Jurnalul de Studii Juridice

Jurnalul de Studii Juridice

ISSN: 1841-6195 (print); ISSN: 2067-8509 (electronic)

Covered in: Index Copernicus, Ideas RePeC, EconPapers, Socionet, EBSCO

THE BRIDGE-BANK, A PRIVATE CREDIT INSTITUTION

Rada POSTOLACHE

Jurnalul de Studii Juridice, 2013, Volume 8, Issue 1-2, June, pp:53-61

The online version of this article can be found at:

http://www.journaloflegalstudies.info/

Published by:

Lumen Publishing House

THE BRIDGE-BANK, A PRIVATE CREDIT INSTITUTION

Rada POSTOLACHE[1]

Abstract

The bridge-bank is new in the Romanian banking legislation. According to our lawmaker, it is a credit institution, but, with special features in relation with the credit institutions stated by our banking law. It was designed with a very well determined purpose – of achieving the "stabilizing measures" approved by the National Bank of Romania regarding distressed credit institutions. We shall analyze the legal statute of the bridge-bank, in terms of its constituents, establishing for each the specificity, and using the law as mean of comparison.

Keywords: *stabilizing measures, special supervision, special administration, transfer of assets and liabilities.*

[1] Associate Professor PhD.,"Valahia" University of Târgoviște, Faculty of Law and Social-Political Sciences.

POSTOLACHE, R. (2013). The Bridge-Bank, a Private Credit Institution.
Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 53-61

1. Legal regulation of the bridge-bank

The bridge-bank is regulated by Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy[2], Title III ("Supervision and disclosure requirements for the National Bank of Romania"), Chapter VIII ("Special procedures"), Section 2^1 "Stabilizing measures", Art 240^{23}-240^{31}. Art 240^{23}-240^{31} have a special feature, stating only from the perspective of the stabilizing measures created by the bridge-bank. In this context, the law itself, seeing it as a credit institution, refers, in addition, to the provisions applicable for the other credit institutions – both stated by the banking law, as well as by the common law – Law No 31/1990 on commercial societies[3] [Art 240^{29} Para (3)].

2. The bridge-bank notion

According to Art 3 of the Government Emergency Ordinance No 99/2006, the credit institutions, Romanian legal persons, may be set up and may operate in one of the following forms: *a)* banks, *b)* cooperative credit companies; *c)* saving banks, banks offering real estate credits; *d)* mortgage banks. According to Art 240^{29} Para (1) of this Emergency Ordinance, the "bridge-bank is set up and operates as a bank, according to Art 3 Let a), with the purpose of holding the assets and liabilities of another bank, for the insurance of the direct provision of banking services afferent for the actives and liabilities taken, which will be subsequently sold to a third eligible party. The bridge-bank is set up and operates for maximum 2 years, with the possibility of extending this period, by the decision of the National Bank of Romania, if there is a continuous risk of a threat for the financial stability and/or the negotiations with the potential buyer of the bridge-bank were not concluded yet".

The quoted provisions reveals it as a credit institution – a banking one, but private, set up for a determinate period, exclusively for holding the assets and liabilities of a credit institution, for the insurance for the insurance of the direct provision of banking services afferent for the actives and liabilities taken.

[2] Official Gazette No. 1027 from December 27th 2006, with subsequent modifications and additions, called special law in the present work, Government Ordinance No 99/2006, G.E.O. No 99/2006 or banking law.

[3] Republished in the Official Gazette No 1066 from November 17th 2004.

POSTOLACHE, R. (2013). The Bridge-Bank, a Private Credit Institution.
Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 53-61

The specificity of the bridge-bank as "credit institution - bank" results from the corroborated interpretation of all the provisions allocated to it by the special law, aspects highlighted below.

3. Setting up a bridge-bank

Circumstances. The establishment of stability measures

Setting up the bridge-bank takes place in the context of establishing stability measures that the banking law states within its special procedures (applicable for distressed credit institutions) (see regarding their legal regime, Silberstein, I., (2011) : 167-180), together with the special administration and special supervision[4].

