

BANKING SYSTEM

Applicable Legislation in this Field

- Law. no. 58/1998, Banking Law, published in the Official Gazette no. 121/23rd of March 1998
- Law nr. 101/1998 on the Bylaws of National Bank of Romania, published in the Official Gazette no. 203/1st of June 1998
- Norm nr. 2/1999 on the authorization of banks, republished in the Official Gazette no. 887/9th of December 2002
- Norm no. 3/1999 on the modification in the situation of banks, republished in the Official Gazette no. 58/9th of February 1999
- Norms no. 2/2003 on the determination and reporting of average interests rate practiced in the banking system, published in the Official Gazette no. 160/13th of March 2003

I. Organization and Functioning of Banks

Banking activity in Romania is carried on through the National Bank of Romania or through banks (by law, the carrying on of the banking activity by other legal persons may be authorized). Bank are established in the legal form of *joint stock companies*, on the basis of the *approval* of the National Bank of Romania, subject to compliance with the legal provisions in force, applicable to trade companies. Banks, Romanian legal persons and the subsidiaries of foreign banks may function on the Romanian territory only on the basis of the authorization issued by the National Bank of Romania. The branches of certain Romanian or foreign legal persons, which are established as banks on the Romanian territory, are Romanian legal person banks and have their legal regime.

Foreign banks cannot engage themselves directly in a banking activity in Romania, except the case in which the activity is carried on through a branch established as bank, Romanian legal person or through a subsidiary, for which an authorization has been issued by the National Bank of

Romania. Foreign banks have the obligation to notify to the National Bank of Romania about the opening of representative offices in Romania. The representative offices of foreign banks shall limit their activity to deeds of informing, of connections or representation.

1. Authorization of Banks

The process of authorization of banks by the National Bank of Romania has two stages:

- approval of the establishment of the bank, according to the provisions of the Law no. 31/1990 on trade companies, republished and of the Law no. 58/1998, republished;
- authorization to function of the bank.

Within maximum 4 months from the reception of an application for Authorization, the National Bank of Romania shall approve the establishment of a bank or reject the application, notifying in writing the applicant, with motivations, the decision made. The approval of the establishment of the bank does not guarantee the obtaining of the authorization to function.

Documents that must be submitted to the National Bank of Romania by the applicants in order to obtain the authorization of establishment are stipulated under Art. 26-29 from the Norm no. 2/1999, republished. The object of activity of a bank shall be established with the compliance of the provisions of Art.8 from the Law no. 58/1998.

Within two months from the communication of the approval of establishment, for the obtaining of the authorization to function, the documents attesting the legal establishment of the bank shall be presented with the National Bank of Romania. In case of banks established on the way of public subscription, the term for the presenting of such documents is of 8 months.

Within maximum 4 months from the date of the reception of documents stipulated, the National Bank of Romania shall decide upon the authorization to function of the bank and, as the case may be, shall issue **the authorization to function**, accompanied by the approvals for significant shareholders of the bank – person or group of persons – and for the persons designated as manager, administrator and independent auditor, or shall communicate his decision on rejection of the application, together with the reasons that are at their basis.

Starting from the date of the issuance of the authorization to function by the National Bank of Romania, the bank shall be able to carry on banking activities. Within 5 days from the date of the performance of the first

banking operation, the bank shall notify this thing to the National Bank of Romania.

These provisions apply accordingly in the case of the subsidiaries of foreign banks too.

Banks, Romanian legal persons and the subsidiaries of foreign banks, hereinafter referred to as banks that have been authorized to function on the Romanian territory, *are incorporated in the banking registry* and kept by the National Bank of Romania.

2. Organization and management of the bank

The organization and management of the bank are established through the constitutive documents of the banks.

The management of the bank must be secured by two persons at least. The quality of the managers of the bank must be adequate to the position for which they have been assigned.

Persons proposed as administrator, censor and independent auditor should comply with requirements stipulated by law and not to be in a state of incompatibility stipulated by the legislation in force.

