Bank Finance and Regulation

Romania

I. Banks and Financial Institutions Supervision

1) Applicable laws and regulation. Provide a list of main laws and regulations that refer to the supervision and control of banks and financial institutions. Give a brief summary of the substance of each of them.

The framework of the Romanian financial sector is represented by a series of enactments regulating the supervision and control of both banks and non-banking financial institutions.

The banking activity is mainly subject to the provisions of Law no. 58/1998 as republished, (the “Banking Law”) and Law no. 312/2004 regarding the Statute of the National Bank of Romania. The insolvency of credit institutions is regulated under Ordinance no. 10/2004, as amended. The legislative system in the banking sector is completed by a series of laws issued by the Parliament, and ordinances and decisions issued by the Romanian Government, as well as by the special regulations issued by the National Bank of Romania. The legislation is undergoing nowadays a process of implementing the EU’s legislation, the banking system being in this regard harmonized at a high level with the relevant acquis communautaire. Mortgage banks (i.e. credit institutions professionally carrying out the activity of mortgage lending) are also regulated, in accordance with the provisions of a very recent enactment (Law no. 33/2006), providing for the special conditions applicable to the establishment and functioning of such credit institutions.

The insurance activity is governed mainly by Law No. 136/1995 regarding insurance and reinsurance in Romania (“Insurance and Reinsurance Act”), Law No. 32/2000 on insurance companies and insurance supervision (“Insurance Regulatory Act”) and Law no. 503/2004 regarding the financial reorganization and bankruptcy of insurance companies. In addition to the above-mentioned main regulatory framework, the Insurance Supervisory Commission has the ability to issue secondary legislation (i.e., orders, norms) for the application of the said laws. During the past two years, various legislative and regulatory measures with the purpose to ensure the harmonization with the “acquis communautaire” have been adopted. Moreover, the applicable legal framework currently includes provisions regulating the insurance activity in the context of the future integration in the European Union.

The operation of other non-banking financial institutions (“IFN”) acting in the field of granting credits (such as leasing companies and non-banking credit institutions) was not, until very recently, subject to specific regulations. However, an ordinance was enacted in late January 2006 (Ordinance no. 28/2006 (“IFN Law”)) setting forth the main characteristics of IFN's (legal form, scope of business, share capital requirements, NBR supervision. As the above regulation is of
very recent date, it has not yet generated any relevant practice, and, therefore, certain inconsistencies may exist; moreover, certain matters are to be further detailed/clarified/implemented by NBR norms that have not yet been issued. In addition to the aforementioned rules, the mortgage lending companies are subject to the specific provisions in the Government’s Emergency Ordinance no. 200/2002 regarding the mortgage lending activity.

The rendering of certain financial services relating to capital markets (such as originating debt capital markets transactions, securitization schemes, or sales of units in collective investments schemes) are also subject to the capital markets legislation (mainly Law no. 297/2004 (the “Capital Markets Law”) and the regulations issued by the National Securities Commission (the “NSC”). In addition, very recent regulations were enacted (i.e. Law no. 31/2006, regarding securitisation of receivables (“Securitisation Law”), Law no. 32/2006, regarding mortgage bonds (“Mortgage Bonds Law”) and Law no. 33/2006 regarding mortgage banks (“Mortgage Banks Law”), dated March 2006, which have not yet generated any practice.

2) Entities/Authorities in charge of the control and supervision. Purposes, powers and functions of each of them – their organization and structure (i.e. public or private, independency or body of the Government to which they belong, size, etc).

National Bank of Romania (“NBR”)

The public institution having control and supervision attributions in respect of banks and financial institutions (save for insurance companies) is the National Bank of Romania. The current Statute of the NBR is harmonised with the provisions of the Treaty establishing the European Community, the Protocol regarding the Statute of the European System of Central Banks and of the European Central Bank, as well as with the rest of the Community regulations regarding the activity of the central banks of the member states of the European Union.

The NBR, in its capacity of central bank, aims at ensuring and maintaining the stability of the prices on the Romanian market. For this purpose, NBR is responsible for the monetary policy, foreign exchange control, credit and payments policies, as well as for the licensing of banks and their prudential supervision, on an individual and consolidated basis. In all these fields, NBR completes a regulatory function, providing norms and principles that have to be observed by all credit institutions performing their activity on the Romanian territory.

