BANKING CONTRACTS

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Law no. 58/1998 – Banking Law, published in the Official Gazette no. 121/23rd of March 1998 as amended and completed by:
- Government Emergency Ordinance no. 137/2001 for the amendment and completion of the Banking Law no. 58/1998, published in the Official Gazette no. 671/24th of October 2001
- Law no. 485/2003 for the amendment and completion of the Banking Law no. 58/1998, published in the Official Gazette no. 876/10th of December 2003
- Government Emergency Ordinance no. 56/2000 for the completion of Art. 41 from the Banking Law no. 58/1998, published in the Official Gazette no. 227/23rd of May 2000

- Government Ordinance no. 39/1996 on the establishment and functioning of the Deposits Guaranteeing in Banking System Fund, republished in the Official Gazette no. 141/25th of February 2002

- Regulation no. 5/2002 on the classification of the credits and investments, as well as the establishment, regularization and use of the specific provisions of credit risk, published in the Official Gazette no. 626/23rd of August 2002

I. Analyzed banking contracts

The contract of current bank account, the contract of bank account and the contract of bank funds shall be analyzed further on.

Banking contracts are adhesion contracts. The standard forms drafted by the banks are usually used, without exception, in the practice of conclusion of banking contracts, with non-negotiable clauses, conferring them the nature of simple adhesion contracts. In case of litigation, the court only verifies if the client was knowledgeable at the signing of the contract about the litigious clause – the enforcement of the consensually principle – Art.942, 969 Civil Code.

The client not only adheres to the express clauses of the contract, but also to the general conditions of bank, to the conventional usages and to the professional banking regulations.

II. Contract of current bank account

1. Definition

The contract of current bank account is the contract through which a bank opens a current account upon a client's request, cont in which the client's available funds and collections and remittances operations ordered by him are shown.
The available funds may be withdrawn by the holders of the account without previous notice.

2. Duration and closing of the current account

The contract is opened for an indefinite period. The opening of a current account is marked by a depositing of funds by the client, thus having a credit balance. It may be closed by the client or by the bank at any time, but the bank is obliged to comply with the periods of previous notice established by contract.

The account is duly closed if:

- the legal person holder of the account is dissolved;
- the legal person ceasing its legal existence by merger or beginning of the procedure of bankruptcy.

Closing of the account brings about the client's obligation to refund immediately to the bank the means of payment.

3. Features of the current account

Operations entering into the current account are guaranteed mutually and merge in order to form a balance. Only this balance is exigible upon closing of the account.

4. Informing of the bank

The client must submit to the bank all the information useful for the functioning of his current account and to submit to the bank the balance sheet and the annex accounts certified for conformity, as well as any significant or informative document with financial character.
For the confidential information received, the bank must maintain the professional secret.

5. Bank garnishment

The credit balance of the current bank account may be subject to a forced execution through garnishment. The establishment of garnishment has as effect the blocking of the credit balance, in the sense that no debits will be operated but only possible crediting of the account.

The garnishment may be established even if the garnished third party bank has declared that the pursued debtor does not have credit balance, not having available funds. By amounts owed by the garnished third party not only the amounts exigible in the moment of the establishment of the garnishment must be understood, but also those that are going to be owed on the basis of an existing debt but that shall fall due later on.

III. Contract of credit

1. Concept

Art. 3 item 7 of the Banking Law no. 58/1998 as further amended and completed, comprises the legal definition of the banking credit: "Any commitment of placing at disposal or granting of an amount of money or extension of the maturity of a debt, for the exchange of the debtor's obligation to reimbursement of that amount, as well as to the payment of an interest or of other expenses connected to this amount or any commitment of purchasing of a security incorporating a debt or of another right to the cashing of an amount of money".

2. Credit documentation

The documentation at the basis of a convention intervened between a bank and another person for the granting of a credit comprises at least:

- current financial situation of the credit applicant and of any guarantor of it, including the protection of the financial flows for the period of credit reimbursement and interests payment;
- a description of the modalities of guaranteeing for the full payment of the debt and, as the case may be, an evaluation of the goods which are the object of the guarantee;
- a description of the conditions of the credit, comprising the value of the credit, interest rate, reimbursement schemes and the debtor's objective or the purpose of the credit;
- signature of each person authorizing the credit on behalf of the bank.