3. Subsidiaries of foreign banks

The subsidiaries must have at their establishment a capital of endowment at the level stipulated for the minimum registered capital of the banks. The conditions regarding the space, managing bodies and those regarding also the managers of the banks stipulated in the case of banks – Romanian legal persons, must be complied with in the case of subsidiaries of foreign banks too.

At the establishment of the object of activity of the subsidiary of a foreign bank the legal provisions regarding the object of activity of the banks – Romanian legal persons shall be taken into account, and also the fact that the activities that are to be carried out cannot exceed the object of activity of the respective foreign bank.

I. Opening by the banks, Romanian legal persons of representative offices and subsidiaries or any other secondary offices abroad

The application for approval of opening abroad of a representative Office, subsidiary or another secondary office, shall be compulsory signed by one the managers of the bank and shall be accompanied by: a) the decision of the statutory body, b) feasibility study, from which the opportunity of opening the respective office to result and to comprise information regarding the system of banking surveillance, legislation on banking secrecy and the prevention of money laundering, standards regarding the knowing of the clientele, existent in the country in which the opening of the secondary office is intended; c) curriculum vitae and the certificate of judicial record of the assigned managers of the secondary office.

II. Modifications subject to prior Authorization of the National Bank of Romania

According to the Norm no. 3/1999, republished, are subject to prior Approval the modifications in the banks' situation referring to: a) denomination, b) registered office, c) object of activity, d) the level of registered capital, e) significant shareholders, f) managers and administrators of the bank, g) opening by the banks Romanian legal persons of representative offices and subsidiaries and other secondary offices on the Romanian territory, h) independent auditor.

In the case of the foreign banks subsidiaries, the followings are subject to prior approval: a) modifications stipulated under letter b), c) and f) above; b) increasing of capital of endowment by using the reserves constituted from the net profit, existing in the balance according to the last balance sheet and that made by using the reserves from the influences of exchange rate afferent to the appreciation of the cash in foreign currency representing capital of endowment in foreign currency; c) modifications regarding the expansion of the territorial network.

III. Capital Requirements

The registered capital of a bank must be integrally paid up and in cash form, in the moment of subscription.

Through the Norm 16/2002 the minimum threshold of the registered capital and that of a bank's own funds have been established at 370 billion

lei. Provisions referring to the threshold of registered capital apply also to the subsidiaries of foreign banks.

Banks must permanently maintain a minimum level of the registered capital, in cash form, according to the National Bank of Romania regulations.

Banks distribute 20% from the gross income for the establishment of a reserve fund, until the fund thus established equals the registered capital, then, maximum 10% until the moment in which the fund is twice the registered capital. After reaching such level, the allotting of amounts for the reserve fund is made from the net profit.

Banks distribute from the gross income the amounts destined to the establishment of the general reserve for the credit risk, within the limit of 2% from the balance of the granted credits.

IV. Operational Requirements

In their activity, banks are subject to regulations and orders issued by the National Bank of Romania.

With a view to function, within 30 days from the date of the obtaining of the authorization, each bank is obliged to open a *current account with the National Bank of Romania*. Money transfers operated through subscriptions in the current account opened in the records of the National Bank of Romania are irrevocable and unconditional. Banks may open with the National Bank of Romania other accounts too.

V. Prudential Requirements

Upon granting of the credits, banks require for the applicants to present credibility for their reimbursement at maturity. For this purpose, banks require from the applicants the security of the credits, in the conditions established through the crediting norms.

The commissions established for the performing of services of collections and payments with and without cash shall be posted in a visible place in each banking unit.

Bank shall report to the National Bank of Romania, at the end of each semester, the level of commissions practiced for the performing of services of collections and payments with and without cash.

Banks should comply with the prudential requirements, at the individual or consolidated level, as the case may be, provided for in the

regulations issued by the National Bank of Romania, referring, without being limitative to: a) solvability; b) liquidity; c) maximum exposure beside a sole debtor and with the maximum aggregated exposure; d) exposure beside persons in special relation with the bank; e) currency risk; f) quality of assets, constitution and use of risk provisions; g) internal organization and control.