NBR also benefits of a supervisory and control function, being able to apply sanctions and enforce remedy measures in case of non-compliance with the regulations in the banking field, as well as to control the banks’ accounts and any documents it deems necessary for the fulfillment of its supervisory responsibilities. Thus, credit institutions must file reports inter alia, on credit exposure, securities portfolio, liquidity, classification of the portfolio, FX position and minimum reserves with NBR on an on-going basis, the content, form, structure, timing and manner of filing being determined by NBR.

Except for the individual supervision, NBR performs the supervision of credit institutions on a consolidated basis. The supervision on a consolidated basis applies to: (i) any credit institution,
Romanian legal person, which has as subsidiaries other credit institutions and/or financial institutions, with headquarters in Romania or abroad, or holds participation in such institutions; and (ii) any credit institution, Romanian legal person, which is the subsidiary of a financial holding with headquarters in Romania or abroad.

Insurance Supervisory Commission (“ISC”)

The Insurance Supervisory Commission is organized and functions as an autonomous public authority and its main objectives are to supervise the insurance market and the activity of the insurers, with the purpose of protecting the rights of the insured parties, as well as to establish legal and institutional framework for the insurance market and to ensure the compliance with the insurance legislation.

The main competencies of the ISC comprise: (i) giving advice regarding draft pieces of legislation; (ii) issuance of various regulations; (iii) authorize all insurance services providers to perform activities on the insurance market (i.e., insurers, mutual insurance companies, agents, brokers); (iv) supervising the activity of the services providers in the insurance sector in order to protect the interests of the existing or potential insured; (v) approving of certain operations that may take place between insurance companies, such as split-up or merger of an insurer registered in Romania, or the transfer of portfolios, as well as any modification of the documents or conditions in consideration of which the companies have been authorized.

The ISC also has control functions and it is able to apply sanctions and enforce remedy measures in case of non-compliance with the regulations in the field of insurance.

National Securities Commission (“NSC”)

The National Securities commission is organized and functions as an autonomous public authority, subordinated to the Parliament, having control and supervision attributions in the field of capital markets. According to its statute, the main objectives of the NSC include protection against unlawful or abusive practices on the capital markets, stability and transparency of regulated markets, and protection of all entities operating on the capital markets. The NSC is competent to advise on relevant draft legislation; issue the secondary legislation applicable to capital markets; authorize the entities operating on the capital market (issuers, financial investment services companies, traders, investment advisors, rating agencies, undertakings in collective investment schemes, asset management companies); supervising the activities on the capital markets and inflict sanctions.

3) Describe briefly the activities under supervision and give a list of the different types of licenses available.

II. Banking Activities

Like the EU Directive 2000/12/EC, the Banking Law draws a distinction between credit institutions and financial institutions. Thus, pursuant to the Banking Law, credit institutions are represented by: (i) the entity carrying out professionally the activity of accepting deposits and
other repayable funds from the public and the activity of lending on its own account; and (ii) the entity issuing electronic currency.

In Romania, credit institutions may be set up as banks, cooperative credit institutions, institutions issuing electronic currency and savings institutions in the residential field. Furthermore, by means of special laws other credit institutions may be regulated.

According to the Banking Law, banks may be authorized for carrying out one or more of the following financial activities:

- acceptance of deposits and other repayable funds;
- lending (including, inter alia, consumer credit, mortgage credit, financing of commercial transactions, factoring);
- financial leasing (until Romania joining the EU, financial leasing activities may only be carried out through specialized subsidiaries, subject to the IFN Law);
- money transfer services;
- issuance and administration of means of payment, such as credit cards, traveler’s checks, including the issuance of electronic currency;
- guarantees and commitments;
- trading for own account or for account of clients with:
  - money market instruments;
  - foreign currency;
  - futures and options contracts;
  - exchange and interest rate instruments;
  - securities and other financial instruments;
- acting as intermediary in the offering of securities and other financial instruments;
- providing consultancy with regard to the capital structure, the business strategy or other related aspects, consulting and provision of services with respect to mergers and acquisitions;
- acting as in-between on the inter-banking market;
- portfolio management and advice;
- keeping in custody and managing securities and other financial instruments;
- credit reference services;
- safe custody services.

