Government of Romania

Ordinance for amendment and completion of normative acts on credit institutions

Under the provisions of Art.108 of the Romanian Constitution, republished, and of Art.1 point I.2 of the Law 284/2011 concerning the ability of the Government to issue ordinances,

the Romanian Government adopts this ordinance:

Art. I – The Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, published in Monitorul Oficial al României, Part I, no.1027 of 27 December 2006, approved with amendments and completions by Law no.227/2007, as subsequently amended and completed, shall be amended and completed as follows:

1. In Article 7 paragraph (1), after point 1^2 shall be introduced a new point, point 1^3 as follows:

1^3. *to acquire* – in the sense of the provisions of point **1^2** , to acquire by any means a qualifying holding in a credit institution.

2. In Article 25, after paragraph (1) shall be inserted a new paragraph, paragraph (1^1), as follows:

(1^1) Where, for objective reasons, the notification can not be made in advance, the obligation of notification is required from the date of acquisition.

3. In Article 76, paragraph (2) shall be amended as follows:

(2) Where the requirements of the third country relating to preparation of the financial statements referred to in para. (1) are in conformity with, or equivalent to the accounting regulations adopted to the European Union level, the branch established in Romania of the credit institution from the third country shall not be required 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 accounting

regulations issued under the provisions of the Accounting Law no.82/1991, republished, as subsequently amended and completed.

4. In Article 150, paragraph (1), lett.d) shall be amended as follows:

d) prudential value adjustments;

5. Article 185^4 shall be amended as follows:

Art. 185^4 – The National Bank of Romania, as a consolidating supervisor, shall inform the European Banking Authority, subject to the confidentiality requirements, about the activities of the colleges of supervisors, also in emergency situations, and shall communicate to this authority all information that is of particular relevance for the purposes of supervisory convergence.

6. In Article 226, paragraph (2), letter g) shall be amended as follows:

g) imposing measures of special supervision or special administration, as the case may be, on the credit institution or to order stabilisation measures, in accordance with the provisions of this emergency ordinance;

7. In Article 230, paragraph (1) shall be amended as follows:

Art. 230 - (1) Where the persons having qualifying holdings in a credit institution, Romanian legal person, do not longer fulfill the requirements provided by law and the regulations issued for its application regarding the quality of the credit institution's shareholding, or if they exercise an influence that jeopardizes the credit institution's prudent management, the National Bank of Romania shall take appropriate measures to cease that situation. For this purpose, regardless of any other measures or sanctions against the credit institution or the persons having administration and/or management duties, 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 and/or on the initiation of special administration or on the implementation of stabilisation measures, according to the provisions of Chapter VIII hereof.

8. In Article 230^1, paragraph (2) shall be amended as follows:

(2) If the shareholders with qualifying holdings do not comply, in the time limit set by the National Bank of Romania, with the measures taken according to para.(1) letter a) or b), the provisions of Article 230 para.(1) and (3) will become applicable.

9. In Article 230[1], after paragraph (2) shall be inserted a new paragraph, paragraph (3), as follows:

(3) Where the suspension of exercising the voting rights of the persons with qualifying holdings was ordered, the National Bank of Romania will revoke the measure only if the following conditions are met cumulatively:

a) the circumstances referred to in paragraph (1) ceased to exist;

b) by his behavior, the person concerned has not exercised an influence which is likely to jeopardize the prudent administration of the credit institution, taking into account, in particular, the responsiveness in terms of performance, within the specified deadlines, of the recommendations made under Art.168, of the measures ordered pursuant to Art.226 or by case, under this article;

c) the National Bank of Romania did not ordered in the meanwhile the application of other measures regarding the credit institution, in accordance with the provisions of Chapter VIII hereof.

10. In Article 231[1], paragraph (1) shall be amended as follows:

(1) The provisions of Art.231 para.(1) and (3) shall also apply to a proposed acquirer which, although complying with the obligation of notification, according to Art.25 para.(1), is acquiring the qualifying holding before its approval, according to the provisions of this emergency ordinance, including an acquirer which complied with the notification obligation according to the provisions of Art.25 paragraph (1^1).

11. In Article 240, paragraph (1), letters b) and e) shall be amended as follows:

b) a significant deterioration of the prudential and financial performance indicators is noticed or is predictable to occur which is likely to jeopardize the capacity of the credit institution to meet the prudential requirements and the shareholders did not take and/or do not demonstrate that they are able to take timely the necessary steps to remedy the situation;

……..

e) the credit institution's operations are threatening its stability or the level of its own funds, or the credit institution is experiencing a liquidity crisis which jeopardises the interests of its depositors or other creditors;

12. In Article 240, paragraph (2) shall be amended as follows:

(2) Apart from the situations provided in paragraph (1), if the credit institution's own funds are less then 75% of the minimum level of capital requirements determined in accordance with the

regulations issued for the application of Article 126, the National Bank of Romania shall initiate the special administration, except when it decides either the adoption of stabilisation measures, according to the provisions set forth in Section 2^1 of Chapter VIII hereof or, by case, the withdrawal of the authorisation by notification of the competent court in order to open the bankruptcy proceeding.