3. Lines of credit

The line of credit consists of the obligation of the bank to grant, on a definite period, as a loan, funds usable in a fractionate manner, subject to limitation of a threshold, so that the daily balance of the engagements not to exceed the volume of the approved line of credit.
The terms of granting of such credits are of 3 months, 6 months or maximum 12 months.

4. Risk of failure to reimburse the credits and the guarantee

National Bank of Romania regulation regarding the classification of credits and the establishment of the specific risk provisions stipulate that the banks must limit the risk of credit and to spare no efforts for the cashing of the debts. Banks must classify the credits in one of the five categories: standard, in observation, sub-standard, doubtful, loss.
The minimum threshold of the solvability indicator, calculated as ratio between the level of its own funds and the net exposure, shall be of 12% and the minimum threshold of the solvability indicator, calculated as ratio between the level of its own capital and the net exposure shall be of 8%.

For the limitation of the risk of credit and for the keeping permanently of the minimum solvability level of 8% which to guarantee the fulfillment of their own obligations to the creditors, the banks have the obligation to establish specific risk provisions resulted within the operation of classification of the credits.

Regulation no. 1/1999, as further amended and completed, regulates the organization and functioning, at the National Bank of Romania, of the Banking Risks Office.

The Banking Risks Office (B.R.O.) is a mediation centre managing on behalf of the National Bank of Romania the information of banking risk for the users' purposes, subject to condition of the keeping of the banking secret.
The information of banking risk is the information reported by the banks, processed and sent by the Banking Risks Office; the information of banking risk comprises the identification data of a debtor – natural person or resident non-banking legal person – and the operations in lei and in currency through which the banks expose themselves to the risk towards that debtor.

For the purpose of the guaranteeing of the execution of the obligation by the debtor, the parties have the possibility to resort to the personal or corporal securities.

Thus, at present, the *bail* (security) is preferred by the majority of the banks. The fideiussor is liable jointly to the debtor because the obligation is jointly even if the fideiussor does not have the capacity of trader.
After the payment of the debtor's obligation to the creditor, the fideiussor has regress against the debtor, being able to request the amount actually paid plus expenses made with the debtor's notification that he is pursued by the creditor.

Another form of guarantee of the execution of obligation is the *pledge* which may have as its object all the debtor's tangible and intangible movables. The pledge contract must be duly concluded or materialized in a document under private signature, signed by the debtor and must describe the asset. Law no. 99/1999 on certain measure for the acceleration of the economic reform, as further amended and completed, provides for the necessity of the registration of the pledge contract with the Electronic Archive for Real Movable Guarantees.
According to the same law, the pledge contract is writ of execution.

Another modality of guaranteeing the reimbursement of the credit is the *clause of reserve of the right of property upon the goods bought, as guarantee of reimbursement.*
The debtor may guarantee the credit reimbursement with the credit balance of a bank account.

Mortgage is a form of real estate guarantee without dispossession. The establishment of mortgage takes place only through certified document, subject to absolute nullity. In order to be opposable to third parties the mortgage must be written in the special register or, as the case may be, in the charges sheet of the land registry in which the mortgaged building is registered.

Guarantees established in the favor of a bank for the purpose of guaranteeing the credits that fulfill the publicity conditions stipulated by law, grant to bank priority towards third parties, including the state, whose debts and guarantees have not previously fulfilled the publicity conditions.

5. Credit destination

Destination of the funds is the financing of the debtor's ensemble activity or of certain components of it. The economic agents that are: steady clients of the bank; have a registered capital according to the norms of the bank; have good financial results and a good service of the debt benefit from this type of credits.

The bank has the right to control the use of the funds according to the stipulated destination and the right to cancel the contract in the case of the

embezzlement of the funds from this destination, with the obligation for the client to reimburse immediately the amounts used.

