- Unofficial translation -

Government Emergency Ordinance no.25 dated 18 March 2009
Published in the Official Gazette, Part I no. 179 dated 23/03/2009

on amending and supplementing of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy

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Having regard that the transposition into the national legislation of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector shall be performed up to 21 March 2009, according to Art.7 of the Directive, in order to be carried out the procedure on informing the European Commission regarding the adoption of legislation issued in it's applicability, up to this date,
According to Art. 115 para.4 of the Romanian Constitution, republished,

The Romanian Government is adopting this emergency ordinance

Art. I. - The Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, *Published in the Official Gazette, Part I no. 1.027 dated 27 December 2006, as approved with amendments and supplements by Law no.227/2007, as further amended, shall be amended and supplemented as follows*:

1. Art.5 para.1 shall be amended as follows:
"Art. 5. - (1) Any legal person which is not an authorised credit institution, and any natural person or entity without legal personality, is prohibited from carrying on the business of taking deposits or other repayable funds from the public, the business of issuing electronic money or the business of raising and/or managing amounts from the contributions of the members of an association with a view to saving and lending in a collective system to purchase goods and/or services by its members."
2. Art.5 para.2, lett.c) shall be amended as follows:
"c) in cases expressly covered by the Romanian or Community legislation, provided that those activities are subject to appropriate regulations and controls intended to protect depositors and investors."
3. Art.6, para.2 shall be amended as follows:
"(2) Without prejudice to para.1, the entities, Romanian legal persons, within the group the credit institution is part of, may use in their name the initials, logo, emblem, name or other identification elements used on the group level."
4. On Art. 7 para.1, after point 1 shall be introduced point 1^1 and point 1^2, as follows:
"1^1. proposed acquirer – any natural or legal person or the group of such persons acting in concert with respect to the proposed acquisition;
1^2. proposed acquisition – the decision taken by a proposed acquirer to acquire, whether directly or indirectly, a qualifying holding in a credit institution, Romanian

legal person, or to increase it's qualifying holding so that the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the credit institution would become its subsidiary;".

5. Art.9 shall be repealed.

6. Art.12 para.1 shall be amended as follows:

"Art. 12. - (1) Upon establishment of a credit institution, Romanian legal entity, its initial capital is represented by the share capital, except the cases where that credit institution results from a reorganisation by merger or splitting-up, or from a transformation process according to Section 2 of chapter VII – Transformation of another undertaking into a credit institution."

7. After Art.15, para.1 shall be introduced para.1^1, as follows:

"(1^1) In assessing the persons referred to in para.1, there shall be taken in consideration the provisions of Art.25 para.2, Art.26 para.1 and para.4 and those of Art.26^2."

8. Art.16 shall be amended as follows:

"Art. 16. - In applying the provisions of Art.15 para.1, the way of determining the voting rights shall be established by the National Bank of Romania by regulations, subject to the provisions regarding the transparency of information with respect to the issuers whose securities are admitted for transaction on a regulated market."

9. On Art. 21, the introductory part shall be amended as follows :

"Art. 21. – Except the activities referred to in Art.20 para.(1) lett.b), credit institutions may perform transactions in movable and immovable assets only if: ".

10. Article 25 shall be amended as follows:

"Art. 25. - (1) Any proposed acquirer shall prior notify, in writing, the National Bank of Romania with respect to any proposed acquisition, indicating the targeted threshold for equity holding and providing the relevant information referred to in Art.26 para.(4).

(2) In applying the provisions of para. (1), the conditions where more persons are considered to act in concert as proposed acquirer shall be established by regulations issued by the National Bank of Romania.

(3) The National Bank of Romania shall confirm in writing the proposed acquirer, promptly and in any event within two working days the receipt of notification and, if the case may be, of all subsequent receipt of any additional information required, referred to in para.5 and shall acknowledge the proposed acquirer each time, the expiry date of the assessment period.

(4) The National Bank of Romania shall perform the assessment referred to in Art. 26 para. (1) no later than 60 working days as from the date of written acknowledgement of receipt of the notification and of all documents required by the National Bank of Romania on the basis of the list of information referred to in Art. 26 para. (4). If notification is not accompanied by all documents required according to the regulations in force, the assessment period shall start on the date when the National Bank of Romania confirms the receiving of all respective documents.

