Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy

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PART I
COMMON PROVISIONS FOR CREDIT INSTITUTIONS

TITLE I
GENERAL PROVISIONS

CHAPTER I
Scope and definitions

Section 1
Scope

Art. 1 – (1) This Emergency Ordinance lays down the principles concerning the taking up and pursuit of the business of credit institutions and financial investment companies within Romania's territory and their prudential supervision, as well as supervision of payment systems and financial instruments settlement systems.

(2) This Emergency Ordinance is applicable to credit institutions, Romanian legal persons, including their branches operating abroad and to credit institutions from other Member States, or from third countries, as concerns their activity pursued in Romania.

(3) This Emergency Ordinance shall apply to financial investment companies and investment management companies that have management of individual investment portfolios included in their scope, in compliance with the provisions of Chapter X of Title III, Part I.

(4) The provisions of Title VI, Part II, shall apply to payment systems, financial instruments settlement systems, the participants in these systems, and the infrastructure services and system administrators within these systems.

(5) The provisions of this Emergency Ordinance shall not apply to the central banks of Member States. Other institutions that are not subject to the provisions of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, as published in Official Journal of the European Union L 177/30 June 2006, as laid down in Art. 2 of the Directive, shall not enjoy the treatment for credit institutions applicable in other Member States, as established in this Emergency Ordinance. For the purposes of the provisions of Chapter II of Title III, Part I, such institutions, except central banks of Member States, are considered financial institutions.

Art. 2 – With a view to performing prudential supervision of credit institutions, the provisions of this Emergency Ordinance are also applicable to other categories of persons, as follows:

a) Chapter II of Title III, Part I shall apply to financial holding companies and mixed-activity holding companies;

b) Art. 54 – 58 shall apply to financial institutions having their head offices in other Member States, which fulfil the conditions provided by Art. 54;

c) Art. 89 – 90 shall apply to financial institutions having their head offices in Romania, which fulfil the conditions provided by Art. 89;

d) Chapter IV of Title II, Part I, shall apply to financial auditors of the credit institution and, in accordance with Art. 197, to the financial auditors of financial holding companies.

Art. 3 – Credit institutions, Romanian legal persons, may be set up and may operate, according to the general provisions applicable to credit institutions and the specific requirements set forth in Part II of this Emergency Ordinance, as:

a) banks;

b) credit co-operative organisations;

c) savings banks for housing;

d) mortgage loan banks;

e) electronic money institutions.

Art. 4 – (1) The National Bank of Romania is the competent authority for the licensing, regulation and prudential supervision of credit institutions.

(2) In the performance of the responsibilities assigned to it by law, the National Bank of Romania may collect and process any relevant data and information, including those of a personal nature.

Art. 5 – (1) Any natural or legal person or entity without legal personality, which is not a credit institution, is prohibited from carrying on the business of taking deposits or other repayable funds from the public, the business specific to an electronic money institution or the business of raising and/or managing amounts of money arising from the contributions of the members of groups of persons thus established so as to grant loans/credits to their members to purchase goods and/or services.

(2) The interdiction set forth in para. (1) shall not apply to the taking of deposits or other repayable funds:

a) by a Member State or by a Member State's regional governments or local authorities;

b) by public international bodies of which one or more Member States are members;

c) in the cases laid down expressly by the Romanian legislation or the national legislation of another Member State or the Community legislation, provided that those activities are regulated and controlled accordingly with a view to protecting depositors and investors.

(3) For the purposes of the provisions of para. (1) and (2), an issue of bonds or other similar financial instruments is considered taking of repayable funds from the public if at least one of the following conditions is fulfilled:

a) it represents the sole or main activity of the issuer;

b) the issuer conducts by way of business the activity of granting credits or one or more of the activities provided by Art. 18, para. (1), let. c) – l).

(4) The provisions of para. (3) are not applicable when the issue is solely destined to qualified investors, as provided by the capital market legislation.

(5) The National Bank of Romania is vested with the power to determine whether or not an activity represents taking of deposits or other repayable funds from the public,

banking activity, activity of issuing electronic money or activity of receiving and/or managing amounts of money arising from the contributions of the members of groups of persons thus established so as to grant loans/credits to their members to purchase goods and/or services. Determining the nature of the activity by the National Bank of Romania shall be binding on the interested parties.

Art. 6 – (1) Any person, other than an authorised credit institution, is prohibited from using the name "bank" or "credit co-operative organisation", "credit co-operative", "central body of credit co-operatives", "cooperative bank", "cooperative central bank", "mortgage bank/mortgage loan bank", "savings bank for housing", "electronic money institution" or derivatives or translations of these names, in connection with an activity, a product or a service, except for the case where this use is imposed or acknowledged by law or by an international agreement, or when, from the context in which the respective name is used, it follows undoubtedly the fact that no banking activity is being pursued.

(2) The subsidiary undertakings of a credit institution operating in Romania may use in their name the initials, logo, emblem, name or other identification elements of the parent credit institution.

Section 2
Definitions

Art. 7 – (1) For the purposes of this Emergency Ordinance, the following definitions shall apply:

1. *banking activity* – taking of deposits or other repayable funds from the public and granting of credits for its own account;

2. *competent authority* – the national authority empowered by law or other regulations to exert prudential supervision of credit institutions;

3. *authorisation* – an instrument issued in any form by the competent authority by which the right to carry on the business of a credit institution is granted;

4. *control* – the relationship between a parent undertaking and a subsidiary, as provided by pt. 19, or a similar relationship between a natural or legal person and an undertaking;

5. *subsidiary* – an entity being a subsidiary undertaking of a parent undertaking in one of the cases provided by pt. 19;

6. *investment firm* – any legal person whose activity consists in providing one or more financial investment services to third parties and/or carrying on one or more investment activities on a professional basis;

7. *Member State parent investment firm* – an investment firm authorised in a Member State which has as a subsidiary a credit institution, an investment firm or another financial institution which holds a participation in such an undertaking and which is not itself a subsidiary of another credit institution or investment firm authorised in the same Member State, or of a financial holding company set up in the same Member State;

8. *parent investment firm in Romania* – a financial investment company set up for the purpose of Law No. 297/2004 on the capital market, as subsequently amended and supplemented, which satisfies the requirements laid down in pt. 7;

9. *EU parent investment firm* – a Member State parent investment firm which is not a subsidiary of another credit institution or investment firm authorised in any Member State or of a financial holding company set up in any Member State;

10. *credit institution* – shall mean:

a) an undertaking whose business is to receive deposits or other repayable funds from the public and to granting credits for its own account;

b) an undertaking, other than that under let. a), which issues means of payment in the form of electronic money, hereinafter referred to as *electronic money institution*;

11. *Member State parent credit institution* – a credit institution authorised in a Member State, which has as a subsidiary a credit institution or a financial institution or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;

12. *parent credit institution in Romania* – a credit institution authorised in Romania which satisfies the requirements laid down in pt. 11;

13. *EU parent credit institution* – a Member State parent credit institution which is not a subsidiary of a credit institution authorised in any Member State, or of a financial holding company set up in any Member State;

14. *financial institution* – an undertaking other than a credit institution, the principal activity of which is to acquire participations in other undertakings or to carry on one or more of the activities listed in Art. 18 para. (1) let. b) – l);

15. *close links* – the situation in which two or more natural or legal persons are linked in any of the following ways:

a) by a participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

b) by control;

c) by the fact that both or all these persons are permanently linked to one and the same third person by a control relationship;

16. *electronic money* – monetary value representing a claim on the issuer which fulfils each of the following conditions:

a) it is stored on an electronic device;

b) it is issued on receipt of funds of an amount not less in value than the monetary value issued;

c) it is accepted as means of payment by undertakings other than the issuer as well;

17. *qualifying holding* – a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

18. *public* – any natural or legal person or entity without legal personality, which does not possess the required knowledge and expertise so as to assess the risk of non-repayment of the placements made. In this category the following are not included: the government, central, regional and local authorities, government agencies, central banks, credit institutions, financial institutions, other similar institutions and any other person considered a qualified investor, within the meaning of the capital market legislation;

19. *parent undertaking* – an entity in any of the following situations:

a) has a majority of the voting rights in another undertaking (a subsidiary undertaking);

b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary

undertaking) and is at the same time a shareholder/associate or member of that undertaking;

c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder/associate or member, pursuant to a contract entered into with that undertaking or to some provisions in its articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions.

d) is a shareholder/associate or a member of an undertaking and the majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of voting rights; this provision shall not apply where another undertaking has the rights referred to under let. (a), (b) or (c) above with regard to that subsidiary undertaking;

e) is a shareholder/associate or a member of an undertaking and controls alone, pursuant to an agreement with other shareholders/associates or members of that undertaking (a subsidiary undertaking), the majority of voting rights in that subsidiary undertaking;

f) has the right to exercise, or actually exercises, a dominant influence or control over another undertaking (the subsidiary undertaking);

g) that undertaking (a parent undertaking) and another undertaking (the subsidiary undertaking) are managed on a unified basis by the parent undertaking;

20. *investment management company* – an investment management company as defined by Law No. 297/2004, as subsequently amended and supplemented, and an investment management company in a third country, which would require an authorisation in accordance with Law No. 297/2004 if its head-office were located on Romania's territory;

21. *financial holding company* – a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution, and which is not a mixed financial holding company within the meaning of Emergency Ordinance No. 98/2006 on the

supplementary supervision of credit institutions, insurance undertakings, reinsurance undertakings, financial investment companies and investment management companies in a financial conglomerate;

22. *EU parent financial holding company* – a Member State parent financial holding company which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company set up in any Member State;

23. *Member State parent financial holding company* – a financial holding company set up in a Member State which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company set up in the same Member State;

24. *parent financial holding company in Romania* – a financial holding company set up in Romania, as defined under pt. 23;

25. *mixed-activity holding company* – a parent undertaking, other than a financial holding company, a credit institution or a mixed financial holding company within the meaning of Emergency Ordinance No. 98/2006, the subsidiaries of which include at least one credit institution;

26. *ancillary services undertaking* – an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the key activity of one or more credit institutions;

27. *Member State* – any EU Member State and any state belonging to the European Economic Area;

28. *home Member State* – the Member State in which the credit institution has been authorised;

29. *host Member State* – the Member State in which the credit institution has a branch or in which it provides services directly;

30. *third country* – any country which is not a Member State;

31. *branch* – a place of business which forms a legally dependent part of a credit institution or financial institution and which carries out directly all or some of the transactions inherent to its business.

(2) For the purposes of applying the provisions of Chapter II of Title III, Part I, the terms hereinafter shall have the following meaning:

a) *subsidiary undertaking* – an undertaking as provided at para. (1) pt. 19 let. a)–e) and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence;

b) *parent undertaking* – a parent undertaking within the meaning of provisions under para. (1) pt. 19 let. a)–e) and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking.

(3) For the purposes of applying the provisions under Title III, Part I, *participation* shall mean the rights in the capital of an undertaking, whether or not represented by securities, which, by creating a durable link with that undertaking, are intended to contribute to its activities or the ownership, directly or indirectly, of 20% or more of the voting rights or capital of an undertaking;

(4) For the purposes of applying the provisions of para. (1) pt. 5 and para. (2) let. a), all subsidiaries of a parent undertaking which in turn is a subsidiary undertaking of another parent company shall be considered subsidiaries of the latter.

Art. 8 – (1) For the purpose of determining the situations in which an undertaking is a parent undertaking according to the provisions of Art.7, para. (1), pt. 19, let. a), b) and d), the voting rights and the rights of appointment or removal of any subsidiary undertaking of the parent undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of one of its subsidiary undertakings shall be added to those of the parent undertaking.

(2) Out of these, the following shall be excluded:

a) the rights attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof;

b) the rights attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

(3) For the purpose of determining the situations in which an undertaking is a parent undertaking according to the provisions of Art.7, pt. 19, let. a) and d), the total of the voting rights attaching to the shares held by shareholders/associates or members in a subsidiary undertaking shall be reduced by the voting rights held by that subsidiary undertaking itself, by a subsidiary undertaking of that subsidiary undertaking or by a person acting in his own name but on behalf of those subsidiary undertakings.

Art. 9 – (1) For the purpose of applying the provisions of Art. 15 and those under Section 2.2 of Chapter II in this Title, the person which holds a qualifying holding is considered any natural or legal person or the group of natural and/or legal persons acting in concert for acquiring the qualifying holding and/or pursuing a common policy in respect of the credit institution.

(2) Without prejudice to the tasks incumbent, in accordance with the provisions of para. (1), on the persons that, acting severally or in concert, intend to acquire a qualifying holding in a credit institution, Romanian legal person, the National Bank of Romania may determine that a group of persons acts in concert by taking into consideration the particulars of each case.

CHAPTER II

Minimum requirements for taking up and pursuit of business

Section 1
Minimum requirements for the taking up of business

1.1 Requirement to obtain authorisation and minimum requirements for authorisation

Art. 10 – (1) In order to carry on activity in Romania, every credit institution shall be authorised according to the provisions of this Emergency Ordinance.

(2) Without prejudice to the provisions in this Section, the terms under which the authorisation may be granted, including the documentation which accompanies the authorisation application, shall be established by the National Bank of Romania through regulations and shall be notified to the European Commission.

Art. 11 – The National Bank of Romania shall not grant authorisation to a credit institution if the credit institution concerned does not possess separate own funds or in cases where initial capital is less than the equivalent in RON of EUR 5 million.

Art. 12 – **(1)** When establishing a credit institution, Romanian legal person, its initial capital is represented by the share capital, except the cases where that credit institution results from a reorganisation by merger or split-up.

(2) The share capital of a credit institution, Romanian legal person, including the case of its increase, shall be paid up fully and in cash, at the time of subscription. No in-kind contributions shall be allowed. Shares issued by a credit institution, Romanian legal person, shall be nominative only. In their articles of association, credit institutions, Romanian legal persons, may not provide for exceptions from the 'one share, one vote' principle.

(3) When establishing a credit institution, the contributions to the share capital shall be paid up in an account opened with a credit institution; the account shall be blocked until the registration of the credit institution, Romanian legal person, with the trade register.

Art. **13** – **(1)** At least two persons should effectively direct the business of the credit institution.

(2) The persons mentioned in para. (1) shall be of sufficiently good repute and have sufficient experience to perform the assigned duties.

Art. 14 – **(1)** The registered office and, as appropriate, the head office of a credit institution, Romanian legal person, shall be located on Romania's territory. The head office represents the place where the core management of the statutory business is situated, when this is not situated at the registered office.

(2) The credit institution must effectively and chiefly carry on the activity for which it has been authorised in Romania.

Art. 15 – **(1)** In order to grant authorisation to a credit institution, Romanian legal person, the National Bank of Romania shall be informed of the identities of the shareholders or members – natural or legal persons – that are going to have, whether

direct or indirect, qualifying holdings in respect of the credit institution, and of the amounts of those holdings. The National Bank of Romania shall only grant authorisation if, taking into account the need to ensure the sound and prudent management of the credit institution, it is satisfied as to the suitability of those persons.

(2) Where close links exist between the credit institution, Romanian legal person, and other natural or legal persons, the National Bank of Romania shall grant authorisation only if those links or the legal provisions, administrative measures of a third country governing one or more natural or legal persons with which the credit institution has close links, or the difficulties involved in the application of those provisions or measures do not prevent the effective exercise of its supervisory functions.

Art. 16 – In determining a qualifying holding in the context of Art. 15, para. (1), in order to establish a person's voting rights, the following shall be considered:

a) voting rights held by other persons or entities in their own behalf but on the account of that person;

b) voting rights held by an entity controlled by that person;

c) voting rights held by a third party with whom that person concluded a written agreement which obliges them to adopt, by concerted exercise of voting rights they hold, a lasting common policy in relation to the management of the entity they hold the voting rights in;

d) voting rights held by a third party under a written agreement concluded with that person or with an entity controlled by that person providing for the temporary transfer for consideration of the voting rights to the third party;

e) voting rights attaching to shares owned by that person which are lodged as security, except where the person holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights;

f) voting rights attaching to shares of which that person has the life interest;

g) voting rights which that person or one of the other persons or entities mentioned at let. a)-f) is entitled to acquire, on his own initiative alone, under a formal agreement;

h) voting rights attaching to shares deposited with that person, which that person can exercise at his discretion in the absence of specific instructions from the holder.

Art. 17 – Any authorisation application of a credit institution shall be accompanied by a programme of operations setting out at least the types of business envisaged and the structural organisation of the credit institution. The programme of operation should demonstrate the credit institution's ability to achieve its intended objectives in a way consistent with the rules of a prudent and sound banking practice, by means of adjusting its management structure, procedures, internal mechanisms and capital structure to the type, size and complexity of the envisaged activities.

1.2. Activities permitted to credit institutions

Art. 18 – (1) Credit institutions may perform, according to their authorisation the following activities:

a) acceptance of deposits and other repayable funds;

b) lending including, *inter alia*: consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions, including forfeiting;

c) financial leasing;

d) money transmission services;

e) issuing and administering means of payment, such as credit cards, travellers' cheques and other similar means of payments, including issuing of electronic money;

f) guarantees and commitments;

g) trading for own account and/or for account of clients, according to the law, in:

1. money market instruments, such as: cheques, bills, promissory notes, certificates of deposit;
2. foreign exchange;
3. financial futures and options;
4. exchange and interest-rate instruments;
5. transferable securities and other financial instruments;

h) participation in securities issues and other financial instruments by underwriting and selling them or by selling them and the provision of services related to such issues;

i) advice on capital structure, business strategy and other related issues, advice and other services relating to mergers and purchase of undertakings as well as other advice services;

j) portfolio management and advice;

k) safekeeping and administration of securities and other financial instruments;

l) intermediation on the interbank market;

m) credit reference services related to provision of data and other credit references;

n) safe custody services;

o) operations in precious metals, gems and objects thereof;

p) acquiring of participations in the capital of other entities;

r) any other activities or services that are included in the financial field, abiding by the special laws regulating those activities, where appropriate.

(2) The activities provided for in para. (1) let. g)–k) include all the financial investment services laid down in Law No. 297/2004, as subsequently amended and supplemented, when referring to the financial instruments laid down therein.

(3) The provisions of para. (1) shall be interpreted and applied in a broad manner, so that the activities provided for in that paragraph include any operations, transactions, products and services which fall within the scope of these activities or may be considered similar to them, including ancillary activities.

(4) Activities which, according to certain special laws, are subject to authorisation, specific consent or approval, may be performed by the credit institution only after obtaining such authorisation, specific consent or approval.

Art. 19 – (1) Granting of mortgage credits financed through mortgage bond issues shall be performed according to the special laws in this field.

(2) Collective saving and lending for housing may be performed according to the provisions of Title III, Part II herein.

Art. 20 – (1) Credit institutions may also perform other activities, allowed under the authorisation granted by the National Bank of Romania, as follows:

a) non-financial mandate or commission operations, especially for the account of other entities within the group the credit institution is part of;

b) managing a portfolio of movable and/or immovable assets, which are the property of the credit institution, but are not used for the performance of its activities;

c) rendering of services to own clients, which, although are not ancillary to its activity, are related to banking operations.

(2) The activities provided for in para. (1) shall be consistent with the requirements of banking activity, especially those referring to preserving the reputation of the credit institution and to protecting depositor interests.

(3) The total amount of revenues from the activities mentioned under para. (1) may not exceed 10% of the credit institution's net profit, as laid down in Art. 18.

Art. 21 – Credit institutions may perform transactions in movable and immovable assets only if:

a) those transactions are required for adequately carrying on the activities the credit institution was authorised for, and to the extent to which those assets are reasonably required for this purpose;

b) those transactions involve movable and immovable assets designed to enhance employee proficiency, organise recreational and leisure facilities or ensure dwellings for employees and their families;

c) those transactions involve movable and immovable assets acquired as a result of enforcement of claims, abiding, in respect of hiring/letting such goods, by the provisions of Art. 20, para. (2) and (3).

Art. 22 – (1) Credit institutions shall not engage in any other activities except for those allowed in accordance with this Emergency Ordinance.

(2) Credit institutions shall not engage in activities such as:

a) pledging of own shares against the credit institution's debts;

b) granting of credits secured by shares, other equity instruments or bonds issued by the credit institution or other undertaking included in the credit institution's group;

c) acceptance of deposits or other repayable funds, securities or other valuables, from the public, when the credit institution is in insolvency.

Section 2
Minimum requirements for pursuit of the business

2.1 Capital and risk management requirements

Art. 23 – (1) A credit institution's own funds may not fall below the minimum amount of initial capital required at the time of its authorisation.

(2) If the own funds should be reduced below the minimum amount provided for in para. (1), the National Bank of Romania may, where the circumstances justify it, allow a credit institution a limited period in which to remedy this situation or cease its activities.

Art. 24 – (1) Every credit institution shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.

(2) The arrangements, processes and mechanisms referred to in para. (1) shall be comprehensive and proportionate to the nature, scale and complexity of the credit institution's activities. The technical criteria which must be taken into account shall be laid down in the regulations issued for the application of this Emergency Ordinance. The internal control mechanisms shall at least ensure the organisation of risks control functions, of compliance and internal audit.

2.2. Shareholders

Art. 25 – (1) Any person who proposes to acquire, directly or indirectly, a qualifying holding in a credit institution, Romanian legal person, shall previously notify this intention to the National Bank of Romania, also notifying it of the size of the intended holding.

(2) Any person who proposes to increase his qualifying holding so that it would reach or exceed 20%, 33% or 50% of the share capital or the voting rights of a credit institution, Romanian legal person, or so that the credit institution would become his subsidiary shall notify this intention to the National Bank of Romania.

(3) The notification procedure and the required documentation shall be established by regulations issued by the National Bank of Romania. Within maximum 3 months from the date of notification provided for in para. (1) or, as appropriate, para. (2), the National Bank of Romania shall assess the intention of acquiring a qualifying holding and may oppose such a plan if, in view of the need to ensure sound and prudent management of the credit institution, it is not satisfied as to the suitability of the persons concerned. If the National Bank of Romania does not oppose the plan, it may fix a maximum period for its implementation.

(4) The assessment of the plan to acquire or raise the qualifying holding shall be subject to the prior consultation laid down in Art. 37 if, as a result of acquiring the qualifying holding, the credit institution, Romanian legal person, should become a subsidiary of the person proposing to acquire it or should be subject to the control of the acquirer and if the acquirer is:

a) a credit institution authorised in another Member State or an insurance undertaking or an investment firm authorised in Romania or another Member State;

b) the parent undertaking of either a credit institution authorised in another Member State or an insurance undertaking or investment firm authorised in Romania or another Member State;

c) a natural or legal person controlling either a credit institution authorised in another Member State or an insurance undertaking or investment firm authorised in Romania or another Member State.

Art. 26 – (1) The National Bank of Romania is vested with the power to assess all the circumstances and information related to the suitability of the persons intending to

acquire qualifying holdings in a credit institution, Romanian legal person, and to decide the extent to which the requirements laid down in this Emergency Ordinance and/or in the regulations issued for its application are met.

(2) The assessment of the persons intending to acquire qualifying holdings in a credit institution, Romanian legal person, shall at least involve:

a) the transparency of the source of the funds intended to be used by the concerned person as contribution to the credit institution's capital;

b) the soundness of the financial position of the person concerned and his ability to financially support the credit institution, if needed;

c) the adequacy of the supervision framework in the home country, as the case may be.

Art. 27 – Any person who intends to dispose, directly or indirectly, of a qualifying holding or to reduce his qualifying holding so that it would fall below 20%, 33% or 50% of the share capital or the voting rights of a credit institution, Romanian legal person, or so that the credit institution would cease to be his subsidiary shall notify this intention to the National Bank of Romania, according to regulations.

Art. 28 – In determining the qualifying holdings or other amounts of those holdings, the voting rights referred to in Art. 16 shall be taken into consideration.

Art. 29 – **(1)** On becoming aware of any acquiring or disposal of their shares that exceeds the thresholds referred to in Art. 25, para. (1) and (2), falling below the thresholds referred to in Art. 27, credit institutions, Romanian legal persons, shall inform the National Bank of Romania.

(2) At least once a year, credit institutions, Romanian legal persons, shall inform the National Bank of Romania of the names of the persons possessing qualifying holdings and the sizes of such holdings, according to the information available to them.

Art. 30 – The suitability of the shareholders/members of a credit institution and the capital distribution among them shall enable its growth and stability.

Art. 31 – (1) The National Bank of Romania may set by regulations further criteria to assess the suitability of the shareholders of a credit institution.

(2) The National Bank of Romania shall monitor compliance with the conditions referred to in this Subsection on a continuous basis; to this end, it may require credit institutions any information it deems necessary and it may take appropriate measures, according to this Emergency Ordinance, if the requirements are not met.

CHAPTER III
Authorisation of credit institutions, Romanian legal persons

Section 1
Authorisation procedure and reasons for rejecting the application

Art. 32 – (1) Credit institutions, Romanian legal persons, may be set up and may operate solely on the basis of the authorisation granted by the National Bank of Romania.

(2) Credit institutions, Romanian legal persons, shall be set up in the legal status provided for each category, according to Part II of this Emergency Ordinance. They shall not be set up by public subscription.

(3) The National Bank of Romania shall grant authorisation to a credit institution, Romanian legal person, only if the provisions of this Emergency Ordinance and of the regulations issued for its application are preserved and if it is satisfied that the credit institution can ensure the pursuit of business in safety and in compliance with the requirements for a sound and prudent management, which ensures the protection of interests of depositors and other creditors and the good operation of the banking system.

Art. 33 – (1) The National Bank of Romania shall take a decision regarding a credit institution's authorisation application within four months at most from the receipt of the application, either by approving the establishment of the credit institution or rejecting the application, and shall notify the applicant thereof.

(2) In order to obtain the authorisation for pursuit of business, the documents attesting the legal incorporation of the credit institution in compliance with the applicable

provisions shall be submitted to the National Bank of Romania within two months at most from releasing the approval for establishment.

(3) Within four months at most from the receipt of the documents referred to in para. (2), the National Bank of Romania shall take a decision regarding the credit institution's authorisation for the pursuit of business. The provisions of para. (1) shall be applied accordingly.

(4) In the event of rejection of the authorisation application, the decision shall also comprise the underlying rationale.

Art. 34 – In the process of analysing an authorisation application, the National Bank of Romania may require any additional information and documents, if those submitted are incomplete or insufficient for the assessment of the compliance with the conditions provided for releasing the authorisation.

Art. 35 – **(1)** The authorisation granted shall be valid for an indefinite period of time and cannot be transferred to another undertaking.

(2) The authorised credit institutions shall be registered with the register held by the National Bank of Romania according to Art. 417.

Art. 36 – The National Bank of Romania shall notify the European Commission of any granted authorisation, except those granted to electronic money institutions, so that the name of the credit institution be included in the list of credit institutions drawn up and updated by the European Commission, which is published in the Official Journal of the European Union.

Art. 37 – **(1)** Prior to authorising a credit institution, Romanian legal person, the National Bank of Romania shall consult the competent authorities of another Member State involved, if:

a) the credit institution, Romanian legal person, is a subsidiary of a credit institution authorised in the respective Member State;

b) the credit institution, Romanian legal person, is a subsidiary of the parent undertaking of a credit institution authorised in the respective Member State;

c) the credit institution, Romanian legal person, is controlled by the same persons as those controlling a credit institution authorised in the respective Member State.

(2) Prior to authorising a credit institution, Romanian legal person, the National Bank of Romania shall consult the National Securities Commission or the Insurance Supervisory Commission and the authority in charge with the supervision of insurance undertakings or investment firms in another Member State, if:

a) the credit institution, Romanian legal person, is a subsidiary of an insurance undertaking, financial investment company or investment firm authorised in another Member State;

b) the credit institution, Romanian legal person, is a subsidiary of the parent undertaking of an insurance undertaking, financial investment company or investment firm authorised in another Member State;

c) the credit institution, Romanian legal person, is controlled by the same person as the one controlling an insurance undertaking, financial investment company or investment firm authorised in another Member State.

(3) The authorities referred to in para. (1) and (2) shall be consulted in particular when assessing the suitability of the shareholders/members of the credit institution, Romanian legal person, and the reputation and experience of the persons involved in the management and/or running of another entity belonging to the same group, who are going to be responsible for the effective management and/or running of the credit institution, Romanian legal person. For this purpose, they shall exchange information relevant for the granting of the authorisation, as well as for the ongoing assessment of the compliance with the conditions for the pursuit of business.

Art. 38 – (1) The National Bank of Romania shall reject an authorisation application, if:

a) the submitted documentation is incomplete or is not drawn up in compliance with the legal provisions in force;

b) the credit institution does not possess separate own funds or the initial capital is below the minimum level set by the National Bank of Romania;

c) the legal status is different from that provided for the category of credit institution intended to be set up;

d) from the assessment of the programme of operations it follows that the credit institution cannot ensure the achievement of the assumed goals in compliance with the requirements provided by this Emergency Ordinance and the applicable regulations;

e) the effective management of the credit institution's activity is not ensured by at least two persons or the National Bank of Romania is not satisfied with the suitability of the respective persons, because their reputation or professional expertise is inadequate to the nature, scale and complexity of the credit institution's activity or is not in line with the need to ensure a prudent and sound management;

f) the suitability of the credit institution's shareholders/members or the distribution of capital between them fails to fulfil the requirements provided by this Emergency Ordinance and the regulations issued based on it;

g) the close links between the credit institution and other natural or legal persons, or the legal provisions, the administrative measures in a third country's jurisdiction governing one or more natural or legal persons with which the credit institution has close ties or difficulties in the enforcement of these provisions or measures could impede the effective exercise of the supervisory functions;

h) prior to obtaining the setting-up approval, the founders have made public disclosures regarding the pursuit of business of the credit institution;

i) other conditions provided by the law or by the regulations issued in its application are not fulfilled.

