- Unofficial translation -

Government Emergency Ordinance no.26/31.03.2010
amending and supplementing the Government Emergency Ordinance no.99/2006
regarding credit institutions and capital adequacy and other acts

Having regard the Government commitment on continuing the economic and financial reforms in order to keep the economic stability in the context of the actual global financial crisis and to provide the appropriate improvement of the relevant legislative framework,

with a view to the obligations assumed in the Stand-by Agreement concluded between Romania and the International Monetary Fund agreed in the Intention Letter transmitted by the Romanian authorities, signed in Bucharest on 24 April 2009 and in the Decision of the Directorate Council of the International Monetary Fund of 4th Mai 2009, as well as in the further Letter of intention, signed by the Romanian authorities on 8 September 2009 and approved by the Decision of the Directorate Council of the International Monetary Fund of 21 September 2009, in the context of improvement requirements regarding the applicable legal framework to the credit institutions in distress, the amendment of the banking legislation regulating the procedure of special administration shall be revised, in order to allow a quick and efficient intervention for banks in financial distress,

these emergency measures shall be taken considering that the failing of quick adoption of the expected legislative measures, in order to provide the compliance with the terms assumed by the Stand-by Agreement, would lead on loosing of the Agreements concluded with the international financial bodies, conducting to macroeconomic instabilitiy leading to the impossibility of economic launching, like the impossibility of urgent covering and with low costs of the financing necessities for the year 2010, with negative impact over interest rates and exchange rates.

Having regard the necessity of the total transposition and implementation in the national legislation of the Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending the Directives 97/7/EC,

2002/65/EC, 2005/60/EC, and 2006/48/EC and of repealing of Directive 97/5/EC until 1 November 2009,

considering that the Government Emergency Ordinance no.113/2009 on payment services transposed partially the provisions of Directive 2007/64/EC,

as since the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), transposed in the national legislation by the Government Emergency Ordinance no.99/2006 regarding credit institutions and capital adequacy, approved with amendments and supplements by Law no.227/2007, with further amends and supplements, as well as the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, transposed by 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, have been amended by Directive 2007/64/EC

these emergency measures shall be taken, having regard the deadline of 1 November 2009 for adoption of all essential measures for implementing the provisions of Directive 2007/64/EC.

Having regard the actual world financial context, the providing of pre-requisite for establishing of new credit institutions properly capitalized, of which shareholders shall have adequate financial standing, requires the urgent adoption of emergency measures in order to provide the strengthening of the existing legislative framework in this purpose,

as since the aimed aspects are representing an extraordinary situation, whose regulation shall not be postponed,

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 regarding credit institutions and capital adequacy, published in Monitorul Oficial al Romaniei, Part I, no.1027/27.12.2006, approved with amendments and supplements by Law no.227/2007, with further amends and supplements, is amended and supplemented as follows:

1. **Art.3 lett.e)** – repealed

2. On **Article 5, para.(1)** and **(5)** are amended as follows:

Art. 5 – (1) Any natural person, legal person or entity without legal personality which is not an authorized credit institution, is prohibited from carrying on the business of taking deposits or other repayable funds from the public, 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.

……

(5) The National Bank of Romania may determine whether or not an activity represents taking of deposits or other repayable funds from the public, banking activity, or activity of receiving and/or managing amounts of money arising from the contributions of members of an association with a view to saving and lending in a collective system to purchase goods and/or services by is members. The determination of the nature of the activity made by the National Bank of Romania shall be binding on the concerned parties.

3. On **Article 6, para.(1)** shall be amended as follows:

Art. 6 – (1) Any person, other than an authorised credit institution, is prohibited from using the name "bank" or "cooperative credit organisation", "credit cooperative", "central body of credit cooperatives", "cooperative bank", "mortgage loan bank/mortgage bank", "savings bank for housing", or derivatives or translations of these names, in connection with an activity, a product or a service, except for the case where this use is imposed or acknowledged by law or by an international agreement, or when, from the context in which the respective name is used, it follows undoubtedly the fact that no banking activity is being pursued.

