

29 November 2016

Legal Bulletin



Banking Law

In this issue:

1. **Government Emergency Ordinance No. 52/2016 on credit agreements for consumers relating to immovable property, amending and supplementing Government Emergency Ordinance No. 50/2010 on credit agreements for consumers (“GEO 52/2016”)**

GEO 52/2016

GEO 52/2016 was published in the Official Gazette of Romania, Part I, No. 727 of 20 September 2016, and became effective on 30 September 2016.

The draft law for approving GEO 52/2016 provides no amendments to the content of the ordinance and was adopted by the Senate on 1 November 2016. At this point, the draft law is under legislative process and has been submitted for debates to the decisional chamber, i.e. the Chambers of Deputies.

The purpose of this legislative act is to transpose into the national law the Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, as published in the Official Journal of the European Union, series L, no. 60 of 28 February 2014 (“**Directive 17**”).

However, the scope of application of GEO 52/2016 is broader than that of Directive 17, namely Directive 17 regulates credit agreements for consumers relating to residential immovable properties, while GEO 52/2016 regulates consumer credit contracts relating to any type of immovable property. Furthermore, the consumer protection standards under GEO 52/2016 are higher than those provided by the European legislator.

This Legal Bulletin presents the main provisions of GEO 52/2016 on: (i) the scope of GEO 52/2016, (ii) the amendments to the Government Emergency Ordinance No. 50/2010 on credit agreements for consumers, as further amended and supplemented (“**GEO 50/2010**”), (iii) the main changes to the legal regime applicable to credit agreements relating to immovable assets, (iv) the rules for the assignment of credit agreements and receivables, (v) receivables collection and the obligations incumbent on receivables collection entities, (vi) the regime applicable to credit intermediaries.

1. Definitions under GEO 52/2016

GEO 52/2016 defines and uses, among others, the following concepts:

- “*Consumer*”: means an individual - including the co-debtor - who is acting for purposes which fall outside his/her commercial or professional activity; under such circumstances, any obligation relating to consumers, as provided by GEO 52/2016, needs to be performed by reference to both debtors and co-debtors;
- “*Credit agreement*”: means an agreement whereby a creditor grants or promises to grant, to a consumer, a credit falling within the scope of GEO 52/2016, in the form of a deferred payment, loan or other similar financial facilities;
- “*Creditors*”: mean credit institutions and non-banking financial institutions which grant loans regulated by GEO 52/2016 on the Romanian territory, in the course of their commercial or professional activity;
- “*Receivables collection entities*”: means legal entities - other than initial creditors - with a minimum paid share capital of RON 500,000 (approximately EUR 110,865), which perform the activity of receivables collection and/or obtain the rights over outstanding debts following an assignment of receivables arising from non-performing credit agreements;
- “*Credit intermediary*”: means a freelancer or a legal entity which is not acting as a creditor and which, in the course of its commercial or professional activity, and in exchange of a remuneration, either directly or indirectly, links a consumer to a creditor or to another credit intermediary, and which conducts at least one of the following activities: (a) presents credit agreements to consumers; (b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements, other than as referred to in point (a) above; (c) concludes credit agreements with consumers on behalf of the creditor.

2. Scope of GEO 52/2016

Types of credit agreements

GEO 52/2016 regulates credit agreements for consumers that: (a) concern the sale and the purchase, respectively, of certain immovable assets, (b) are secured with a mortgage on immovable assets, or (c) imply a right related to an immovable asset. For the purpose of this Legal Bulletin the above-mentioned credit agreements will be hereinafter collectively referred to as “**the credit agreements regarding immovable assets**”.

GEO 52/2016 expressly stipulates that it does not apply to certain agreements, namely credit agreements that are free of interest or bear an interest lower than the prevailing market rate, such as employer-employee credit agreements, or credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose. Moreover, housing savings and credit cooperative agreements are expressly excluded from the scope of GEO 52/2016, due to the issues concerning the related savings.