(2) Under no circumstances shall the economic needs of the market act as a criterion for the assessment of an authorisation application or as grounds for its rejection.

Section 2
Authorisation withdrawal

Art. 39 – The National Bank of Romania may withdraw the authorisation granted to a credit institution in the following circumstances:

a) the credit institution has not commenced the business for which it was authorised within one year from the date the authorisation was granted or has ceased to conduct business for more than six months;

b) the authorisation has been obtained on the basis of false information or through any other unlawful means;

c) the credit institution no longer fulfils the conditions based on which the authorisation was granted;

d) the credit institution no longer possesses sufficient own funds or there are elements that lead to the conclusion that within a short interval the credit institution will no longer fulfil its obligations towards depositors or other creditors and, in particular, can no longer provide security for the funds/financial instruments entrusted to it;

e) as a penalty, in accordance with the provisions of Art. 229 para. (1), let. e).

Art. 40 – (1) Shareholders or members of the credit institution may relinquish the authorisation and decide that the credit institution be dissolved and liquidated.

(2) Liquidation at the request of shareholders or members shall be allowed only when the credit institution is no longer in any of the insolvency cases provided by law for the opening of bankruptcy proceedings.

(3) The credit institution shall notify the National Bank of Romania of the decision taken by the general shareholders' meeting or by its members to dissolve and wind up the credit institution, also submitting at least a liquidation plan to dispose of assets and pay off debts, ensuring the full payment of receivables to depositors and other creditors.

(4) Based on the assessment of the liquidation plan, the National Bank of Romania may confirm that the authorisation of the credit institution has ceased to be valid.

Art. 41 – (1) The authorisation of the credit institution shall cease to be valid in the following circumstances:

a) the credit institution has ceased to exist as a result of a merger or split-up;

b) the credit institution has turned into to a different category of credit institution;

c) an order has been passed for opening bankruptcy proceedings against the credit institution.

(2) The National Bank of Romania shall publish the cessation of validity of the authorisation of a credit institution, both for the situations referred to in para. (1) and in

the situation referred to in Art. 40, in *Monitorul Oficial al României*, Part IV, and in two national daily newspapers at least.

Art. 42 – (1) The decision of the National Bank of Romania to withdraw the authorisation shall be notified in writing to the credit institution, along with the underlying rationale, and shall be published in *Monitorul Oficial al României,* Part IV, and in two national daily newspapers at least.

(2) The decision to withdraw the authorisation shall produce effects from its publication in *Monitorul Oficial al României*, Part IV, or from a future date, as specified in the respective decision.

Art. 43 – The authorisation withdrawal in respect of a credit institution and, as appropriate, the cessation of validity of the authorisation shall be notified to the European Commission within the shortest delay and, according to Art. 88 and 259, to the competent authorities of the host Member States.

Art. 44 – (1) Following the authorisation withdrawal, if the credit institution is not in any of the insolvency cases provided by Government Ordinance No. 10/2004 on the judicial reorganisation and winding-up proceedings of credit institutions, approved as amended and supplemented by Law No. 278/2004 or, following the cessation of validity of the authorisation of the credit institution, in accordance with Art. 40, para. (1), it shall go into liquidation, the provisions of Section 3 of Chapter VIII under Title III, Part I regarding liquidation being therefore applicable.

(2) From the date of entry into force of the decision to withdraw the authorisation, respectively the date when the authorisation ceases to be valid in the cases referred to in Art. 40 para. (1) and Art. 41 let. c), the credit institution may not carry on other activities than those strictly related to liquidation.

CHAPTER IV

Treatment of credit institutions and financial institutions from other Member States

Section 1

Credit institutions from other Member States

Art. 45 – (1) Credit institutions authorised and supervised by the competent authority of another Member State may carry on in Romania the activities referred to in Art. 18, para. (1), let. a)–n), either by the establishment of branches or by the direct provision of services, provided that such activities are covered by the authorisation granted by the competent authority of the home Member State and the Romanian legislation issued in the interest of the general good is observed.

(2) Any number of branches set up in Romania by a credit institution with headquarters in another Member State shall be considered a single branch.

Art. 46 – (1) If a branch is set up by a credit institution from a Member State, neither the issue of an authorisation by the National Bank of Romania, nor the endowment capital for the branch shall be compulsory. The supervision of the branch shall be performed in accordance with the provisions of Chapters III and V of Title III, Part I.

(2) On the basis of the notification mentioned in Art. 48**,** the National Bank of Romania shall perform the registration of the branches referred to in para. (1) with the register of credit institutions.

Art. 47 – (1) Electronic money institutions authorised and supervised in other Member States shall benefit from the treatment provided for in this Chapter only with regard to the activity of issuance of electronic money.

(2) Electronic money institutions for which the competent authority of the home Member State waived the application of some or all of the provisions applicable to this kind of credit institutions shall not benefit from the treatment provided for in this Section.

Art. 48 – (1) A credit institution authorised and supervised in another Member State may set up a branch in Romania based on the notification sent to the National Bank

of Romania by the competent authority of the home Member State. Prior to the commencement of the activity, within two months of receiving the notification, the National Bank of Romania shall inform the credit institution concerned, if necessary, of the list of Romanian regulations issued in the interest of the general good, regulating the particular conditions under which certain activities may be carried on.

(2) The notification referred to in para. (1) shall be accompanied by the following data and information:

a) a programme of operations setting out at least the types of businesses envisaged and the organisational structure of the branch;

b) the address of the registered office of the branch from which documents regarding its activity may be obtained;

c) the names of the persons to be responsible for the management of the branch;

d) the amount of the own funds of the credit institution and the amount of capital requirements.

(3) On receipt of a communication from the National Bank of Romania regarding the list of regulations provided for in para. (1), or in the event of the expiry of the 2-month period provided for in that paragraph without receipt of any communication from the latter, the branch may commence its activities.

(4) Any intention to change the information provided for in para. (2), let. a)–c), shall be notified in writing to the National Bank of Romania by the credit institution in question at least one month before making the change; in this interval, the National Bank of Romania shall inform the credit institution, if necessary, of the new conditions under which it may perform activity in Romania.

Art. 49 – A credit institution authorised and supervised in another Member State may exercise the freedom to directly provide services upon the notification sent to the National Bank of Romania by the competent authority of the home Member State; the notification shall include the activities which the credit institution intends to carry on in Romania.

Art. 50 – For the purpose of exercising its specific activities, a credit institution from another Member State may use within Romania's territory the same name as it uses

in the home Member State. In the event of there being any danger of confusion, the National Bank of Romania may, for the purposes of an adequate clarification, require that the name be accompanied by certain explanatory particulars.

Art. 51 – (1) Branches established in Romania by credit institutions from other Member States shall be applied the following:

a) the provisions regarding banking secrecy in Chapter II of Title II, Part I;

b) the provisions of Art. 102 para. (2) regarding the opening of the current account with the National Bank of Romania;

c) the provisions of Art. 103 regarding the identity elements of a credit institution;

d) the regulations issued by the National Bank of Romania on liquidity supervision;

e) the regulations issued by the National Bank of Romania on monetary policy and statistics.

(2) The provisions of para. (1) let. a) shall also be applicable to credit institutions from other Member States providing services directly in Romania.

Art. 52 – (1) Branches of credit institutions from other Member States shall publish in Romanian language the accounting documents of the credit institution they belong to – annual financial statements, consolidated financial statements, report of the members of the board of directors, consolidated report of the members of the board of directors, opinion of the persons responsible for auditing the annual and consolidated financial statements – prepared and audited in accordance with the legislation of the home Member State.

(2) Branches mentioned at para. (1) shall not be bound to publish annual financial statements regarding their own activity. However, they may be required to publish certain data and information regarding their activity, according to specific regulations in the field.

Art. 53 – (1) Credit institutions from other Member States shall notify the National Bank of Romania of the establishment of representative offices in Romania in accordance with its regulations.

(2) Representative offices shall solely perform market research, representative and customer contact operations, and shall not carry on any kind of activities governed by this Emergency Ordinance.

Section 2
Financial institutions from other Member States

Art. 54 – (1) Financial institutions having their registered office in another Member State may carry on in Romania the activities mentioned at Art. 18, para 1, let. b)–n), either by the establishment of branches or by the direct provision of services, if these financial institutions are subsidiaries of one or more credit institutions, those activities are mentioned in their articles of association and each of the following conditions is fulfilled:

a) the parent undertaking or undertakings of the financial institution are authorised as credit institutions in the Member State by the law of which the subsidiary financial institution is governed;

b) the activities in question are actually carried on within the territory of the same Member State;

c) the parent undertaking or undertakings of the financial institution hold(s) 90% or more of the voting rights attaching to shares in the capital of the financial institution;

d) the parent undertaking or undertakings of the financial institution shall satisfy the requirements of the competent authority of the home Member State regarding the prudent management of the subsidiary financial institution and shall declare, with the consent of that competent authority, that they jointly guarantee the commitments entered into by the subsidiary financial institution;

e) the subsidiary financial institution is included, especially for the activities to be carried on in Romania, in the consolidated supervision of the parent undertaking, or, as the case may be, of each of the parent undertakings, in particular, for the purpose of calculating the own funds requirements in order to cover the risks set out in Art. 126, controlling large exposures, and limiting qualifying holdings in accordance with the provisions of Art. 143.

(2) The provisions of Art. 45 para. (2), Art. 48 and Art. 49 shall also be applied accordingly for the establishment of a branch or for the direct provision of services in Romania by a financial institution from another Member State. In this case, the

notification sent to the National Bank of Romania shall also include the proof of fulfilling the conditions mentioned at para. (1).

(3) By way of derogation from the provisions of Art. 48, para. (2) let. d), in the case of the establishment of a branch, the notification shall include information regarding the amount of own funds of the subsidiary financial institution and the level of own funds and capital requirements of the consolidated own funds of the credit institution which is its parent undertaking.

Art. 55 – The supervision of the subsidiary financial institution, including the branch set up on Romania's territory, shall be exercised by the competent authority of the home Member State, according to the provisions of Chapters III and V of Title III, Part I, and by applying accordingly the provisions of Section 3 of this Chapter.

Art. 56 – If the National Bank of Romania is notified by the competent authority of the home Member State that a financial institution ceases to fulfil any of the conditions mentioned at Art. 54 para. (1), the activities carried on in Romania by that financial institution shall no longer benefit from the treatment provided for in this Section and shall be subject to the Romanian legislation regulating the performance of those activities, where appropriate.

Art. 57 – The provisions of this Section shall accordingly apply to subsidiaries of the financial institutions situated in a Member State, as mentioned at Art. 54.

Art. 58 – Financial institutions which are subsidiaries of an electronic money institution authorised and supervised in another Member State shall not benefit from the provisions of this Section.

Section 3
Powers of the National Bank of Romania

Art. 59 – (1) Credit institutions from other Member States which have established a branch on Romania's territory shall, for statistical purposes, report periodically to the National Bank of Romania data and information regarding their activities carried on in Romania, according to the regulations issued by the National Bank of Romania.

(2) In discharging its responsibilities regarding the supervision of liquidity and adoption of the measures needed to implement monetary policy, as laid down in Art. 209, the National Bank of Romania may require that branches of credit institutions from other Member States provide the same information as they require from credit institutions, Romanian legal persons, for these purposes.

Art. 60 – (1) Where the National Bank of Romania ascertains that a credit institution from another Member State having a branch or directly providing services in Romania is not complying with the legal provisions adopted in Romania involving powers of the National Bank of Romania, it shall require the credit institution concerned to put an end to that irregular situation and shall also set a cut-off date for this.

(2) If the credit institution concerned fails to take the necessary steps, the National Bank of Romania shall inform the competent authority of the home Member State accordingly, in order for the latter to impose the measures deemed appropriate.

(3) If, despite the measures taken by the home Member State and communicated to the National Bank of Romania, or because such measures prove inadequate or are not available in Romania, the credit institution persists in violating the Romanian legal rules in force, the National Bank of Romania may, after informing the competent authority of the home Member State, take appropriate measures to prevent or to punish further irregularities and, in so far as is necessary, to prevent the offending credit institution from initiating further transactions within Romania's territory. Those measures shall be communicated to the credit institution concerned by the National Bank of Romania.

Art. 61 – Art. 59 and 60 shall not affect the power of other Romanian authorities to take appropriate measures to prevent or to punish irregularities committed within

Romania's territory which are contrary to the legal rules in force adopted in the interest of the general good and to other provisions regarding public order. These measures shall include the possibility of preventing the offending credit institution from initiating further transactions within Romania's territory.

Art. 62 – (1) Any measure taken according to Art. 60 or Art. 61 involving sanctions or restrictions on the exercise of the freedom to directly provide services shall be properly justified and communicated to the credit institution concerned.

(2) The measures taken by the National Bank of Romania according to para. (1) may be subject to appeal according to conditions provided under Chapter IX of Title III, Part I.

Art. 63 – (1) Before following the procedure provided for in Art. 60, the National Bank of Romania may, in emergency cases, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The European Commission and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

(2) The National Bank of Romania shall amend or abolish the measures taken according to para. (1) following a decision in this respect of the European Commission, after consulting the competent authorities of the Member States concerned.

Art. 64 – If the National Bank of Romania is informed by the competent authority of the home Member State that the authorisation of a credit institution operating within Romania's territory has been withdrawn or is no longer valid for any other reasons, the National Bank of Romania shall take the necessary measures to prevent the respective credit institution from initiating further transactions within Romania's territory and to safeguard the interests of depositors and other creditors.

Art. 65 – The National Bank of Romania shall inform the European Commission of the number and type of cases in which measures have been taken in accordance with Art. 60.

Art. 66 – This Section shall not prevent credit institutions with head offices in other Member States from advertising their services through all available means of communication, subject to any Romanian rules governing the form and the content of such advertising adopted in the interest of the general good.

CHAPTER V
Treatment of credit institutions from third countries

Art. 67 – **(1)** Credit institutions having their registered office in third countries may perform activity in Romania only if all the following requirements are collectively met:

a) the activity is carried on by setting up a branch, the provisions of Art. 45 para. (2) being applied accordingly;

b) the branch has been granted authorisation by the National Bank of Romania;

c) the competent authority of the home state does not oppose to the establishment of a branch in Romania;

d) the provisions of this Emergency Ordinance and the regulations issued for its application are observed.

(2) Activities that may be performed by the branch in Romania shall be included in the authorisation granted by the National Bank of Romania, in accordance with the provisions of Section 1, Chapter II of this Title, and may not exceed the scope of activity of the credit institution, authorised by the competent authority of the home third country.

(3) The activity performed by the branch set up in Romania shall be subject to prudential supervision of the National Bank of Romania in accordance with the provisions of Chapter IV of Title III, Part I.

Art. 68 – A branch established in Romania may use the same name as the credit institution uses in the home third country. In the event of there being any danger of confusion, the National Bank of Romania may, for the purposes of an adequate clarification, require that the name be accompanied by certain explanatory particulars.

Art. 69 – **(1)** Authorisation requirements and those regarding the carrying on of the business, provided for in Chapters II and III of this Title, shall be applied accordingly

to branches of credit institutions from third countries, taking into account the following provisions.

(2) The National Bank of Romania shall grant authorisation to the branch in Romania of a credit institution from a third country only if it is satisfied that the credit institution is able to ensure the safe performance of activity within Romania's territory by preserving the requirements of a prudent and sound management and that there are adequate conditions for supervision to be exercised.

(3) The National Bank of Romania shall notify the European Commission and the European Banking Committee of any authorisation granted to a branch of a credit institution from a third country.

Art. 70 – The initial capital of a branch shall be made up of the endowment capital provided, in cash, by the credit institution from a third country. The amount of the endowment capital shall be established by the regulations of the National Bank of Romania and may not be less than the equivalent in RON of EUR 5 million.

Art. 71 – **(1)** A credit institution from a third country shall designate at least two persons responsible for the senior management of the branch in Romania, who shall be empowered to legally engage the credit institution in Romania. These persons shall have sufficiently good repute and expertise for discharging the assigned duties. The provisions of Chapter I of Title II, Part I, referring to the senior management of credit institutions shall be applied accordingly.

(2) The management of the branch and the documents needed to exercise supervision shall be situated within Romania's territory, at the address of the registered office.

Art. 72 – **(1)** In assessing the quality of a credit institution from a third country, the criteria for assessing persons that have qualifying holdings in the credit institution in question, provided for in Art. 26, para. (2), which shall be applicable accordingly, as well as at least the following shall be taken into account:

a) the amount of own funds, capital requirements and liquidity of the credit institution;

b) legal provisions or administrative measures of the home country of the credit institution or difficulties in the enforcement of these provisions or measures, in light of the possible impediments in the exercise of prudential supervision of the branch by the National Bank of Romania.

(2) If close links exist between the credit institution from a third country and other natural or legal persons, the National Bank of Romania shall grant authorisation only if these links do not prevent the effective exercise of its supervision functions.

Art. 73 – Any material changes in the shareholding of the credit institution from the third country or persons having close links to it, including those arising from merger or split-up involving the credit institutions from a third country, shall trigger a new assessment by the National Bank of Romania that may lead to the withdrawal of the authorisation granted to the branch established in Romania, if the conditions underlying its authorisation are no longer met.

Art. 74 – The authorisation granted to a branch of a credit institution from a third country may be withdrawn by the National Bank of Romania under the conditions provided for in Art. 39.

Art. 75 – **(1)** The validity of an authorisation granted to a branch of a credit institution from a third country shall cease in the following cases:

a) the credit institution concerned or, where it is involved in a merger/split-up leading to its non-existence, the resulting entity shall give up the authorisation, deciding also the dissolution and liquidation of the branch;

b) following certain reorganisation processes undertaken by the credit institution or by the group it belongs to, including merger and split-up, the activity of the branch established in Romania shall be taken over by another credit institution or by a branch established in Romania of a credit institution from another Member State or third country;

c) the authorisation granted to the credit institution has been withdrawn by the competent authority of the home state or its validity ceases;

d) a court order for commencement of bankruptcy proceedings of the credit institution or other proceeding involving its liquidation has been passed.

(2) In cases provided for at let. a) and b), the credit institution shall inform the National Bank of Romania of its decision about the dissolution and liquidation of the branch established in Romania and shall send it at least a plan to sell the assets and pay off the liabilities so as to ensure full payment of the claims of depositors and other creditors.

(3) The decision of dissolution and liquidation shall have effects only after the disclosure by the National Bank of Romania concerning the cessation of validity of the authorisation. This shall be communicated to the credit institution.

(4) The provisions of Art. 41 para. (2) shall be applied accordingly.

Art. 76 – (1) Branches of credit institutions from third countries shall publish in Romanian language the accounting documents of the credit institution they belong to – annual financial statements, consolidated financial statements, report of the members of the board of directors, consolidated report of the members of the board of directors, opinion of the persons responsible for auditing the annual and consolidated financial statements – prepared and audited in accordance with the legislation of the third country.

(2) Where the requirements of the third country relating to preparation of the financial statements referred to in para. (1) are adequate or equivalent to those applicable in Romania, the branch established in Romania of the credit institution from the third country shall not be bound to publish annual financial statements related to its own activity if, on the condition of reciprocity, credit institutions from Member States benefit from the same treatment in the third country in question. However, these branches may be required to publish some data and information related to their own activity, as provided by the specific regulations in this area.

(3) For failure to fulfil the provisions referred to in para. (2), the branches of credit institutions from third countries shall publish annual financial statements related to their own activity.

Art. 77 – (1) The provisions of Title II, Part I, shall be applied accordingly to branches of credit institutions from third countries that have been authorised to carry on

business in Romania, under the terms provided by regulations issued for the application of this Emergency Ordinance.

(2) The National Bank of Romania may waive the application of some prudential requirements to branches of credit institutions from some third countries if, as a result of making an assessment, it ascertains that the home third country has in place a prudential framework equivalent to the one established by this Emergency Ordinance and by the regulations issued for its application, and that the competent authority of that country exercises adequate supervision of the credit institution, including the activity of its branch in Romania.

(3) The treatment provided for in para. (2) may be applied on the basis of reciprocity only and shall not be more favourable than that applied to credit institutions from other Member States that pursue business in Romania.

Art. 78 – (1) Credit institutions from third countries shall notify the National Bank of Romania of the establishment of representative offices in Romania, in compliance with the regulations issued by it.

(2) Representative offices shall solely perform market research, representative and customer contact operations, and shall not carry on activities governed by this Emergency Ordinance.

Art. 79 – Where, through agreements concluded with third countries at the level of the European Union, the treatment of credit institutions from these countries that carry on business in Member States differs from the one provided for in this Emergency Ordinance, the provisions of such agreements shall have precedence in application.

CHAPTER VI

The pursuit of business outside the territory of Romania

Section 1

Establishment of branches and provision of services in other Member States

Art. 80 – (1) Credit institutions authorised and supervised by the National Bank of Romania may carry on in other Member States the activities laid down in Art. 18, para.

(1), let. a)-n), either by the establishment of branches or by the direct provision of services; their authorisation by the competent authority of the host Member State is not necessary, if the respective activities are covered by the authorisation granted by the National Bank of Romania.

(2) The provisions of Art. 45 para. (2) shall be applied accordingly.

Art. 81 – (1) The credit institution, Romanian legal person, intending to establish a branch in another Member State shall for this purpose send a notification to the National Bank of Romania, along with the following data and information:

a) the Member State within the territory of which the branch is to be established;

b) a programme of operations of the branch, which includes at least the types of business that are to be carried on and the structural organisation of the branch;

c) the address of the office of the branch where the documents related to the performed activity may be obtained;

d) the identity of the persons designated to ensure the senior management of the branch and information regarding their reputation and professional expertise.

(2) Within 3 months of the receipt of the notification, the National Bank of Romania shall communicate the information received to the competent authority of the host Member State and shall accordingly inform the credit institution, with the exception of the case when, considering the activities that are to be carried on by the branch, it has reasons to ascertain that the administrative structure or the financial situation of the credit institution is not adequate; in this case, it shall be able to oppose to the establishment of the branch and shall consequently refuse to communicate the information to the competent authority of the host Member State.

(3) Along with the information provided by the credit institution under para. (1), the National Bank of Romania shall also communicate information regarding the amount of own funds and the amount of capital requirements of the credit institution to the competent authority of the host Member State.

(4) If the National Bank of Romania refuses to communicate the information to the competent authority of the host Member State, it shall accordingly inform the credit institution and shall convey the underlying rationale of its decision within the term laid down in para. (2).

(5) The decision concerning the refusal to communicate the information, as well as the lack of an answer from the National Bank of Romania within 3 months of the receipt of the notification from the credit institution, may be subject to appeal as laid down in Chapter IX of Title III, Part I.

Art. 82 – **(1)** The branch may commence its activity from the date the credit institution is notified by the competent authority of the host Member State, where appropriate, of the conditions in which, in the interest of the general good, the activities may be carried on in the host Member State or, where there is no such communication, on the expiry of a 2-month term from the receipt of the information communicated by the National Bank of Romania to the respective competent authority.

(2) The credit institution, Romanian legal person, shall notify the National Bank of Romania and the competent authority of the host Member State of any intention to modify the information it provides pursuant to Art. 81, para. (1), let. b)–d), at least one month before the date the modification is to be made; within this interval, the National Bank of Romania shall take a decision pursuant to Art. 81, para. (2), being able to oppose to the carrying on of activity by the branch in the new circumstances.

Art. 83 – **(1)** The credit institution, Romanian legal person, intending to provide services directly in another Member State for the first time shall notify this to the National Bank of Romania. The notification shall specify the host Member State concerned and the activities provided by Art. 18, para. (1), let. a)–n), which the credit institution intends to carry on in this Member State.

(2) The credit institution, Romanian legal person, may provide services directly in another Member State once the notification referred to in para. (1) is made.

(3) Within one month of the receipt of the notification pursuant to para. (1), the National Bank of Romania shall communicate it to the competent authority of the host Member State.

Art. 84 – The National Bank of Romania shall inform the European Commission with regard to the number and the nature of cases in which it has opposed to the

establishment by a credit institution, Romanian legal person, of a branch in another Member State or the carrying on of business by such a branch.

Art. 85 – **(1)** If the National Bank of Romania is informed by the competent authority of the host Member State of the fact that, though forewarned, a credit institution, Romanian legal person, which has a branch or directly provides services within the territory of the respective Member State does not comply with the legal provisions adopted in that Member State, providing for the responsibilities assigned to the respective authority by law, the National Bank of Romania shall within the shortest delay take the necessary measures to ensure that the offending credit institution puts an end to that irregular situation. The nature of these measures shall be communicated to the competent authority of the host Member State.

(2) If, despite the measures imposed by the National Bank of Romania or because such measures prove to be inadequate or inapplicable in the host Member State, the offending credit institution, Romanian legal person, persists in violating the legal provisions referred to in para. (1), it shall be subject to the measures or sanctions imposed by the competent authority of the respective Member State, including, where appropriate, the restriction on initiating further transactions within the territory of that Member State, with the prior notification of the National Bank of Romania.

(3) The acts issued by the competent authorities of the host Member State, through which measures or sanctions are imposed on the offending credit institution, Romanian legal person, according to para. (2), shall be recognised and shall produce mandatory effects in Romania.

Art. 86 – The credit institution, Romanian legal person, pursuing business within the territory of another Member State is subject to the legal provisions in force in the host Member State, adopted in the interest of the general good, and to the measures and sanctions imposed by the authorities of the respective Member State, one such measure being the interdiction of the pursuit by the offending credit institution of any future activities within the territory of the host Member State.

Art. 87 – **(1)** Before following the procedure provided for in Art. 85, the competent authority of the host Member State may, in emergency cases, take precautionary measures needed to protect the interests of depositors, investors and other persons to whom services are provided by a credit institution, Romanian legal person, pursuing business within the territory of the respective Member State, measures of which the National Bank of Romania shall be informed at the earliest opportunity.

(2) At the request of the European Commission, the National Bank of Romania shall communicate its opinion on the precautionary measures adopted pursuant to para. (1).

Art. 88 – The National Bank of Romania shall accordingly inform the competent authorities of the host Member States regarding the withdrawal of the authorisation of a credit institution, Romanian legal person, pursuing business within the territory of other Member States, including with regard to the consequences of authorisation withdrawal or concerning the cessation of the validity of the authorisation, where appropriate.

Art. 89 – **(1)** The financial institutions, Romanian legal persons, may pursue the activities covered by Art. 18, para. (1), let. b)-n), in other Member States, through the establishment of branches or the direct provision of services, if:

a) these financial institutions are subsidiaries of one or more credit institutions, Romanian legal persons;

b) the respective activities are included in the articles of association of the financial institution;

c) the conditions provided for in Art. 54, para. (1), let. a)-e), applicable accordingly, are cumulatively fulfilled.

(2) The provisions of Art. 45, para. (2), and Art. 81 – 83 shall apply accordingly to the financial institutions in Romania laid down in para. (1).

(3) Along with the notification pursuant to Art. 81 and Art. 83 respectively, the National Bank of Romania shall verify the compliance with the conditions provided for in para. (1), which ensures their fulfilment. By way of derogation from Art. 81 para. (3), the notification shall comprise information regarding the amount of own funds of the subsidiary financial institution and the consolidated amount of own funds and capital requirements of the parent credit institution, Romanian legal person.

(4) The supervision of the subsidiary financial institution shall be exercised by the National Bank of Romania in compliance with the provisions of Art. 23 – 31, 172 – 174, 214 – 223, and 225.

(5) In the event that the financial institution no longer fulfils one of the conditions referred to in para. (1), the National Bank of Romania shall notify the competent authority of the host Member State; the activities carried on in the host Member State by that financial institution shall fall within the provisions of the legislation of that state, the provisions of this Emergency Ordinance being no longer applicable.

(6) The provisions of this article shall apply accordingly to the Romanian subsidiaries of the financial institutions covered by para. (1) as well.

(7) The financial institutions whose parent credit institution is an electronic money institution, Romanian legal person, shall not benefit from the treatment provided by this article.

Art. 90 – The provisions of Art. 84 – 88 shall also apply accordingly to the establishment of branches or to the provision of services in another Member State by the financial institutions with head offices in Romania covered by Art. 89.

Section 2
The establishment of branches in third countries

Art. 91 – (1) Credit institutions, Romanian legal persons, shall be able to carry on the activities covered by the authorisation granted by the National Bank of Romania within the territory of a third country only through the establishment of a branch. For the purposes of this Emergency Ordinance, all places of business established within the territory of a third country shall be considered a single branch.

(2) The establishment of a branch in a third country is subject to the prior approval of the National Bank of Romania, according to the regulations issued by it.

(3) The National Bank of Romania may reject the application for the approval of the establishment of the branch if, on the basis of information held and documentation submitted by the credit institution, Romanian legal person, it finds that:

a) the credit institution does not have an adequate financial standing or the administrative capacity to carry on the envisaged activity through the branch;

b) the existing legislative framework of the third country and/or the manner in which it is applied impedes the exercise by the National Bank of Romania of its supervisory functions;

c) the credit institution posts an inappropriate development of the prudential banking indicators or does not comply with other requirements set by this Emergency Ordinance or by the regulations issued for its application;

(4) Any change in the elements considered in the approval of the establishment of the branch is subject to the prior approval of the National Bank of Romania.

