Unofficial partial translation

Law no. 272/2013

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Law no.272/2013 on amending and supplementing Government Emergency Ordinance no.98/2006 on the supplementary supervision of credit institutions, insurance companies and/or reinsurance companies, financial investment services companies and management companies in a financial conglomerate, of Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy and of Law no.32/2000 on insurance activity and insurance supervision

The Romanian Parliament is adopting this law.

Art. III. - Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, published in the Official Journal of Romania, Part I, no.1.027 of 27 December 2006, approved with amendments and supplements by Law no.227/2007, as subsequently amended and supplemented, shall be amended and supplemented as follows:

1. In Article 2, letter a) shall be amended as follows:

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

2. In Article 7 paragraph (1) points 2^1, 11, 13, 20, 22 and 23 shall be amended as follows:

2^1. consolidating supervisor - the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or by EU parent mixed financial holding companies;

11. parent credit institution in a Member State - a credit institution authorized in a Member State which has a credit institution or a financial institution as a subsidiary 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, of a financial holding company or of a mixed financial holding company established in the same Member State;

13. EU parent credit institution - a parent credit institution in a Member State which is not a subsidiary of a credit institution authorised in any Member State, of a financial holding company or of a mixed financial holding company established in any Member State;

20. management company - a management company as defined by Government Emergency Ordinance no.32/2012 on undertakings for collective investment in transferable securities and investment management companies and on amending and supplementing Law no.297/2004 on capital market, and a management company in a third country, which would require an authorisation in accordance with Government Emergency Ordinance no.32/2012 if its head-office were located on Romania's territory;

22. EU parent financial holding company - a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State, of a financial holding company or of a mixed financial holding company established in any Member State;

23. parent financial holding company in a Member State - a financial holding company established in a Member State, which is not itself a subsidiary of a credit institution authorised in the same Member State, of a financial holding company or of a mixed financial holding company established in the same Member State;

3. In Article 7 paragraph (1), after point 24 shall be inserted three new points, points 24^1-24^3, as follows:

24^1. mixed financial holding company- means a mixed financial holding company as defined in Art.2 para.(15) point 16 of Government Emergency Ordinance no.98/2006, approved with amendments and supplements by Law no.152/2007, as subsequently amended and supplemented;

24^2. parent mixed financial holding company in a Member State - means a mixed financial holding company in a Member State which is not itself a subsidiary of a credit institution authorised in the same Member State, or a subsidiary of a financial holding company or of a mixed financial holding company established in the same Member State;

24^3. EU parent mixed financial holding company - means a parent mixed financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or a subsidiary of a financial holding company or of a mixed financial holding company established in any Member State;

4. After Article 36 shall be inserted a new article, Article 36^1, as follows:

Art. 36^1. - The National Bank of Romania, as a consolidated supervisor, shall provide the competent authorities concerned and the European Banking Authority with all information regarding the banking groups, respectively information on entities which have close links and on the formal administration framework of the activity, in particular regarding the legal structure and the governance and organisational structure of the group.

5. Article 131 shall be amended as follows:

Art. 131. - Where a credit institution, Romanian legal entity, is an EU parent credit institution or a subsidiary of an EU parent credit institution or of an EU parent financial holding company or of an EU parent mixed financial holding company, and the group to which it belongs use the IRB Approach on a unified basis, the National Bank of Romania may allow the minimum requirements to be met by the parent undertaking and its subsidiaries considered together.

6. Article 132 shall be amended as follows:

Art. 132. - Where a credit institution, Romanian legal entity, is an EU parent credit institution or a subsidiary of an EU parent credit institution or of an EU parent financial holding company or of an EU parent mixed financial holding company and where an Advanced Measurement Approach is intended to be used at the group level, the National Bank of Romania shall cooperate closely with the competent authorities of the different legal entities belonging to the group, including the granting of approval to use that approach, as provided in Art.182-Art.188.