These measures may be decided by the National Bank of Romania only in the presence of one of the following circumstances: if a credit institution is found in any of the situations stated by Art 240 of the G.E.O No 99/2006 (generating the establishment of the special administration); the voting rights of the shareholders owning the control of the credit institution have been suspended; and, in any of these situations, there is a threat for the financial stability. Practically, the threat for the financial stability is the key element for the establishment of stability measures.

According to Art 240^{23} of the G.E.O No 99/2006, if a credit institution if found in any of the above mentioned situations, the National Bank of Romania may decide, one of the following stability measures:

a) The total or partial transfer of assets and liabilities of a credit institution to an eligible one or more;

b) The involvement of the Bank Deposit Guarantee Fund as delegated administrator or shareholder, if previously was initiated the procedure of suspending the voting rights for the shareholders having control over that credit institution;

c) The transfer of assets and liabilities from a credit institution to a bridge-bank, which is especially created for this.

As a consequence, a bridge-bank can be set up only in the presence of the latter measure [Let c)]. The option for setting up a bridge-bank belongs to the National Bank of Romania.

[4] The competence for the special administration and supervision belongs to the National Bank of Romania. Their administrative establishment occurs for infringement, by the credit institutions, of the banking discipline, in the ways stated by the special law [Art 237 Para (1), Art 240-240^2 of the G.E.O No 99/2006].

The purpose of setting up. Given the threat for the financial stability, the bridge-bank is set up (only) "with the purpose of holding the assets and liabilities of a credit institution, for the insurance of the banking services afferent to the assets and liabilities taken" [Art 240[29] Para (1)].

Authorizing the setting up. The bridge-bank is authorized, complying with the provisions of the legislation applicable for the credit institutions and subjected to the supervision of the National Bank of Romania.

The bridge-bank is a new entity, authorized by the NBR for the above mentioned purpose and for a limited period, for maximum 2 years, with the possibility of prolongation – in the presence of the circumstances stated by the law; it is an entity different than the distressed credit institution; it is an entity different than the distressed credit institution, which enters into liquidation when the assets and liabilities are transferred.

The authorization for function of the bridge-bank is issued by the NBR after the issuance of the decision for the transfer of assets and liabilities from the distressed credit institution to a bridge-bank, set up for this purpose. The effective transfer of asets and liabilities takes place in the first day after the bridge-bank is registered in the National Trade Register.

The *name* of the bridge-bank is formed from the name of the credit institution that transferred the assets and liabilities, followed by the "BB – S.A (joint stock Company)".

The *head office* of the bridge-bank is established at the same address as of the credit institution that performs the transfer.

The *registration* of the bridge-bank in the National Trade Register is made urgently, based on the authorization issued by the NBR and based on the articles of incorporation, within 24 hours from the registration of the documents at the National Trade Register in whose area is located the head office of the bridge-bank, for that in maximum 30 days to be registered all the other documents stated by the law for setting up a company.

4. Registered capital

The banking law offers the possibility of a registered capital under the mandatory minimum one stated for the other credit institutions – minimum the equivalent in RON of 1 million Euros[5], the law stating the requirement of informing the European Commission about it. The

[5] For credit institutions – minimum 5 million Euros.

POSTOLACHE, R. (2013). The Bridge-Bank, a Private Credit Institution.
Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 53-61

registered capital shall be delivered in maximum 30 days from the registration of the bridge-bank in the National Trade Register[6].

Shareholders. The bridge-bank is set up as a joint stock company with one shareholder, namely the Bank Deposits Guarantee Fund[7]. It derogates from the common law, Art 10 Para 3 of the Law No 31/1990, which states, that for joint stock companies, the requirement of at least 50 shareholders. In addition, for the Bank Deposits Guarantee Fund, the banking law presumes the fulfillment of the requirements stated by Art 26 Para 1 for the other credit institutions, aiming the adequate quality of the potential shareholder and his financial strength. We consider that these derogations are stated in order to insure the efficiency, as well as the effective performance of the operations for which the bridge-bank was created, given the quality of this shareholder – public institution, guaranteeing the reimbursement of the deposits made in the banking system.

Moreover, the Bank Deposits Guarantee Fund insures the financing of the bridge-bank: both for the transfer of assets and liabilities to the bridge-bank, as well as for the insurance of its necessary funds, so that the bridge-bank will insure the development of the banking activity with the fulfillment of all prudential requirements (Art 240[31]).