13. In Article 240^{14}, paragraph (3), letter b) shall be amended as follows:

b) if there are bids from several institutions which fulfill the eligibility conditions referred to in paragraph (1), the designation of the winning institution or, as appropriate, institutions, hereinafter referred to as the beneficiary institution, is based on the most advantageous bid, as considered by the National Bank of Romania, with respect to the objectives pursued;

14. In Article 240^{14}, paragraph (3), after letter c) shall be inserted two new letters, letter c^1) and letter c^2), as follows:

c^1) the assets sale with assumption of liabilities to the beneficiary institution or, by case, the return of assets from it to the credit institution from which the transfer was made, shall ensure that the rights and obligations subject to a netting agreement, or related to a securitisation transaction are either transferred or fully kept, and those related to guarantee contracts shall follow the transferred assets;

c^2) within an assets sale with assumption of liabilities, rights and obligations related to elements which are not recorded as balance-sheet assets or liabilities, may be subject to the transaction, if, in the opinion of the National Bank of Romania, this is necessary to achieve the objectives pursued.

15. In Article 240^{14}, lett.e) of paragraph (3) is repealed.

16. In Article 240^{14}, after para. (6) shall be inserted 3 new paragraphs, paragraphs (7) – (9), as follows:

(7) The beneficiary institution subrogates all the rights and obligations arising from contractual relationships related to assets and liabilities taken over, as well as those arising from elements taken over which are not recorded as balance-sheet assets and liabilities.

(8) The liabilities transferred can not be subject to returning.

(9) The implementation measure of assets sale with assumption of liabilities shall not be considered as a reason for termination of contracts where the beneficiary institution was subrogated, according to paragraph (7).

17. In Article 240^{15}, paragraphs (3) and (3^{1}) shall be amended as follows:

(3) The report mentioned in para.(1) shall include enough details to sustain the administrator's recommendations. The estimated amounts to be realized in case of liquidation shall be determined by an authorized valuator, according to the law, at the expense of the credit institution, as the average value resulting from the application of at least two of the valuation methods recognized by the law in force at the valuation date.

(3^{1}) The authorised valuator referred to in paragraph (3) shall have appropriate experience in the field of assessing the banking assets and shall be agreed by the National Bank of Romania according to the regulations issued for this purpose by it; it is considered that these conditions are fulfilled by the financial auditors approved by the National Bank of Romania in compliance with the provisions of Article 155 para.(1).

18. After Article 240^{22} shall be inserted a new section, Section 2^{1} – Stabilisation measures, including Articles 240^{23} – 240^{41}, as follows:

"Section 2^{1}

Stabilisation measures

2^{1}.1. Common provisions

Art.240^{23} - (1) The National Bank of Romania may decide, under the provisions of this section, the implementation of one of the following stabilisation measures, if a credit institution is in any of the situations referred to in Art.240 and/or the measure of suspension of the voting rights for the shareholding having control over that credit institution was disposed and, in any of these circumstances, there is a threat to the financial stability:

a) the total or partial transfer of assets and liabilities of a credit institution to one or more eligible institutions;

b) the involvement of the Bank Deposit Guarantee Fund as a delegated administrator and as a shareholder, as the case may be, if previously was disposed the measure on suspension of the voting rights for the shareholding having control over that credit institution;

c) the transfer of assets and liabilities from a credit institution to a bridge-bank, established for this purpose.

(2) Before a decision is taken in accordance with paragraph (1), the National Bank of Romania decides which of the stabilization measures provided in that paragraph is appropriate to be implemented.

(3) If a decision was taken according to paragraph (1), the mandate of the persons ensuring the administration and/or management of the credit institution subject to the stabilisation measure ceases at the date the National Bank of Romania's decision is communicated to the credit institution, its administrative and management duties being taken over by the delegated administrator appointed by National Bank of Romania's decision on adopting a stabilisation measure. The provisions of Art.240^{5} paragraph (5), Art. 240^{6} and Art. 240^{9} paragraph (3) are applied accordingly.

(**4**) The delegated administrator is entitled to take all necessary measures to ensure implementation under good circumstances of the National Bank of Romania's decision referred to in paragraph (1).

(5) The functioning of the general assembly of shareholders of the credit institution on which the stabilisation measure was taken is suspended during implementation of the stabilisation measures referred to in paragraph (1) lett.a) and c).

(6) The National Bank of Romania shall notify immediately the Public Finance Ministry the adoption of any decision under paragraph (1).

(7) In the case of implementing a stabilization measure according to paragraph (1), the provisions of Art.240^{21} and Art.240^{22} are applied accordingly.

(8) The operations performed following the adoption of stabilization measures will be carried out in compliance with the relevant rules on competition in the field.

Art.240^{24} - (1) The financing of stabilization measures referred to in Art.240^{23} paragraph (1) is provided by the Bank Deposit Guarantee Fund, from the resources managed by it, under the applicable provision.

2^1.2 The transfer of assets and liabilities to eligible institutions

Art.240^{25} - (1) The National Bank of Romania may decide the implementation of the stabilisation measure referred to in Art.240^{23} para.(1) lett.a) in compliance with the provisions of Art.240^{14} para.(1), para.(4), para.(5) and para.(7) - (9), which shall apply accordingly, as well as with the following requirements:

a) fair treatment and fair competition among institutions that fulfill the eligibility conditions provided in Art.240^{14} para.(1) and that indicate their intention for taking over should be ensured; in this respect, there shall be made 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, 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 transfer;

b) if there are bids from several institutions complying with the eligibility conditions referred to in Art.240^{14} paragraph (1), the designation of the winning institution or, as appropriate, institutions, hereinafter referred to as the beneficiary institution/institutions, is based on the most advantageous bid, as considered by the National Bank of Romania, in terms of the objectives pursued;

c) the transfer of assets and liabilities to the beneficiary institution or, by case, the return of assets from it to the credit institution from which the transfer was carried out, shall ensure that the rights and obligations subject to a netting agreement, or related to a securitisation transaction are either transferred or fully kept, and those related to guarantee contracts shall follow the transferred assets;

d) within a transfer of assets and liabilities, may be subject to the transaction, inclusively rights and obligations related to elements which are not recorded as balance-sheet assets or liabilities, if, in the opinion of the National Bank of Romania, this is necessary to achieve the objectives pursued.

