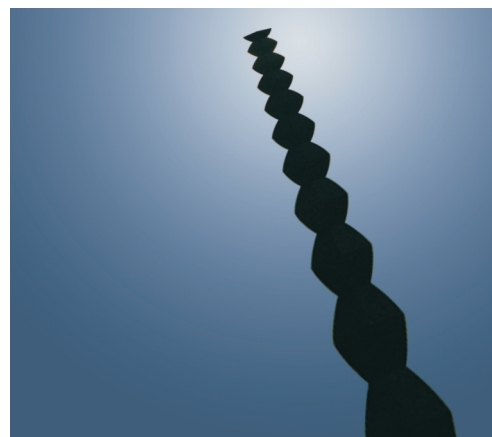


# INVESTING IN ROMANIA



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### LEGAL BACKGROUND

The crediting activity in Romania is carried out through:

- Credit institutions, Romanian or foreign legal entities;
- Financial institutions having their headquarters located in a EU Member State, either by the establishment of branches or by the direct provision of services, under the terms set forth by the law;
- Non-banking financial institutions.

Pursuant to the recent transposition in national legislation, by means of Government Emergency Ordinance no. 113/2009, of the provisions of Directive no. 2007/64/CE on payment services, the crediting activity may also be performed by the payment institutions, but solely with respect to certain payment services performed by the same and solely provided that the following requirements are met: (i) the credit is of an ancillary nature and is granted exclusively with respect to the performance of a payment operation ; (ii) the credit is not granted out of the funds received or owned for the purpose of performing a payment operation; (iii) the level of the payment institution's own funds is appropriate at any time, by reference to the total value of the credits granted.

Other entities, apart from those aforementioned, may not carry out professional crediting activities in Romania.

### NATIONAL BANK OF ROMANIA

As central bank of the Romanian state, the National Bank of Romania (the "NBR") is organized and functions in accordance with its Statute, adopted by Law no. 312/2004. The

activity of the credit institutions and the relations between the same and the national bank are regulated by Government Emergency Ordinance no. 99/2006 regarding credit institutions and capital adequacy, as supplemented and amended successively by Law no. 227/2007, by Government Emergency Ordinance no. 215/2008 and by Government Emergency Ordinance no. 25/2009, the latter being approved, with amendments, by Law no. 270/2009. The conditions for declaring bank bankruptcy and capitalizing upon the bank assets are stipulated by Government Ordinance no. 10/2004 on the bankruptcy of credit institutions, approved and amended by Law no. 278/2004.

### Fundamental Objectives and Duties of the NBR

The fundamental objective of the NBR is to ensure and maintain the stability of prices. The main duties of the NBR consist of:

- (a) Developing and applying the monetary policy and the exchange rate policy;
- (b) Authorization, regulation and prudential supervision of credit institutions and, starting from 2009, of the payment institutions;
- (c) Granting to non-banking financial institutions the permission to carry out crediting activities, by recording the same in the general register, the special register or the entry register, as the case may be, of the non-banking financial institutions, held by the NBR, as well as monitoring the non-banking financial institutions recorded in the general register, and, respectively, the prudential supervision of the non-banking financial institutions recorded in the special register, which carry out an activity on the Romanian territory;
- (d) Promotion and monitoring of the proper functioning of the payment systems in view of ensuring financial stability;



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(e) Issuance of banknotes and coins as legal means of payment on the Romanian territory;

(f) Setting out the currency regime and supervising the compliance with the same;

(g) Management of the international resources of Romania.

### CREDIT INSTITUTIONS

#### Credit institutions that may carry out activities in Romania

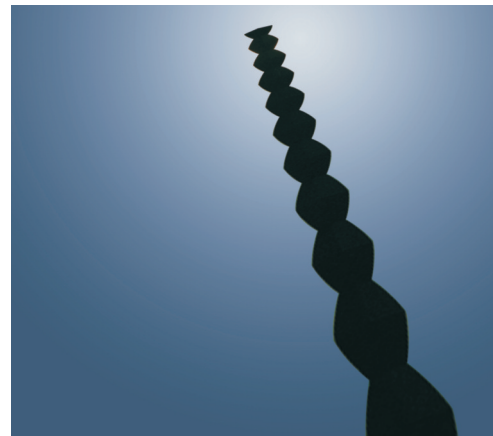
According to Government Emergency Ordinance no. 99/2006, the entities that may carry out banking activities in Romania are the credit institutions that are Romanian legal entities, on the basis of the banking license issued by the NBR, the credit institutions and the financial institutions from EU Member States, on the basis of an "unique passport" issued by the home member state, as well as the credit institutions from third party states, on the basis of the banking license issued by the NBR and in compliance with the other express legal provisions.