5. Organization and management of the bridge-bank

The administration of the bridge-bank is made in a dualist system: *a)* a supervisory board; *b)* the directorate. The supervisory board's responsibilities are performed by the Bank Deposits Guarantee Fund, represented by at least 3 natural persons, fulfilling the requirements stated by Art 108 Para 1 of the G.E.O No 99/2006[8].

[6] For the other credit institutions, the registered capital is paid in the moment of their registration.

[7] Stated by the Government Emergency Ordinance No 39/1996 on the Bank Deposit Guarantee Fund, in the banking system, republished in the Official Gazette No 587/19 August 2010, with modifications and additions.

[8] They all must "enjoy a good reputation and experience adequate to the nature, extent and complexity of the activity and responsibilities of the credit institution and must unfold its activity in accordance with the rules of a good, healthy and prudently banking practice".

POSTOLACHE, R. (2013). The Bridge-Bank, a Private Credit Institution.
Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 53-61

Practically, the Bank Deposits Guarantee Fund exerts an *ope legis* multiple quality: single shareholder, financier, supervisory board fulfilling all the intrinsic rights and attributions.

6. Activity

Unlike the other credit institutions, which have the possibility to choose for any of the activities stated by Art 18 of the banking law (see in regard with the activities allowed for the credit institutions, Postolache, R., (2009) : 82-92), the bridge-bank has an activity limited to the general operations of transferring assets and liabilities from the distressed credit institution, with the purpose of insuring the continuous performance of the banking services, being created exclusively for this purpose; the law gives the possibility to extend its activity, but, prudently, this must insure the maintenance of a low risk degree in performing its activity.

7. Closing the bridge-bank

The validity of the authorization to function of the bridge-bank ceases at the end of the period for which it has been authorized. The duration can be prolonged by decision of the NBR, if the risk of a threat to the financial stability persists and/or negotiation to the potential purchaser of the bridge-bank has not been concluded.

It only ceases the authorization for function, the bank not being able anymore to perform any activity; but the bridge-bank must be sold to a third eligible party, the mission as "bridge" coming to an end. By selling it is aimed the perpetuation of the banking activity and stabilizing the banking system.

The sale, decided by the NBR, can take place in maximum 2 years by one of the following methods: a) stock selling; b) assets sales operations with the assumption of liabilities, according to the restrictive requirements of the banking law[9].

The amounts received from selling the bridge-bank are distributed in the following order: *a*) covering the expenses due to the selling; *b*) paying the obligations arising from labor relations owned and unpaid until the moment of the sale; *c*) recovering the debts of the Bank Deposit Guarantee Fund resulted from the financing granted according to Art 240^{31}; *d*) extinction of

[9] See in this regard, Art 240^{39} of the G.E.O No 99/2006.

budget claims; *e*) covering other expenses of the bridge-bank registered until the moment of the sale.

Any amounts remained after this distribution is transferred to the Bank Deposit Guarantee Fund.

8. The legal effects of the stabilizing measure on the transfer of assets and liabilities by a bridge-bank

Effects on the credit institution whose assets and liabilities have been transferred. From the analysis of the banking law we have the following effects:

a) Cessation of the mandate of the persons administering and/or managing the credit institution;

b) Taking over the administration and management of the credit institution by a delegated administrator; the measure is ordered by the NBR by the decision of establishing the stabilizing measure analyzed and ceases at the transfer of the assets and liabilities;

c) Cessation, at the moment of the transfer, of the authorization of the credit institution who has performed the transfer of assets and liabilities [Art 240[38] Para (1)]. By derogation from Art 44 Para (2)[10] of the G.E.O No 99/2006, the credit institution who has performed the transfer is compelled to continue performing in the benefit of the bridge-bank, based on a contract and for an agreed commission, the activities and operations unfolded previously the transfer and which are necessary for the bridge-bank to perform the activities with the existing personnel of the credit institution;

d) From the moment of the transfer, the liquidation of the credit institution who has performed the transfer, derogative from the Government Ordinance No 10/2004 on the judiciary reorganization procedure and credit institutions bankruptcy[11]; in this case, the law does not tolerate the procedure of bankruptcy.