e) the amounts that could result from the transfer of assets and liabilities transaction, less costs related to such transactions, are included in the credit institutions property from which the transfer is made and are used to the payment of creditors, in accordance with the claims priority ranks, in the event of liquidation/bankruptcy.

(2) On performing the transfer of assets and liabilities priority is given to the guaranteed deposits, in the sense of the Government Ordinance no.39/1996, republished, as further amended and supplemented. It may be achieved both, the transfer of all deposits guaranteed, and the transfer of a part of them, in case of partial transfer the transaction being carried out in such a way as to

minimize the risk, if any, so that the Bank Deposit Guarantee Fund, after funding the transfer, to remain bound for the payment of compensation on deposits of the same depositor to the credit institution from which the partial transfer was carried out.

(3) The National Bank of Romania's decision taken under paragraph (1) shall include at least the following**:**

a) the assets and liabilities to be transferred, according to the accounting recordings of the credit institution from which the transfer is carried out;

b) where appropriate, the level of funding to be provided by the Bank Deposit Guarantee Fund;

c) the person appointed as a delegated administrator;

d) the beneficiary institution of the transfer of assets and liabilities.

Art.240^{26} - (1) In the case of the credit institution from which the transfer was carried out, the provisions of Art. 240^{18} paragraph (2) are applied accordingly.

(2) Until the appointment of a liquidator, the administration and management of the credit institution is further maintaining by the delegated administrator.

2^{1}.3 Bank Deposit Guarantee Fund's involvement

Art. 240^{27} – (1) In case of adoption a stabilisation measure according to Art. 240^{23} para. 1 lett. b), the BDGF's involvement as shareholder is made by increasing that credit institution share capital and subscribing by the Bank Deposit Guarantee Fund of the new shares issued.

(2) The decision of the National Bank of Romania adopted under paragraph (1) includes at least the following:

a) the person/persons approved to exercise the duties of the delegated administrator on behalf of the Bank Deposit Guarantee Fund;

b) the level of participation of the Bank Deposit Guarantee Fund to the share capital of the credit institution, as appropriate.

Art. 240^{28} – (1) The delegated administrator convenes the general assembly of shareholders to decide upon the share capital increasing and the cancellation of the existing shareholders' preferential subscription rights, for the subscription by the Bank Deposit Guarantee Fund of the new

shares issued. The provisions of Art. 240^{8} para. (4) and Art.240^{12} para. (6) shall be applied accordingly.

(2) The sale of shares acquired by the Bank Deposit Guarantee Fund according to para.(1) shall be achieved in a period up to 2 years since the date of acquisition, with the possibility of extending this period, for grounded reasons, by the decision of the National Bank of Romania.

(3) Where a qualifying holding the level of which allows the control over the credit institution is sold, the Bank Deposit Guarantee Fund is entitled to exercise the option to sell its shares to the same proposed acquirer, on the same terms, price and sales conditions in which the sale of the respective qualifying holding is carry out. The intention to sell shall be notified according to Art.27 also to the Bank Deposit Guarantee Fund, which should express its put option within 48 hours from notification, in which case, the qualifying holding may be sold only together with the shares of the Bank Deposit Guarantee Fund, in terms, price and conditions agreed.

(4) The mandate of the BDGF as delegated administrator, granted by the National Bank of Romania's decision according to Art. 240^{23} para. 1 lett. b), ceases on its revocation by the National Bank of Romania or when shares are being sold according to para.(2).

2^{1}.4 The transfer of assets and liabilities to a bridge-bank

Art.240^{29} – (1) The bridge-bank is a credit institution which is established and functioning as a bank, in the meaning of Art.3 lett.a), in the purpose of taking over the assets and liabilities of a credit institution, in order to ensure the continuing of providing banking services related to the assets and liabilities taken over, to be subsequently sold to a third eligible part. The bridge-bank is established and functioning for a period of up to 2 years, with the possibility of extending this period, by the decision of the National Bank of Romania, in situations where a threat to the financial stability still persists and/or negotiations with the proposed acquirer of the bridge-bank were not finalized.

(2) The bridge-bank shall ensure the maintenance of a low risk level in the pursuit of the business, and the eventual extension of its business will be done prudently.

(3) The bridge-bank is authorised and operates in compliance with the legislation applicable to the credit institutions and is subject to the prudential supervision of the National Bank of Romania.

(4) The National Bank of Romania may decide upon the establishing of the bridge-bank with a share capital set below the level specified in Art.11, but which can not be less than the equivalent in Lei of 1 million EUR. In application of the provisions of Art.36, the National Bank of Romania

shall notify, in this case, the authorisation of the bridge-bank also to the European Commission, together with the motivation for the level set for the share capital.

(5) The share capital shall be paid up within 30 days from the date of the bridge bank's registration in the trade register.