4. On **Art.7 para.(1),** after point 2 is introduced point **2^1** as follows:

2^1. "consolidating supervisor" means 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.';

5. On **Article 7 para.(1), points 10** and **14** shall be amended as follows:

10. *credit institution* – means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;

……

14. *financial institution* – means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to pursue on one or more of the activities listed in Article 18 para. (1) lett. b) to l) and n^1);

6. Article 7 para.(1), point 16 is repealed;

7. On **Article 18 para.(1), lett.d)** and **lett.e)** are amended as follows:

d) payment services, as defined in Art.8 of the Government Emergency Ordinance no.113/2009 on payment services;

e) issuing and administering other means of payment such as travellers' cheques and bankers' drafts insofar as this activity is not covered by lett.d);

8. On **Article 18 para.(1),** after **lett.n)** shall be introduced **lett.n^1)** as follows:

n^1) issuing of electronic money;

9. Article 33 para.(6) is amended as follows:

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

10. Article 36 is amended as follows:

Art.36 – The National Bank of Romania shall notify the European Commission about any authorization granted, for the purpose of including the name of the credit institution in the list of credit institutions drawn up and updated by the European Commission, published in the Official Journal of the European Union.

11. Article 40 para. (4) is amended as follows:

(4) Based on the assessment of the liquidation plan, the National Bank of Romania shall approve the dissolution and liquidation of the credit institution only if the conditions provided in

paragraph (2) and (3) are fulfilled, confirming in this sense that the authorization has ceased to be valid.

12. Articles 47 and **58** and **Article 89 para.(7)** are repealed

13. Part I, Title I Chapter VII, Section 2 "Turning another undertaking into a credit institution", **Articles 97 – 100** are repealed

14. On **Article 115,** after lett.e) is introduced **lett.f)** as follows:

f) remittance to the credit institutions of the existent information in the recordings of the Banking Risk Division of the National Bank of Romania.

15. Article 117 para.(3) is repealed

16. On **Art.172,** after para.(2) is introduced **para. (2^1)** as follows:

2^1. In the exercise of its general duties of prudential supervision, the National Bank of Romania duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

17. After **Art.173** are introduced 4 new articles, **Art.173^1 – Art.173^4**, as follows:

Art. 173^1 (1) On the request regarding the designation of a branch from another Member State of a credit institution, Romanian legal person, as being significant, the National Bank of Romania shall do everything within its power to reach a joint decision with the competent authority of the host Member State and, by case, with the competent authority responsible with the consolidated supervision, in considering the tasks of the latter, similar to those provided in Art.181 para.(1).

(2) The provisions of Art.210^1 para.(2) shall be applied accordingly.

(3) If no joint decision is reached according to the provisions of para.(1), the decision taken by the competent authorities of the host Member State shall be final and opposable to the National Bank of Romania, which shall apply it accordingly.

(4) The designation of a branch as being significant shall not affect the rights and

responsibilities of the competent authorities involved.

Art.173^{2} – (1) The National Bank of Romania shall communicate to the competent authorities of the host Member State within the territory of which a significant branch is established by a credit institution, Romanian legal person, the information referred to in Article 186 para.(4) lett.(c) and (d) and shall carry out the tasks referred to in Article 181 para.(1) lett.c) in cooperation with the competent authorities of the host Member State.

(2) If the National Bank of Romania becomes aware of an emergency situation in a credit institution as referred to in Article 183 para.(1), it shall alert as soon as practicable the authorities referred to in Article 222 para.(6) and in Article 222^{1} para.(1).

Art.173^{3} – (1) In the case of a credit institution, Romanian legal person, with significant branches in other Member States, if the provisions of Art.185^{1} – 185^{5} are not applicable, the National Bank of Romania shall establish and chair a college of supervisors to facilitate the cooperation under Art.173 and 173^{2}.

(2) The establishing and functioning of the college shall be based on written arrangements determined, by the National Bank of Romania, after consultation with the competent authorities concerned. The manner of functioning of the supervisory colleges shall consider also the guidelines drawn up by the Committee of European Banking Supervisors.

(3) The National Bank of Romania shall decide the participation of the competent authorities at a meeting or activity of the college.

(4) The decision of the National Bank of Romania shall consider the relevance of the supervisory activity to be planned or coordinated by those authorities, in particular the potential impact on the financial stability of the financial system in the Member States concerned referred to in Article 172 para.(2^{1}), as well as the obligations of the National Bank of Romania referred to in Article 173^{2}.