The application of GEO 52/2016 from a timing perspective

GEO 52/2016 expressly limits its temporal application, setting forth that its provisions on credit agreements regarding immovable assets do not apply to *ongoing credit agreements* on the date such GEO becomes effective.¹

Changes to GEO 50/2010

In addition to setting forth the legal regime governing credit agreements regarding Immovable Assets, GEO 52/2016 amends certain provisions of GEO 50/2010. *Inter alia*, the amendments to GEO 50/2010 clearly separate the scopes of GEO 52/2016 and GEO 50/2010. Since 30 September 2016, GEO 50/2010 has no longer been applied to credit agreements regarding immovable assets, as the latter are governed by GEO 52/2016. The amendments to GEO 50/2010 mainly concern:

- The introduction of requirements for the assignment of receivables arising from consumer credit agreements and the obligations incumbent on receivables collection entities concerning their set-up, registration and performance of the receivables collection activity;
- Default interests, which, in case of credit agreements falling under GEO 50/2010, are regulated based on the same limits as those provided for credit agreements relating to immovable assets;
- The creditor's right to accelerate the credit and to initiate enforcement proceedings, in case of payment delays;
- The penalty regime, providing for fines between RON 10,000 - RON 80,000 (approximately EUR 2,217 - EUR 17,738) applied to creditors which fail to assess consumer creditworthiness before entering into a credit agreement.

GEO 52/2016 expressly provides that only some of the amendments to GEO 50/2010 do not apply to ongoing credit agreements upon its entry into force. However, the application of the new regulations on receivables assignments and the activity of receivables collection entities is not expressly excluded in case of ongoing credit agreements. As mentioned in the preamble to GEO 52/2016, the legislator intended that the new provisions governing the receivables collection be immediately applicable.

3. The legal framework for credit agreements regarding immovable assets

Foreign currency credits

Foreign currency loan is defined as a credit denominated in a currency, other than that in which the consumer receives its income or holds the assets from which the credit is to be repaid; or a credit

¹ Amid this, mention should be made that in transposing Directive 17, the legislator did not exactly import the terms used therein, as according to such Directive, this European legislative instrument does not apply to *existing* credit agreements at the time the legal provisions become effective at a national level.

denominated in a currency other than that of the Member State in which the consumer either had its residence when the credit agreement was concluded, or it has its current residence.

GEO 52/2016 sets forth the foreign exchange risk-related information that should be communicated to consumers in case of foreign currency loans, based on standard information sheets, in the credit agreement and throughout the performance of the agreement. It also provides for the consumers' right to convert the credit into an alternative currency, at any time during the contractual relationship.

Removal of early repayment fees

As regards credit agreements regarding immovable assets entered into under GEO 52/2016, creditors have no longer the right to charge early repayment fees, and therefore the costs incurred by consumers are reduced.

Support to and solutions for consumers in difficult circumstances or impending payment, as well as to consumers in payment difficulty

- *Obligation to support and obligation to inform*

GEO 52/2016 defines “*financial difficulties and payment difficulties*” as those cases in which the consumer cannot fully or partly pay the monthly instalment due to a decrease in the income of the consumer or that of the consumer's family, the consumer's medical issues or invalidity, break in the professional activity, increase of its level of indebtedness or other issues that might affect the monthly instalment repayment, situations that are to be assessed on a case-by-case basis.

Firstly, the creditor and the receivables collection entity are bound to institute policies and procedures for approaching and interacting with consumers facing payment difficulties.

In such situations, the creditor will inform the consumer about the payment delays, and both parties have the obligation to work together, so as to enable the creditor to take adequate measures.

- *Obligation to propose debt repayment solutions*

If the consumer's payment difficulty persists for more than 60 days, the creditor and the receivables collection entity have the obligation to propose consumers debt repayment solutions.

