

*Recent developments in the
Romanian legal framework on
bank restructuring and recovery*

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Main points

1. Context
2. The recovery and resolution framework in Romania
3. When the stabilization measures can be implemented by NBR?
4. Common principles to be considered when adopting and implementing the stabilization measures
5. Stabilization measures process
6. Types & characteristics of the stabilization measures
7. Next steps

1. Context (1/3)

- Difficulties related to the authorities' capacity to tackle with crisis situation both internally and on a cross-border level for large banking groups:
 - Inadequate supportive intervention tools for supervisory authorities;
 - Lack of legal powers for supervisors to promptly deal with distressed large banking groups;
 - Shortcomings into the supervisory interventions;
 - Weaknesses of the regulatory framework related to the severe turbulence of the financial markets.
- Limited level of the ex-ante raised private funds for financing resolution measures or lack of supportive liquidity.

1. Context – cont.(2/3)

- High price*) for preserving financial stability of the EU financial markets and restoring the market confidence into the banking sector
 - Crisis-related losses incurred by European banks (2007 – 2010) – almost EUR 1 trillion equiv. 8% of the EU GDP (IMF);
 - EU GDP contraction in 2009 do to the economic recession caused by the financial crises – 6% (Eurostat);
 - State-aid measures used, including state guarantees (2008 – 2010) – EUR 1.6 trillion equiv. 13% of EU GDP (Commission) out of which EUR 409 billion of asset relief and recapitalization aid.

*) Source: European Commission Memo – Bank recovery and resolution proposal – Annex Key Numbers, 6 June 2012

1. Context – cont.(3/3)

- Lesson learned:

At a such price no jurisdiction can afford to not take into consideration the new revised EU bank recovery and resolution framework and to reconsider, accordingly, its internal regulatory approach in this field

N.B. This lesson is also valid for jurisdictions where following the financial crisis there were no threats to the financial stability, including Romanian case

2. The recovery and resolution framework in Romania (1/3)

a) Reasoning:

- The international recent developments;
- The contagion threats connected to maintaining the financial stability;
- The need for additional tools used by the supervisory authority, in addition to those ones connected to the special administration procedures – namely tools for implementation of the stabilization measures in case of distressed institutions that pose a threat for preserving the financial stability of the system;
- The existence or the legal powers for the national authorities to intervene in a troubled credit institutions at a sufficiently early stage to address the problems;
- The need to harmonize the legal powers of national authorities for such interventions.

2. The recovery and resolution framework in Romania– cont. (2/3)

b) Overview of Romanian legal framework on bank recovery and resolution:

- Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as further amended and supplemented by Law No. 227/2007, subsequently amended and supplemented (Banking Law);
- - Government Ordinance No. 39/1996 on the establishment and operation of the Bank Deposit Guarantee Fund in the banking system, republished with further amendments and supplements.
- - Internal procedure on implementation of the stabilization measures, which is to be formalized, accordingly.

2. The recovery and resolution framework in Romania– cont. (3/3)

- c) **The fundamentals of the Romanian framework** for bank recovery and resolution - allow for a flexible and graduated response to varying degrees of stress in a bank and to threats to the stability of the financial system.

Stages of the framework:

1. **Early intervention.** The normal situation involves regular on-site and off-site supervision. Monitoring may be stepped-up in case the situation deteriorates and specific instructions may be given as needed.
2. **Special supervision.** The credit institution's management remains in place, but an intensified supervision is implemented.
3. **Special administration.** The credit institution's management is replaced by a special administrator appointed by and accountable to the NBR.
 - Special amendments were considered in the new legal framework by clearly emphasizing the triggers that lead from implementation of special administration to the application of the stabilization measures, namely the existence of a threat to the financial stability.
4. **Stabilization measures.** This procedure is used when the conditions for imposing the special administration are met, but there is a threat to the stability of the financial system & further clarification of the cases when the measure of suspension of the shareholders' voting rights can be revoked.
5. **Liquidation.** NBR withdraws the license of the credit institution. Depending on certain conditions, the credit institution enters into a process of dissolution followed by winding-up, or is placed under bankruptcy proceedings.

3. When the stabilization measures can be implemented by the NBR (Art.240²³ GEO No. 99/2006)?

Case 1:

- A credit institution is in any of the situation where the special administration is to be imposed (Art.240)
- &
- **There is a threat to the financial stability**

Case 2:

- A credit institution is in any of the situation where the special administration is to be imposed (Art.240)
- &
- The measure of suspension the voting rights for the shareholding having control over that credit institution was disposed;
- &
- **There is a threat to the financial stability**

Case 3:

- The measure of suspension the voting rights for the shareholding having control over that credit institution was disposed;
- &
- **There is a threat to the financial stability**

4. Common principles to be considered when adopting and implementing the stabilization measures

- Adoption of the stabilization measures by an NBR decision;
- Notification by the NBR of the Ministry of Finance regarding the decision of adopting one of the stabilization measure;
- The ceasing of the mandate of the board members and/or management of the credit institution subject of the stabilization measure and the appointment by the NBR an delegated administrator which will be in charge in the administration and the management of the bank;
- The financing of the stabilization measures is providing by the Bank Deposit Guarantee Fund from the resources managed by it, under the applicable provisions.

