Unofficial translation

Ordinance no.13/2011
on legal remuneratory and penalisatory interest for monetary indebteness, as well as for the regulation of some financial-fiscal measures in the banking field

Chapter III – Amendments and supplements to the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy

Art. 15 – The Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, published in Monitorul Oficial al României, Part I, no. 1027/27.12.2006, approved with amendments and supplements by Law no. 227/2007, as further amended and supplemented, shall be amended and supplemented as follows:

1. In Article 10, paragraph (2) shall be amended as follows:

(2) Without prejudice to the provisions of this section, the National Bank of Romania shall lay down by regulations and shall notify to the European Comission and to the European Banking Authority, established by Regulation n.1093/2010 of the European Parliament and of the Council, the terms under which the authorisation may be granted, including the documentation which accompanies the authorisation application.

2. Article 36 shall be amended as follows:

Art. 36 – The National Bank of Romania shall notify the European Banking Authority about any authorisation granted, so that the name of the credit institution will be entered in the list of credit institutions drawn up and updated by the European Banking Authority, which is published on its website.

3. Article 43 shall be amended as follows:

Art. 43 – The withdrawal of authorisation of a credit institution or, as appropriate, the cessation of its validity shall be notified to the European Commission and to the European Banking Authority and, according to Articles 88 and 259, to the competent authorities of the host Member States.

4. In Article 63, paragraph (1) shall be amended as follows:

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

5. Article 65 shall be amended as follows:

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

6. In Article 69, paragraph (3) shall be amended as follows:

(3) The National Bank of Romania shall notify the European Commission, the European Banking Authority and the European Banking Committee of any authorisation granted to a branch of a credit institution having its head office in a third country.

7. Article 84 shall be amended as follows:

Art. 84 – The National Bank of Romania shall inform the European Commission and the European Banking Authority with regard to the number and the nature of cases in which it has opposed to the establishment by a credit institution, a Romanian legal entity, of a branch in another Member State or to the carrying on of business by such a branch.

8. In Article 173, after paragraph (2) shall be inserted a new paragraph, paragraph (3), as follows:

(3) The National Bank of Romania may refer situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time, to the European Banking Authority, which may act in accordance with the powers conferred on it under Article 19 of the Regulation of the European Parliament and of the Council no.1093/2010.

9. In Article 176, paragraph (2) shall be amended as follows:

„**(2)** In particular cases, the National Bank of Romania may, by common agreement with the competent authorities of other Member States, not apply the criteria referred to in para. (1) points c) to 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 and the European Banking Authority of any agreement, falling within the scope of this paragraph.

10. In Article 181, after paragraph (1) shall be inserted a new paragraph, paragraph (1^1), as folows:

(1^1) Where the National Bank of Romania, as a consolidating supervisor fails to carry out the tasks referred to in the first subparagraph or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in the first paragraph, the National Bank of Romania and any of the competent authorities concerned may refer the matter to the European Banking Authority, in accordance with the provisions of Art.19 of the Regulation of the European Parliament and of the Council no.1093/2010.

11. In Article 182, after paragraph (5) shall be inserted a new paragraph, paragraph (5^1), as follows:

(5^1) If, at the end of the six month period, any of the competent authorities concerned has referred the matter to the European Banking Authority, according to the settlement of disagreements referred to in Article 19 of the Regulation of the European Parliament and of the Council no.1093/2010, the National Bank of Romania, as a consolidating supervisor shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation. The National Bank of Romania shall take a decision in conformity with the decision of the European Banking Authority. The six month period shall be deemed the conciliation period within the meaning of Article 19 of the Regulation of the European Parliament and of the Council no.1093/2010. In accordance with the provisions of Art.9 paragraph (1) lett.b) of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), the European Banking Authority shall take its decision within 1month. The matter shall not be referred to the European Banking Authority after theend of the six month period or after a joint decision has been reached by the involved competent authorities.

12. After paragraph 1 of Article 182^3 shall be inserted a new paragraph, paragraph 2, as follows:

„**(2)** If, at the end of the four month period, any of the competent authorities concerned has referred the matter to the European Banking Authority, according to the settlement of disagreements referred to in Article 19 of the Regulation of the European Parliament and of the Commission no.1093/2010, the National Bank of Romania, as a

consolidating supervisor shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation. The National Bank of Romania shall take a decision in conformity with the decision of the European Banking Authority. The four month period shall be deemed the conciliation period within the meaning of Article 19 of the Regulation of the European Parliament and of the Council no.1093/2010. In accordance with the provisions of Art.9 paragraph (1) lett.b) of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), the European Banking Authority shall take its decision within 1month. The matter shall not be referred to the European Banking Authority after theend of the four month period or after a joint decision has been reached by the involved competent authorities.