Credit activities of IFNs

According to the IFN Law, the business of IFNs is restricted to the following credit activities:

- extending various forms of financing facilities (including, but not limited to, consumer credits, mortgage loans, financing of commercial operations, factoring);
- financial and operational leasing (subject to applicable NBR requirements);
- issuance of letters of guarantee;
- issuance of credit cards;
- advisory services related to the above listed main activities.

Insurance

The Insurance Regulatory Act provides a distinction between (i) life insurance activities, and (ii) general insurance activities, comprising all other types of insurance. Distinct classes of insurance are established within each of the above insurance categories. Insurance companies may be authorized for carrying only one of the two types of activities (i.e. the business of an insurance company is restricted either to general insurance or life insurance), provided that the life insurance classes may be cumulated with the injury insurance and health insurance activities. The setting up and functioning of insurance companies is subject to authorization by the ISC.

Capital Markets

Capital markets activities, such as issuance and trading various types of securities on the regulated markets, including issuance and trading of bonds are regulated under legal framework comprising numerous pieces of legislation, such as the Company Law, the Capital Markets Law, the Securitization or the Mortgage Bonds Law, as well as the secondary legislation issued by the NSC.

Regulated capital markets activities include the activities of:

a) intermediaries (i.e. financial investments services companies, traders, investments consultants and rating agencies): (i) taking, submitting and performing orders on account of clients, in respect of financial instruments; (ii) trading financial instruments on own account; (iii) management of clients’ financial instruments portfolios; (iv) subscribing to/placing of financial instruments; (v) custody and safe keeping services; (vi) extending loans for financial investments, subject to specific restrictions; (vii) consultancy and (viii) foreign exchange services, if related to financial services rendered.

b) undertakings for collective investment (including undertakings for collective investment of securities – investment funds and investment companies), the activity of which is limited to placement of funds in financial instruments. Undertakings for collective investment of securities are managed by specialized asset management companies.

c) other entities operating on the capital markets (including issuers of securities), such as issuance of securities or other financial instruments and public offerings.

According to the aforementioned legal framework, the financial services relating to the capital markets may be rendered either through special purpose companies (subject to NSC authorization), or by credit institutions, subject to authorization by the NBR and registration with the NSC.

4) Describe briefly non-regulated financial and banking activities.
Following the most recent additions to the financial legal framework applicable in Romania, all financial activities are currently subject to a certain degree of regulation, as described under questions 3 and 5.

5) Describe briefly non-permitted financial and banking activities and/or government monopolies.

There are currently no government monopolies as regards the financial and banking activities referred to herein. However, as detailed under the questions above, certain competencies (such as the control and supervision, and the regulatory activities) are the exclusive attributions of the legal certain relevant public institutions.

The entities authorized for carrying on financial activities, as described under Questions 2 and 3 above, are also subject to specific restrictions regarding the scope of their business, in order to ensure the stability of the Romanian financial markets, as well as the protection of entities acting on such market.

The activity of banks is generally limited to the financial services listed above, and only exceptionally may the banks perform additional activities (i.e. operations relating to acquisition and/or lease of immovable properties, subject to specific restrictions). Moreover, banks are expressly prevented from conducting the following types of activities: (i) creating security in own shares, for securing bank’s own debt; (ii) extending loans, if such operation is linked to the sale or purchase by the debtor of bank’s shares; (iii) extending loans secured by taking security interests in the shares issued by the same bank; (iv) bundling (provision of non related products, as a condition for extending loans to a customer). Furthermore, banks are not currently allowed, until Romania joining the EU, to perform leasing activities, unless a special purpose subsidiary is established to this end. In addition to the above, the activity of raising fund from the public, conducted by mortgage banks, is restricted to the issuance of mortgage bonds.

The activity of entities issuing electronic currency may only consist in those financial or non-financial services that are related to the issuance of electronic currency and data storage in electronic form. The entities issuing electronic currency may not perform any credit activities.

Insurance companies may only be authorized for performing the insurance activities provided by the applicable regulations; therefore, insurance companies are prohibited from carrying on other non-insurance business.