Total value of the long term investments of a bank, in securities issued by a trade company that is not engage in one or many financial activities, cannot exceed:

- a) 20% from the registered capital of the respective trade company; and
- b) 10% from the bank's own funds

Total value of the long term investments of a bank, in securities issued by such a trade company, cannot exceed 50% from the bank's own funds.

Total value of the investments of a bank in securities, performed in its own name and on its own account, cannot exceed the level of 100% from its own funds, except those in government securities.

Loans granted to the persons in special relations with the bank or to its personnel, including their families, may be allowed only subject to conditions established by the National Bank of Romania regulations.

VI. Accounts, Financial Situations and their Control

The bookkeeping of the banks must be kept permanently, according to the provisions of the accounting law and of the specific regulations given in its enforcement and to draw up adequate financial situations in order to reflect accordingly the operations and their financial condition. Bookkeeping and the financial situation of a bank must reflect also the operations and the financial situation of the subsidiaries, branches and other secondary offices, on an individual base and, as the case may be, on a consolidated base.

Each bank shall appoint an independent auditor. Only an audit company authorized according to law to perform such activity in Romania may be appointed auditor of a bank. Among other things, the independent auditor:

- a) shall give assistance in bookkeeping;
- b) shall draw up an annual report together with his opinion, from which to result if the financial situations present an accurate image of the bank's condition;

- c) shall analyze the practices and procedures of internal control and of the censors and, if he considers them to be inadequate, shall make recommendation to the bank for their remediation.

VII. Merger and Division of Banks

Merger and division of banks may be performed with the cumulative fulfillment of the following conditions:

- a) merger is performed only between two or more authorized banks;
- b) in case of division, only joint stock companies resulted as a result of a division of a bank may be authorized as banks;
- c) the decision of National Bank of Romania has been obtained regarding the authorization of merger or division, as the case may be.

Merger of two or more banks or the division of a bank is decided by each bank according to its own Bylaws. Before the starting of activity, the bank or the banks appeared as a result of merger or division are obliged to obtain the authorization of the National Bank of Romania.

VIII. Remedy Measures and Sanctions

If the National Bank of Romania establishes that a bank and/or any of its administrators, executive managers or censors are guilty of:

- a) violation of Law 58/1998 or of regulations or orders issued by the National Bank of Romania in the enforcement of the present law;
- b) violation of any condition or restriction provided for in the authorization issued for the bank;
- c) performing of false operations and without actual covering;
- d) failure to report, deferred reporting or reporting of erroneous data on the banking prudence indicators or other indicators stipulated in the National Bank of Romania regulations;
- e) failure to comply with the measures established through the deeds of control or as a result of these ones;
- f) jeopardizing of the credibility and viability of the bank, through inadequate administration of the entrusted funds.

National Bank of Romania may apply the following **sanctions**:

- written warning to the bank;
- limitation of the bank's operations;

- fine applicable to the bank, between 0.1 and 1% from the registered capital or the administrators, executive managers or censors, between 1-6 average wages/bank from the previous
- month, at the date of the establishment of the deed. The collected fines are income for the state budget;
- withdrawal of the approval given to the managers and/or administrators of the bank;
- withdrawal of the bank's authorization.

As a result of establishments, National Bank of Romania may take the following *measures*:

- a) conclusion of a written agreement with the board of directors of the bank, which to comprise a program of measures for remediation;
- b) obliging of the guilty bank to take measures for the remediation of the consequences of the established deeds;
- c) setting up measures of special surveillance and of management;
- d) withdrawal of the approval granted to the significant shareholders and/or suspension of the right of vote of the other shareholders, if those persons do not comply anymore with the requirements stipulated under the present law and under the regulations issued in its enforcement regarding the quality of the shareholders of a bank or carry out an individual or joint policy that endanger on a prudent and healthy management of the bank, to the detriment of the interest of the deponents of other creditors.

The enforcement of sanctions is subject to prescription within 2 years from the date of the committing of the deed. The enforcement of sanctions does not remove material, civil, administrative or criminal responsibility, as the case may be.