

Tax & Legal Weekly Alert

13 – 17 January 2014

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- the entry into force of the Government’s Emergency Ordinance no. 113/2013 substantially amending the Government’s Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy (“**G.E.O. 99/2006**”) – [page 3](#).



Tax Forms

Several tax forms have been amended

NAFA orders regarding the approval of certain tax forms have been published. Specifically, the following forms have been amended:

- Form 010 "Statement for fiscal registration / Amending statement for legal entities, associations and other entities without legal personality";
- Form 012 „Notification regarding the change of the annual/quarterly system for reporting and paying the corporate income tax“;
- Form 013 "Statement for fiscal registration / Amending statement for non-resident taxpayers that perform activities in Romania through one or several permanent establishments“.

The new forms will be available for download from the NAFA website at the following links:

- [Form 010](#).
- [Form 012](#).
- [Form 013](#).

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Financial Services Industry

Legislative amendments for the Financial Services Industry

The beginning of 2014 brought a series of changes to the specific legislation governing the financial services industry, of which the most important are:

- the direct application, as of the 1 January 2014, of the EU **Regulation no. 575/2013** on prudential requirements for credit institutions and investment firms (the “EU Regulation 575/2013”) and the repeal, by means of the National Bank of Romania (“NBR”) Regulation no. 7/2013, of a considerable number of NBR Orders that regulated the treatment of credit risk, large exposures, the supervision on consolidated basis and the minimum capital requirements and own funds of credit institutions and investment firms, all the above being regulated, as of 1 January 2014, by the EU Regulation 575/2013; and
- the entry into force of the Government’s Emergency Ordinance no. 113/2013 substantially amending the Government’s Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy (“**G.E.O. 99/2006**”).

The EU Regulation 575/2013 is directly applicable in Romania and regulates a series of important aspects which were, until now, regulated by the G.E.O. 99/2006; consequently, the equivalent provisions from the latter normative document were correspondingly repealed.

In addition to the above, the G.E.O. 99/2006 also underwent the following main amendments:

A. Amendments regarding the measures which NBR may undertake:

- NBR may withdraw the authorization of a credit institution:
 - (i) when there are elements that lead to the conclusion that in the short term a credit institution can no longer meet its obligations towards its creditors and, in particular, when it is no longer able to ensure the preservation of assets that have been entrusted to it by its clients;
 - (ii) when the credit institution does not fulfill the prudential requirements provided by the EU Regulation 575/2013 regarding capital, large exposures and liquidity, as well as when the credit institution does not fulfill the obligation to have at its disposal a higher level of funds than the regular requirement, which NBR may impose in exceptional conditions.
- the regulation of NBR’s ability to establish specific measures for a credit institution regarding the publication of information regarding its activity, namely publishing such information more than once a year, the establishment of certain publication terms or the utilization of certain specific forms for the publication other than the information relating to financial situations;
- the introduction of certain objective criteria which NBR has to consider when establishing sanctions (e.g. criteria for evaluating the gravity of the act that is to be sanctioned, the damages caused to third parties, if they can be determined etc.);
- change of the modality for establishing the amount of fines, namely up to 10% of the net value of the turnover obtained in the previous fiscal year, for a legal person, and up to the equivalent in lei of EUR 5 million at the exchange rate from 17 July 2013, for a natural person;

- the creation of the possibility that, in the event of emergency situations related to a credit institution from an EU member state, NBR is entitled to take any precautionary measures necessary in order to ensure protection against financial instability that would seriously threaten the collective interests of depositors, investors and other clients in Romania of the respective credit institution in relation to the activities carried out by the respective credit institution in Romania and until the necessary measures are taken by the competent authority of the Member State of origin or reorganization measures are put in place. Similarly, in emergency situations, until the NBR implements appropriate measures or measures of special management or stabilization, the competent authority of the host Member State in which a Romanian credit institution operates is allowed to take preventive measures necessary to ensure protection against financial instability that would seriously threaten the collective interests of depositors, investors and other clients of the respective Romanian credit institution from the Member State.

B. Regulations regarding financial investment services entities and the Financial Supervisory Authority:

- detailing the powers and the instruments for prudential supervision of credit institutions and, respectively, of financial investment services companies;
- the express provision that NBR is the competent authority for the regulation and prudential supervision of credit institutions; while the competent authority for regulation and prudential supervision of financial investment services entities is the Financial Supervisory Authority;
- a much more rigorous regulation in regards to collaboration between NBR, the Financial Supervisory Authority and the European Banking Authority, as regards prudential supervision;
- the express regulation of the credit institutions’ right to provide financial investment services, as these are regulated by Law no. 297/2004 regarding the capital markets;
- the regulation of the requirements for risk management and supervision of financial services entities and investment management companies whose object of business is the management of individual investment portfolios, in a similar manner to the one specific to credit institutions; in this regard, the present form of G.E.O. 99/2006 regulates in a similar manner to the one specific for NBR the status and the prerogatives of the Financial Supervisory Authority in relation to these entities.

