

# Financial Services Alert

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### **New rules governing loan and loan receivables portfolio transfers and the debt collection activity in Romania**

On 20 September 2016, the Emergency Government Ordinance no. 52 as of 14 September 2016 (the "New EGO") on credit agreements for consumers relating to immovable property and on the amendment of the Emergency Government Ordinance no. 50/2010 on credit agreements for consumers was published in the Official Gazette and, on 30 September 2016, it entered into force. We have summarised for you some of the key implications of the new legislation concerning loan and loan receivables portfolio transfers and debt collection activities.

## Major changes in the legal framework for loan portfolio transfers and debt collection activities in Romania

The New EGO transposes into the national legislation the Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property, as well as amends certain provisions of the Emergency Government Ordinance no. 50/2010 on credit agreements for consumers, as subsequently amended ("EGO 50/2010") and of Law no. 93/2009 on non-banking financial institutions, as subsequently amended ("NFIs Law").

This legal alert deals with rules regarding the assignment of Credits relating to Immovable Assets (as defined below) and the related receivables as well as credits under EGO 50/2010 and the related receivables and the debt collection activity.

### **Which types of loan agreements are covered by the new legal framework?**

The New EGO regulates mainly the rights and the obligations in relation to consumer loans regarding the sale / purchase of real estate, loans secured with mortgages over real estate and loans involving otherwise rights related to real estate (all being "**Credits relating to Immovable Assets**").

On the one hand, the New EGO expressly states that its provisions (including those applicable to the assignment of loan agreements and/or receivables) do not apply to the agreements which are ongoing as at 30 September 2016. On the other hand, the New EGO expressly states which certain specific amendments to the EGO 50/2010 do not apply to credit agreements ongoing as at 30 September 2016. Among others, the EGO 50/2010 is amended so that it does not apply to Credits relating to Immovable Assets.

### **Which types of entities may purchase credit agreements /receivables relating to immovable assets under the new legal framework?**

#### **Assignment of loan agreements relating to immovable assets**

The acquisition of Credits relating to Immovable Assets and/or the related receivables (performing / non-performing) can be performed only by "Creditors", which are defined as legal entities, including branches of foreign credit institutions and financial institutions which grant Credits relating to Immovable Assets in Romania, in accordance with EGO no. 99/2006 regarding credit institutions and capital adequacy, NFIs Law or in accordance with the New EGO, during the course of their business – e.g., credit institutions, non-banking financial institutions ("NFIs"), other than "non-financial creditors" (i.e. certain NFIs offering credits from public funds or on the basis of an intergovernmental agreements registered with the Entry Register held by the National Bank of Romania and real estate developers granting Credits relating to Immovable Assets in accordance with the New EGO).

#### **Assignment of loan receivables deriving from performing loans related to immovable assets**

The acquisition of receivables related to performing Credits relating to Immovable Assets can be performed by entities qualifying as Creditors as well as by Securitisation Vehicles (defined by the law as entities whose object of activity is the issuance of assets backed securities on the basis of a receivables portfolio, in accordance with Law no. 31/2006 regarding securitisation of receivables).

#### **Assignment of loan receivables deriving from non-performing loans related to immovable assets**

The acquisition of receivables related to non-performing Credits relating to Immovable Assets for which the creditor has accelerated the loan or has initiated an enforcement procedure against the consumer can be performed by Creditors, Securitisation Vehicles and by Debt collection companies. "Non-performing credits" are defined to include credits in relation to which there are payment delays (capital and/or interest) of at least 90 days.

### **Which types of entities may purchase credit agreements and/or the related receivables under EGO 50/2010?**

Similar rules to the above apply under EGO 50/2010 in relation to credit agreements and/or the related receivables. As such:

- Creditors may acquire credit agreements and related receivables. Notably, the scope of creditors is different under the EGO 50/2010 and includes all entities granting credits in accordance with the applicable legislation;
- entities whose object of activity is the issuance of securitised financial instruments on the basis of a receivables portfolio, in accordance with Law no. 31/2006 regarding securitisation of receivables, may acquire receivables; and
- debt collection entities may acquire receivables related to non-performing credits. However, the non-performing credit is not defined under the EGO 50/2010, as opposed to the New Ordinance.

In addition, under both the New EGO and EGO 50/2010, all assignees must have either a registered office, a branch or a representative in Romania, in order to settle any potential litigation and to be held liable for administrative or criminal liability, in front of the public authorities.