CHAPTER VII
Authorisation in special cases

Section 1
Merger and split-up

Art. 92 – Merger or split-up of credit institutions, Romanian legal persons, shall be performed according to the legal provisions in the field, as well as to the regulations issued by the National Bank of Romania.

Art. 93 – **(1)** The merger may be performed:

a) between two or more credit institutions;

b) between credit institutions and financial institutions;

c) between credit institutions and ancillary services undertakings.

(2) The merger and split-up are subject to the prior approval of the National Bank of Romania according to the regulations issued by it.

(3) The merger or split-up may be registered with the Trade Register only after prior approval has been obtained from the National Bank of Romania.

(4) In the prior approval process, the National Bank of Romania shall analyse the documents submitted, as well as any other available information so as to ensure that the legal requirements of this Emergency Ordinance are met.

Art. 94 – When assessing a merger or a split-up, at least the following shall be considered:

a) the fulfilment of the conditions for authorising a credit institution;

b) capital adequacy of the resulting credit institution/institutions;

c) the transparency of the structure of the resulting credit institution/institutions, so as to allow the exercise of effective supervision;

d) the suitability of the persons that ensure the management of the resulting credit institution/institutions.

Art. 95 – (1) Newly-established credit institutions, Romanian legal persons, resulting from a merger or a split-up, as well as credit institutions remaining after such an operation, shall fulfil all the requirements laid down in this Emergency Ordinance and in the regulations issued for its application.

(2) Newly-established credit institutions, Romanian legal persons, shall obtain the authorisation from the National Bank of Romania.

Art. 96 – The provisions of this Section shall be accordingly applied to any operation involving a credit institution, Romanian legal person, leading to a total or significant transfer of its assets, regardless of the way in which such an operation is performed.

Section 2
Turning another undertaking into a credit institution

Art. 97 – In the event of turning another undertaking into a credit institution, the authorisation requirements laid down in para. 1.1 of Section 1, Chapter II, Title I, shall be taken into account.

Art. 98 – A credit institution belonging to one of the categories provided for in Art. 3 may turn into a credit institution belonging to another category only if it meets the specific requirements applicable to that category.

Art. 99 – Financial institutions may turn into credit institutions if the general and specific provisions applicable to the respective credit institution category are fulfilled.

Art. 100 – The process of turning an undertaking into a credit institution shall be subject to the approval of the National Bank of Romania, the resulting credit institution being bound to obtain the authorisation from the National Bank of Romania. The provisions regarding the merger shall apply accordingly.

TITLE II
OPERATIONAL REQUIREMENTS

CHAPTER I
Organisation and management

Art. 101 – **(1)** In pursuing their activity, credit institutions shall abide by the rules and regulations passed by the National Bank of Romania for carrying out its tasks laid down in Law No. 312/2004 on the Statute of the National Bank of Romania.

(2) Credit institutions shall organise their entire business in accordance with the rules of prudent and sound banking practice, as well as with the provisions of the law and of the regulations issued in the application of the law.

Art. 102 – **(1)** Credit institutions shall be established and shall operate under the conditions of the legislation applicable to commercial companies and in compliance with the provisions of this Emergency Ordinance.

(2) Before it starts operating, each credit institution shall open a current account with the National Bank of Romania, according to the regulations issued by it.

Art. 103 – In all its official documents, a credit institution shall be identified by a minimum amount of information, as provided by the applicable legislation, and by

mentioning the number and date of registration in the credit institutions register provided under Art. 417.

Art. 104 – The management of a credit institution, the processes of risk identification, management, monitoring and reporting as well as its internal control mechanisms shall be established by its articles of association and internal regulations, according to the legislation in force applicable to commercial companies and in compliance with the provisions of this Emergency Ordinance and the regulations issued for its application.

Art. 105 – The articles of association and internal regulations of the credit institution shall be submitted to the National Bank of Romania, according to the conditions set by regulations.

Art. 106 – The board of directors and the senior managers of the credit institution shall have the duties and responsibilities provided by the legislation applicable to commercial companies, being also responsible for the fulfilment of all the requirements provided by this Emergency Ordinance and the regulations issued for its application.

Art. 107 – **(1)** The executive management of the credit institution is delegated by the board of directors to a steering committee consisting of at least two senior managers, according to the legislation applicable to commercial companies.

(2) The senior managers of the credit institution appointed pursuant to para. (1) shall perform solely the tasks they have been appointed to.

Art. 108 – **(1)** The persons appointed to the running and executive management of a credit institution should be of good repute and have sufficient experience to match the nature, size and complexity of the business of the credit institution and of the entrusted responsibilities.

(2) In the case of credit institutions, the management responsibilities provided for in para. (1) may be performed by natural persons only.

(3) Each of the persons mentioned under para. (1) shall be approved by the National Bank of Romania prior to begin fulfilling his tasks.

(4) The members of the board of directors shall collectively have adequate qualification and expertise in order to take well-grounded decisions, according to their assigned responsibilities, in respect of all the aspects related to the business of the credit institution.

Art. 109 – The National Bank of Romania is vested with the power to analyse to what extent the minimum requirements of this Emergency Ordinance and of the regulations issued for its application are observed, to assess all circumstances and information regarding the activity, reputation, moral integrity and experience of each person mentioned under Art. 108 and to decide whether the respective person fulfils, both individually and collectively, the requirements laid down.

Art. 110 – **(1)** Besides the conditions stipulated by the legislation in force regarding the board members of a commercial company, a person may not be elected to the board of directors of a credit institution and if elected, he loses his mandate, where:

a) he holds another position within the credit institution, except where he is also the senior manager of the credit institution;

b) in the past five years, his approval to direct a credit institution, a financial institution or an insurance/reinsurance undertaking as a member of the board of directors or as a senior manager was revoked by the supervisory authority or he was replaced from the position held in such entities for reasons attributable to him;

c) he is forbidden, following a legal act, a court order or a decision made by another authority, to direct a credit institution, a financial institution or an insurance/reinsurance undertaking or another undertaking carrying out business in the financial sector as a member of the board of directors or as a senior manager, or to perform activity in any field specific to the above-mentioned institutions.

(2) The legal provisions in force regarding the incompatibilities and the interdictions for board members, including those laid down in para. (1), shall also apply to senior managers who are not board members.

CHAPTER II

Banking secrecy and the relationship with clients

Art. 111 – (1) The credit institution shall preserve the confidentiality of all facts, data and information on the activity performed, as well as of any fact, data or information at its disposal, regarding the person, property, activity, business, personal or business relationships of clients, or any information related to the clients' accounts – balances, flows, operations –, to services or contracts concluded with its clients.

(2) For the purposes of this Chapter, the client of a credit institution is any person with whom the credit institution has negotiated a transaction – in carrying out the activities set forth under Art. 18 and Art. 20 – even if the respective transaction has not been concluded yet, including the persons who benefit or benefited in the past from the services of a credit institution.

Art. 112 – (1) Any board member of a credit institution, its senior managers, employees and any person who, in a way or another, participates in the credit institution's management, administration or business shall preserve professional secrecy about any fact, data or information referred to in Art. 111, which they acknowledged while discharging their duties related to the credit institution.

(2) The persons referred to in para. (1) are not entitled, either during or after their term of service, to use or disclose facts or data, which, in the event they became publicly known, would damage the interest or prestige of the credit institution or of any of its clients.

(3) The provisions of para. (1) and (2) shall also apply to the persons who obtain information of the nature referred to above, from reports or other documents of the credit institution.

Art. 113 – (1) The obligation of preserving professional secrecy may not hinder the competent authority in discharging its supervisory tasks stipulated by law at an individual, consolidated or sub-consolidated level, as appropriate.

(2) Information subject to banking secrecy may be disclosed when the purpose for which it is requested is deemed justified, as follows:

a) at the request of the accountholders or their legal heirs, including their legal and/or statutory representatives, or with their explicit permission;

b) in cases when the credit institution has a legitimate interest;

c) at the written request of other authorities or institutions or *ex officio*, if such authorities or institutions are entitled by special law to require and/or receive such information and the information which can be provided by credit institutions are explicitly stated, in order for these authorities and institutions to fulfil their specific tasks;

d) at the written request of the accountholder's spouse when the submission to the court of an action for the partition of goods is proved, or at the request of the court;

e) at the request of the court, with a view to solving various issues related to the case.

(3) According to the provisions of para. (2) let. c), the application submitted to the credit institution shall contain the legal grounds for the request of information, the identity of the client the confidential information refers to, the category of the requested data and the purpose for which the information is requested.

(4) The employees of a credit institution shall not use, for their personal benefit or for the benefit of any other person, directly or indirectly, the confidential information referred to in Art. 111 that is held or received by them in any way.

Art. 114 – In the case of criminal proceedings or at the written request of the prosecutor or of the court or, as the case may be, of the criminal investigation bodies with the approval of the prosecutor, credit institutions shall provide information subject to banking secrecy.

Art. 115 – The following shall not be considered a violation of banking secrecy:

a) provision of aggregate information, so that the identity and other information about each client's activity cannot be identified;

b) provision of data to the entities established as Credit Information Bureau, Payment Incidents Bureau or Deposit Guarantee Fund, organised in accordance with the law;

c) provision of data to the financial auditor of the credit institution;

d) provision of information at the request of the correspondent credit institutions if such information is related to the operations performed via correspondent accounts;

e) provision of data and information to entities belonging to the group that the credit institution is part of, information required for the purpose of supervision on a consolidated basis, for fighting money laundering and the financing of terrorism.

Art. 116 – The persons entitled to request and/or to receive information subject to banking secrecy pursuant to this Chapter shall be bound to preserve confidentiality and may only use it for the purpose for which it was requested or provided, according to the law.

Art. 117 – **(1)** Credit institutions shall conduct transactions with their clients only on contractual bases, acting prudently and in accordance with the specific legislation governing consumer protection.

(2) Contracts shall be drawn up so as to facilitate the understanding by clients of all contractual terms and conditions, in particular the liabilities undertaken by them in virtue of the concluded agreement. Credit institutions shall not require their clients to pay interests, penalties, commissions or other banking fees and charges, if these are not laid down in the contract.

(3) Credit institutions issuing electronic money shall ensure compliance with the provisions of Art. 320.

Art. 118 – **(1)** Credit institutions shall ensure the adequate identification of their clients, under the conditions provided by the specific legislation in the field, the provision of services involving account opening and transactions or the renting of safe deposit boxes by anonymous persons being prohibited.

(2) In order to fulfil the obligations set forth in this Emergency Ordinance or other legal provisions, credit institutions may process personal data without the explicit consent of the person concerned.

Art. 119 – Credit institutions shall not condition the granting of credits or the provision of other products/services to clients by the sale or purchase of shares or other equity instruments/financial instruments issued by the credit institution itself or by another undertaking belonging to the group the credit institution is part of, or by the acceptance by the client of other products/services being provided by the credit institution

or by an undertaking belonging to its group, which are not related to the lending operation or to the requested product/service.

Art. 120 – Loan agreements, including the real or personal collateral agreements, concluded by a credit institution shall be considered executory contracts.

Art. 121 – Each credit institution shall draw up and keep, either at its registered office or at its branches, one copy of the contractual documents, the internal documentation on the transactions performed, the daily records of entries for every client indicating at least the nature of the transactions carried out and the amount due to or receivable from the client or the credit institution, as well as any information regarding its business relations with clients and other entities that the National Bank of Romania might lay down in its regulations.

CHAPTER III
Risk mitigation requirements

Section 1
Scope

Art. 122 – Credit institutions shall comply with the requirements laid down in Art. 24 and Art. 126, in Sections 6, 7 and 8 of this Chapter and in Chapter V herein, on an individual and/or consolidated or sub-consolidated basis, as appropriate. The level of application of these requirements by a credit institution on an individual basis and/or consolidated or sub-consolidated basis, as appropriate, shall be established through regulations issued for the application of this Emergency Ordinance.

Section 2
Own funds and minimum own funds against risks

Art. 123 – With a view to ensuring the stability and reliability of the activity carried out and/or the fulfilment of the assumed obligations, each credit institution shall maintain a proper level of its own funds.

Art. 124 – The elements included in the calculation of own funds, the conditions and limits where they may be taken into account and the situations where these limits may be exceeded, the elements deducted in the calculation of own funds and any other requirements for their determination, shall be established through regulations, on an individual as well as on a consolidated basis.

Art. 125 – Any reference to the concept of own funds laid down in this Emergency Ordinance, in the regulations or any other enforcement acts issued pursuant to this Emergency Ordinance, shall be deemed made to the definition of own funds established through regulations issued for this purpose.

Art. 126 – **(1)** Without prejudice to the provisions of Art. 23 and to the competences of the National Bank of Romania laid down in Art. 226, credit institutions shall – to the extent and as per the terms and conditions set out through regulations issued for the application of this Emergency Ordinance – provide own funds that are at all times more than or equal to the sum of capital requirements established for the mitigation of credit risk, including the counterparty credit risk, dilution risk, position risk, settlement/delivery risk, currency risk, commodities risk and operational risk, as appropriate.

(2) The regulations shall establish the methodology for determining capital requirements for the mitigation of the risks referred to in para. (1), the criteria for application and the activity sectors to which such methodology may be applied.

Section 3
Credit risk

Art. 127 – Credit institutions shall apply either the Standardised Approach, or, if permitted by the National Bank of Romania, the Internal Ratings Based Approach to calculate the capital requirements for covering credit risk, with a view to calculating the risk weighted exposure amounts.

Art. 128 – The methodology for calculating the risk weighted exposure amounts for credit risk by using the Standardised Approach shall be set through regulations issued for the application of this Emergency Ordinance.

Art. 129 – **(1)** In the case of Standardised Approach, credit quality – including exposures arising from securitisation – may be determined by reference to the credit assessments of External Credit Assessment Institutions or of Export Credit Agencies, deemed eligible by the National Bank of Romania, based on specific criteria laid down in the regulations issued for the application of this Emergency Ordinance.

(2) An External Credit Assessment Institution which has been deemed eligible for this purpose by the competent authority from another Member State or by the National Securities Commission may be deemed eligible by the National Bank of Romania without carrying out its own assessment.

(3) The National Bank of Romania shall make publicly available an explanation of the assessment and a list of eligible External Credit Assessment Institutions.

Art. 130 – **(1)** The methodology for calculating the risk weighted exposure amounts for credit risk using the Internal Ratings Based Approach as well as the minimum requirements for approving this method shall be formulated through regulations issued for the application of this Emergency Ordinance.

(2) Credit institutions may obtain permission for using the Internal Ratings Based Approach only if the National Bank of Romania is satisfied that the implemented systems for the management and rating of credit risk exposures comply with the standards and minimum requirements for the assessment of conformity, established through regulations issued for the application of this Emergency Ordinance.

(3) If a credit institution ceases to comply with the requirements set out in obtaining permission for using the Internal Ratings Based Approach, it shall either present to the National Bank of Romania a plan for a timely return to compliance or demonstrate that the effect of non-compliance is immaterial**.**

Art. 131 – Where a credit institution, Romanian legal person, is an EU parent credit institution or a subsidiary of an EU parent credit institution or of an EU parent

financial holding company, and the group which it is part of employs the Internal Ratings Based Approach on a unified basis, the National Bank of Romania may allow minimum requirements to be met by the parent undertaking and its subsidiaries considered together.

Art. 132 – Where a credit institution, Romanian legal person, is an EU parent credit institution or a subsidiary of an EU parent credit institution or of an EU parent financial holding company and when the Internal Ratings Based Approach is intended to be used within the group, the National Bank of Romania shall co-operate closely with the competent authorities of the different entities within the group, in respect of granting the approval to use the approach concerned as provided for in Art. 182-188.

Art. 133 – **(1)** The credit institution which obtained the approval to use the Internal Ratings Based Approach shall implement the Internal Ratings Based Approach for all exposures.

(2) By way of derogation from the provisions of para. (1), the National Bank of Romania may approve the sequential implementation of the Internal Ratings Based Approach, subject to the conditions established through regulations issued for the application of this Emergency Ordinance. These conditions shall be designed to ensure that this treatment is not used selectively by the credit institution for the purpose of achieving lower capital requirements.

(3) By way of derogation from the provisions of para. (1), credit institutions which obtained the approval to use the Internal Ratings Based Approach may use, with approval from the National Bank of Romania, the Standardised Approach for certain categories of exposures, pursuant to the conditions established through regulations.

Art. 134 – When using both the Standardised Approach and the Internal Ratings Based Approach, the specific treatment applicable to the following categories of exposures shall be established through regulations issued for the application of this Emergency Ordinance:

a) collateralised exposures;

b) securitised exposures and securitisation positions;

c) exposures from transactions in financial derivatives, repurchase transactions, long-term settlement transactions, margin lending operations, and securities/commodities lending/borrowing transactions.

Section 4
Market risks

Art. 135 – The methods for determining capital requirements for covering the position risk, settlement/delivery risk, currency risk and commodities risk shall be formulated through regulations issued for the application of this Emergency Ordinance.

Art. 136 – **(1)** The National Bank of Romania may allow credit institutions to calculate their capital requirements for position risk, currency risk and/or commodities risk using their own internal risk-management models instead of or in combination with the methods described in the regulations issued for the application of this Emergency Ordinance; it also sets the framework governing the use of such methods.

(2) Each credit institution shall apply for and obtain the approval from the National Bank of Romania for using its own internal models, in accordance with the terms and conditions laid down in the regulations issued for the application of this Emergency Ordinance.

Section 5
Operational risk

Art. 137 – Credit institutions shall at all times hold own funds to cover the operational risk they are exposed to.

Art. 138 – **(1)** In computing the capital requirements for covering operational risk, credit institutions may use the Basic Indicator Approach, or, with the prior approval of the National Bank of Romania, the Standardised Approach, the Alternative Standardised Approach or the Advanced Measurement Approach.

(2) The methodology for computing the capital requirements for operational risk, by employing the approaches listed in para. (1), as well as the requirements that credit

institutions have to fulfil in order to employ such approaches, as appropriate, are laid down in the regulations issued for the application of this Emergency Ordinance.

Art. 139 – Credit institutions may use, with the approval of the National Bank of Romania, a combination of the approaches referred to under Art. 138 para. (1), in accordance with the terms and conditions laid down in the regulations issued for the application of this Emergency Ordinance.

Art. 140 – The provisions of Art. 131 and Art. 132 shall apply accordingly in case of employing the Advanced Measurement Approach in determining capital requirements for operational risk.

Section 6
Large exposures

Art. 141 – Credit institutions shall fulfil at all times the requirements concerning large exposures set forth through the regulations issued for the application of this Emergency Ordinance.

Art. 142 – Each credit institution shall have sound administrative and accounting procedures and adequate internal control mechanisms for the purpose of identifying and recording all large exposures and subsequent changes to them, in accordance with the provisions of this Emergency Ordinance and with the applicable regulations, and of monitoring those exposures in the light of each credit institution's own exposure policies.

Section 7
Qualifying holdings of credit institutions

Art. 143 – (1) No credit institution, Romanian legal person, may have a qualifying holding the amount of which exceeds 15% of its own funds in an undertaking, other than a credit institution, a financial institution, an insurance/reinsurance undertaking or an undertaking carrying on activities which are a direct extension of banking or concern services ancillary to banking, such as leasing, factoring, management of investment funds, data processing services or any other similar activity.

(2) The total amount of a credit institution's qualifying holdings in the undertakings listed under para. (1) may not exceed 60% of its own funds.

(3) The limits laid down in para. (1) and (2) may be exceeded only in exceptional circumstances, in which case the National Bank of Romania shall require the credit institution either to increase its own funds or take other equivalent measures.

Art. 144 – Credit institutions, Romanian legal persons, may not acquire qualifying holdings in the undertakings listed under Art. 143 para. (1) if in this manner they may exercise control over the concerned entity.

Art. 145 – Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in the name of a credit institution, Romanian legal person, but on behalf of other persons, shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in Art. 143 para. (1) and (2). In addition, shares which are not financial fixed assets shall not be included in the calculation.

Art. 146 – (1) The National Bank of Romania's prior approval is required for any qualifying holding that a credit institution, Romanian legal person, intends to hold in an undertaking from a third country, which, as a result of the acquisition of the holding in question, would be included in the prudential consolidation scope of the credit institution, Romanian legal person, according to the applicable regulations.

(2) Among the requirements laid down while approving the acquiring of qualifying holdings referred to in para. (1), the following shall be considered:

a) the acquisition of qualifying holdings shall not expose the credit institution, Romanian legal person, to undue risks or hinder effective supervision on a consolidated basis;

b) credit institutions shall have adequate financial and organisational resources to handle the acquiring and administering of the respective holdings.

Art. 147 – The qualifying holdings, other than those requiring the National Bank of Romania's approval according to Art. 146, including holdings which in exceptional circumstances exceed the limits laid down under Art. 143 para. (3), shall be notified to

the National Bank of Romania within 5 days from the date of their acquisition by the credit institution, Romanian legal person.

Section 8
Internal assessment process of capital adequacy in relation to risks

Art. 148 – (1) Credit institutions shall have in place sound, effective and complete internal strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of capital that they consider adequate to cover the nature and level of risks to which they are or might be exposed. In this respect, credit institutions shall take into account, in addition to the risks listed in Art. 126, any other risks to the performed activity, as well as those risks due to external factors.

(2) The processes and strategies laid down in para. (1) shall be subject to regular internal review by the credit institution to ensure that they remain comprehensive and proportionate, related to the nature, scale and complexity of the activities carried out by the credit institution concerned.

Art. 149 – Each credit institution is responsible for the internal assessment process of the capital adequacy to its risk profile.

Section 9
Other prudential requirements

Art. 150 – (1) The National Bank of Romania may set through regulations other prudential requirements as well as the level of their application to credit institutions. These requirements may be aimed at, without being limited to, the following:

a) liquidity risk;

b) the operations of credit institutions with persons having special relations with the credit institution concerned;

c) the outsourcing of the credit institution's activities;

d) the quality of assets and provisions;

e) changes related to the credit institution affecting the conditions considered when it was authorised.

(2) Pursuant to the provisions of para. (1) let. e), the changes requiring prior approval of the National Bank of Romania and the changes for which subsequent notification is sufficient shall be established through regulations issued in virtue of this Emergency Ordinance. Registration in the trade register of those alterations shall be performed only upon approval.

Art. 151 – Credit institutions, Romanian legal persons, may establish branches in Romania and other operational units in Romania or abroad according to the conditions stipulated by the National Bank of Romania's regulations. The provisions of Art. 53 para. (2) shall apply accordingly.

CHAPTER IV
Financial statements and audit

Art. 152 – **(1**) Credit institutions shall permanently keep accounting records according to the provisions of Law No. 82/1991 – Accounting Act, as republished, and shall draw up annual financial statements and, as appropriate, consolidated annual financial statements providing a fair view of financial position, financial profitability, cash flows and other information related to the activity performed. The accounting records and the financial statements of a credit institution shall also reflect the operations and financial position of its branches and subsidiaries, on an individual basis and on a consolidated basis, respectively.

(2) The annual financial statements and, as appropriate, the consolidated annual financial statements of credit institutions shall be audited by financial auditors, in accordance with international standards and practices.

(3) The Board members and directors of the credit institution are responsible for the observance of the provisions of para. (1) and (2).

Art. 153 – Credit institutions shall submit to the National Bank of Romania their financial statements, as well as other data and information required by the National Bank of Romania, in its capacity as supervisory authority, at the time limits and in the form set up by its regulations.

Art. 154 – The National Bank of Romania may set up by regulations the carrying out of external audit at credit institutions for purposes other than those referred to in Art. 152 para. (2) and the standards applicable thereto.

Art. 155 – **(1)** The financial auditors of credit institutions shall be appointed by the National Bank of Romania.

(2) The National Bank of Romania may reject the appointment of an auditor if it considers that the auditor lacks the adequate expertise and/or independence for the fulfilment of its specific tasks or if it is established that the auditor failed to observe the particular requirements of ethical and professional conduct.

(3) Credit institutions shall periodically replace the financial auditor or shall require the financial auditor to periodically replace the co-ordinator of the team performing the financial audit according to the National Bank of Romania's requirements.

Art. 156 – **(1)** While discharging his duties, the financial auditor of a credit institution shall inform the National Bank of Romania as soon as he finds out about any fact or decision concerning the credit institution which:

a) constitutes a material breach of the law and/or regulations or other documents issued for its application, which lay down the conditions for authorisation or requirements related to the pursuit of activity;

b) is liable to affect the functioning of the credit institution;

c) may lead to the financial auditor's refusal to express an opinion on the financial statements or to the expression of a qualified opinion.

(2) At the National Bank of Romania's request, the financial auditor of the credit institution shall provide any details, specifications, explanations related to the financial audit performed.

(3) The obligations provided for in para. (1) and (2) rest with the credit institution's financial auditor also when carrying out specific tasks in an undertaking having close links resulting from a control relationship with the credit institution.

(4) The fulfilment in good faith by the financial auditor of the obligation to inform the National Bank of Romania, according to para. (1)-(3), shall not constitute a breach of the obligation to keep professional secrecy, which rests with the financial auditor

according to the law or the contractual clauses, and shall not involve the financial auditor in liability of any kind.

(5) The National Bank of Romania has access to all the documents drawn up by the financial auditors during the audit.

Art. 157 – The National Bank of Romania may withdraw the approval granted to a financial auditor when he does not carry out, in an appropriate manner, the duties provided by law or does not observe the particular requirements of ethical and professional conduct.

Art. 158 – The National Bank of Romania may issue specific regulations concerning the relation between the financial auditor and the competent authority.

CHAPTER V
Disclosure by credit institutions

Art. 159 – (1) For the purpose of providing market discipline and public disclosure, credit institutions shall disclose data and information regarding the activity performed, to the extent that and under the conditions laid down in the regulations issued for the application of this Emergency Ordinance.

(2) Credit institutions shall adopt formal policies to comply with the disclosure requirements laid down and to assess the appropriateness of their data and information.

Art. 160 – Small- and medium-sized enterprises or another corporate, which apply for a loan, may ask the credit institution to provide them an explanation in writing, regarding its rating decision.

Art. 161 – (1) Credit institutions shall publish, as soon as practicable, the data and information referred to in Art. 159 at least on an annual basis.

(2) In the light of the criteria laid down in the regulations issued for the application of this Emergency Ordinance, credit institutions shall decide if more frequent publication than that provided for in para. (1) is necessary.

Art. 162 – (1) Each credit institution shall establish the methods for the disclosure of necessary data and information, the location where such data and information are available and the means of verification regarding the compliance with the disclosure requirements. Whenever possible, credit institutions shall use the same means and location for disclosures.

(2) Equivalent disclosures made by credit institutions to the market, under accounting, listing or other requirements, may be deemed to constitute compliance with the disclosure requirements according to this Emergency Ordinance. If data and information are not included in the financial statements, credit institutions shall indicate where they can be found.

Art. 163 – (1) For the purpose of providing public disclosure and market discipline, the National Bank of Romania may impose credit institutions specific provisions regarding:

a) the content of data and information to be disclosed;

b) the frequency of disclosures and the establishment of deadlines for publication;

c) the means and locations for disclosures, other than those for the financial statements;

d) the use of specific means of verification for the disclosures not covered by financial audit.

TITLE III
SUPERVISION AND DISCLOSURE REQUIREMENTS FOR THE NATIONAL BANK OF ROMANIA

CHAPTER I
Supervision of credit institutions, Romanian legal persons

Art. 164 – For the purpose of protecting the interests of depositors and ensuring a sound and viable banking sector, the National Bank of Romania shall carry out the prudential supervision of credit institutions, Romanian legal persons, and of their

branches established in other Member States or in third countries, by setting rules and prudential banking indicators, by monitoring their observance and the compliance with other requirements laid down by law and by the applicable regulations, on an individual basis, as well as on a consolidated or sub-consolidated basis, as appropriate, in order to prevent and reduce specific banking risks.

Art. 165 – Credit institutions, Romanian legal persons, shall report to the National Bank of Romania the data and information necessary for assessing the compliance with the provisions foreseen in this Emergency Ordinance and in the regulations issued for its application, at the time limits and in the form set up by the National Bank of Romania.

Art. **166** – **(1)** The National Bank of Romania shall review the arrangements, strategies, processes and mechanisms implemented by each credit institution, Romanian legal person, to comply with the provisions of this Emergency Ordinance and of the regulations issued for its application and shall evaluate the risks to which the credit institution is or might be exposed.

(2) On the basis of the review and evaluation, the National Bank of Romania shall determine to what extent the arrangements, strategies, processes and mechanisms implemented by the credit institution, Romanian legal person, as well as its own funds ensure the prudent management and the adequate coverage of its risks, in relation to the risk profile of the credit institution.

(3) The National Bank of Romania shall establish the frequency and intensity of the reviews and evaluations having regard to the size, systemic importance, nature, scale and complexity of the activities performed by each credit institution, Romanian legal person, and taking into account the principle of proportionality. The reviews and evaluations shall be updated at least on an annual basis.

Art. 167 – The National Bank of Romania shall pursue the efficient communication with each credit institution, Romanian legal person, aimed at ensuring a deep knowledge of the activity, organisation and internal process of the credit institution of assessing the capital adequacy on its risk profile.