7. In Article 176 paragraph (1), letters b) -e) shall be amended as follows:

b) when the credit institution authorised by the National Bank of Romania has as a parent undertaking a parent financial holding company in Romania, a parent mixed financial holding company in Romania or an EU parent financial holding company, or an EU parent mixed financial holding company provided that, in the latter case, the parent undertaking has no other credit institutions in the Member States as subsidiaries;

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

d) when the credit institutions authorised in two or more Member States, including Romania, have as parent undertakings more than one financial holding companies or mixed 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, a Romanian legal person, has the largest balance sheet total;

e) when the credit institution authorised by the National Bank of Romania has as parent undertaking a financial holding company or a mixed financial holding company which is also a parent undertaking for at least another credit institution authorised in another Member State, and none of these credit institutions has been authorised in the Member State in which the financial holding company or the mixed 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 credit institution controlled by an EU parent financial holding company or by an EU parent mixed financial holding company.

8. 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) lett.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 EU mixed 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.

9. Article 177 shall be amended as follows:

Art. 177. - Credit institutions, Romanian legal entities, 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 or mixed 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) points 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.

10. Article 179 shall be amended as follows:

Art. 179. - (1) Financial holding companies and mixed 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 or to the mixed financial holding company, on an individual basis.

11. In Article 180, paragraph (3) shall be amended as follows:

(3) The National Bank of Romania, as a competent authority responsible for exercising supervision on a consolidated basis, may require the subsidiaries of a credit institution, of a financial holding company or of a mixed 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 as are laid down in Article 194 and 195 shall apply.

12. In Article 181, the introductory part of para.(1) shall be amended as follows:

Art. 181. - (1) 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 entities, and of credit institutions, Romanian legal entities, controlled by EU parent financial holding companies or by EU mixed financial holding companies, shall carry out the following tasks:

13. In Article 182, paragraph (1) shall be amended as follows:

Art. 182. - (1) In the case of applications for the permissions to use the 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, or of an EU parent mixed financial holding company, where at least a credit institution, a Romanian legal entitz, is part of the group, the National Bank of Romania and the competent authorities shall cooperate 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.

14. Article 182^1 shall be amended as follows:

Art. 182^1. - (1) The National Bank of Romania, as a consolidating supervisor shall do everything within its power to reach a joint decision with the authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU mixed financial holding company, on the application of Articles 148 and 166, to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 226 para.(3) to each entity within the banking group and on a consolidated basis.

(2) The provisions of para.(1) are applicable also if the National Bank of Romania is the authority responsible for the supervision on an individual basis of credit institutions, Romanian legal persons, being subsidiaries of an EU parent credit institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

15. In Article 182^4, paragraph (1) shall be amended as follows:

Art. 182^4. - (1) The decision on the application of Art.148, 166 and Art.226 para.(3) shall be taken on an individual or sub-consolidated basis by the National Bank of Romania, as the authority responsible for supervision on an individual basis of credit institutions, Romanian legal entities, being subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company, after duly considering the views and reservations expressed by the consolidating supervisor.

16. Article 182^8 shall be amended as follows:

Art. 182^8. - (1) The joint decision referred to in Art.182^1 and any decision taken according to Art.182^3 and Art.182^4 shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or of an EU parent mixed financial holding company makes a written and fully reasoned request to the National Bank of Romania as a consolidating supervisor, to update the decision on the application of Art.226 para.(3).

(2) The National Bank of Romania, as a competent authority responsible for the supervision on an individual basis of the credit institutions, Romanian legal entities, being subsidiaries of an EU parent credit institution, an EU parent financial holding company or of an EU parent mixed financial holding company, makes a written and fully reasoned request to the consolidating supervisor to update the joint decisions on the application of Art.182[1], as well as for the decisions adopted similar to those foreseen in Art.182[3] and Art.182[4] on a consolidated level by the consolidating supervisor and, respectively, on an individual or sub-consolidated basis by another authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or of an EU parent mixed financial holding company.

