COUNTRY UPDATE-Moldova: Securities & Banking

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Massive migration of businesses online, catalysed by the pandemic, expansion of the non-banking financial sector, gaining terrain from the traditional financial services providers, and rationalisation of the regulatory framework for the joint-stock companies, have been the most significant 2020 landmarks in Moldova.

Banking system

The Moldovan banking legislation is perceived as quite progressive and generally in line with (i) Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and (ii) Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 26, 2013 on prudential requirements for credit institutions and investment firms.

The Law No. 202/2017 on Banks Activity, enacted on January 1, 2018, has imposed more stringent requirements on the local banks insofar as capital base, corporate governance, risk management and compliance is concerned, in line with Basel III requirements. In particular, banks shall revise their internal management framework and ensure the material risks are properly addressed and prevented.

The regulator, National Bank of Moldova (NBM), has the authority to issue and withdraw banking licences, as well as to regulate and supervise the banking sector. It tries to keep pace with and impose on the banks the best international standards.

To incorporate a bank in the Republic of Moldova (Moldova), the following steps shall be taken:

- Founders shall file with the NBM the licensing application, accompanied by corporate documents; disclosures on the identity, qualification and experience of the directors/key officers, the shareholders with qualified equity interests (i.e., 1 percent or more) and their affiliates; financial disclosures; the bank's business plan etc. Shares shall be fully paid in cash, regardless if from own or borrowed funds. In case of bridge banks, the share capital can be paid in state issued securities.
- The NBM shall issue the preliminary approval of the application within five months.
- Founders shall pay in the capital (minimum capital is set at 100 million Moldovan lei, ca. 4.5 million euros). The bank shall lease or purchase office premises and equipment, employ key personnel and retain an external auditor. If these requirements are not met within five months, the preliminary approval ceases.
- The NBM shall issue the banking licence within two months after all the above requirements are fulfilled. The license is issued for an unlimited term, for a fee of 50,000 Moldovan lei (ca. 2,400 euros).

The branch of a foreign bank in Moldova is subject to similar licensing requirements, whereas a representative office can be opened only subject to NBM notification. The representative office is only allowed to carry out information and representation functions and also to defend the interests of the bank.

The acquisition of qualified equity interest in a Moldovan bank, either through initial or secondary offering, as well as increase of such equity interest higher than 5%, 10%, 20%, 33% and 50% are subject to the NBM prior clearance. The NBM clearance is required for any of: (i) acquisition of significant shareholding or increase thereof higher than the above thresholds through transactions or any other legal act, and/or (ii) share transfers based on court judgments or any transactions resulted therefrom.

The Law on Banks Activity and NBM secondary legislation have also established clear criteria for the assessment of potential acquirers, with regard to their reputation, experience, integrity and financial soundness. These provisions are backed up by extensive disclosure requirements toward potential acquirers, including ultimate/beneficiary ownership disclosure, accompanied by the legal prohibition for offshore entities to acquire significant equity interests in Moldovan banks.

Also, currently the NBM has capacity, for the purposes of assessing the potential acquirer, to inquire relevant authorities of other states. This is without a need of a formal agreement between the mentioned authorities.

After the 2014 banking crisis, when $1 billion faded away from three Moldovan banks, Moldovan banking and capital market regulators have made significant effort in ensuring proper transparency of shareholder structure and banks' risk management. Noticeably, since then regulatory efforts in recent years have been directed to ensure the soundness and transparency of the Moldovan banking system — a purpose which has been partly achieved.

