



THE EXPERIENCE OF THE ROMANIAN DEPOSIT GUARANTEE FUND IN THE PROCESS OF LIQUIDATION AND RECOVERY

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- **August 1996 – Government Ordinance No. 39/1996 on the establishment and functioning of the Deposit Guarantee Fund in the Banking System**
 - **occurrence of the first signals of crisis in the banking system**
 - **established as a classic pay-box scheme**

- **1999 – Fund’s first compensations payments**
 - **7 failures up to now – Fund as creditor**

- **2001 – Fund’s scope enlargement further to the amendment of the law on banks’ bankruptcy proceedings made possible for the Fund to be appointed as liquidator of members declared bankrupt by courts**

- **2003 – the amendment of the banking law introduced the possibility of:**
 - **appointing the Fund as special administrator – the initiation of special administration is decided by the National Bank of Romania;**
 - **appointing the Fund as sole liquidator both when the liquidation is decided by shareholders and when the National Bank of Romania orders the dissolution of a bank followed by liquidation**

- **2004 – the new law on credit institutions' bankruptcy proceedings broadened furthermore the scope of the Fund by the role of interim administrator (for the period between the date of filing an application for opening the bankruptcy proceedings and the date of appointing the liquidator)**

- **2006 – changes in the insolvency general legal framework – Law No. 85/2006 on insolvency proceedings:**
 - **several provisions that apply to bankrupt credit institutions as well**
 - **enhancing the role of the creditors in the bankruptcy proceedings through Creditors' Assembly and Creditors' Committee**
 - **enlargement of the managerial tasks to be performed by the liquidator, concomitantly with a decrease in syndic's role**

→ ***Further to the amendment of the insolvency general legal framework, the Fund's activity as creditor and liquidator of bankrupt banks increased accordingly in terms of both monitoring and support in the implementation of bankruptcy proceedings and fulfilling the liquidation-related tasks.***

The Fund was appointed both as judicial liquidator and administrative liquidator.

Judicial liquidator

- April 16, 2002 - appointing the Fund as judicial liquidator to Banca Română de Scont - BRS (Romanian Discount Bank)
- July 3, 2002 – appointing the Fund as judicial liquidator to Banca Turco-Română – BTR (Turkish-Romanian Bank)

Administrative liquidator

- August 22, 2006 - appointing the Fund as administrative liquidator to Nova Bank, further to the decision of the National Bank of Romania for dissolution of the bank followed by liquidation

The Fund's activity as administrative liquidator took place during September 4 – November 9, 2006, when the Bucharest Court decided the opening of the bankruptcy proceedings and nominated the judicial liquidator

- **As judicial liquidator, the Fund performs the tasks provided for in the law on credit institutions' bankruptcy proceedings.**
- **The Fund had to face many difficulties in implementing the bankruptcy proceedings as judicial liquidator of the two banks – Romanian Discount Bank (BRS) and Turkish-Romanian Bank (BTR) -, due to the fraudulent nature of the main causes that led to bankruptcy.**
- **In addition, the courts set long terms and in many cases ruled in favour of the debtors.**

- In the case of BRS, its former president put in place a fraudulent mechanism that prejudiced the bank and finally resulted in its failure.
- Through the said mechanism, the former president:
 - used bank's resources in his own interest and the interest of some customers as well;
 - extended credits in a fraudulent manner to clients in special relations with the major shareholder of the bank;
 - changed the legal destination of bank's raised funds so as to serve the particular interests of some clients.

➤ In the case of BTR, the fraudulent mechanism that led to its bankruptcy consisted in:

- collaterals made with a Turkish bank in Cyprus based on four pledge agreements in order to guarantee the credits granted by the same to a Turkish company – Bayindir Insaat Turizm Ticaret ve Sanayi AS (the said company and Bayindir Holding AS, the major shareholder of both Bayindir Insaat Turizm Ticaret ve Sanayi AS and BTR, are the main debtors of BTR);
- fiduciary credits granted to the same Turkish company by a Turkish bank in Switzerland from resources made available by BTR.

