



## **NEW REGULATION FOR THE AUTHORIZATION OF CREDIT INSTITUTIONS – PRELIMINARY REQUIREMENTS FOR AUTHORIZATION**

### **1. Introduction**

Regulation no. 12 of December 18, 2020 on the authorization of credit institutions and amendments pertaining to the same (the “**Regulation 12/2020**”) issued by the National Bank of Romania (the “**NBR**”) was published in the Official Gazette no. 1291 as of December 2020 and is applicable starting with the same date.

Regulation 12/2020 brings a number of updates as regards the authorization procedure that needs to be followed by credit institutions, including the general requirements that must be met in order to obtain authorization.

We have summarized below some of the most important aspects in relation to the preliminary evaluation to be performed by the NBR.

### **2. General requirements**

Regulation 12/2020 sets forth general requirements which have to be met by credit institutions requiring authorization, particularly in relation to the name, headquarters, business object, shareholding, members of the management body, financial audit, financial viability, etc.

We will further focus on the evaluation criteria to be applied by the NBR while assessing with respect to the shareholders of credit institutions.

### **3. Shareholders’ evaluation**

Regulation 12/2020 imposes a series of requirements to be met by shareholders of credit institutions in order to achieve authorization.

An important novelty is the fact that in order to be authorized by the NBR, a credit institution will currently need to provide information not only pertaining to its significant shareholders<sup>1</sup>, but also to the ultimate beneficial owners.

Significant shareholders include any shareholder that directly or indirectly holds at least 10% of the credit institution's share capital or at least 10% of the voting rights.

As regards ultimate beneficial owners of the credit institution, the same are considered the natural person(s) who own(s) or ultimately control(s) a credit institution, by exercising direct or indirect ownership of a sufficient percentage of shares or voting rights or by participating in the capital of that bank, including by exercising control by means other than a listed company subject to disclosure requirements, in accordance with European Union law or equivalent international standards which ensure the proper transparency of information on the exercise of property rights.

In order to be authorized by the NBR, a credit institution must identify all significant shareholders and ultimate beneficial owners, along with their direct or indirect holdings in the share capital and provide the relevant information to the NBR.

All significant shareholders will be subject to an evaluation by the NBR, as part of the authorization process. Such evaluation shall be made taking into account several criteria, such as (i) the reputation, (ii) financial soundness, (iii) compliance of the credit institution with prudential requirements and (iv) the suspicions related to the money laundering and the terrorism financing.

### **3.1. The reputation of significant shareholders**

Assessing the good reputation of significant shareholders is based the following key components:

- (i) integrity of the significant shareholders;
- (ii) the professional competency of the significant shareholders.

In case of legal entities that are significant shareholders of the credit institution subject to authorization, the integrity requirements must be met not only by such legal entity, but also by the members of its management bodies and by its ultimate beneficial owners.

In order to conduct the evaluation, the NBR will analyse a comprehensive set of information and documents pertaining to each significant shareholder, including regarding the following, amongst others:

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<sup>1</sup> In case there are no significant participations, the NBR will have to assess the criteria to be met with respect to the first twenty greater shareholders or, if the credit institution has less than twenty shareholders, with respect to all of them.

- (i) any deeds registered in the criminal records of such significant shareholders;
- (ii) any aggravating or mitigating circumstances in which an offense or contravention committed by the significant shareholders occurred, if the case;
- (iii) the relevance of any criminal or administrative measures imposed on significant shareholders on the position they will hold in the credit institution.

Potential convictions related to criminal offenses committed by the significant shareholders are important factors considered in evaluating the integrity thereof, especially those related to offenses under regulations governing banking and financial institutions, money laundering, corruption or companies, just to name a few.

In addition to the above, the NBR also analyses a number of factors pertaining to the fairness of significant shareholders in the business conducted in the last ten years, such as, for example:

- (i) any indication that the shareholder has not been transparent, open and cooperative with supervisory authorities similar to the NBR;
- (ii) reasons for which the shareholder has been dismissed from work or any revocation, on grounds of disregard for trust, from a fiduciary or similar relationship.

As regards the professional competency of significant shareholders, NBR will evaluate the shareholders' managerial competence and technical competence in the field of financial activities carried out by credit institutions.

In case of legal entities that are significant shareholders of the credit institution subject to authorization, the professional competency requirements must be met not only by such legal entity, but also by the members of its management bodies.

In assessing the professional competency requirements of significant shareholders, the NBR will assess the minimum experience of five years from the last seven years of the shareholder in:

- (i) the acquisition and management of participations of at least 10% in commercial entities;
- (ii) exercising control over credit institutions or financial institutions and/or in managing and/or leading the activities thereof.

### **3.2. Financial soundness of significant shareholders**

In addition to the integrity and professional competency requirements, the NBR will also evaluate the financial soundness of the credit institution's significant shareholders.

In assessing the financial soundness of the significant shareholders of the credit institution subject to authorization, the NBR will analyse elements such as:

- (i) the significant shareholders' capacity to finance their participation and to maintain a solid financial structure of the credit institution;
- (ii) the significant shareholders' capacity to ensure the prudent and health management of the credit institution for the foreseeable future;
- (iii) whether the financing mechanisms used by the significant shareholders to finance their participations in the credit institution's capital or whether the existing financial relationships between the significant shareholders and the credit institution may generate conflicts of interest that could destabilize the financial structure of the credit institution.

### **3.3. Compliance of the credit institution with prudential requirements**

Another important element in the authorization process of a credit institution is evaluating its compliance with prudential requirements.

The NBR will evaluate a number of technical aspects, such as, for example:

- (i) the evaluation of the adequacy of the quality of the significant shareholders should consider if the bank will be able to comply with the prudential requirements, as provided in the applicable regulations;
- (ii) that the group that the credit institution belongs to has a structure that does not prevent the exercise of effective supervision by the competent authorities and the efficient exchange of information with the competent authorities.

The evaluation of a significant shareholder must consider its capacity to sustain an adequate organization of the bank within the group. The bank, as well as the group must have a framework of the activity management clear and transparent, as well as an adequate organization, including an efficient internal control system and independent control functions.

### **3.4. Suspicions regarding money laundering or the terrorism financing**

The capacity of significant shareholder shall not be deemed adequate if:

- (i) the NBR knows or suspects or has reasonable reasons to suspect that the shareholder is or has been involved in operations of money laundering or in such attempts;

- (ii) the NBR knows or suspects or suspects or has reasonable reasons to suspect that the shareholder is or has been involved in acts of terrorism or in the terrorism financing, specifically if it is subject to financial sanctions; or
- (iii) the proposed acquisition increases the risk of money laundering or terrorism financing.

NBR is also evaluating information related to the source of the funds to be used for the proposed acquisition, including the activity that generated the funds, as well as the means by which the same have been transferred.

#### **4. Conclusions**

Seen the above, it is clear that credit institutions prospecting the entry on the Romanian market will need to conduct a complex assessment in order to determine whether they meet the criteria subject to the NBR's evaluation.

This implies a multilateral analysis of various elements pertaining to the envisioned shareholders, ultimate beneficial owners, financial soundness, compliance with prudential requirements and suspicions regarding money laundering and terrorism financing.

For this purpose, in order to mitigate the risk of delays in the authorization procedure, on which we will touch on in a subsequent article, it is important for the credit institution to undertake an in-depth analysis concerning the criteria of the preliminary evaluation mentioned above and potential scenarios pertaining to the structure of the future credit institution. Benefiting from the assistance of consultants (such as attorneys, tax consultants and financial auditors) experienced in this type of operations could maximize the chances of a smooth authorization procedure.

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



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