Art.240^{30} - (1) By way of derogation from the provisions of Art.10 para.(3) of the Law no.31/1990 on commercial companies, republished, as further amended and supplemented, the bridge-bank is established as a joint stock company, the Bank Deposit Guarantee Fund being the sole shareholder. The fulfillment by the Bank Deposit Guarantee Fund of the conditions referred to in Art.26 para.(1) is presumed.

(2) The bridge-bank's administration is organised under a dual board structure, the exercise of the supervisory board responsibilities being ensured by the Bank Deposit Guarantee Fund, which is represented at least by 3 individuals that meet the requirements of Art.108 paragraph(1).

(3) In the application of the provisions of paragraphs (1) and (2), the Bank Deposit Guarantee Fund exercises the rights and assumes the obligations arising from its shareholder's status and from the supervisory board's duties, as these result according to the law and regulations issued by the National Bank of Romania.

(4) The name of the bridge-bank is formed by the name of the credit institution from which the assets and liabilities have been transferred, followed by the initials „*BP - S.A.*"

(5) The registered office of the bridge-bank is set to the same address with that of the credit institution from which the transfer is carried out.

(6) The provisions of Art.9 paragraph (2), Art.111 paragraph (2) lett.b^{1}), Art. 153^{9} paragraph (1) lett.b) and of Art. 153^{13} paragraph (2) of Law no.31/1990, republished, as further amended and supplemented, are not applicable to the bridge-bank.

Art.240^{31} – The financing is granted by the Bank Deposit Guarantee Fund both, for the assets and liabilities transfer to the bridge-bank, and to ensure its own funds requirements, so as to ensure the carrying out of activity of the bridge-bank, in compliance with all prudential requirements.

Art.240^{32} – (1) The National Bank of Romania's decision, adopted under Art.240^{23} paragraph (1), lett.c), contains at least the following:

a) the assets and liabilities that will be transferred, calculated according to the accounting records of the credit institution from which the transfer was carried out and the authorization of establishment and functioning of the bridge-bank;

b) the level of the initial share capital subscribed of the bridge-bank and the temporary level of funding for the transfer of assets and liabilities;

c) the persons approved to exercise management responsibilities of the bridge-bank, in compliance with the requirements of Chapter I of Title II of Part I;

d) the approval of the representatives of the Bank Deposit Guarantee Fund in the supervisory board of the bridge-bank;

e) the object of activity of the bridge-bank;

f) the financial auditor approved for the bridge-bank;

g) the person appointed as a delegated administrator to the credit institution from which the transfer of assets and liabilities is carried out.

(2) Following the decision referred to in paragraph (1), the National Bank of Romania issues the authorisation of the functioning for the bridge-bank.

(3) The registration of the bridge-bank in the trade register shall be made urgently, based on the authorisation issued by the National Bank of Romania and on the articles of association, within 24 hours from submitting the documents to the National Trade Register Office in whose circumscription the bridge-bank's headquarters are located.

(4) Within 30 days there will be submitted also the other necessary documents provided by the law for the registration of a trading company.

(5) The non-compliance with the provisions of para.(4) is sanctioned according to the provisions of Art.44 of the Law no.26/1990 on the trade register, republished, as further amended and supplemented.

Art. 240[33] – (1) The transfer of assets and liabilities to the bridge-bank shall be made to the value at which they are recorded in the accounts of the credit institution from which the transfer is carried out, at the time of transfer.

(2) If, from the assessment provided in Art.240[34] paragraph (4) results that the fair value of the assets transferred, taking into account also the possible returning performed according to Art.240[34] paragraph (5), is greater than the fair value of the liabilities transferred, the bridge-bank owes that difference to the credit institution from which the transfer was carried out, debt which is

paid by the Bank Deposit Guarantee Fund, within up to four months from the date of transfer, and it shall be recorded by the latter as a claim on the bridge-bank.

(3) If, from the assessment provided in Art.240[34] paragraph (4) results that the fair value of the liabilities transferred is greater than the fair value of the assets transferred, taking into account also the possible returning performed according to Art.240[34] paragraph (5), the credit institution from which the transfer was made owes to the bridge-bank that difference, debt which is paid by the Bank Deposit Guarantee Fund, within up to four months from the date of transfer, and it shall be recorded by the latter as a claim on the credit institution from which the transfer was made.

Art.240[34] – (1) The transfer of assets and liabilities, as well as the beginning of carrying out the activity by the bridge-bank shall take place on the first banking day following the registration date of the bridge-bank in the trade register.

(2) On performing the transfer of assets and liabilities to the bridge-bank priority is given to the guaranteed deposits, in the sense of the Government Ordinance no.39/1996 on establishing and functioning of the Bank Deposit Guarantee Fund in the banking system, republished, as further amended and supplemented.

(3) The liabilities of the credit institution, excepting the equity capital and the subordinated loans, as well as its assets, except the tangible assets which are not qualified by the National Bank of Romania as being necessary for carrying out the activity of the bridge-bank, may be subject to transfer to the bridge-bank. The rights and obligations related to the items which are not evidenced as balance sheet assets and liabilities, may be subject to the transfer if they are qualified by the National Bank of Romania as necessary to achieve the objectives pursued.

(4) After the transfer, the bridge-bank appoints an authorized valuator, according to the law, with experience in assessing the financial assets, agreed by the National Bank of Romania, according to the regulations issued in this purpose by it, to assess the quality of assets taken over by the bridge-bank and to calculate the fair value, on the transfer date, of the transferred assets and liabilities, including, where appropriate, the related goodwill, as this value is defined in the applicable accounting regulations.

