Unofficial translation

Law no. 29/2015 on approving Government Emergency Ordinance no.113/2013 on some budgetary measures and on amending and supplementing Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy

The Romanian Parliament is adopting this law.

Art. I. – Government Emergency Ordinance no.113/2013 on some budgetary measures and on amending and supplementing Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, published in the Official Journal of Romania, Part I, no.830 of 23 December 2013, shall be approved with the following amendments and supplements:

1. In Article VIII Article 4^1, after paragraph (2) shall be inserted a new paragraph, paragraph (2^1), as follows:

"(2^1) In exercising its powers as provided by law, the Financial Supervisory Authority collects and processes all relevant data and information, including the nature of personal data needed to assess compliance for financial investment services companies, as well where the Financial Supervisory Authority is the authority responsible for consolidated supervision of financial holding companies and mixed financial holding companies, with the prudential requirements referred to in this emergency ordinance, in Regulation (EU) no.575/2013 and in the regulations issued for their application, and to investigate possible breaches of those requirements."

2. In Article VIII, after point 65 shall be inserted a new point, point 65^1, as follows:

"65^1. In Article 107, after paragraph (2) shall be inserted a new paragraph, paragraph (2^1), as follows:

« (2^1) In case of a credit institution with an unitary management system, the chairman of the management body must not exercise simultaneously the function of a general manager within the same credit institution. Exceptionally, with the approval of the National Bank of Romania, this cumulation of functions may be exercised by credit institution in well justified cases.»"

3. In Article VIII point 67, paragraph (1) of Article 108 shall be amended as follows:

"Art. 108. - (1) Each of the members of the management body and the directors, or where appropriate, the members of supervisory board and of the directorate of a credit institution, as well as the persons appointed to conduct the business regarding the management and control of

risks, internal audit, judicial, conformity, treasury, lending activity, as well as any other activities which may expose the credit institution to significant risks shall be at any time of good reputation, knowledge, skills and have sufficient experience to match the nature, size and complexity of the business of the credit institution and of the entrusted responsibilities and shall conduct the activity according to a sound and prudent banking practice. The composition of these bodies of the credit institution shall reflect the overall of a sufficiently wide range of relevant professional experience."

4. In Article VIII article 108^1, after paragraph (2) shall be inserted three new paragraphs, paragraphs (2^1) - (2^3), as follows:

"(2^1) In case of significant credit institutions in terms of size, internal organization and the nature, scope and complexity of the business, except the case representing the State, the persons referred to in paragraph (1), when cumulating several directorships, shall not be in more than one of the following situations:

a) exercises one executive directorship concomitantly with two non-executive directorships;
b) exercise four non-executive directorships concomitantly;

(2^2) For the purposes of paragraph (2^1), the following shall count as a single directorship:

(a) executive or non-executive directorships held within the same group;

(b) executive or non-executive directorships held within credit institutions and investment firms which are members of the same institutional protection scheme, provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled;

c)) executive or non-executive directorships held within financial or non-financial entities, in which the credit institution holds a qualifying holding.

(2^3) Directorships in organisations or entities which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph (2^1)."

5. In Article VIII, after point 71 shall be inserted two new points, points 71^1 and 71^2, as follows:

"71^1. After Article 117^1 shall be inserted a new article, Article 117^2, as follows:

« Art. 117^2. - (1) Credit institutions may only conduct transactions with their clients on a contractual basis, acting in a prudent manner and in compliance with the specific legislation governing consumer protection.

(2) Contracts shall be drawn up so as to enable clients understand all contractual terms and conditions, in particular the benefits to which they commit, according to the concluded contract.

Credit institutions shall not claim to the clients interest rates, penalties, fees or other costs and bank charges, if such payment is not stipulated within the contract.»

71^2. – After Article 119 shall be inserted a new article, Article 119^1, as follows:

« Art. 119^1. - Credit institutions shall not condition to clients the granting of loans or the providing of other products / services by the purchasing or the sale of shares or other equity / financial instruments issued by the credit institution or by another entity belonging to the group to which the credit institution belongs to, or the client's acceptance of other products /services offered by the credit institution or an entity belonging to its group, not related to the lending operation or to the requested product / service.»"

6. In Article VIII point 167 Article 226 paragraph (3), letter d) shall be amended as follows:

"d) to restrict or limit the business, operations or network of credit institutions, including by withdrawal of the approval granted on establishment of branches abroad, or to request the divestment of activities that pose excessive risks to the soundness of a credit institution;".

7. In Article VIII point 167 Article 226 paragraph (3), after letter k) shall be inserted a new letter, letter k^1), as follows:

"k^1) to limit or prohibit distribution by the credit institution of profit from distributable items, as defined in Article 4 paragraph (1) point 128 of Regulation (EU) no.575/2013, to shareholders or to their members, and/or interest payment to the holders of Additional Tier 1 instruments, where the prohibition does not constitute an event of default of the credit institution;".