Legislation

The most important novelties brought by the Law on Banks Activity are the following:

- Legal regime of branches and representative offices has been clearly differentiated. Branches, as local business units, could incorporate smaller business units (agencies, exchange bureaus) located outside the branch office. Representative offices, in turn, shall be concerned with promotion and advertisement only.
- Learning from past lessons, the NBM has proposed to distinguish between remedial measures and sanctions and, in line with the World Bank/International Monetary Fund FSAP recommendations, has established a causal nexus between the gravities of breaches and sanctions.
- Additional know your customer, anti-money laundering and corporate governance requirements have been imposed on banks, with drastic sanctions for non-compliance.
- Liquidation remains out-of-court and bank liquidators were vested with additional powers. Employee claims, for three months before opening the liquidation proceeding, took priority over all other claims.
- The meaning of the term "banking secret" has been clearly defined, hence any information relating to the client, its assets, activity, transactions, personal or business relations are deemed to fall under banking secrecy rules. Banks have a duty to keep the banking secret and disclose confidential information only when expressly requested by law (e.g., at the request of fiscal authority, law enforcement bodies, courts of law) and following the prescribed clear-cut procedure.
- Changing the rule-based supervision to the risk-based supervision and enhancing the NBM collaboration with the supervision authorities from different states.
- Introducing a wide pallet of rights and competences for the NBM especially in the supervisory review and evaluation process (SREP). The key purpose of introduced SREP being to provide that banks have adequate strategies, processes and mechanisms as well as capital and liquidity to ensure a sound management and coverage of the risks they are exposed to.
- Abolition of the audit (censor) commission, so that now, the mandatory bodies of a bank shall be the deliberative, supervision and executive one. Also, the new law limits the powers of the general shareholders meetings allegedly limiting the corporate democracy of the banks.
- Introducing the concept of independent members of the board (at least 1/3 of board members), which concept has been further elaborated in the secondary legislation passed by NBM.

New recent changes to the Law on Banks Activity deal with the cases where the bank shareholders, determined as non-complying by the NBM, are bound to sell their shares. If failing to do so within the prescribed 3 months period, the bank itself shall cancel the shares, issue new shares instead, offer them for sale via stock exchange and pay the sale proceeds to the ex-shareholder(s). If unsuccessful to sell, the bank shall redeem the shares while if more than 50% shareholding is concerned the NBM may withdraw the bank's licence.

Further, in 2016 the Law No. 232/2016 on the recovery and resolution of banks was enacted, which is partially in line with Directive 2014/59/EU. This law sets forth the prevention, early intervention and restructuring mechanisms.

Prevention is applicable to banks in difficulties and means that both the bank and the national resolution authority, i.e. NBM, shall prepare a recovery plan. Both plans set out the actions to be taken in the event that the bank is to run into difficulties leading to its failure. Early intervention is applicable to banks in a difficult financial situation. In these cases, NBM has the power to intervene, such as by appointing a temporary administrator of the bank. As of June 2020, only one Moldovan bank, namely Energbank, is under external administration appointed by the NBM, extended until October 29, 2021.

Resolution is applicable to failing banks. In these cases, NBM might apply the following resolution tools: the sale of business; the bridge institution; the asset separation and the bail-in.

One of the main principles underpinning the above mentioned law refers to the NBM powers to minimise the cost to taxpayers in case of continuance of the failing bank's downward spiral. In other words, the law indicates that the private sector is to bear the costs with precedence. When a bank collapses, shareholders are first in line to cover the restructuring costs. Also, the powers in the hands of the NBM include the possibility to sell the bank undergoing restructuring or merge it with another one. This 'bail-in' mechanism, which marks a change of tack compared to the public 'bail-out' tool – which was implemented by the Moldovan Government in relation to the 2014 banking crisis – has been applicable in Moldova since mid-fall 2016.

The mentioned law sets forth that NBM will create a national resolution fund to provide financial support for banks' restructuring plans. This resolution fund shall be financed in advance, including by the banks established in the territory of Moldova.

Also, in this context, as of March 2018 a new piece of legislation has entered into force. Passed through the Law No. 250/2017 on the Supplementary Supervision of Credit Institutions, Insurance Undertakings and Investment Firms in a Financial Conglomerate, the

mechanisms introduced thereby provide a comprehensive set of rules on the prudential supervision of credit institutions, insurance undertakings and investment firms on a stand-alone basis and credit institutions, insurance undertakings and investment firms which are part of respectively a banking/investment firm group or an insurance group, i.e., groups with homogeneous financial activities.