(5) If necessary, the National Bank of Romania may request in writing, no later than the 50th working day of the assessment period referred to in para.(4), any further information that is necessary to complete the assessment, and shall specify the information needed.

(6) The proposed acquirer shall send the additional information no later than 20 working days as from the date of providing the request, in case of unfulfilling of this obligation being incident the provisions of Art. 26 para. (2). During that time, the assessment period referred to in para. (4) shall be interrupted. Any other request from

the National Bank of Romania for completion or clarification of the received information shall not interrupt the assessment period.

(7) The National Bank of Romania may extend the interruption period referred to in para. (6), up to 30 working days, if the proposed acquirer is:

a) situated or regulated outside the Community;

b) a natural or legal person or another entity situated in another Member State, not subject to prudential supervision applicable to credit institutions, undertakings for collective investment in transferable securities, assurance undertakings, insurance undertakings, capital market or intermediaries in insurances.

(8) If the National Bank of Romania, upon the completion of the assessment, decide to oppose the proposed acquisition, shall inform the proposed acquirer in writing about its decision, within two working days after adopting the decision, but not exceeding the assessment period, indicating the reasons of the decision. On the request of the proposed acquirer, the reason of the decision can be disclosed.

(9) If the National Bank of Romania does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

(10) In case of approving the proposed acquisition, the National Bank of Romania may fix a maximum period for concluding the proposed acquisition and extend it, where appropriate."

11. Article 26 shall be amended as follows:

"Art. 26. - (1) In assessing the notification provided for in Art. 25 para. (1) and of the additional information referred to in Art. 25 para. (5), in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed and having regard to the likely influence of the proposed acquirer on the credit institution, the National Bank of Romania apprises the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

a) the reputation of the proposed acquirer, respectively its integrity and professional competence;
b) the reputation and experience of any person performing management and/or running responsibilities of the credit institution, as a result of the proposed acquisition;
c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;
d) whether the credit institution will be able to comply with the prudential requirements based on this emergency ordinance and on the regulations issued, based on its provisions, and, in particular on the applicable legislation, especially on the Government Emergency Ordinance no.98/2006, approved with amendments and supplements by Law no.152/2007, and by Law 297/2004, as further amended and supplemented, including the regulations issued, based on their provisions, as well as to comply with these requirements, in particular whether the group of which it will become a part of, has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities;
e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, there has been commited an offence or an attempt of offence on money laundering or terrorist financing within the meaning of Art. 2 lett. a), respectively lett. a[1]) of Law no. 656/2002 on the prevention

and sanctioning of money laundering and on the initiation of measures for the prevention and fighting against financing terrorist activities, as further amended and supplemented, or that the proposed acquisition could increase the risk thereof.

(2) The National Bank of Romania may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in para. 1 or if the information provided by the proposed acquirer is incomplete.

(3) The National Bank of Romania shall neither impose any prior conditions in respect of the level of holding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(4) The National Bank of Romania shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to it at the time of notification referred to in Art.25 para.1. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition and shall be relevant for a prudential assessment.

(5) The criteria referred to in para.1, the list of information specified in para.4 in performing the assessment and the documentation shall be detailed by the National Bank of Romania's regulations.

(6) Notwithstanding Art.25 para.(3)-(7), where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the National Bank of Romania, the latter shall treat the proposed acquirers in a non-discriminatory manner."

12. After Art. 26 there shall be introduced Art.26^1 and Art. 26^2, as follows:

"Art. 26^1. - (1) When carrying out the assessment referred to in Art.26 para.1, the National Bank of Romania shall work in full consultation with the other supervisory local competent authorities or from other involved Member States, if the proposed acquirer is one of the following:

a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company authorised in another Member State or in another sector of the financial system;

b) the parent undertaking of an entity referred to on lett.a) authorised in another Member State or in another sector of the financial system;

c) a natural or a legal person controlling an entity referred to on lett.a) authorised in another Member State or in another sector of the financial system.

