

banking & capital market news

The new regulation in the field of non-banking financial institutions

On 24 April 2009 law no. 93/2009 regarding non-banking financial institutions, published in the Official Gazette of Romania part I, no. 259 of 21 April 2009 ('**Law 93**') came into force.

Clarifications and supplements in relation to the activities that may be carried out by the IFNs:

Law 93 confirms that non-banking financial institutions ("**IFNs**") may simultaneously carry out several lending activities, such as management of public funds granted by Government agencies as micro crediting funds, mortgage loans and micro financing, whereas the former legal regime did not permit the carrying out of all such activities by the same entity.

As a novelty, the IFNs are entitled:

- to issue and manage credit cards for their clients and to carry out activities related to the processing of transactions, other than consumer credit, whereas the former legislation provided the carrying out of such activities solely in connection to consumer credit;
- to carry out ancillary activities related to lending activities or to the operation of the entity as well as mandate operations and consultancy services, within the limits prescribed by the lending activities as registered in the IFNs object of activity;
- to carry out money exchange operations corresponding to the permitted activities (solely the IFNs registered in the general registry);
- in relation to entities within the group, the IFN may carry out non-financial mandate operations or commission operations corresponding to the activities required for the operation of the respective entities (solely the IFNs registered in the general registry).

New activities as per Law 93:

- the IFNs may secure contracted debts with own stock; and
- offer loans secured with own stock, in accordance with applicable company law.

Features of the lending business. Restrictions

In order to determine if a lending activity is carried out as a business the following shall be taken into consideration:

- the carrying out as an independent activity, oriented towards generating profits on a regular basis; and
- the presence of internal specialized structures in the lending field that manage and analyze such activity distinctively, on the basis of previously set-out rules and by taking into account the lending activity for the company's budget forecast or for the carrying out of estimates regarding the company's

integrated activity.

The carrying out of the lending business is solely permitted to credit institutions, credit and financial institutions headquartered in the European Union that have been *passport*ed in accordance with the procedure in Government Emergency Ordinance 99/2006 regarding credit institutions and capital adequacy, updated, (the "**GEO 99/2006**") and to IFNs that operate under Law 93.

As an exception, the acquisition of loan portfolios rated in the 'losses' category by loan classification regulations and portfolios assigned to secure the issue of securitization financial instruments may be carried out by entities other than the ones mentioned above.

Professional secrecy

Law 93 introduces a provision regarding professional secrecy in client relations, which is in many respects similar to the one introduced by GEO 99/2006. The persons involved in the administration, management or activity of the IFN shall equally keep any fact, data or information regarding the person, patrimony, activity, personal or business relationships of clients, contracts with clients or services rendered to clients which they learnt about during the exercise of their function strictly confidential, and are prohibited to utilize this information for personal use or in the benefit of a third party, directly or indirectly. This obligation persists even after the person ceases its activity within the IFN.

Employee statute

Law 93 brings light to the former regulation and eliminates the employment requirement that used to be applicable to the IFNs' management; their organization and operation shall be regulated by the general rules of Company Law no. 31/1990 republished, as subsequently amended.

Other provisions

The National Bank of Romania (the "**NBR**") shall be notified within 30 days as of the company's registration with the Trade Registry, as opposed to the former 60 day period.

The minimum registered capital of IFNs offering mortgage loans cannot be lower than the RON equivalent of EUR 3,000,000, while the minimum threshold for the other IFNs remains at EUR 200,000. Contributions in kind may not be accepted for the IFNs' constitution and increase of share capital.

Law 93 broadens the field of entities with which IFNs are allowed to merge, and further entitles NBR to elaborate the norms for the registration procedure of the resulting entity. Moreover, it is no longer mandatory to notify NBR prior to establishing a IFN by a merger of several entities of this kind. Chapter IV of the law, referring to merger and division, only concerns the IFNs already registered in the general register.

The IFNs are allowed to process personal data, in accordance to the provisions of Law no. 667/2001 on the protection of persons regarding the processing of personal data and free circulation of personal data.

Government Ordinance no. 51/1997 regarding leasing operations and leasing companies is modified by changing the name of Chapter V to 'The organization and operation of operational leasing companies', this amendment impacting upon the distinction between leasing companies, which will only be allowed to carry out operational leasing, but not financial leasing, activity which will be only permitted to IFNs.

Criminal offences

The new regulation incriminates certain illegal activities as criminal offences:

- carrying out lending activities as a business by a person, on its own or through an entity which is not registered with the NBR as an IFN;
- acquisition of portfolios with the violation the legal provisions in force;
- using a name specific to an IFN with the violation the legal provisions in force; and
- the action of an administrator, respectively a member of the supervision council, manager or employee of an IFN who deliberately and with foul intentions does not allow or hinders the exercise of the monitoring and surveillance competences of NBR.

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