C. Own funds:

- the establishment of credit institutions’ obligation to hold, as own funds and in addition to the minimum threshold of own funds generally applicable, certain capital buffers imposed by NBR at the recommendation of the inter-institutional structure of coordination in the field of macro-prudential supervision of the national financial system - respectively the capital maintenance buffer, the countercyclical capital buffer, the capital buffer for systemic risk and the capital buffer related to the systemic importance of the respective credit institution;
- the elimination of NBR’s possibility to grant credit institutions a term for remedying the situation in which a credit institution’s funds are lower than the minimum level of the initial capital requirements provided for authorization.

D. Obligations regarding recovery plans and resolution:

- the establishment of credit institutions' obligation to develop and have available for implementation certain recovery plans for restoring their financial situation in the case of significant deterioration, as well as "*resolution plan*", by which it is understood the reorganization of a credit institution in difficulty with the aim to ensure the continuity of its essential functions for the economy, financial stability and, where appropriate, restoration of viability for at least part of the credit institution; in this regard, certain new notions have been created, such as "*institution of systemic importance*", which is an institution whose bankruptcy or malfunction might trigger "*systemic risk*", meaning the risk of disrupting the entire financial system.

E. Regulations regarding personnel:

- the regulation governing NBR's obligation to report to the European Banking Authority the collected information on the number of the persons per credit institution who are paid at least EUR 1 million or equivalent in a financial year;
- the increase of the discretionary manner in which NBR may grant approval for an individual member who is part of a management body of a credit institution to hold an additional mandate in a non-executive function.

F. Other amendments:

- the amendment of the mandatory identification data regarding a credit institution, namely the introduction of the obligation to mention the name of the deposit guarantee scheme formally recognized by the participating credit institution, in any form of publicity issued by it, in all the information and/or pre-contractual documents and in the agreements and correspondence referring to deposits;
- the elimination of the provisions regulating the credit institutions' obligation to conduct transactions with its customers only on a contractual basis, acting in a prudent manner and in compliance with the specific consumer protection legislation, as well as the elimination of the provisions forbidding credit institutions to claim penalties, commissions or other costs as well as bank charges from customers' interest, if such a payment is not stipulated in the agreement;
- the repeal of the provisions that sanctioned the interdiction of credit institutions to condition the granting of loans or the provision of other products/services on the obligation of clients to buy shares or other equity securities / financial instruments issued by the credit institution or by another entity part of the group to which the credit institution belongs to or by the acceptance on behalf of the client of other products/services offered by the credit institution or by an entity part of its group, which have no connection to the crediting operation or with the solicited product/service;
- also repealed was the provision according to which the temporary holding of shares (in a financial assistance or reorganization operation or in the normal course of subscription action or the temporary holding of shares in the name of the credit institution, but on behalf of another person) does not constitute qualified participation;
- the regulation governing the obligation for credit institutions that maintain a website to explain on the respective website the manner in which they comply with the requirements regarding the administration and remuneration framework.

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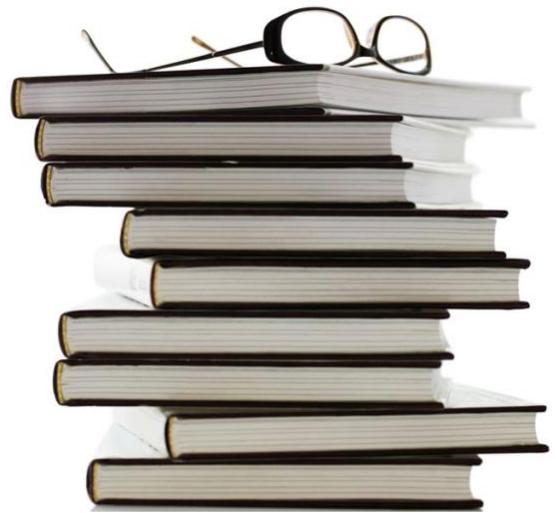
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The Government's Emergency Ordinance no. 113/2013 regarding some budgetary measures and which amends and supplements the Government's Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy was published in the National Gazette of Romania no. 830/2013, on 12 December 2013; while the National Bank of Romania's Regulation no. 7/2013 repealing certain normative acts was published in the National Gazette of Romania no. 837/2013 on 24 December 2013. Both documents may be consulted on the National Gazette of Romania's website and entered into force on 1 January 2014.

For further information please contact us at:
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