

6. Banking System

6.1 Moldovan Banking System

Overview

The banking system is supervised by the central bank, the National Bank of Moldova (“**NBM**”). At the date of this paper, 11 banks are licensed and active on the Moldovan banking market, 4 of them are part of international financial groups and have major foreign investors with branches in Europe.

The list of Moldovan banks may be accessed here:

<http://bnm.md/en/content/authorized-banks-republic-moldova>

Central Bank

The NBM’s activity is governed by Law No. 548 on the National Bank of Moldova of 21 July 1995 (<http://bnm.md/files/NBM%20Law%20updated%202020.pdf>)

The primary objective of NBM is to ensure and maintain price stability. Without prejudice to the primary objective, NBM shall promote and maintain a financial system based on market principles and shall support the general economic policy of the state.

The NBM works on a permanent basis with the International Monetary Fund, the European Central Bank and specialized consultants from the World Bank, as well as with other organizations, in developing banking policies and procedures.

More information on the corporate governance of the NBM, its activity as well as reports on financial activity of Moldovan licensed banks may be found on: <http://bnm.md/en/search>

Main legal framework

The Basel III framework regulations are being implemented in the Republic of Moldova. New regulatory requirements have put pressure on Moldovan banks in 2018 when a new law, Law No. 202 on the activity of banks of 6 October 2017 has been adopted and enacted.

The Law on the activity of banks aimed at aligning Moldovan regulations to European prudential requirements and Basel III framework. The Law on the activity of banks partially transposed the EU Directive 2013/36/CE of the European Parliament and Council of 26 June 2013, the Regulation No. 575/2013 of the European Parliament and Council of 26 June 2013.

The list of all normative acts in the banking sector may be accessed here:

<http://bnm.md/ro/content/bancile-licentiate-din-republica-moldova>

Following the amendment of the legal framework, important decisions of the NBM regarding the transparency of bank’s operations and structure have been passed. Implemented measures have led to major changes in the shareholders’ structure of existing banks and stimulated the arrival of foreign investors into the Moldovan banking sector.

Current performance index of banks may be consulted on the website of the NBM which publishes quarterly reports on the financial status of banking sector:

https://bnm.md/ro/search?partitions%5B0%5D=677&post_types%5B677%5D%5B0%5D=897

Activities of banks

Moldovan banks are mainly involved in the following activities:

- (a) acceptance of deposits and other repayable funds,
- (b) lending, including, inter alia: consumer credits, mortgage credits, financing of commercial transactions,
- (c) financial leasing,
- (d) payment services,
- (e) issuing and administration of payment means such as cheques, bills and promissory notes and other similar means of payment,
- (f) issuing guarantees and undertaking commitments,
- (g) trading with financial instruments on their own behalf and on behalf of clients,
- (h) keeping in custody and managing financial instruments, etc.

Banks liquidity and capacity to secure the deposits of individuals is closely supervised by the NBM. The NBM issued guidelines in relation to different aspects of banks activity that are mandatory for the market players and their shareholders. Periodic reports are submitted to the NBM informing the supervisor on the volume of performed operations, observance of prudential requirements etc. Each bank has developed and implemented policies and regulations on bank's appetite for risk and prudence of operations depending on their strategy of business, observing minimum requirements provided in NBM regulations and instructions.

Information on main financial indicators of activity, including liquidity of banks in Moldova may be consulted on the NBM website following the link:

<http://bnm.md/bdi/pages/reports/drsb/DRSB1.xhtml?id=0&lang=ro>

All activities that may be performed by a bank are indicated in its license for banking activity.

A bank may not engage in activities that are not covered by its license.

Banks may also not engage in the following activities:

- (a) pledging own treasury shares at the expense of bank's debts;
- (b) extending loans secured by shares, other equity securities or bonds issued by the bank and / or its related party, including by an entity belonging to the group to which the bank is party.

Other players on the market

Only banks may attract deposits from individuals.

Other activities performed by banks such as crediting, transfer of credit, payment services, issuance of e-money and other activities may be performed by other entities such as the non-banking credit institutions, leasing companies, payment service providers and e-money issuers.

This is also highly regulated aiming to adopt best European practices on the Moldovan market.

The existing Law No. 114 on Payment Services and E-money of 18 May 2012 fully transposes provisions of PSD 1. In the nearest future a new law on payment services is going to be adopted aiming to transpose provisions of PSD 2.

Information on state policies in regulating payment services area may be accessed on <http://bnm.md/ro/content/bancile-licentiate-din-republica-moldova>

Consumer lending is widely spread in Moldova. Besides banks, non-banking credit institutions are active in this area. Currently, there are 169 non-banking credit institutions undertaking different types of lending activities in Moldova.

Credits to consumers, benefit from a higher protection with minimum standard safeguard of consumer rights in credit agreements. The Law No. 202 on Consumers Credit Agreement of 12 July 2013 fully transposed the provisions of the EU Directive 2008/48/CE of the European Parliament and Council of 23 April 2008. At present, Moldovan provisions are in line with the European Regulations.

