

## banking & finance - legal changes published in December 2020

**National Bank of Romania Regulation no. 11/2020 for amending and supplementing of the National Bank of Romania Regulation no. 5/2013 on prudential requirements for credit institutions**, published in the Official Gazette, Part I no. 1296 as of 28 December 2020, in force as of 28 December 2020.

The new Regulation mainly ensures the transposition of the provisions of the Directive 878/2019/EU - CRD V, implementing the meaning of certain expressions contained in the Regulation (EU) no. 575/2013, with additions, and implements, by normative provisions, the provisions contained in the European Banking Authority (EBA) Guide regarding the valuation of the adequacy of the members of the management body and of the persons holding key positions - EBA/GL/2017/12, in the EBA Guide regarding the activity management framework - EBA/GL/2017/11, in the EBA Guide on credit risk management practices of credit institutions and accounting for expected credit losses (EBA/GL/2017/06) and in the EBA Guide on managing interest rate risk associated with activities outside the trading book (EBA/GL/2018/02).

New provisions are introduced regarding the following:

- the assessment of the adequacy of the members of the management body and of the persons holding key positions;

Persons in office at the date of entry into force of this Regulation shall be required to comply with the new adequacy requirements within one year.

The term of one year also applies for compliance with the provisions regarding the number of independent members within the management body in its supervisory function, determined according to the principle of proportionality.

- the implementation of the internal control framework, the risk management framework, the control functions and the conditions for it to be considered independent; (ii) the risk management function and its roles, (iii) the establishment of the compliance function (the compliance function coordinator must be a member of senior management); (iii) the internal audit function; (iv) business continuity management framework (possibility to set up a specific independent business continuity function);
- the internal process of assessing the adequacy of capital and risks liquidity; liquidity and financing risks; operational risk and reputational risk; capital and liquidity planning;

Credit institutions shall develop or adapt, as appropriate, policies, procedures, mechanisms, processes and practices regarding the business management framework, the internal capital adequacy and liquidity assessment process and crisis simulations, within 6 months of entry into force of this Regulation.

For reporting purposes according to the new requirements of art. 6811 alin. (3) - Annex 10, the first report to the National Bank of Romania - Supervision Department is sent for the reference date December 31, 2020.

- active involvement of the management body; implementing effective policies on conflicts of interest; implementation of appropriate policies and procedures for internal reporting by staff of current or potential breaches of regulatory requirements or internal requirements, through a specific independent and autonomous channel (independent internal warning procedures).

**National Bank of Romania Regulation no. 12/2020 on the authorization of credit institutions and changes in their situation**, published in the Official Gazette, Part I no. 1291 of December 24, 2020, in force as of December 24, 2020.

The new Regulation implements, by normative provisions, the provisions contained in the Joint Guidance issued by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority on the prudential assessment of acquisitions and the increase of qualified holdings in the financial sector (JC/GL/2016/01).

The new Regulation introduces provisions regarding, inter alia:

- the procedure, documentation and conditions regarding the authorization of banks, savings and lending banks in the housing field, mortgage credit banks and credit cooperative organizations, Romanian legal entities, generically called credit institutions, as well as Romanian branches of credit institutions from third countries;
- the conditions under which changes can be made in the situation of the above mentioned entities, in order to ensure prudential supervision;
- the procedure and conditions for prior approval of the merger and division operations in which the above mentioned entities are involved;
- the conditions, requirements and documentation regarding the authorization of the credit-bridge institutions;
- the procedure, documentation and conditions for notifying a proposed acquisition in the situation of implementing the business sale instrument, according to art. 223 para. (1) lit. a) of Law no. 312/2015 on the recovery and resolution of credit institutions and investment firms, as well as for the amendment and completion of some normative acts in the financial field, hereinafter referred to as Law no. 312/2015, of the institution-bridge resolution instrument, according to art. 239 para. (1) lit. a) of Law no. 312/2015, and of the internal recapitalization instrument of the same law.

The new Regulation repeals the following normative acts:

- NBR Regulation no. 11/2007 on the authorization of credit institutions, Romanian legal entities, and of the Romanian branches of credit institutions from third countries;
- NBR Regulation no. 6/2008 regarding the changes in the situation of credit institutions, Romanian legal entities, and of the Romanian branches of credit institutions from third countries;
- NBR norms no. 5/2000 on the merger and division of banks;
- NBR norms no. 6/2003 regarding the merger and division of credit cooperatives;
- NBR Regulation no. 1/2007 on the register of credit institutions.