#### Romanian legal entity credit institutions

Legal forms, operation and minimum share capital. According to Romanian law, credit institutions are legal entities that are authorized to mainly and professionally carry out activities intended to attract deposits or other repayable funds from the public and grant credits on personal account, as well as entities that issue electronic currency ("electronic money institution"). Credit institutions which are Romanian legal entities may be established and may operate as banks, cooperative credit organizations, savings banks for housing, mortgage loan banks and electronic money institutions. Any of such credit institutions may solely operate on the basis of the banking license/authorization issued by the NBR.

Banks are established in the form of joint stock companies and the subscribed share capital must be fully paid in, in cash, on the date of their establishment, including in the event of an increase of the share capital, while in-kind contributions are not allowed. The minimum level of the initial capital is set out by the NBR by means of Regulation no. 18/2006, which

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provides that, at the time of authorization, banks that are Romanian legal entities must, however, have an initial share capital level of at least RON 37 million, the savings banks for housing and the mortgage loan banks must have an initial share capital level of at least RON 25 million and the electronic money institutions must have an initial share capital level of at least RON 12 million.

The shares of a credit institution that is a Romanian legal entity may solely be nominative shares. In their articles of association, credit institutions may not set out exceptions from the principle according to which a share entitles its holder to a single vote. The capacity of the founders and the significant shareholders must correspond to the requirements provided for under Government Emergency Ordinance no. 99/2006 and the NBR Regulation no. 11/2007, as subsequently amended and supplemented.

**The Mortgage Credit Banks.** The establishment, the organization and the operation of the mortgage credit banks are regulated by Government Emergency Ordinance no. 99/2006. The mortgage credit banks operate as specialized credit institutions, being authorized by the NBR and having as their main object of activity the professional performance of activities of granting mortgage credits for real estate investments and attracting reimbursable funds from the public by means of the issuance of mortgage bonds.

**The Institutions issuing Electronic Currency.** The object of activity of the institutions that issue electronic currency is limited to the following activities: the issuance of electronic currency; adjacent financial services (electronic currency management, the issuance and management of other payment methods), the granting of credits being prohibited; services of storing information on electronic support, in the name of certain public institutions or other entities.

**The Fund for Securing Bank Deposits.** All credit institutions authorized by the NBR to receive deposits from the public are obligated to contribute to the Fund for the Guaranteeing of Bank Deposits (the "Fund"), a legal entity of public law, the main purpose of which is to secure the deposits established in national or foreign currency, by residents or non-residents, in the authorized credit institutions, as well as to

make payments in the form of set-offs to individuals, legal entities or entities with no legal personality, in the event of the commencement of a bankruptcy procedure against the credit institution. The set-offs are made within a security coverage equal to the RON equivalent of EUR 50,000.

The deposits established at the branches of the credit institutions having their headquarters located in other European Union member states, which operate in Romania, are secured by the plan in force in the state of origin, under the terms provided for by the legislation applicable in such state.

**Payment Incident Principal Office (CIP)** is a mediation center operating within the NBR, which manages the payment incident specific information, both from a banking point of view (drawdown in overdraft) and from a social point of view (loss/theft/destruction). Both Romanian legal entity credit institutions, including the territorial units thereof, and the Romanian branches of the foreign legal entity credit institutions, are obligated to report to the CIP payment incident specific information, such as: individual and legal entity account owner identification data, the payment incidents caused by such account owners at the payment of cheques, bills of exchange and promissory notes, which incidents may either be major or not, depending upon the reason/reasons for which the payment is refused, as well as information on the lost, stolen, destroyed or annulled payment instruments.

**Banking Risk Principal Office (CRB)** represents a structure specialized in collecting,

storing and centralizing information on the exposure of every declaring person in Romania (credit institution or non-banking financial institution recorded in the special Register) towards such debtors that benefited from credits and/or commitments the cumulated level of which exceeds the reference limit amount (RON 20,000), as well as the information regarding card frauds committed by the holders thereof. The users of the information existing in the CRB database are the declaring persons and the NBR.

**Unauthorized Activities.** Credit institutions may not carry out operations such as: (i) pledging their own shares on account of their own debts; (ii) granting credits secured by shares, other equity securities or bonds issued by the credit institution itself or by another entity belonging to the group a member of which the credit institution is; (iii) attracting deposits or other reimbursable funds, securities or other stocks, from the public, when the credit institution is in a state of insolvency.