### **Debt collection activity. Debt collection entities**

Under both the New EGO and EGO 50/2010 **the debt collection activity** may be carried out by either (a) creditors (as described above, however noting the different scope under each EGO) or (b) debt collection entities if the latter are registered with the National Authority for Consumer Protection ("NACP").

Carrying out debt collection activity after 1 January 2017 without being registered with NACP is a misdemeanour and may be punishable under the New EGO by fines ranging up to RON 100,000 (approx. EUR 22,000) while under the EGO 50/2010 by fines of up to RON 80,000 (approx. EUR 17,800); certain complementary sanctions may be applied.

**Under both the New EGO and EGO 50/2010 a debt collection entity** is a **legal entity**, other than a "creditor" (please see above the different scope) which carries out debt collection activity **and/or** acquires rights as assignee of receivables deriving from non-performing consumer credit agreements.

**Under both the New EGO and EGO 50/2010 debt collection entities** shall comply with the following statutory conditions:

- **Share capital:** Minimum subscribed and paid-in share capital is RON 500,000 (approx. EUR 111,000);
- **Registration formalities:** Starting with 1 January 2017, entities may carry out debt collection activities only if they are registered with the NACP. For such registration, entities must submit an application and meet certain conditions, including:
  - have either a registered office, a branch or a representative in Romania, in order to settle any potential litigation and to be held liable for administrative or criminal liability, in front of the public authorities;
  - good reputation of the persons responsible for management and administration;

- the remuneration and motivation of staff shall not depend exclusively on objectives regarding the debt collection or the collected amounts.

In addition to the above, under the EGO 50/2010, the persons responsible for management and administration of the debt collection entity should have the knowledge and experience adequate to the nature, extent and complexity of the envisaged business.

The above conditions under the New EGO may be updated through an order of NACP's president. In addition, under both the New EGO and EGO 50/2010 the documentation and the necessary information for registration shall be established through an order of NACP's president, to be published in the Official Gazette by the end of 2016.

### **Obligations imposed on creditors prior to assignment**

Under the New EGO, the creditor must take all necessary measures to prevent (i) the acceleration of the loan, (ii) the initiation of enforcement proceedings and (iii) the assignment of overdue receivables to debt collection entities, and should be able to evidence such measures.

Separately, the following time periods should be considered by creditors when setting the timeline of the assignment process:

#### **Under the New EGO:**

- 60 consecutive days of delay – the creditor will make all endeavours to provide the debtor with suitable solutions for the payment of the outstanding debt (e.g., extend the duration of the credit agreement; change the type of the credit agreement; restructure the payment of interest; credit conversion);
- 6-month period prior to the acceleration of the loan or the initiation of the enforcement procedures – at the consumer's request, the creditor should grant the debtor the right to sell directly the mortgaged asset, provided that certain conditions are met;
- at least 30 days prior to the acceleration of the loan – the creditor will notify the debtor the intention to accelerate the loan;
- at least 30 days prior to the assignment of the receivables from non-performing credit agreements towards debt collection entities - the creditor will notify the debtor the intention to assign the receivables;
- at least 30 days prior to the initiation of the enforcement procedures – the creditor will notify the debtor the intention to initiate the enforcement procedures.

#### **Under both the New EGO and EGO 50/2010:**

- after 90 consecutive days of delay – the creditor may accelerate the loan;
- within a 3 months after the acceleration of the loan – the creditor cannot initiate enforcement procedures, unless the debtor requests the reduction of such period;

In addition, under both the New EGO and EGO 50/2010 certain limitations in relation to the interest payable by the consumer under the New EGO are relevant and they should be considered by the assignors and/or assignees in the negotiation of the representations and warranties for the assigned receivables or the pricing:

- default interest cannot be applied to the credit balance or the total amount of the loan or to the total amount payable by the consumer;
- the amount of default interest cannot exceed the outstanding principal;
- during enforcement proceedings no interest or default interest may be charged; and
- the creditor may no longer collect default interest if has not initiated the enforcement procedures within the maximum statutory 6 months after

the acceleration of the loan. However, under the New EGO such period may be reduced if the creditor and the debtor have concluded a written agreement in this respect, at the request of the debtor.

### **Implications concerning consequences of assignments**

We highlight the express provisions under the New EGO stating that the credit agreements and the related security agreements, concluded to the creditors' request will cease to be writs of execution if the assignment is made towards a debt collection entity. Consequential difficulties and/or delays in the enforcement procedures should be considered by debt collection entities.

Under both the New EGO and EGO 50/2010 the debt collection entity is entitled only to the legal default interest and may not charge commissions or other type of interest or costs relating to the debt collection activity (other than the enforcement costs).

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)

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