<< Back to Country Guides List

Moldova

Country Guides: Securities and Banking

x Contacts directory for Moldova

Last updated Aug 27, 2014

GLADEI & PARTNERS
Legal Consultants

Moldovan financial services and capital market legislation has undergone significant modernisation in recent years. Such modernisation has had as objectives: (i) reviving the capital market and increasing access to finance through capital market; (ii) shift from rule-based ("tick-the-box" approach) to risk-based supervision; and (iii) harmonisation of national laws on credit and financial institutions, capital market, insurance and leasing with European Union legislation. Further, signing of the Association Agreement with the EU and its ratification (on July 2, 2014) has brought to the agenda of Moldovan lawmakers the objectives of transposing the relevant EU Directives into domestic laws. This new wave of legislative reform ultimately aims to create an investor-friendly legal environment which is seen as a precondition for sustainable growth of market-based Moldovan economy.

Banking system

The Moldovan banking legislation is perceived as quite progressive and generally in line with 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.

Currently, Moldovan banks are in compliance with Basel I capital requirements, but there are no regulations or draft regulations regarding Basel II/III implementation (although intentions have been stated to introduce them in a 3-4 year time span). Gradual implementation of the EU Capital Requirements Directive (CRD-IV) is also targeted.

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, and tries to keep pace with and impose on the banks the best international standards.

To incorporate a bank in 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 significant (i.e., 5 percent or more) shareholders and their affiliates; financial disclosures and the bank's business plan. Shares shall be fully paid in cash, regardless if from own or borrowed funds.

- The NBM issues the preliminary approval of the application within three months.

- Founders shall pay in the capital (minimum Tier 1 capital is set at 200 million Moldovan lei (approx 10.5 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 one year, the preliminary approval ceases.

- The NBM issues the banking licence within one month after all the above requirements are fulfilled. The license is issued for an unlimited term, for a fee of 50,000 Moldovan lei (approx 2600 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 functions. The acquisition of significant (five percent or more) equity interest in a Moldovan bank, either through initial or secondary offering, as well as increase of such equity interest higher than 20 percent, 33 percent and 50 percent are subject to the NBM prior clearance. Notably, after the August 2011 attempts of hostile takeover of shares in one Moldovan bank, this rule has significantly toughened.

Now, the NBM clearance is required for: (i) acquisition of significant shareholding or increase thereof higher than the above thresholds through transactions or any other legal act, (ii) share transfers based on court judgments or any transactions resulted therefrom, and (iii) transfer of shares with participation of off-shore entities.

The legal amendments (labelled as 'anti-raider law'), which provided the above novelties have been declared unconstitutional in December 2011 for procedural reasons, but were shortly (March 2012) replaced by a new law to the same effect.

To meaningfully build upon these developments, in March 2013, the Law on Financial Institutions (LFI) saw new amendments, purported to enhance the transparency equity investment in local banks and thus strengthen the capacity of the NBM to supervise the integrity of bank shareholders. As a result, the NBM shall be entitled to request from any direct or indirect shareholder (whether holding a significant share or not) any information necessary to carry out a prudential evaluation.

The 2013 amendments 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.

Noticeably, 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

Starting in June 2009, when the relevant amendments to the LFI were enacted, bank bankruptcies were exempt from the control of the courts of law, thus expediting the claims settlement procedure. Current bank liquidation procedure is conducted by an external administrator, appointed and supervised by the NBM. The administrator has to opt for one of the following alternative liquidation scenarios: (i) sale of bank to another licensed bank as going concern; (ii) partial transfer of assets and liabilities to another bank; or (ii) liquidations of assets. Notably, the scenario that was opted for in the case of the 2009 and 2012 bank bankruptcies was a combination of the last two legal scenarios, which ensured smooth settlement of individual claims but set aside the major liquidation burden.

In late 2010, new amendments were made to the LFI, which pertain to the following:

1. 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.