6) Different types of banking licenses. Activities permitted under each of them. Activities prohibited.

According to the Banking Law, the following types of entities are subject to the licensing requirements with the NBR: (i) Romanian banks; (ii) Romanian branches of foreign credit institutions; (iii) entities issuing electronic currency (other than banks). Please note that foreign credit institutions may only conduct their business in Romania through Romanian branches, subject to the same licensing procedure applicable to Romanian banks. Please refer to Questions
3 and 5 above for details regarding the activities that may be carried according to each type of license.

7) Procedures to be followed and requirements to be met to obtain each of the different licenses. Formalities to be fulfilled, documentation to be submitted, guaranties requested, time estimation, etc.

Under the Banking Law, the entry on the banking market is equally permitted to Romanian and foreign entities (by establishing a Romanian legal person in the form of a joint stock company or of a branch).

Romanian banks and branches of foreign credit institutions can be established and can operate based on, and according to a license from NBR, and within the normal supervision and regulatory framework defined by NBR. There are no major differences between the establishment and operational activities of a Romanian bank, of a branch of a foreign credit institution or a entity issuing electronic currency; the licensing procedure is similar, and the operations permitted by NBR are similar.

As of the date of integration in the European Union the EU banking companies established in the state members of the EU shall perform banking activity on Romanian territory in accordance with the principle of free circulation of services.

The Banking Law (as detailed in NBR Norms no. 10/2004) provides a two-step licensing process: (i) the obtaining of the license for the establishment of the bank, based on which the bank may be incorporated as a new legal person, and (ii) the obtaining of the functioning license, based on which a bank may actually start to operate in Romania.

In order for the NBR to approve the establishment of a bank, an application must be filed, attaching a set of documents, comprising: (i) draft articles of association or prospectus (in case of establishment by public subscription of shares); (ii) corporate documents (or identity documents in case of natural persons) of and other specific documents, relating to founders, significant shareholders, bank managers and directors; (iii) feasibility study, referring to bank’s economic objectives, various financial projections, risk management strategies; bank’s organizational chart; (iii) information regarding the persons having special relationships with the bank, and (iv) any other documents and information that may be relevant in assessing the bank’s capability act on the market. If it deems necessary, the NBR may request that additional documentation be provided.

The NBR must either issue the license, or reject the application, within a period not to exceed 4 months. Should no answer be issued after the expiry of such term, the applicant has an additional 15 days term to address the NBR Supervisory Board, which must take a final decision.

After the establishment license is issued, the bank may be effectively set up and registered with the Trade Registry. The NBR must be provided with evidence in this respect in a term not to exceed two months as of the issuance of the establishment license (eight months in case of banks established by way of public subscription of shares), for the purpose of NBR issuing the
functioning license (within 4 months as of the date the aforementioned documentation is submitted to the NBR). Please note that, should the NBR not issue the functioning license, due to the applicant’s failure to provide complete documentation and/or failure to meet all the legal requirements for authorization, a new application may be filed after the expiry of a six months term since rejection of the previous application.

Changes in the situation of a bank, such as modification or extension of the object of activity, management and members of the board of directors, of the financial auditor, opening of branches abroad or changing the shareholding structure imply the obtaining of NBR’s prior approval or, as the case may be, notifying NBR of such changes in accordance with the norms issued by the NBR.

8) Legal structure admitted/requested for each of the different licenses

a. Different types of legal structures that may be used, i.e. corporations, limited liability, partnerships, branches, subsidiaries, etc.

According to the Banking Law and the secondary legislation issued by NBR, banks may only be set up as joint stock companies, with registered offices located in Romania, or, as branches of foreign credit institutions. This requirement does not apply to entities issuing electronic currency, which may also be set up as limited liabilities companies.

b. Capital requirements and own fund rules.

Currently, the minimum required initial capital for a bank incorporated in Romania is RON 37 million (the equivalent of approximately Euro 1.1 million. In addition to this minimum threshold, certain other restrictions apply in respect of the bank’s share capital, as detailed below.