This law refers to partially transposing the Directive 2002/87/EC. Note that as opposed to the mentioned Directive – EUR 6 billion – under the Moldovan law the threshold for the balance sheet total of the smallest financial sector in the group shall be MLD 500 million, approx. EUR 24 million. In early 2020 technical standards were put in place on calculation of the financial conglomerate's capital and on financial conglomerate's significant transactions and risks reporting.

In the beginning of 2017 the Law No. 184/2016 on Financial Collateral Arrangements has entered into force, which is partially in line with the Directive 2002/47/EC. The Law was aimed to bring the legal certainty with regard to the financial collateral arrangements, including it has set that certain provisions of the insolvency law shall not apply to the financial collateral arrangements.

Civil procedure law has also been amended to the effect that courts are now entitled to rule forceful transfer of bank shares only if the right over such shares is the direct subject-matter of litigation.

Moreover, enforcement of a foreign court judgment, in this respect, shall only be authorised upon submission of either NBM permission to hold a significant share of bank equity or NBM permission to hold such share without preliminary approval. These amendments aim to prevent hostile takeovers through court (labelled in Moldova as 'raider attack'), when bank shareholders are deprived of shares as sanction for (often fake) debt non-payment.

Back in January 2019, the NBM had determined groups of shareholders in two Moldovan banks Fincombank and Energbank as having acted in concert and triggered the above share cancellation process. During more than 2 years none of such external intervention has been fully resolved.

Non-banking financial institutions

The 2018-2022 National Strategy for Development of the Non-Banking Financial Market and the actions plan for its implementation, approved by Law No. 129/2018, has stated the following objectives:

- development and implementation of a regulatory framework that would include the transposition of the provisions of the EU legislation, which would allow the market participants and the investors to benefit from the advantages of the European single market;
- increase the supervision efficiency by implementing the risk prevention and management;
- increase the level of financial literacy of the population on the services and instruments of the non-banking financial market and increasing consumer confidence, ensuring its protection;
- development and strengthen of the institutional and operational capacities of the NCFM to ensure performance-based governance.

In line with the above Strategy, the Moldovan Parliament enacted on November 20, 2020 (in force from June 18, 2021) the Law on Voluntary Pension Funds, which is partially in line with the Directive 2016/2341 EP. The law provides for the possibility to establish voluntary pension funds under the NCFM control, as part of the voluntary pension system, based on capitalized individual savings. Also, the law gives banks the right to act as a depositories of the assets of the voluntary pension funds in custody. Regarding foreign investors, the law provides that administrators from other states may carry out activities of administration of pension funds on the territory of the Republic of Moldova, following the established requirements as well and the AML Law. Referring to NCFM approval for registration, a fund shall have at least 15 participants and a fund manager shall have a minimum capital of 25,000 euros that gradually would increase during 10 years up to equivalent of 125,000 euros.

Consolidated supervision of the non-banking financial sector (except for exchanges, e-money issuers and payment services providers) has been strengthened under the National Commission for Financial Market (NCFM). The regulator has benefited from the extensive knowledge transfer supported by international donors, which enhanced the technical and institutional capacity of the NCFM.

The NCFM retains the authority to license, regulate and supervise the activity of "professional participants of the non-banking financial market", which includes capital market intermediaries, insurance market participants (insurers, reinsurers, insurance/reinsurance brokers and agents, and actuaries), private pension funds, investment funds, saving and lending associations, microfinance non-banking credit organisations and mortgage lending organisations, and credit bureaus.

Pursuant to the provisions of the Law 178 dated September 11, 2020, as from July 1, 2023, the NBM shall take over from the NCFM the supervisory power of the activity of the insurers, non-bank credit organizations, saving and credit associations and the credit history bureaus. This law per se does not impose additional obligations for the non-bank credit organizations, but the NBM is expected to pass new regulations to cover the sector as well, which may bring additional or increased regulatory burden on such institutions.