More information on non-banking credit institutions may be accessed on the web page of the National Commission for Financial Market <https://www.cnpf.md>

Procedure of licensing banks

All banks are organized as joint stock companies and may operate subject to obtaining of the banking license issued by the NBM. The NBM shall only license a bank if it is fully convinced that the bank can ensure the safe conduct of banking activity and complies with the requirements of prudent and sound management, guaranteeing the protection of interests of depositors and other creditors, as well as a good functioning of the banking system.

Upon applying for a license, foreign and domestic banks are subject to the same NBM licensing requirements.

The main requirements involve:

- (a) maintenance of a minimum share capital
- (b) reputation and financial reliability of significant shareholders
- (c) evidence of a strong and professional management team (iv) presentation of a comprehensive three-year business plan.

Generally, the NBM authorization process includes **3 stages**:

- (1) prior NBM approval for the setting up of the bank
- (2) incorporation of the bank and,
- (3) obtaining the license for banking activity.

Individuals or legal entities or a group of individuals and/or legal entities which intend to become significant direct or indirect shareholders of an already existing bank, e.g., have a contribution to the share capital or voting rights in the bank equal to or more than **1%**, must obtain NBM approval.

Requirements for holding equity in the bank

To ensure the stability of the banking system, NBM has introduced certain requirements to be met by the shareholders of a bank (individuals or legal entities), as follows:

- (a) sound reputation, analysed in terms of integrity and professional competence, including experience as a controlling shareholder or a director/manager of a financial institution;
- (b) reputation, knowledge, skills and experience of any member of the management body and any member of senior management who will direct the business of the bank, as a result of the proposed acquisition;
- (c) financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the bank, where the acquisition is proposed the NBM has the authority

to analyse the source of funds used by individuals or legal entities to gain the position of a significant shareholder);

- (d) provision of necessary information related to the group they belong to (the NBM verifies whether the group of which the bank will become a part has a structure that makes it possible to exercise efficient supervision of the bank by the NBM and other authorities);
- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorism financing, is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

All these requirements are verified by the NBM before any direct or indirect acquisition of a **1%** and more equity in a bank.

Failure to obtain prior authorization of the NBM will lead to the suspension of the voting right of the respective shareholder, the right to convene and hold General Shareholders Meetings, the right to put discussion points on the agenda, the right to nominate candidates for the management body membership or the right to receive dividends.

Persons that have breached the obligation to obtain prior authorization of the NBM for holding the equity of the bank shall within 3 months from the date of proposed/general acquisition of shares, dispose of shares related to the ownership thus acquired. If not disposed of in the given term the shareholding will be cancelled, and equity obtained by breach will be forcibly sold following the provisions of the Moldovan law.

Activity of branches of foreign banks

Banks having their head office in another state, which have been licensed in another state, shall carry out activities on the territory of the Republic of Moldova provided only the following cumulative conditions are met:

- (a) the activity is to be carried out through the established branch office;
- (b) the branch was licensed by the NBM;
- (c) the competent authority in the country of origin of the bank does not oppose the establishment of the branch in the Republic of Moldova, this fact being confirmed in a document issued by the said authority;
- (d) the legal framework of the state of origin and/or the manner of its application does not prevent the NBM from exercising its supervisory functions;
- (e) the foreign bank complies with the provisions of the Moldovan law and the regulations issued for its application.

The activities, which are permitted to be carried out through a branch established in the Republic of Moldova, shall be stipulated in the license issued by the NBM and shall not exceed the scope of activities allowed to the bank under the license issued by the competent authority in the country of origin.

The activity of a foreign bank's branch established in the Republic of Moldova is subject to the same prudential supervision of the NBM as in case of banks, which are legal entities of the Republic of Moldova and are licensed by the NBM, including the application of sanctions and other sanctioning measures.

6.2 Foreign Currency Regime

The main provisions currently regulating foreign currency operations are incorporated in the Law No. 62 on Currency Regulation of 21 March 2008.

National currency and exchange rate

The national currency is the (Moldovan leu, pl. Moldovan lei, short form - MDL).

The Moldovan leu exchange rate is determined on the foreign exchange market after the confrontation of supply and demand in foreign exchange. That is the market exchange rate which is a free exchange rate that reflects market conditions and may vary throughout the day. It is displayed by financial intermediaries and banks.

The official exchange rate is determined by the NBM and may be closer or further to the exchange rate formed on the foreign exchange market. The exchange rate is used for various settlement operations, evaluations, statistics, reports.

To determine the official exchange rate of MDL against USD, considered as reference currency in the Republic of Moldova, one uses the arithmetic average of the average purchase and sale exchange rate weighted to the spot transactions volume conducted on the foreign exchange market of the Republic of Moldova between 12.30 PM of the previous working day and 12.30 PM of the reporting day.

Official exchange rate of Moldovan Leu against another currency is determined by multiplying the official exchange rate against the U.S. dollar with the cross-exchange rate of the respective foreign currency against the U.S. dollar established on the international market at 2:00 PM, Chisinau time.