13. Article 182^4 shall be supplemented by inserting a new paragraph, paragraph 2, as follows:

„**(2)** The provisions of Art. 182^3 paragraph (2) shall apply accordingly."

14. In Article 183, paragraphs (1) and (1^1) shall be amended as folows:

Art. 183 – (1) Where an emergency situation, including a situation of adverse developments in financial markets which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches are established, the National Bank of Romania, as a consolidating supervisor shall alert as soon as is practicable, complying with the requirements on keeping the professional secrecy, the European Banking Authority, the European Committee for systemic risk, established by Regulation of the European Parliament and of the Council no.1092/2010 on European Union macro-prudential oversight of the financial system and establishing an European Systemic Risk

Board, and the authorities referred to in Art.222 paragraph (6) and Art. 222^1 paragraph (1) and shall communicate all information essential for the pursuance of their tasks.

(1^1) If the the National Bank of Romania, in exercising its tasks of a central bank, becomes aware of a situation described in the first paragraph, it shall alert as soon as is practicable the competent authorities exercising the consolidated supervision of the credit institutions and the European Banking Authority.

15. Article 185 shall be amended as follows:

Art. 185 – (1) The National Bank of Romania, in its capacity as competent authority responsible for authorising a credit institution, Romanian legal entity, that is a subsidiary of a credit institution of another Member State, may, by bilateral agreements, in accordance with the provisions of Art.128 of Regulation of the European Parliament and of the Council no.1093/2010, delegate its responsibility for supervision to the competent authority which authorised and supervises 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 Banking Authority of the existence and content of such agreements.

16. In Article 185^1, after paragraph (2) shall be inserted a new paragraph, paragraph (2^1), as follws:

„**(2^1)** In order to contribute to promoting and monitoring the effective, efficient and consistent functioning of colleges of supervisors, according to the provisions of Article 21 of Regulation of the European Parliament and of the Council no.1093/2010, the European Banking Authority may participate in colleges of supervisors and shall be considered as a competent authority for that purpose.

17. In Article 185^1, the introductory part and lett. a) from paragraph (3) and paragraph (4) shall be amended as follows:

„**(3)** Colleges of supervisors shall provide to the National Bank of Romania, to the European Banking Authority and to the other competent authorities concerned, a framework to carry out the following tasks:

(a) exchanging information among the competent authorities concerned and, in accordance with Article 21 of Regulation of the European Parliament and of the Council no.1093/2010, with the European Banking Authority;

……..

(4) Within the colleges of supervisors, the National Bank of Romania shall cooperate closely with the other participating competent authorities and with the European Banking Authority. The confidentiality requirements shall not prevent the National Bank of Romania from exchanging information with the other competent authorities within colleges of supervisors.

18. In Article 186, after paragraph (1) shall be inserted a new paragraph, paragraph (1^1), as follows:

(1^1) The National Bank of Romania shall cooperate closely with the European Banking Authority, in accordance with Regulation of the European Parliament and of the Council no.1093/2010. The National Bank of Romania shall provide to the European Banking Authority, according to the provisions of Art.35 of that regulation, all information necessary to carry out its duties under 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 and under the mentioned regulation.

19. In Article 186, after paragraph (4) shall be inserted a new paragraph, paragraph (5), as folows:

(5) The National Bank of Romania may refer to the European Banking Authority situations where:

(a) a competent authority has not communicated essential information,

(b) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

20. In Article 202, paragraph (3) shall be amended as follows:

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

21. In Article 206, paragraph (3) shall be amended as follows:

(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, on the request of the European Commission. The National Bank of Romania shall consult the European Banking Authority before taking a decision.

22. In Article 207, paragraph (4) shall be amended as follows:

(4) The supervisory techniques shall be designed to achieve the objectives of consolidated supervision, as defined in this emergency ordinance and in the regulations issued for its application and shall be notified to the other competent authorities involved, to the European Banking Authority and to the European Commission.

23. On Article 210, after paragraph (2), shall be inserted a new paragraph, paragraph (3), as follows:

„**(3)** The provisions of Art. 173 paragraph (3) shall be applied accordingly."

24. In Article 210^2, after paragraph (2), shall be inserted three new paragraphs, paragraphs (2^1) – (2^3), as follows:

(2^1) If, at the end of the initial two-month period referred to in paragraph (2), any of the competent authorities concerned has referred the matter to the European Banking Authority, in accordance with Article 19 of the Regulation of the European Parliament and of the Council no.1093/2010, the National Bank of Romania shall defer their decision and await the decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation. The National Bank of Romania shall take the decision in conformity with that of the European Banking Authority.

(2^2) The two-month period referred to in paragraph (2^1) shall be deemed to be the "conciliation phase" within the meaning of Article 19 of Regulation of the European Parliament and of the Counci no.1093/2010, the European Banking Authority shall take its decision within 1 month.