The solutions offered by the **creditor** may include: (a) total or partial re-financing of the credit agreement, based on one of the creditor's current offers; (b) extending the credit agreement term; (c) changing the type of credit agreement; (d) deferring repayment of the credit instalment, in full or in part, for a certain period of time; (e) changing the interest rate; (f) allowing a repayment-free period of time; (g) reducing the instalment for short periods of time; (h) consolidating several credits, which may result in a longer credit term and a lower instalment rate; (i) changing the maturity dates of the instalments (*Romanian: rescadențare*); (j) rescheduling instalments; or (k) credit conversion.

Mention should be made that even in case of no outstanding debts, consumers may unilaterally activate the obligation to propose adequate solutions, if they prove that a difficult situation or an impending payment situation exists.

The **receivables collection entity** is bound to draw up, along with the consumer, a debt/liability repayment plan adjusted to the consumer's current incomes, which may include: (a) scheduling the repayment of the due amounts; (b) reducing the total due amount; (c) allowing a repayment-free period of time; or (d) consolidating several debts.

Irrespective of whether they are offered by the creditor or by the receivables collection entity, the aforementioned solutions **may not** result in:

- Increasing the interest margin or the fixed interest rate, as the case may be;
- Introducing/increasing fees, and
- Introducing new cost elements, by way of addenda drafted for rescheduling, changing maturity dates, or granting grace periods upon the consumer's request;
- The re-assessment of the asset provided as mortgage; or
- Impose a different security, unless the consumer expressly requests so.

Default interest

GEO 52/2016 provides the following limits concerning default interest:

- Throughout performance of the credit agreement, and before declaring acceleration, the default interest rate is calculated as a fixed percentage - which may not exceed three percentage points - which is added to the current interest rate and applied to the outstanding principal;
By way of exception, if the consumer or its spouse are in one of the following situations: unemployment, significant salary reduction, demise, the default interest may not exceed two percentage points over the current interest rate;
- After declaring the acceleration, the default interest cannot be higher than two percentage points which is added to the contractual interest rate and is applied to the due debt;
- During the enforcement proceedings, it is expressly prohibited to charge any interest and default interest rates.

In all cases, the amount of the default interests is limited to the value of the outstanding principal.

Acceleration and initiation of enforcement proceedings

The creditor is entitled to accelerate the credit if the consumer registers 90 consecutive days of arrears. The creditor has the obligation to notify the consumer with at least 30 calendar days before it takes such measure.

The creditor may initiate enforcement proceedings only after the lapse of at least 3 months as of the date when it declared the acceleration, subject to having notified the consumer with at least 30 calendar days in advance.

Unless enforcement proceedings have been initiated within maximum 6 months as of the date when the acceleration was declared, the creditor, starting the following day after the expiry of such term, may no longer charge any default interests, except for the case when the parties, at consumer's request, executed a written agreement in this respect.

4. Assignment of credit agreements and receivables under GEO 52/2016

GEO 52/2016 provides for a series of rules applicable to the assignment of credit agreements regarding immovable assets or the assignment of receivables arising therefrom.

According to the new rules, credit agreements and/or receivables may be assigned only to:

- Other creditors - credit institutions or non-banking financial institutions;
- Receivables may be assigned to entities operating in accordance with Law no. 31/2006 on receivables securitisation; or
- Non-performing receivables may be assigned to receivables collection entities, provided that the following conditions are met: (a) the receivables arise from a non-performing credit agreement, i.e. they are overdue for at least 90 days, and (b) the creditor has declared the acceleration of the loan or has initiated enforcement proceedings against the consumer.

A new effect of the assignment of non-performing receivables to a receivables collection entity is that, further to the assignment, credit agreements, mortgage agreements and any other deeds aiming at securing such credits, executed at the creditors' request, **do not represent writs of enforcement**.

GEO 52/2016 provides that the assignor must inform the consumer on the assignment of the credit agreement, the receivables arising therefrom and the receivables arising from non-performing credit agreements within 10 calendar days as of the execution date of the assignment agreement, by registered letter with return receipt.