Official exchange rate of Moldovan Leu against foreign currencies is set by the NBM on each working day and is available from the next working day. The official exchange rate during weekends (holidays) is the same as in the previous working day.

The daily official rate may be found on
<https://bnm.md/ro/content/ratele-de-schimb>

Domestic and foreign payments of legal entities

Generally, payments made between residents, related to trade of goods and services must be carried out in Moldovan lei.

In certain situations, and only if expressly allowed by law, payments can also be made in foreign currency, for example in the following cases:

- a. legal entities in cross-border trade of goods and services;
- b. legal entities residents of free economic zones for transactions in the free economic zone;
- c. lending in foreign currency where it is expressly allowed by law etc.

Payments among resident legal entities should be performed via bank transfers.

Payment in cash is restricted for legal entities.

Cash requirements for legal entities

Under the law, resident legal entities shall keep their financial means, in Moldovan lei or foreign currency, in their bank accounts opened with Moldovan licensed banks.

The amount of cash that may be withdrawn and kept in the cashier of the legal entity, as well as the grounds for such withdrawal are strictly regulated by law.

Opening of bank accounts

Opening of bank accounts in Moldova is a rather straight forward operation. The volume of information to be submitted to the bank depends on the policies of the relevant bank and aim at performing the KYC procedures and AML clearance of transactions.

Opening of bank accounts abroad is possible only for cases expressly provided by law and subject to the authorization of the NBM.

Cross border payments

Cross-border trade is allowed and encouraged in Moldova. Moldova is party to multiple bilateral and international treaties ensuring free flow of products, subject to the observance of local customs requirements.

Payments and transfers within current foreign exchange operations may be freely performed and do not require prior authorization or notification of the NBM.

Such transactions refer to the following, but not limited to:

- (a) payments within international trade of goods and services, including works, as well as payments and transfers within bank credit facilities related to international trade (for instance, letters of credit, overdrafts, overnight credits, credit cards) with initial repayment period not exceeding one year;
- (b) payments representing interest on loans/credits and net income from other investments;
- (c) payments for the repayment of loans/credits or amortization of direct investments;
- (d) transfer of funds intended to cover family living expenses;
- (e) payments and transfers within other operations, which are not capital foreign exchange operations, for instance: payments related to medical treatments, travel expenses, study expenses; payments related to duties and taxes, except for duties and taxes related to inheritances; penalties; payments related to court expenses; payments and transfers related to technical assistance; payments related to social insurance, including pensions; payment of membership fees in international organizations, public, religious or other non-profit organizations.

Repatriation rules

Currency control rules, require, among others, residents to repatriate (collect), from their non-resident partners, the funds that should have resulted from an export of goods/services (as well as from other foreign operations and transactions).

It does not matter whether the money have been received or not. If the company has recorded a debt it shall either collect the money/product or initiate court actions to recover the money.

Breach of repatriation rules is punishable
with a fine in the amount of the unrepatriated value.

Foreign capital transfers. NBM authorization and notification

Residents and non-residents may hold financial assets in both foreign currency and Moldovan lei. Financial assets held in Moldova may be repatriated or transferred, locally and abroad by non-residents.

A capital foreign exchange transaction is the operation resulting from:

- (a) operations related to direct investments;
- (b) operations with immovable property;
- (c) operations with financial instruments;
- (d) commercial loans/credits;
- (e) financial loans/credits;
- (f) guarantees;
- (g) operations in current and deposit accounts with financial institutions;
- (h) operations related to life insurance;
- (i) personal operations;
- (j) import and export of foreign exchange values;
- (k) other capital operations.

Authorization of operation

Residents are free to perform capital foreign transactions involving outflow of capital from the Republic of Moldova.

However, most of capital transactions involving outflow of capital from the Republic of Moldova are to be authorized by the NBM before they are executed, if their value exceeds 10 000 Euro. Exceptions apply.

Notification of operation

Certain transactions concluded between residents and non-residents which involve the inflow of capital into the Republic of Moldova where residents are receiving loans/credits and guarantees from non-residents should be notified to the NBM.

Loans/credits and guarantees shall be subject to notification in case of:

- a) interest-bearing commercial loans/credits, except for the receiving of loans/credits by the resident supplier from the non-resident factor within the factoring operation, if the non-resident factor assumes the risk of insolvency of the non-resident debtor for the undertaken debt;
- b) financial loans/credits, except for the following:
 - (a) interbank credits with the initial repayment period not exceeding one year;
 - (b) loans/credits received from non-residents by using credit cards issued by non-residents at the request of residents;
- c) guarantees issued by the non-resident guarantor based on the underlying transaction between two residents;
- d) loans/credits within operations related to direct investments.

Loans below EUR 50,000 may be received and used by residents without notification.

Failure to observe the rules on notification / authorization
will impede the performance of transactions.

Commercial banks will restrict the use of capital if no evidence of the NBM notification / authorization of the relevant external commitment is submitted to them.