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HARD CURRENCY OPERATIONS

In order to consolidate and update the numerous amendments regarding the former Currency Regulation no. 3/1997, the National Bank of Romania ("NBR") has passed the Regulation no. 1/2004 concerning performance of hard currency operations ("Regulation"). The enactment was published in the Official Gazette No. 117 of February 10th, 2004 and shall come into force after 60 days of its publishing.

A brief account of the new elements introduced by the new Regulation may be found below.

Current and capital currency operations

According to the new Regulation, the current currency operations shall be performed using hard currency and national currency (ROL), without the NBR authorization.

As a general rule, the capital currency operations, including those related to the external public debt, shall be performed in hard currency and national currency (ROL), without authorization.

However, several exceptions to this rule are set by the Annexes no. 3 and 4 to the Regulation No. 1/2004, including the following operations that still require NBR authorization:

- operations with financial instruments currently traded on the monetary market;

- operations into current accounts opened abroad by residents at credit institutions and other similar institutions, both in national and hard currency;
- operations into deposit accounts opened in Romania at credit institutions in national currency by non-residents, as well as operations into deposit accounts opened abroad by residents at credit institutions and other such institutions, both in national and foreign currency.

The new Regulation confirms the previous tendency to eliminate the authorization for the various types of loans required by the former Currency Regulation no. 3/1997, as at present, these are not anymore subject to prior authorization procedure.

Operations in convertible currency performed on the Romanian territory by residents

In comparison to the previous provisions, the new Regulation sets several operations in convertible hard currency that may be performed by residents on the Romanian territory without any special authorizations, such as:

- direct payments and cashing resulting from external trade operations, under the conditions mentioned by art. 8 par. 2 letter b) of the Regulation, other external services agreements, loan services agreements etc.;
- payments and cashing under subcontractor agreements resulting from international economic cooperation agreements, export agreements regarding complex works

and products with long production cycle;

- operations under international financing programmes (including PHARE, SAPARD, ISPA, etc);
- operations performed abroad by individuals, legal entities and other entities.

The authorization procedure of the operations performed between residents in hard currency within the Romanian territory is detailed by the Annex no. 5 to the Regulation.

It should be noted that the former authorizations issued under the NBR Regulation no. 3/1997 shall become invalid in 30 days as of the coming into force of the new Regulation, delay in which the re-authorization must be requested according to the new applicable legal provisions.

Accounts in national currency (ROL) opened by non-residents in Romania

Besides the current accounts in national currency (ROL) which may be freely opened at credit institutions in Romania, the non-residents may also open deposit accounts in national currency (ROL), but only upon the prior NBR authorization.

Accounts in national currency (ROL) opened by residents abroad

According to the Regulation no. 1/2004, it is not needed any authorization of the accounts in national currency (ROL) opened by residents abroad, in countries with which

Romania has concluded regional convertibility arrangements.

Repatriation of financial assets resulting from operations with non-residents

The exceptions to the obligation to repatriate the financial assets (either in hard or national currency) resulting from the operations with non-residents include now the following residents:

- embassies, consulates or other missions of Romania abroad, for the amounts necessary for the development of the specific activity;
- residents that hold real estates, as regards the income related to those estates/the amounts transferred that are necessary for covering the taxes and expenses for the estate maintenance and administration;
- legal entities, as regards the amounts that represent current expenses related to the activity of representative offices, agencies, bureaus that are not registered as legal entities abroad;
- residents, as regards the amounts whose repatriation is temporarily obstructed by special legal provisions applicable in the respective country.

NBR monitoring of the capital currency operations

In case that during the monitoring of the capital currency operations, NBR ascertains hostile tendencies with negative impact over the payment balance and the monetary and currency policies, the Regulation enables NBR to take necessary actions, including the temporary re-introduction of authorization

requirements for certain liberalized capital currency operations, with the observance of the relevant EU directives.

The hard currency exchange operations

The authorization procedure, as well as the operations that can be performed in this domain, has been distinctively described in case of each entity authorized to act on the market, such as:

- credit institutions;
- hard currency exchange offices, organized as legal entities according to companies law, having as unique object of activity the hard currency exchange operations with cash and cash substitutes for individuals; and
- entities having under administration hotels, whose object of activity include purchase operations of hard currency.

Any interruption of the currency exchange activity (lasting under 30 days) shall be notified in writing to the NBR - Regulation and Authorization Department, within maximum 5 calendar days of the interruption date. Also, the definitive termination of the currency exchange office shall be communicated in writing to the NBR within maximum 5 calendar days of the termination date.

Authorization for opening and operation of the residents' accounts abroad

New situations are set as to issuance of the authorization for opening and operation by residents of their accounts abroad, such as: need for guarantees in favour of non-residents, setting-up or maintenance of

guarantees for specific performance, as well as hard currency operations with the non-residents, duly justified by the applicant.

All the residents excepted from the repatriation obligation shall be also excepted from the obligation to obtain from the NBR prior authorization of the accounts opened abroad.

The Regulation no. 1/2004 does not set a standard validity period for the authorizations issued in respect of the opening and operation by residents of their accounts abroad. Such validity period shall be set by NBR, on a case by case basis.

Transfer in and out of Romania of amounts in national currency (ROL)

According to the new Regulation, the natural persons shall be obliged to declare to the customs authorities the amounts held in national currency (ROL) over the equivalent of EUR 1.000/person/trip, with the exceptions which may be set by certain other prevailing agreements/protocols concluded by Romania.

National Bank of Romania's Norms no. 2 and 3/2004

By the recently adopted NBR's Norm no. 3/2004, it has been restricted the range of the capital currency operations of the nature of the external public debt on medium and long term that must be notified to NBR. The following operations are still included:

- financial credits and loans over 1 year, received by residents from non-residents;

- credits related to international commerce over 1 year, received by residents from non-residents;
- primary trading of financial instruments having original maturity over 1 year issued by residents on foreign capital markets.

However, as regards the operations which must be notified to NBR, the Norm no. 2/2004 refers additionally to the following operations and situations:

- hard currency exchange operations with cash and cash substitutes for individuals, performed by resident legal persons and the branch offices from Romania of the credit institutions for the foreign legal entities;
- transactions through foreign accounts by resident legal entities (including those excepted from authorization

under the NBR Regulation no. 1/2004). However, there are excepted from this obligation the credit institutions (Romanian legal entities) and the branch offices from Romania of the credit institutions - foreign legal entities;

- balances of the current and deposit accounts in national currency (ROL) owned by non-residents;
- investments resulting from holding by residents (natural or legal persons) of minimum 10% of the share capital of a non-resident company.

The coming into force of the two enactments above is set for different dates: respectively, at the date of publishing (Norm no. 3/2004) and after 60 days of the publishing (Norm no. 2/2004).