(2^3) The matter shall not be referred to the European Banking Authority after the end of the initial two month period referred to in paragraph (2) or after a joint decision has been reached by the competent authorities concerned.

25. In Article 215, paragraph (1) shall be amended as follows:

Art. 215 – (1) The National Bank of Romania may exchange information with the competent authorities from other Member States, in accordance with this emergency ordinance and with other regulations applicable to credit institutions and transmit information to the European Banking Authority, in accordance with the provisions of Art. 31 and of Art.35 of Regulation of the European Parliament and of the Council no.1093/2010.

26. In Article 217, paragraph (2) shall be amended as follows:

(2) Where the information received by the National Bank of Romania originates in another Member State, it shall not be disclosed, according to 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.

27. In Article 222, after lett. b) of paragraph (1) shall be inserted a new letter, letter c), as follows:

c) the European Systemic Risk Board, where that information is relevant for the exercise of its statutory tasks under Regulation no.1092/2010 of the European Parliament and of the Council.

28. In Article 222, paragraphs (3) and (6) shall be amended as follows:

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

……

(6) In an emergency situation as referred to in Article 183 para.(1), the National Bank of Romania may communicate information to the central banks of the European System of the Central Banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system and to the European Systemic Risk Board under Regulation no.1092/2010 of the European Parliament and of the Council, where such information is relevant for the exercise of its statutory tasks.

29. In Articles 173^4, 182^2 paragraph (3), 182^6 and 185^4, the term *Committee of European Banking Supervisors* shall be replaced by the term *European Banking Authority.*

30. Article 240^{14} shall be amended as follows:

Art. 240^{14} – (1) The operations of a credit institution under special administration, related to assets sale, deposits transfer, assets sale with assumption of liabilities and merger/split-up may be carried on to credit institutions or, as the case may be, to financial institutions which, in the opinion of the National Bank of Romania, have a financial standing which is suitable from the perspective of the size and risks related to the activities that will be taken over, have operational capacity and are able to ensure properly the pursuing of banking services related to assets and, by case, to transferred

liabilities, and such operation does not put at risk the soundness and viability of their activity or, if the case may be, their capacity to meet the prudential requirements, and in particular the requirements on the minimum level of own funds.

(2) In order to facilitate the implementation of a restructuring measure consisting in transactions involving guaranteed deposits transfer within the meaning of the Government Ordinance no.39/1996 on establishment and functioning of the Bank Deposit Guarantee Fund, republished, as further amended and supplemented, the resources administered by the Bank Deposit Guarantee Fund may be used for financing the transaction, including by issuing of guarantees, in compliance with the provisions of the above mentioned ordinance. The financing is proposed by the special administrator and grounded within the report provided for in Article 240^{15} paragraph (1) or, by case, in the request made according to Art. 240^{15} paragraph (4), based on the analysis regarding the estimated value of compensations related to deposits existing in the internal records of the credit institution under special administration, sent by the Bank Deposit Guarantee Fund to the special administrator. The financing is requested to the Bank Deposit Guarantee Fund by the special administrator based on the National Bank of Romania's approval.

(3) On performing the operations referred to in paragraph (1), the following requirements shall be met:

a) fair treatment and fair competition among institutions that fulfill the eligibility conditions provided in paragraph (1) and that indicate their intention for taking over should be ensured; in this respect, the special administrator shall make available to the interested institutions, in a non-discriminatory manner, and only after these institutions signed a confidentiality agreement, of the pack of relevant information from the perspective of the proposed restructuring measures, as well as facilitating the carrying on of the valuation of assets and/or, by case, of liabilities that will be taken over, if this valuation is performed prior to the date of signing the contract, that underlie the operation;

b) if there are several bids sent by institutions complying with the eligibility conditions referred to in paragraph (1), the designation of the winning credit institution or financial institution is based on the best price offered;

c) in the case of a partial deposits transfer or a partial assets sale with assumption of liabilities transaction, priority will be given to the transfer of guaranteed deposits, by

complying with the principle of minimum cost, respectively, that the amount for financing this transaction by the Bank Deposit Guarantee Fund shall be lower than the amount of compensations to be paid for those deposits;

d) it may be performed the transfer of all guaranteed deposits as well as the partial transfer of these, in the latter case, the transaction will be performed in such a way to minimize risk, if any, so that the Bank Deposit Guarantee Fund, after financing the transfer, will also remain obliged for the payment of the compensation related to the deposits of the same depositor to the credit institution where the partial transfer was performed;

e) in the case of transactions concerning a deposits transfer, the contractual documents concluded with the beneficiary credit institutions shall not include provisions providing the returning, on occurring of some persuaded events, of the transferred deposits;

f) the amounts that could result from transactions provided for in paragraph (1), less costs related to such transactions, are included in the credit institutions property, being in the situation of Art.240^{18} paragraph (2) and are used to the payment of creditors, in accordance with the claims priority ranks, in the event of liquidation/bankruptcy.