(5) The assets or the portfolio of assets which do not comply qualitatively for ensuring the carrying out the activity in the terms provided by Art.240[29] paragraph (2) may be returned to the credit institution from which they were transferred, within four months from the date of transfer, together with the amounts related to those assets, collected until the date of return.

(6) The provisions of Art.240[14] paragraph (8) and (9) shall apply accordingly.

(7) The transfer of assets and liabilities to the bridge-bank or, by case, the return of assets from it to the credit institution from which the transfer was carried out, shall ensure that the rights and obligations subject to a netting agreement, or related to a securitisation transaction are either transferred or fully kept, and those related to guarantee contracts shall follow the transferred assets.

Art.240[35] – (1) On the transfer date, the bridge-bank subrogates by law all the rights and obligations arising from agreements concluded by the credit institution from which the transfer was carried out, in connection with:

a) the participation in payment systems, settlement systems for financial instruments transactions and payment schemes and payment arrangements;

b) access on the primary market of government securities as a primary dealer, by case;

c) access as an eligible participant to the open market operations performed by the National Bank of Romania and to the standing facilities granted by it;

d) access as an intermediary in the interbank foreign exchange market;

e) access as a participant in setting the reference rates ROBID/ROBOR;

f) access as a participant in setting the reference rates for government securities.

(2) The bridge-bank shall notify the interested parties its subrogation in rights and obligations under the provisions of para.(1).

(3) Under the provisions of paragraph (1), the bridge-bank takes over the existent amounts in correspondent accounts and in accounts opened within payment systems for the credit institution from which the transfer was made, as well as the holdings of its financial instruments, both in its own name and on behalf of clients, recorded in the depository and settlement systems for the financial instruments transactions.

Art.240[36] – (1) The bridge-bank subrogates all the rights and obligations arising from contractual relationships related to assets and liabilities transferred and notifies this, immediately, to the depositors, other creditors and to the debtors taken over following the transfer.

(2) For the transfer of assets and liabilities to the bridge-bank is not necessary the consent of depositors or of other creditors or debtors of the credit institution from which the transfer was carried out.

(3) The provisions of Art.240[14] paragraph(5) shall apply accordingly.

Art.254[37] – (1) By derogation from the provisions of Art.44 para.(2), the credit institution from which the transfer was carried out is required to provide in the benefit of the bridge-bank, based on a contract and on agreed fees, the services related to activities and operations it performed prior to the transfer and which are necessary to carry out the activities of the bridge-bank.

(2) For the purpose of application of the provisions of paragraph (1):

a) no services provider – electricity, natural gas, water, telephone services, as well as other services required for the functioning of the bridge-bank – has no right to change in the detriment of the credit institution, to deny or temporarily discontinue such service to the credit institution from which the transfer was carried out, if the credit institution continues to meet the contractual obligations;

b) no contractual party of a rental agreement, including leasing, concluded by the credit institution from which the transfer was carried out, in which current and fixed assets are put into use for it, can not require the notice of unilateral cancellation of the contract, if the asset is necessary for carrying out the activity of the bridge-bank, and the credit institution continues to meet the contractual obligations;

c) the delegated administrator and, by case, the liquidator, shall ensure the enforcement of the dispositions of the directorate members of the bridge-bank with the credit institution's existing staff from which the transfer was carried out.

Art.240[38] – (1) On the date of the transfer, the validity of the credit institution's authorisation from which the transfer of assets and liabilities was carried out, as well as the mandate of the delegated administrator appointed in accordance with Art. 240[23] paragraph (3) shall legally cease.

(2) By way of derogation from the provisions of the Government Ordinance no.10/2004, approved with amendments and supplements by Law no.278/2004, as further amended and supplemented, the credit institution from which the transfer was made goes into liquidation, with the proper application of the provisions of Section 3 of Chapter VIII from Title III of Part I, excepting the provisions of Art.255 and 257.

(3) The liquidator shall notify immediately, to the creditors and debtors of the credit institution in liquidation, this situation.

(4) From the date of opening the liquidation procedure referred to in paragraph (2), it shall be suspended all legal and extrajudicial proceedings or foreclosure measures regarding realization of claims on the debtor credit institution or on its assets.

(5) Until the sale of the bridge-bank, the liquidator shall take all necessary measures, for meeting the obligations referred to in Art. 240^{37} by the credit institution in liquidation.

(6) In order to achieve the objectives of the stabilisation measures determined under Art.240^{32}, the National Bank of Romania shall monitor the accomplishment by the liquidator of the obligation referred to in paragraph (5).

(7) Until the sale of the bridge-bank, the fulfilling of duties by the liquidator in accordance with the applicable legal provisions referred to in paragraph (2) is carried out to the extent that they do not impede with the fulfillment of the obligation of paragraph (5).

Art.240^{39} - (1) The sale of the bridge-bank shall be decided by the National Bank of Romania.

(2) The sale of the bridge-bank is made by one of the following methods:

a) shares sale, the provisions of Art.25-31 and of Art.240^{14} paragraph (3) lett.b) being applied accordingly;

b) assets sale with assumption of liabilities.