Art. 168 – **(1)** The National Bank of Romania may recommend the credit institution, Romanian legal person, to adopt adequate measures for the improvement of the arrangements, strategies, processes and mechanisms implemented in order to ensure the adequate organisation of the activity performed or regarding the recovery or support of its financial position. The credit institution shall notify the National Bank of Romania about the measures taken, at the time limits established by the latter.

(2) Separate from the recommendation, the National Bank of Romania may take supervision measures and/or impose sanctions according to this Emergency Ordinance.

Art. 169 – The monitoring of fulfilment by credit institutions, Romanian legal persons, of prudential and other requirements provided for by this Emergency Ordinance and by the applicable regulations, shall be carried out by the National Bank of Romania on the basis of reports transmitted by credit institutions and on-site inspections at the head offices of credit institutions and of their branches in Romania and abroad.

Art. 170 – **(1)** The on-site inspections are performed by the staff of the National Bank of Romania, authorised for this purpose, or by financial auditors or experts, appointed by the National Bank of Romania.

(2) The National Bank of Romania may establish, in certain situations, the purpose of the financial audit and the standards which shall be taken into consideration, in the terms of keeping it in the scope of competences of the financial auditor.

Art. 171 – **(1)** Credit institutions are compelled to allow the staff of the National Bank of Romania and other persons authorised to carry out the inspection, to examine their reports, accounts and operations and to provide all the documents and information related to the activity performed, as they are requested.

(2) Credit institutions, Romanian legal persons, are compelled to transmit to the National Bank of Romania any information required by the latter, in order to discharge its responsibilities established by law.

Art. 172 – **(1)** The prudential supervision of credit institutions, Romanian legal persons, which carry out activities in other Member States, according to the conditions referred to in Chapter VI of Title I, Part I, including the establishment of a branch, shall

be the responsibility of the National Bank of Romania, in compliance with the provisions of this Emergency Ordinance.

(2) The provisions of para. (1) shall not prevent the competent authority of the host Member State from exercising its responsibilities regarding the implementation of monetary policy, the reporting requirements for statistical purposes and of those requirements resulting from the provisions of para. (3).

(3) The supervision of the liquidity of the branches established by credit institutions, Romanian legal persons, in other Member States shall be carried out by the competent authority of the host Member State, in co-operation with the National Bank of Romania.

Art. 173 – (1) In order to ensure the prudential supervision of Romanian credit institutions operating, particularly through a branch, in other Member States, the National Bank of Romania shall co-operate with the competent authorities of the host Member States.

(2) According to the co-operation referred to in para. (1), the competent authorities shall supply one another with all information concerning the management and ownership of credit institutions, Romanian legal persons, that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of credit institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

Art. 174 – (1) In order to supervise the business of branches established in other Member States by credit institutions, Romanian legal persons, the National Bank of Romania may perform on-site inspections, after having first informed the competent authorities of the host Member States, or may ask these competent authorities to perform this task, and participate in the carrying out of inspection, if necessary.

(2) The competent authority of the host Member State may carry out, in the discharge of its responsibilities, on-site inspections at the head offices of branches established within the territory of the respective Member State, by credit institutions, Romanian legal persons.

Art. 175 – For the supervision of branches established in third countries by credit institutions, Romanian legal persons, the National Bank of Romania shall co-operate with the competent authorities of the respective states, according to the provisions referred to in the co-operation agreements concluded with these authorities.

CHAPTER II
Supervision on a consolidated basis

Section 1
The competent authority responsible for supervision on a consolidated basis

Art. 176 – (1) The supervision on a consolidated basis of a credit institution, Romanian legal person, shall be exercised by the National Bank of Romania in the following conditions:

a) the credit institution authorised by the National Bank of Romania is a parent credit institution in Romania or an EU parent credit institution;

b) the credit institution authorised by the National Bank of Romania has as a parent undertaking a parent financial holding company in Romania, or an EU parent financial holding company, without that, in the latter case, the parent undertaking having as subsidiaries other credit institutions in the Member States;

c) the credit institution authorised by the National Bank of Romania has as parent undertaking, established in Romania, a parent financial holding company in Romania or an EU parent financial holding company and which is a parent undertaking for at least one more credit institution authorised in another Member State;

d) the credit institutions authorised in two or more Member States, including Romania, have as parent undertakings more financial holding companies having their head offices in different Member States and there is a subsidiary credit institution in each of these States, and from among these subsidiaries, the credit institution, Romanian legal person, has the largest balance sheet total;

e) the credit institution authorised by the National Bank of Romania has as parent undertaking a financial holding company which is also a parent undertaking for at least

another credit institution authorised in any other Member State, and none of these credit institutions has been authorised in the Member State in which the financial holding company was set up, and the credit institution authorised in Romania has the largest balance sheet total; this credit institution shall be considered, for the purposes of supervision on a consolidated basis, as the credit institution controlled by an EU parent financial holding company.

(2) In particular cases, the National Bank of Romania may, by common agreement with the competent authorities of other Member States, waive the criteria referred to in para. (1) let. c)–e), if their application would be inappropriate, taking into account the credit institutions concerned and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. In these cases, before taking a decision, the competent authorities shall give the EU parent credit institution, or the EU parent financial holding company, or the credit institution with the largest balance sheet total, as appropriate, the opportunity to state its opinion on that decision. The competent authorities shall notify the European Commission of any agreement, falling within the scope of this paragraph.

Art. 177 – Credit institutions, Romanian legal persons, subsidiaries in Romania, are supervised on a sub-consolidated basis by the National Bank of Romania if they or their parent undertakings, where these are financial holding companies, and the supervision on a consolidated basis is performed by the National Bank of Romania, according to the provisions of Art. 176 para. (1) let. c), d) or e), have in a third country a subsidiary credit institution, financial institution or investment management company, or hold a participation in such entities.

Art. 178 – The prudential consolidation scope, including the exclusion from consolidation, as well as the prudential consolidation methods shall be set forth through regulations issued for the application of this Emergency Ordinance.

Art. 179 – **(1)** Financial holding companies shall be included in the supervision on a consolidated basis.

(2) Without prejudice to the provisions of Art. 196 para. (1), the provisions of para. (1) shall not in any way imply that the National Bank of Romania is required to play a supervisory role in relation to the financial holding company, on an individual basis.

Art. 180 – (1) When a subsidiary credit institution, Romanian legal person, is not included within the scope of supervision on a consolidated basis, exercised by a competent authority of another Member State, the National Bank of Romania may require the parent undertaking information which may facilitate the supervision of that credit institution.

(2) When, the supervision on a consolidated basis of a credit institution, Romanian legal person, does not include a subsidiary credit institution of another Member State, the parent credit institution in Romania or the parent financial holding company in Romania, as appropriate, shall provide information which may facilitate the supervision of that subsidiary credit institution, at the request of the competent authorities of that Member State.

(3) The National Bank of Romania, in its capacity as competent authority responsible for exercising supervision on a consolidated basis, may require the subsidiaries of a credit institution or of a financial holding company, which are not included within the scope of supervision on a consolidated basis, the information referred to in Art. 194. In such a case, the procedures for transmitting and verifying the information laid down in Art. 194 and 195 shall apply.

(4) Subsidiaries, Romanian legal persons, of a credit institution or of a financial holding company, which are not included within the scope of supervision on a consolidated basis, shall provide the information referred to in Art. 194, at the request of the authority responsible for exercising supervision on a consolidated basis, including when this authority is a competent authority of another Member State.

Art. 181 – The National Bank of Romania, in its capacity as authority responsible for exercising supervision on a consolidated basis of EU parent credit institutions, Romanian legal persons, and of credit institutions, Romanian legal persons, controlled by EU parent financial holding companies shall carry out the following tasks:

a) co-ordinates the collection and dissemination of relevant or essential information in going concern and emergency situations;

b) plans and co-ordinates supervisory activities in going concern as well as in emergency situations, including in relation to the activities referred to in Art.166, in co-operation with the competent authorities involved.

Art. 182 – (1) In the case of applications for the permissions regarding the use of internal models for computing capital requirements, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, where at least a credit institution, Romanian legal person, is part of the group, the National Bank of Romania and the competent authorities shall co-operate in order to decide whether or not to grant the permission and, as appropriate, to determine the terms and conditions, if any, to which such permission should be subject.

(2) Any application as referred to in para. (1) shall be submitted only to the National Bank of Romania, where the latter is the competent authority within the meaning of Art. 181.

(3) The National Bank of Romania shall do everything within its power to reach a joint decision on the application with the other competent authorities within six months. This joint decision shall be set out in a document containing the fully reasoned decision, which shall be provided to the applicant by the National Bank of Romania, where the latter is the competent authority within the meaning of Art. 181.

(4) The period of six months referred to in para. (3) shall begin on the date of receipt of the application and the complete documentation by the National Bank of Romania, in its capacity as competent authority, within the meaning of Art. 181. The National Bank of Romania shall without delay forward that application to the other competent authorities.

(5) In the absence of a joint decision between the competent authorities within six months, the National Bank of Romania, in its capacity as competent authority, within the meaning of Art. 181, shall take its own decision on the application. The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the six-

month period. The decision shall be final and shall be provided to the applicant and the other competent authorities by the National Bank of Romania.

(6) The decisions taken according to the provisions of para. (3), as well as those taken by the competent authorities responsible for the supervision on a consolidated basis, where no joint decision has been taken, are final and opposable to the National Bank of Romania, which shall apply them accordingly, by granting the approval for using the models concerned.

Art. 183 – (1) Where an emergency situation arises within a banking group, which could jeopardise the stability of the financial system in any of the Member States where entities of a group have been authorised, the National Bank of Romania, in its capacity as competent authority, responsible for exercising supervision on a consolidated basis, shall alert as soon as is practicable, by respecting the professional secrecy, the central banks or other similar authorities having responsibilities regarding the implementation of monetary policy and bodies of the central governments of other Member States, having prerogatives in the legislation field regarding the supervision of credit institutions, financial institutions, investment firms and insurance companies. Where possible, the competent authority shall use the existing defined channels of communication.

(2) Where the information already supplied to another competent authority is necessary to the National Bank of Romania, in its capacity as competent authority responsible for supervision on a consolidated basis, it shall contact the competent authority concerned whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Section 2
Co-operation with other competent authorities

Art. 184 – (1) In order to establish and facilitate effective supervision, the National Bank of Romania, in its capacity as authority responsible for supervision on a consolidated basis and/or on an individual basis, and the competent authorities of other Member States shall conclude written co-ordination and co-operation arrangements.

(2) Under these arrangements additional tasks may be entrusted to the National Bank of Romania, in its capacity as authority responsible for supervision on a consolidated basis, and procedures for the decision-making process and for co-operation with other competent authorities may be specified.

Art. 185 – (1) The National Bank of Romania, in its capacity as competent authority responsible for authorising a credit institution, Romanian legal person, subsidiary of a credit institution of another Member State, may, by bilateral agreements, delegate its responsibility for supervision to the competent authority which authorised and supervise the parent undertaking, so that it assumes responsibility for supervising the subsidiary in accordance with this Emergency Ordinance.

(2) The National Bank of Romania shall notify the European Commission of the existence and content of such agreements.

Art. 186 – (1) The National Bank of Romania shall co-operate closely with the other competent authorities. In this regard, for the exercise of the supervisory tasks on an individual basis and/or consolidated basis of the authorities concerned, the competent authorities shall provide on request all relevant information and on their own initiative all essential information.

(2) The information referred to in para. (1) shall be regarded as essential if it could materially influence the assessment of the financial soundness of a credit institution or financial institution in another Member State.

(3) Where the National Bank of Romania is the authority responsible for the supervision on a consolidated basis of an EU parent credit institution or of a credit institution controlled by an EU parent financial holding company, it shall provide all relevant information to the competent authorities in other Member States, which supervise the subsidiaries of these parent undertakings. In determining the extent of relevant information, the importance of these subsidiaries within the financial system in those Member States shall be taken into account.

(4) The essential information referred to in para. (2) shall include, in particular, the following items:

a) identification of the group structure of all major credit institutions in a group, as well as of the competent authorities of the credit institutions in the group;

b) procedures for the collection of information from the credit institutions in a group, and the verification of that information;

c) adverse developments in credit institutions or in other entities of a group, which could seriously affect the credit institutions in a group;

d) major sanctions and exceptional measures taken by the National Bank of Romania in accordance with the provisions of this Emergency Ordinance, including the imposition of an additional capital charge under Art. 226 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the capital requirements for operational risk.

Art. 187 – The National Bank of Romania, in its capacity as authority responsible for the supervision on an individual basis of a credit institution, Romanian legal person, controlled by an EU parent credit institution, shall, whenever possible, contact the competent authority responsible for the exercise of supervision on a consolidated basis, if it needs information regarding the implementation of approaches and methodologies set out in this Emergency Ordinance and in the regulations issued for its application, which may already be available to that competent authority.

Art. 188 – **(1)** The National Bank of Romania shall consult the other competent authorities responsible for the supervision on an individual basis and/or on a consolidated basis of credit institutions prior to taking a decision that is of importance for those competent authorities' supervisory tasks. The consultation refers to the following items:

a) changes in the shareholder, organisational and management structure of credit institutions in a group, which require the approval or authorisation of the National Bank of Romania;

b) major sanctions or exceptional measures to be taken by the National Bank of Romania, including the imposition of an additional capital charge under Art. 226 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the capital requirements for operational risk.

(2) For the purposes of para. (1) let. (b), the competent authority responsible for supervision on a consolidated basis shall always be consulted.

(3) However, the National Bank of Romania may decide not to consult the other competent authorities in emergency cases or where such consultation may jeopardise the effectiveness of decisions. In this case, the National Bank of Romania shall, without delay, inform the other competent authorities of its decisions.

Section 3
Co-operation between the National Bank of Romania and the National Securities Commission and their tasks at national level

Art. 189 – (1) In order to establish and facilitate effective supervision at the national level of credit institutions and financial investment companies, the National Bank of Romania and the National Securities Commission shall conclude written co-ordination and co-operation agreements.

(2) Under these arrangements additional tasks may be entrusted to the authority responsible for supervision on a consolidated basis, and procedures for the decision-making process may be specified.

(3) The National Bank of Romania and the National Securities Commission, in their capacity as authorities responsible for authorising a credit institution or a financial investment company, which are subsidiaries of a credit institution, Romanian legal person, or of a financial investment company, Romanian legal person, may, by bilateral agreement, delegate their responsibility for the individual supervision of that subsidiary. The delegation of responsibility shall always be performed by the competent authority responsible for the consolidated supervision.

Art. 190 – For the exercise of their supervisory tasks on an individual basis and/or on a consolidated basis, the National Bank of Romania and the National Securities Commission shall provide on request all relevant information and on their own initiative all essential information. The provisions of Art. 186 shall be applied accordingly.

Art. 191 – (1) The National Bank of Romania and the National Securities Commission shall consult each other prior to taking a decision that is of importance in

exercising their supervisory tasks on an individual basis and/or on a consolidated basis. The consultation refers to the following items:

a) changes in the shareholder, organisational and management structure of credit institutions and financial investment companies in a group, which require the approval or authorisation of the National Bank of Romania and the National Securities Commission;

b) major sanctions and exceptional measures to be taken by the National Bank of Romania and the National Securities Commission, including the imposition of an additional capital charge under Art. 226 and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the capital requirements for operational risk.

(2) However, the National Bank of Romania or the National Securities Commission may not consult each other, as referred to in para. (1), in emergency cases or where such consultation may jeopardise the effectiveness of decisions. In this case, the other competent authority shall, without delay, be informed of the decisions taken.

Art. 192 – The National Bank of Romania, in its capacity as authority responsible for supervision on a consolidated basis of parent credit institutions in Romania and of credit institutions, Romanian legal persons, controlled by parent financial holding companies in Romania, and the National Securities Commission, in its capacity as authority responsible for exercising supervision on a consolidated basis of parent investment firms in Romania, shall carry out the following tasks:

a) co-ordinate, at the national level, the collection and dissemination of relevant or essential information in going concern and emergency situations;

b) plan and co-ordinate, in co-operation with one another, supervisory activities at the national level in going concern as well as in emergency situations, including in relation to the activities referred to in Art. 166.

Art. 193 – (1) In the case of applications for the permission to use the internal models in computing the capital requirements, submitted by a parent credit institution in Romania and its subsidiaries, of which at least one financial investment company, and by a parent investment firm in Romania and its subsidiaries, of which at least one credit institution, Romanian legal person, or jointly by the subsidiaries, credit institutions and

investment firms of an EU parent financial holding company, where these entities are exclusively Romanian legal persons, the National Bank of Romania and the National Securities Commission shall co-operate to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.

(2) Any application as referred to in para. (1) shall be submitted solely to the National Bank of Romania or solely to the National Securities Commission, in their capacity as authorities responsible for supervision on a consolidated basis.

(3) The National Bank of Romania and the National Securities Commission shall do everything within their power to reach a joint decision on the application within six months. This joint decision shall be set out in a document containing the fully reasoned decision and shall be provided to the applicant by the competent authority responsible for supervision on a consolidated basis.

(4) The period of six months laid down in para. (3) shall begin on the date of receipt of the application, including the complete documentation. The competent authority responsible for the supervision on a consolidated basis shall without delay forward the received application, according to the provisions of para. (2), to the competent authority responsible for supervision on an individual basis.

(5) In the absence of a joint decision regarding the application submitted according to the provisions of para. (3), the competent authority responsible for supervision on a consolidated basis shall make its own decision on the application. The decision shall be final and shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other Romanian competent authority expressed during the six-month period. The decision shall be provided to the applicant and to the competent authority concerned by the authority responsible for supervision on a consolidated basis.

(6) The decisions taken according to the provisions of para. (3) and the decisions taken by the competent authority responsible for supervision on a consolidated basis, where no joint decision has been taken, shall be final and opposable to the other authority and shall be accordingly applied by these authorities, by granting the approval for the models concerned.

Section 4
Supplying of information

Art. 194 – (1) Where the parent undertaking of one or more credit institutions, Romanian legal persons, is a mixed-activity holding company, the National Bank of Romania shall require the mixed-activity holding company and its subsidiaries, including when they are situated within the territory of another Member State, either directly or via subsidiaries of credit institutions, to supply any information which could be relevant for the supervision of credit institutions, Romanian legal persons, subsidiaries of the mixed-activity holding company.

(2) A mixed-activity holding company, Romanian legal person, and its subsidiaries, Romanian legal persons, shall supply the information referred to in para. (1), at the request of both the National Bank of Romania, in its capacity as authority responsible for the authorisation and supervision of a credit institution, Romanian legal person, subsidiary of the mixed-activity holding company, and the authority responsible for the authorisation and supervision of a credit institution in another Member State, subsidiary of the mixed-activity holding company.

Art. 195 – The National Bank of Romania may carry out inspections to verify the information supplied by the mixed-activity holding companies and their subsidiaries, either directly or via third parties empowered for this purpose. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Art. 202 may also be used. If the mixed-activity holding company or one of its subsidiaries is situated in another Member State, the verification of information shall be carried out in accordance with the procedure laid down in Art. 203.

Section 5
Financial holding companies

Art. 196 – (1) The effective running of a financial holding company, Romanian legal person, shall be ensured by at least two persons, which are of sufficiently good repute and have sufficient experience to perform those duties.

(2) The financial holding companies referred to in para. (1) shall notify the National Bank of Romania, in its capacity as authority responsible for consolidated supervision, of the designation of the persons provided for in para. (1), in compliance with the requirements established through regulations issued for the application of this Emergency Ordinance.

(3) The National Bank of Romania shall focus permanently on the fulfilment of requirements referred to in para. (1), by taking the measures or imposing the sanctions which are necessary in case of non-fulfilment of the respective requirements, as provided for in Art. 204.

Art. 197 – The provisions of Chapter IV of Title II, Part I as well as of the regulations applicable to credit institutions, issued by the National Bank of Romania pursuant to the provisions of Law No. 82/1991 – Accounting Act, as republished, shall apply accordingly to the financial holding companies, Romanian legal persons, parent undertakings of credit institutions supervised on a consolidated basis by the National Bank of Romania, in its capacity as competent authority, or by other competent authority of another Member State, for consolidated annual financial statements.

Section 6
Intra-group transactions with mixed-activity holding companies

Art. 198 – Without prejudice to prudential requirements for large exposures, if the parent undertaking of one or more credit institutions, Romanian legal persons, is a mixed-activity holding company, the National Bank of Romania shall exercise the general supervision of transactions between those credit institutions, on the one hand, and between the mixed-activity holding company and its subsidiaries, on the other hand,

according to the conditions established through regulations issued for the application of this Emergency Ordinance.

Section 7
Measures for facilitating the supervision on a consolidated basis

Art. 199 – Undertakings included within the scope of supervision on a consolidated basis, the mixed-activity holding companies and their subsidiaries, or the subsidiaries provided for in Art. 180 para. (3) shall exchange any information that could be relevant for the purposes of supervision on an individual basis and/or on a consolidated basis.

Art. 200 – **(1)** The National Bank of Romania, in its capacity as competent authority responsible for supervision on a consolidated basis, shall require the undertakings included within the scope of supervision on a consolidated basis any information that could be relevant for the purpose of supervision on a consolidated basis of credit institutions, Romanian legal persons.

(2) The undertakings, Romanian legal persons, included within the scope of supervision on a consolidated basis of a credit institution shall supply, upon request, any information that could be relevant for the purposes of supervision on a consolidated basis exercised by the National Bank of Romania or a competent authority of another Member State.

(3) Where the parent undertaking and any of its subsidiaries that are credit institutions are situated in different Member States, and at least one of them is a Romanian legal person, the National Bank of Romania shall, on a mutual basis, supply the competent authorities of other Member States with all the relevant information that may allow or facilitate the exercise of supervision on a consolidated basis.

(4) Where the parent undertaking has its head office within the territory of another Member State and the National Bank of Romania exercises supervision on a consolidated basis, the former may ask the competent authority of the respective Member State to require the parent undertaking any information that could be relevant for the purposes of supervision on a consolidated basis and forward it to the National Bank of Romania.

(5) Where the parent undertaking has its head office in Romania and the National Bank of Romania does not exercise supervision on a consolidated basis, the latter shall, at the request of the competent authority responsible for supervision on a consolidated basis, require the parent undertaking any information that could be relevant for the purposes of supervision on a consolidated basis and forward it to the authority concerned.

(6) The collection and possession of information according to the provisions of para. (1), (4) and (5) shall not in any way imply that the National Bank of Romania is obliged to play a supervisory role on an individual basis in relation to financial holding companies, financial institutions or ancillary services undertakings.

Art. 201 – (1) The National Bank of Romania shall transmit to the other competent authorities of other Member States the information provided for in Art. 194.

(2) The collection and possession of information according to para. (1) shall not in any way imply that the National Bank of Romania is obliged to play a supervisory role on an individual basis in relation to mixed-activity holding companies, their subsidiaries that are not credit institutions or subsidiaries provided for in Art. 180 para. (3).

Art. 202 – (1) Where a credit institution, a financial holding company or a mixed-activity holding company controls one or more subsidiaries that are insurance undertakings or other financial investment companies, which are subject to authorisation, the National Bank of Romania shall co-operate with the National Securities Commission and the Insurance Supervisory Commission, as well as with the authorities of other Member States entrusted with the public task of supervising insurance undertakings or other financial investment companies. Without prejudice to the National Bank of Romania's responsibilities, it shall provide the other authorities with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

(2) Information received by the National Bank of Romania, in the framework of supervision on a consolidated basis, and any exchange of information in which it takes part, which is provided for in this Emergency Ordinance, shall be subject to the obligation of professional secrecy defined in Chapter V of Title III, Part I.

(3) The National Bank of Romania, in its capacity as authority responsible for supervision on a consolidated basis, shall establish a list of the financial holding companies, parent undertakings in Romania, which shall be communicated to the competent authorities of the other Member States and to the European Commission.

Art. 203 – **(1)** Where in applying this Emergency Ordinance and the regulations issued for its application, the National Bank of Romania wishes, in specific cases, to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed-activity holding company, a subsidiary of the kind referred to in Art. 194 or a subsidiary of the kind provided for in Art. 180 para. (3), situated in another Member State, it shall ask the competent authorities in the respective Member State to have the verification carried out.

(2) The verification provided for in para. (1) may be carried out either by the competent authority of that Member Sate, or, with its approval, by the National Bank of Romania. The National Bank of Romania may carry out the verification either by itself or by allowing a financial auditor or expert to carry it out.

(3) When it does not carry out the verification by itself, the National Bank of Romania may participate in the verification carried out by the competent authority of the Member State concerned.

(4) Where the National Bank of Romania receives a request concerning the verification, in specific cases, of the information regarding the entities referred to in para. (1), situated in Romania, it shall, within the framework of its competence, carry out the verification either by itself or by allowing the competent authority which made the request or a financial auditor or expert to carry it out. The competent authority which made the request may participate in the verification carried out by the National Bank of Romania, when it does not carry out the verification itself.

Art. 204 – **(1)** Where a financial holding company, a mixed-activity holding company or the persons effectively directing their business do not observe the provisions of Art. 166 and Art. 176-203, and of the regulations issued or the measures taken for the application of this Emergency Ordinance, the National Bank of Romania, in its capacity as authority responsible for supervision on a consolidated basis, shall take, as concerns

the respective undertaking, the following measures provided for nder let. a)-c), or impose the sanctions referred to under let. d)-h):

a) conclude an agreement with the Board members of the company, which shall include a plan of remedial measures;

b) request information from the financial auditor;

c) decide the replacement by the company of the financial auditor;

d) written warning;

e) suspend one or more persons effectively directing the business of the undertaking;

f) decide the replacement by the financial holding company or the mixed-activity holding company, as appropriate, of the person(s) effectively directing the business of the undertaking;

g) fine imposed to the company, ranging from 0.05% to 1% of the minimum initial capital of the undertaking, subsidiary of the financial holding company or of the mixed-activity holding company, subject to supervision on a consolidated or individual basis;

h) fine imposed to the persons effectively directing the business of the undertaking, ranging from 1 to 6 net salaries, according to the payroll registers in the month before the fact was found.

(2) The amount of fines collected shall be related to the gravity of the commitment. The collected fines shall be recognised as revenue to the state budget.

(3) During the suspension of the managers, decided by the National Bank of Romania according to para. (1) let. e), the financial holding company or the mixed-activity holding company shall nominate a person to effectively direct the business of the undertaking during an interim period, complying with the provisions of Art. 196.

Art. 205 – The National Bank of Romania shall co-operate with the other competent authorities involved in order to ensure that the measures or sanctions imposed, in compliance with the provisions of this Emergency Ordinance, on financial holding companies, mixed-activity holding companies or the persons effectively directing the business of the undertaking, produce the desired results, especially when a financial holding company or a mixed-activity holding company, with its head office within the

Romanian territory, has the central administration or the main establishment within the territory of another Member State.

Section 8
Parent undertakings in third countries

Art. 206 – (1) Where a credit institution, Romanian legal person, having as parent undertaking a credit institution or a financial holding company, the head office of which is in a third country, is not subject to consolidated supervision performed by a competent authority of a Member State, the National Bank of Romania shall verify whether the credit institution is subject to supervision on a consolidated basis by a third-country competent authority, which is equivalent to that governed by the principles laid down in this Emergency Ordinance.

(2) The verification shall be carried out at the request of the parent undertaking or of any of the regulated entities authorised in a Member State or on its own initiative, by the National Bank of Romania, if, according to the provisions of Art. 207, it would be the authority responsible for supervision on a consolidated basis. The National Bank of Romania shall consult the other competent authorities involved.

(3) In order to carry out the verification according to the provisions of para. (1), the National Bank of Romania shall take into account the general guidance for assessing the equivalent supervision on a consolidated basis exercised by the competent authorities in third countries in relation to credit institutions, the parent undertaking of which has its head office in a third country; the guidance is drawn up by the European Banking Committee, at the request of the European Commission. The National Bank of Romania shall consult the European Banking Committee before taking a decision.

Art. 207 – (1) In the absence of such equivalent supervision, according to Art. 206, the provisions concerning supervision on a consolidated basis laid down in this Emergency Ordinance and in the regulations issued for its application shall apply, by analogy, to the credit institution referred to in Art. 206 para. (1). As an alternative, the National Bank of Romania may apply other appropriate supervisory techniques in order to achieve the objectives of supervision on a consolidated basis of the credit institution.

(2) The National Bank of Romania, where it would be the competent authority responsible for the supervision on a consolidated basis, shall decide on the implementation of the alternative supervisory techniques referred to in para. (1), after consultation with the other competent authorities involved.

(3) In the situation referred to in para. (2), the National Bank of Romania may require the establishment of a financial holding company with its head office situated within the Romanian territory or in another Member State, and where, after its establishment, the National Bank of Romania remains the competent authority responsible for supervision on a consolidated basis, it shall apply the provisions on consolidated supervision to the consolidated position of that financial holding company.

(4) The supervisory techniques shall be designed to achieve the objectives of consolidated supervision, according to this Emergency Ordinance and the regulations issued for its application and shall be notified to the other competent authorities involved and to the European Commission.

CHAPTER III

Supervision of credit institutions of other Member States operating in Romania

Art. 208 – (1) Without prejudice to the responsibilities of the National Bank of Romania established by this Emergency Ordinance, the prudential supervision of credit institutions of other Member States, including that of the activities performed within the Romanian territory, in accordance with the provisions of Chapter IV of Title I, Part I, shall be the responsibility of the competent authority of the home Member State.

(2) The provisions of para. (1) shall not prevent supervision on a consolidated basis pursuant to this Emergency Ordinance.

