Financial Institutions & Security Interests

OVERVIEW

1. What is the legal framework applicable to financial institutions and security interests in Romania?

The activity of credit institutions is regulated by Government Emergency Ordinance No. 99/2006 (Banking Law), which is aligned to the Capital Requirements Directive (CRD) IV package.

Non-banking financial institutions benefit of special regulation under Law 93/2009 on non-banking financial institutions, while payment institutions and electronic money institutions are also regulated under specific legal enactments duly implementing the provisions of Directive (EU) 2015/2366 on payment services (PSD 2) in the Romanian legislation.

The main legal framework for credit agreements and security interest consists in the Romanian Civil Code. Consumers benefit of additional protection under special regulations.

2. Which are the regulatory authorities in the areas of financial institutions and money market services?

The National Bank of Romania (the NBR) acts as central state bank, having mainly supervisory and control powers over financial entities within its jurisdiction, irrespective of whether they are credit institutions, non-banking financial institutions, payment services institutions or electronic money institutions. The powers of the NBR do not extend to the capital market and its institutions (e.g., the financial investment services companies), which are placed under the supervision and control of the

Financial Supervisory Authority (the FSA).[1]

The NBR has exclusive powers in authorising and supervising the credit institutions, the non-banking financial institutions, the payment institutions and the electronic money institutions, Romanian entities, which are set up and operate in Romania. In this respect, the NBR issues mandatory regulations, applies sanctions and is entitled to controlling and reviewing the books of accounts and any other documents of the mentioned entities. To the extent that they are authorised and operate under the supervision of financial regulatory authorities in an EU or European Economic Area (EEA) country, foreign entities may directly operate on the Romanian financial market through the passporting procedure, without being required to follow a local authorisation procedure and observe the capital requirements applicable to Romanian entities.

CREDIT INSTITUTIONS

1. What is the general procedure for the authorisation of credit institutions?

Romanian credit institutions and branches of foreign credit institutions headquartered in non-EU member states may operate in Romania based on a banking license issued by the NBR.

The authorisation of credit institutions by the NBR involves a two-step procedure:

- The preliminary authorisation, whereby the NBR approves the setting up of credit institutions. The application for a preliminary authorisation should be accompanied by information and documents concerning their share capital, shareholders and managing bodies, and also a business plan including, inter alia, a description of the targets, policies and strategies of the future credit institution, including information regarding the clients and the target market segment, the products and services, pricing policies, capitalisation policies, the financing sources and asset structure, personnel policies, a description of the internal control system and IT system (including any adjustments). The NBR shall issue a decision on the preliminary authorisation within four months. The issue of the preliminary authorisation by the NBR does not guarantee that the subsequent banking license shall be granted;

and

1 As regards the supervision of other categories of financial institutions, for further details please refer to the "Capital Market" chapter.

- • The banking license, whereby the NBR authorises the operation of credit institutions. Based on the preliminary authorisation, the shareholders proceed with the incorporation of the credit institution or registration of the branch with the Trade Registry, as the case may be. After the credit institution/branch is duly incorporated and registered, a number of additional documents should be filed with the NBR, within two months from the issuance of the preliminary authorisation. The NBR shall issue the banking license within four months as of receipt of the application and complete documentation. The relevant credit institution is subsequently registered with the banking register held by the NBR.

Credit institutions headquartered, authorised and supervised in EU member states may operate in Romania either directly, by passporting their services based on the freedom to provide services within the EU, or through branches, in both cases upon a notification to the NBR. No authorisation is required in this case.

2. Which are the most relevant corporate requirements applicable to credit institutions?

Under the Banking Law, credit institutions, as well as housing banks and mortgage banks may be incorporated only as joint stock companies.

The initial share capital or own funds of credit institutions must be of at least EUR 5,000,000.

3. Are there any specific rules regarding the business purpose of credit institutions?

Under the Banking Law, credit institutions may perform various financial activities, such as: taking deposits and performing lending operations (including consumer loans, mortgage loans, etc.), financial leasing, payment operations, issue and management of payment instruments, issue of guarantees and undertaking of commitments, transactions with money market instruments, intermediation on the interbank market, financial investment services and financial consulting, etc. Credit institutions may also perform, within the limits of their authorisation and subject to compatibility with the requirement of the banking business, the following operations:

- Non-financial mandate or commission operations, especially on behalf of other entities within their group;
- Asset management operations in respect of the movable and/or immovable assets owned by the credit institution, but not for the purpose of performing financial

operations;
- Services for their own clients which, although not related to the core business, are an extension of the banking operations;
- Except for those referred above, credit institutions may undertake transactions with movable assets and real estate property under the following circumstances: (i) when such transactions are necessary for the authorised operations of the credit institution, (ii) the movable assets and real estate property are necessary for the employees' training, or for setting-up leisure facilities or housing for employees and their families; and (iii) when the transactions involve movable assets and real estate property acquired following foreclosure proceedings.

