



## Country Guides: Securities and Banking

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Moldovan financial services and securities legislation has undergone significant modernisation in recent years. Such modernisation was focused on: (i) fuelling the securities market by streamlining the securities issuance and secondary market transfer rules; (ii) unifying the supervision of all non-banking financial institutions under a newly-created public watchdog; and (iii) harmonisation of insurance, collective investment undertakings, microfinance organisations and other non-banking financial institutions-related legislation with European legislation. It is too early to assess the practical outcome of this regulatory effort, although one notable effect has been that the new rules are more investor-friendly and create good preconditions for the evolution of the financial market.

### Banking system

The Moldovan banking regulatory framework is generally in line with Directive [2000/12/EC](#) of the European Parliament and of the Council of March 20, 2000, which relates to the taking up and pursuit of the business of credit institutions. The regulator, the National Bank of Moldova, tries to keep pace with and impose on the banks the best international rules and practices. The NBM has the authority to issue and withdraw banking licences, as well as to regulate and supervise the banking sector.

To incorporate a bank in Moldova, the following steps should be taken:

- Founders should file with the NBM a licensing application. Corporate documents; disclosures on the identity, qualification and experience of the directors/key officers, the significant (i.e., five per cent or more) shareholders and their affiliates; financial disclosures; and the bank's business plan should accompany this application. The requirement to produce evidence to show that the shares will be purchased from own (not borrowed) funds has been abolished.
- The NBM should issue the preliminary approval of the application within three months upon filing the application with the accompanying documentation.
- Founders should then pay in the capital (minimum tier one capital is set at 100m Moldovan lei (€7m)), the bank should lease or purchase office premises and equipment, personnel should be employed and an external auditor should be retained. If these requirements are not met within one year of the filing, the preliminary approval ceases.
- The NBM will issue the banking licence within one month after all the above requirements are fulfilled.

A foreign bank can also open either a branch in Moldova, which is subject to similar licensing requirements, or a representative office, by notifying the NBM thereon. The representative office is only allowed to carry out information activities.

The acquisition of significant equity interest in Moldovan banks, both through share subscription or a

secondary market, is subject to the NBM's prior clearance. Banks are likewise deemed as public interest entities; therefore, bank shareholders can only transfer shares via the Moldova Stock Exchange, with some minor exceptions. 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, were aimed to ensure the health and transparency of the banking system. The purpose of these requirements has been partly achieved.

## **Legislation**

- In the last decade bank bankruptcy has required robust reaction. The immediate regulatory response aimed to exempt the bank bankruptcies from control of the courts of law and, therefore, expedite the claims settlement procedure. Under the amendments to the Law on Financial Institutions, which were enacted in June 2009, the external administrator, appointed and supervised by the NBM, shall be in charge of bank liquidation. 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 (iii) liquidations of assets. Notably, the scenario that was opted for in the case of the only 2009 bank liquidation was a combination of the last two legal scenarios, which ensured smooth settlement of individual claims but set aside the major liquidation burden.
  
- In December 2009 the NBM issued for public consultation on new amendments to banking legislation, which pertain to the following matters:
  1. Legal regime of branches and representative offices has been clearly differentiated. Branches are the territorial outlets which, under the new amendments, will be allowed to 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 shall be armed with additional intervention tools, such as "special administration" and "payment moratorium". The NBM can impose special administration 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 they substitute 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/ the International Monetary Fund financial sector assessment programme 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 are to be imposed on banks, with drastic sanctions for non-compliance.
  
  5. Liquidation remains out-of-court and bank liquidators are vested with additional powers. Employee claims, for three months before opening the liquidation proceeding, shall take priority over all other claims.

## **Non-banking financial institutions**

Consolidated supervision of the non-banking financial sector has been strengthened under the National Commission for Financial Markets. 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 include:

- Securities brokers, dealers, underwriters, stock exchanges and other securities 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.
- Credit bureaus.

## Legislation

The financial market legislation has been revised as follows:

- Enactment of the new 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. Insurers are provided with a five-year term to transform into joint stock companies and their minimum capital shall increase by 2012 to MDL 15m (€1.1m) for non-life and to MDL 22.5m (€1.6m) for life insurance, whereas the life and non-life insurance businesses are to be split. Before expiration of this five-year transition period, Moldovan insurers remain free to assign into reinsurance up to 100 per cent of underwritten policies.
- The NCFM has drafted the Law on Collective Investment Undertakings, with the support of international experts. It has been submitted for public consultation. The draft law was inspired by the [UCITS Directive](#). Undertakings for collective investments in transferable securities are aimed to fill in the gap which appeared after the investment funds that were set up in the early 1990s as privatisation vehicles went into liquidation. As per the draft law, a UCITS could be set up either as an "investment company" (legal entity) which issues to investors its own shares, or as an investment fund (without legal personality) which issues fund units. The draft law also sets forth requirements for UCITS management company, depository and investment policy.

- The NCFM has drafted and submitted for stakeholders' consultation major amendments to the Law on Private Pension Funds, which was issued in 1999. The amendments aim to make the first step in reforming the pension sector and to encourage the emergence of private pension vehicles. Any individual would be able to opt to adhere to a pension plan that a certain pension fund offered either directly or collectively through the employer. The other benefits relate to the allowed investments of the pension fund, the protection of personal assets of the fund's beneficiary and management of the fund's assets.

### Securities market

Apart from the Law on Joint Stock Companies and the Law on Securities Market, a large number of NCFM regulations govern the issuance and circulation of shares, bonds and other corporate securities. After the last wave of amendments to the securities market legislation in 2008, in late 2009 new amendments to the JSC Law were drafted by NCFM. Such amendments aim to: (i) enhance directors' liability; (ii) introduce the shares squeeze-out and sell-out rights, in line with Directive [2004/25/EC](#); and (iii) enhance shareholder protection. By and large, the amendments follow the international best practices in corporate governance, including internal control, reporting and disclosure.

The market capitalisation still remains insignificant. The most notable transactions relate to strategic investors consolidating their shareholdings through mandatory or voluntary buy-outs. The gradual liberalisation of the financial market, combined with the appealing corporate tax regime (zero rate of corporate income tax shall be maintained by 2012 and the dividend tax of 15 per cent 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 new government supported by the ruling Alliance for European Integration to investor protection have created sound prerequisites for transforming Moldova into a non-negligible investment destination in proximity to the European Union.



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