

THE BANK AUTHORIZATION

Petru Tărchilă, Assoc. Prof., PhD, "Aurel Vlaicu" University of Arad

Abstract: Throughout time, credit institutions have been represented by legal persons who work in finance, banking and can operate like banks, credit cooperatives, electronic money institutions and savings banks for housing. Banks can take place, within the authorization granted, and other services permitted by applicable law, such as storage assets of investment funds and investment firms, the distribution of units in investment funds and shares of investment companies, acting as operator of an electronic archive of security interests, transactions with precious metals and stones and objects made of them in office operations, data processing services, database management or similar services to third parties, participation in social capital of other entities . Banks can provide ancillary services or related to activities carried out, such as ownership and management of movable and immovable property necessary to the activity or use of employees, and can perform any other activities or operations necessary to achieve the object of activity authorized without be necessary to include them in the authorization granted. Financial leasing is conducted operations since Romania's EU accession date.

Keywords: credit institutions, credit cooperatives, financiar leasing, investment firms.

1. The bank's main activities

Under Article 11 of Law on Lg.58/98 banking¹, banks can develop, within the authorization granted, the following activities:

- a) financial leasing;
- b) money transmission services;
- c) issuing and administering means of payment;
- d) assuming issuance of guarantees and commitments
- e) trading for own account or the account of clients, under the law, with:
 - money-market instruments, such as: checks, bills, promissory notes, certificates of deposit;
 - currency;
 - futures and options contracts;
 - instruments based on the interest rate and currency;
 - real estate and other financial instruments
- f) mediation, under the law, the offer of securities and other financial instruments, underwriting and placement of them or by placement and related services;
- g) providing advice on capital structure, business strategy and other aspects related to it, consulting services on mergers and acquisitions of companies;
- h) interbank intermediation;
- i) customer portfolio management and advice related to it;

¹ Law no. 58 of March 5, 1998, *banking activity*, republished in the Official Gazette, Part I 78 / 24 January 2005, amended by Law nr.131/2006

- j) safekeeping and administration of securities and other financial instruments;
- k) provision data and credit references in the field;
- l) rental of safe deposit boxes.

Banks can take place, within the authorization granted, and other services permitted by applicable law, such as storage assets of investment funds and investment firms, the distribution of units in investment funds and shares of investment companies, acting as operator of an electronic archive of security interests, transactions with precious metals and stones and objects made of them in office operations, data processing services, database management or similar services to third parties, participation in social capital of other entities.² Banks can provide ancillary services or related to activities carried out, such as ownership and management of movable and immovable property necessary to the activity or use of employees, and can perform any other activities or operations necessary to achieve the object of activity authorized without be necessary to include them in the authorization granted.

Financial leasing is conducted operations since Romania's EU accession date. Banks can not perform the following activities:

- a) transactions in movable and immovable property, except as provided in Article 8³;
- b) pledging their shares in bank debts;
- c) granting loans or providing other customer services, conditional sale or purchase of shares of the bank;
- d) loans secured by shares issued by the bank;
- e) the receipt of deposits, securities or other valuables, when the bank is in cessation of payments;
- f) loans conditional on acceptance by customers of other services that have no connection with the operation of that credit.

2. Bank authorization

Banks, Romanian legal persons, can work only on the basis of the authorization issued by the National Bank of Romania. Capital of banking companies is at least equivalent in RON of EUR 5 million (58, paragraph 2). Capital of a bank to be paid, in full and in cash at the time of subscription.