(3) On performing the assets sale with assumption of liabilities transaction, referred to in para.(2) lett.b), the provisions of Art.240^{14} paragraph (1), paragraph (4), paragraph (5) and paragraph (7) – (9) shall be met, which shall apply accordingly, as well as the following requirements:

a) fair treatment and fair competition among institutions that fulfill the eligibility conditions provided in Art.240^{14} para.(1) and that indicate their intention for taking over should be ensured; in this respect, there shall be made 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, 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 transfer;

b) if there are bids from several institutions complying with the eligibility conditions referred to in Art.240^{14} paragraph (1), the designation of the winning institution or, as appropriate, institutions, hereinafter referred to as the beneficiary institution/institutions, is based on the most advantageous bid, as considered by the National Bank of Romania, in terms of the objectives pursued;

c) assets sale with assumption of liabilities to the beneficiary institution or, by case, the return of assets from it to the credit institution from which the transfer was carried out, shall ensure that the rights and obligations subject to a netting agreement, or related to a securitisation

transaction are either transferred or fully kept, and those related to guarantee contracts shall follow the transferred assets;

d) within an assets sale with assumption of liabilities, may be subject to the transaction, inclusively rights and obligations related to elements which are not recorded as balance-sheet assets or liabilities, if, in the opinion of the National Bank of Romania, this is necessary to achieve the objectives pursued.

Art.240^{40} – (1) Any proceeds obtained from the sale of the bridge-bank shall be distributed in the following order:

a) covering the expenses related to sale;

b) payment of obligations arising from employment relationships which are due and unpaid until the date of sale;

c) claims recovering of the Bank Deposit Guarantee Fund resulting from financing granted according to Art. 240^{31};

d) redemption of budget claims;

e) covering of other expenses of the bridge-bank recorded up to the date of sale.

(2) Any amounts remaining after application of the provisions of paragraph (1) shall return to the Bank Deposit Guarantee Fund.

Art.240^{41} –To the end of period referred to in Art.**240^{29}** paragraph (1) the validity of the functioning authorization of the bridge-bank shall legally cease.

Art. II. Government Ordinance no.39/1996 on the establishment and functioning of the Deposit Guarantee Fund in the Banking System, republished in the Official Gazette of Romania Part I, no. 587 of August 19, 2010, as subsequently amended and completed, shall be amended and completed as follows:

1. After paragraph (1) of article 2 two new paragraphs, paragraph (1)^{1} and (1)^{2} shall be introduced with the following content:

"**(1)^{1}** The Fund may be appointed a delegated administrator and, as the case may be, shareholder of a credit institution which is subject to a stabilization measure taken by the National Bank of Romania.

(1)^2 The Fund may become sole shareholder and exercise the tasks of the supervision committee of a bridge bank, according to the legal conditions and limitations."

2. Letter f) of paragraph (1) of article 9 shall be amended as follows:

"**f)** other revenues set up according to the law, including those resulting from its activity as special administrator, interim administrator or liquidator of a credit institution, as well as from its quality as delegated administrator and, as the case may be, shareholder of the credit institutions or from the sale of the bridge banks according to the law."

3. Paragraph (2) of article 9 shall be amended as follows:

„**(2)** The financial resources provided for under paragraph 1 letters a), b), c) and f) shall be used for the payment of compensations of the covered deposits, for financing, including through the issuing of guarantees, of the transactions involving the transfer of covered deposit and also for the financing of the stabilization measures, under the terms stipulated by law, while those provided under paragraph 1 letter d) shall be used according to the purpose they have been granted for."

4. After paragraph (6) of article 9 two new paragraphs, paragraph (6)^1 and (6)^2 shall be introduced with the following content::

"**(6)^1** The resources of the fund for banking restructuring and, if these are consumed, the resources of the Deposit Guarantee Fund in the Banking System provided under paragraph (1) letters a), b), c) and f) are used for the financing of the stabilization measures taken by NBR.

(6)^2 The financing granted according to paragraph (6^1) cannot exceed a level leading to the diminution of the Fund's exposure coverage ratio under 0.5% of the total amount of the covered deposits."

5. After paragraph (7) of article 9, a new paragraph (7)^1 shall be introduced with the following content:

"**(7)^1** According to the legal provisions in force, the Fund shall finance the stabilization measures decided by the National Bank of Romania."

6. **Paragraph (7) of article 10 shall be amended as follows:**

"(7) The credit institutions resulting from a merger, the credit institutions continuing to exist following the division, as well as bridge banks, are exempted from the payment of the initial contribution."

7. **After paragraph (4) of article 11, a new paragraph (4)[1] shall be introduced with the following content:**

"**(4)[1]** The bridge banks shall pay the first annual contribution calculated according to the provisions of paragraph (1)."

8. Paragraph (2) of article 15 shall be amended as follows:

"**(2)** In special situations, when the financial resources of the Fund are insufficient to pay the compensations, to finance, including through the issuance of guarantees, transactions involving covered deposits transfer according to article 9 paragraph (7), as well as to finance, according to the law, the stabilization measures decided by the National Bank of Romania, the Government, through the Ministry of Public Finance (MOPF), shall lend the necessary amount to the Fund in maximum 5 working days from the Fund's request. The source of the funds is represented by the privatization revenues, in RON and in foreign currencies, registered in the current account of the State Treasury. The granting/reimbursement general terms are set by Government decision and the sums are made available to the Fund at its request, according to the concluded agreement."