Legislation

The main evolutions in the financial market legislation can be summarised as follows:

- Enactment of the Law on Insurance, back in April 2007, has been followed by the revision of secondary insurance legislation pertaining to insurance intermediaries (brokers and agents), diversification of investments, creation of technical and other reserves, etc. Insurance companies shall be organized as joint stock companies and hold a minimum share capital of MDL15 million (ca. 700,000 euros) for non-life and MDL 22.5 million (ca. 1.1 million euros) for life insurance, whereas the life and non-life insurance businesses shall be split.

- The amendments to the Law on Insurance enacted in July 2012 and modified subsequently in 2016 have introduced the concept of "bancassurance", under which banks, savings and loan associations, non-banking credit organisations and leasing companies may be appointed corporate agents of an insurance company, provided they comply with the requirements set forth by the law (i.e., solvability, professional indemnity, personnel qualification).
- Enactment of the Law on Non-banking Credit Organisations (NCO), in spring 2018, has brought significant change to the non-banking financial market. Since under the old legal framework NCFM did not have much supervision attributions, it has come with the initiative of building up to its – by then - monitoring powers only. Generally, the main objective of this new law is to uniform the regulation of all non-banking lenders, including non-banking credit organisations, leasing companies, mortgage and consumer loans providers. All market participants are wanted to comply with market entry conditions (minimum capital requirements, requirements towards administrators), including to obtain the NCFM approval prior to the market entry; corporate and financial data disclosure, including by instituting the NCO Registry; internal control and risk management systems and procedures, including by providing for the mandatory audit of the non-banking credit institutions which assets exceeds MDL 50 million (ca. 2.4 million euros); non-banking secret and personal data confidentiality rules.

Early 2020 amendments to the Law No. 1/2018 and other normative acts have brought deep regulatory interventions, as the following:

- Non compliance with the special legislation can result in an administrative fine up to MDL 25,000, (ca. 1,200 euros). Failure to comply with the NCFM prescriptions can result in a fine up to 10% of the operational revenues of the NCO, but not less than MDL 10,000 (ca. 450 euros) and non compliance with the ownership structure transparency can result in a fine up to 50% from the NCO capital.
- Minimum capital of NCO shall be MDL 1 million (ca. 45,000 euros) instead of MDL 300,000.
- NCOs obligation to report new credit activities to credit bureaus.
- Limitation on total cost of consumer credits (including financial leasing). NCOs' credit contracts with natural persons with a term less than 2 years and/or with a principal in the value up to MDL 50,000, (ca. 2,400 euros) shall provide a charge no more than the equivalent of the principal.
- Regulatory fee of 0.1% – not greater than MDL 5000 (ca. 240 euros)- on non-banking credit institutions.

The "twin-peaks model" of financial prudential regulation and supervision introduced by the recent legislative evolutions is expected to usher thorough market reform. Although not yet proven in practice, the regulator displays confidence in the positive impact of the new-fangled legislation.

Capital market

Despite the consistent effort of the regulator and market operators to bring life to the organized capital market, in 2020 and early 2021 it has still remained in the inception stage. Significant transactions are still few and far between and the investors prefer to transfer the shares outside the regulated market.

Legislation

Replacement of the old Law on Securities Market with the new Law on Capital Market brought substantial changes in the regulation of the capital market. The new Law, which has entered into effect on September 14, 2013, transposes the relevant nine EU Directives (on markets in financial instruments (MiFID), on takeover bids, on organisational requirements and operating conditions for investment firms, on the prospectus to be published when securities are publicly offered, on insider dealing and market manipulation etc).

