Bulletin of the *Transilvania* University of Braşov • Vol. 2 (51) - 2009
Series VII: Social Sciences and Law

THE RELATION BETWEEN THE ROMANIAN COMMERCIAL BANKING COMPANIES AND THE CORPORATE SOCIAL RESPONSIBILITY

L. MUREŞAN [1] **C. A. GHEORGHE [2]**

Abstract: *The relatively recent legal regulation regarding the field of the banking service consumer protection has been determined by the abusive commercial activity of the commercial banking companies. If the commercial banking companies had been aware of the need to comply with certain ethical principles in their relation with consumers – having a socially responsible behavior –, then these principles would not legally have been sanctioned. That is why we consider that the significant sanctions to which the banks expose themselves at present are a consequence of the flagrant and repeated breach of the ethical principles in the field of consumer protection.*

Key words: *banking commercial company, corporate social responsibility, business ethics, consumers, consumer protection legislation.*

1. Introductory Aspects regarding the Corporate Social Responsibility

The social responsibility of the commercial companies is a moral liability, a voluntary liability of the respective commercial companies regarding the interaction of their own activity with: the natural environment, clients/consumers, own employees.

In order to understand the term social responsibility of the commercial companies, the stakeholder term must be explained.

The stakeholder term derives from the following terms: *stake* meaning interest, *holder* meaning owner, both English terms. The stakeholders are those categories of persons who have an interest in the development of the activity of the respective commercial company.

The stakeholders are divided into two main categories:

a external stakeholders – including business partners, suppliers, consumers, local communities, natural environment, future generations,

b. internal stakeholders – including employees, shareholders, and managers/owners. [4]

We shall further on consider the relation between the banking commercial companies and their main external stakeholders – consumers.

2. The Romanian Commercial Banking Companies

The commercial banking companies have a very important role in the commercial field, especially in the relations with the consumers (natural

[1] Dept. of Public Law, Transilvania University of Brasov.
[2] Dept. of Private Law, Transilvania University of Brasov.

persons); for this reason, we will try to briefly describe this special type of commercial company.

The commercial banking company is defined [2] as the commercial company which has a specific object of activity, i.e. fund attraction from natural and legal persons, under the form of deposits or non-negotiable instruments, payable at sight or fixed term, as well as credit granting. Besides these main activities, a bank can perform several banking services, represented by the related operations. Thus, the only element strikingly differentiating a commercial banking company from another commercial company is the object of activity.

The ommercial banking companies are universal credit institutions. Legally, these are joint-stock companies, according to the commercial legislation and to Government Emergency Ordinance no. 99/2006. [3]

Thus, the banking commercial company is constituted under the form of a commercial joint-stock company. The main differences between another commercial joint-stock company and a banking commercial company are the restriction, in the case of the banking commercial company, of the object of the cash contribution made by the partner, and the minimum amount of the social capital of 37,000,000 lei, much higher as compared to the rest of commercial joint-stock companies for which the minimum amount of the social capital is 100,000 lei.

As far as the commercial joint-stock company is concerned, it is considered [1] as being the most complex and most evolved form of commercial company. In the case of this type of company, the contributions of the partners are more important than their personal features. In general, the partners make their contribution to the social capital, without operating any activity within the company. These contributions are also important for the third parties, as the liability of the partners for the social obligations is restricted to these contributions. Due to the importance of the contributions to the social capital and blurring of the partners' personal features, the joint-stock company is also known as an anonymous company.

The commercial joint-stock company is intended to accomplish great businesses requiring significant capitals. This type of commercial company is conceived in order to form great capitals, required for the achievement of far-reaching investments. For this purpose, the joint-stock company is authorized to appeal to the public subscription.

Due to the importance of the activity performed by the commercial banking companies, they are constituted only under the form of commercial joint-stock companies. Moreover, the commercial banking companies, due to their size, always have a marketing department. Thus, we can check whether their marketing strategies are or are not socially responsible, although a few of these commercial banking companies perform philanthropic activities labelled as "socially responsible activities".

The banks are organized as commercial companies, and pursue the obtaining of a profit. By means of this purpose, the banks do not distinguish themselves from other commercial companies; the difference consists in the ways of achieving the purpose in mind. However, the profit is not the only factor which must be considered by the banks in establishing their investment policy. They are obliged to provide an active balance between profitability, liquidity and risk. [2]

The commercial banks perform all types of banking operations. The main operations remain however the deposit constitution and their use for the purpose of granting credits to the traders – legal

persons – and consumers – natural persons–.