2. The NBM has been armed with additional intervention tools, such as "special supervision" and "special administration". Special supervision shall be imposed on a financially distressed bank and can last up to three months. A special supervising committee appointed by the NBM does not substitute the bank's management and, based on its conclusions; the NBM may institute the external administration or go directly to withdrawal of licence and bank liquidation. The NBM can institute the special administration regime when a bank is in breach of certain prudential ratios, remedial measures or legal provisions. A special administrator is appointed by and reports solely to the NBM and he/she substitutes all the governing bodies of the bank. The NBM can declare payment memorandum, for a maximum of two months, when the risk of mass withdrawal of deposits exists.

3. 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.

4. Additional know your customer, anti-money laundering and corporate governance requirements have been imposed on banks, with drastic sanctions for non-compliance.

5. 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.

6. 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.

2012 saw several new amendments to the LFI and other related laws purporting to simplify the mortgage enforcement process. The said amendments have become applicable as of March 14, 2013, and provide the following:

1. A lender, (bank or non-banking financial institutions) can enforce the mortgage in extra-court proceedings, i.e., by having the mortgage agreement authorised for enforcement by a public notary.

2. In turn, secured lenders would be bound by more extensive legal requirements toward pre-lending information disclosure (interest rates and all costs related to the loan, objective criteria for their modification, conditions and costs for early loan repayment, etc.)

Another block of amendments to the LFI, which have entered into force in April 2013, provide for the following:

1. Entities from jurisdictions ‘not implementing the international transparency standards' (the list has been approved by the NBM in May 2013) are prohibited to hold, directly or indirectly, any participation in banks' equity. Within 1 year from the new law enactment the non-qualifying shareholders shall sell out their shares. If non-complying, the bank must cancel such shares, issue others instead, sell them via stock exchange and transfer the proceeds to (former) non-complying shareholder, or, if unsuccessful, redeem the shares and decrease the

equity.

2. NBM permission is required for acquisition of significant shareholding, to be obtained before acquisition by any means (not only by transactions), except for certain 'objective' cases, established by NBM regulations. In such cases permission shall be sought in 60 days after completion of acquisition.

3. All shareholders agreements must be disclosed to NBM by their parties and the bank within 5 days after execution.

4. Any shareholder with significant equity interest must inform the NBM on change of its beneficial owner, within 10 days.

Sanctions against non-complying shareholder range from lifting the voting right up to forceful sale of shares held.

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.

Non-banking financial institutions

Consolidated supervision of the non-banking financial sector has been strengthened under the National Commission for Financial Market. 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 and mortgage lending organisations, and credit bureaus.

Legislation

The financial market legislation has been revised 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. As of April 2012, all insurers had to transform into joint stock companies and their minimum capital had to increase to MDL15 million (approx 790 000 euros) for non-life and to MDL22.5 million (approx 1.18 million euros) for life insurance, whereas the life and non-life insurance businesses are to be split.

- The amendments to the Law on Insurance enacted in July 2012 have introduced the concept of "bancassurance", under which banks, savings and loan associations, and microfinance institutions 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). These amendments also (i) revised the corporate governance rules, (ii) clarified the relations between insurance companies and their external auditors, and (iii) introduced more extensive disclosure requirements to insurance companies.

- In March 2014, the Law on Consumer Credits, aimed at harmonising national legislation with Consumer Credit Directive (Directive 2008/48/EC) has entered into force. The envisaged harmonisation aims at regulating: the manner of calculation of the total cost of credit to consumer, standard information to be included in advertising, pre-contractual information to be also provided on a durable medium, information to be included in credit agreements, right of withdrawal within 14 days, linked credit agreements, database access, early repayment rules on calculation of the compensation due, etc. Although the harmonisation with the EU Directive is only partial, market participants have a significant burden of reforming their practices.

