



**COUNTRY
COMPARATIVE
GUIDES 2024**

The Legal 500 Country Comparative Guides

Romania

BANKING & FINANCE

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Muşat & Asociații



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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Romania.

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ROMANIA

BANKING & FINANCE



1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The main national authority for banking regulation, supervision and resolution in Romania is the National Bank of Romania (the "NBR"). The NBR's main goal is to assure and maintain price stability, having authority over the circulation of money, foreign currency, lending and payment policy, and prudential banking authorization and supervision.

The NBR also shares competences with the Financial Supervisory Authority (the "FSA"). In addition to its role in respect of certain credit institutions, the FSA exercises its powers regarding the regulation and supervision of the insurance, private pension and capital markets.

2. Which type of activities trigger the requirement of a banking licence?

It is generally prohibited for individuals or legal entities which do not hold a credit institution license to engage in the activity of attracting deposits or other repayable funds from the public or in the activity of attracting and/or managing sums of money from the contributions of members of groups established for the purpose of accumulating collective funds and granting credits/loans from the funds thus accumulated for the purchase of assets and/or services by their members.

The NBR is empowered to determine whether or not an activity represents banking activity as described above. Such determination of the nature of the activity, expressed by the NBR, is mandatory for the interested parties.

3. Does your regulatory regime know different licenses for different banking services?

Romanian credit institutions are incorporated and

function as banks, credit cooperative organizations, banks for savings and loans granted in the residential field, mortgage loans banks.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

Romanian credit institutions, Romanian legal entities, as well as branches of credit institutions from third countries may carry out within the limits of authorization issued by the NBR any of the following activities:

- a. acceptance of deposits and other repayable funds;
- b. lending (including, inter alia, consumer credit, mortgage credit, financing of commercial transactions, factoring);
- c. financial leasing;
- d. payment services;
- e. issuance and administration of other means of payment, such as checks, bills of exchange and promissory notes;
- f. guarantees and commitments;
- g. trading for own account or for account of clients with money market instruments, foreign currency, futures and options contracts, exchange and interest rate instruments, securities and other financial instruments;
- h. participation to the issuance of securities and other financial instruments by underwriting and selling them or by selling them and providing ancillary services;
- i. providing consultancy with regard to the capital structure, business strategy or other related aspects, consultancy with respect to mergers and acquisitions as well as other advice services;
- j. portfolio management and advice;
- k. custodial and financial management services;
- l. intermediation on the inter-bank market;

- m. credit reference services;
- n. safe custody services;
- o. electronic money issuance;
- p. transactions involving precious metals and precious stones and articles manufactured therefrom;
- q. acquisition of equity interests in other entities;
- r. any other activities or services in so far as they fall within the financial field, in compliance with the special legal provisions governing those activities, where applicable.

5. Is there a “sandbox” or “license light” for specific activities?

Currently, the “regulatory sandbox” concept is not expressly recognized by the Romanian legislation. However, there have been various initiatives launched by the NBR and the FSA in order to support the development of new business models, applications, processes or products with a direct effect on the provision of financial services using innovative information and communication technologies.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

There are no specific restrictions under Romanian law with respect to the issuance or custody of crypto currencies (save for AML purposes). Cryptocurrencies and other forms of cryptoassets have not been specifically regulated until recently in Romania (except for tax purposes). Nevertheless, legislative changes designated mainly for implementing the EU Directive 843/2018 have been oriented towards shaping a legal and regulatory regime in this area. To this end, authorization and/ or registration obligations for providers of exchange services between virtual and fiduciary currencies and providers of digital wallets have been established.

In addition to the above, depending on the characterisation of the specific cryptocurrency or cryptoasset under Romania’s general financial services legal and regulatory framework, and on the relevant services that are provided in relation to the cryptocurrencies/cryptoassets, further regulatory regimes in respect of payments services, e-money and investment services may also be relevant.

7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Crypto assets do not qualify as deposits, thus they are not covered by deposit insurance and/or segregation of funds. Widely used cryptocurrencies are generally thought not to constitute electronic money on the basis that, amongst other things, they are not generally viewed as representing monetary value and there is no central issuer of those cryptocurrencies against whom a claim could be made for redemption of the fiat equivalent of the cryptocurrency.

8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

There are currently no capital requirements which are expressly designated to scenarios where crypto assets are held by licensed entities. Further developments on the matter are, however, discussed at EU level and may further shape the local framework in this regard.

9. What is the general application process for bank licenses and what is the average timing?

The general procedure for authorization is characterized by the presence of two obligatory stages, namely:

- i. approval of being set up as a credit institution;
- ii. authorization to operate in Romania.