According to NBR Norms 11/2003, the bank’s own funds have the following structure:

(a) Own capital, including:

(i) initial share capital - the funds to be contributed to the bank’s initial share capital by the founders must represent own funds, it being expressly prohibited that any borrowed monies (or amounts otherwise made available to the founders by third parties) be included in the share capital. However, an exception is made in case of funds made available to a subsidiary by the company controlling it. Additional restrictions are applicable to the participation of state owned companies (i.e. companies in which the state holds a participation of 10% or more) to the bank’s share capital: (i) shares held by state owned companies may not exceed 2% of the bank’s capital; and (ii) the aggregate participation of state owned companies to the share capital of a single bank may not exceed 10%.
(ii) the general banking risks fund.

(b) Additional capital, composed of: (i) the general credit risk reserve, (ii) subordinated loans and other types of subordinated debt, subject to certain restrictions, (iii) aggregate nominal value of preferential shares, and (iv) other funds, if evidenced in the bank’s books and available to the bank for covering potential losses in relation to the banking activity.

Romanian banks and branches of foreign credit institutions must keep mandatory reserves at NBR, the amounts of such reserves being calculated based upon rates established by NBR applied to the overall liabilities subject to the required reserves regulations.

Besides the above-mentioned reserves, Romanian banks and branches of foreign credit institutions are required to constitute a reserve, established in accordance with the general provisions regarding commercial companies (i.e., by allocating at least 5 per cent of the yearly profit, until the reserve fund reaches a value equal to a fifth of the share capital.

c. Transfer of control and ownership regime. Is it regulated?

In addition to the requirements under item b) above relating to the banks’ share capital structure, certain rules apply to the ownership regime and transfer of control.

As indicated, one of the goals sought by the licensing procedure is to ensure that banks are set up and owned by well reputed entities, in order to benefit from adequate management and financial support from the significant shareholders. This is one of the reasons for setting forth strict requirements in respect of the persons involved in bank ownership/management, as presented in more detail under item d) below.

As a matter of principle, the internal organization, as well as the management and ownership of credit institution are subject to NBR’s close supervision, ranging from notification requirements to prior approval of changes to the bank’s structure (e.g. appointment of bank’s executives or changes to the bank’s authorized scope of business are subject to NBR’s prior approval).

In accordance with the aforementioned principle, changes to the control of banks are subject to notification to the NBR, as provided under NBR Norms no. 11/2004. Any entities aiming at becoming significant shareholders\(^1\) of a bank, or increasing or decreasing their participation in the bank’s share capital\(^2\), must notify such intention to the NBR, which may raise objections within a 3 months term or even set a deadline for the notified to become effective. Furthermore, all changes to the share capital of the bank, including those resulting from changes to its significant shareholders must be notified to the NBR within 10 days as of fulfillment of the necessary formalities with the Trade Registry, as generally required to Romanian companies.

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1 According to the Banking Law, a significant shareholder is defined as the person, or the group of persons acting together, holding at least 10% of the bank’s share capital or voting rights, or which otherwise hold a participation placing such person/group in the position of having a dominant influence on the bank’s business.

2 20%, 33% and 50% thresholds apply in case of a participation increase; 10%, 20%, 33% and 50% thresholds apply in case of a decrease of the significant shareholder’s participation quota.
copy of the certificate issued by the Trade Registry in respect of the registered change must be attached to the notice.

d. Personal requirements and restrictions that may apply in each case for officers, directors, shareholders, etc.

Certain general restrictions apply to certain persons (i.e. founders, significant shareholders, directors, managers, auditors) involved in the establishment and management of a bank. Thus, no natural person may become a founder, significant shareholder, director, manager, any of the following situations: (i) their name is mentioned in the anti-terrorism regulations, and (ii) the respective person has been convicted for financial criminal offences (e.g. bribery, money laundering, forgery, tax evasion. The aforementioned prohibition also extends to companies, should their founders, significant shareholders, directors, managers, auditors (natural persons) find themselves in the situations herein described.

In addition to the general restrictions above, the following main limitations/requirement apply to persons playing a significant part in the bank’s business:

1. Shareholders - Founding shareholders and significant shareholders must have good financial status, allowing them to support the bank, should it go into financial difficulties; moreover, they must not have registered any losses during the previous three financial years, as evidence by the respective balance sheets. Certain persons, such as companies that are not subject to adequate supervision in their jurisdiction of incorporation, or which have had conflicts with financial/tax authorities in the past, are prevented from becoming founders/significant shareholders of banks.

