Briefing

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Consumers vs Banks: Potential New Romanian Law on Transfer of Mortgaged Immovables in Lieu of Payment

On the 25th of November, the Romanian Parliament passed a new law regarding the transfer of mortgaged immovable assets in lieu of payments under consumer loans ("**Approved Draft Law**") – this is subject to promulgation by the President of Romania, but it seems there is strong lobbying from the banking industry to challenge the constitutionality of such Approved Draft Law as well as its compatibility with the EU legal framework.

The Approved Draft Law would apply to the relationships between consumers ("**Debtor**") and credit institutions, non-banking financial institutions, and/or transferees of loan receivables from such institutions ("**Creditors**") in relation to loans secured by mortgages over immovable assets ("**Immovables**"). According to the Approved Draft Law, its provisions would apply to both loans outstanding at entry into force of the Approved Draft Law, as well as to new loans.

Under the envisaged regime, the Debtor would have the option to fully settle any debt or accessory obligations under a loan agreement by transferring to its Creditor the property rights to the Immovables mortgaged in favour of that Creditor ("**Transfer in Lieu of Payment**").

The conditions prerequisites for a Transfer in Lieu of Payment under the Approved Draft Law would be: (a) the Creditor and Debtor are subject to the Approved Draft Law (*i.e.* the Debtor is a natural person and the Creditor is a credit institution, a non-banking financial institution, or a transferee thereof (such as NPLs collection companies)); (b) a loan agreement has been concluded between the parties (where parties include the originator of loan); (c) the Immovables subject to Transfer in Lieu of Payment is mortgaged in favour of the Creditor and secures the obligations under that loan agreement.

The main steps of the Transfer in Lieu of Payment procedure are envisaged as follows:

i.   The Debtor would notify the Creditor (via a court bailiff, lawyer, or notary public) of the intention to transfer the Immovable in lieu of its payment under the loan agreement ("**Notice on Transfer in Lieu of Payment**"). If there is more than one Immovable subject to security in favour of the Creditor, all encumbered Immovables would need to be transferred.

ii.   The Creditor and the Debtor should sign the Immovable transfer agreement before a notary public selected by and at the cost of the Debtor on one of two dates which should be included in the notice above (such dates being no earlier than 15 days from the date of notice) ("**Transfer Agreement**"). Upon signing of the Transfer Agreement, all outstanding debt of the Debtor towards the Creditor (including principal, interests, penalties) is discharged and the property right over the Immovable is transferred to the Creditor.

Starting with the date of the Notice on Transfer in Lieu of Payment, all payments to the Creditor and all proceedings and actions of the Creditor pursuing the recovery of the outstanding debt from the Debtor and the Debtor's co-debtors and guarantors are suspended.

A Creditor may challenge the conditions for a Transfer in Lieu of Payment within 10 days as of the Notice on Transfer in Lieu of Payment. However, such challenge would not affect the suspension of payment or procedures pursuing recovery of outstanding debt.

Further, if a Creditor does not comply with the Transfer in Lieu of Payment procedure initiated by its Debtor (or the Debtor's co-debtors and guarantors), the Debtor (or the co-debtors or guarantor, as applicable) may request a competent court to rule on the Transfer in Lieu of Payment, *i.e.* the discharge of outstanding debt in full and the transfer of the Immovable to the Creditor.