The following transactions are forbidden in the case of credit institutions:

- Pledging its own shares against the credit institution's debts;
- Granting loans secured with shares, other equity securities or bonds issued by the credit institution itself or by other credit institution within the same group;
- Taking of deposits or other reimbursable funds, equity securities or other valuables when the credit institution is in insolvency.

4. Are credit institutions subject to specific rules on capital adequacy?

The provisions of the Banking Law have implemented CRD IV and comply with the principles of the Basel III framework on capital adequacy requirements.

Thus, under these regulations, credit institutions must comply with minimum capital requirements, establishing, *inter alia*, rules on Tier I and Tier II capital of credit institutions. In addition, under these regulations, credit institutions must comply with capital requirements *inter alia* for risk covering, on individual and consolidated basis, and for monitoring and control of large exposures.

According to the NBR Regulation No. 6/2002, all categories of Romanian credit institutions are obliged to create and maintain minimum mandatory reserves with the NBR, in national and in foreign currencies, receiving interest at such rates as periodically determined by the NBR norms.

Currently, the minimum mandatory reserves rate for RON is of 8%, and of 5% for foreign currency liabilities, in both cases for liabilities having a residual maturity limited to two years as of the expiry of the observation period or, in case it exceeds two years, the liabilities have attached a reimbursement, transfer or an anticipated withdrawal clause.

In all other cases, for liabilities exceeding two years and without having attached a reimbursement, transfer or an anticipated withdrawal clause, the minimum mandatory reserves rate is zero. The minimum mandatory reserves applicable to mortgage and housing banks are zero.

5. Do credit institutions have specific reporting obligations?

Pursuant to the Banking Law, the NBR secondary regulations and the Regulation (EU) No. 575/2013, Romanian credit institutions are compelled to periodically file specific reports with the NBR, containing, *inter alia,* information in respect of:

- Tier I and Tier II capital levels and other capital adequacy compliance indices;
- Net assets;
- Individual and aggregate large exposures;
- Solvency indices, on individual and consolidated basis;
- Yearly financial statements and certain biannual financial data;
- Classification of the loan portfolio and related credit risk provisions;
- Banking fees for cashing in and payment operations, etc.

OTHER FINANCIAL INSTITUTIONS

1. Are there any other categories of regulated financial institutions active on the Romanian money market?

Mortgage banks, assimilated to credit institutions under the Banking Law, are established as joint stock companies operating under the authorisation issued by the NBR. The main business of mortgage banks consists of (i) providing mortgage loans for real estate investments (dwellings, industrial/commercial constructions) and (ii) issuing mortgage bonds. Mortgage banks are not allowed to take deposits.

Non-banking financial institutions (NBFI), which act as professional lenders, are regulated by Law No. 93/2009 and operate under NBR authorisation and supervision.

Payment institutions are regulated by Law No. 209/2019 on payment services, while electronic money institutions are regulated by Law No. 210/2019 on the activity of electronic money issuance and ancillary NBR regulations.

The NBR acts as regulatory and supervising authority in respect of these financial institutions, as well.

2. Do non-banking financial institutions need to comply with specific capital requirements?

Non-banking financial institutions are required to have a share capital amounting to the equivalent in RON of EUR 200,000, except for those granting mortgage loans, to which a minimum EUR 3,000,000 threshold applies.

For non-banking financial institutions registered in the special register the level of own funds[2] must be at all times equal to the level of the minimum share capital.

3. Are there any rules applicable to the business purpose of non-banking financial institutions?

According to Law No. 93/2009, non-banking financial institutions are allowed to carry out various lending activities, such as financial leasing and consumer credits. Non-banking financial institutions are entitled to grant mortgage loans as well.

In addition, non-banking financial institutions can also undertake financing and guarantee commitments, issue and manage credit cards, perform payment services and any connected or ancillary activities to credit operations, as well as mandate and consultancy activities. Nevertheless, they cannot receive money in deposit and cannot, as a rule, issue bonds, nor perform other activities unless in relation to their lending activities.