Art. 209 – (1) The National Bank of Romania shall perform, in co-operation with the competent authorities of the home Member States, the supervision of liquidity requirements of the branches in Romania of credit institutions of other Member States.

(2) Without prejudice to the measures taken for the consolidation of the European Monetary System, the National Bank of Romania shall retain full responsibility for taking

the measures necessary for the implementation of its monetary policy. Such measures may not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Art. 210 – (1) The National Bank of Romania shall co-operate with competent authorities of the home Member State and of other Member States in which the credit institution carries out activity, in order to supervise the activities of credit institutions of another Member State, operating in Romania, particularly through a branch.

(2) According to the co-operation activity referred to in para. (1), the information shall be exchanged in compliance with the provisions of Art. 173 para. (2), which apply accordingly.

Art. 211 – (1) The competent authority of the home Member State of a credit institution may perform on-site inspections, according to Art. 210 para. (2), at the office of the branch in Romania of the credit institution. The on-site inspections may be carried out directly or through persons appointed for that purpose, after the National Bank of Romania has been first informed.

(2) The competent authority of the home Member State may require the National Bank of Romania to carry out on-site inspections at the office of the branch in Romania of a credit institution authorised in that Member State, in which case the National Bank of Romania shall carry out the inspection either directly or through a third party appointed for that purpose. The competent authority which required the inspection may participate if it does not carry out the inspection by itself, according to the provisions of para. (1).

(3) The provisions of para. (1) and (2) shall not affect the right of the National Bank of Romania to carry out, in the discharge of its responsibilities under this Emergency Ordinance, on-site inspections of branches established within the Romanian territory.

CHAPTER IV

The supervision of branches in Romania of credit institutions of third countries

Art. 212 – (1) In order to supervise the activity of branches of third-country credit institutions operating in Romania, the National Bank of Romania shall co-operate with

the competent authorities of these states. In this regard, the National Bank of Romania shall conclude co-operation agreements with the competent authority of the third country of origin of the credit institution. These agreements shall establish at least the conditions regarding the exchange of information, in compliance with the provisions on professional secrecy.

(2) The representatives of the competent authority of the third country of origin may participate in the on-site inspections at the office of the branch in Romania of the credit institution in the third country, in compliance with the co-operation agreements concluded between the National Bank of Romania and the authority concerned.

Art.213 – The provisions of Art. 164–171 shall apply accordingly to the supervision by the National Bank of Romania of branches in Romania of third-country credit institutions.

CHAPTER V
Exchange of information and professional secrecy

Art. 214 – (1) The Board members, the National Bank of Romania's staff, as well as the financial auditors or experts appointed by the National Bank of Romania in order to perform on-site inspections at the head offices of credit institutions, according to the provisions of Art. 170, shall be bound by professional secrecy regarding any confidential information which they receive in the course of their duties. The Board members and the National Bank of Romania's staff shall also be bound by professional secrecy after ceasing their activity with the bank.

(2) The persons referred to in para. (1) shall not divulge confidential information to any person or authority, except in summary or collective form, so that the credit institution cannot be identified.

(3) Where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be divulged in civil or commercial proceedings.

(4) Without prejudice to the criminal law, the provisions of para. (1)-(3) shall not prevent the exchange of confidential information in certain situations.

Art. 215 – (1) The National Bank of Romania may exchange information with the competent authorities of other Member States, in accordance with this Emergency Ordinance and with other regulations applicable to credit institutions.

(2) The information received by the National Bank of Romania according to para. (1) shall be subject to the conditions of professional secrecy indicated in Art. 214.

(3) The National Bank of Romania may supply information to the competent authorities of other Member States, according to the provisions of para. (1), if the information received by the concerned authorities is subject to professional secrecy, similarly to those provided in Art. 214.

Art. 216 – The National Bank of Romania may use the information received under Art. 214 and Art. 215 only in the discharge of its supervisory tasks and only for the following purposes:

a) to check that the conditions governing the taking-up of the business of credit institutions are met and to facilitate monitoring, on an individual and/or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;

b) to impose penalties;

c) in case of protest against a decision of the National Bank of Romania;

d) in court proceedings initiated pursuant to Art. 275 para. (2) or to the provisions laid down in other laws applicable to credit institutions.

Art. 217 – (1) The National Bank of Romania may conclude co-operation agreements providing for exchange of information with the competent authorities of third countries or with other authorities or bodies of third countries as defined in Art. 218-220 only if the information disclosed is subject to keeping professional secrecy at least equivalent to those referred to in Art. 214. Such exchange of information shall be for the purpose of performing the supervisory tasks of the authorities or bodies mentioned.

(2) Where the information received by the National Bank of Romania originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it, according to para. (1), and, where appropriate, solely for the purposes for which those authorities gave their consent.

Art. 218 – (1) The National Bank of Romania may exchange information with:

a) authorities entrusted with the supervising of other financial organisations, insurance companies and financial markets in Romania and other Member States;

b) Romanian and other Member States bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures;

c) persons from Romania and other Member States responsible for carrying out statutory audits of the accounts of credit institutions and other financial institutions.

(2) The authorities, bodies and financial auditors in Romania referred to in para. (1) may exchange information with the competent authorities of other Member States.

(3) The exchange of information referred to in para. (1) and (2) takes into account the carrying out of supervisory tasks by the National Bank of Romania, the competent authorities in other Member States and by the financial auditors referred to in para. (1).

(4) The National Bank of Romania may disclose to bodies which run deposit-guarantee schemes in Romania and in other Member States information necessary to the exercise of their functions.

(5) The information received by the authorities, bodies and financial auditors in Romania according to para. (1) and (3) shall be subject to the conditions of professional secrecy specified in Art. 214.

(6) The National Bank of Romania may exchange information with the authorities, bodies and financial auditors in other Member States, according to the provisions of para. (1) and (3), if the information received by those authorities, bodies or financial auditors is subject to the conditions of professional secrecy specified in Art. 214.

(7) The Romanian authorities, bodies and financial auditors shall exchange information with the competent authorities of other Member States, according to the provisions of para. (2) and (3), if the information received by such competent authorities is subject to the conditions of professional secrecy specified in Art. 214.

Art. 219 – (1) The National Bank of Romania may exchange information with authorities in Romania or in other Member States responsible for:

a) overseeing the bodies involved in the liquidation and bankruptcy of credit institutions or in other similar procedures;

b) overseeing the persons charged with carrying out statutory audits of the accounts of credit institutions, investment firms, insurance companies, and other financial institutions.

(2) The exchange of information provided for in para. (1) shall be carried out by fulfilling the following conditions:

a) the information shall be for the purpose of performing the supervisory tasks referred to in para. (1);

b) the information received by the authorities in Romania shall be subject to the conditions of professional secrecy specified in Art. 214; information received by the authorities in other Member States shall be subject to conditions of professional secrecy similar to those laid down in Art. 214;

c) where the information originates in another Member State, it may not be disclosed in accordance with the provisions of para. (1) without the express agreement of the competent authorities which have disclosed it and solely for the purposes for which those authorities gave their agreement.

(3) The authorities in Romania referred to in para. (1) may exchange information with the competent authorities in other Member States abiding by the conditions stipulated in para. (2).

Art. 220 – (1) With the aim of strengthening the stability, including integrity, of the financial system, the National Bank of Romania may exchange information with the authorities and bodies in Romania or in the other Member States responsible under the law for the detection and investigation of breaches of company law.

(2) The exchange of information provided for in para. (1) shall be carried out by fulfilling the following conditions:

a) the information is for the purpose of performing the tasks referred to in para. (1);

b) the information received by the authorities and bodies in Romania shall be subject to the conditions of professional secrecy specified in Art. 214; information received by authorities and bodies in other Member States shall be subject to conditions of professional secrecy similar to those laid down in Art. 214;

c) where the information originates in another Member State, it may not be disclosed in accordance with the provisions of para. (1) without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

(3) The authorities or bodies in Romania referred to in para. (1) may exchange information with competent authorities from other Member States abiding by the conditions stipulated in para. (2), including the situation in which these authorities or bodies carry out detection and investigation activities with the aid of persons appointed for that purpose and not employed in the public sector.

(4) The authorities or bodies in Romania referred to in para. (1) shall communicate to the competent authorities which have disclosed the information the names and clearly-defined responsibilities of the persons to whom it is to be sent.

Art. 221 – The Ministry of Public Finance shall communicate to the European Commission and to the other Member States the names of the authorities in Romania which may receive information pursuant to the provisions of Art. 219 and Art. 220.

Art. 222 – **(1)** In exercising its supervisory tasks in respect to credit institutions, the National Bank of Romania may submit information to the following authorities for the purposes of achieving their tasks:

a) central banks and other bodies with a similar function in their capacity as monetary authorities;

b) where appropriate, to other public authorities responsible for overseeing payment systems.

(2) The National Bank of Romania may receive information from the authorities mentioned in para. (1), where this information is necessary for the purposes laid down in Art. 216.

(3) In carrying out its tasks as monetary authority and those related to payment systems monitoring, the National Bank of Romania may submit to the competent authorities of the other Member States such information as they may need for the purposes of Art. 216.

(4) The information received in accordance with the provisions of para. (2) shall be subject to the conditions of professional secrecy specified in Art. 214.

(5) The National Bank of Romania shall supply information in accordance with the provisions of para. (1) if the information received by such competent authorities is subject to conditions of professional secrecy similar to those specified in Art. 214.

Art. 223 – **(1)** The National Bank of Romania may communicate the information referred to in Art. 214-217 to clearing houses or other similar bodies recognised under national law for the provision of clearing or settlement services for any market in Romania, if the National Bank of Romania considers that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

(2) The information received in accordance with the provisions of para. (1) shall be subject to the conditions of professional secrecy specified in Art. 214.

(3) The information received in accordance with the provisions of Art. 215 may not be disclosed by the National Bank of Romania in the circumstances referred to in para. (1) without the express consent of the competent authorities which disclosed it.

CHAPTER VI

Disclosure by the National Bank of Romania

Art. 224 – **(1)** The National Bank of Romania shall disclose the following information:

a) the texts of laws, regulations, other requirements and general guidance adopted in the field of prudential regulation;

b) the manner of exercise of the options and discretions available in the Community legislation in the field;

c) the general criteria and methodologies employed in the review and evaluation of the arrangements, strategies, processes and mechanisms implemented by credit institutions to comply with this Emergency Ordinance and with the regulations issued for the application thereof and in the assessment of the risks to which credit institutions are or might be exposed;

d) aggregate statistical data on key aspects of the implementation of the prudential framework.

(2) The disclosures provided for in para. (1) shall be sufficient to enable a meaningful comparison of the approaches adopted by the competent authorities of the different Member States. The disclosures shall be published and shall be available on the National Bank of Romania website, being updated on a regular basis.

CHAPTER VII
Supervision and power of sanction

Art. 225 – The National Bank of Romania may adopt or impose penalties against credit institutions, Romanian legal entities, or against persons who effectively control the business of credit institutions, that infringe laws, regulations or administrative provisions concerning the supervision or pursuit of their activities, and/or measures aimed specifically at ending the observed infringements or the causes of such infringements.

Art. 226 – **(1)** The National Bank of Romania shall require any credit institution, Romanian legal person, that does not meet the requirements of this Emergency Ordinance, of the regulations or other guidelines issued for the application thereof, or fails to comply with a recommendation of the National Bank of Romania, to take the necessary actions or steps at an early stage to address the situation.

(2) The measures available to the National Bank of Romania shall include, without being limited to, the following:

a) compelling credit institutions to hold own funds in excess of the minimum level laid down in Art. 126;

b) requiring the reinforcement of the arrangements, processes, mechanisms and strategies implemented to comply with Art. 24 and Art. 148;

c) requiring credit institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

d) restricting or limiting the business, operations or network of credit institutions, including by withdrawing the authorisation issued for establishment of branches abroad;

e) requiring the mitigation of risks inherent to the activities, products and systems of credit institutions;

f) replacing the persons appointed to head departments of the credit institutions and/or of their branches;

g) imposing measures of special supervision or special administration, as the case may be, on the credit institution, in accordance with the provisions of Chapter VIII hereof;

h) limiting the qualifying holdings in financial or non-financial institutions, in which case the credit institution is bound to sell them.

(3) The measure referred to in para. (2) let. a) shall be imposed by the National Bank of Romania at least on the credit institution, Romanian legal person, which fails to meet the requirements laid down in Art. 24, Art. 142 and Art. 148 and in the regulations issued for their application or, according to the review and evaluation carried out by the National Bank of Romania pursuant to Art. 166 para. (3), if the National Bank of Romania considers that the level of own funds held by the credit institution fails to ensure a prudent administration and adequate risk mitigation in respect of its risk profile. Such measure shall be imposed if the sole application of other measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe.

(4) In case of imposition of special administration, the National Bank of Romania shall also decide on the withdrawal of the approval granted to managers, board members and the financial auditor of the credit institution, Romanian legal person, and on the suspension of the voting rights of shareholders/members, as the case may be.

(5) The adoption of the measures referred to in para. (2) shall be subject to the provisions concerning the exchange of information and professional secrecy, according to Chapter V hereof.

Art. 227 – The National Bank of Romania shall aim at preventing the capital of a credit institution, Romanian legal person, from falling below the minimum threshold required for covering specific risks and shall require that the credit institution concerned adopt urgent remedial measures if such minimum threshold is not observed.

Art. 228 – The National Bank of Romania may apply penalties under this Emergency Ordinance in the cases referred to in Art. 126 para. (1) or if it finds that a credit institution, Romanian legal person, and/or any of its board members or managers, or the persons appointed to head the departments, branches or other places of business are found guilty of:

a) infringement of the measures taken by the National Bank of Romania;

b) infringement of any of the conditions or restrictions stipulated in the authorisation;

c) performance of fictitious operations, with a view to reporting an inaccurate financial standing or exposure of the credit institution;

d) failure to report, delayed reporting or reporting inaccurate data to the National Bank of Romania.

Art. 229 – **(1)** In the cases listed in Art. 226 para. (1) and Art. 228, the National Bank of Romania may apply the following penalties:

a) written warning;

b) fine applicable to the credit institution, ranging between 0.05% and 1% of its share capital;

c) fine applicable to board members, managers or the persons appointed to head the departments, branches or other places of business, ranging from 1 to 6 net salaries in the credit institution, in the month before the fact was found;

d) withdrawal of the approval granted to the credit institution managers and/or board members;

e) withdrawal of the authorisation granted to the credit institution.

(2) The penalties referred to in para. (1) may be applied simultaneously with the measures laid down in Art. 226 para. (3) and Art. 230 or independently thereof.

(3) The actual penalty shall take into consideration the seriousness of the perpetrated deed and the personal and real circumstances thereof.

(4) The sanctions referred to in para. (1) let. c) and d) applicable to board members and managers of the credit institution shall apply to persons holding such positions and found guilty of the breach, because such breach would not have occurred had the respective persons properly discharged their tasks and duties according to the company law, to the regulations issued for the application hereof and internal regulations.

Art. 230 – (1) Where persons possessing qualifying holdings in the credit institution no longer fulfil the requirements provided for under this Emergency Ordinance and the regulations issued for its application regarding the quality of the credit institution's shareholders, or if they pursue a policy that jeopardises the credit institution's prudent management, the National Bank of Romania shall take appropriate measures to put an end to that situation. For this purpose, regardless of any other measures or penalties against the credit institution or its board members and managers, the National Bank of Romania may decide on the suspension of the exercise of the voting rights attached to the shares held by the shareholders or members in question.

(2) The shareholders against whom the measures laid down in para. (1) were taken shall no longer be allowed to acquire new shares of the credit institution and the provisions of Art. 232 shall apply accordingly.

Art. 231 – The exercise of the voting rights of persons who failed to notify the National Bank of Romania of their intention of acquiring or increasing their qualifying holdings in a credit institution, pursuant to Art. 25 para. (1) and (2), or of persons who acquired a qualifying holding despite the opposition formulated by the National Bank of Romania, pursuant to Art. 25 para. (3), shall be suspended.

Art. 232 – (1) The shareholders referred to in Art. 230 and 231 shall sell, within 3 months, their shares representing qualifying holdings for which their voting rights have

been suspended. After the expiry of this time limit, unless the shares are sold, the National Bank of Romania shall impose on the credit institution to cancel the shares involved, to issue and sell new shares bearing the same number, and the amount of money collected from the sale shall be made available to the initial holder, after the cost related to the sale was deducted.

(2) The Board of Directors of the credit institution is responsible for the implementation of measures necessary for the cancellation of shares in accordance with the provisions of para. (2) and for the sale of the newly issued shares.

(3) If, for want of buyers, the sale did not take place or was only partially accomplished in terms of the newly issued shares, the credit institution shall immediately proceed to the reduction of its share capital by subtracting the amount representing the difference between the registered share capital and the share capital held by shareholders with voting rights.

(4) Shareholders whose voting rights were not suspended shall be allowed to take part in the General Meeting of Shareholders and make any decision in accordance with its powers, with the majority of the voting rights provided by law or, as the case may be, by the incorporation document being calculated in relation to the capital held by such shareholders.

Art. 233 – (1) The finding of the deeds referred to in this Chapter, representing infringements of the banking discipline, is performed by the National Bank of Romania's staff empowered for this purpose, based on the reports submitted by credit institutions under the law, at the National Bank of Romania's express request or during the inspections carried out at the head offices of credit institutions.

(2) The documents establishing the measures and the penalties laid down in this Chapter shall be issued by the Governor, the First Deputy Governor or Deputy Governors of the National Bank of Romania, except for the measures referred to in Art. 226 para. (2) let. g) and the penalties referred to in Art. 229 para. (1) let. d) and e), the imposition of which falls within the scope of the National Bank of Romania Board.

Art. 234 – **(1)** The imposition of penalties shall be lost by limitation within one year from notification, but not later than 3 years from the date when the deed was perpetrated.

(2) The collected fines shall be recognised as revenue to the state budget.

(3) The imposition of penalties does not remove the material, civil, administrative or penal responsibility, as the case may be.

Art. 235 – The National Bank of Romania may take appropriate measures against credit institutions carrying out their activity within the Romanian territory, so as to prevent or punish irregularities committed within the Romanian territory, according to Section 3, Chapter IV of Title I, Part I. This shall include the possibility of preventing offending credit institutions from initiating further transactions within the Romanian territory.

Art. 236 – **(1)** The provisions of this Chapter shall accordingly apply to branches in Romania of foreign credit institutions.

(2) Any infringement of the special legislation governing mortgage lending financed through mortgage bond issues shall also fall under the scope of this Chapter if the special legislation provides no penalties for such infringement.

CHAPTER VIII
Special procedures

Section 1
Special supervision

Art. 237 – **(1)** The National Bank of Romania may decide on the initiation of the special supervision of a credit institution, Romanian legal person, for infringement of the law or of the regulations issued for its application, detected following the on-site inspections and/or the assessment of the reports submitted by the credit institution, as well as for finding a poor financial standing.

(2) Special supervision shall be ensured by a commission incorporated for this purpose, consisting of no more than 7 experts of the National Bank of Romania, one member of whom shall be appointed as chairman and another as vice-chairman of the commission.

Art. 238 – (1) The responsibilities of the special supervision commission shall be established by the National Bank of Romania and refer mainly to the following:

a) supervision of the manner in which Board members and/or managers of the credit institution act to establish and implement the necessary measures to remedy the deficiencies or, as the case may be, the recommendations formulated or measures taken by the National Bank of Romania, according to this Emergency Ordinance;

b) suspension or cancellation of certain decisions made by the credit institution's statutory bodies, which are contrary to the prudential regulations or lead to the deterioration of the credit institution's financial standing;

c) formulation of requirements regarding the amendment/supplementation of the arrangements, strategies, processes and mechanisms implemented by the credit institution;

d) limitation and/or suspension of some banking activities and operations for a certain period of time;

e) any other measures deemed necessary to remedy the credit institution's standing;

f) formulation of recommendations to the National Bank of Romania for the imposition of the sanctions or remedial measures provided by law, when the Board members or the managers of the credit institution do not comply with the measures set by the commission.

(2) The Special Supervision Commission shall not substitute the credit institution's management in relation to the daily activity and the prerogative to engage the credit institution. The responsibility for the legality, authenticity, accuracy and opportunity of the performed operations and of the documents set by the credit institution, is, exclusively incumbent on the credit institution's managers and/or on the persons who draw up and sign the documents concerned in accordance with their prerogatives and duties.

(3) During the carrying out of special supervision, the General Meeting of Shareholders, the Board members and the managers of the credit institution shall not take measures contrary to those adopted by the Special Supervision Commission.

(4) The members of the Special Supervision Commission have access to all the documents and records of the credit institution, and shall observe the banking secrecy.

Art. 239 – (1) The Special Supervision Commission shall submit on a regular basis reports on the credit institution's standing to the National Bank of Romania.

(2) Depending on the conclusions arising from the reports, the National Bank of Romania shall decide on the continuation or suspension of the special supervision, which may not exceed a period of 3 months from the date of its commencement.

(3) Where significant deficiencies in the credit institution's activity are still found, the National Bank of Romania may decide, on a case-by-case basis, the commencement of special administration of the credit institution or the implementation of other measures provided by law, including authorisation withdrawal.

Section 2
Special administration

Art. 240 – (1) The National Bank of Romania may decide on the initiation of special administration of a credit institution, Romanian legal person, including its branches in Romania and abroad. Special administration shall be decided on when:

a) the special supervision measure was not efficient in a period of up to 3 months;

b) the solvency ratio, calculated based on the regulations issued for the application of Art. 126 and 148, does not exceed half of the minimum level established by the said regulations;

c) the credit institution has repeatedly infringed on the provisions of the law and/or regulations issued for its application;

d) the requirement regarding the effective running of the credit institution's activity by at least 2 persons is no longer fulfilled.

(2) An announcement regarding the initiation of special administration shall be published in *Monitorul Oficial al României*, Part Four.

(3) The establishment of special administration measures shall also be decided upon by the National Bank of Romania in case of its notification to the competent court of law for the opening of bankruptcy proceedings against a credit institution, until the appointment of the liquidator by the syndic judge.

Art. 241 – **(1)** Special administration shall be established for a period of one year from the date the decision was taken by the National Bank of Romania, except for the case where the decision sets a shorter period of time or the National Bank of Romania decides to cease the special administration according to the provisions of Art. 252, para. (4).

(2) In special cases, under the terms stipulated for the implementation of the special administration, the National Bank of Romania may extend the period of time referred to in para. (1) by 6 months at most.

Art. 242 – **(1)** A special administrator shall be appointed to exercise the special administration by the National Bank of Romania's decision to implement this measure. The special administrator may be an individual or a legal person, having suitable experience, as well as the Bank Deposit Guarantee Fund.

(2) The National Bank of Romania may replace the special administrator based on well-founded reasons.

(3) All the expenses pertaining to the special administration shall be borne by the credit institution, subject to this measure.

(4) The expenses incurred by the Bank Deposit Guarantee Fund upon performing special administration shall be deemed expenses related to special administration, in the sense of para. (3).

Art. 243 – Where necessary, the National Bank of Romania may set limits and/or conditions regarding the activity of the credit institution subject to special administration. The limits and conditions shall be notified to the special administrator who is responsible for their observance.

Art. 244 – The special administrator shall take over all the tasks of the credit institution's Board and managers, established according to the law, in compliance with the incorporation documents and the internal regulations of the credit institution.

Art. 245 – **(1)** After taking over the credit institution's administration, the special administrator shall, without delay, inform of this measure the credit institution's departments, branches, the correspondent credit institutions, the trade register and, as the case may be, the Bank Deposit Guarantee Fund.

(2) The notification shall be in writing and shall also include the signature specimen of the special administrator. The notification addressed to correspondent credit institutions shall also include the mention that all further operations carried out through the credit institution's account shall be authorised only by the special administrator or by the persons expressly empowered by him.

Art. 246 – **(1)** The main task of the special administrator is to establish the optimal conditions in order to preserve the value of the credit institution's assets, to remedy the deficiencies in its administration, to collect its claims and to establish the possibility to restore the credit institution to viability; therefore, the special administrator may take all the necessary measures, in compliance with its statutory powers.

(2) The measures that shall be taken refer to:

a) negotiation of the credit institution's claims and/or their new maturity;

b) suspension of the deposit-taking and/or credit granting;

c) closing of unprofitable branches or of branches with unjustified activity;

d) rescaling the personnel through business reorganisation to cut down costs;

e) other measures that the credit institution's Board or managers may adopt in compliance with the law, during a regular administration.

(3) The special administrator shall take at least the necessary measures to:

a) cut losses;

b) halt fraudulent activities and abuses of any kind made by the persons having special relationships with the credit institution;

c) take legal actions in order to cancel fraudulent agreements, previously concluded by the credit institution, including the contracts where the credit institution's obligations are disproportionate as compared with the services performed by the other party of the contract;

d) keep safe the credit institution's assets and documents;

e) notify the competent authorities if there are reasons to consider that infringements were committed.

Art. 247 – By exception from the provisions of Art. 246, where special administration was implemented in accordance with the provisions of Art. 240 para. (1) let. d), the main responsibility of the special administrator is to take the necessary measures for appointing Board members and managers of the credit institution. During this administration, the special administrator is allowed to take any decisions, which under normal circumstances of administration the credit institution's Board or its managers are allowed to adopt, in accordance with the law.

Art. 248 – Where the financial statements regarding the period preceding the implementation of special administration have not been approved, in compliance with the law, or the special administrator considers that they do not reflect the real financial standing of the credit institution, the latter shall draw up a new financial statement, taking the necessary measures for its approval, disclosure and submission to the competent authorities, in accordance with the law.

Art. 249 – **(1)** In order to adopt decisions concerning the credit institution's standing in areas exceeding his prerogatives, established by law for the Board members, including the taking over of the credit institution concerned, by merger/split-up, by other credit institutions, the special administrator may convene the General Meeting of Shareholders/Members of the credit institution. The special administrator shall establish the meeting's agenda, with the prior consultation of the National Bank of Romania, and the convened persons shall not alter it.

(2) After the implementation of special administration, the legal provisions on the binding character to convene the General Meeting of Shareholders/Members at the request of the credit institution's shareholders/members shall not be applicable during the validity period of such measure. The shareholders/members accounting for at least 50% of the share capital shall be allowed to submit viable proposals for the credit institution's financial recovery and the special administrator shall decide upon them.

Art. 250 – (1) Where the General Meeting of Shareholders decides to increase the share capital for well-founded reasons, justified by an investor's serious intention to participate in the credit institution's capital, the special administrator may suspend the shareholders' subscription right for new shares, in whole or in part, with the prior approval of the National Bank of Romania.

(2) The decision to increase the share capital must guarantee at least a level of the own funds enabling the credit institution to meet the solvency ratios stipulated in the National Bank of Romania's regulations.

(3) The reduction in the share capital is allowed only after a period of 30 days from the date of the decision's publication in *Monitorul Oficial al României*, Part Four.

Art. 251 – (1) Within 2 months from appointment, the special administrator shall submit a written report to the National Bank of Romania regarding the measures taken since the special administration was implemented, their effects, the credit institution's financial standing and the possibility to restore it to viability, as well as his specific recommendations, including the potential taking over of the credit institution, by merger/split-up, by other credit institutions. The report shall enclose documents regarding the assessment of the credit institution's assets and liabilities, the claims retrieval statement, the cost of preserving the assets and the statement on debt repayment.

(2) The report mentioned in para. (1) shall include enough details to sustain the administrator's recommendations.

(3) For well-founded reasons, the National Bank of Romania may, on recommendation of the special administrator, extend the time limit referred to in para. (1) by 1 month at most.

Art. 252 – (1) Within 15 days from receiving the special administrator's report, the National Bank of Romania shall decide upon the timeliness of maintaining the special administration and shall express its opinion on the special administrator's recommendations.

(2) Where the special administrator's report shows that there are no favourable conditions for the credit institution's financial standing to be improved to the extent that the credit institution would fulfil the prudential requirements established by law or by the

regulations issued for its application or, as the case may be, the credit institution's new managers and Board members were not appointed and approved, the National Bank of Romania may decide on the following, as appropriate:

a) setting of a time limit in which the special administrator shall undertake steps for the identification of the potential credit institutions interested in the takeover, by merger/split-up, of the credit institution under special administration;

b) the withdrawal of the credit institution's authorisation and informing the competent court in order to open winding-up proceeding, or, as the case may be, the withdrawal of the authorisation followed by the dissolution and liquidation of the credit institution, in accordance with the provisions of Section 3 of this Chapter.

(3) When the special administration continues, the special administrator shall submit reports on the credit institution's financial standing to the National Bank of Romania, at the dates set by the National Bank of Romania.

(4) On the basis of the special administrator's reports, the National Bank of Romania may, at any time, decide to discontinue special administration in order to restart the credit institution's activity under its statutory bodies' control, or to withdraw the credit institution's authorisation, the provisions of para. (2) let. b) being applied accordingly.

Art. 253 – (1) If, on the basis of the special administrator's reports, the National Bank of Romania finds that during the period of special administration the credit institution's financial standing improved to the extent that the prudential requirements, established by this Emergency Ordinance and the regulations issued for its application, are met or, as the case may be, the credit institution's new managers and Board members were appointed and approved, the National Bank of Romania may decide to end the special administration and to restart the credit institution's activity under its statutory bodies' control.

(2) A statement on ending the special administration shall be published in accordance with the provisions of Art. 240 para. (2).