**Foreign legal entity credit institutions****Credit institutions based in other member states**

The credit institutions that are authorized and supervised by the competent authority in another member state may carry out in Romania any of the activities for which they were authorized in the home member state, either directly or through a branch, on the basis of the "unique passport" issued by the home member state. In other words, the performance of banking activities in Romania by a credit institution based in another state does not require the obtaining of any authorization/license from the NBR, it being sufficient for the competent authority in the home member state to notify the NBR with respect to the respective credit institution's intention to carry out a banking activity on the Romanian territory. In the event that such activity is carried out through a branch, such branch may commence its activity in Romania as of the date of receipt of NBR's address with respect to the list of Romanian normative acts adopted for the purpose of protecting the general interest, which normative acts should also be complied with and applied by the respective branch, or, in the absence of such





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address, as of the date of expiry of a 2-month term as of NBR's receipt of the notification; in the event that the services are provided directly, the credit institution based in the member state may commence its activity in Romania as of the date of the notification of the competent authority in the member state of origin with respect to the intention to carry out the banking activity on the Romanian territory. The NBR shall perform the registration of all branches in the register of credit institutions solely on the basis of the notification; it shall also open and update the list of credit institutions that notified the NBR with respect to the direct provision of services on the Romanian territory.

Credit institutions based in other member states may open representative offices in Romania, in accordance with the regulations issued by the NBR and on the basis of a notification sent to the same. The representative offices are obligated to restrict their activity to market survey actions, representation and publicity activities, and they may not carry out the activities that are subject to Government Emergency Ordinance no. 99/2006.

**Financial institutions based in other member states**

According to Government Emergency Ordinance no. 99/2006, financial institutions are those entities, other than the credit institutions, the main activity of which consists in acquiring participations in other entities or in carrying out one or several banking activities. The financial institutions having their headquarters located in another member state may carry out a banking activity in Romania by means of establishing branches or by providing services directly, on the basis of the "unique passport" issued by the home member state, provided that such financial institutions are subsidiaries of one or several credit institutions, of such activities are provided for in their articles of association and if the following requirements are met, cumulatively:

(a) The mother-company or the mother-companies is/are authorized as credit institutions in the member state the legislation of which governs the state of the subsidiary-financial institution;

(b) The respective activities are substantially carried out on the territory of the same member state;



(c) The mother-company or the mother-companies of the financial institution holds/hold 90% or more of the voting rights attached to the shares in the financial institution's share capital;

(d) The mother-company or the mother-companies of the financial institution must meet the requirements of the competent authority in the home member state with respect to the prudent management of the subsidiary-financial institution and it/they must represent, with the consent of such authority, that it/they jointly warrant the obligations undertaken by the subsidiary-financial institution;

(e) The subsidiary-financial institution is included, especially with respect to the activities that it shall carry out in Romania, in the consolidated supervision of the mother-company or of each mother-company, as the case may be.

**Credit institutions based in third party states**

Credit institutions having their headquarters in third party states may carry out activities in Romania solely provided that the following requirements are met, cumulatively:

(a) The activity is carried out by means of the establishment of a branch;

(b) The branch is authorized by the NBR;

(c) The competent authority in the state of origin does not oppose the establishment of the branch in Romania;

(d) The provisions of Government Emergency Ordinance 99/2006 and the regulations issued for implementing the same are complied with.

The activities that may be carried out through the Romanian branch are solely those provided for under the authorization/license granted by the NBR and they may not surpass the credit institution's object of activity, as authorized by the competent authority in the third party state

of origin. Said branches are also obligated to permanently maintain the initial capital at least at the minimum level applicable to the Romanian legal entity credit institutions, depending upon the type of the respective credit institution.

**Supervision of credit institutions' activity**

For the purpose of protecting the interests of the depositories and of ensuring the stability of the banking system, the NBR carries out the activity of prudential supervision of credit institutions that are Romanian legal entities, including the branches thereof, established in other member states or in third party states, by setting out certain norms and banking prudence indicators and supervising the compliance with the same and with other requirements provided for under the law and the applicable regulations, in order to prevent and limit the banking activity specific risks.

The prudential supervision of credit institutions in other member states, including with respect to the activities carried out on the Romanian territory, shall be provided by the competent authority in the home member state, which, however, shall not prevent NBR's exercise of the supervision on consolidated bases, provided that the legal requirements for the performance thereof are met.

The activity of the Romanian branches of credit institutions based in third party states is subject to the prudential supervision of the NBR.

## PAYMENT INSTITUTIONS

**Legal forms, operation and minimum share capital**

The minimum requirements regarding the access to the activity of performance of payment services and the carrying out of the same on the territory of Romania are regulated by Government Emergency Ordinance no. 113/2009 on payment services and NBR Regulation no. 21/2009 on payment institutions, which currently represents the general relevant regulation framework.

The categories of service performers authorized to carry out professional payment services on the territory of Romania are mainly credit

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institutions and payment institutions authorized by the NBR or by the competent authority in the member state of origin, as the case may be, to carry out payment services, as well as the institutions issuing electronic currency, the providers of postal giro services, which perform payment services according to the applicable national legislative framework, the European Central Bank and the national central banks, when they do not act in the capacity of monetary authorities or in other capacity that implies the exercise of public authority etc.