Non-banking financial institutions are allowed to carry out payment services operations as well, in accordance with the applicable legal framework.

4. Are non-banking financial institutions subject to an authorisation procedure?

According to Law No. 93/2009, non-banking financial institutions must apply for registration with the NBR within 30 days as of their incorporation.

They can start lending activities only after being registered in the NBR's general registry for non-banking financial institutions.

The NBR should issue the license within 30 days as of receipt of the application and relevant documentation.

2 The own funds of a non-banking financial institution includes its own capita and the additional capital.

5. Do non-banking financial institutions need to comply with prudential and reporting obligations?

According to Law No. 93/2009 and the ancillary NBR norms, non-banking financial institutions must comply with specific prudential and reporting requirements, *inter alia* concerning exposures, credit portfolio structure and corporate changes. Also, non-banking financial institutions must report to the NBR statistical data regarding: (i) the status of outstanding assets and liabilities, (ii) the status of the main assets and liabilities in RON equivalent; and (iii) the criteria for registration in the special register of non-banking financial institutions.

6. Do payment institutions need to comply with specific corporate requirements for incorporation?

Payment institutions can be incorporated only as Romanian legal entities and are subject to an authorisation procedure before commencing their operations. The payment institutions from EU-member states may operate in Romania using the EU passporting procedure, based on a notification sent to the NBR by the competent authority in their home member state.

Payment institutions are required to have a share capital which may vary according to the payment services envisaged: the equivalent in RON of EUR 20,000 (for cash remittance operations only); EUR 50,000 (for payment initiation services only) or respectively EUR 125,000 (for all the payment services provided under Law No. 209/2019, except for account information services, with respect to which there is no share capital requirement).

7. Are there any rules applicable to the business purpose of payment institutions?

According to Law No. 209/2019, payment institutions are allowed to carry out various payment operations, to take cash deposits/withdrawals to/from payment accounts, to perform specific transfers, issuing and accepting payment instruments, cash remittance, payment initiation services or account information services. Payment institutions are permitted to grant credits, but only in connection with the payment services that it provides and subject to specific conditions or in compliance with the legislation applicable to non-banking financial institutions. They can also perform operational and other connected services, management of payment systems and other commercial activities, subject to the applicable laws.

8. Are payment institutions subject to an authorisation procedure?

According to Law No. 209/2019, payment institutions are allowed to start payment operations only after obtaining approval from the NBR, which should be issued within three months as of the submission of the complete relevant documentation. Such documentation includes, *inter alia*, information on the initial capital, business object, significant shareholders, managers, business and activity plans, management and internal control mechanisms and procedures, mechanism for the protection of the funds received from the payment services users, etc.

Within five days as of the initiation of the authorised operations, the payment institutions must submit to the NBR a notification in this respect, together with a statement of the management in respect of the IT system, the identity of the persons responsible for the management of the organisational structures within the payment institution, the identity of the auditors who provide the payment institution with services other than statutory audit, the identity and functions of the persons responsible for monitoring the externalised activities and copies of specific agreements concluded by the payment institutions as a requirement for authorisation (e.g. the insurance policy).

9. Do payment institutions need to comply with prudential and reporting obligations?

According to Law No. 209/2019 and the ancillary NBR Regulation, payment institutions must comply with specific prudential and reporting requirements, *inter alia* concerning their agents, the Tier I and Tier II capital requirements, measures to protect the received funds.

Changes in the status of the payment institutions are subject to either authorisation or notification to the NBR, depending on the degree of risk entailed by such changes. The payment institutions are subject to specific regulatory requirements, aimed at protecting consumers and their funds deposited with the payment institutions.

10. What credit reporting institutions exist in Romania?

The Credit Information Bureau is established as a private structure, operating as an intermediation centre that manages credit risk information and card fraud information. The system collects from, and provides to financial and credit institutions, as well as to insurance companies for credit-type products, information on the individuals,

debtors of the participants who register payment arrears exceeding 30 days, on the frauds related to the participants (ascertained by final court decisions or uncontested enforceable administrative acts) and on the statements of individuals containing inconsistencies.

The Central Credit Register is a structure created and operating within the NBR, specialised in collecting, storing and centralising information on the exposures of the declaring entities (in principle, the institutions supervised by the NBR) towards the debtors whose aggregate indebtedness exceeds RON 20.000. The system collects, stores and centralises information on: (i) the bank's exposures (loans/commitments) which exceed the reporting threshold and the identification details of the debtors, (ii) the details of such exposures (for instance, type of credit, maturity, debt service, etc.), (iii) the groups of entities representing a single debtor (the group name and its members which are acting jointly as borrowers), as well as (iv) information on card frauds committed by cardholders.

