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Covered Bonds Law

The Romanian law on covered bonds (the "**Covered Bonds Law**") was published in the Official Gazette on 4th of December 2015 and will enter into force within 90 days. The principal objective of the newly adopted law is to align the current Romanian legislation in this field to the European standards and practices in order to allow the development of a local covered bonds market. The Covered Bonds Law is meant to ensure a legislative framework capable to provide increased protection to investors and, at the same time, to represent the basis for obtaining alternative accessible refinancing sources for Romanian credit institutions.

Principal provisions

The newly adopted law changes significantly the previous framework in this field, i.e. Law no. 32/2006 on mortgage bonds (repealed by the Covered Bonds Law). There was no issuance of covered bonds in Romania under the former Law no. 32/2006 due to the fact that it was not aligned to the international market practices and to the standards expected by sophisticated investors.

Among the principal provisions of the Covered Bonds Law, we would like to mention the following:

- **Dynamic cover pool**: The Covered Bonds Law promotes the concept of a dynamic cover pool used for securing the issue of the cover bonds, the issuers being required to provide for the entire life of the covered bonds an appropriate quality of the cover pool securing such bonds. When assets in the pool mature, default or are in significant arrears, the issuer of the covered bonds is obliged to replace them with new eligible assets.
- **Cover pool receivables**: The receivables which may be included in the cover pool consist of real estate receivables, other financial assets and derivative instruments.
- **Ring fencing principle**: The Covered Bonds Law provides for a delimitation of the cover pool as an asset distinct from the issuer's estate, being bankruptcy remote. The cover pool continues to be administered following the default of the issuer.
- **Cover pool monitor**: A cover pool monitor is appointed by the issuer from among financial auditors and approved by the National Bank of Romania for the purpose of, *inter alia*, verifying the fulfilment of the eligibility criteria of the receivables included in the cover pool.
- **Cover Register**: Issuers are bound to keep a Cover Register for the cover pool, which must reflect the structure and dynamics of the cover pool.
- **LTV ratio**: The LTV ratio (i.e. the ratio between the nominal value of each loan and the reference value of the real property serving as security) is set at maximum 80% for residential real estate loans and 60% for the other real estate loans.
- **Publicity formalities**: The covered bonds are secured by a first ranking mortgage over the cover pool which shall be registered under a global registration notice with the Electronic Archive. The creation of collateral over the mortgage right related to the receivables from the cover pool is not subject to the publicity formalities with the Land Books of the relevant real estate properties.
- **Claw back**: Article 117 paragraph (2) of Law no. 85/2014 regarding the procedures of preventing insolvency and insolvency which envisages the annulment of certain fraudulent acts concluded by debtors (i.e. the issuing credit institution) prior to the commencing of the insolvency proceedings is not

applicable in case of covered bonds issues (including the replacement of the cover pool assets).

- **Dual recourse**: The investors have a claim on both the cover pool and the issuer. As such, beside the rights over the cover pool securing the covered bonds issue, the bondholders have the right to register for the uncovered difference within the bankruptcy procedure against the issuer, *pari passu* with the unsecured creditors of such issuer.
- ***Pari passu* ranking for derivatives**: The rights of the counterparties in the derivative financial instruments included in the underlying cover pool for coverage purposes rank equally to the rights of covered bondholders.
- **Clear separation of duties between the regulators**: The Covered Bonds Law sets out that the prudential supervision of the cover bonds issue shall rest with one authority only, namely with the National Bank of Romania.

  The prudential supervision regarding the manner in which the requirements related to the prospectus are complied with are exercised by the competent authority of the home member state, established under the relevant capital market legislation.

Next steps

The Covered Bonds Law shall come into force 90 days after its publication with the Official Gazette of Romania. The National Bank of Romania shall issue regulations for the implementation of this law within 90 days as of its publication with the Official Gazette of Romania.

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