- The draft Law on Voluntary Pension Funds has been approved by the government in early February 2013, pending adoption by the Parliament. Through it, the NCFM aims to develop a legal framework that would offer a viable alternative to the public pension system, a purpose which the 1999 Law on Non-state Pension Funds has not been fit to achieve. According to such draft law, the NCFM shall issue licences and permits to companies managing the voluntary pension funds, which shall have a minimum share capital of 730 000 euros, as opposed to the 250 000 euros required under the existing Law. The fund shall be established on the basis of a civil partnership agreement between two participants (natural persons), provided that in its second year of activity the fund shall have at least 100 registered participants. The voluntary pension plan shall be drafted by the fund administrator and approved by the NCFM, and it shall include the terms and conditions of contribution, investment and distribution of the fund's money. The Parliament did not adopt however the Law on Voluntary Pension Funds and the process of its examination has been suspended for an indefinite period of time. Nonetheless, voluntary pension funds are subject to limited regulation through the Law on Capital Market, as they are deemed public interest entities.

- A new draft Law on the National Commission for Financial Markets has been drafted with the World Bank technical assistance. The draft new law primarily aims to bring the operation of the Commission in line with best international standards, set by international standard setters: the International Organisation of Securities Commissions, the International Association of Insurance Supervisors, the International Organisation of Pensions Supervisors and the World Council of Credit Unions.

  In particular, the draft law aims to: (i) set clearly the supervisory objectives and powers; (ii) strengthen and guarantee operational and financial independence or supervisor; and (iii) ensure effective international cooperation, including within cross-border investigations and information sharing. Licensed entities (current "professional participants") will be subject to fully-fledged prudential supervision, whereas other regulated/supervised entities (microfinance organisations, leasing companies, mortgage lending companies, credit bureaus) will enjoy only limited (business conduct) supervision, labelled as "monitoring".

As is the case with the Law on Voluntary Pension Funds, it remains unclear whether and when the Law on the National Commission for Financial Markets shall be adopted (or not) in the current draft format. As of the date of the current update, the Law on the National Commission for Financial Markets of 1998 is still valid. Furthermore, there are amendments to the 1998 Law pending adoption by the Parliament, which would allow eligible plaintiffs not only challenge the Commission’s decisions in court, but also request suspension of such decisions before a court judgment is issued.

- A new draft Law on Non-banking Financial Organisations has been devised by the NCFM in late 2011; however the draft still makes the object of several debates pertaining to the expediency of establishing supervision (and not mere "monitoring") of the sector (this law has not been adopted to this date). Generally, the main objective of this new draft law is to uniform the regulation of all non-banking lenders, including microfinance 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); corporate and financial data disclosure, internal control and risk management systems and procedures, formation and using of the credit risk provisions; non-banking secret and confidentiality of personal data.

Capital market

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. By March 14, 2015, the NCFM is bound to adjust its internal normative acts to the provisions set forth in the Law on Capital Market.

The new Law introduces:

- 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 authorized by the NCFM, provided that the issuer complies with the following requirements: (i) the publishing of a public offer prospectus; (ii) a capitalization of 1 million EUR; (iii) an equivalent of 200,000 Euro of issued securities, all securities being transferable; (iv) a free float of at least 10% 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.

Nevertheless, 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.

The gradual liberalisation of the financial market, combined with the appealing corporate tax regime (zero rate of corporate income tax has been replaced in 2012 with a low 12 percent tax and the dividend tax of 15 percent is subject to optimisation via the double-taxation avoidance treaties that were concluded between Moldova and more than 40 countries), stable currency and the strong commitment of the political elite toward EU accession have been creating sound prerequisites for transforming Moldova into a non-negligible investment destination in close proximity to the

EU.

GLADEI & PARTNERS
Legal Consultants

***Roger Gladei** is the managing partner, **Corina Voda** is an associate and **Stefan Milicenco** is a junior associate at Gladei & Partners. Tel: +37322 240577, www.gladei.md*