In terms of timing, the process will depend significantly on the parties involved, however there are some statutory deadlines in this respect. Within four months as of receipt of a bank authorization application, the NBR must approve the establishment or reject the application and inform the applicant in writing on the decision and reasons for such decision. The clearance for the establishment of the bank means that the founders are allowed to proceed towards establishment of the bank, but it does not guarantee that operational authorization will be obtained.

Documents attesting the legal establishment of the bank must be submitted to the NBR within two months from communication of the establishment clearance, after which the NBR will decide on the authorization within a maximum of four months. The NBR may also request an applicant to submit additional information and documents, case in which it must decide on the

operational authorization within four months as of receipt of such documents.

10. Is mere cross-border activity permissible? If yes, what are the requirements?

Credit institutions, authorized and controlled by the relevant authority from one of the EU member states, may perform, either directly (based on the free provision of services principle) or through branches (on a freedom of establishment basis), banking activities in Romania within the limits of the authorization granted by the relevant authorities from their country of origin, without a prior authorization from the NBR being necessary and without an endowment capital for the branch being required.

The establishment of a branch in Romania by an EU-based credit institution, as well as the intention to provide banking services in Romania based on the free provision of services, must be notified to the NBR via the competent authority of the home member state of the parent company along with certain information concerning the banking services to be provided in Romania.

11. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Romanian banks must be established in the legal form of joint-stock companies in accordance with Romanian commercial legislation.

12. What are the organizational requirements for banks, including with respect to corporate governance?

As a general rule, credit institutions must organize their entire activity in accordance with the rules of a prudent and healthy banking practice, with the requirements of the law, of EU Regulation no. 575/2013 ("CRR") and the regulations issued in the application of the aforementioned.

The corporate governance of a Romanian credit institution is implemented by, among others, the board of directors and the managers of the credit institution or, where applicable, the supervisory board and the management board, having the powers and duties provided for by the law applicable to Romanian companies. Management responsibilities may only be

exercised by individuals who must be approved by the NBR prior to the commencement of the exercise of responsibilities.

Credit institutions that are significant from the perspective of size, internal organization and the nature, extent and complexity of the activities carried out at individual, sub-consolidated or consolidated level, as the case may be, must establish a risk management committee, a nomination committee and a remuneration committee, with advisory powers for the board of directors, within the unitary administration system, or for the supervisory board, within the dual administration system.

13. Do any restrictions on remuneration policies apply?

Credit institutions must have a rigorously designed formal business management framework that includes, among other matters, remuneration policies and practices that promote and are consistent with sound and effective risk management. The NBR establishes the requirements for a credit institution's remuneration policy, including the principles for granting and adjusting remuneration, as well as the remuneration principles applicable to credit institutions receiving exceptional government assistance.

When establishing and applying remuneration policies in respect of total remuneration, including salaries and discretionary benefits such as pensions, for categories of staff whose professional activities have a significant impact on the risk profile of credit institutions, credit institutions shall comply with the legal requirements on remuneration policies in a manner appropriate to their size and internal organization and the nature, extent and complexity of the activities carried out.

14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

The provisions of the Capital Requirements Directive IV (CRD IV) have been transposed into Romanian law mainly by means of Regulation No. 5/2013 on prudential requirements for credit institutions.

In this respect, the following initial capital requirements apply in respect of credit institutions:

- i. banks shall have at the time of authorization

an initial capital level of at least RON 37 million;

- ii. mortgage loan banks must have a minimum initial capital of RON 25 million at the time of authorization.
- iii. banks for savings and loans granted in the residential field shall have at the time of authorization an initial capital level of at least RON 25 million; and
- iv. the minimum limit of own capital of a credit cooperative is set at RON 300,000.

15. Are there any requirements with respect to the leverage ratio?

The leverage ratio has been introduced as a tool to limit the risk of excessive leverage and may be considered a simplified indicator of solvency because it measures the volume of non-risk-weighted assets compared to Tier 1 own funds. The requirements for the leverage ratio for the Romanian banks are determined in accordance with CRR. To this end, a binding 3% leverage ratio requirement has been applicable to Romanian banks pursuant to the entry of the EU Regulation No. 876/2019 into force.

16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Romanian banks are subject to the EU Regulation No. 61/2015 as regards the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR). In this respect, credit institutions shall maintain a liquidity coverage ratio of at least 100%. This is equal to the ratio of its cash reserve to net cash outflows over 30 days. As regards the NSFR, EU Regulation No. 876/2019 stipulates that it should be expressed as a percentage and set at a minimum level of 100%, which indicates that an institution holds sufficient stable funding to meet its funding needs over a one-year horizon under both normal and stressed conditions.

17. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Credit institutions shall prepare annual financial statements and, where appropriate, consolidated annual financial statements. Moreover, each credit institution is required to publish annually, in addition to financial statements, any other information stipulated by the

regulations in force.

In terms of publication requirements, to ensure transparency and market discipline and without prejudice to the publication obligations incumbent upon credit institutions under CRR, the NBR may impose specific measures relating to:

- i. publication of the information referred to in Part VIII of CRR more frequently than annually, and setting publication deadlines;
- ii. the use of specific publication methods and forms other than financial statements.

18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

In addition to the consolidated supervision legal framework existing under CRR, Romanian banking legislation provides further details on the matter, recognising the NBR as consolidating supervisor, having the following duties:

- i. to coordinate the collection and dissemination of relevant or essential information in the normal course of business and in emergency situations;
- ii. to plan and coordinate surveillance activities in the normal course of business in cooperation with the competent authorities concerned;
- iii. to plan and coordinate supervisory activities, in cooperation with the relevant competent authorities and, if necessary, with the central banks of the European System of Central Banks, in the process of preparing for emergency situations, including in the event of adverse developments at the level of credit institutions, and financial markets, using, where possible, existing communication channels, in order to facilitate the management of such crisis situations.

19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Any legal entity or individual who intends to acquire, directly or indirectly, a qualified participation in the share capital of a Romanian credit institution shall previously notify in writing such intention to the NBR, mentioning the specific participation that it intends to acquire. CRR defines the concept of "qualifying holding," as meaning a direct or indirect participation in an

undertaking, which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking.

Any legal entity or individual that intends to increase a qualified participation in a credit institution to reach or exceed the levels of 20 percent, 33 percent, or 50 percent of the share capital or the voting rights of a Romanian credit institution, or in order that the latter becomes one of its subsidiaries, must notify such intention to the NBR. Within 60 business days as of receipt of such notification, the NBR may dispute or admit the applicant's request.

Moreover, The NBR must be informed if a person intends to waive a qualified participation or the percentage of its voting rights so that it represents less than 20 percent, 33 percent, or 50 percent of the share capital or of the voting rights of a Romanian credit institution or if the latter ceases to be one of its subsidiaries.

20. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

In order to ensure a prudent management of the credit institution involved in the proposed acquisition and taking into account the possible influence of the proposed acquirer on the credit institution, the NBR shall assess the adequacy of the quality of the proposed acquirer as well as its financial strength in relation to the proposed acquisition, based on the following cumulative criteria:

- i. the reputation of the potential acquirer, i.e. its integrity and professional competence;
- ii. the reputation, knowledge, skills and experience of any person who will exercise responsibilities of management and/or direction of the credit institution as a result of the proposed acquisition;
- iii. the financial strength of the potential acquirer, in particular in relation to the type of business currently conducted and the business expected to be carried on by the credit institution;
- iv. the credit institution's ability to comply with the prudential requirements set out in the regulations in force and to comply on an ongoing basis with these requirements and, in particular, with the requirement that the group to which it will belong be structured in such a way as to allow effective supervision, effective exchange of information between

- competent authorities and the allocation of responsibilities between those authorities;
- v. the existence of reasonable grounds to suspect that, in relation to the proposed acquisition, a criminal offence or attempted criminal offence of money laundering or terrorist financing is being or has been committed or that the proposed acquisition could increase such a risk.

21. Are there specific restrictions on foreign shareholdings in banks?

There are no restrictions dedicated specifically to foreign shareholdings in banks, the conditions for eligible owners of banks being applicable in all cases regardless of such criteria.

22. Is there a special regime for domestic and/or globally systemically important banks?

In order to identify systemic credit institutions, the NBR uses a methodology harmonized with the EBA Guidelines and in accordance with EU Directive 878/2019. Thus, the main set of criteria for granting the systemic importance score should consist of:

- i. size;
- ii. importance for the economy of the relevant Member State or the Union, capturing substitutability/financial institution infrastructure;
- iii. complexity — including the additional complexities from cross-border activity;
- iv. interconnectedness of the institution or (sub-)group with the financial system.

Based on its latest assessment, it has been established by the NBR that the Romanian banking system includes nine systemically important banks. Such banks are required to maintain additional capital (buffer) for systemic risk (O-SII) in 2023, representing between 0.5% and 2% of the risk exposure, as determined in accordance with CRR.