(2) Within the meaning of para.1, the National Bank of Romania shall supply the other supervisory authorities involved, without undue delay, any information which is essential or relevant for the assessment. As a competent authority of the credit institution in which the acquisition is proposed, the National Bank of Romania shall take into account all the essential information provided by the supervisory authorities and may request all relevant information for the assessment. The decision of the National Bank of Romania regarding the acquisition proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Art. 26^2. - (1) If the proposed acquirer is a regulated entity situated in a third country, the National Bank of Romania shall cooperate with the involved supervisory authority, if the following conditions are simultaneously fulfilled:

a) the supervisory framework of the third country can be considered as equivalent by the National Bank of Romania;
b) in the third country there are no laws, regulations or administrative measures in order to preclude the exchanging of information;
c) the competent authority of the third country expressed it's availability for concluding a cooperation agreement with the National Bank of Romania in exchanging of information.

(2) The regulated entity is a regulated entity within the meaning of Art.2 para.(1) point 5 of the Government Emergency Ordinance no.98/2006, approved with amendments and supplements by Law no.152/2007, as well as any similar entity of a third country."

13. Article 27 shall be amended as follows:

"Art. 27. – Any natural or legal person who has made a decision to dispose, directly or indirectly, a qualifying holding in a credit institution, Romanian legal person or to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the credit institution would cease to be his subsidiary, shall notify in writing the National Bank of Romania on this decision, according to the regulations issued on this matter."

14. Article 28 shall be amended as follows:

"Art. 28. – For the provisions of Art. 25 and Art.27, for the calculation of the voting rights, the regulations issued by the National Bank of Romania according to Art.16 shall be applicable."

15. Article 30 shall be repealed

16. Article 31, paragraph 1 shall be amended as follows:

"Art. 31. - (1) The National Bank of Romania may not set by regulations more strictly requirements than those referred to in this sub-section for notification and for the assessment of direct or indirect acquisitions of qualifying holdings in a credit institution, Romanian legal person."

17. Article 33 shall be amended as follows:

"Art. 33. - (1) The National Bank of Romania shall make a decision regarding an application for authorisation of a credit institution, either for granting the approval of establishment of the credit institution or for rejecting the application, within four months from the receipt of the application and of the documents foreseen in Art.10 para.2 thereof.

(2) Within 5 working days from the receipt of the application, the National Bank of Romania shall notify the applicant, if the case may be, on the missed documents according para.1, for their prompt submission.

(3) The National Bank of Romania may request in writing, up to the period referred to in para.1, but not later than 3 months from the receiving of application of authorization, any additional information or documents, if those submitted are not sufficient or relevant in performing the assessment or if the documents are deficient.

(4) Within one month from the communication of the requirement according to para.3, the applicant shall submit the required information and/or requested documents, in order to remedy the deficiency. During this period, the term of 4 months referred to in para.1 shall be suspended. The applicant may provide by own initiative any other information or documents considered to be relevant, no later than 30 days before the expiry date on which the National Bank of Romania shall decide on the application.

(5) If the National Bank of Romania decides granting of approval for the establishment, the credit institution, in order to obtain the authorisation for the pursuit

of business, shall submit to the National Bank of Romania no later than two months after receiving the National Bank of Romania's notification on its decision, the documents certifying the legal establishment of the credit institution, according to the legal provisions applicable and to the conditions provided by the project.

(6) The National Bank of Romania shall make a decision regarding the granting of authorisation for the pursuit of business for the credit institution within three months from the date of receiving the documents foreseen in para.5.

(7) The National Bank of Romania may request in writing any additional information and documents for the assessment and/or, by case, remedy of other deficiency, within one month from receiving the documents foreseen in para.5, and the applicant shall submit them within one month from receiving the requirement for their submission. The applicant may submit by own initiative any other information and documents considered to be relevant, no later than 30 days before the expiry date of the period referred to in para.6.

(8) Information and documents submitted after the expiry of periods foreseen for their submission shall not be taking into consideration in the assessment of the authorization requirement and shall be returned to the applicant.

(9) In any of the stages of the authorisation process referred to in para.1 and para.6, the National Bank of Romania shall notify in writing it's decision to the applicant, indicating the underlying rational in the event of rejection of the application for authorization."

18. Article 38 para. (1), lett. a) and f) shall be amended as follows:

"a) the submitted documentation is incomplete or is not drawn up in compliance with the legal provisions in force and/or the information submitted is not relevant or is insufficient for the assessment on fulfilling the conditions foreseen for granting the authorization;

.....

f) the condition of the credit institution's shareholders/members fails to fulfil the requirements provided by this emergency ordinance and the regulations issued for its application;"

19. Art.107, para.3 shall be amended as follows:

"(3) The directors of the credit institution and by case, the members of directorate shall perform exclusively the tasks they have been appointed to, excepting the directors of the credit institution applying for the unitary management system, which may also be administrators and excepting the case where the person is fulfilling other tasks within other entities situated in the same prudential consolidation perimeter where the credit institution is located."