6. Cost of the credit

It is borne by the debtor of the bank, being made up from two basic components: interest and commission, to which the penalty for the delay of the credit reimbursement and of the payment of the interest may be added.

The interest rate may be modified unilaterally by the bank during the execution of the contract, if this has been established by contract.

The client's tacit acquiescence to the new interest rate established unilaterally by the bank may result also from the payment of a unique rate of the increased interest, even if in the contract of credit the right of the bank to modify the interest rate during the execution of the contract has not been stipulated.

7. Confidential information

The sphere of confidential information comprises data and facts which, become public, would damage the interests or the prestige of a banking company or of a client of the bank as well as the name of the deponent or of the holder of the account and the operations registered in his accounts.

The disclosing of professional secret may only be made within the criminal procedure, upon written request of the prosecutor or of the judicial court. The secret of banking operations cannot serve as coverage for the economic delinquency.

8. Escrow account

The credit balance of a bank account constitutes a right of debt of the holder of the account to the bank. This debt, whose quantum varies permanently, under the influence of debits and credits, may be destined as guarantee to the bank for the obligations of the holder of the account.

9. Writ of execution

According to the Art.56 paragraph 2 from the Law no. 58/1998, as further amended and completed, contracts of banking credit and the contracts of personal and corporal securities are writs of execution.

Paragraph 3 from the same law stipulates that from the date of the commencement of a judicial procedure towards the debtor, including of the request by the bank of investing with executory formula of the contract of credit or, as the case may be, of the commencement by it of another forced

execution procedure stipulated by law, the interest established according to the contract or, as the case may be, the legal interest shall be calculated further on, if the law does not provide for the fact that from the date of the commencement of the procedure interest are no longer due; the interest and respective credits shall be registered by the bank outside the balance.

IV. Contract of funds deposit

1. Definition

The contract of funds deposit is the convention concluded by the bank with its client for the delivery of an amount for fructification, the bank having the right to have the funds at its disposal in its own interest, in any moment or at the agreed term.

For the deponents the deposit contract is a means of fructification of available funds and especially of the savings.

For the bank, the contract is an advantageous method of credit financing.

2. Forms of the contract of funds deposit

Deposit at sight

It is the basic form of the contract of funds deposit and involves the obligation of the bank to reimburse the funds in any moment, upon depositor's request. The funds restitution must take place even if the establishing document has been lost, stolen or destroyed.

Certain contracts stipulate a compulsory previous notice of a few days meant to facilitate the cash desk service of the bank.

Term deposit

The deposit with a term with normal duration between 3 and 12 months resembles a loan with interest granted to the bank.

Bank funds deposits may be represented also through certificate of deposit, which are negotiable writs.

2.1 Deposits guaranteeing

For the purpose of guaranteeing the reimbursement of the deposits established with the banking companies by the depositors - natural persons the Deposit Guaranteeing in banking system fund has been established by the Government Ordinance no. 39/1996.

The fund guarantees the deposits held by the residents and non-residents, expressed in the national or foreign currency.
Deposits non-guaranteed by the Fund are provided for by the Art. 4 paragraph 2 from the Government Ordinance no. 39/1996, republished.

If a banking company cannot fulfill its obligations to its depositors, the Fund shall guarantee the payment to depositors of the deposited funds, regardless of the currency of the deposit or the number or size of the deposit, subject to the limit of a threshold of guaranteeing of lei 10,000,000 for one deponent.

The fund shall compensate the payment of the deposits when they become unavailable. Deposits are considered unavailable from the date provided for in the final and enforceable judgment for the beginning of the procedure of bankruptcy of the bank.

Within 30 days from the date of its designation by the tribunal the liquidator transmits to the Fund the list comprising the natural persons that have secured or non-secured deposits, the total amount of the deposits of each deponent and of his obligations towards the bank, according to the necessities and requests of the Fund.

The fund verifies, on the basis of the data transmitted by the liquidator of the bank, the depositors' debts in relation to the unavailable deposits and pays them within maximum two months from the date of the receipt by the liquidator of the data.