5. Stabilization measures process

1. Stages of implementation:

- a) NBR is required to decide which of the stabilization measures provided in the law is appropriate to be implemented;
- b) NBR is required to decide the implementation of one of the stabilization measures.

2. Triggers:

- The NBR shall decide the implementation of one of the stabilization measures if:
 - a) a credit institution is in any of the situations that require the implementation of the special administration procedure and/or
 - b) the measure of suspension of the voting rights for the shareholding having control over that credit institution was disposed
 - c) in any of the above mentioned situations, there is a threat to the financial stability.

6. Types & characteristics of the stabilization measures - (1/4)

- a) the **total or partial transfer of assets and liabilities** of a credit institution **to one or more eligible institutions**;
- b) the **involvement of the Bank Deposit Guarantee Fund as an delegated administrator and as a shareholder, as the case may be**, if previously was disposed the measure on suspension of the voting rights of the shareholders having control over that credit institution;
- c) the **transfer of assets and liabilities from a credit institution to a bridge-bank**, established for this purpose.

6. Types & characteristics of the stabilization measures – (2/4)

a) The total or partial transfer of assets and liabilities of a credit institution to one or more eligible institutions^{*)}

The NBR decision taken in this regard shall include at least the following:

- the assets & liabilities to be transferred according to the accounting recordings of the credit institution from which the transfer is carried out;
- where appropriate, the level of funding provided by the Bank Deposit Guarantee Fund;
- the person appointed as a delegated administrator;
- the beneficiary institution of the transferred assets & liabilities.

^{*)} Under the provision of the banking Law, there are specific conditions to be met by a credit institution or, as the case may be, a financial institution to be qualified as a eligible institution (Art. 240¹⁴ para.1)

6. Types & characteristics of the stabilization measures - (3/4)

b) The involvement of the Bank Deposit Guarantee Fund as a *delegated administrator* and as a *shareholder*, as the case may be, if previously was disposed the measure on suspension of the voting rights of the shareholders having control over that credit institution, under the two cases:

b.1. The involvement of the Bank Deposit Guarantee Fund as a *delegated administrator* consists in convening of the General Assembly of the Shareholders (whose voting rights were not suspended).

b.2. The involvement of the Bank Deposit Guarantee Fund as a *shareholder* depends on the decision of the General Assembly of the Shareholders (whose voting rights were not suspended). In this case, there are *two special situations*:

- 1) If the General Assembly of the Shareholders (whose voting rights were not suspended) **approves** the cancellation of the existing shareholders' preferential subscription rights and share capital increasing, then the Bank Deposit Guarantee Fund is entitled to subscribe the new shares issued and become shareholder.
- 2) If the General Assembly of the Shareholders (whose voting rights were not suspended) **does not approve** the cancellation of the existing shareholders' preferential subscription rights and share capital increasing, *in the absence of any viable solutions*, NBR shall decide the withdrawal of the authorization of the credit institution, followed by the liquidation of the said institution.

6. Types & characteristics of the stabilization measures - (4/4)

- c) **The transfer of assets and liabilities** from a credit institution to a **bridge - bank**, established for this purpose.

Main features of a bridge - bank

- is a credit institution which is established with the purpose of taking over the assets and liabilities of a credit institution, in order to ensure the continuity of banking services related to the assets and liabilities taken over, and having by way of derogation from the provisions of the Company law, a sole shareholder – BDGF;
- its administration is organized only under a dual board structure, the supervisory board responsibilities being ensured by the BDGF, which is represented at least by 3 individuals;
- its financing is granted by the BDGF both, for the assets and liabilities transfer to the bridge-bank, and to meet the capital requirements of the bridge-bank, so as to ensure the carrying out of activity of the bridge-bank, in compliance with all prudential requirements;
- is established and functions for a period of up to 2 years, with the possibility of extending this period, by the decision of the NBR, in situations where a threat to the financial stability still persists and/or negotiations with the potential acquirer of the bridge-bank were not finalized;
- is subsequently sold to a third eligible part.

7. Next steps

- 1) The approval of the Internal procedure on implementation of the stabilization measures;
- 2) Performing simulations exercises by the NBR and the involved parties;
- 3) Fine tuning of the Internal procedure on implementation of the stabilization measures, considering the output of the simulation exercise.

■ **THANK YOU !**

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