(4) For the implementation of restructuring measures referred to in Art. 240^{12} paragraph (1) letters c), d) and e), the consent of depositors or other creditors or debtors of the credit institution shall not be required. For their notification, the special administrator publishes a general statement in the *Monitorul Oficial al României*, Part Four, and in one or more newspapers of general circulation, and, where appropriate, ensures the publicity according to art. 240^{10} immediately after the implementation of the measure.. All interested parties may obtain the necessary information on the state of their claims or obligations from the credit institution under the special administration, the special administrator being obliged to take the necessary measures in this respect.

(5) Where restructuring measures involve deposits transfer, within the term notified by the credit institution which has taking over the deposits, the transferred depositors shall apply for keeping the deposits to that credit institution, according to the agreed conditions or may withdraw their deposits, without bearing any penalty form for early withdrawal, provided that there are no restrictions or interdictions on those deposits.

(6) The institution which takes over liabilities of the credit institution under special administration shall be liable only for the obligations related to the transferred liabilities

according to contractual terms and which are recorded in the financial statements prepared by the special administrator.

31. In Artice 240^{15}, paragraph (3^{1}) shall be amended as follows:

(3^{1}) The independent authorised expert referred to in paragraph (3) shall have appropriate experience in the field of assessing the banking assets, shall be an active member of the Chamber of Financial Auditors of Romania and shall be agreed by the National Bank of Romania; it is considered that these conditions are fulfilled by the financial auditor approved by the National Bank of Romania in compliance with the provisions of Article 155 para.(1). The financial auditor which carried on specific professional activities in the credit institution under special administration during the past 5 years, shall not fulfill the specific tasks of the independent authorised expert.

32. In Article 240^{16}, paragraph (5) shall be amended as follows:

(5) Where, by adoption of restructuring measures, the creditors of the credit institution are in a less favorable situation than the one where the restructuring measures would have not been implemented and the credit institution would have gone directly into liquidation, taking into account the estimated amounts that would have been due to them following the distribution in case of bankruptcy, based on the estimates made under Art. 240^{15} paragraph (2), the provisions of Art.240^{21} will be applicable.

33. In Article 240^{18}, paragraph (2) shall be amended as follows:

(2) Where implementation of some restructuring measures consisting in transactions involving transfer of deposits placed with the credit institution under special administration, the National Bank of Romania shall withdraw the authorisation starting with the date on which the contract that underlie the transaction regarding deposits transfer or assets sale with assumption of liabilities starts to produce effects and, as the case may be, shall notify the competent court of the initiation of the bankruptcy proceeding. The withdrawing of the authorisation does not prevent the completion of restructuring measures approved by the National Bank of Romania.

34. In Article 404[1], paragraph (1) and lett.b) fromparagraph (2) shall be amended as follows:

Art. 404[1] – (1) The payment systems shall ensure the unrestricted access to the system of the payment service providers, credit institutions, payment institutions, within the meaning of the Government Emergency Ordinance no.113/2009 on payment services, approved with amendments and supplements by Law no.197/2010, as further amended and supplemented, and electronic money institutions in the meaning of Law no.127/2011 on the activity of electronic money issuance, based on objective, non-discriminatory and proportionate rules, that will not inhibit the access more than is necessary to safeguard the payment system against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

……

b) any rules which discriminate the payment services providers in relation to the rights and obligations of participants;

Art. 19 – Entering into force

The provisions of this Ordinance shall enter into force three days after its pubication in Monitorul Oficial al României, Part I, excepting the provisions of Chapter I, Art. 8 paragraph (3) and Art.10, which shall enter into force on 1 October 2011 and of the provisions of Chapter III, points 1 – 29, which shall enter into force on 31 December 2011.

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This Ordinance is transposing the provisions of the following provisions of the EU Directives:

- Chapter III, points 1 – 29 are transposing the provisions of Art.9 point (1) (a), point (3), point (4), point (10), point (11), point (12), point 14 paragraph (1), point (15) (a), point (16), point. (17), point (18), point (19) (a), point (31), point (32)

(a), (b), (d) i) - iv), point (33), point (34), point (35) (a) paragraph 2 - 4, point (35) (b) ii), point (36), point 37, point (38) (a) ii), point (38) (b) and of Art. 13 point (1) of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), published in the Official Journal of the European Union (JOUE) no. L 331 dated 15 December 2010;

- Chapter III, point 34 is transposing the provisions of Art.20 point 1 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, published in the Official Journal of the European Union (JOUE) L 267 dated 10 October 2009.