(3) The updates according to the provisions of para.(1) and (2) may be treated on a bilateral basis between the National Bank of Romania and the competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company, or of an EU parent mixed financial holding company, or between the National Bank of Romania and the consolidating supervisor, by case.

17. In Article 185[5], paragraph (1) shall be amended as follows:

Art. 185[5]. - (1) The National Bank of Romania responsible for the supervision of credit institutions, Romanian legal entities, being subsidiaries of an EU parent credit institution, an EU parent financial holding company, or of an EU parent mixed financial holding company, or where appropriate, branches established in Romania of credit institutions from a host country are significant as referred to in Art.210[1], may participate in colleges of supervisors.

18. In Article 186, paragraph (3) shall be amended as follows:

(3) Where the National Bank of Romania is the competent authority responsible for the consolidated supervision of an EU parent credit institution, of a credit institution controlled by an EU parent financial holding company, or of an EU parent mixed 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.

19. In Article 186, paragraph (4) letter a) shall be amended as follows:

a) identification of the legal structure and the governance and organisational structure of the group, including all entities which have close links, respectively all regulated and non-regulated entities, non- regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Art.24 para.(1), at a consolidated and sub-consolidated level, as well as identification of the competent authorities of the regulated entities in the group;

20. In Article 192, the introductory part shall be amended as follows:

Art. 192. - The National Bank of Romania, in its capacity as the authority responsible for exercising supervision on a consolidated basis of parent credit institutions in Romania and of credit institutions, Romanian legal entities, controlled by parent financial holding companies in Romania, or by parent mixed financial holding companies in Romania, respectively the Financial Supervisiory Authority, 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:

21. In Article 193, paragraph (1) shall be amended as follows:

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 is a financial investment services company, or by a parent investment firm in Romania and its subsidiaries, of which at least one is a credit institution, a Romanian legal entity, or submitted jointly by the subsidiaries, credit institutions and investment firms of a parent financial holding company in Romania, or of a parent mixed financial holding company in Romania, where these entities are exclusively Romanian legal entities, the National Bank of Romania and the Financial Supervisory Authority shall cooperate 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.

22. In Article 196, paragraph(1) shall be amended as follows:

Art. 196. - (1) The administration and/or management of a financial holding company or of a mixed financial holding company, Romanian legal entity, shall be ensured by at least two persons.

23. After Artice 197 shall be introduced two new articles, Articles 197^1 and 197^2, as follows:

Art. 197^1. - (1) Where a mixed financial holding company, Romanian legal entity, is subject to the provisions of this emergency ordinance as well as to equivalent provisions under Government Emergency Ordinance no.98/2006, approved with amendments and supplements by Law no.152/2007, as subsequently amended and supplemented, in particular in terms of risk- based supervision, the National Bank of Romania may, if designated as consolidated supervisor, after consulting the other competent authorities responsible for the supervision of subsidiaries of the mixed financial holding companies, apply only the relevant provision of Government Emergency Ordinance no.98/2006, approved with amendments and supplements by Law no.152/2007, as subsequently amended and supplemented to that mixed financial holding company.

(2) Where a mixed financial holding company, Romanian legal entity, is subject to the provisions of this emergency ordinance and to equivalent provisions under Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), in particular the provisions relating to the supervision of compliance with the prudential requirements, the National Bank of Romania may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions relating to the most significant financial sector as determined under Article 3 para.(2) and (3) of Government Emergency Ordinance no.98/2006, approved with amendments and supplements by Law no.152/2007, as subsequently amended and supplemented.

Art. 197[2]. - The National Bank of Romania, as a consolidating supervisor shall inform the European Banking Authority and the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision no.716/2009/EC and repealing Commission Decision 2009/79/EC, of the decisions taken under Art.197[1].