20. Art. 107, para. 4 shall be repealed.

21. Art.108, para. 1 and para. 3 shall be amended as follows:

"Art. 108. - (1) The members of the board of administration and the directors, or by case, 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, conformity, treasury, credit activity, as well as any other activities which can expose the credit institution to significant risks shall be of good repute and have sufficient experience to match the nature, size and complexity of the business of the credit institution and of the entrusted responsibilities and shall conduct the activity according to a sound and prudent banking practice.

.....

(3) Each of the persons mentioned under para.1 shall be approved by the National Bank of Romania prior to starting the fulfilment of their tasks, according to the regulations issued."

22. After Art.108 para.4 shall be introduced Art.108 para.5 as follows :

"(5) The persons appointed as administrators, directors, members of the supervisory board or by case, of the directorate, shall perform effectively the administration and/or management responsibilities they are entitled to."

23. Art.118 shall be repealed.

24. After Art.146 para.2 shall be introduced Art.146 para.3 as follows:

"(3) If the entity from a third country referred to in para.1 is a regulated entity, the National Bank of Romania may cooperate with the involved supervisory authority according to the conditions foreseen in Art.26^2."

25. After Art.147 para.1 shall be introduced Art.147 para.2 as follows:

"(2) Where a credit institution, Romanian legal person or, by case, its parent undertaking or the natural or legal person controlling the credit institution decides to acquire or to increase a qualifying holding, directly or indirectly, in another credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company, authorised in another member state or by case, in another sector of the financial system, the National Bank of Romania shall ensure cooperation by mutual consulting about all the matters with the other national supervisory authorities or from other involved member states, by their notice. In this respect, the National Bank of Romania shall provide at request any relevant information and by its initiative any essential information and shall communicate the other supervisory authorities involved its opinion and any personal reservation regarding the decision of acquisition."

26. Art.163, lett.c) shall be amended as follows:

"c) the media and location for disclosures, other than the financial statements;".

27. Art.168 para.1 shall be amended as follows:

"Art. 168. - (1) The National Bank of Romania may recommend to a credit institution, Romanian legal entity, to take appropriate measures to improve the governance arrangements, strategies, processes and mechanisms implemented, to ensure the adequate organisation of the activity performed or to restore or to sustain its financial position, also for the cases of finding the deterioration of the credit institutions financial and prudential indicators. The credit institution shall notify the National Bank of Romania about the measures taken, at the time limits established by the latter."

28. Art.182 para.6 shall be amended as follows:

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

29. After Art.222 shall be introduced Art.222^1 and Art.222^2, as follows:

"Art. 222^1. - (1) Without any prejudice to the provisions of Art. 214 and Art.216, the National Bank of Romania may provide certain information to the department of central administration which is responsible for the legislation applicable in the field of supervision of credit institutions, financial institutions, investment firms and insurance companies, as well as to inspectors acting on behalf of these departments.

(2) The providing of information referred to in para.1 may be performed only for prudential purposes."

Art. 222^2. – For the situation referred to in Art. 222^1, the information received by the National Bank of Romania according to Art.215 and Art.218 as well as those obtained as a result of on-site inspections, which have been performed according to Art. 174 para.1, shall not be disclosed without the express consent of the competent authorities which provided it, respectively of the competent authorities from the member state where the on-site inspection was performed. "

30. Art.226 para.2, lett.f) shall be amended as follows:

"f) requiring credit institution to replace the persons appointed to run the branches of the credit institution;".

31. Art.228, the introductory part shall be amended as follows:

"Art. 228. - The National Bank of Romania may apply sanctions under this emergency ordinance, when it finds that a credit institution, Romanian legal entity, and/or any of the persons referred to in Art.108 para.1, or the persons appointed to head the branches of the credit institution are found guilty of:".

32. On Art.228, after lett.e) shall be introduced lett.f), as follows:

"f) jeopardizing the trustworthy and/or viability of the credit institution by the unsuitable administration of funds."