Please note that GEO 52/2016 repealed the provisions on the assignment of the credit portfolios from Law No. 93/2009 on non-banking financial institutions, although these provisions had a wider scope of application, as they were also applicable to the assignment of receivables under the credit agreements executed with professionals (e.g., companies). Therefore, the general provisions of law on the receivables assignment shall govern the assignment of non-performing receivables under the credit agreements entered into with professionals.

5. The receivables collection activity and the receivables collection entities

Following the entry into force of GEO 52/2016, the receivables collecting activity can only be performed by creditors or by receivables collection entities.

Also, GEO 52/2016 provides, *inter alia*, certain prohibitions in relation to the activities performed by the receivables collection entities, including:

- To charge fees, interest rates and default interest rates, except for the legal default interest rates;
- To charge collection costs, other than the costs with the enforcement proceedings;
- To conduct receivables collecting activities during the 30 calendar days allowed for the consumer to send the receivables collection entity a challenge contesting the existence or the amount of the due debt, and until the answer to such challenge is sent to the consumer;
- To contact consumers at their workplace, for receivables collection issues;
- The receivables collection entity's communication with the consumer between 08:00 p.m.-09:00 a.m..

Starting 1 January 2017, only receivables collection entities registered with the National Authority for Consumer Protection will be allowed to conduct receivables collection activities. For the purpose of such registration, the National Authority for Consumer Protection will assess such entities' compliance with the relevant legal requirements, namely: (i) the entity should have a registered office, a branch or a representative in Romania; (ii) the persons running and managing the entity should have a good reputation; and (iii) the personnel remuneration method should not depend exclusively on the achievement of certain objectives or the collected amounts.

6. Credit intermediaries

Credit intermediaries are entities conducting the following activities: (i) present credit agreements to consumers; (ii) assist consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than as referred to in point (i); (iii) conclude credit agreements with consumers on behalf of the creditor.

In order to conduct such activities in full or in part, credit intermediaries must be registered with the relevant register of the National Authority for Consumer Protection. For the admission of their registration, credit intermediaries must meet the legal requirements related to good reputation, having an adequate level of knowledge and competence in relation to credit agreements, and no insolvency proceedings should have been initiated against them.

As to the credit intermediaries' freedom of establishment, GEO 52/2016 provides, as a general rule, that a credit intermediary's registration is effective for the entire territory of the European Union, without further authorisation by the competent authorities of the host Member States being required for the carrying out of the activities and for providing the services covered by their authorisation, provided that the activities to be carried out in the host Member States are already covered by their authorisation.

gabriela.anton@tuca.ro

elena.lazarescu@tuca.ro

Editors

Our lawyers specializing in **Banking and Finance Law** provide professional counselling in the regulatory and advisory fields, ranging from bank acquisitions and privatisations to structuring of bilateral, syndicated and other loan facility agreements, including the accessory transaction documentation. The group represents high-profile international and domestic commercial banks, investment banks, multilateral development banks, leasing companies, insurance companies, arrangers and other financial institutions with a presence in Romania or interested to invest in Romania.

Since many financings may be part of a larger business transaction, our banking and finance lawyers work closely with lawyers from other practice groups of Țuca Zbârcea & Asociații and are well versed in completing most any kind of transaction with a financing component, including banks privatisation, bankruptcy and restructuring of banks, collateral enforcement and debt recovery, counselling of financial institutions in mergers & acquisitions projects, portfolio transfers and restructuring and disposal of non-performing loans.



Mihai Dudoiu
Partner
+4 021 204 76 36
mihai.dudoiu@tuca.ro



Gabriela Anton
Managing Associate
+4 021 204 88 90
gabriela.anton@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro

This material is for reference only. It does not seek to provide legal advice, which may be requested according to each specific legal issue and may not be relied upon for any purposes whatsoever. For details and clarifications on any of the topics dealt in this Legal Bulletin, please do not hesitate to contact the attorneys indicated hereinabove.