

Tax & Legal Alert

ROMANIA 27 March 2009

Amendments and supplements to the Banking Ordinance no. 99/2006

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Government Emergency Ordinance no. 25/2009 on the amendment and completion of GEO no. 99/2006 on credit institutions and capital adequacy was published on March 23 March 2009.

Amendments are brought mainly in regard of:

Credit institutions are allowed to perform portfolio management operations involving movable and immovable assets which are not used for the performance of financial activities, the limitations provided under art. 21 not being applicable to these operations.

Regulation of „proposed acquisition” and „proposed acquirer”. The provisions regarding persons which intend to acquire a qualified participation within a credit institution, Romanian legal person, are replaced by provisions on proposed acquisition and proposed acquirer.

Every proposed acquirer should submit a preliminary written notification to the National Bank of Romania (“NBR”) in respect of any proposed acquisition. The proposed acquirer will be evaluated on the basis of new criteria, such as:

- reputation, integrity and professional qualification of the proposed acquirer;
- its financial soundness;
- reputation and experience of the persons with management and governance responsibilities in respect of the credit institutions as a result of the proposed acquisition;
- the credit institution's ability to observe the prudential requirements, especially the requirement for the group it is part of to have a structure that allows effective supervision;
- the existence of reasonable suspicion that, within the

proposed acquisition, certain crimes such as money laundering and financing of terrorism were or are being committed.

The NBR will perform the evaluation of the proposed acquirer within maximum 60 working days as of the written confirmation of the receipt of the notification regarding the proposed acquisition, together with the receipt of all required documents. In case the NBR requires additional information, the 60 working days period can be suspended for certain time intervals.

The ordinance imposes the obligation to submit to the approval of the NBR, prior to the performance of their responsibilities, the persons from other management positions within the credit institution (risk management and control, internal audit, compliance, treasury, crediting etc.). As a transitory provision, the ordinance states that credit institutions, Romanian legal persons, and Romanian branches of credit institutions from third countries should obtain the approval of the NBR for the persons holding those positions, within no more than six months as of the entry into force of this ordinance. This period may be prolonged for justified reasons, not more than once and not longer than three months.

Directors, managers, members of the Supervisory Board or of the Management Board have the obligation to perform their management and governance responsibilities in an effective manner.

Managers or members of the Management Board may exercise other functions within the consolidated supervision area of the credit institution.

The periods in which the NBR will decide regarding the authorization of the credit institution were amended, together with the computation methods in regard of these periods. The period in which the NBR decides as regards the granting of the functioning authorization is presently one month shorter, respectively maximum three months.

The sanctions which could be applied to the persons holding management positions within the credit institution or the Romanian branch of a credit institution from a third country are now applicable to the persons in management positions within risk management and control, internal audit, compliance, treasury and crediting departments.

The warranting of receivables from credits granted by saving banks for housing will be performed in accordance with NBR regulations.

Authorization requests and notifications of proposed acquisitions pending on the date of entry into force of this ordinance shall be subject to the regulatory frame applicable on the date of their submission.

[Source: Romanian Official Gazette no. 179/23 March 2009, part I]

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