8. In Article VIII point 169 Article 228, the introductory part of paragraph (1) shall be amended as follows:

"Art. 228. - (1) The National Bank of Romania has the competence to apply sanctions in accordance with Article 229 paragraph (1) and sanctionatory measures referred to in Article 229 paragraph (2) letter a) and letter b), when it finds that a credit institution, Romanian legal entity, and/or any of the persons referred to in Article 108 paragraph 1, or the persons appointed to head the branches of the credit institution are found guilty of the following facts:".

9. In Article VIII point 170 Article 229 paragraph (2), after letter a) shall be inserted a new letter, letter a^1), as follows:

"a^1) temporary ban in exercising functions in a credit institution by persons referred to in Article 108 paragraph (1) or by persons appointed to head the branches of the credit institution, held responsible for committing the deeds."

10. In Article VIII point 171, the introductory part of Article 229^1 shall be amended as follows:

"Art. 229[1]. - The National Bank of Romania shall apply the sanctions referred to in Article 229 paragraph (1) and the measures on sanctions provided in Article 229 paragraph (2) letters a) and c), where it finds that a natural or legal person, a credit institution, Romanian legal entity, and/or any of the persons referred to in Article 108 paragraph (1) or persons appointed to head the branches of credit institutions are guilty of the following deeds:".

11. In Articlel VIII point 176, paragraph (2) of Article 233 shall be amended as follows:

"(2) Documents relating to credit institutions, through which, according to this chapter, measures are disposed or penalties and sanctionatory measuresare applied, shall be issued by the Governor, the First Deputy Governor or Deputy Governors of the National Bank of Romania, except for establishing special supervision, withdrawal of the approval granted to persons referred to in Article 108 paragraph (1), withdrawal of the credit institution's authorisation and suspension of the voting rights of the credit institution's shareholders/members, the imposition of which falls within the scope of the National Bank of Romania's Board."

12. In Article VIII point 183 Article 278, after paragraph (2) shall be inserted a new paragraph, paragraph (3), as follows:

"(3) The Financial Supervisory Authority shall establish the duties of the Board and of the directors by regulations or, where applicable, the duties of the supervisory board and directorate of a financial investment services companies, in order to comply with the provisions of this emergency ordinance, of Regulation (EU) No. 575/2013 and with the regulations issued for their application."

13. In Article VIII, after point 193 shall be inserted two new points, points 193[1] and 193[2], as follows:

"Art. 193[1]. - Article 406 shall be amended as follows:

« Art. 406. - (1) The funds and financial instruments of the participants in the payment and settlement systems of the financial instruments, set up at the disposal of the settlement agent or system operator, in compliance with the system's rules and within its limits, in order to guarantee the fulfilment of the participant's obligations in the system, shall not be subject to the foreclosure by third parties, and shall not be encumbered by other real guarantees or duties assumed by the debtor participant.

(2) The funds and financial instruments referred to in para. (1) are exempted from registration with the Electronic Archive of Movable Real Collateral.

(3) In case of insolvency of a participant in the payment system, the funds and financial instruments provided for in paragraph (1) shall be used in the fulfilling of its obligations arising from the irrevocable transfer orders and net positions resulting from the clearing, obligations that

are incumbent on the participant until the date when the ruling of opening the insolvency proceedings is passed.

(4) Where the capacity of a participant in the payment system ceases, the funds and financial instruments referred to in paragraph (1) shall only be used in the fulfilling of its obligations arising from the irrevocable transfer orders and net positions resulting from the clearing, obligations that are incumbent on the participant until the capacity of participant ceases.

(5) The existing funds and financial instruments in the accounts of participants in the payment and settlement systems of financial instruments, which are designed to fulfill the participant's obligations arising from the irrevocable transfer orders and net positions resulting from the clearing, shall be subject of foreclosure by third parties, inclusively through precautionary or executory measures, only after fulfillment of the previous mentioned obligations.

(6) The financial instruments recorded in the accounts of participants in securities settlement systems, accounts designed solely for recording of their customers' holdings, shall not be affected in the event of insolvency of the participant, and shall not be subject to foreclosure of the participant by third parties, inclusively through precautionary or executory measures.

Art. 193^2. - Article 410 shall be amended as follows:

« Art. 410. – The carrying on, without right, of activities provided by Article 5 paragraph 1, and starting the development of activities as a credit institution without obtaining authorization under Article 10 paragraph (1) shall be deemed a criminal offence and shall be punished by 1 to 5 years' imprisonment.»"

Art. II. – Credit institutions shall apply the provisions on the ratio between fixed and variable components of total remuneration stated in the regulations issued in application of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law no. 227/2007, as subsequently amended and supplemented, as further amended and supplemented by this Law, for remuneration granted for services provided or performance achieved starting with 2014, the remuneration due under contracts concluded before 1 January 2014, either after that date."

This law has been adopted by the Romanian Parliament, in compliance with the provisions of Article 75 and Article 76 paragraph (1) from the Romanian Constitution, republished.

Bucharest, March, 9 2015.

Nr. 29.