(5) The National Bank of Romania shall keep all members of the college fully informed, in advance, on the organization of such meetings, the main issues to be discussed and the activities to be analyzed. The National Bank of Romania shall also keep all members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

Art.173^{4} – (1) In the exercise of its duties, the National Bank of Romania shall take into

account the convergence in respect of supervisory tools and practices in the application of the law, regulations and requirements of the competent authorities, adopted to national and Community level. For that purpose:

(a) the National Bank of Romania shall participate in the activities of the Committee of European Banking Supervisors;

(b) the National Bank of Romania shall follow the guidelines, recommendations, standards and other measures agreed by the Committee of European Banking Supervisors or shall state the reasons if they do not do so;

(c) national mandates conferred on the National Bank of Romania as a competent authority on the national level do not inhibit the performance of its duties as a member of the Committee of European Banking Supervisors or of other duties in the prudential supervisory field of the credit institutions.

18. Article 181 is 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 persons, and of credit institutions, Romanian legal persons, controlled by EU parent financial holding companies, shall carry out the following tasks:

a) coordination of the collection and dissemination of relevant or essential information in going concern and emergency situations;

b) planning and coordination of supervisory activities in going concern, as well as in emergency situations, including in relation to the activities referred to in Articles 24, 148, 159-163, 166, 226, in cooperation with the competent authorities involved;

c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary, with central banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication, for facilitating crisis management.

(2) The planning and coordination of supervisory activities referred to in para.(1) lett.c) includes exceptional measures referred to in Article 188 para.(1) lett.b), the preparation of joint

assessments, the implementation of contingency plans and communication to the public.

19. On Article 182, para.(4) is amended as follows:

(4) The period of six months referred to in para. (3) shall begin on the date of receipt by the National Bank of Romania of the application and the complete documentation in view of the regulations issued in the application of this emergency ordinance, in its capacity as competent authority, according to Article 181. The National Bank of Romania shall without delay forward that application to the other competent authorities.

20. After **Article 182** are introduced eight new articles, **Article 182^{1} – 182^{8}**, 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 or an EU parent financial holding company in a Member State 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 or of an EU parent financial holding company.

Art. 182^{2} - (1) The joint decision referred to in Art. 182^{1} para.(1) shall be reached within four months after submission by the National Bank of Romania, as a consolidating supervisor, to the other relevant competent authorities, of a report containing the risk assessment of the group in accordance with Articles 148 and 166. The joint decision shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 148 and 166.

(2) The joint decision referred to in Art. 182^{1} para.(1) shall be set out in a document containing the fully reasoned decision which shall be provided to the EU parent credit institution by the National Bank of Romania, as a consolidating supervisor.

(3) In the event of disagreement, the National Bank of Romania, as a consolidating

supervisor shall, at the request of any of the other competent authorities concerned, consult the Committee of European Banking Supervisors. The National Bank of Romania, as a consolidating supervisor, may consult the Committee of European Banking Supervisors on its own initiative.

Art. 182^{3} - In the absence of such a joint decision between the competent authorities within four months, a decision on the application of Articles 148, 166 and Article 226 para.(3) shall be taken on a consolidated basis by the National Bank of Romania, as a consolidating supervisor, after duly considering the risk assessment of subsidiaries performed by relevant competent authorities.

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

Art. 182^{5} - The decisions referred to in Articles 182^{2} - 182^{4} shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the four-month period referred to in Article 182^{2} para.(1) . The document shall be provided by the National Bank of Romania to all competent authorities concerned and to the EU parent credit institution.

Art. 182^{6} - (1) Where the Committee of European Banking Supervisors has been consulted, according to the provisions of Art.182^{2} para.(3), the National Bank of Romania shall consider such advice, and explain any significant deviation therefrom.

(2) The National Bank of Romania shall consider the advice of the Committee of European Banking Supervisors and shall explain any significant deviation therefrom, inclusively when consultation is performed by another competent authority, as a consolidated supervisor.

Art. 182^{7} - (1) The joint decision referred to in Art.182^{1} and the decisions taken according to Art.182^{3} and 182^{4} shall be recognized as determinative.

(2) Where the National Bank of Romania is not the consolidating supervisor, the joint decision adopted on a similar basis with those referred to in Art.182^{1} and any decision taken on a similar basis with those referred to in Art.182^{3} and 182^{4} by a consolidated supervisor, respectively

by the authority responsible for the supervision on an individual basis of the credit institutions, being subsidiaries of an EU parent credit institution or of an EU parent financial holding company are determinative to the National Bank of Romania, which shall apply them accordingly.

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 or, an EU parent 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 persons, being subsidiaries of an EU parent credit institution or of an EU parent 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 Article 182[3] and 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 or of an EU parent 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 or of an EU parent financial holding company or between the National Bank of Romania and the consolidating supervisor, by case.

