

Legal Alert

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New rules governing the activity of the real estate developers and their reporting obligations

By way of background, on 30 September 2016, the Emergency Government Ordinance no. 52 as of 14 September 2016 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 entered into force, regulating, among other aspects, the activity and the registration with the National Authority for Consumer Protection of the real estate developers.



New rules governing the activity of the real estate developers and their reporting obligations

Who are the real estate developers?

Under the Emergency Government Ordinance no. 52 as of 14 September 2016 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 ("**EGO 52/2016**"), the real estate developers are the legal entities that carry out all real estate operations for the construction, finalizing and handing-over to the beneficiaries of residential immovable property, as well as the coordination of the necessary financing sources for the realisation of such operations (the "**Real Estate Developers**").

Financing activities

Starting with 1 January 2017, the Real Estate Developers may grant credits if they are registered with the National Authority for Consumer Protection ("**NACP**"). Under the EGO 52/2016, the credits may result from one of the following:

- credit agreements for consumers regarding the sale and, respectively, the purchase of immovable assets;
- credit agreements secured with mortgages over real estate; and
- credit agreements implying a right related to an immovable asset.

What are the conditions for the registration of the Real Estate Developers with the NACP?

Under EGO 52/2016, the Real Estate Developers must 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 of the activity; and
- their personnel have adequate knowledge and experience for the nature, scope and complexity of the envisaged activity, meeting the minimal specific requirements under Annex no. 3 of the EGO 52/2016, such as relevant knowledge of various areas (e.g., credit products and the ancillary services usually attached to the credit agreements; the applicable legislation to credit agreements concluded with consumers and to consumer protection; acquisition of immovable assets; land book registries; evaluation of the creditworthiness of the consumer; financial and economic domains).

What are the necessary documents for registration with NACP of the Real Estate Developers?

Together with the application for the registration with the NACP, the Real Estate Developers must also provide the documents ascertaining the conditions for such registration. Such documents have been detailed in the order of the President of the NACP no. 4 as of 11 January 2017 regarding the documents and the information necessary for registration as well as the modality and terms for the reporting obligations of the real estate developers (the "**Order**") and include:

- the procedure for granting credits;
- certified copies of:
 - the certificate of registration;
 - the ascertaining certificate issued by the Trade Registry, including the data of the company;
 - the ascertaining certificate issued in accordance with article 17¹ of the Law no. 359/2004 on the simplification of formalities regarding the registration in the trade registry of natural persons, family associations and legal entities, their fiscal registration and authorization for functioning of legal entities;
 - the articles of association;

- evidence that the company is authorized as an operator for personal data processing, in accordance with Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data;
- criminal record(s) for the persons in charge with the administration and the management of the company; and
- affidavit of the company's administrator(s) ascertaining that the employees that interact with clients for granting of credits have adequate knowledge and experience in consideration of the nature, scope and complexity of the envisaged activity, meeting the minimal specific requirements under Annex no. 3 of the EGO 52/2016.

What are the reporting obligations of the Real Estate Developers?

There are two types of reporting obligations for the Real Estate Developers:

- an (one - off) reporting at the time of the registration with NACP (applicable to the companies that carried the activity envisaged for real estate developers by EGO 52/2016 at the time when the EGO 52/2016 was enacted (i.e. 30 September 2016) or at the time of filling the request for registration) and includes the following information:
 - the number of ongoing credit agreements concluded with consumers; and
 - the aggregate amount payable by the consumer in accordance with such agreements.
- an annual reporting (reporting period 1 January – 1 March) after registration with NACP, which includes the following information:
 - the number of credit agreements concluded with consumer in the previous year, as well as the total payable value for the consumer in accordance with such agreements;
 - the currency in which the credits are granted; and
 - the total cost of the credit for the consumer.

For further questions regarding the aspects mentioned in this alert, please contact us.

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