The Payment Incidents Bureau is created and operating within the NBR as a centre for intermediation and management of information specific to payment incidents, in connection with paper instruments (e.g., cheques, bills of exchange and promissory notes). Information to the Bureau is conveyed by a computerised system through the Interbank Communication Network, which links the head office of the NBR to the head offices of all credit institutions.

SECURITY INTERESTS

1. Which is the legal framework for security interests in Romania? Which are the main categories of such security interests?

Under the New Civil Code, the legal regime of personal and real security interests has received a uniform regulation and certain new categories of security interests.

The main categories of security interest are as follows:

- **Movable hypothecs**, formerly known as security interests on movable property, are regulated by the New Civil Code as of its entry into force on the 1 October 2011 (Title VI of Law No. 99/1999 on the legal regime of security interests was repealed). The New Civil Code provides a flexible and uniform framework, more efficient and adequate to the current economic environment, as well as additional security enforcement procedures, as an alternative to the "classical" procedures provided by

the Civil Procedure Code;

- **Pledges** (Romanian: *gaj*) are now regulated by the New Civil Code as a security where the secured creditor takes possession of the pledged assets. Only tangible movable assets or materialised commercial titles may be subject to pledge. In relation to tangible movable assets, the publicity of pledges is ensured either by the mere fact of possession over the pledged assets, or by registration with the National Register for Movable Assets Publicity (Publicity Register); however, the publicity of a pledge over an amount of money is ensured only by holding such amount. With respect to materialised commercial titles, publicity is ensured by their remittance or, as the case may be, by their endorsement. If no specific rules are provided under the New Civil Code on pledges, those applicable to movable hypothecs shall apply;
- **Immovable hypothecs** (mortgages) which continue to be preferred by professional lenders as security instruments, are frequently used in various types of commercial and retail transactions. Under the New Civil Code, immovable mortgages may be created on existing property such as land and buildings, but also (differently from the previous regulation) on future immovable assets. Following the creation of an immovable hypothec, the security provider will continue to own and use the hypothecated asset. The immovable hypothec will be preserved despite any ownership transfer, being enforceable against any subsequent acquirer;
- **Suretyship** (*fidejussio*) is a personal guarantee, based on which the secured creditor is granted the right to pursue the assets of the guarantor in case the debtor fails to perform the secured obligation. The suretyship is not subject to any registration procedure and does not give a priority ranking to the secured creditor;
- **Independent guarantees** are for the first time regulated under the New Civil Code, which sets out regulations regarding the letters of guarantee and the letters of comfort.

2. How are movable hypothecs created and perfected?

Movable hypothecs are created by way of written agreement (either as a private agreement or as an authenticated deed) between the secured creditor and the security provider (either the debtor or a third party providing security for the benefit of the debtor). The perfection of the movable hypothecs, which is relevant for establishing the priority ranking of the hypothec, is obtained as of the moment when (cumulatively): (i) the secured obligation is effective, (ii) the security provider gains rights on the secured asset, (iii) the movable hypothec agreement is signed and (iv) the registration formalities of the movable hypothec have been duly performed. The New Civil Code provides the categories of movable assets which can be charged by movable hypothec, and these include: intangible assets, universalities of movable assets (including goodwill) - but only to the extent they are assigned to the operations of a company, products of the secured asset (e.g. proceeds from the sale or any movable asset

replacing the secured asset), future movable assets, etc.

3. Are there any publicity requirements in connection with movable hypothecs?

The New Civil Code requires the registration of movable hypothecs with the Publicity Register for ensuring a priority order among creditors holding movable hypothecs on the same assets, as well as publicity towards third parties. The Publicity Register can be easily accessed through a tax-free Internet database, ensuring rapid verification of the records (available in Romanian only). The general rule is that the priority rank is given by the date of the registration of the movable hypothec with the Publicity Register. The creditor is bound to request the movable hypothec be removed from the Publicity Register within 10 days following the fulfilment of the secured obligation.