The constitution, capital will be poured into an account at a credit institution, which will be blocked until the bank registration in the Commercial Register (58, paragraph 3)

² S.D. Carpenaru, Romanian Commercial Law, All Beck Publishing House, 2004, Bucharest

³ Article 13 provides that banks may conduct these transactions in movable and immovable:

- Operations necessary to the activity;
- Operations with movable and immovable property for improvement of professional education of employees, organization of leisure and recreation spaces housing insurance for employees and their families;
- Lease of movable and immovable assets to third parties, provided that the value of movable and immovable property leased should not exceed 5% of the bank's own funds that total revenues from these operations do not exceed 5% of total bank income, less revenues from these operations, these levels can be exceeded in duly justified cases, only with the approval of the National Bank of Romania;
- transactions in movable and immovable property acquired as a result of the execution of the debts had forced the bank. Movable and immovable property acquired after the execution of bank debt will be forced to be sold within one year from the date of acquisition. For justified reasons, the deadline may be extended with the approval of the National Bank of Romania

When setting up a bank with initial capital equals capital, unless the new bank is formed resulting from a reorganization by merger or division. At the opening of a branch will provide initial capital by providing its endowment of capital by foreign credit institution. (Article 58, paragraph 4).

Banks are under the legal form of joint stock company, upon approval of the National Bank of Romania, in compliance with legal provisions applicable to companies.

Banks, Romanian legal persons, will have its head office and, if necessary, head office, representing the location of the main center for leadership and management of statutory activity on the Romanian territory.

Permit application will be submitted to the National Bank of Romania in the form established by it. Documentation that must accompany the application deadlines and procedures for authorization will be established by the Romanian National Bank regulations.

The conditions under which authorization may be granted shall be regulated by the National Bank of Romania and will refer, without being limited to:

- a) the qualification and professional experience of bank managers;
- b) the minimum initial capital;
- c) feasibility study, which will include at least the type of operations conducted and provided to the bank's organizational structure;
- d) significant shareholders and founders of the bank;
- e) ownership structure;
- f) Bank premises;
- g) auditor.

Within 4 months of receiving the request, the National Bank of Romania will approve the establishment of a bank or reject the request and shall notify the applicant in writing its decision, together with the reasons behind it, in case of rejection.

Within two months of the notification of approval of incorporation in order to obtain operating permits will be submitted to the National Bank of Romania up legal documents attesting to the bank. In the case of banks that are on the way public subscription, the deadline for these documents is 8 months.⁴

3. Withdrawal of authorization

National Bank of Romania may withdraw the authorization granted to a bank, Romanian legal person, or a branch in Romania of a credit institution with headquarters abroad or at the request of the bank⁵, while shareholders have decided to dissolve and liquidate its request that the lender foreign, or as punishment or for the following reasons:

- a) the bank has started operations for which it was authorized, within one year of receiving the permit, or has not exercised for more than six months, the activity of taking

⁴ D. Mazilu, *Course commercial law, general part*, Ed Lumina Lex, Bucharest, 2009.

⁵ For instance, The decision of the National Bank of Romania no. 461 of 2004 (published in Official Gazette no. 946 of 15 October 2004) on the withdrawal of authorization Banque Franco Roumaine, Paris-Bucharest Branch. Withdrawal of authorization was granted on the request of the bank's sole shareholder. Moreover, on 20 October was announced "merger by absorption of Anglo-Romanian Bank Limited, a member of the group Romanian Commercial Bank (BCR), Frankfurt Bucharest Bank (BCR former subsidiary in Germany) and Banque Franco-Roumaine (French subsidiary of BCR)"

deposits;

b) the authorization was granted based on false statements or any other unlawful means;

c) there was a bank merger or division;

d) the competent authority in the country where foreign credit institution is established to set up a branch in Romania withdrew its authorization to conduct banking activities;

e) has passed a decision to shutter the bank's bankruptcy, if it holds the operating permit delivery of the decision;

f) no longer meets the bank's shareholders conditions provided by law and rules to ensure a healthy and prudent management of the bank or do not allow for effective supervision;

g) The National Bank of Romania considers that endangers the interests of maintaining the permit bank depositors and other creditors of the bank, in that the bank does not have sufficient equity to the development of normal activity or there are elements that lead to the conclusion that within a short bank will not be able to meet obligations to depositors or other creditors or the bank no longer justify its presence in the market because their activity does not meet the purpose for which the bank was established and this activity can be performed only by drawing on resources from interest rates much higher than those prevailing in the market;

h) the bank's management was not provided at least two persons for a period not exceeding three months;

i) are not met any other conditions that led to the issuance of the permit.