The new Law regulates the business of investment firms, public offerings, takeover bids, capital market infrastructure (including regulated markets and information disclosure), and is designed to set and maintain high standards of capital market activities, raise the level of investors protection and offset systemic risks. The novel elements introduce:

- Abolition of supervision of the private share offerings, moving the focus to public offerings only. Public offerings are to be made only through investment companies and individuals authorized by the NCFM.
- Regulation of business of undertakings for collective investments in transferable securities, which are expected to emerge after mandatory liquidation of the investment funds set up in the early 1990s as privatisation vehicles. As per the new law, UCITS can be set up either as an "investment company" — legal entity which issues shares, or as an investment fund (without legal personality) which issues fund units.
- Extensive information disclosure, in line with Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
- Permission to trade a broader variety of financial instruments (as opposed to the trading of securities only).
- Only JSCs meeting certain requirements are permitted to be listed on a stock exchange.
- Simplified registration for security issuance of privately-traded JSC.
- Abolition of the requirement of mandatory listing. The listing on a regulated market is to be authorised by the NCFM, provided that the issuer complies with the following requirements: (i) the publishing of a public offer prospectus; (ii) a capitalisation of 1 million euros; (iii) an equivalent of 200,000 euros of issued securities, all securities being transferable; (iv) a free float of at least 10 percent of securities belonging to the same class; etc. Listing requirements for MTFs are of a more basic nature.
- Best Execution Rule, allowing intermediaries to trade client securities at organized markets or OTC markets, substituting the Concentration Rule, requiring that investors trade securities only at a stock exchange.

After progressing at a slow pace, the enactment of the Law on the Central Securities Depository in 2016 has brought improvement to the corporate securities registration system. The new law has considered the provisions of the Regulation (EU) No. 909/2014 on improving securities settlement in the European Union and on central securities depositories. The mentioned law provides that:

- The Central Securities Depository shall have sound corporate governance and clear organisational structure. The NBM shall hold at least 76% of the shares in the capital of such Central Securities Depository.
- The independent registrars that keep the registers of securities for the currently registered 4,500 joint stock companies shall gradually – by the spring of 2020 – pass on to the Central Securities Depository the databases in their possession.

The Law on Alternative UCITS has been enacted in 2020 (Law No. 2/2020) considering the provisions of Directive 2011/61/EU, Regulation (EU) No. 2015/760 and Regulation (UE) nr. 345/2013. The Alternative UCITS can be set up either as an "investment company" — legal entity which issues shares or a limited partnership, or as an investment fund (without legal personality) which issues fund units. The minimum capital of an Alternative UCITS set up as a legal entity which issues shares shall be the equivalent of EUR 50 000 that gradually increases during 10 years up to equivalent of EUR 300 000 after the law is enacted.

For the Law on Capital Market - some changes are expected in relation to entities regulated by NCFM and on issues related to securities' transactions. The Law No. 97 of June 11, 2020 (in force from January 1, 2021), establishes the term of the credit rating agency (CRA), its attributions, mission, registration procedure and the control authority. The other draft law issued for public consultation would introduce the investing consultant that would have access on the capital market on NCFM’s authorisation, would exclude the customary circulation of Moldovan depository receipt by accepting directly foreign securities for transactions and would regulate in a more detailed manner the listing process, application of sanctions by NCFM, licence issuance by NCFM to its supervised entities etc.

In order to implement the Directive 2011/61/EU of the European Parliament and of the Council from June 8, 2011, the Moldovan Parliament enacted on February 6, 2020 the Law on alternative collective investment undertakings (in force from September 27, 2020), They are defined as entities that operate on the principle of risk sharing and whose activity consists in attracting and collecting financial resources from individuals and / or legal entities by issuing and placing participation units for the purpose of subsequent investment of funds attracted in securities , money market instruments, as well as in real estate assets or other property rights, under the supervision of NCFM.

Despite the above legislative evolutions, market capitalisation still remains insignificant. Most notable transactions relate to strategic investors consolidating their shareholdings through mandatory or voluntary buy-outs. Risky investments into financial assets represent a minor part of the transactions on the Moldovan market; therefore, share prices are relatively immune to boom and bust cycles.

For the first time in the last 30 years, the July 2021 general elections in Moldova resulted in the pro-EU Presidential party obtaining comfortable majority in the Parliament, thus enabling an ambitious economic reform. On the background of stable national currency, low and relatively predictable taxation, and clear agenda of implementation of DFFTA and EU-Moldova Association Agreement, Moldova is a next step to investors wishing to expand into a neighbouring territory with, finally, high political stability.

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