21. On **Article 183**, **para.(1)** is amended as follows:

(1) Where an emergency situation arises, including adverse developments in financial markets, which potentially jeopardizes the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorized or where significant branches are established, the National Bank of Romania, as a consolidating supervisor shall alert as soon as is practicable, complying with the requirements on keeping the professional secrecy, the authorities referred to in Art. 222 para.(6) and in Art.222[1] para.(1), and shall communicate all information that is essential for the pursuance of their tasks.

22. On **Article 183,** after **para.(1)** are introduced two new paragraphs**, para.(1^1)** and **(1^2),** as follows:

(1^1) If the National Bank of Romania, in exercising its tasks as a central bank, becomes aware of a situation described in para.(1), it shall alert as soon as is practicable the competent authorities responsible with the exercising of consolidated supervision of the credit instututions.

(1^2) Where possible, in applying the provisions referred to in para.(1) and (1^1), there shall be used existing defined channels of communication.

23. After **Article 185** are introduced five new articles, **Art. 185^1 - Art.185^5**, as follows:

Art. 185^1 – (1) The National Bank of Romania, as a consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Article 181 and Article 183 para.(1)-(1^2) and subject to the confidentiality requirements and compatibility with Community law, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

(2) The competent authorities from third countries may attend the colleges of supervisors if the confidentiality requirements are equivalent with those of the Community by the involved competent authorities.

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

(a) exchanging information;

(b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(c) determining supervisory examination programmes based on a risk assessment of the group within the process carried on by the competent authorities, of the review of the governance arrangements, strategies, processes and mechanisms implemented by the credit institutions and of the risks assessment to which the credit institution is or might be exposed;

(d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 183 para.(2) and Article 187;

(e) consistently applying the prudential requirements on the Community level across all entities within a banking group without prejudice to the options and discretions of the supervisory authorities available in European Union legislation;

(f) applying Article 181 para.(1) lett.(c) taking into account the work of other forums that may be established in this area.

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

(5) The establishing and functioning of colleges of supervisors shall not affect the rights and responsibilities of the National Bank of Romania in the prudential supervisory field, under this emergency ordinance.

Art.185^{2} – (1) The establishing and functioning of the colleges of supervisors shall be based on written arrangements referred to in Articles 184 and 185, determined after consultation with competent authorities concerned by the National Bank of Romania, as a consolidating supervisor.

(2) The Committee of European Banking Supervisors shall elaborate guidelines for the operational functioning of colleges.

Art.185^{3} – (1) The National Bank of Romania, as a consolidating supervisor shall chair the meetings of the college and shall decide which competent authorities participate in a meeting or in an activity of the college.

(2) The decision of the National Bank of Romania according to para.(1) shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 172 para.(2^{1}) and the obligations referred to in Article 173^{2}.

(3) The National Bank of Romania, as a consolidating supervisor shall keep all members of the college fully informed, in advance, of the organization of such meetings, the main issues to be discussed and the activities to be considered. The National Bank of Romania shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

Art.185^{4} - The National Bank of Romania, as a consolidating supervisor, subject to the confidentiality requirements, shall inform the Committee of European Banking Supervisors about the activities of the college of supervisors, also in emergency situations, and shall communicate to that Committee all information that is of particular relevance for the purposes of supervisory

convergence.

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

(2) The provisions of Art.185^1 shall be applied accordingly.

24. On **Art.193, para.(4)** and **(6)** are amended as follows:

(4) The period of six months laid down in para. (3) shall begin on the date of receipt of the application, including the complete documentation with a view of the regulations issued in the application of this emergency ordinance. The competent authority responsible for the supervision on a consolidated basis shall, without delay forward the received application, according to the provisions of para. (2) and the complete documentation, to the competent authority responsible for the supervision on an individual basis.

(6) The decisions taken according to the provisions of para. (3) and the decisions taken by the competent authority responsible for the supervision on a consolidated basis, where no joint decision has been taken, shall be final and opposable to the other authority and shall be accordingly applied by that authority.

25. After **Art.210** are introduced 3 new articles, **Art.210^1 – 210^3**, as follows:

Art.210^1 – (1) The National Bank of Romania may make a request to the consolidating supervisor where Article 181 para.(1) applies or to the competent authorities of the home Member State, for a branch of a credit institution of another member State established in Romania to be considered as significant.

(2) That request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) whether the market share of the branch of a credit institution in terms of deposit exceeds 2 % in Romania;

(b) the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in Romania;

(c) the size and the importance of the branch in terms of number of clients within the context

of the banking or financial system of Romania.