The beneficiary failed to reimburse credits at stated maturities and BTR suffered a major loss that triggered failure.

a) Finalization of the lists of creditors

Due to the specific features of the liquidation of the two banks, the list of creditors was finalized only for BRS, while in the case of BTR there are still unsettled claims.

b) Recovery of claims from credits plus accrued interests and other titles and realisation of assets (bankruptcy date – April 30, 2007)

	BRS	BTR
Claims from credits and other titles (%)	42.9	1.5*
Other assets (%) (sale of bank premises, assignment of shares, sale of movables, recovery of investments made at rented premises)	86.8	46.5
Total assets (%)	61.0	9.8

* The reason for such lower level of claims recoveries was that the two Turkish debtors (Bayindir Insaat Turizm Ticaret ve Sanayi AS and Bayindir Holding AS) held 92.08% of bank's total claims as of the bankruptcy date. These claims and accrued interest have not been recovered yet.

c) Legal actions for recovery of claims and prejudices suffered by banks

➤ **BRS: 541 files, of which 116 commercial, 97 civil, 48 for debtors' bankruptcy, 165 forced seizure, 110 criminal files and 5 of fiscal nature. As of December 31, 2006, there were still unsettled 337 files**

- in 2006, the former president of BRS was finally and irrevocably found responsible for bank's failure by the competent court, being thus obligated to cover the existing liabilities of the bank

➤ **BTR: 410 files, of which 60 commercial, 143 civil, 41 criminal files and 166 of fiscal nature. As of December 31, 2006, only 60 files were still unsettled.**

Having in view the substantial portion held by the two Turkish debtors out of bank's total claims, the Fund has initiated since 2003 two civil actions and one criminal action in Romania, none of them solved yet by a final and irrevocable court decision.

- In the two civil actions, the competent courts still not heard the essence of the cases.
- In the criminal file, the former administrators who signed the pledge agreements and fiduciary contracts were convicted by the court, in April 2007, to imprisonment from 5 to 13 years and to payment to the bank, as civil party, of over USD 52 million and EUR 11 million plus accrued interest until effective payment. All defendants filed appeal.

d) Distribution of funds to creditors until end-2006

- **BRS: 5 distributions representing 34.18% of the total accepted claims**
- **BTR: 2 distributions made in 2005 and 2006 for small amounts representing 2.06% of the total preliminary claims**
- **Further to the distributions, the Fund as liquidator received, as provided for in the law, 3% of total amounts collected in the distribution-related periods as remuneration for its liquidation activity.**

The financial effort of the Fund as liquidator of the two bankrupt banks as of December 31, 2006:

- **BRS – Fund’s costs with the personnel involved in the liquidation procedure were 2,5 times higher than the remuneration collected.**
- **BTR - Fund’s costs with the personnel involved in the liquidation procedure were 9 times higher than the remuneration collected.**

The main reasons were:

- the low recovery rate of bank’s claims due to the two Turkish debtors who accounted for over 90% of total claims;
 - the freezing of further distributions until finalization of the list of creditors.
- **As an estimate, the Fund, as liquidator, will not cover the costs incurred with the personnel involved in the liquidation proceedings of the two bankrupt banks.**

- The duties of the administrative liquidator are provided for in the banking law, the law on commercial companies and the law on credit institutions' bankruptcy proceedings related to the liquidator's duties, the costs and expenses incurred by the liquidation proceedings, the order of debt extinction.

- Having in view the short period of time during which the Fund was administrative liquidator (almost 2 months), there were undertaken steps related only to:
 - ✓ **personnel cutting;**
 - ✓ **inefficient bank units closure;**
 - ✓ **termination of contracts;**
 - ✓ **assets inventory;**
 - ✓ **opening balance sheet drawing up;**
 - ✓ **daily operations management etc.**

➤ Fund's claims over bankrupt banks consist of insured deposits' payoffs (the legal term for claiming compensations is of 3 years from the beginning of payments) and, in case of three banks, of unpaid contributions until bankruptcy date as well.