23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

In case of a violation of banking regulations, the following sanctions may be applied:

- i. written warning;

- ii. a public warning indicating the individual, credit institution, financial holding company or mixed financial holding company responsible and the offence committed;
- iii. the fine applicable to the legal entity, up to 10% of the total net turnover in the preceding financial year;
- iv. fine applicable to the individual, up to the equivalent in RON of EUR 5 million at the exchange rate of 17 July 2013;
- v. the withdrawal of the approval granted to members of the board of directors and managers or, as the case may be, members of the supervisory board and the management board of a credit institution, as well as to individuals appointed to manage certain structures;
- vi. a fine of up to twice the amount of the benefit obtained by committing the offence, if such can be determined.

Moreover, the following sanctioning measures may be applied at the same time as the above sanctions are imposed or independently of them:

- i. an order to cease the unlawful conduct of the individual or legal entity and to refrain from repeating it;
- ii. temporary prohibition of the exercise of functions in a credit institution by members of the board of directors and managers or, as the case may be, members of the supervisory board and the management board of a credit institution, individuals appointed to manage certain structures, as well as individuals appointed to manage the branches of the credit institution responsible for the offence;
- iii. withdrawal of the authorization granted to the credit institution;
- iv. suspension of the voting rights of the responsible shareholder(s).

24. What is the resolution regime for banks?

According to Law no. 312/2015 on the recovery and resolution of credit institutions and investment firms, transposing into national law EU Directive 59/2014 (BRR Directive), the NBR is the resolution authority for the banking sector, having responsibilities regarding planning and implementing resolution actions. Romanian credit institutions draw up recovery plans and are the subject of resolution plans in accordance with the provisions of the aforementioned legal framework.

In order to ensure the efficiency of potential resolution

actions, the NBR prepares resolution plans which include measures that could be taken, if needed, in accordance with the established resolution strategy.

25. How are client's assets and cash deposits protected?

The Deposit Guarantee Scheme Directive ("DGSD") has been fully transposed into Romanian law by means of Law No. 311/2015 on deposit guarantee schemes and the Bank Deposit Guarantee Fund. Pursuant to the local legal framework, for the purpose of guaranteeing deposits, the Bank Deposit Guarantee Fund operates in Romania as a statutory deposit guarantee scheme, while the NBR is the designated authority and the administrative authority competent to classify deposits as unavailable.

The local transposition contains several slight differences in comparison with the DGSD, such as with regard to the amount/compensation to be repaid. Also, the categories of deposits which should be protected above EUR 100,000, for a limited period of time, are apparently more restrictively regulated under the Romanian legislation than those included in the DGSD.

26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?

Romanian jurisdiction does know a bail-in tool, the use of which is not entirely discretionary. The bail-in tool covers all liabilities which are not expressly excluded by Law no. 312/2015 on the recovery and resolution of credit institutions and investment firms.

As a general rule, in order for the NBR to carry out resolution actions and use resolution tools, the following conditions must be cumulatively satisfied:

- i. the institution is failing or is likely to fail;
- ii. there are no alternative measures of the private sector/supervisory authority;
- iii. the resolution action is justified by reasons of public interest.

27. Is there a requirement for banks to hold gone concern capital ("TLAC")? Does the regime differentiate between different types of banks?

EU Regulation 876/2019 and EU Directive 879/2019 have updated the framework for the minimum requirement for

own funds and eligible liabilities (MREL) and have introduced the total loss-absorbing capacity (TLAC) standard in EU legislation. These provisions ensure that banks develop a strong and sufficient loss-absorbing and recapitalization capacity so that, in the event of a resolution, their losses are covered by the banks' shareholders and creditors and not financed by taxpayers' funds. Starting from 1 January 2022, the minimum required TLAC is 18% of risk-weighted assets and 6.75% of total exposure for global systemically important institutions based in the EU.

28. In your view, what are the recent trends in bank regulation in your jurisdiction?

Recent trends in local bank and financial services regulation should be viewed as part of the broader EU-level tendency of trying to keep up the pace with the developments and innovations brought by the FinTech sector. As Romanian banks continue to embrace innovation and digitalization, they are poised to adapt to changing market dynamics by introducing a diverse array of emerging technologies and solutions aimed at

enhancing customer experience, streamlining operations, and improving accessibility to financial services.

In particular, after an initial reluctance regarding cryptoassets, it is expected that further regulation will lead to the local market opening further in this respect.

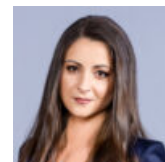
29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

The uncertainty with which the market is perceived in the current economic context may be seen as a threat to the success of the financial sector. This comes as a consequence of increasing inflation and financing costs after a prolonged health crisis and is currently under the impact of the financial distress caused in the region by political unrest and warfare. Furthermore, legislative amendments and regulatory reforms may also impact the operating environment for financial institutions, however the local industry has matured considerably over the years and should be capable of evolving in a more resilient manner.

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