drafted by a specialized company, selected by tender, in accordance with the law.

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 the total share capital of banks earmarked for privatization, excepting reputable international financial banking institutions.

The law also forbids the following operations:

- (i) anticipated share sale and purchase agreements, as well as any other agreements related to such operations concluded prior to privatization;

- (ii) loans granted by Romanian-based banks for paying for shares acquired from ASAA or for paying for subscribed shares in case of a share capital increase of banks earmarked for privatization;
- (iii) shares in banks earmarked for privatization may not be purchased with loans granted by Romanian entities;
- (iv) loans obtained abroad may be used to purchase such shares, but the shares cannot be pledged to secure the repayment of the loan.

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

GEO No. 51/1998 sets up, *inter alia*, the legal framework for the capitalization of assets pertaining to banks wherein the State acts as majority shareholder, to prepare such for privatization and for increasing their solvency level, as well as for the purpose of accelerating the recovery of assigned receivables.

ASAA is organized as a specialized institution with the legal status of a central public administration, and subordinated to the Government.

ASAA aims for the capitalization of certain banking assets taken over from the majority State-owned banks, to prepare such for privatization and a reduction of the State's financial effort in such operations. In order to reach its goals, ASAA's main powers focus on take-over, management and capitalization of banking assets and debts associated with the same.

Receivables titles and their accessories assigned to ASAA are enforceable titles, just like any other deeds or instruments entered by the latter for the recovery of bank receivables.

Any litigation involving ASAA in relation to the takeover of banking debts will be settled with the observance of special rules provided by GEO No. 51/1998 (short judgment terms, special enforcement procedures, etc.), accordingly completed by the provisions of the Civil Procedural Code. Additionally, the claims initiated by ASAA and any other procedural acts performed by and on behalf of ASAA in connection with the recovery of state assets are exempted from stamp fees and other taxes.

The Bank Deposit Guarantee Fund (the "**Fund**") was established as a public legal entity organized and operating based on its own statutes approved by NBR, upon the proposal of the Fund's board of directors. The Fund aims to secure repayment of deposits made with banks by depositors, under certain conditions and within certain limits provided by Law No. 311/2015. Thus, should a bank not be able to reimburse to its clients their deposits, the Fund guarantees the repayment of such deposits up to the limit of EUR 100,000.

The financing resources out of which the Fund guarantees the deposits consist mainly of mandatory contributions of all Romanian credit institutions and the branches of foreign banks from outside the EU and licensed by NBR, 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 in the Fund, and in such case depositors are secured via the fund organism in which the parent credit institution participates.

7. The Credit Bureau

The Credit Bureau (in Romanian, “*Biroul de Credit*”) is incorporated as a joint stock company, in accordance with relevant corporate legislation. The purpose of its incorporation consists in the creation of a monitoring vehicle in the financial and banking market; in establishing a centralized information database system containing information regarding the financial conduct of individuals, clients of credit institutions, other financial and insurance institutions or non-financial companies (the “**Participants**”).

The supply of the Participants to 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 credit risk, credit quality increase within the Romanian banking system, and of the decrease of fraud risk and creditors’ protection.

The Credit Bureau establishes uniform client’s evaluation criteria, entitled *clients scoring*, and drafts and promotes standard clients evaluation criteria from a credit risk perspective.