

Briefing

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New Romanian Covered Bonds Law

After almost a decade of discussions between banks and authorities and in line with the commitment of the Romanian Government towards the IMF and the European Commission, on 3 March 2016, Law 304/2015 regarding the issue of mortgage bonds ("**Covered Bonds Law**") by Romanian credit institutions entered into force.

Creation of a Cover Pool

Under the Covered Bonds Law, Romanian banks, cooperative credit organizations (other than credit cooperatives) and housing banks ("**Issuers**") may create a ring-fenced dynamic pool of eligible assets ("**Cover Pool**") designed to secure one or more bond issues ("**Covered Bonds**"). The assets eligible for inclusion in a Cover Pool are immovable mortgage loans receivables, certain substitution assets, and (subject to no early termination due to bankruptcy and/or bank resolution) hedging derivatives.

Such assets are evidenced in an internal registry of the Issuer - which should reflect the structure and the dynamics of the assets in the Cover Pool ("**Cover Pool Registry**"). Upon registration of an asset within the Cover Pool Registry, the Issuer's creditors (other than the holders of the Covered Bonds and the hedging counterparties of derivatives included in the Cover Pool) may not foreclose in any situation on any such asset or amount collected in relation thereto.

Approvals of Covered Bonds

Each issue of Covered Bonds has to be approved by the National Bank of Romania ("**NBR**"). Such approval may be withdrawn if the Covered Bonds are not issued within one year or in case of non-compliance with the Covered Bonds Law and ancillary regulations (and lack of evidence regarding future compliance). The NBR shall adopt specific regulations regarding the approval and assessment procedure.

If the (public) offer of Covered Bonds is subject to publication of a prospectus under the Prospectus Directive, the prospectus should be approved by the Romanian Financial Supervisory Authority (of course, the general exceptions to publication / approvals are also available for Covered Bonds).

Cover Pool Eligibility and Value

Mortgage loan receivables under the Cover Pool have to meet certain *de minimis* eligibility criteria such as, *inter alia*:

- fully disbursed immovable mortgage loans;
- no payment delay at the time of inclusion in the Cover Pool and no payment delay in excess of 15 days thereafter;
- no opposition by the debtors (within a 45-day period) to the inclusion in the Cover Pool;
- insurance for the underlying immovable asset;
- maximum LTV of 80% for residential mortgage loans and of 60% for other mortgage loans.

There are certain exceptions to the above but additional requirements can also be set forth by the Issuer - other criteria are expected to be detailed by the NBR and required under the implementation norms and regulations to the Covered Bonds Law.

The value of the Cover Pool should exceed the current value of all payment obligations under the outstanding Covered Bonds (and ancillary costs) by a certain threshold as provided for under the prospectus or the offer document, but by no less than 2 per cent.



Control by an Agent

In view of the Covered Bonds, the Issuer should appoint an independent agent responsible for the Cover Pool, which is a financial auditor and should be approved by the NBR ("**Agent**"), for the purposes of, *inter alia*, verifying that the Cover Pool meets the requirements under the Covered Bonds Law and implementation regulations, verifying and approving entries into the Cover Pool Registry and notifying the NBR of new entries therein, certifying the periodic reports made by the Issuer, verifying and notifying to the NBR any non-compliance with the applicable laws and regulations. In general, all changes to the Cover Pool Registry can be effected only with the prior written approval of the Agent.

NBR Ongoing Supervision

In addition to the approval of the Covered Bond, the NBR has several ongoing supervisory functions, such as verifying the Issuer's compliance with the applicable regulations regarding Covered Bonds, the approval of the Agent, the appointment of a Cover Pool manager for the distress cases set out below if applicable, or approving the transfer of obligations undertaken under the Covered Bonds towards other bond Issuers.

Mortgage over Cover Pool

The Covered Bonds will be secured by a movable mortgage to be created over the Cover Pool ("**Mortgage**"). Such Mortgage will be registered as a first ranking mortgage with the Romanian Electronic Archive for Movable Security Interests ("**Electronic Archive**") by the Agent on behalf of the bondholders - to be transferred to the bondholders' representative, after its appointment by the general meeting of the bondholders. Registration with the Electronic Archive is done by means of a global notice of registration. As an exception to the general rule, this Mortgage is not subject to Land Book registration formalities. However, the information in Cover Pool Registry has to be published and kept updated on the Issuer's website, and should reflect at least the same information which would have been reflected in a Land Book registration.

Reporting

On the basis of transparency principles, Issuers should publish on their websites and send to the NBR, quarterly reports covering, *inter alia*, the structure of, and the risks associated with, the Cover Pool as well as the total outstanding Covered Bonds.

Bankruptcy

As a general principle, the bankruptcy of the Issuer should not affect the bondholders' rights in relation to the Covered Bonds. The Cover Pool constitutes a separate estate of the Issuer which shall in no case be included in the Issuer's estate subject to bankruptcy / liquidation procedures or be in any manner affected by the liquidation of the Issuer's assets under such procedures. The bondholders will continue to receive payments pursuant to the terms and conditions of the Covered Bonds. Moreover, bondholders will have voting rights in the assembly of the Issuer's creditors, as per bankruptcy procedures.

Cover Pool Manager

The NBR may appoint an independent portfolio manager ("**Cover Pool Manager**") if (i) the NBR authorisation has been withdrawn due to the failure to comply with applicable law, (ii) the Cover Pool does no longer properly cover the Covered Bonds, or (iii) the Issuer is no longer fulfilling its payment obligations under a Covered Bond. A Cover Pool Manager will also be appointed by the insolvency judge in case a bankruptcy procedure is sought against the Issuer.

Upon its appointment, the Cover Pool Manager gains exclusive control over the assets under the Cover Pool Registry, including any amounts collected by the Issuer on account thereof, and all acts of the Issuer or of a liquidator concerning such assets are null and void.



Acceleration of the Covered Bonds

The Cover Pool Manager may request the approval by the general assembly of bondholders of the acceleration of payments under the Covered Bonds and, for this purpose, the transfer of the Cover Pool to a third party which may carry out the business of real estate finance. If the amounts obtained following such transfer are not sufficient to fully repay the Covered Bonds, any the outstanding claims of the bondholders against the Issuer will rank *pari passu* with the other unsecured creditors.

Implementation – next steps

The NBR shall issue supplementary regulations for the implementation of the Covered Bonds Law regarding the authorisation conditions, the assessment, the management, and the eligibility criteria regarding the assets in the cover pool, the internal cover registry and the transparency requirements.

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