Investment funds, venture capital funds or other securities collective investment schemes without legal personality, associations, foundations, leagues, trade unions or similar associations cannot be founding and/or significant shareholders of a bank.

2. Directors/bank managers – Only highly qualified individuals, having an professional expertise in the banking/financial sector of at least seven years may be appointed as bank managers. In case of directors, the minimum expertise required is of three years in the banking/financial sector. It is up to the NBR to finally assess on the managers/directors’ capacity.

Certain persons are prohibited from being appointed managers/directors, in case proven to have carried on certain activities that are not compatible with such position within the bank (e.g. breach of financial regulations, bad reputation, unlicensed practice within financial institutions, causing a financial institution to go into financial difficulties).

3. Auditors – in addition to the generally applicable requirements in regard of the skill and professional expertise of auditors, the audit team manager must be specialized in auditing credit institutions.
e. Special requirements/restrictions for foreigner either individuals or legal entities (including short description of WTO/GATS commitments and exemptions.

As mentioned above, the establishment and operation in Romania of branches of foreign credit institutions is subject to similar rules and limitations as the setting up of Romanian banks and other credit institutions. However, certain restrictions apply to the staying in Romania and employment of foreign individuals by the banks and/or branches of foreign credit institutions. Depending on the state of origin (and especially on whether such state is or is not a member state of the European Union), the aforementioned restrictions may include:

a) the obtaining of a Romanian visa (multiple types of visas exist, depending on the duration of the stay and types of activities to be performed during the stay);

b) the obtaining of a work permit based on which foreign citizens may be hired in Romania (under the exemption or the requirement of a work visa) – there are several types of work permits, including permits for permanent employees and seconded foreign citizens).

9) Is there a deposit for insurance? Is it mandatory or based on self regulation? Provide a brief explanation on how it works.

The deposits insurance regime is regulated under Government’s Ordinance no. 39/1996, as amended. As a matter of principle, the repayment of all deposits existing with credit institutions, in RON or FX, of both residents and foreigners, is guaranteed, up to a maximum amount (the current limit, as of January 1st, 2006 is set to EUR 15,000, to be increased to EUR 20,000 starting January 1st, 2007).

A unique legal body – the Deposits Insurance Fund in Banking System (“DIPBS”) was set up for this purpose. DIPBS is a public authority, competent to guarantee deposits, up to the certain limits (to be revised periodically by the NBR), should a credit institution not be able to comply with its repayment obligations towards its customers.

The financial resources available to DIPBS are created by way of mandatory contributions to be paid annually by all credit institutions duly authorized to take deposits from the public. The current rate of such contribution, as of January 1st, 2006, is of 0.4% applied to the aggregate value of all deposits taken by the relevant bank as of December 31st of the precedent year. NBR may impose increased rates, in case it deems that a certain bank is operating in a way that may result in additional financial risks. Starting January 1st, 2007, the contribution rate shall be decreased to 0.3%.

10) Interest Rate. Is it regulated? Should the answer be affirmative, explain briefly its regulatory framework.

Interest rate is not regulated, meaning that the NBR may not directly impose any limits to the interest rates practiced by the banks. However, a specific regulatory framework is in place,
mainly providing for: (i) legal interest rate, as detailed in Government’s Ordinance no. 9/2000, as amended, and (ii) various interest rates determined by the NBR, either for statistical purposes, or applied by the NBR in its relationships with the banks.

The legal interest rate is applicable whenever the parties have omitted to specify, within the relevant contract, a negotiated interest rate. In such case, the legal interest applicable to the respective payment obligations is the reference interest rate, as determined by the NBR. Please note that the legal interest rate does not represent a maximum, and the parties (including banks) may freely negotiate an interest rate of their choice.

The NBR determines a series of interest rates, that indirectly influence the commercial banks’ interest rates, through the NBR’s money market policy, such as (i) NBR reference interest rate; (ii) NBR interest rate applicable to deposits from commercial banks, or (iii) NBR interest rate applicable to credits granted by the NBR.

