

Tax & Legal Alert

ROMANIA 29 April 2009

Law no. 93/2009 on non-banking financial institutions

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DAVID SI BAIAS

Law no. 93/2009 on non-banking financial institutions ("Law 93/2009" or "the Law") has been published, replacing the provisions regarding non-banking financial institutions ("NBF") under Title I, Part I in Government Ordinance no. 28/2006 on the regulation of certain financial and fiscal measures, as approved with amendments by Law no. 266/2006. We present below the main amendments:

The Law clarifies the situations in which the acquisition of credit portfolios is considered a crediting activity performed on a professional basis and is subject to the provisions of the Law. Thus, credit institutions, financial institutions which benefit from the "European passport" procedure and NBFs are the only ones entitled to acquire credit portfolios under the said conditions, except when:

- the credit is in the "losses" category;
- the acquired portfolios are allocated to the warranting of the issuing of securitised financial instruments.

A number of criteria according to which it will be determined whether a crediting activity is performed on a professional basis are clarified, such as:

- the performance of such activities as self-contained economic activities, aimed at obtaining income on a regular basis;
- the existence of specialized internal structures managing and analysing these activities separately, based on pre-established rules and taking into account the said activities in the projection of the NBF's budget.

Provisions regulating NBFs' obligations to maintain professional secrecy in relation to clients are introduced and the situations in

which they are exempted from such obligations defined.

Among crediting activities which can be performed by NBFs registered within the General Registry were introduced:

- undertaking of financing commitments;
- exchange rate operations related to permitted activities;
- performing non-financial mandate or commission operations related to activities necessary to support the functioning of NBF group entities, only in relations with these entities.

The minimum level of share capital for NBFs which grant mortgage credit cannot fall under the RON equivalent of EUR 3,000,000, subsequently repealing Government Emergency Ordinance no. 200/2002 on mortgage credit companies.

The National Bank of Romania ("NBR") has to remit to the NBF the document testifying their registration within the General Registry within 30 days of the submission of the complete and corresponding documentation. The period was previously 60 days.

The requirement for the directors and managers of NBFs registered within the Special Registry to have a university degree and a minimum two years experience in a relevant field, as well as one year of experience in the financial and accounting field was eliminated. It was replaced with more general provisions regarding the reputation and experience of those people.

The obligation of those holding management positions within NBFIs registered in the Special Registry to be employees of the NBFIs was also eliminated.

- Title I of Part I of Government Ordinance no. 28/2006 on the regulation of certain financial and fiscal measures.

People holding management positions in NBFIs are allowed to hold management positions in other credit institutions or NBFIs, provided that they are from the same group.

The Law entered into force on 24 April 2009.

A merger may currently occur between NBFIs and companies the object of activity of which is the performance of related and ancillary activities. NBFIs may also merge with credit institutions issuing e-money.

[Source: Romanian Official Gazette no. 259/21 April 2009, part I]

Certain provisions regarding consumer protection are to be introduced into the contractual documentation drafted by NBFIs. Therefore, NBFIs may not claim any interest, penalties, commissions or costs from clients, unless expressly provided within the contract.

For more information please contact Sorin David, Dan Dascalu, Luiza Tomescu, Anda Rojanschi or Laura Toncescu.

A separate chapter regarding crimes was introduced, making the following criminal offences:

- performance of crediting activities on a professional basis violating the provisions of this Law, by a natural or legal person on its account or on the account of an entity which is not an NBFI;
- use by another person of a denomination specific for NBFIs;
- violation with bad faith or obstruction with intent of the exertion by the NBR of its monitoring and supervision competences.

On the date of entry into force of this Law, the title of chapter V of Government Ordinance no. 51/1997 on leasing operations and leasing companies becomes "Organisation and functioning of operational leasing companies". Therefore, the organisation and functioning of financial leasing companies are subject to the provisions of this Law.

On the date of entry into force of this Law, the following normative acts are repealed:

- Law no. 240/2005 on micro-financing companies;