(3) The special administrator shall take the necessary measures in order to designate the new Board members and, as the case may be, the new managers of the credit institution.

(4) Prior to the appointment and approval of the persons referred to in para. (3), the special administrator shall ensure the management and effective running of the credit institution.

Art. 254 – Where the National Bank of Romania decides to withdraw the credit institution's authorisation and to inform the competent court in order to open bankruptcy proceedings, according to Government Ordinance No. 10/2004, as approved, amended and supplemented by Law No. 278/2004, until the appointment of a syndic judge of the liquidator, the administration of the credit institution shall be ensured by the special administrator.

Section 3
Winding-up of credit institutions

Art. 255 – Along with the withdrawal of the credit institution's authorisation, the National Bank of Romania shall order the dissolution followed by winding-up of the credit institution, according to the provisions of this Section, or, if the credit institution finds itself in one of the insolvency cases referred to in the specific legislation regarding the bankruptcy proceedings for credit institutions, the National Bank of Romania shall inform the competent court in order to open the winding-up proceedings.

Art. 256 – **(1)** The winding-up of the credit institution that does not find itself in insolvency, including its branches established in Romania, in other Member States or in third countries, shall be performed in compliance with the Romanian laws applicable to the dissolution and winding-up of joint-stock commercial companies, and in accordance with the provisions below.

(2) The liquidator for credit institutions shall be the Bank Deposit Guarantee Fund, hereinafter referred to as "liquidator", both when the winding-up was decided in accordance with the provisions of Art. 255 and when the winding-up was decided by shareholders/members.

Art. 257 – The winding-up proceedings in keeping with the provisions of Art. 255 or the voluntary liquidation initiated by the shareholders/members shall not

preclude the opening of bankruptcy proceedings, if during the winding-up proceedings the credit institution finds itself in one of the insolvency cases referred to in the specific legislation regarding the bankruptcy proceedings for credit institutions.

Art. 258 – (1) The provisions laid down in the legislation on the bankruptcy of credit institutions regarding the liquidator's duties, the costs and expenses incurred by the winding-up proceedings, the order of debt extinction shall also apply accordingly to the winding-up of the insolvent credit institution in accordance with the provisions of this Section.

(2) The expenses incurred by the Bank Deposit Guarantee Fund upon performing winding-up activities shall be deemed expenses related to winding-up, in the sense of para. (1).

Art. 259 – (1) Where the authorisation of a credit institution, Romanian legal person, which operates within the territory of one or several Member States, is withdrawn, the National Bank of Romania shall inform the competent authorities of the host Member States, without delay and by any available means, of its decision, of the legal consequences and the possibly related effects.

(2) Where the adoption of the decision cannot be delayed, for reasons pertaining to the protection of depositors or to other public matters, the National Bank of Romania shall communicate the information referred to in para. (1) immediately after the decision was taken.

Art. 260 – (1) If the measure referred to in Art. 255 is aimed at a branch in Romania of a credit institution based in a third country, which has branches in at least another Member State, the National Bank of Romania shall, before taking the decision, inform the competent authorities of the other host Member States in which the credit institution operates, of its decision and the related effects.

(2) Where the adoption of the decision cannot be delayed, for reasons pertaining to the protection of depositors or to other public matters, the National Bank of Romania shall communicate the information referred to in para. (1) immediately after the decision was taken.

(3) The National Bank of Romania shall provide the co-ordination of its actions with those of the competent authorities of the other host Members States. The liquidator shall ensure the co-ordination of its actions with those of the liquidators appointed in the respective Member States.

Art. 261 – (1) Where the authorisation of a credit institution, Romanian legal person, which also operates within the territory of one or more Member States is withdrawn, the liquidator shall immediately take the necessary measures to publish an excerpt from the National Bank of Romania's decision on opening the winding-up proceedings of the credit institution in the Official Journal of the European Union and in two national newspapers in each host Member State, in the official language or one of the official languages of the respective Member State.

(2) The National Bank of Romania's decision shall have effects in all the host Member States, without any other formality, and shall enter into force on the date of its publication in *Monitorul Oficial al României*, Part One, or at a later date stipulated in that decision.

(3) Where necessary, the liquidator may request that the National Bank of Romania's decision to open winding-up proceedings be registered in the land register, the trade register or any other public register kept in the host Member States. If the host Member State's laws stipulate the binding character of such formalities, the liquidator shall take all the measures to ensure the registration. The costs of registration shall be regarded as costs and expenses incurred by the winding-up proceedings.

Art. 262 – (1) The liquidator may operate within the territory of the host Member States based on a certified copy of the National Bank of Romania's decision or on a certificate issued by it, without any other formality.

(2) The liquidator may exercise within the territory of the host Member States all the powers he is entitled to by the Romanian law. He may also appoint persons to assist or represent him within the territory of these states, including for the purpose of assisting creditors overcome any difficulties encountered during the winding-up proceedings.

(3) In exercising his powers, the liquidator shall comply with the laws of the Member State within the territory of which he operates, in particular with regard to

procedures for the realisation of assets and the provision of information to the credit institution's employees within the Member State concerned. The liquidator's powers may not include the use of force or the right to rule on litigations or disputes.

Art. 263 – In the case of winding up of a credit institution, Romanian legal person, which operates within the territory of one or more Member States, the Romanian laws shall apply, with the exceptions under Art. 266 – 274.

Art. 264 – **(1)** Any creditor of the credit institution subject to winding-up proceedings, having his domicile/residence or, as the case may be, the registered office in Romania or in another Member State, shall have the right to lodge claims or to submit to the liquidator written observations on claims against the credit institution. The lodgement of claims or the written observations on claims, as the case may be, shall be submitted in the official language or one of the official languages of the Member State concerned, in which the creditor has his domicile/residence, or, as the case may be, his registered office, and shall bear the heading "Lodgement of Claims" or, as the case may be "Observations on Claims" in Romanian.

(2) The claims of creditors whose domiciles/normal places of residence or, as the case may be, registered offices are in States other than Romania shall be subject to the same treatment and shall bear the same ranking as claims of an equivalent nature, which may be lodged by creditors having their domiciles/normal places of residence, or, as the case may be, registered offices in Romania.

(3) The creditors exercising the right referred to in para. (1) shall send copies of documents confirming their claims, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether they allege preference, security in re or reservation of title in respect of the claims and what assets are covered by their security.

(4) At the liquidator's request, creditors shall provide a translation into Romanian of the lodgement of claims or, as the case may be, of the observations on claims and the submitted documents.

Art. 265 – (1) The liquidator shall keep creditors regularly informed, in an appropriate manner, particularly with regard to progress in the realisation of credit institution's assets.

(2) The liquidator shall be bound by professional secrecy in accordance with the provisions laid down in Chapter V, Title III, Part I.

Art. 266 – The effects of the credit institution's winding-up proceedings on certain contracts and rights shall be governed by law as follows:

a) employment contracts and relationships shall be governed by the laws of the Member State applicable to each employment contract;

b) contracts conferring the right to make use of or to acquire immovable property shall be governed by the laws of the Member State within the territory of which the immovable property is located. The respective law shall determine whether the considered property is movable or immovable;

c) rights in respect of immovable property, ships and aircraft subject to registration in a public register shall be governed by the laws of the Member State under whose authority the register is held.

Art. 267 – (1) The opening of the credit institution's winding-up proceedings shall not affect the rights in re of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole – belonging to the credit institution and which are located within the territory of other Member States at the time of entry into force of the winding-up decision.

(2) The rights referred to in para. (1) shall in particular mean:

a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

b) the exclusive right to have a claim met ahead of other holders with rights in respect of the respective asset;

c) the right to demand the assets from anyone having possession or use of them;

d) a right to the beneficial use of assets.

Art. 268 – **(1)** The opening of winding-up proceedings against a credit institution purchasing an asset shall not affect the seller's rights based on a reservation of title, until a certain time limit or until the fulfilment of certain conditions is achieved, where at the time of entry into force of the winding-up decision the asset purchased is located within the territory of another Member State.

(2) The opening of winding-up proceedings against a credit institution selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not affect the purchaser's rights if the opening occurred upon the delivery of the asset and if, at the time of entry into force of the winding-up decision, the asset sold is located within the territory of another Member State.

Art. 269 – **(1)** The opening of winding-up proceedings shall not affect the right of creditors to demand the legal set-off of their claims against the claims of the credit institution, where the law applicable to the credit institution's claims allows such a set-off.

(2) In case of netting agreements, the law governing such agreements shall apply.

Art. 270 – The provisions of Art. 267, 268 and 269 para. (1) shall not preclude the actions for voidness, voidability or unenforceability of legal acts, according to the Romanian law.

Art. 271 – **(1)** The enforcement of proprietary rights or other rights on securities whose existence or transfer presupposes their recording in a register, account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located.

(2) Without prejudice to para. (1), repurchase agreements and transactions carried out on a regulated market shall be governed by the law of the contract, which governs such agreements and transactions.

Art. 272 – The Romanian legislation relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors shall not apply in the case where the beneficiary of these acts proves that the act detrimental to the creditors as a whole is

governed by the law of another Member State, and that the law does not allow any means of challenging that act in the case in point.

Art. 273 – The validity of documents concluded upon the opening of winding-up proceedings by which the credit institution disposes of its immovable assets, ships or aircraft that are subject to registration in a public register, or securities or rights on such securities the existence or transfer of which presupposes their being recorded in a register, account or centralised deposit system held or located in another Member State, shall be governed by the law of the Member State within the territory of which the immovable assets are located or, as the case may be, under the authority of which that register, account or centralised deposit system is kept.

Art. 274 – Pending lawsuits concerning the assets or the rights the credit institution has been divested of shall be governed by the law of the Member State in which the lawsuit is pending.

CHAPTER IX
Manners of appeal

Art. 275 – **(1)** The decisions taken by the National Bank of Romania according to the provisions referred to in this Emergency Ordinance, regarding a credit institution, including those concerning the members of the Board of Directors, directors, persons in charge of departments or of branches of the credit institution or concerning shareholders may be disputed – within 15 days from their notification – to the National Bank of Romania Board, which is to make a well-grounded decision within 30 days from the date the notification was made.

(2) The decision of the National Bank of Romania Board may be contested at the High Court of Cassation and Justice, within 15 days from notification.

(3) The National Bank of Romania is the sole authority empowered to decide on the criteria of timeliness, qualitative assessments and analyses underlying its acts.

(4) In case of appeal against the NBR acts, the court shall deliver a decision in respect of the lawfulness of these acts.

Art. 276 – The provisions of Art. 275 shall also be accordingly applied in the case of an unfounded refusal of the National Bank of Romania to deliver a decision, within the period provided by the law, in respect of an application for authorisation which contains all the data and information required under the legal provisions in force.

Art. 277 – Execution of the acts issued by the National Bank of Romania shall remain in place until a decision is made by the National Bank of Romania Board according to Art. 275 para. (1) or until the delivery of a final and irrevocable decision by the court in compliance with para. (2) of the said Article.

CHAPTER X
Provisions applicable to financial investment companies

Art. 278 – **(1)** The following provisions of this Emergency Ordinance shall apply to financial investment companies and to investment management companies whose business is the management of individual investment portfolios defined in accordance with Law No. 297/2004, as subsequently amended and supplemented, in the conditions provided for in the following articles:

a) Section 2, Chapter I, Title I, Part I;

b) Art. 23 and Art. 24;

c) Sections 1-8 and Art. 150 para. (1) let. b) and c) of Section 9, Chapter III, Title II, Part I, specifying that the provisions of Art. 137 shall apply only to financial investment companies which are authorised to perform transactions in financial instruments on own account and to underwrite financial instruments and/or investment of financial instruments based on firm commitment;

d) Chapter V, Title II, Part I;

e) Art. 164-168 of Chapter I and Chapter II, Title III, Part I;

f) Art. 226 and 227 of Chapter VII, Title III, Part I.

(2) The provisions of Chapter VI, Title III, Part I shall apply accordingly to the National Securities Commission.

Art. 279 – For the enforcement of Art. 278 the following shall be taken into consideration:

a) any reference to a credit institution, Romanian legal person, to a parent credit institution in Romania or to a parent credit institution in the European Union is considered to be made to a Romanian financial investment company, a parent investment company in Romania and a parent investment company in the European Union, excepting Art. 143 and Art. 177 where only the first reference to credit institutions, Romanian legal persons, is considered to be made to the Romanian investment companies. Any reference to the National Bank of Romania is considered to be made to the National Securities Commission.

b) for the purposes of applying the provisions of the law to groups that include an investment company but which do not include a credit institution, the terms and expressions specified in Art. 7, para. 1, points 2, 21 and 25 have the following meanings:

1. *competent authority* – means the national authority empowered to exert prudential supervision of investment companies.

2. *financial holding company* – a financial institution the subsidiary undertakings of which are either exclusively or mainly investment companies or other financial institutions, at least one of which being an investment company, and which is not a mixed financial holding company within the meaning of Emergency Ordinance No. 98/2006.

3. *mixed-activity holding company* – a parent undertaking, other than a financial holding company, an investment company or a mixed financial holding company within the meaning of Emergency Ordinance No. 98/2006, whose subsidiary undertakings include at least one investment company;

c) for the enforcement of Art. 129 para. (2), the National Securities Commission may acknowledge eligibility of an external credit assessment institution, without being necessary another assessment, if the National Bank of Romania or the competent authority of another Member State acknowledged the eligibility of this institution;

d) for the enforcement of Art. 168 para. (2), the reference to this Emergency Ordinance shall be considered as a reference to Law no. 297/2004, as subsequently amended and supplemented;

e) where a group does not include a credit institution, the provisions referred to in para. (1) of Art. 202 shall be read as follows: "Where an investment company, a financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies, the National Securities Commission shall co-operate closely with the Insurance Supervisory Commission and other authorities responsible for the supervision of insurance companies";

f) for the enforcement of Art. 202 para. (2) and Art. 226 para. (5), the reference to Chapter V of Title III, Part I shall be considered as a reference to Art. 7 para. 2^1 and 2^2 of the National Securities Commission Statute, as approved by Government Emergency Ordinance No. 25/2002, approved and amended by Law No. 514/2002, as subsequently amended and supplemented;

g) for the enforcement of Art. 226 para. (2) let. g), the reference to Chapter VIII of Title III, Part I shall be considered as a reference to Title IX of Law No. 297/2004, as subsequently amended and supplemented.

Art. 280 – For the purpose of supervision on a consolidated basis, the terms "financial holding company", "parent financial holding company in Romania", "EU parent financial holding company" and "ancillary services undertaking" shall cover undertakings defined in Art. 7, with special mention that every reference to credit institutions shall be read as a reference to credit institutions or investment companies, as the case may be.

Art. 281 – Where an EU parent financial holding company has as subsidiary both a credit institution and an investment firm, the provisions of Title III, Part I shall apply both to the supervision of credit institutions and supervision of Romanian investment companies, as applicable.

Art. 282 – **(1)** Where a credit institution has as parent undertaking a parent investment company in Romania, only that investment company shall be subject to supervision on a consolidated basis by the National Securities Commission, in accordance with the provisions of this Emergency Ordinance and of the regulations issued for its application.

(2) Where a Romanian investment company has as parent undertaking a parent credit institution in Romania, only that credit institution shall be subject to supervision on a consolidated basis by the National Bank of Romania, in accordance with the provisions of this Emergency Ordinance and of the regulations issued for its application.

(3) Where a financial holding company has as subsidiaries at least a credit institution, Romanian legal person, and a financial investment company, only the credit institution shall be subject to supervision on a consolidated basis by the National Bank of Romania, in accordance with the provisions of this Emergency Ordinance and of the regulations issued for its application.

Art. 283 – The National Securities Commission shall closely co-operate with the Member States' competent authorities for performing the duties provided for in this Emergency Ordinance and in subsequent regulations issued for its application, particularly where investment services and activities are provided on the basis of the freedom to provide services or through the establishment of branches.

Art. 284 – **(1)** The National Securities Commission shall dispose – to a financial investment company or to responsible persons that infringe the provisions of this Emergency Ordinance or of the regulations or other pieces of legislation issued for the application of the law concerning prudential and capital adequacy requirements or that do not comply with the recommendations made – the necessary measures and/or apply sanctions in order to bring to an end the infringements, to remove the deficiencies and their causes.

(2) The measures established by the National Securities Commission in order to remedy immediately the situation of the entities mentioned in para. (1) are those provided for in Art. 226, applying accordingly the provisions of Art. 227 of this Emergency Ordinance.

(3) Where the prudential and capital adequacy requirements stipulated in this Emergency Ordinance, in the regulations or in other pieces of legislation issued for the application of this Emergency Ordinance are not observed or the recommendations made are not followed, the National Securities Commission shall apply sanctions in accordance

with the provisions stipulated in Title X of Law No. 297/2004, as subsequently amended and supplemented.

PART II
SPECIFIC PROVISIONS

TITLE I
BANKS

Art. **285** – Banks are credit institutions with universal activity, which may perform any of the activities mentioned in Section 1.2, Chapter II of Title I, Part I.

Art. **286** – The general provisions applicable to credit institutions in accordance with this Emergency Ordinance are fully applicable to banks.

Art. **287** – **(1)** Banks, Romanian legal persons, are legally constituted as joint-stock companies in accordance with the commercial legislation and with the provisions of this Emergency Ordinance.

(2) Banks, Romanian legal persons, shall not use a name specific to another category of credit institutions governed by this Emergency Ordinance.

TITLE II
SAVINGS BANKS FOR HOUSING

CHAPTER I
General provisions

Art. **288** – This Title shall govern the regime applicable to savings banks for housing, Romanian legal persons, as credit institutions specialised in long-term financing for housing, which have collective saving and lending for housing included in their scope.

Art. 289 – The general provisions applicable to credit institutions in accordance with the provisions of this Emergency Ordinance shall apply accordingly to savings banks for housing, Romanian legal persons, unless otherwise stipulated in the provisions of this Title.

Art. 290 – For the purpose of this Title, the definitions and expressions mentioned below have the following meaning:

a) *housing activities* represent:

1. construction, purchasing, restoration, refurbishment, consolidation or expansion of buildings intended mainly for housing;

2. purchasing, restoration, refurbishment, consolidation or expansion of buildings, other than those intended mainly for housing, on condition that they are used as dwellings;

3. purchasing of urban land or acquiring the rights of concession to erect buildings intended mainly for housing;

4. purchasing of urban land or acquiring the rights of concession in order to erect buildings, other than those intended mainly for housing, within the limit of the share held by dwellings in the entire structure built on the land;

5. rendering viable the land transferred to urban property with a view to promoting construction of residential districts;

6. taking over some claims related to performance of activities set forth under points 1-5;

7. building of commercial, industrial and social and cultural facilities, if they are connected to the building of dwellings or if they contribute, given their location, to supplying of goods and services to these areas or to meeting the social and cultural needs;

8. construction works in the housing area committed by the tenant in order to modernise the dwelling;

b) *client* – natural or legal person who/which concludes a contract of collective saving and lending for housing with the savings bank for housing pursuant to which that person acquires, following the deposits made according to the contract, the legal status to be granted a credit at the interest rate established under the contract;

c) *contract of collective savings and lending for housing* hereinafter referred to as *saving-lending contract* – the parties' commitment by means of which the client is bound to save an amount constituting the minimum saved amount while the savings bank for housing is bound to grant a fixed-rate credit to cover the difference between the total amount stipulated by the contract and the amount saved, including interest and premiums granted, the client being bound to meet all requirements for taking the credit;

d) *allotment date* – the date on which the savings balance and the loan for housing are made available to the client;

e) *collective saving and lending for housing* – taking deposits from clients and granting fixed-rate credits to clients from the amounts saved for housing activities;

f) *financing on the basis of saving-lending contract* – fixed-rate credit granted to the client on the terms and conditions stipulated by the saving-lending contract;

g) *anticipated financing* – the credit at market interest rate granted to the client who did not yet save the minimum amount established by the savings bank for housing in the saving-lending contract; this credit, for which only the interest is paid, turns into a fixed-rate credit at the date all terms and conditions for granting the credit, as stipulated under the saving-lending contract, are met;

h) *intermediary financing* – the credit at market interest rate granted to the client who saved the minimum amount established by the saving-lending contract but who does not fulfil the other terms stipulated by the saving-lending contract; this credit, for which only the interest is paid, turns into a fixed-interest rate credit at the date all terms and conditions stipulated by the saving-lending contract are met;

i) *special fund* – the fund established by the savings bank for housing in order to guarantee the operation of the system as regards the method of collective saving and lending for housing and in order to protect the clients' interests;

j) *allotment amount* – resources of the savings bank for housing, coming from deposits and related interest, and any other payments contributing to the increase in the savings balance, credit-related repayments, payments of premiums and related interest, other sources taken solely for financing, based on the saving-lending contract, as well as amounts from own sources;

k) *individual ratio between the client and the savings bank for housing* – the ratio between the client's cash contribution calculated by each saving-lending contract and the cash contribution of the savings bank for housing after the credit was granted;

l) *collective ratio between the clients and the savings bank for housing* – the ratio between the total cash contributions of clients and the expected cash contribution of the savings bank for housing resulting from saving-lending contracts whose saving process came to an end and/or was discontinued, calculated for a certain period;

m) *waiting time* – the period beginning on the date the saving-lending contract was concluded and ending on the date the client's contract is allotted;

n) *types of contracts (tariffs)* – alternative ways for collective saving and lending for housing made available to clients by the savings bank for housing in terms of the amount stipulated by the contract, interest and terms of repayment related to financing based on the saving-lending contract as well as according to other criteria established by the savings bank for housing.

Art. **291** – **(1)** Savings banks for housing, Romanian legal persons, shall be legally established as joint-stock companies in compliance with legal provisions applicable to commercial companies and with the provisions of this Emergency Ordinance.

(2) The name of a savings bank for housing should include the phrase "*savings bank for housing*" or another expression that indicates its specialisation in financing for housing.

Art. 292 – **(1)** Savings banks for housing may, to the limit of the powers assigned following the authorisation granted, carry out the following activities:

a) collective saving and lending for housing;

b) anticipated financing and intermediary financing based on saving-lending contracts;

c) granting of credits for housing in compliance with the provisions of para. (2);

d) management of third parties' credit portfolios and intermediation of credits to third parties, if the credits are intended to financing of some housing activities;

e) issuance, in accordance with the provisions of para. (2), of guarantees for those types of credits granted to third parties that the savings banks may grant;

f) low risk investments, according to the National Bank of Romania regulations;

g) granting of credits to commercial companies in which the savings banks for housing hold equity stakes, according to the provisions of Art. 307;

h) issuance and management of payment and credit instruments;

i) funds transfers;

j) financial and banking consulting services;

k) financial-banking mandate operations;

l) other operations, according to the provisions of Art. 18, if they underpin the carrying out of the activity.

(2) The total claims from credits and liabilities set forth in para. (1) let. c) and e) respectively may not exceed the level stipulated by the National Bank of Romania from the volume of financing based on saving-lending contracts and financing in accordance with para. (1) let. b).

Art. 293 – Savings banks for housing may transfer the claims from financing based on saving-lending contract and related guarantees, only if the amounts gained from transfer are used for the activity of the collective saving and lending for housing and for the anticipated and intermediary financing.

CHAPTER II

Specific provisions on authorisation and withdrawal of the authorisation

Art. 294 – Savings banks for housing shall be subject to authorisation criteria applicable to credit institutions and they should also fulfil the specific criteria established by the National Bank of Romania's regulations, which shall refer, without being limited to the following:

a) general business conditions and general conditions of saving-lending contracts;

b) fulfilment of specific technical and operational requirements;

c) own regulations of savings banks for housing concerning the simplified unfolding procedure of saving-lending contracts;

d) types of contracts (tariffs) proposed to be made available to the clients.

Art. 295 – The National Bank of Romania shall reject the application for authorisation of a savings bank for housing according to the provisions of Art. 38 also where the General Business Conditions and/or General Conditions of saving-lending contracts:

a) may not ensure proper execution of saving-lending contracts and, taken separately, they do not ensure, during the contractual period, an adequate individual ratio between the client and the savings bank for housing;

b) include provisions stipulating the payment of the saved amounts, repayments or payment of any other obligations that delay inadequately the allotment of saving-lending contracts, lead to unduly extension of saving-lending contract period or do not ensure enough guarantees for the clients' interests.

Art. 296 – (1) The National Bank of Romania may withdraw the authorisation of a savings bank for housing, according to the provisions of Art. 39, also in the following cases:

a) finds that the clients' interests cannot be sufficiently protected by adopting other measures, in accordance with this Emergency Ordinance;

b) finds deeds similar in nature to those laid down in Art. 295, which provide the grounds for withdrawal of the authorisation.

(2) Withdrawal of the authorisation of a savings bank for housing entails the commencement of the simplified unfolding procedure of saving-lending contracts.

Art. 297 – (1) Merger and split-up of savings banks for housing shall be performed in accordance with the provisions included in Chapter VII of Title I, Part I, by observing the specific provisions applicable to this category of credit institutions.

(2) Savings banks for housing may only merge with other savings banks for housing.

CHAPTER III

Specific requirements for carrying out the activity

Art. 298 – Savings banks for housing shall issue their own regulations in respect of General Business Conditions and General Conditions of saving-lending contracts underlying the types of contracts (tariffs) provided.

Art. 299 – The General Business Conditions shall refer, without being limited to the following:

a) calculations underlying the unfolding of saving-lending contracts, indicating the individual ratio between the client and the savings bank for housing and the minimum, medium and maximum waiting time;

b) the procedure to allot saving-lending contracts, indicating the composition of allotment amount, the terms of allotment, assessment of fulfilling the allotment requirements and establishment of the allotment order;

c) the procedure in respect of calculation of resources of the allotment amount, which, temporarily, may not be allotted, of additional returns on investment of such resources and destination of the special fund;

d) the method for calculating the value of the guarantee;

e) the method of refunding the amounts saved if saving-lending contracts are cancelled;

f) the procedure for simplified unfolding of saving-lending contracts, for the benefit of the client, if the authorisation is withdrawn or if the winding-up proceedings commence;

g) financing of investment for rendering viable the land transferred to urban property with a view to promoting construction of residential districts;

h) financing of construction works for commercial, industrial and social and cultural facilities to the extent the provisions of Art. 290 let. a) point 7 are fulfilled.

Art. 300 – The General Conditions of saving-lending contracts shall encompass the following provisions:

a) the value and maturity of contributions of the client and of the savings bank for housing, and the effect of delayed contributions;

b) deposit and lending rates;

c) the value of commissions and of other expenses binding upon the client;

d) the method for assessing fulfilment of the allotment requirements, establishment of allotment order and requirements for payment of the amount stipulated by the contract;

e) credit guarantee and repayment methods, and methods to ensure against default risk;

f) the terms and conditions under which a saving-lending contract can be parted or connected to other saving-lending contract;

g) the terms and conditions under which the amount stipulated by the contract is increased or decreased;

h) the terms and conditions under which the rights deriving from saving-lending contract can be transferred;

i) the terms and conditions under which a saving-lending contract can be cancelled and the effects following cancellation or following the unfolding of the simplified procedure;

j) the conditions for managing client accounts;

k) the competent authority empowered to settle the disputes.

Art. 301 – **(1)** The amendments or supplements to the General Business Conditions and the General Conditions of saving-lending contracts relative to the provisions of Art. 299, except let. d), and of Art. 300, except let. c), as well as those to the General Business Conditions and the General Conditions of saving-lending contracts as regards new types of saving-lending contracts shall be subject to prior approval of the National Bank of Romania.

(2) The National Bank of Romania may ask the savings banks for housing to alter the General Business Conditions and the General Conditions of saving-lending contracts whenever it finds that the savings banks for housing may not ensure fulfilment of their obligations arising from such contracts.

Art. 302 – The introduction of new types of saving-lending contracts (tariffs) shall be subject to approval of the National Bank of Romania at least 3 months before these contracts (tariffs) are made available to the clients and they shall comply with the provisions of the approved General Business Conditions and the General Conditions of saving-lending contracts.

Art. 303 – **(1)** If the allotment volume is not used for financing based on saving-

lending contracts, this may be used only for the purpose of refunding the savings which were incorporated into the allotment amount as well as for anticipated and intermediary financing.

(2) The allotment amount shall be allotted so as to ensure a uniform allotment of saving-lending contracts and as short as possible waiting time.

Art. 304 – (1) In the case of saving-lending contracts denominated in foreign currency, the savings banks for housing shall create separate allotment amounts for each currency the saved amount is denominated in. These allotment amounts shall be used mainly in the currency in which the amount was saved, the savings banks for housing being bound to manage appropriately the currency risk.

(2) In special cases, upon grounded request, the National Bank of Romania may exempt savings banks for housing from creating separate allotment amounts, without prejudice to the clients' interests.

Art. 305 – The savings banks for housing may not commit themselves to making available to the client the amount stipulated by the contract in view of being granted the credit at a fixed date, before the allotment of saving-lending contract.

Art. 306 – Savings banks for housing shall allot on an annual basis, before the application of profit tax in the special fund account, the difference between the realised income as a result of temporary placements from the allotment amount which was not used for financing as set forth under the saving-lending contracts, because of non-fulfilment by the clients of the allotment conditions and the income that would have been realised as a result of financing as set forth under the saving-lending contract, within the limit of 3% of deposits. The special fund may be closed at the end of the year within the limit of the share which exceeds 3% of deposits.