24. In Article 200, aparagrap (6) shall be amended as follows:

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

25. In Article 202, paragraphs (1) and (3) shall be amended as follows:

Art. 202. - (1) Where a credit institution, a financial holding company, a mixed financial holding company or a mixed-activity holding company controls one or more subsidiaries that are insurance companies or other undertakings provided investment services which are subject to authorisation, the National Bank of Romania shall cooperate with the Financial Supervisory Authority, as well as with the authorities of other Member States entrusted with the public task of supervising insurance undertakings or other undertakings providing investment services. 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.

(3) The National Bank of Romania, as a responsible authority for supervision on a consolidated basis, shall establish lists of the financial holding companies that are parent undertakings in Romania, and of the mixed 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 Commission.

26. In Article 203, paragraph (1) shall be amended as follows:

Art. 203. - (1) Where, in applying the provisions of 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 mixed 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 referred to in Art.180 para.(3), situated in another Member State, it shall ask the competent authorities of that other Member State to have the verification carried out.

27. In Article 204 paragfraph (1), the introductory part and letters f) and g) shall be amended as follows:

Art. 204. - (1) Where a financial holding company, a mixed financial holding company, a mixed-activity holding company or the persons discharging administration and/or management duties relative to these entities do not observe the provisions of Art. 166 and Art.176-203, and those of the regulations issued or the measures taken for the enforcement of this emergency ordinance, the National Bank of Romania, in its capacity as an authority responsible for supervision on a consolidated basis, shall take, as concerns the respective undertaking, the following measures provided for under letters a)-c), or shall impose the sanctions referred to under letters d)-h):

f) decide the replacement by the financial holding company, the mixed financial holding company or the mixed-activity holding company, as appropriate, of the person/persons discharging administration and/or management duties relative to the undertaking;

g) impose a fine against the undertaking, ranging from 0.05 percent to 1 percent of the minimum initial regulated capital of the undertaking that is a subsidiary of the financial

holding company, the mixed financial holding company or of the mixed-activity holding company, subject to supervision on a consolidated or individual basis;

28. In Article 204, paragraph (3) shall be amended as follows:

(3) During the suspension of the managers, decided by the National Bank of Romania according to para.(1) lett.e), the financial holding company, the mixed financial holding company or the mixed activity holding company shall nominate a person/a number of persons discharging administration and/or management duties during an interim period, complying with the provisions of Art.196.

29. Article 205 shall be amended as follows**:**

Art. 205. - The National Bank of Romania shall co-operate with the other competent authorities concerned in order to ensure that the measures or sanctions imposed, in compliance with the provisions of this emergency ordinance, on financial holding companies, mixed financial holding companies, mixed activity holding companies or the persons discharging administration and/or management duties, produce the desired results, especially when a financial holding company, a mixed 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.

30. In Article 30, paragraph (1) shall be amended as follows:

Art. 206. - (1) Where a credit institution, a Romanian legal person, having as parent undertaking a credit institution, a financial holding company or a mixed 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 consolidated supervision by a third-country competent authority, which is equivalent to that governed by the principles laid down in this emergency ordinance.

31. In Article 207, paragraph (3) shall be amended as follows:

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

32. In Article 240^{23} , the introductory part of paragraph (1) shall be amended as follows:

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 including in terms of protection of depositors and/or maintain public confidence in the banking system:

33. In Article 240^{23}, after paragraph (1) shall be inserted a new paragraph, paragraph (1^1), as follows:

(1^1) When implementing any of the measures referred to in para.(1) the National Bank of Romania shall take into account the following objectives:

a) the continuation of the activities whose interruption could significantly affect the functioning of the economy or of the financial market;

b) maintaining the financial stability and the market discipline;

c) protection of secured depositors.

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Art.I and Art.III points 1-31 of this law ensures the transposition of the provisions of Art.2 and Art.3 of Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial

conglomerate, published in the official Journal of the European Union no.L 326 dated 8 December 2011.

This law was adopted by the Romanian Parliament, in accordance with Art.75 and Art.76 para.(2) of the Romanian Constitution, republished.