Art.210^{2} – (1) The National Bank of Romania shall do everything within its power to reach a joint decision with the competent authorities referred to in Art.210^{1} para.(1), on the designation of a branch as being significant.

(2) If no joint decision is reached within two months of receipt of a request Art.210^{1} para.(1), the National Bank of Romania shall take its own decision within a further period of two months on whether the branch is significant. In taking its decision, the National Bank of Romania shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home Member State.

(3) The decisions referred to in para.(1) and (2) shall be set out in a document containing the fully reasoned decision and transmitted to the competent authorities concerned. The decisions taken according to the provisions of para.(1) shall be recognized as determinative and opposable to the National Bank of Romania, which shall apply them accordingly.

Art.210^{3} - The designation of a branch as being significant shall not affect the rights and responsibilities of the National Bank of Romania foreseen in this emergency ordinance.

26. On **Article 222 para.(1), lett.a)** is amended as follows:

a) central banks of the European System of the Central Banks and other bodies with a similar function in their capacity as monetary authorities, when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;

27. On **Article 222**, after **para.(5)** is introduced **para.(6)** as follows:

(6) In an emergency situation as referred to in Article 183 para.(1), the National Bank of Romania may communicate information to the central banks of the European System of the Central Banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system.

28. On **Article 222[1]**, after **para.(2)** is introduced **para.(3)**, as follows:

(3) In an emergency situation as referred to in Article 183 para.(1), the National Bank of Romania may disclose information which is relevant to the departments referred to in the first paragraph of this Article in all Member States concerned.

29. On **Art. 226 para. (2)**, after **lett.h)** is introduced **lett.i)**, as follows:

i) ordering the credit institution to draw up and approve a recovery plan to improve the condition of its activity, which must contain detailed measures and activities to be taken to provide an adequate management of the risks on which the credit institution is exposed to and/or to remove the irregularities in its activity, as well as the timeframe for their implementation;

30. Article 226 para.(4) is amended as follows:

(4) The recovery plan provided for in para.(2) lett. i) may include, without being limited to, any of the measures referred to in para.(2) lett. a) – f) and h) or a combination of these measures and can be implemented if the National Bank of Romania considers it to be appropriate for the achievement of the set objective.

31. Article 230 para.(1) is amended as follows:

Art. 230 - (1) Where the persons having a qualifying holding 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 pursue a policy 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.

32. On **Art.230**, after **para.(3)** is introduced **para.(4)**, as follows:

(4) If the measure of suspension of voting rights provided in para.(1) is applied to all shareholders, the National Bank of Romania may decide on the withdrawal of the credit institution's authorization, the provisions of Art.255 being applicable.

33. Art.237 para.(1) is amended as follows:

Art.237 – (1) The National Bank of Romania may decide on the initiation of the special supervision of a credit institution, Romanian legal person, for infringement of the law or of the regulations issued for its application, detected following the on-site inspections and/or the assessment of the reports submitted by the credit institution, as well as for finding a poor financial standing, unless it decides on the initiation of the special administration.

34. Art.238 para(1) lett.b) is amended as follows:

b) suspension of applications of certain decisions made by the credit institution's statutory bodies or by persons having administrative and/or management responsibilities, which are contrary to the prudential and sound banking practice, to the requirements of the law and regulations issued for its application or lead to the deterioration of the credit institution's financial standing;

35. Art.240 is amended as follows:

Art. 240 - (1) The National Bank of Romania may decide on the initiation of the special administration of a credit institution, Romanian legal person, in any of the following circumstances:

a) the special supervision measure was not efficient for a period of up to 3 months;

b) a significant deterioration of the prudential and financial performance indicators has been occurred or is predictable to occur which is likely to jeopardize the capacity of the credit institution to meet the prudential requirements in the short term and the shareholders did not take the necessary measures to redress the situation;

c) there are found serious deficiencies in the administration and/or management of the credit institution or severe and repeatedly infringements of the law and/or regulations issued for its application, which are seriously threatening the interests of its depositors;

d) the credit institution regarding which one or more measures have been taken under Article 226 para.(2) letter a) to f) and letter h) failed to fully implement such measures within the determined timeframes, whereby this failure may jeopardize the bank's liquidity and/or the adequate level of the own funds;