Thus, the bank has as its main function the concrete mediation by resource attraction and its redistribution in the economic circulation. Money and credit can form the object of the circulation, i.e. the object of certain commercial operations.

The Romanian banking system is made up, on the one hand, of the National Bank of Romania, the central bank of Romania, whose activity is regulated by the B.N.R. Statute – Law no. 312 of 2004 –, and the banks constituted as commercial companies, according to Law no. 31 of 1990 regarding the commercial companies and G.E.O. no. 99 of 2006. [2]

The commercial activity performed by the banks is mainly controlled by the National Bank of Romania.

In their relation to the banks, the National Bank of Romania performs crediting operations for the banks; establishes the crediting conditions and costs; opens an account for each bank; monitors the payment systems; can provide compensation, storing, discounting and payment services, as well as data and information collection and issuance services, for the purpose of preventing and restricting risks. One of the most important activities performed by the BNR in relation to the banks is their prudential supervision, expressed by means of the exclusive competence to authorize the operation of the banks, and through the fact that B.N.R. is responsible for the prudential supervision of the credit institutions which they have authorized to operate. After they have been subject to the constitution control and operation authorization, the banks must be and continue to be controlled. This control considers the assumed risks which must not endanger the solvability of the respective bank and the credibility of others. At community level, the quality of the prudential control performed by the competent authority of each member state is mutually acknowledged, by harmonizing the prudential control rules.

3. Consumer Protection – Element of the Corporate Social Responsibility In the Romanian Banking System

The abuse of the banks operating on the Romanian market towards the banking service consumers, has determined the recent modification of the consumer protection legislation. Thus, Emergency Ordinance no. 174 of 19.11.2008 for the modification and completion of normative documents regarding the consumer protection [5] modifies, first of all, Government Ordinance no. 21/1992 regarding consumer protection, republished in 2008. Thus, at art. 2 of Government Ordinance no. 21/1992, three new definitions are included.

The total cost of the consumer credit includes all costs, including interest, commissions, taxes and any other type of costs which must be borne by the consumer, related to the credit contract, and which are known by the creditor, except for the notarial fees. The related service costs concerning the credit contract, especially the insurance bonuses are also included here, in case the obtaining of the credit is conditioned by the conclusion of a service contract.

The total value payable by the consumer represents the sum between the total value of the credit and the total cost of the credit for the consumer. The total value of the credit represents the ceiling or the total amounts made available based on a credit contract.

Emergency ordinance no. 174/2008 adds two new articles 92 and 93, according to which the banking service consumers are protected.

Thus, any form of publicity related to the credit contracts indicating an interest rate or any other figures regarding the credit cost for the consumer shall include the following standard information: the interest rate related to the credit, fixed and/or variable, together with information related to any costs included in the total credit cost for the consumer; total credit value; actual annual interest, according to the specific legal stipulations; duration of the credit contract and total value payable by the consumer.

The previously presented definitions explain the extent of these obligations in the field of the publicity performed by the banking commercial companies operating on the Romanian market. Moreover, in the case of any form of publicity, the information related to costs shall visibly be written and easy to read, in the same visual area, and with characters of the same size. In the cases in which, in order to be granted the credit, the consumer is obliged to conclude an insurance contract, this shall be mentioned in the publicity.

As for the contracts concluded by the banks with the consumers, the banks are obliged to comply with certain rules to be presented next. Contracts shall be prepared in writing, visibly and easy to read, with a font size of minimum 10, on paper or other durable support, in at least two copies, an original being distributed to each party; the background color of the paper on which the contract is prepared must contrast with the one of the used font.

The interests, as well as all commissions, fees, tariffs, bank expenses or any other costs related to the granting and development of the contract, i.e. services regarding which the consumer does not have the freedom to choose, shall be mentioned in the contract, without aiming at the general business conditions of the bank, list of tariffs and commissions or any other document.

If an anticipated refund right is provided, the anticipated refund commission of the credit is determined in close connection to the losses of the creditor related to the anticipated refund, and must not be a disproportionate obstacle in the exertion of the consumer's right to early refund the credit.

In the credit/deposit contract, the costs related to the administration, cash withdrawal and/or deposit related to the current account, which are the consumer's task, shall also be mentioned, if the banking commercial company collects such commissions.

