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# INTERNATIONAL BANKING LAW & REGULATION

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**The “Credit Institution” Concept**

According to EU Regulation no. 575/2013, on prudential requirements for credit institutions and investment firms and amending EU Regulation no. 648/2012, the term “credit institution” is defined as being an undertaking, the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.

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 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 a member in such entity;
3. Is entitled to exercise a dominating influence over such entity, in which it is a shareholder or a member, 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 a member of such entity and a majority of the members of the administrative management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or
5. Is a shareholder or a member 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 a member.

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.

### **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 CEC 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 percent 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. Receiving deposits or other reimbursable funds, titles, or other values from the public when the credit institution becomes insolvent; and
4. Granting loans secured with the shares, other equity titles or bonds 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, 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, 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 euro 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. EU Regulation no. 575/2013, on prudential requirements for credit institutions and investment firms and amending EU Regulation no. 648/2012, defines the concept of “qualified holding,” as meaning a direct or indirect participation in an undertaking (e.g. a credit institution), which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking.

Any person that intends to increase a qualified participation in a credit institution to reach or exceed the levels of 20 percent, 33 percent, or 50 percent 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 60 business days 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 percent, 33 percent, or 50 percent 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.

### **§ 53:9 Concepts of “Credit Institution” and “Bank”— 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;<sup>1</sup>
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. The business plan, signed by the direct or indirect significant shareholders of the bank and acknowledged by the persons proposed as directors and/or managers, members of the supervision board or of the directorate, respectively;
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 shareholders 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 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;

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#### **[Section 53:9]**

<sup>1</sup>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. 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 certificate 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;<sup>2</sup>
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

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<sup>2</sup>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.

subject to supervision by competent authorities from EU member states or third states' authorities considered to have equivalent systems of fighting against money laundering and terrorist financing;

4. Information on the share capital and the voting rights held indirectly by significant shareholders, under the signature of the representatives of direct shareholders;
5. Updated information for each direct and indirect qualified shareholder, as well as for direct shareholders that do not hold a qualified holding, 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.

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 obtain 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.

As of 31 December 2011, the National Bank of Romania must notify the European Banking Authority as to any authorization granted in order for the credit institution to be included on the list of credit institutions updated by the European Banking Authority which will be published on its website.

Additionally, as of 31 December 2011, the National Bank of

Romania, as the competent authority responsible for authorizing a credit institution, a Romanian legal entity, or a subsidiary of a credit institution from another member state may, with the consent of the delegate, as per the provisions of article 28 of EU Regulation 1.093/2010 of the European Parliament and Council, delegate the supervising responsibility to the competent authority that authorized and supervises the parent company so that the responsibilities incumbent upon it, as per GEO Number 99/2006, with respect to the supervision of the subsidiary to become those of the latter. The National Bank of Romania must notify the European Banking Authority within at least one month before putting the agreement into effect as to the existence and content of such agreements.

#### **Authorization of Romanian Branches of Credit Institutions Incorporated in Countries outside 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 and provided that the competent authority of the home state does not oppose to the establishment of a branch in Romania.

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 euro 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.

As of 31 December 2011, the National Bank of Romania must notify, in addition to the European Commission and the European Banking Committee, the European Banking Authority as to any authorization granted to a branch of a credit institution headquartered in a non-EU state.

#### **Notification of Romanian Branches of Credit Institutions Incorporated in 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 provision 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 competent authority of the home member state 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, or executive managers 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. In addition, foreign credit institutions must notify the National Bank of Romania on the opening of representative offices.

Representative offices may only perform market research advertising 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, either by the

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establishment of branches or by the direct provision of services. 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.