11) Sanctions (civil, administrative, or criminal) for violations of the legal and regulatory dispositions.

In the situation that NBR ascertain the fact that the bank (including the local branch of a foreign credit institution) and/or any of its directors of managers are guilty for breaching the provisions of the Banking Law (including performance of activities without prior obtaining the necessary license), or the conditions or the restrictions provided within the license issued by the NBR for that specific bank, NBR has the possibility to apply the a series of sanctions, including:

- written warning given to the bank;
- fine applied to the bank, amounting between 0.05% and 1% of the share capital;
- withdrawing of the approval given to the bank’s managers and/or directors;
- withdrawing the license given to the bank.

Also, in such situation, the NBR has the possibility to establish certain measures of special surveillance and special administration, depending on the gravity of the breach; such measures shall be cumulated with the sanctions that can be applied as mentioned above. Please note that in case the license is withdrawn by NBR, such trigger the dissolution and winding up of the bank.

III. Bank Secrecy Laws

12) Is clients’ information protected? Are there any restrictions for its use?

According to the Banking Law, credit institutions, as well as employees or such other persons having a relation with credit institutions, have the obligation to maintain the professional secret in respect to all data and information handled during the performance of their respective activities, provided that certain exceptions apply, as described in more detail under question 13 below.
In addition to the requirements provided by the banking legislation, the credit institutions (including branches of foreign credit institutions) are required to observe the provisions of the personal data protection legislation.

Banks are also under certain whistle-blowing obligations, in respect of customers’ operations, should such represent criminal offences falling under the money laundering legislation.

13) Should answer to number 12) be affirmative, please describe the legal framework, i.e. scope, limitations, exceptions.

Bank secrecy

Under Romanian Banking Law, bank secrecy benefits from a rather broad definition, including clients’ information relating to operations performed, assets owned, business, personal relationships, clients’ accounts, customer contracts, etc. The Banking Law also provides for the situations when banks and their personnel are exempted from the obligation to keep the clients’ information confidential: (i) when information is requested by the clients’ heirs; (ii) at the written request of public authorities, if expressly permitted by the applicable laws; (iii) in certain divorce cases; (iv) in case of criminal prosecution, at the written request of the relevant authorities, (v) auditors’ reports to the NBR in case of operations/events likely to result in adverse consequences on the bank.

Personal data protection

The main piece of Romanian legislation regarding personal data protection is Law no. 677/2001 regarding the protection of individuals with regard to the processing of personal data and on the free movement of such data (the “Data Protection Law”).

Romania has recently implemented such special legislation, in its process of including the acquis communautaire in the domestic legal framework (in particular, Directive no. 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data).

According to the Data Protection Law, entities performing (i) processing of personal data and/or (ii) transfer of such data abroad are under an obligation to notify the supervisory authority and register therewith.

The supervisory authority (i.e., the Ombudsman) has issued standard forms that are to be used in the notification procedure. Such forms contain the minimum information required by the Ombudsman in respect to each data processing. Such information refers to: the identity of the personal data operator; the purpose(s) of the processing; a description of the data subjects’ category; a description of the measures implemented in order to ensure the processing’s security; the means by which the data subjects are informed of their rights in connection with the data processing, etc. The Ombudsman has the right to order a preliminary control if it considers that the processing in question may present special risks to the data subjects’ rights.
Money laundering

According to the provisions of Law no.656/2002 (‘‘Money Laundering Law’’), as subsequently amended, there are certain obligations in relation to the entities performing activities in connection with money transfer (therefore including banks and other credit institutions). The Money Laundering Law sets forth specific obligations with respect to (i) identification of the customer; (ii) transaction reporting, (iii) information disclosure, and (iv) transaction recording. The competent authority, to which secret information may be disclosed under the Money Laundering Law is the National Office for Money Laundering prevention.

14) Sanctions (civil, administrative, or criminal) for violations.

Failure of bank’s personnel to comply with the bank secrecy obligations is considered, under the Romanian Criminal Code, a criminal offence, and is punished by fine or prison. Although not subject to criminal prosecution, the bank may be held liable for the prejudice incurred by the clients as a result of such failure to observe its confidentiality obligations.

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LEX MUNDI

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