33. Art.229 para.1, lett. c) and d) shall be amended as follows:

"c) fine applicable to the persons referred to in Art.108 para.1 and to the persons appointed to head the branches of credit institutions, ranging from 1 to 6 net salaries in the credit institution, according to the real salary statement in the month before the fact was found;

d) withdrawal of the approval granted to the persons referred to in Art.108 para. (1);".

34. Art.229 para.4 shall be amended as follows:

"(4) The sanctions referred to in para.(1) points c) and d) shall be applied to the persons found guilty of the breach, in the sense that such breach would not have occurred if the persons concerned had properly performed their tasks and duties as laid down by the company law, the regulations issued for the application of this emergency ordinance and internal regulations, or by case, to the persons for which the National Bank of Romania uncovers bad performance of their duties, contrary to the sound and prudent banking practice and/or for which the requirements of good reputation and competence according to the nature, size and complexity of the business of the credit institution and of the responsibilities in charge is no longer fulfilled."

35. Art.275 para.1 shall be amended as follows:

"Art. 275. - (1) The decisions taken by the National Bank of Romania according to the provisions referred to in this emergency ordinance, regarding a credit institution, including those concerning the persons referred to in Art.108 para.1, or the persons in charge of branches of the credit institution or concerning shareholders may be disputed within 15 days from their transmission, to the National Bank of Romania's Board, which is to make a well grounded decision within 30 days from the date of receiving the complain."

36. On Art.292, after para.2 shall be introduced para.3, as follows:

"(3) Claims pledge arising from credits granted according to para.1 lett. a)-c) shall be carried out according to the regulations issued by the National Bank of Romania."

37. Art.367 shall be amended as follows:

"Art. 367. - (1) The persons appointed to conduct the business regarding the management and control of risks, internal audit, conformity, treasury, credit activity, as well as any other activities which can expose the credit cooperative to significant

risks, to the extent to which these activities are not conducted to a centralized level, shall be approved by the central body before starting the performance of the responsibilities, according to the regulations issued by the central body.

(2) The central body may withdraw the granted approval, according to the provisions of Art. 229 para.4."

38. Art.413 shall be repealed.

Art. II. - (1) In order to apply the provisions of the Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, as approved with amendments and supplements by Law no.227/2007, further amended, as amended and supplemented by this emergency ordinance, the National Bank of Romania shall issue the necessary regulations.

(2) The applications for authorization as well as the notification for the proposed acquisitions, not ruled up to the date of entering into force of this emergency ordinance shall comply with the provisions of regulations in force on the date of their submission to the National Bank of Romania.

Art. III. - (1) The National Bank of Romania shall assess the quality of persons in charge to conduct the business regarding the management and control of risks, internal audit, conformity, treasury, credit activity, as well as any other activities which can expose the credit institution to significant risks, within the credit institution, Romanian legal persons, as well as of Romanian branches of third countries credit institutions and may undertake the necessary measures, in order to ensure the fulfilment of the provisions of the Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, as approved with amendments and supplements by Law no.227/2007, further amended, as amended and supplemented by this emergency ordinance and of the regulations issued for its application, within 6 months from entering into force of this emergency ordinance.

(2) For justified reasons, the National Bank of Romania may extend the term referred to in para.1 only one time, for a period no longer than 3 months.

(3) The persons referred to in para.1 which do not obtained the National Bank of Romania's approval shall no longer perform the entrusted responsibilities and the credit institutions shall replace them according to the terms referred to in para.1 or, by case, in para.2.

(4) In the case of credit cooperatives, the assessing of persons referred to in Art. 367 para.1 of the Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy, as approved with amendments and supplements by Law no.227/2007, further amended, as amended and supplemented by this emergency ordinance, shall be in the competence of the central body where they are affiliated to, applying accordingly the provisions of para.1- para.3.

Art. IV. – The persons which on the date of entering into force of this emergency ordinance are members of the board of administration, or, by case, of the supervisory board of the credit cooperatives shall be considered to hold the approval of the National Bank of Romania, according to the legal provisions.

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This emergency ordinance is transposing the provisions of Art.5 para.2- para.4 and those of Art.8 para.2 of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of

holdings in the financial sector, published in the Official Journal of the European Union (JOUE) no.L 247 dated 21 September 2007.

Bucharest, 18 March 2009.
No. 25.