4. Organization and management of banks

Organization and management of banks is determined by incorporation of banks, in accordance with commercial law and banking law compliance.

In all its official documents to the bank must clearly identify by a minimum of data: company under which the register of trade, capital, registered address, the unique registration number in the trade register, the number and date of registration in the register bank.

The Bank is committed by the signature of at least two leaders, having powers under the articles of association, or at least two employees of the bank authorized by the management.

Leaders and managers of banks should have a good reputation, qualification and competence appropriate to achieve the objectives and prerequisites necessary for the activity of the bank in accordance with the requirements of the law and rules of prudent and sound banking practices in order to ensure credibility and viability of the banking system, including protecting the interests of depositors and other creditors of the bank⁶.

Bank management must be ensured at least two people. Leaders must be employees of the bank may be members of the board of directors. Bank managers should ensure effective management of daily bank activity, to exercise sole function for which they were appointed and at least one of them to prove knowledge of Romanian. They must be licensed in one of the economic, legal or other area that is circumscribed in the financial and banking activity

⁶ I. Turcu, Business Law, Chemarea Publishing House, 2002, Iasi

and / or have completed graduate courses in one of these areas and have at least 7 years experience in finance and banking, to be specific and relevant to the volume of activity undertaken by the bank.

Bank managers may be only individuals. These individuals must have at least 3 years experience in finance and banking or in another area may be considered relevant to the bank. If bank managers on the board of directors, the number of its members should be set so administrators do not have the capacity to represent the majority leader.

Apart from the conditions stipulated by the legislation in force in respect of directors, a person can be elected to the board of a bank, and if elected, or if the decade of the mandate:

a) is an employee of that bank, except its leaders; b) is an employee, director or auditor to another credit institution, the Romanian legal person, unless the bank is a subsidiary of the credit institution;

c) in the last five years has been withdrawn by the competent authority approval to conduct a credit institution or has been replaced as a result of the remedial measures taken by a credit institution;

d) is barred by a legal provision, a court order or decision of another authority, to conduct a credit institution, a financial institution or an insurance / reinsurance, or to work in one specific fields institutions respective.

Conclusions

Banks, Romanian legal persons, can work only on the basis of the authorization issued by the National Bank of Romania.

Capital of banking companies is at least equivalent in RON of EUR 5 million (58, paragraph 2). Capital of a bank to be paid, in full and in cash at the time of subscription. The constitution, capital will be poured into an account at a credit institution, which will be blocked until the bank registration in the Commercial Register (58, paragraph 3). When setting up a bank with initial capital equals capital, unless the new bank is formed resulting from a reorganization by merger or division. At the opening of a branch will provide initial capital by providing its endowment of capital by foreign credit institution. (Article 58, paragraph 4).

Banks are under the legal form of joint stock company, upon approval of the National Bank of Romania, in compliance with legal provisions applicable to companies, Banks, Romanian legal persons, will have its head office and, if necessary, head office, representing the location of the main center for leadership and management of statutory activity on the Romanian territory.

Bibliography

1. S.D. Carpenaru, Romanian Commercial Law, 4th Edition, ALL Beck Ed, Bucharest, 2004;
2. D. Mazilu, Commercial Law, General Part, Lumina Lex , Bucharest, 2009;
3. I. Turcu, Business Law, Chemarea Ed, Iasi, 2002;
4. I. Turcu, Romanian Commercial Law Theory and Practice, Lumina Lex, Bucharest 2010;

5. P. Tarchila, Romanian Commercial Law, University Horizons Ed, Timisoara, 2007.