Romanian legal entity payment institutions may perform payment services either directly or through an agent<sup>2</sup>, solely after obtaining the NBR's authorization to that effect, or after recording the payment institution or the agent of the same in NBR's payment institution register, respectively. The payment institutions authorized in a different member state may perform, on the territory of Romania, the payment services provided for in the authorization, either directly or through a branch or an agent, on the basis of a notification sent to the NBR by the competent authority in the member state of origin.

Payment institutions are established in the legal form required under the law for each of the entities that are legally authorized to perform payment services. The minimum share capital upon establishment must represent at least the RON equivalent of the amount of EUR 20,000, EUR 50,000 or EUR 125,000, depending upon the category of payment services to be performed. The documentation necessary in view of authorization, the requirements that must be met by the founders, the significant shareholders and the heads of the payment institutions, as well as the main operational requirements regarding the institutions' own funds, the obligations to report to the NBR and the outsourcing of the payment services, are regulated, in detail, by the NBR Regulation no. 21/2009, which also presents the standard forms that must be used by the payment institutions with respect to various aspects of their authorization and/or operation.



The NBR provides the prudential supervision of the Romanian legal entity payment institutions and collaborates with the competent authorities in the member state of origin of the payment institutions using the European passport, for the latter authorities' prudential supervision of such institutions.

The payment institutions are prohibited from attracting deposits or other reimbursable funds from the public. They may, however, carry out crediting<sup>3</sup> activities, conditioned upon, and solely with respect to, certain payment services performed, and they may also open and maintain payment accounts for their clients, provided that such accounts are to be used exclusively for the performance of payment operations.

NON-BANKING FINANCIAL  
INSTITUTIONSLegal forms, operation and  
minimum share capital

The minimum requirements regarding the non-banking financial institutions' access to the crediting activity are regulated by Law no. 93/2009 on non-banking financial institutions, as well as by NBR Regulation no. 20/2009 on non-banking financial institutions, as the same was amended by NBR Regulation no. 2/2010, which currently represents the relevant unitary

regulation framework.

The non-banking financial institution ("IFN") is a legal entity that is subject to the regulations issued by the NBR, established in the form of a joint stock company<sup>4</sup>, for the purpose of professionally performing crediting activities, and the financing sources of which originate in its own resources or in resources borrowed from credit institutions, or from other financial institutions or, as the case may be in other sources provided for under special laws. Non-banking financial institutions assimilate such legal entities without a patrimonial purpose, established on the basis of Government Ordinance no. 26/2000 on associations and foundations or on the basis of special laws, which grant credits from public funds or from funds provided on the basis of intergovernmental agreements, such funds being of a reimbursable or a non-reimbursable nature.

Non-banking financial institutions may carry out crediting activities solely after NBR grants its permission in this respect, and the NBR shall further record such institutions, as the case may be, in the general Register, the special Register (when the IFNs recorded in the general Register meet, cumulatively and within a set period, the criteria provided for under article 26 of NBR Regulation no. 20/2009, namely when the level of its own capital and of the borrowed resources existing in the balance is of at least RON 50 million and the level of the credits/financing granted and the undertaken obligations existing in the balance is of at least RON 25 million) or in the Entry Register (pawnshops, mutual benefit societies).

The minimum share capital of a non-banking financial institution, required at the establishment of the same, must be at least the RON equivalent of EUR 200,000, save in the cases where, in accordance with special regulations, the minimum share capital must be higher (i.e. EUR 3 million for such IFNs that grant mortgage credits). Such provisions shall also apply accordingly to the Romanian branches of the foreign legal entity non-banking financial institutions.

The capacity of the founders, of the significant

<sup>2</sup>Individual or legal entity providing payment services in the name and on behalf of a payment institution

<sup>3</sup>Save in the case that the crediting activity is performed by the legal entity payment institutions from other member states, according to article 22 paragraph 1 of Government Emergency Ordinance no. 113/2009, the crediting activity by the payment institutions may solely be performed in compliance with Law no. 93/2009 on non-banking financial institutions

<sup>4</sup>An exception to this rule is represented by the IFNs that are subject to recording in the Entry Register held by the NBR, namely the pawnshops, the mutual benefit societies and the entities that carry out a crediting activity exclusively out of public funds or funds attracted on the basis of intergovernmental agreements.



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shareholders and of the IFN managers must comply with the requirements provided for under Law no. 93/2009 and NBR Regulation no. 20/2009.

The IFNs recorded in the general Register are subject to the monitoring of the NBR and the IFNs recorded in the special Register are subject to the prudential supervision exercised by the NBR.

Non-banking financial institutions are prohibited from carrying out activities of attracting deposits or other reimbursable funds from the public, as well as from issuing bonds, except for the public offer addressed to the investors qualified according to the law on the capital market.