Moreover, without prejudicing the stipulations related to the modification of the interest, during the development of the contract, it is forbidden to increase the commissions, fees, tariffs, banking expenses or any other costs mentioned in the contract, as well as the introduction and collection of new fees, commissions, tariffs, banking expenses or any other costs which have not been mentioned in the contract. In the contract signed between the bank and the consumer, the type of interest, variable and/or fixed shall be mentioned, and if the interest is fixed only for a period of time, this shall precisely be mentioned.

In the credit contracts with a variable interest, the variation of the interest rate must be independent of the will of the banking commercial company, related to the fluctuations of certain checkable reference indexes, mentioned in the contract, or to the legislative modifications enforcing this. In this type of contract, the interest can vary depending on the reference interest of the bank, on condition that the interest is unique for all financial products intended for the natural persons of the respective bank, and is not increased over a certain level, established by the contract. The formula, according to which the variation of the interest is calculated,

must expressly be indicated in the contract, while mentioning the periodicity and/or conditions under which the modification of the interest rate occurs, i.e. it increases or decreases.

The law forbids the contractual clauses allowing the banking commercial company to unilaterally modify the contractual clauses without signing an addendum, accepted by the consumer. Any notification related to the modification of the content of the contractual clauses regarding costs shall be sent to the consumers with at least 30 days before its coming into force. The consumer has 15 days from the date the notification is received, to communicate his option to accept or refuse the new conditions. The failure to receive an answer from the consumer within the mentioned deadline is not considered an implicit acceptance.

For any modification of the credit cost level, according to the contractual conditions, the bank is obliged to notify the consumer, depending on his written option, expressed in the contract, by means of one or several methods: registered letter, e-mail, sms, and shall put a new refund schedule at his disposal. The banking commercial company has the legal obligation to take action in order to repair, within maximum 15 days, the possible damages caused to the consumer by means of the failure to observe the obligations assumed according to the contract, and prove the measures taken in this respect.

The credit contract shall necessarily contain a stipulation according to which the consumer is informed on being reported to the Credit Office, Banking Risk Central Offices, and/or to other existing institutions, in case the consumer is late in paying his due installments, if there is such a reporting obligation.

When the contract is terminated, including by completion, cancelation or unilateral denunciation from the consumer, the banking commercial company shall offer the consumer, free of charge, a document certifying the fact that all the obligations between the parties have been solved. At the same time, the accounts related to the main financial service supplied shall also be closed, without requiring the submission of another request by the consumer, and without the payment of additional costs.

The infringement of the previously presented legal dispositions is sanctioned with a contraventional fine from 5,000 to 50,000 lei. It can be noticed that the value of the sanctions applied to the banks are higher in case the legal provisions for the banking service consumer protection are infringed.

These new legal regulations of the Romanian banking activity are a reaction of the state to the irresponsible and unethical actions of the banks.

4. Conclusions

We have previously presented in detail the situations which have legally been regulated in the field of banking service consumer protection because these have been determined by the abusive commercial activity of the banks. In other words, each situation which has been provided in the normative document, and shall be sanctioned in case of breach, has been based on at least one case of abusive infringement of the ethical principles.

It is sad to notice that the banks have not been aware of the fact that, if they had complied with certain ethical principles in their relation with the consumers, these principles would not legally have been sanctioned, i.e. they would not have been protected by the state. Ultimately, the significant sanctions to which the banks expose themselves at present if they continue to perform an unethical commercial activity are a consequence of

the flagrant and repeated infringement of the ethics principles in the field of the consumer protection so far.

Other information may be obtained from the address: laura.muresan@unitbv.ro

References

1. Cărpenaru S. D.: *Romanian commercial law. Sixth edition, revised and completed.* Universul Juridic publishing house, Bucharest. 2007, pp. 317-371.
2. Gheorghe, C. A.: *Bank law*. C.H. Beck publishing house, Bucharest. 2006, pp. 3, 7, 17, 61-62.
3. Mureşan, L., Gheorghe, C. A., Poțincu, C.: *Elements of business law*. Braşov Transilvania University publishing house, 2007, p. 98.
4. Racolța-Paina N. D., Mateescu V. M.: *Internal social responsibility and lohn production. Case study: a small foreign capital enterprise, operating in the confections industry*. in Management & Marketing No. 3/2006, Economic publishing house, Bucharest. pp. 99-100.
5. Emergency Ordinance no. 174 of 19.11.2008 for the modification and completion of normative documents related to the consumer protection, published in the Official Gazette no. 795 of 27.11.2008.