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The Provision of Banking Services in Romania by the EU Credit Institutions

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Once Romania joined the European Union on 1 January 2007, a “new banking law” entered into force, represented by Government Emergency Ordinance No. 99/2006 regarding credit institutions and capital adequacy (“**GEO 99/2006**”). GEO 99/2006 repealed the old Banking Law No. 58/1998 that helped through the years the continuous development of the banking sector. Such development, in terms of the European accession, had to be continued based on a new law. To this effect, GEO 99/2006 has been adopted; it transposes the newest European Directive in this field, namely Directive 2006/48/EC of 14 June 2006 (the “**Directive**”), which at its turn represents a consolidated version of several previous directives regarding the activities of credit institutions.

Distinction between carrying-out activities in Romania by the EU credit institutions and those from outside the EU

GEO 99/2006 clearly provides the regulation of the way the EU credit institutions have access to the Romanian market, as well as those acting from outside the EU. As this article regards in particular the way the banking services are provided by the EU credit institutions, about credit institutions outside EU we mention just that these may act in Romania (except when these set-up a bank in Romania or take-over a Romanian credit institution already operating) only through a branch that has to be authorised by the National Bank of Romania (the “**NBR**”), by means of a rather long procedure. This branch has to comply with the Romanian banking legislation, and moreover the regulatory authority of the State of the credit institution outside EU must not be against the setting-up of such branch on the Romanian territory.

As regards the way the EU credit institutions may provide banking services in Romania, the legal framework is much more permissive.

Two ways used by the EU credit institutions to provide banking services in Romania

Before detailing the ways the EU credit institutions may provide banking services in Romania, it should be mentioned that such institutions may offer, with just a few exceptions, the same services as the Romanian credit institution do. The EU credit institutions have two methods for getting in the position to carry-out activities in Romania, namely either through a branch or by directly providing services. These two ways reflect the communitarian principle based on which within EU the companies must have the possibility to chose from either to provide services directly in another Member State, or to have the right to set-up an entity on the territory of another Member State. When the credit institutions decide to “settle” themselves in Romania, the said entity has the form of a branch.

Providing services directly in Romania by the EU credit institutions takes place based on a notification procedure and in addition provided that the activities intended to be developed in Romania be mentioned by the banking licence of the concerned credit institution. In practice, the credit institution from another Member State notifies the supervising authority in its country about

its intention to develop activities in Romania. The supervising authority communicates to NBR such intention, and NBR communicates, if necessary, to the concerned credit institution the list of the Romanian laws passed in order to protect the general interest, regulating the specific conditions under which certain activities may be carried-out. This list of laws has already been made public by NBR at the beginning of March; it contains an enumeration of the main laws in several sectors relevant for the credit institutions activities, as banking services, deposit security, insurances, private pensions, consumer's protection or financial investments services.

Providing services through a branch in Romania by the EU credit institutions takes place without being necessary to obtain the NBR's authorisation (as for the subsidiaries set-up by the credit institutions outside EU), also through a notification procedure, similar to that above-mentioned. The only difference is in this case that GEO 99/2006 provides a two-month term for NBR to communicate to the concerned credit institution the above-mentioned list of laws. The branch of the credit institution of another Member State may actually start its activity either upon the communication by NBR of the list with the relevant laws, or upon the expiry of the two-month term.

From the operational and regulatory point of view, in case of direct services provided by the credit institutions of another Member State, according to law, such services must be provided in compliance with the provisions regarding the banking secret of GEO 99/2006, while in case of services provided through a branch, several other provisions become applicable, including the compliance with the regulations regarding the NBR's supervision of the liquidity or those in the statistics field and monetary policy field, as decided also by the NBR.

Great interest for Romania

According to the information published by NBR on its Internet site, as of April 2007, there are 58 credit institutions of Member States that have notified their intention to carry-out activities directly in Romania. Without detailing the names of such institutions, however, it should be mentioned that their list includes both (i) credit institutions without any activity in Romania for the last years, which were somehow expected to express their interest, confirming thus the ascendant trend and the perspectives of the Romanian financial and banking market, and (ii) credit institutions that were already present in Romania through a branch or a subsidiary. It cannot be question of a competition of such foreign institutions towards the entities under which they were operating already in Romania, but probably of more flexibility for the concerned credit institutions in choosing to act directly in Romania in relation to certain operations. Moreover, it should also be mentioned that most of the EU credit institutions mentioned in the list made public by the NBR have notified their intention to carry-out **all** the activities allowed under GEO 99/2006, fact that confirms once again the interest for the financial and banking market in Romania.