Art. **307 – (1)** Savings banks for housing may hold equity stakes only in commercial companies whose scope includes housing activities and which perform mainly such activities, within the limit of one third of their share capital and by observing the provisions of Art. 143.

(2) A larger equity stake is permitted only in the case of other savings banks for housing, provided the total equity stakes held in such companies is not higher than 20% of own funds of the savings bank for housing.

Art. 308 – (1) Besides the tasks laid down by law, the independent auditors of the savings banks for housing shall also have the following special tasks:

a) to check the observance of the provisions set forth in the General Business Conditions concerning the allotment procedure, for which they are entitled to have access to the documents of the savings banks for housing insofar as they refer to the allotment procedure;

b) to check the observance of the conditions laid down in the internal regulations on credit payment and guaranteeing the claims arising from credits;

c) to check the observance of the regulations issued by the National Bank of Romania for the application of this Emergency Ordinance.

(2) The financial auditor shall be bound to notify the National Bank of Romania whenever he/she finds that the savings banks for housing breached the provisions of this Emergency Ordinance and/or of the regulations issued for the application of this Emergency Ordinance.

(3) The financial auditor shall, at the end of the financial year, prepare a report on the collective saving and lending activity for housing that shall be submitted to the National Bank of Romania as well.

CHAPTER IV
Specific regulations and measures

Art. 309 – (1) In order to ensure appropriate conditions for carrying out the obligations arising from the saving-lending contracts and particularly for guaranteeing the existence of sufficiently large funds of the savings banks for housing to secure a pace of allotment as even as possible, the National Bank of Romania shall issue regulations concerning:

a) temporary placement of saved amounts in order to be allotted and of the amounts already allotted but whose payment has not been required yet by the clients;

b) the method for calculation of large-value saving-lending contracts as well as:

1. the admitted share of amounts relating to the large-value saving-lending contracts in total amounts stipulated by the contract, associated with the saving-lending contracts of the savings bank for housing which were not assigned;

2. the admitted share of amounts relating to the large-value saving-lending contracts concluded during a calendar year in total amounts stipulated by the contract, associated with the saving-lending contracts concluded during the respective calendar year;

c) the terms and conditions under which housing loans provided for in Art. 290 let. a) point 7 as well as the admitted share of these contracts in total lending of a savings bank for housing which may not exceed 3% of total;

d) the admitted maximum exposure to a commercial company included in the categories provided for in Art. 307 para. (1), as well as the total admitted maximum exposure to such commercial companies;

e) the admitted share of credits granted based on saving-lending contracts and backed by various types of guarantees in total credits granted in virtue of saving-lending contracts, in the case that such as a prudential measure is deemed necessary;

f) minimum conditions for assignment of saving-lending contracts, particularly those referring to the minimum saved amount and the calculation of the minimum assessment index, in order to ensure an adequate individual ratio between the client and the savings bank for housing;

g) the method of establishment, use and liquidation of the special fund.

(2) When calculating the number of large-value saving-lending contracts admitted, according to para. (1) let. b), the saving-lending contracts under which, in accordance with the General Business Conditions, the clients paid the minimum saved amount during the first year after the conclusion of the saving-lending contract shall be included as well.

Art. 310 – (1) The National Bank of Romania is empowered to take all the necessary steps to ensure that the collective saving and lending activities for housing are performed in compliance with the General Business Conditions and the General Conditions of saving-lending contracts, as well as with the other conditions laid down in

this Emergency Ordinance and in the regulations issued for the application of this Emergency Ordinance.

(2) Where there is clear evidence leading to the conclusion that a savings bank for housing will not be able to pay its obligations, the National Bank of Romania may forbid it to conclude, for a limited time period, new saving-lending contracts.

(3) When the situation mentioned under para. (2) is not redressed, the National Bank of Romania may order the withdrawal of the authorisation and the commencement of the procedure of simplified unfolding of saving-lending contracts.

(4) The procedure of simplified unfolding of saving-lending contracts shall be aimed at realising the cash contributions from clients and from the savings bank for housing, as stipulated in the existing saving-lending contracts, in order to protect the clients' interests.

CHAPTER V

Promotion of collective saving and lending for housing

Art. 311 – (1) Every client, natural person, Romanian citizen and having a stable place of residence in Romania, shall benefit from a government-granted premium for the annual savings made on the basis of a saving-lending contract concluded with a savings bank for housing.

(2) The right to the government-granted premium shall be established at the end of the year when the saving was made. The year of saving is the calendar year when the amounts that give the right to be granted the premium were deposited.

(3) The government-granted premium shall be requested by the client from the savings bank for housing with which the saving-lending contract was concluded, until at the latest the end of the calendar year subsequent to the year of saving.

(4) Where the government-granted premium was not requested by the end of the calendar year following the year of saving, the right to the premium shall be lost by limitation.

Art. 312 – (1) The government-granted premium shall be established at 15% of the saved amount in the year concerned.

(2) The government-granted premium may not exceed the RON equivalent of EUR 120 calculated in terms of the RON/EUR exchange rate communicated by the National Bank of Romania on the last working day of the year of saving.

(3) The provisions of para. (1) and (2) shall not apply to the persons aged up to 35 years and to the persons having minor dependents, in which case the maximum government-granted premium may not exceed EUR 150, as follows:

a) persons aged up to 35 years, without minor dependents: EUR 135;

b) persons having one minor dependent: EUR 140;

c) persons having two minor dependents: EUR 145;

d) persons having three or more minor dependents: EUR 150.

(4) Where the client concludes several saving-lending contracts with the savings bank for housing and the premiums exceed the maximum premium admitted in the year of saving, the total amount of premiums shall not exceed the level set forth in para. (2).

Art. 313 – (1) The clients, single persons, as well as any of the spouses, separately, no matter who saved the amount, shall be entitled to receive the government-granted premium.

(2) Single person, as mentioned in para. (1), shall refer to any person that is unmarried, widow/widower or divorcee.

Art. 314 – The government-granted premium shall be paid from the government budget via the budget of the Ministry of Transport, Construction and Tourism, being granted after the expiry of every calendar year, within at most 60 days from the day the request was sent by the savings bank for housing to the aforementioned authority. The savings bank for housing shall transfer the premium to the client's account.

Art. 315 – (1) In order to benefit, on a regular basis, from the government-granted premium, the saving-lending contracts must be concluded on five years at least and total or partial reimbursement out of the saved amounts should not have been made before the expiry of the deadline for saving.

(2) The provisions of para. (1) shall not apply to the following:

a) the amount stipulated by the contract is made available and the saver uses directly the amount for housing activities;

b) in the case of transfer of the saving-lending contract, the amount saved or the amount stipulated by the contract is directly used for housing activities by the transferor;

c) in the case of demise of the person who saved money for housing activities, or of his/her spouse, or the persons have become incapacitated to work after the conclusion of the saving-lending contract;

d) the person who saved money for housing activities has become unemployed and the unemployment period lasts for at least nine successive months and the person is still unemployed on the date the withdrawal of the amount is requested.

Art. 316 – The clients who received the government-granted premium by breaching the provisions of this Emergency Ordinance or of regulations issued for the application of this Emergency Ordinance shall be bound to pay back the premium to the Ministry of Transport, Construction and Tourism, within maximum 90 days from the date the premium was granted.

Art. 317 – The procedure of granting the premium shall be established by the Ministry of Public Finance and the Ministry of Transport, Construction and Tourism via methodological norms approved by joint order.

TITLE III
MORTGAGE LOAN BANKS

Art. **318** – **(1)** The provisions of this Title shall govern the regime of the mortgage loan banks as specialised credit institutions, which have as core business the granting with professional title of mortgage loans for real estate investments and the raising of repayable funds from the public by issuing mortgage bonds.

(2) With the exception of deposit collection activities, mortgage loan banks may, within the boundaries of the granted authorization, carry on the activities set forth in Art. 18 provided these activities support the granting of mortgage loans and the issuing of mortgage bonds. The provisions of Art. 20-22 shall apply accordingly.

Art. **319** – **(1)** Mortgage loan banks, Romanian legal persons, shall be legally established as joint-stock companies in accordance with the legislation applicable to commercial companies and with the observance of the provisions of this Emergency Ordinance.

(2) The name of a mortgage loan bank shall include the phrase "*mortgage loan bank"* or the phrase "*mortgage bank*".

Art. 320 – The general provisions applicable to credit institutions in accordance with this Emergency Ordinance shall apply to mortgage loan banks accordingly.

TITLE IV
ELECTRONIC MONEY INSTITUTIONS

Art. **321** – This Title shall govern the regime of electronic money institutions, Romanian persons legal, as credit institutions specialised in issuing electronic money.

Art. 322 – Electronic money institutions, Romanian legal persons, shall be legally established as joint-stock companies in accordance with the provisions of the laws applicable to commercial companies and in compliance with the provisions of this Emergency Ordinance.

Art. 323 – The business of electronic money institutions shall be limited to the issue of electronic money and the provision of the following types of services:

a) financial and non-financial services, closely related to the issue of electronic money such as: management of electronic money by the performance of operational and other ancillary functions related to issue of electronic money, issue and management of other means of payment, but excluding the granting of any form of credit;

b) storing of data on an electronic device on behalf of some public institutions or of other entities.

Art. 324 – **(1)** The general provisions applicable to credit institutions in accordance with the provisions of this Emergency Ordinance shall apply accordingly to electronic money institutions, unless otherwise stipulated herein.

(2) The regime provided for in Section 1 of Chapter VI, Title I, Part I, concerning the conditions of carrying out this activity in other Member States shall apply to electronic money institutions exclusively for the activity of issuing electronic money.

(3) The raising of funds with the view of issuing electronic money shall not be viewed as collection of deposits or of other repayable funds in the meaning of Art. 5, if the funds received are immediately exchanged for electronic money.

Art. 325 – Electronic money institutions shall not hold equity stakes in other entities, except for those having exclusively as the business activity the provision of operational or other ancillary services related to electronic money issue or distribution by the respective electronic money institution.

Art. 326 – **(1)** During the validity period of the issued electronic money, the electronic money institutions shall redeem it, upon the holders' request, at a value equal to its value recorded in the balance. The redemption shall be carried out in cash or by transfer to an account, free of charges other than those strictly necessary to carry out the redemption.

(2) The contracts concluded between the electronic money institutions and the holders shall clearly state the electronic money redemption conditions.

(3) The contracts may stipulate a minimum threshold for redemption, which may not exceed the equivalent in RON of EUR 10.

Art. 327 – **(1)** Electronic money institutions shall have an initial capital equalling at least the level set forth in regulations issued by the National Bank of Romania, that may not be less than the equivalent in RON of EUR 1 million.

(2) Electronic money institutions shall have own funds equal to or higher than 2% of the largest amount or of the average totals of their financial liabilities relating to the issue of electronic money over the past 6 months.

(3) Without prejudice to the provisions of para. (2), the own funds of an electronic money institution shall not be lower than the minimum level of the initial capital established in accordance with para. (1).

Art. 328 – For the purposes set out in Art. 24, the framework of the management, the strategies, operations and mechanisms implemented by an electronic money institution shall take into account the financial and non-financial risks to which the electronic money institution is or may be exposed, including the technical and procedural risks, as well as the risks related to its co-operation with other entities which provide operational or other ancillary services related to its activity.

Art. **329** – **(1)** The National Bank of Romania may allow an electronic money institution to waive the application of some or all of the provisions of this Emergency Ordinance in the following cases:

a) issue of electronic money by the electronic money institution generates a total balance of financial liabilities related to outstanding electronic money that normally does not exceed the equivalent in RON of EUR 5 million and never exceeds the equivalent in RON of EUR 6 million;

b) the electronic money issued by the institution is accepted as means of payment only by its subsidiaries, which provide operational or other ancillary services related to electronic money issued or distributed by the electronic money institution, by any parent undertaking of the electronic money institution or by any other subsidiaries of that parent undertaking;

c) the electronic money issued by the electronic money institution is accepted as means of payment only by a limited number of undertakings, which can be clearly distinguished by being located within the same premises or limited area or by their close financial or business relationship with the issuing institution, such as a common marketing or distribution network.

(2) In the situation provided for in para. (1), the contractual documents underlying the issue of electronic money shall provide that the amount which may be stored on an electronic device made available to the holders for the purpose of making payments is subject to a maximum amount that may not exceed the equivalent in RON of EUR 150.

Art. 330 – **(1)** Electronic money institutions that have been exempt according to Art. 329 shall not be governed by the regime stipulated in Section 1 of Chapter VI, Title I, Part I.

(2) The prohibition stipulated in Art. 5 related to the issue of electronic money shall not apply to the electronic money institutions provided for in para. (1).

Art. 331 – For the purpose of this Title, the National Bank of Romania shall establish by its own regulations the following:

a) the allowed investments of an electronic money institution;

b) the reporting requirements, including those requirements for the electronic money institutions to which the provisions of this Emergency Ordinance shall not apply entirely or partially.

Art. 332 – Electronic money institutions shall be allowed to merge with banks, with other electronic money institutions or with other entities providing ancillary services if the services are those laid down in Art. 323.

TITLE V
CREDIT CO-OPERATIVE ORGANISATIONS

CHAPTER I
General provisions

Section 1
Scope and definitions

Art. 333 – **(1)** The provisions in this Title shall apply to credit co-operatives, Romanian legal persons, and to the central bodies, Romanian legal persons, of credit co-operative organisations to which these organisations are affiliated, hereinafter referred to as *credit co-operative organisations*.

(2) The general provisions in Part I of this Emergency Ordinance shall apply entirely to the central bodies and, unless otherwise stipulated in this Title, to the affiliated credit co-operatives.

(3) The central body and its affiliated credit co-operatives shall observe the requirements laid down in Chapters III and V of Title II, Part I under the conditions laid down in Art. 384.

Art. 334 – For the purpose of this Title, the terms and expressions below shall have the following meanings:

a) *credit co-operative* – a credit institution established as an independent association of individuals fulfilling, out of their own free will, their common economic, social and cultural needs and aspirations, whose activity is based mainly on the principle of mutual benefit of the co-operative members;

b) *central body of credit co-operatives* – a credit institution established through the association of credit co-operatives, in order to manage their common interests, to perform a centralised oversight of the application of legal provisions and regulations applicable to all the affiliated credit co-operatives by means of the supervision and the administrative, technical and financial control of their organisation and operation, hereinafter referred to as *central body*;

c) *affiliated to a central body* – a credit co-operative that subscribes and pays to the registered capital of the central body at least the number of shares established in the articles of association and which is subordinated to it in accordance with the provisions of this Title and with the affiliation terms and conditions laid down by the central body;

d) *general articles of association* – a compulsory guide relative to the association, organisation and operation of the credit co-operatives affiliated to a central body, drafted by the central body and approved by the National Bank of Romania, setting forth the minimal provisions on the drawing-up of the general articles of association of the affiliated credit co-operatives as well as the regulation on the organisation and operation of the network;

e) *general regulations* – regulations, norms and instructions issued by a central body in the discharge of its lawful duties, which are compulsory for all the credit co-operatives affiliated to the central body in order to carry out the activity within the credit co-operative network, in a consistent manner and in line with the legal requirements and the National Bank of Romania's regulations issued for the application of this Emergency Ordinance;

f) *credit co-operative network* – a group consisting of a central body and its affiliates.

Section 2
General principles

Art. 335 – **(1)** Credit co-operative organisations, Romanian legal persons, are independent, non-political and non-governmental associations, carrying out activities specific to credit institutions for the mutual benefit of their members in accordance with the provisions of this Emergency Ordinance.

(2) The activity within a credit co-operative network shall be run mainly for the co-operative members and the credit co-operative organisations affiliated to the central body.

Art. 336 – **(1)** Credit co-operative organisations, Romanian legal persons, may be organised and may operate only as credit co-operatives and as a central body to which these credit co-operatives are affiliated.

(2) The affiliation to a central body is compulsory. The terms and procedure of affiliation shall be established in the articles of association of a central body.

Art. 337 – **(1)** The central body of credit co-operatives shall ensure the promotion of the interests of affiliated credit co-operatives and shall have the following main tasks:

a) to represent the common economic, financial, legal, social and cultural interests of the affiliates before the National Bank of Romania, public institutions and courts of law;

b) to aim at and ensure the consistency and well-functioning of the entire network for which purpose the central body shall take all the necessary measures to guarantee the liquidity and capital adequacy of each affiliate in the network and of the network as a whole, including, where appropriate, by granting financial assistance to the affiliates;

c) to issue the general articles of association and also other general regulations regarding the organisation of activity within the network;

d) to supervise the affiliates in terms of their observance of the legal provisions and regulations issued by the National Bank of Romania, of the general articles of

association and general regulations of the central body, and to exercise the administrative, technical and financial control over their organisation and management;

e) to guarantee all the liabilities of the affiliated credit co-operatives, by imposing the necessary measures in order to ensure the payment of the established contributions;

f) to liquidate the affiliated credit co-operatives;

g) to report, in compliance with the regulations in force, the data and information required by the National Bank of Romania;

h) to inform the affiliates of the regulations issued for the application of this Emergency Ordinance and to issue general regulations in order to ensure the observance of requirements at the level of the entire network;

i) to ensure the management of the resources available in the network;

j) to ensure the settlement of receipts and payments among affiliates and of receipts and payments of their own network in relation to the State Treasury and other credit institutions through a current account opened with the National Bank of Romania;

k) to provide training for the staff and to organise social and cultural activities of common interest.

(2) In order to discharge its specific tasks, the central body may recommend and impose measures on the affiliates or it may propose to the National Bank of Romania the infliction of sanctions, in accordance with the provisions of this Title.

CHAPTER II

Authorisation of credit co-operative organisations

Section 1

Authorisation of credit co-operatives and withdrawal of authorisation

Art. 338 – (1) The authorisation of credit co-operatives shall be performed under the conditions applicable to credit institutions provided for in Chapter II of Title I, Part I, except for Art. 11, Art. 13 para. (1) and Art. 17, whose provisions shall not be applicable to the credit co-operatives within the network.

(2) Credit co-operatives which are established and affiliated to an already-authorised central body may be authorised by the National Bank of Romania only in virtue of the agreement of affiliation with the respective central body.

(3) Credit co-operatives which are established simultaneously with the central body shall be authorised under the conditions provided for in Section 2 of this Chapter.

Art. 339 – The National Bank of Romania may establish a minimum level of the initial capital for the credit co-operatives, by observing accordingly the requirement laid down in Art. 23.

Art. 340 – **(1)** Credit co-operatives may, to the limit of their authorisation, carry out the activities provided for in Section 1 of Chapter II of Title I, Part I, except for the provisions referred to in Art. 18 para. (1) let. c), g1), g3), g4), h), j)-m), o) and p), under the conditions laid down in the provisions below.

(2) Credit co-operatives may collect deposits or other repayable funds from their members, as well as from individuals, legal entities or from other entities without legal personality, whose domicile, normal place of residence, workplace or registered office is situated within the credit co-operative's area of operation.

(3) Credit co-operatives may grant credits to:

a) their members, who have priority over the other entities;

b) individuals, legal entities or other entities without legal personality, whose domicile, normal place of residence, workplace or registered office is situated within the credit co-operative's area of operation, in an amount which cannot exceed 25% of the credit co-operative's assets.

(4) Credit co-operatives may extend loans, on behalf of and through the account of the state, from sources made available, which are earmarked to the entities referred to in para. (3) and/or to finance some development/rehabilitation projects of the economic and social activities within the credit co-operative's area of operation.

Art. 341 – Credit co-operatives shall not issue bonds. These organisations may be financed from inter-co-operative loans or loans from other credit institutions, by observing the provisions of Art. 337 para. (1) let. i).

Art. 342 – The National Bank of Romania may withdraw the authorisation of a credit co-operative in accordance with the provisions of Art. 39 and at the substantiated request of the central body to which the respective credit co-operative is affiliated, where it finds out that the credit co-operative is undergoing either one of the predicaments referred to in the respective article or insolvency, as defined by the laws on insolvency of credit institutions.

Art. 343 – Apart from other cases when it stops to be valid, the authorisation of a credit co-operative shall no longer produce effects starting with the date the authorisation of the central body is withdrawn or its validity ceases in accordance with Art. 40 para. (1) and Art. 41 para.(1) let. b) and c).

Art. 344 – The decision of the National Bank of Romania to withdraw the authorisation of a credit co-operative shall be notified in writing both to the credit co-operative and the central body the credit co-operative is affiliated to.

Section 2
Authorisation of the central body and withdrawal of authorisation

Art. 345 – **(1)** Central bodies shall be authorised collectively, together with all the credit co-operatives within the network which are proposed to be established, in accordance with the provisions laid down in Chapter III of Title I, Part I.

(2) The National Bank of Romania shall grant authorisation to the central body and to the credit co-operatives within a network, only if the requirements provided for by the Emergency Ordinance and the regulations issued for its application are fulfilled at the level of the central body and of each affiliated credit co-operative, as well as at the level of the entire co-operative network.

(3) For the application of para. (2), the requirements laid down in Section 1 of Chapter II of Title I, Part I and in the regulations issued by the National Bank of Romania for their application shall be fulfilled at the level of the central body and the entire co-operative network; the provisions laid down in Art. 338 para. (1) shall be applicable to credit co-operatives.

(4) The minimum level of the total capital of a co-operative network and the elements used in its calculation are set by the National Bank of Romania through regulations. This level shall not be lower than the equivalent in RON of EUR 5 million.

Art. 346 – **(1)** Central bodies may, to the limit of their authorisation, carry out any of the activities allowed to a credit institution, under the conditions laid down in Section 1.2 of Chapter II of Title I, Part I. The activity is mainly carried out for the interest of the affiliated credit co-operatives and with a view to ensuring capital adequacy and liquidity at the level of the entire network.

(2) The credits granted by a central body to legal entities, other than the affiliated credit co-operatives, shall not exceed 20% of the assets of the central body.

(3) Central bodies may issue bonds under the conditions stipulated by the law for joint-stock companies.

Art. 347 – The National Bank of Romania shall reject the application for authorisation of a co-operative network in accordance with the provisions of Art. 38 and should either of the following occur:

a) the assessment of the business plan indicates that the co-operative network as a whole cannot ensure the fulfilment of the proposed objectives in compliance with the requirements laid down in this Emergency Ordinance and in the applicable regulations;

b) the requirements on the minimum level of the total capital of the network are not fulfilled.

Art. 348 – Where, according to the assessment of the documents submitted at any stage of the authorisation process, only some of the credit co-operatives within the network and the central body fulfil the requirements laid down, the National Bank of Romania may grant authorisation, only if the network comprising the respective credit co-operative organisations complies with the provisions of this Emergency Ordinance and of the regulations issued for its application.

Art. 349 – Where the authorisation granted to the central body is withdrawn, the provisions of Art. 344 shall be applied accordingly.

Section 3
The carrying out of activity outside Romania

Art. 350 – The provisions laid down in Chapter VI of Title I, Part I, shall apply to the whole comprised of the central body and its affiliated credit co-operatives.

CHAPTER III
Specific provisions on establishment and operation

Section 1
Common provisions applying to credit co-operative organisations

Art. 351 – **(1)** The provisions of Law No. 31/1990 on commercial companies, republished, as subsequently amended and supplemented, shall apply accordingly to credit co-operative organisations as well, unless otherwise stipulated in this Title. The establishment, operation, amendment of the articles of association, dissolution, merger, division and liquidation of credit co-operative organisations shall be governed by the same provisions as those applicable to joint-stock companies.

(2) For the application of para. (1), any reference to shares and shareholders is considered to be made to the share capital and the co-operative members/affiliated credit co-operatives, and any reference to a certain percent of the share capital of the joint-stock company is considered to be made to the total voting rights at the level of a credit co-operative/central body.

(3) In all the official documents, credit co-operative organisations shall indicate, beside other elements stipulated by the law, the mention "variable share capital", while credit co-operatives shall also indicate the name of the central body to which they are affiliated.

Art. 352 – **(1)** Credit co-operative organisations have a variable number of co-operative members or, as the case may be, of affiliated credit co-operatives, which shall not be lower than the minimum number stipulated in this Title.

(2) The share capital of a credit co-operative organisation may vary and consists in shares of equal value.

(3) Within a co-operative network, the shares of all the credit co-operative organisations must be equal in value.

Art. 353 – (1) The nominal value of a share shall be laid down in the general articles of association, but it shall not be lower than RON 10.

(2) The shares shall bear dividends. Dividends shall be paid to the co-operative members and to the affiliated credit co-operatives from the net profit, proportionally to the equity stake in the share capital and for the period of holding the shares during the financial year.

Art. 354 – (1) The shares shall not be represented by negotiable securities. They are indivisible and may only be sold, transferred, or pledged as collateral between the co-operative members, except where the membership ceases in accordance with the articles of association, and between the credit co-operatives affiliated to the central body.

(2) The shares shall not be used for the payment of personal debts of their holders to the credit co-operative organisation or to third parties, and shall not bear interest.

(3) The co-operative members and the affiliated credit co-operatives shall not ask for the partial repayment of the value in exchange of the subscribed shares, except for those resulting from the compensations referred to in Art. 369 para. (2), in the case of shares subscribed to the central body.

(4) The shareholders, co-operative members or credit co-operatives, as the case may be, are liable for the obligations of the credit co-operative organisation to the limit of their subscribed shares.

Art. 355 – (1) The general meeting of shareholders of a credit co-operative organisation shall meet whenever necessary, under the conditions and on the dates provided for by the law, in order to decide on all the matters related to the powers of the ordinary and extraordinary general meetings of a joint-stock company, and in the case of credit co-operatives, also to appoint from among the members of the Board of Directors,

the representatives of the credit co-operative in the general meeting of shareholders of the central body.

(2) The general meeting of shareholders of the credit co-operative organisation may delegate to the Board of Directors, under the conditions laid down in the articles of association, the power to change the core business, to decide on the relocation of the registered office, to set up or dissolve branches, and, as the case may be, to appoint representatives in the general meeting of shareholders of the central body.

Art. 356 – The Board members of a credit co-operative organisation must participate in the general meetings of shareholders.

Art. 357 – The Board of Directors of a credit co-operative organisation may decide on the conclusion of legal documents granting the right to acquire, alienate, rent, exchange or pledge as collateral some of the assets of the credit co-operative organisation, whose value exceeds one fifth of the book value of its assets on the date of signing the legal document, only with the approval of the general meeting of shareholders and, in the case of credit co-operatives, also with the approval of the central body to which the credit co-operative organisation is affiliated.

Art. 358 – The monthly remuneration of the Board members of a credit co-operative organisation, as laid down in the articles of association or by the decision of the general meeting of shareholders, shall not exceed 20% of the gross wage of the general director/director.

Art. 359 – **(1)** The central body shall set up a mutual guarantee fund on the basis of the contributions paid by affiliates and of a percentage equalling 5% at most of the pre-tax profit of the central body. The setting-up, use, as well as the level of the mutual guarantee fund shall be laid down in the general regulations of the central bodies.

(2) Credit co-operatives shall contribute to the setting-up of the mutual guarantee fund of the central body, in accordance with the general regulations issued by the central body for that purpose. The contributions paid by the credit co-operatives shall be recognised as tax-deductible expenses.

Section 2
Credit co-operatives

Art. 360 – Credit co-operatives shall be established based on the freedom of association of individuals, without any discrimination based on nationality or ethnic origin, language, religion, political affiliation, wealth, social status, race or gender.

Art. 361 – **(1)** Any natural person with full capacity to act, whose domicile, normal place of residence or workplace is situated within the credit co-operative's area of operation, who signed or accepted, as the case may be, the articles of association of the respective credit co-operative and who subscribed and paid at least the minimum number of shares laid down in the general articles of association, may become a co-operative member.

(2) The articles of association may also provide for other eligibility conditions for co-operative members.

Art. 362 – **(1)** Credit co-operatives shall have their own area of operation, as laid down in the articles of association, where they may establish branches. This area may include certain territories within the county where the credit co-operative has its registered office or within other bordering counties.

(2) The area of operation of credit co-operatives affiliated to the same central body shall not overlap.

(3) Any change in the area of operation of a credit co-operative shall be submitted for prior approval to the central body to which the credit co-operative is affiliated.

Art. 363 – **(1)** Credit co-operatives shall be established based on the articles of association drafted on the basis of the general articles of association.

(2) The minimum number of founder co-operative members, laid down in the general articles of association, may not be lower than 1,000. The general articles of association may provide for the possibility to establish a credit co-operative by the association of at least 100 founder co-operative members provided that they subscribe and pay at least 1,000 shares in total.

Art. 364 – Unless otherwise stipulated by law, the articles of association shall include provisions related to:

a) the conditions and procedure for joining a credit co-operative, including, as the case may be, the registration fee, as well as the manner to rule on potential complaints against the decision to reject the registration application;

b) the conditions and procedure to cancel the membership of co-operative members, including in the case of withdrawal, exclusion and demise, and the means to pay off the debts of the credit co-operative to the co-operative member or his/her successors and the debts of the co-operative member or his/her successors to the credit co-operative;

c) the rights and obligations of co-operative members;

d) the area of operation of the credit co-operative.

Art. 365 – **(1)** The name of a credit co-operative shall include the phrase "credit co-operative" or "co-operative bank" and the name of the locality where the credit co-operative has its registered office.

(2) Credit co-operatives within the same co-operative network shall use only one of the expressions provided for in para. (1).

Art. 366 – **(1)** Each co-operative member shall be entitled to one vote only, irrespective of the number of shares held.