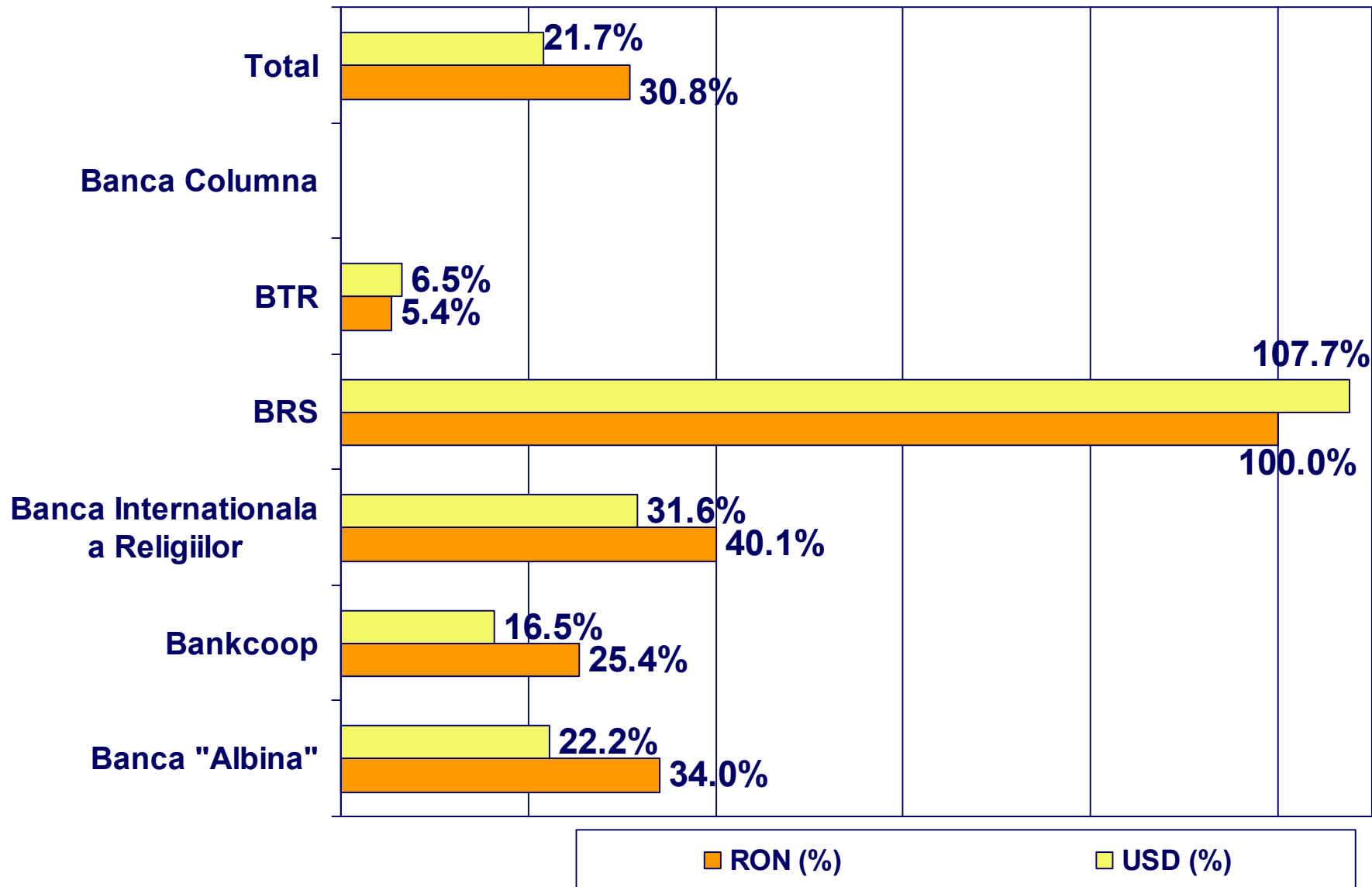
➤ Fund's quota in total enrolled claims over each of the seven bankrupt banks is as follows:

✓ Banca „Albina”	68.02%
✓ Bankcoop	86.60% (unpaid contribution included)
✓ Banca Internationala a Religiilor	79.18%
✓ BRS	2.30%
✓ BTR	14.80% (unpaid contribution included)
✓ Banca „Columna”	0.27% (unpaid contribution included)
✓ Nova Bank	3.76%

Fund's claims and recoveries as of end-2006

No	Bankrupt bank	Bankruptcy year	Total claims		Total recoveries	
			RON million	USD million (at the exchange rate of claim birth)	RON million	USD million (at the exchange rate of distribution date)
1.	Banca "Albina"	1999	36.06	22.51	12.26	5.00
2.	Bankcoop	2000	273.64	136.24	69.39	22.41
3.	Banca Internațională a Religiilor	2000	186.15	75.19	74.57	23.78
4.	BRS	2002	0.87	0.26	0.87	0.28
5.	BTR	2002	16.45	4.92	0.89	0.32
6.	Banca "Columna"	2003	0.09	0.03	-	-
Total			513.26	239.15	157.98	51.79

Recovery rate by banks



- In 2004, the Fund collected in full its claim over BRS for insured deposit payoffs
 - ✓ the first bankrupt bank where the Fund as creditor recovered from distribution of proceeds 100% of its claim;
 - ✓ achievement made possible due to both the amendment of the law on credit institutions' bankruptcy proceedings (year 2001), whereby the Fund as creditor benefited from the inclusion in the first positions of payment priority order as compared to the legal provisions applicable to banks declared bankrupt prior to BRS, and to the small amount of the claim.

- Until end-2006, BTR paid only 5.4% of Fund's claim due to the small amount recovered in the liquidation proceedings (about 5% of the total assets at the failure date).

- **Until end-2006, no recoveries were made from Banca „Columna” as its liquidation is not governed by the special law on credit institutions' bankruptcy proceedings but by the general law on insolvency proceedings in place at the date of bankruptcy, where the Fund, as a general creditor, is placed amongst the last positions in the order of priority for claims payment.**

- **As for Nova Bank (declared bankrupt in November 2006), the deadline for submission of claims' list and date for the first Creditors' Assembly were set in February 2007. However, Fund's claim of RON 277.406 was recovered in full in April 2007 by way of assignment to the main creditor of the bank.**

- **During 2006, distributions made in favour of the Fund amounted to 15% of those made in 2005.**
- **Having in view the time elapsed from the bankruptcy date and the recovery and realisation of most claims and assets of the most bankrupt banks, we can conclude that the possibilities to recover claims started to decrease during 2006.**
- **The portfolio of said banks consists at present in assets and/or claims of small volume or difficult to realise, situation that will direct the banks to the final stage of bankruptcy procedure and will trigger a small volume of recoveries for Fund's claims as well in the future.**

- In the medium term, the Fund as creditor shall closely monitor the liquidators of bankrupt banks in their liquidation activity in terms of assets resolution, claims recovery and reduction of liquidation expenses, with a view to recovering as much as possible out of its claims from insured deposits payoffs.
- The responsibility of the Fund as creditor shall be enhanced through a more dynamic participation to the monthly meetings of Creditors' Committees and Assemblies of failed banks.

- **As liquidator of BRS and BTR, the Fund shall focus mainly on assets resolution, recovery of claims, especially regarding the Turkish debtors of BTR, distributions to creditors, diminution of liquidation expenses.**
- **After almost 11 years of existence, the Fund became an active presence in the Romanian banking system, its initial design being shaped to accomplish the more complex roles of special and interim administrator, judicial or administrative liquidator of member institutions.**



Thank you for your attention!

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