Effects regarding the established bridge-bank

In essence, the effects of establishing the stabilizing measures aim:

[10] According to Art 44 Para 2 "From the date of entry into force of the decision to withdraw the authorization, respectively the date when the authorization ceases to be valid in the cases referred to in Art 40 Para (1) and Art 41 let. c), the credit institution may not carry on other activities than those strictly related to liquidation."

[11] Off. Gazz. No 84/January 30th 2004, with ulterior modifications and additions.

POSTOLACHE, R. (2013). The Bridge-Bank, a Private Credit Institution.
Jurnalul de Studii Juridice, Volume 8, No 1-2, June, pp. 53-61

a) Taking over the assets and liabilities from the credit institution. The transfer of assets[12] and liabilities is made at their true value, the difference between them, plus or minus, being financed by the Bank Deposit Guarantee Fund. The difference shall be paid by the Fund to the credit institution and emphasized as a claim over the bridge-bank (transferred A>L) or, the difference shall be paid by the Fund to the bridge-bank and emphasized as a claim over the credit institution (transferred L>A).

During the transfer of assets and liabilities to the bridge-bank is prioritized the transfer of the guaranteed deposits (regarding the legal regime of the transferred deposits, see Postolache, R., (2011) : 153-164).

Taking over the assets and liabilities does not require the agreement of the depositors, nor of the creditors or debtors of the credit institution who performs the transfer;

b) Subrogation of the bridge-bank, by law, in rights and obligations of the credit institution (who has performed the transfer), arising from the agreements concluded by it regarding: the participation in payment systems, discount systems of the operations with financial instruments and payment schemes and arrangements; the access on the primary market of state titles as primary dealer; the access as eligible participant in the operations on the money market performed by the NBR and to the permanent facilities offered by it; the access as intermediary on the interchange currency market; the access as participant in the establishment of the reference rates ROBID/ROBOR; the access as participant in the establishment of the reference rates for state titles [Art 240[35] Para (1)].

Also, the bridge-bank is surrogated in all its rights and obligations arising from the contractual relations afferent to the transferred assets and liabilities and immediately notifies the deponents, the other creditors and debtors taken over after the transfer [Art 240[36] Para (1)].

Conclusions

The bridge-bank is not specie itself. It is not settled by Art 3 of the banking law. It is created only when the NBR decided as stabilizing measure the transfer of assets and liabilities from the distressed credit

[12] Regarding the assets which can be transferred, evaluated or returned, see Art 240[33] Para (2)-(7) of the G.E.O No 99/2006.

institution. It is created with a certain, well determined purpose and for a limited period of time.

It was conceived as a banking entity to ensure the continuity of the operations regarding transferred assets and liabilities, in case of *a threat to the financial stability*. The proof in this regard is the express regulation of the obligation to sell it when the authorization to function ceases. Otherwise the NBR could have decided the special administration of the bankruptcy and dissolution of the credit institution.

In the spirit of the "continuity" which must be insured, the banking law states some elements regarding the credit institution, derogative from the common law: taking over its head office, its name, to which is added the logo "BB – S.A (joint stock company)", insuring by the credit institution of some intrinsic services for the achievement of the operations afferent to the transferred assets and liabilities, with its existing personnel.

Finally, the creation of the bridge-bank aims the "financial stability" and not the salvation of the distressed credit institution.

Selective Bibliography

Cours

Postolache, R., (2012)*Drept bancar*, C.H. Beck Publishing House, Bucharest.

Article

Postolache, R., (2011) *Protection of persons affected by the deposit transfer instituted with the special administration of a credit institution*, in the "Journal of Legal Studies" No 3-4/2011, "Petre Andrei" University of Iasi.

Silberstein, I., (2011)*Reglementarea actuală a procedurilor speciale bancare*, Law Magazine No 11/2011.

Legislation

Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, Official Gazette No. 1027 from December 27th 2006.

Law No. 31/1990 on commercial societies, republished in the Official Gazette No. 1066 from November 17th 2004.

Government Ordinance No. 39/1996 on the creation and functioning of the Bank Deposits Guarantee Fund, republished, Official Gazette No. 587 from August 19th 2010.