9. After paragraph (2) of art.15 a new paragraph (3) shall be introduced with the following content:

"**(3)** When the privatizations revenues are insufficient, the MOPF may launch state loans, according to the legislation on public debt. The financial conditions for the sub-loan granted to the Fund by the MOPF shall be set in a bilateral agreement. The sums shall be made available to the Fund in maximum 5 working days since its request."

10. After paragraph (4) of art.16 a new paragraph (5) shall be introduced with the following content:

"**(5)** The VAT regime applicable to the operations of bridge bank's sale and those of sale the shares held by Fund according to the provisions of art. 2 paragraph (1^1) is regulated by the fiscal legislation."

11. Article 18 shall be amended as follows:

"**Art.18. – (1)** The Fund shall take all the necessary steps in order to make available for the covered depositors, through the credit institutions mandated under article 22 paragraph (1), the due compensations within 20 working days at most since the deposits have become unavailable under article 2 paragraph (3) letter c) pts (i) or (ii).

(2) By way of exception from paragraph (1), NBR may approve, at the Fund's request, in absolutely special circumstances, the extension with maximum 10 working days of the time limit/deadline for making the compensations available to the covered depositors.

(3) In order to fulfill the obligations stipulated under paragraph (1), in maximum 5 working days since the deposits have become unavailable, the Fund settles the date when the payment of compensations begins, the period when the payment of compensations shall be made in the mandated credit institutions, the modality of payments and publishes all the necessary information in order to cash the compensations on the Fund's website and in at least two national newspapers.

(4) The information provided under paragraph (3) shall include at least:

a) the credit institutions mandated to pay the compensations, including their territorial units;

b) the period of time when the payment of compensations shall be made in the mandated credit institutions;

c) the procedure for obtaining the compensations that have not been paid in the period set up in letter b);

d) the method of payment, the documents related to the conditions to be fulfilled and the formalities to be completed to be eligible for the payment of compensation;

e) the procedure to solve complaints on the information included in the list of the compensations to be paid.

(5) The credit institution whose deposits have become unavailable and the credit institution mandated to pay the compensations shall make public all the information provided under paragraph (4) in all their territorial units.

(6) The time limit and the period of time laid down under paragraphs (1)-(4) in order to make available the due compensation and for making the payments through mandated credit institution may not be invoked by the Fund in order to deny the payment of the compensation to any covered depositor who has been unable to assert his claim to payment under the said time limits."

12. After art.27[1] four new articles, articles 27[2]-27[5] shall be introduced, with the following content:

"**Art.27[2]**. – **(1)** The claims of the Fund over a bridge-bank, resulted from financing the taking over of assets and liabilities and setting up and functioning of the bridge-bank, shall be compensated from the selling of that bridge-bank.

(2) In the event of the legal termination of the validity of the bridge-bank's license, the claims of the Fund over the bridge bank will have the priority rank of the claims resulting from covered deposits, according to the legislation on the bankruptcy of the credit institutions.

Art.27[3]. The claims of the Fund over a credit institution, resulted from financing the transfer of assets and liabilities of this credit institution to a bridge bank, shall be compensated from the wealth of that credit institution.

Art.27[4]. The claims of the Fund over a credit institution, resulted from the financing granted in order to implement the stabilization measure consisting of the total or partial transfer of a credit institution's assets and liabilities to one or more eligible institutions, shall be compensated from the wealth of that credit institution.

Art.27[5]. In case of liquidation of a credit institution for which the involvement of the Fund as shareholder was decided, the claims of the Fund over that credit institution will have the priority rank provided under art.27[2] paragraph (2)."

13. After point 9 of letter a) from article 33, eight new points 10-17 shall be introduced, with the following content:

"10**.** the level of financing for the operations that involve the transfer of covered deposits, of financing the stabilization measures decided by the National Bank of Romania and/or of the Fund's participation in the share capital of a credit institution;

11. the individual(s) nominated by the Fund to exercise the quality of delegated administrator of a credit institution;

12. the individuals nominated by the Fund to exercise the tasks of the supervision committee of a bridge-bank;

13. the proposals to replace the persons that exercise the tasks of the supervision committee of the bridge-banks, as well as their financial auditor;

14. the proposal to extend the functioning period of the bridge-bank and the justification of the proposal;
15. the proposal to sell a bridge-bank and the justification of the proposal documentation;
16. the proposal to return to the initial bank some assets that have been taken over;
17. the proposal to sell the shares of the bank were the Fund is the shareholder under the provisions of art. 2 paragraph (1^1)."

14. After point 3 of letter b) of art.33 a new point 3^1 shall be introduced, with the following content:

"3^1. proposals regarding the nomination of the independent authorized expert to evaluate the assets acquired by the bridge-bank, to calculate, according to applicable accounting regulations, the fair value at the moment of the transfer of the assets and the liabilities transferred including, if the case may be, the goodwill."

