



NEW REGULATION FOR THE AUTHORIZATION OF CREDIT INSTITUTIONS – BANKS' AUTHORIZATION PROCEDURE

1. Introduction

In follow-up to our summary regarding the preliminary evaluation for the banks' authorisation, as detailed in Regulation no. 12/2020 on the authorization of credit institutions and amendments pertaining to the same ("**Regulation 12/2020**"), we will shortly review below the information and documentation to be submitted by a bank in order to obtain authorisation from the National Bank of Romania (the "**NBR**").

2. General overview

The authorisation process of a bank includes two phases:

- (i) the approval for the establishment of the bank; and
- (ii) the authorisation for the operation of the same.

The operation authorisation of a bank will include the approvals for the members of the management body of the bank, for its financial auditor, as well as a confirmation of its significant shareholders.

In principle, the approval for the establishment of a bank does not guarantee the obtaining of the operation authorisation. Also, the occurrence of changes in the conditions under which the approval for the establishment was granted will trigger a new assessment by the NBR in the second phase of the authorisation process and may lead to the revocation of the decision to approve the establishment if the changes are contrary to the legal provisions or of Regulation 12/2020.

3. The establishment authorisation

A large set of information and documents must be submitted for the NBR review by a bank requiring the establishment approval, among which may be listed:

- (i) the authorisation request;
- (ii) a notarized power of attorney or a lawyer proxy executed by all direct shareholders of the bank empowering one or several persons to represent them in the relationship with the NBR;
- (iii) information on the name and logo the bank intends to use and on the address of the headquarters/office where the banking activity is to be undertaken;
- (iv) the draft of the articles of association of the bank subject to authorisation;
- (v) a list of the significant shareholders of the bank or of the first 20 shareholders by capital holdings, in case there are not qualified holdings¹;
- (vi) documents and information (such as, for example, the shareholding structure of the bank, information on the capital holding strategy) in relation to the ultimate beneficial owners of the bank;
- (vii) documents and information for each member of the management body of the bank (such as, for example, information pertaining to the expertise of the management members in the financial/banking sector and information pertaining to the good reputation and integrity thereof);
- (viii) an activity plan for at least the first 3 years of activity;
- (ix) a description of the management framework and of the internal control mechanisms of the bank subject to authorisation;
- (x) details for the identification of the financial auditor, *i.e.* the name, the address of the headquarters and the contact information;
- (xi) substantiation of the sources of financing funds.

As regards the capital expected for authorisation, it is represented by the minimum share capital and other eligible sources of capital. The level of the minimum share capital that must be subscribed and paid in order to obtain the operation authorisation is represented by the level of the initial capital or the estimated own funds required for the first year of activity, whichever of these values is higher, plus the loss related to the first year of activity. The amount up to the level of capital expected for authorisation may be covered

¹ According to Regulation no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, qualifying holding means a direct or indirect holding 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.

by other sources of eligible capital, such as: (i) loans, (ii) letters of guarantee, (iii) financial instruments issued or to be issued on financial markets.

4. The operation authorisation

The main documentation to be submitted to the NBR for the purpose of obtaining the operation authorisation includes the documents evidencing the establishment of the bank, as follows:

- (i) a notarized copy of the articles of association or an original copy whereby the subscription date of the share capital equals the certified date of the articles of association;
- (ii) a notarized copy of the registration certificate issued by the trade registry office and of the registration decision;
- (iii) documents certifying the amounts paid for the share capital of the requiring bank, as follows:
 - a letter from the depositary of funds for the share capital ascertaining the amount paid by each shareholder in a special bank account opened for such purpose and which is blocked until the bank's incorporation;
 - documents ascertaining that the amount paid by each shareholder in the account mentioned above has been transferred through a credit institution or financial institution subject to supervision by competent authorities of Member States or third states deemed as having systems equal to the ones of the European Union as regards the money laundering and the terrorism financing.
- (iv) if the case, information up to date concerning each member of the management body of the bank subject to authorisation;
- (v) if the case, up to date information for each of the direct and indirect significant shareholders or for the first 20 shareholders not having qualified holdings, as well as the ultimate beneficial owners, such as:
 - the most recent individual and consolidated financial situations, audited, as well as the most recent interim individual and consolidated financial situations prepared after the date of submission of the authorization request;
 - estimates of the balance sheet and of the profit and loss account for the next 3 years, at individual and consolidated level, signed by the shareholder;

- information on the significant shareholders, to the extent the ones initially presented have been amended.
- (vi) documentation regarding the financial auditor;
- (vii) communication on the existence of the own regulations concerning the performance of the activity, under the signature of persons delegated to exercise the management competences as manager or member of the directorate;
- (viii) the report of an auditor specialized in auditing IT systems, evidencing that the IT system to be implemented within the bank is adequate in relation to the specifics and volume of activity expected to be carried out in the first 3 years of activity.

One should take into account that the NBR may request, in writing, any additional information or documents if the submitted ones are not sufficient or relevant for performing the evaluation or if the documentation submitted has other deficiencies. It should be also mentioned that information may be also obtained by conducting professional interviews with the nominees as members of the management body of the bank.

5. Conclusions

Considering the above, a bank requiring authorisation has to carefully and thoroughly prepare the entire information and documentation to be submitted with the NBR. Moreover, as indicated by the provisions of Regulation 12/2020, it is advisable that in anticipation of the formal authorisation request, a preliminary meeting is requested to the NBR for the presentation and clarification of the elements related to the envisaged project, particularly if such project is of a special complexity.

This article contains general information and should not be considered as legal advice.



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