4. Are there any specific rules applicable to movable hypothec agreements?

The movable hypothec agreement must provide a determinable value of the secured obligation, as a threshold limiting the amounts that may be recovered by the secured creditor in case of enforcement. The agreement must describe the secured assets in sufficient detail as to reasonably allow identification of the secured assets, general descriptions for category of assets being no longer permitted (for example, "all the debtor's present and future movable assets" does not represent a sufficient description anymore). The security provider is allowed to sell or otherwise dispose of the asset throughout the entire duration of the movable hypothec agreement. As a general rule, a movable hypothec agreement cannot prevent the security provider from disposing of the hypothecated asset. Also, the New Civil Code prohibits negative pledges clauses in movable hypothec agreements.

5. Do movable hypothecs enjoy specific enforcement procedures?

The movable hypothec agreements are deemed enforceable titles, which provide a procedural advantage in case of enforcement, as the secured creditor would not be required to file a claim on the merits of the case. Throughout the enforcement procedure, before the sale of the secured assets, the debtor or any other interested person is entitled by law to pay the outstanding debt and to thus put an end to the enforcement procedure.

The parties to a movable hypothec agreement may agree on methods of sale to be used in case of enforcement. If the movable hypothec agreement is silent in this regard, the creditor may capitalise on the hypothecated assets through reasonable commercial conditions. Under a certain procedure, the secured creditor may appropriate the hypothecated assets for the settlement of its claim.

6. Are there any specific rules for immovable hypothec agreements?

An immovable hypothec is created by agreement of the parties and by registration thereof with the relevant land book (under the New Civil Code, the registration has become a validity condition, however, this provision is not effective, yet). The immovable hypothec agreement must be notarised as a condition for its validity. Under the sanction of nullity, the immovable hypothec agreement must provide a proper description of the mortgaged property and details of the secured obligations. The security provider is allowed to sell or otherwise dispose of the hypothecated asset throughout the entire duration of the immovable hypothec agreement and as a general principle, an immovable hypothec agreement cannot prevent the security provider from disposing of the hypothecated asset.

The New Civil Code explicitly prohibits the negative pledges clauses in immovable hypothec agreements.

7. Are there any publicity requirements in connection with immovable hypothecs?

The Cadastre Law No. 7/1996 sets out the legal framework for the registration of immovable hypothecs with the land books kept by the offices for cadastre and real estate publicity. The immovable hypothec registration system is aimed at ensuring the validity thereof and also the priority rank among secured creditors and the publicity against third parties. Thus, by reviewing the registrations in a land book, a third party would be informed about the existence of any immovable hypothecs encumbering the property. The land books can be relatively easy accessed. An internet database is also available for the verification of the real estate records.

8. Do immovable hypothecs enjoy specific enforcement procedures?

If the debtor failed to discharge the debt on the due date, the secured creditor is

entitled to enforce the immovable hypothec and satisfy its receivable against the debtor by selling the hypothecated real estate following the procedure under the Civil Procedure Code (which procedure in many cases proves to be lengthy and bureaucratic). A properly notarised immovable hypothec agreement is an enforceable title on the basis of which the secured creditor can submit a formal request to the court, within a non-contentious procedure, in order to obtain approval to start the enforcement procedure.

9. Does the suretyship (*fidejussio*) have certain specific traits, compared to the other security interests?

One particularity of the suretyship is that, when pursued by the creditor, the guarantor may use the specific defences, as follows:

- The benefit of discussion (Romanian: *beneficiul de discuțiune*), whereby the guarantor asks the secured creditor to first exhaust its remedies against the debtor before pursuing the guarantor; and
- The benefit of division (Romanian: *beneficiul de diviziune*), available where there are multiple guarantors for the same debt; should one guarantor uphold the benefit of division, the creditor would be obliged to pursue each of the guarantors' pro-rata with their undertakings.

Either of these types of defence may be contractually waived by the guarantors.

10. Which are the main features of the letter of guarantee under Romanian law?

The letter of guarantee is a type of personal guarantee whereby the issuer irrevocably undertakes to pay an amount of money to a beneficiary, on its first demand and such obligation to pay is independent from the underlying obligation in relation to which the letter of guarantee was issued.

11. Do letters of comfort have specific characteristics under Romanian law?

The letter of comfort is regulated by the New Civil Code as an irrevocable undertaking of the issuer to perform or abstain from performing an action, for the purpose of supporting the debtor in the performance of its obligations towards its creditor (such creditor being the beneficiary of the letter of comfort). The issuer of a comfort letter

may only be held liable for damages caused to the creditor, upon the latter providing evidence of the issuer's breach of the obligations undertaken by the comfort letter and only to the extent the principal debtor defaults towards the creditor. The issuer has a right of recourse against the principal debtor if it paid damages to the creditor.