15. **After point 4 of letter b) of article 33 a new point 4^1 shall be introduced, with the following content:**

"4^1. contracting, with Romanian or foreign natural or legal entities, services regarding the activity, related to the Fund quality of sole shareholder of a bridge-bank, delegated administrator and, the case may be, shareholder of a credit institution, or services related to the exercise of the tasks of the supervision committee of a bridge-bank;"

16. After point 6 of letter b) of article 33, a new point 6^1 shall be introduced, with the following content:

"6^1. documents regarding solutions and proposals related to the Fund's quality as sole shareholder of a bridge-bank, as delegated administrator and, as the case may be, shareholder of a credit institution or related to the exercise of the tasks of the supervision committee of a bridge-bank;"

17. Letters g) and k) of article 35 shall be amended as follows:

"**g)** monitors and supervises the Fund's activity related to the management and liquidation of credit institutions, as well as to the payment of the compensations of the covered depositors; orders the measures to be taken within the Fund's activity in the said situations; monitors liquidators' activity within the bankrupt credit institutions, when the Fund acts only as a creditor; monitors the Fund's activity as sole shareholder of a bridge-bank, its activity related to the exercise of the tasks of the

supervision committee of a bridge-bank, or the activity as delegated administrator and, as the case may be, shareholder of a credit institution;

…….

k) represents the institution in concluding contracts regarding the liquidation activity or the activity as sole shareholder of a bridge-bank, as delegated administrator and, as the case may be, shareholder of a credit institution, or related to the exercise of the tasks of the supervision committee of a bridge-bank, as well as assistance and consultancy services contracts with Romanian or foreign natural or legal entities;"

18. After art.45 a new article, art.45[1] shall be introduced, with the following content:

"**Art 45[1] - (1)** In the event of a merger between participant credit institutions, the covered depositors whose deposits, as a result of the accumulation / aggregation will exceed the coverage ceiling stipulated under art.6 paragraph (3), shall be informed regarding in this respect by the said credit institutions, as soon as they received the National Bank of Romania prior approval regarding the merger.

(2) As an exception from the provisions of paragraph (1), in situations justified by commercial secrecy regarding the merger or by financial stability, the information may be done within 5 days after the date when the merger is finalized.

(3) In cases where as a result of the implementation of measures approved by National Bank of Romania involving transfer of deposits, respectively in the case of the sale of a bridge-bank, the covered deposits of a depositor will exceed the coverage ceiling stipulated at art.6 paragraph (3) as a result of aggregation, the depositor shall be informed regarding this situation by the credit institution beneficiary of the transfer or, as the case may be, by the buyer of the bridge-bank no later than 15 days after the transfer or the sale."

19. **The name of Title II shall be amended as follows:**

"**Title II**

The Bank Resolution Fund and the Activity Related to the qualities of the Fund within the Implementation of the Stabilization Measures"

20. **The name of Chapter XIV of Title II shall be amended as follows:**

"Chapter XIV

Establishment, Administration and Use of the Bank Resolution Fund"

21. Article 57 shall be amended as follows:

"**Art. 57**. - The provisions of this Chapter lay down the conditions regarding the establishment, administration and use of the bank resolution fund, for compensation of the persons prejudiced following the implementation of the restructuring measures during the special administration or, as the case may be, of stabilization measures, taken by the National Bank of Romania and for the financing of the stabilization measures."

22. **After paragraph 1 of article 58, a new paragraph (1)[1] shall be introduced, with the following content:**

"**(1)[1]** The financial resources of the bank resolution fund, provided under article 60, may also be used for the financing of the stabilization measures taken by the National Bank of Romania."

23. Letters a) and b) of article 59 shall be amended as follows:

" **a)** *prejudiced person* – any person that, under the applicable provisions of the credit institution legislation, obtained a binding court decision admitting his/her right to receive compensation for the damage incurred following the measures implemented during the special administration or the stabilization measures taken by the National Bank of Romania;

b) *compensation* – the amount determined according to the applicable provisions of the credit institution legislation, that shall be paid to the prejudiced person from the bank resolution fund;"

24. After letter d) of paragraph (1) of art.60 a new letter is introduced, letter e), with the following content:

"e) collections of the Fund's recovered claims related to the use of the bank resolution fund;"

25. Paragraph (6) of art.61 shall be amended as follows:

"**(6)** The credit institutions resulting from a merger, the bridge banks or the credit institutions continuing to exist after a division process, where these processes took place after the payment of annual contribution, are exempted from its payment for that year."

26. **After chapter XIV** "**Establishment, administration and use of the bank resolution fund", a new chapter, "Chapter XV The activity of the Fund related to its qualities within the**

implementation of stabilization measures", comprising articles 68 and 69, shall be introduced, with the following content:

"**Chapter XV**

The activity of the Fund related to its qualities within the implementation of stabilization measures

Art. 68. (1) The Fund shall perform, according to the applicable legal provisions, all the operations needed for the setting up and functioning of the bridge-bank, following the National Bank of Romania decision, as well as for the exercise of its quality as a delegated administrator, and, as the case may be, as a shareholder of a credit institution.

(2) After receiving the decision of the National Bank of Romania board regarding the setting up of a bridge-bank, the Fund shall submit the necessary documentation for the urgent registration of the bridge-bank with the Trade Registry.

Art.69. The returns from Fund's recovered claims related to the financing granted according to the provisions of paragraph (2) of art.9 shall be used in the following order of priority: reimbursing the amounts borrowed from the Government according to the provisions of art.15 paragraphs (2) and (3), restoring of the guarantee scheme resources, restoring of the bank resolution fund resources."

Art. III. - In the whole text of the Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, published in Monitorul Oficial al României, Part I, no.1027 of 27 December 2006, approved with amendments and completions by Law no.227/2007, as subsequently amended and completed, and the Government Ordinance no.39/1996 on the establishment and functioning of the Deposit Guarantee Fund in the Banking System, republished in Monitorul Oficial al României Part I, no. 587 of August 19, 2010, as subsequently amended and completed, the denomination "special fund" is replaced with the denomination "bank resolution fund".