(2) The decisions of the general meetings of shareholders are valid only if they are made in the presence of most co-operative members and voted by the majority thereof.

(3) If unable to work, owing to non-compliance with the requirements laid down in para. (2), the general meeting of shareholders shall convene for the second time and shall decide on the issues on the initial agenda, unless otherwise provided for in the articles of association, in the presence of at least one third of the number of co-operative members; decisions shall be valid if voted by the majority of the present co-operative members.

Art. 367 – **(1)** The persons appointed as Board members of the credit co-operative must receive the approval of the central body before starting to exercise their duties,

except for the first Board members of credit co-operatives who are appointed simultaneously with the central body.

(2) The National Bank of Romania may require the central body to withdraw the approval of a Board member of the credit co-operative where he/she was appointed by infringement of applicable legal provisions, or where the activity carried out by this Board member led to the worsening of the credit co-operative's financial standing and/or to the violation of prudential requirements by the credit co-operative.

Art. 368 – Credit co-operatives shall allot 25% per annum of the profit after tax to the setting-up of a mutual aid reserve earmarked for creating the conditions needed for reducing the costs related to the operations performed with co-operative members.

Section 3
Central body

Art. 369 – **(1)** Central bodies shall be established based on the articles of association by the association of at least 30 founder credit co-operatives.

(2) Each of the affiliated credit co-operatives shall subscribe and pay to the share capital of the central body shares accounting for at least 20% of their share capital. Based on the share capital recorded at the end of the financial year by each credit co-operative, the equity stakes in the capital of the central body shall be recalculated, and the differences found shall be compensated within 90 days after the end of the financial year.

Art. 370 – The name of a central body shall include the phrase "central body" or "co-operative central bank".

Art. 371 – Unless otherwise stipulated by law, the articles of association of a central body shall include provisions related to:

a) the affiliation conditions and procedure of credit co-operatives;

b) the rights and obligations of the affiliated credit co-operatives;

c) the manner of representing the affiliated credit co-operatives in the general meeting of shareholders of the central body;

d) the duties of the central body concerning the representation, guidance, regulation, supervision, control and informing within the network.

Art. 372 – (1) Each affiliated credit co-operative shall be entitled to a number of votes in the general meeting of shareholders of the central body equal to the number of persons in the register of co-operative members at the end of the month preceding the date of holding the general meeting of shareholders.

(2) The decisions of the general meeting of shareholders of the central body are valid only if they are made in the presence of representatives of the affiliated credit co-operatives accounting for at least half of the number of eligible votes and voted by the majority thereof, unless the articles of association provides for a larger majority.

(3) If unable to work, owing to non-compliance with the requirements laid down in para. (2), the general meeting of shareholders shall convene for the second time and shall decide on the issues on the initial agenda in the presence of representatives of the affiliated credit co-operatives accounting for at least one third of the number of eligible votes; decisions shall be valid if voted by the majority of the present representatives.

Art. 373 – (1) The central body shall be run by a Board of Directors consisting of the members elected by the general meeting of shareholders from among the persons appointed for this purpose by the representatives of the affiliated credit co-operatives. Apart from the incompatibilities and prohibitions laid down by the law, the Board members, directors or the persons appointed to ensure the management of departments or branches of a credit co-operative may hold neither the position of a Board member nor that of a director of the central body.

(2) Beside the prerogatives laid down in the laws applicable to commercial companies, the Board of Directors of the central body shall also have the following prerogatives concerning the network of affiliated credit co-operatives:

a) to approve or reject the affiliation of credit co-operatives;

b) to approve, in advance, the changes in the status of the credit co-operatives within the network, other than those submitted for prior approval of the National Bank of Romania as laid down in this Title, in compliance with the general regulations;

c) to take the necessary measures in order to ensure the minimum number of affiliated credit co-operatives;

d) to approve the general regulations and the changes to the general articles of association;

e) to establish and submit for approval to the general meeting of shareholders the aggregated financial statement prepared at the level of the credit co-operative network;

f) to establish and approve the general regulations on the supervision of the affiliated credit co-operatives and to decide on the measures to be taken for the affiliated credit co-operatives, and, as appropriate, on the sanctions for non-compliance with the provisions of this Emergency Ordinance and of the regulations issued for its application.

Art. 374 – Central bodies shall keep highly liquid assets at a level at least equal to the level of the mutual guarantee fund.

Art. 375 – Beside the registers laid down by the law, central bodies shall also keep a register of the affiliated credit co-operatives.

Section 4
Some specific provisions on the dissolution, merger and split-up of credit co-operative organisations

Art. 376 – By way of derogation from the provisions of laws applicable to commercial companies, the dissolution of a credit co-operative organisation following a decrease in the number of co-operative members and of affiliated credit co-operatives below the minimum level established in accordance with this Title shall take place where this number has not been raised within one year from the date the decrease was found.

Art. 377 – **(1)** A central body of credit co-operatives may merge only with another central body.

(2) The merger and split-up operations of credit co-operatives shall be performed only within the same credit co-operative network, except for the situation referred to in para. (1).

(3) The merger or split-up of credit co-operative organisations shall be performed under the conditions laid down in Chapter VII of Title I, Part I, and in the case of credit co-operatives, also with the approval of the central body to which these co-operatives are affiliated.

Section 5
Payment operations of credit co-operative organisations

Art. 378 – In order to start operating, within 30 days from receiving the authorisation, each credit co-operative organisation shall open a current account as follows:

a) the central body shall open a current account with the National Bank of Romania, in accordance with the regulations issued by the latter;

b) credit co-operatives shall open a current account with the central body to which they are affiliated, in accordance with the general regulations.

Art. 379 – **(1)** Each central body shall issue, with the approval of the National Bank of Romania, general regulations on the carrying out of payment operations between the affiliated credit co-operatives.

(2) Credit co-operative organisations are responsible for the legality and discipline of payment operations performed within the network.

CHAPTER IV
Specific provisions on the operational requirements

Section 1
General provisions

Art. 380 – **(1)** Credit co-operative organisations shall organise their whole activity in accordance with the rules of a prudent and sound banking practice, the requirements of the law and of the regulations issued for its application, as well as in compliance with the general regulations issued by the central body.

(2) The provisions included in Title II, Part I, shall apply accordingly to credit co-operative organisations, in line with the provisions and conditions laid down in this Chapter.

Art. 381 – For the application of the provisions of Art. 105, the articles of association, internal regulations of credit co-operative organisations and the general regulations issued by the central body shall be submitted to the National Bank of Romania, under the conditions laid down in its regulations issued on the basis of this Emergency Ordinance.

Art. 382 – **(1)** By the general articles of association and the general regulations, the central body shall ensure the consistent implementation, at the level of the entire co-operative network, of an administration framework, of risk identification, administration, monitoring and reporting processes, and of some internal control mechanisms which shall ensure the observance of the requirements of this Emergency Ordinance and of the regulations issued for its application.

(2) The central body is responsible for organising the internal control of the activity, for managing the significant risks, as well as for organising and carrying out the internal audit activity at the level of the entire co-operative network. By way of derogation from the provisions of Law No. 31/1990, republished, as subsequently amended and supplemented, the establishment of an audit committee within each credit co-operative is not compulsory.

Art. 383 – By way of derogation from the provisions of Art. 107 para. (1), the management of credit co-operatives with at most 5,000 co-operative members may be delegated to one director only.

Section 2
Prudential and publicity requirements

Art. 384 – **(1)** A credit co-operative network shall observe the requirements provided for in Art. 24, Art. 126, in Sections 6, 7 and 8 of Chapter III and the requirements provided for in Chapter V of Title II, Part I.

(2) In applying the provisions of para. (1), a credit co-operative network's own funds may not fall below the minimum level of the total capital required for its authorisation.

(3) The central body shall ensure the observance of the requirements laid down in Chapter V of Title I, Part I, concerning its own activity, as well as the activity of the entire credit co-operative network.

Art. 385 – (1) Each credit co-operative organisation shall comply with the provisions referred to in Art. 384 para. (1), in accordance with the regulations of the National Bank of Romania and, as the case may be, with the general regulations of the central body.

(2) Each credit co-operative within the network shall, on a continuing basis, keep own funds at the level laid down in the general regulations issued by the central body for the purpose of covering the risks to which the credit co-operative is or may be exposed; this level shall not be lower than the minimum level of share capital established by the National Bank of Romania through regulations, where appropriate.

Art. 386 – (1) The amendments to the initial conditions of authorisation of credit co-operatives, which call for the central body's prior approval, other than the amendments referred to in this Title or the amendments submitted for approval to the National Bank of Romania according to its regulations, and the amendments which call for a subsequent notification only shall be established through general regulations by the central body.

(2) The mentions corresponding to the amendments made at the level of a credit co-operative organisation, which are subject to prior approval, shall be registered in the trade register only after receiving the approval of the National Bank of Romania or, as the case may be, of the central body.

Section 3
Financial statements and audit

Art. 387 – (1) Beside the requirements concerning the preparation of financial statements by each credit institution, the central body shall draw up an aggregated financial statement, according to the legal provisions, reflecting the operations and the financial standing of all the credit co-operative organisations within the network.

(2) In applying the provisions laid down in para. (1) and in order for the central body to prepare the reports required by the National Bank of Romania at the level of the co-operative network, credit co-operatives shall submit to the central body they are

affiliated to their annual financial statements and other data and information required by the central body, within the time limits set forth by the general regulations of the central body.

Art. 388 – **(1)** The financial auditor of the credit co-operative shall be subject to the prior approval by the central body, except for the first financial auditor of a credit co-operative, who shall be appointed and authorised simultaneously with the central body.

(2) The National Bank of Romania may require the central body to withdraw the approval granted to a financial auditor in the cases laid down in Art. 157.

Art. 389 – The reports drafted by the financial auditor of a credit co-operative in applying the provisions of Art. 156 shall be submitted to the central body, which shall notify the National Bank of Romania thereof.

Art. 390 – **(1)** The financial auditor of the central body shall audit the individual financial statements of the central body, as well as the aggregated financial statements of the co-operative network.

(2) The financial auditor of the central body may audit also the financial statements of the affiliated credit co-operatives. In this case, the provisions laid down in Art. 388 para. (1) and para. (2) shall not be applicable.

Art. 391 – The financial auditor's validation for more than one credit co-operative organisation shall not be considered an infringement of its independence principle.

CHAPTER V
Supervision of credit co-operative organisations

Section 1
Exercising of supervisory tasks

Art. 392 – **(1)** The National Bank of Romania shall ensure prudential supervision of the central body on an individual basis and prudential supervision of all the credit co-operative organisations within the network at an aggregate level. Where necessary, the National Bank of Romania may perform inspections at the registered office of credit co-operatives.

(2) The central body shall report to the National Bank of Romania the necessary data and information for the assessment of the compliance with the provisions laid down in this Emergency Ordinance and in the regulations issued for its application, concerning both its own activity and the activity of the entire co-operative network.

(3) Without prejudice to the prerogatives of the National Bank of Romania to supervise credit co-operative organisations, the central bodies shall ensure the monitoring of the affiliated credit co-operatives. For this purpose, the provisions of Chapter I of Title III, Part I, shall be applied accordingly, and any reference to the National Bank of Romania shall be considered a reference to the central body.

(4) The members of the Board of Directors, the staff of the central body and any person fulfilling certain tasks on the account of the central body shall keep the professional secrecy in accordance with Art. 214 while exercising the tasks of this institution referred to in para. (3).

Section 2
Supervision measures and sanctions

Art. 393 – (1) In performing its tasks laid down in this Title, the central body may take the measures referred to in Art. 226 para. (2) let. a)-f) against an affiliated credit co-operative, which breaches the provisions of the law, of the regulations or of other rules issued for the application of the law concerning the supervision or the carrying out of the activity, under the conditions laid down in the general regulations issued by the central body for this purpose.

(2) The central body may suggest in a substantiated manner to the National Bank of Romania to take the measures referred to in Art. 226 para. (2) let. g) against a credit co-operative and/or to apply the sanctions provided for by the law.

(3) The provisions referred to in Chapter VII of Title III, Part I, shall be applied accordingly to the central body in exercising the prerogatives laid down in para. (1).

(4) The central body shall notify the National Bank of Romania of any measure taken, within 5 days from the date of its adoption.

(5) The documents for the application of the measures in accordance with para. (1) shall be issued by the managers of the central body, consistent with the general regulations issued for this purpose.

Art. 394 – Where a severe deterioration of the financial standing and of prudential indicators is found at the level of the central body or of one of its affiliates, the central body may ask the affiliated credit co-operatives to contribute to the increase in its financial resources either by subscription of new shares or by placing some deposits repayable at the time limits set by the central body.

Art. 395 – The National Bank of Romania may take the necessary measures or apply sanctions for non-fulfilment or inadequate fulfilment by the central body of the control and supervisory tasks assigned according to this Title or delegated by the National Bank of Romania, in relation to the affiliated credit co-operatives.

Section 3
Specific provisions for special procedures

Art. 396 – **(1)** The National Bank of Romania may take special supervision or special administration measures in relation to a credit co-operative also at the substantiated proposal of the central body to which the credit co-operative is affiliated.

(2) The special supervision or special administration of a credit co-operative may be delegated to the central body to which the credit co-operative is affiliated, by the decision of the National Bank of Romania.

Art. 397 – **(1)** Where the special supervision is performed by the central body in compliance with the provisions of Art. 396, the provisions laid down in Section 1 of Chapter VIII of Title III, Part I, shall be applied accordingly and any reference to the National Bank of Romania shall be considered a reference to the central body.

(2) The periodical reports referred to in Art. 239 para. (1) shall be submitted to the National Bank of Romania as well.

(3) Where, during the special supervision serious deficiencies continue to be found in the credit co-operative's activity, the central body may propose the National

Bank of Romania, on a case-by-case basis, to take special administration measures or other measures stipulated by the law, or it may ask the National Bank of Romania to withdraw the authorisation of the respective credit co-operative.

Art. 398 – (1) Where the special administration is ensured by the central body in compliance with the provisions of Art. 396, the provisions laid down in Section 2 of Chapter VIII of Title III, Part I, shall be applied accordingly and any reference to the National Bank of Romania shall be considered a reference to the central body.

(2) In applying the provisions of para. (1), the special administrator's reports shall be submitted to the National Bank of Romania as well.

(3) The central body may ask the National Bank of Romania to withdraw the authorisation of the respective credit co-operative according to the provisions of Art.252 para.(2).

Art. 399 – (1) The liquidation of a credit co-operative following the withdrawal of its authorisation according to Art. 342 shall be performed by the central body to which it is affiliated, including where the credit co-operative is in insolvency, by accordingly applying the provisions of Section 3 of Chapter VIII of Title III, Part I. The central body may appoint an authorised liquidator.

(2) Where the credit co-operative is in insolvency, the general meeting of shareholders of the central body shall decide on the assets of the credit co-operative, whose authorisation has been withdrawn. Its assets may be distributed to the credit co-operative organisations within the network; in this situation, the central body shall fulfil its task referred to in Art. 337 para. (1) let. e).

Art. 400 – (1) In cases differing from those referred to in Art. 399 para. (2), while liquidating a credit co-operative organisation, the co-operative members and the affiliated credit co-operatives shall receive from the net assets remained after the repayment of its liabilities the amounts representing the value in exchange of the subscribed and paid-in shares, as well as all dividends for the financial year in progress. The remainder shall be taken over in case of liquidation of the credit co-operatives by the central body they are affiliated to, and in case of liquidation of the central bodies and its affiliates, by the Bank Deposit Guarantee Fund.

(2) Where the remaining net assets fail to cover the total value of shares, they shall be distributed proportionally to the shares owned by each credit co-operative member.

CHAPTER VI
Bankruptcy of central bodies

Art. 401 – Where a central body is in insolvency, the provisions of the laws on bankruptcy of credit institutions shall be applicable; the procedure stipulated by the law shall be applied at an aggregate level to the credit co-operative organisations within the network.

CHAPTER VII
Other provisions

Art. 402 – The decisions adopted by a central body according to the provisions of this Emergency Ordinance regarding a credit co-operative may be subject to appeal under the conditions laid down in Art. 275 – 277.

Art. 403 – The share capital set up by the co-operative members until the date of entry into force of this Emergency Ordinance, according to the provisions of Emergency Ordinance No. 97/2000 on credit co-operative organisations, approved as subsequently amended and supplemented, may not be withdrawn earlier than one year after the last principal repayment and the related interest payment, unless otherwise stipulated in the agreement concluded by the parties.

TITLE VI
PAYMENT SYSTEMS

CHAPTER I
General provisions

Art. 404 – **(1)** The National Bank of Romania shall regulate, authorise and supervise the payment systems and the financial instruments settlement systems in

Romania, including their administrators, in order to ensure the smooth functioning of these systems in accordance with the international standards in the field.

(2) The systems referred to in para. (1) may not operate on the territory of Romania without being authorised by the National Bank of Romania.

Art. 405 – The National Bank of Romania shall issue regulations regarding the payment systems and the financial instruments settlement systems, which shall refer to the following:

a) the conditions and the manner in which the systems are organised;

b) the authorisation conditions and procedure, the cases where the authorisation may be withdrawn;

c) the criteria and the rules for the supervision of the systems, including the participants in these systems and their administrators;

d) the information and reports that shall be provided to the National Bank of Romania;

e) the minimum requirements related to the functioning, operational audit and risk management of a system, and those referring to the financial statements and the internal audit of the participants and of a system administrator;

f) any other specific requirements necessary for the smooth operation of a system.

Art. 406 – **(1)** The funds and financial instruments of the participants in the payment systems, set up as reserves at the disposal of the settlement agent, within the limits imposed by the system rules, in order to guarantee the fulfilment of the obligations arising from the capacity of participant in the system, may not be subject to the forced sale by third parties, and may not be subject to other real collateral or to other similar duties assumed by the debtor participant.

(2) The funds and financial instruments referred to in para. (1) shall be exempt from registration with the Electronic Archive of Movable Real Collateral.

(3) In case of bankruptcy of a participant in the payment system, the funds and financial instruments provided for in para. (1) shall only be used in the discharge of its obligations arising from the irrevocable transfer orders and the net positions resulting

from the clearing, obligations that are incumbent on the participant until the date when the ruling on opening the bankruptcy proceedings is passed.

(4) Where the capacity of a participant in the payment system ceases, the funds and financial instruments referred to in para. (1) shall only be used in the discharge of its obligations arising from the irrevocable transfer orders and the net positions resulting from the clearing, obligations that are incumbent on the participant until the capacity of participant ceases.

CHAPTER II
Remedial measures and sanctions

Art. 407 – The National Bank of Romania may require the participants and/or administrators of payment systems and financial instruments settlement systems to take remedial measures to correct the deficiencies found within the systems.

Art. 408 – **(1)** Where the National Bank of Romania finds that the participants or administrators of payment systems and financial instruments settlement systems are guilty of non-compliance with the provisions of this Chapter, with the regulations issued by the National Bank of Romania for the application of these provisions, or with the remedial measures imposed, it may apply the following sanctions:

a) written warning;

b) fine ranging from RON 10,000 to RON 100,000;

c) suspension or exclusion of one or more participants from one or more systems;

d) suspension, over a period of up to 90 days, of the authorisation granted by the National Bank of Romania to a system administrator;

e) withdrawal of the authorisation granted to the system administrator.

(2) The documents establishing the measures and the sanctions laid down in this Chapter shall be issued by the Governor, the First Deputy Governor or Deputy Governors of the National Bank of Romania, except for the sanctions referred to in para. (1) let. d) and e), the imposition of which falls within the scope of the National Bank of Romania Board.

Art. 409 – **(1)** The imposition of the sanctions laid down in Art. 408 shall be lost by limitation within one year from notification, but not later than 3 years from the date the deed was perpetrated.

(2) The collected fines shall be recognised as revenue to the state budget.

(3) The imposition of sanctions does not remove the material, civil, administrative or penal responsibility, as the case may be.

PART III
INFRINGEMENTS AND TRANSITORY AND FINAL PROVISIONS

TITLE I

INFRINGEMENTS

Art. 410 – The performance of activities prohibited in accordance with Art. 5 by an individual, on his/her account or on the account of an entity which is not a credit institution shall be deemed as an infringement and shall be punished by imprisonment from 2 years to 7 years.

Art. 411 – The unauthorised use by an individual of a specific name of a credit institution by infringing the provisions of Art. 6 shall be deemed as an infringement and shall be punished by imprisonment from 3 months to 2 years or by fines.

Art. 412 – The following deeds shall be deemed as infringements and shall be punished by imprisonment from one year to 3 years:

a) the deed of a Board member, director or employee of a credit institution who, in bad faith, infringes the provisions of Art.171 or, in any way, obstructs the performance of the supervision by the National Bank of Romania;

b) the deed of any person in charge of the management of a financial holding company or of a mixed-activity holding company who infringes the provisions of Art. 166 and Art. 176-203 with a view to obstructing the National Bank of Romania from exercising its prerogatives concerning the supervision of credit institutions.

Art. 413 – The opening of accounts under fictitious names shall be deemed as an infringement and shall be punished by imprisonment from 2 years to 7 years.

TITLE II
TRANSITORY AND FINAL PROVISIONS

CHAPTER I
Transitory provisions

Art. 414 – (1) The applications for authorisation unsolved at the date of entry into force of this Emergency Ordinance, which are not in accordance with the provisions of the law and/or the regulations issued for its application, may be withdrawn and submitted again by the applicants after correcting the deficiencies.

(2) By way of derogation from the provisions in para. (1), the authorisation applications submitted by the credit institutions authorised and supervised by the competent authority in another Member State shall be classified as being unfounded and these credit institutions shall follow the notification procedure referred to in Section 1 of Chapter IV of Title I, Part I.

Art. 415 – (1) The credit institutions, Romanian legal entities, the branches of credit institutions in third countries and the system administrators, which at the date of entry into force of this Emergency Ordinance operate in Romania, are considered to hold an authorisation in accordance with the provisions of this Emergency Ordinance.

(2) The credit institutions from other Member States which, at the date of entry into force of this Emergency Ordinance, perform activity in Romania through a branch are considered to be notified in accordance with the provisions of Chapter IV of Title I, Part I. Starting with the date of entry into force of this Emergency Ordinance, the authorisations issued by the National Bank of Romania for these branches shall no longer be legally valid. In these cases, the provisions of Art. 41 para. (2) shall not be applicable.

Art. 416 – The credit institutions, Romania legal entities, and the branches of the credit institutions from third countries shall comply with the new requirements in this Emergency Ordinance, within the time limits and under the terms and conditions established by the regulations issued for its application.

CHAPTER II
Final provisions

Art. 417 – The credit institutions which perform their activity in Romania in accordance with this Emergency Ordinance, including the branches of the credit institutions from other Member States and from third countries, shall be registered by the National Bank of Romania in the register of credit institutions which shall be available to all those interested.

Art. 418 – **(1)** Credit institutions may establish professional associations to represent their collective interests in relation to the public authorities, analyse commun interest issues, promote co-operation, inform the association members and the public, and organise commun interest services. The professional associations of the credit institutions shall co-operate with the National Bank of Romania.

(2) Credit institutions may organise separately or, as appropriate, within the professional associations or at the level of a co-operative network, their own body of executors, whose activity shall be strictly related to the collection of claims of a credit institution or of other entities which belong to this institution and carry out financial activities.

(3) The status of this body of executors shall be approved by order of the Minister of Justice and its activity must be performed in accordance with the provisions of common law.

Art. 419 – **(1)** This Emergency Ordinance shall enter into force on 1 January 2007.

(2) This Emergency Ordinance shall be supplemented by the provisions of the laws applicable to commercial companies, insofar as these provisions are without prejudice to the provisions of this Emergency Ordinance, and by those relating to the carrying out of certain activities/operations, as appropriate.

Art. 420 – (1) The National Bank of Romania shall issue regulations for the application of this Emergency Ordinance, which shall be published in *Monitorul Oficial al României*, Part I, as well as on the National Bank of Romania website.

(2) For the purpose of a consistent application of the provisions of this Emergency Ordinance and of the regulations issued on its basis, the National Bank of Romania may issue instructions and guidelines which shall be communicated to all the credit institutions and published on the National Bank of Romania website.

(3) By way of derogation from the provisions of para. (1) and para. (2), where the provisions of this Emergency Ordinance are applicable to credit institutions and in accordance with Chapter X of Title III, Part I, to financial investment companies, and, as the case may be, to investment management companies which have the management of individual investment portfolios included in their scope, the regulations and, as the case may be, the instructions and guidelines shall be jointly issued by the National Bank of Romania and the National Securities Commission.

(4) When drafting regulations, instructions and guidelines, the National Bank of Romania and the National Securities Commission shall ensure the transposition of the relevant laws adopted at the European Union level and shall follow the implementation of the best international practices in the prudential supervision field.

Art. 421 – (1) The regulations issued by the National Bank of Romania, on the basis of the pieces of legislation referred to in Art. 422, and by the National Securities Commission, on the basis of Law No. 297/2004, as subsequently amended and supplemented, shall be further applicable until the express repeal thereof.

(2) In order to calculate capital requirements, the credit institutions, the financial investment companies and, as the case may be, the investment management companies may, until 1 January 2008, choose to implement certain provisions of the regulations referred to in para. (1) under the conditions laid down in the new regulations issued jointly by the National

Bank of Romania and the National Securities Commission in the application of this Emergency Ordinance, consistent with the provisions of Art. 420 para. (3).

(3) The new regulations issued jointly by the National Bank of Romania and the National Securities Commission shall expressly establish which of the provisions of the previous regulations remain, exceptionally, in force until 1 January 2008, being applicable to the credit institutions, financial investment companies and, as the case may be, the investment management companies which make the choice referred to in para. (2).

Art. 422 – At the date of entry into force of this Emergency Ordinance, the following pieces of legislation shall be repealed:

a) Law No. 58/1998 on the banking activity, republished in *Monitorul Oficial al României*, Part I, No.78/24 January 2005, as subsequently amended and supplemented;

b) Government Emergency Ordinance No. 97/2000 on credit co-operative organisations, published in *Monitorul Oficial al României*, Part I, No. 330/14 July 2000, approved as amended and supplemented by Law No. 200/2002, as subsequently amended and supplemented;

c) Law No. 541/2002 on collective saving and lending for housing, published in *Monitorul Oficial al României*, Part I, No. 733/8 October 2002, as subsequently amended and supplemented;

d) Law No. 33/2006 on mortgage loan banks, published in *Monitorul Oficial al României*, Part I, No. 200/3 March 2006;

e) any other contrary provisions.

This Emergency Ordinance transposes the provisions of European Union Directives governing credit institutions and investment firms as follows:

1. Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions, published in Official Journal of the European Union L 177/30 June 2006, Art. 1-3, Art. 4 paragraphs (1) – (5), (7) – (17), (19) – (21) and (46), Art. 5 – 8, Art. 9 paragraph (1), Art. 10 paragraphs (1) and (5), Art. 11 – 25, Art. 26 paragraphs (1) – (3), Art. 27, Art. 28 paragraphs (1) and (2), Art. 29 – 38, Art. 40 – 49, Art. 52 – 56, Art. 75, Art. 76, Art. 80 paragraph (1) subparagraph 3, Art. 81 paragraphs (1)-(3) and (4), Art. 84 paragraphs (1),

(5) and (6), Art. 85 paragraphs (1) and (2), Art. 89 paragraph (1), Art. 91, Art. 97 paragraphs (1) and (3) – (5), Art. 102 paragraphs (1) and (4), Art. 105 paragraphs (1), (3) and (4), Art. 109, Art. 120, Art. 121, Art. 122 paragraph (1), Art. 123, Art. 124 paragraphs (1) – (4), Art. 125 – 132, Art. 135 – 137, Art. 138 paragraph (1), Art. 139 – 142, Art. 143 paragraphs (1), (2) subparagraph 2 and paragraph (3), Art. 144, Art. 145, Art. 147 – 149, Art. 152 paragraph (8), Art. 157 and Annex 1;

2. Directive No. 2006/49/EC of the European Parliament and of the Council of 14 June 2006, on the capital adequacy of investment firms and credit institutions, published in Official Journal of the European Union L 177/30 June 2006, Art. 1 paragraph (1), Art. 2 paragraphs (1) and (2) let. b), d) and e), Art. 3 paragraph (1) let. a), f) and g), and paragraphs (2) and (3), Art. 10 paragraph (4), Art. 13 paragraph (1) subparagraph 1, Art. 18 paragraph (1), Art. 20 paragraph (1), Art. 28 paragraph (1), Art. 34, Art. 35 paragraph (1), Art. 37 paragraph (1), Art. 38, Art. 39, Art. 49 paragraph (1) subparagraphs 2 and 3, and paragraph (2), Art. 50 paragraph (1), and Annex 1, paragraph 1;

3. Directive No. 2000/46/EC of the European Parliament and of the Council of 18 September 2000, on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, published in Official Journal of the European Communities L 275/27 October 2000, Art. 1-3, Art. 4 paragraph (1), Art. 7 and Art. 8;

4. Directive No. 2001/24/EC of the European Parliament and of the Council of 4 April 2001, on the reorganisation and winding up of credit institutions, published in Official Journal of the European Communities L 125/5 May 2001, Art. 1, Art.2, Art.9-13, and Art. 16-33;

5. Council Directive No. 89/117/EEC of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents, published in Official Journal of the European Communities L 044/16 February 1989, Art. 1 paragraph (1) and Art. 2-4.

PRIME MINISTER,
CĂLIN POPESCU TĂRICEANU

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