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

f) the credit institution has failed to submit the recovery plan referred to in Art.226 para. (2), letter i) for improving the condition of the bank within the prescribed timeframe, or the National Bank of Romania has found the submitted plan unacceptable, or the bank has failed to meet the obligations set out in such a plan within the defined timeframe, or the problems related to liquidity or the level of own funds of the credit institution cannot be resolved with a recovery plan;

g) initiation of the special administration is reasonably requested by the Board members, or, as the case may be, the supervisory council, or the general meeting of shareholders;

h) the National Bank of Romania declared as unavailable the credit institution's deposits, in accordance with the provisions of the Government Ordinance no.39/1996 on the establishment and operation of the Bank Deposit Guarantee Fund in the banking system, republished, with further amendments and supplements;

(2) Apart from the situations provided in para.(1), National Bank of Romania should initiate the special administration 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, except when it decides to withdraw the credit institution's authorization and, if the case may be, files a petition to the competent court in order to open the bankruptcy proceeding.

(3) In case of initiation of the special administration according to paragraphs (1) and (2), and taking into account the concrete circumstances that led to the adoption of this measure, the National Bank of Romania shall also decide, as the case may be, on the following:

(a) to withdraw the approval granted to persons discharging administration and/or management duties, according to the provisions of Art. 228 in corroboration with Art. 229;

(b) to withdraw the approval granted to the financial auditor of the credit institution, according to Art.157;

(c) to suspend the voting rights of the shareholders with qualifying holdings in the credit institution.

(4) In taking the decision provided in para.(3) letter c), the National Bank of Romania shall assess the influence of the persons concerned on the credit institution, which may threatening the prudential administration of the credit institution, in particular taking into account their responsiveness to the recommendations made under Art. 168, the measures provided in Art.226 or, as the case may be, to the requests made under Art.230[1].

36. After **Art.240** are introduced 22 new articles, **Art.240^{1} - Art.240^{22}** as follows:

240^{1} – (1) The special administration measure shall cover also the activity of the branches of the credit institution established abroad.

(2) Except for the situation provided in Art. 240^{2} para.(1), an announcement regarding the initiation of the special administration shall be published in *Monitorul Oficial al României*, Part Four and shall be notified to the other supervisory authorities in Romania.

Art. 240^{2} - (1) The special administration may be initiated also, if and during the discharging of administration and/or management duties is no longer fulfilled at the level of the credit institution.

(2) In case provided in para. (1), the main task of the special administrator is to take the necessary measures for appointing the Board members and managers of the credit institution or, the members of the supervision council and the directorate, as appropriate. During this administration, the special administrator is allowed to take any other decisions which may be adopted by the credit institution's Board members and managers, or by the supervision council and directorate, in accordance with the law.

Art. 240^{3} – (1) In case of initiation of the special administration for a credit institution, Romanian legal person, with branches in other member states, the National Bank of Romania shall notify, by any available means, the appropriate supervisory authorities from other member states regarding the decision of initiation of the special administration and their effects, if possible, prior or immediately after the adoption of the decision.

(2) For situations referred to in para.(1), the procedure of special administration shall be governed by the Romanian law, except those provided by Art.266-Art.274, applied accordingly.

(3) The special administration shall be set up to all the branches of the credit institution, Romanian legal person, opened in other Member States, starting with the date of National Bank of Romania's decision or with a subsequent specified date in that decision. The measures taken during the special administration shall produce effects according to the Romanian legislation, without any other formality, in all the Member States with branches opened by the credit institution, inclusively in those Member States where the applicable legislation does not provide such measures or where their implementation depends on the fulfilling of certain requirements.

Art. 240[4] - (1) Special administration shall be established for a period of 4 months from the date the decision was taken by the National Bank of Romania, except for the case where the decision sets a shorter period of time.

(2) The National Bank of Romania may extend the period of time referred to in para. (1), if such an extension is necessary to finalize the restructuring measures of the credit institution.

Art. 240[5] - (1) In view of exercising the special administrator's duties, the National Bank of Romania may appoint one or more individuals or a legal person, which may be the Bank Deposit Guarantee Fund in the banking system.

(2) The National Bank of Romania's decision regarding initiation of the special administration includes the nomination of the persons designated as special administrator, their objectives and specific tasks determined in accordance with the provisions of this emergency ordinance, the special administrator's remuneration, the permitted amounts of expenditures it may incur in the performance of the authorized tasks, as well as other terms that the National Bank of Romania considers significant.

(3) In appointing persons according to para.(2), the National Bank of Romania should consider the following:

a) the individual in question or, if a legal entity is appointed, the individuals having representative capacity of the legal entity, should not be in one of the incompatibility situations referred to in Art.110, should not be debtor or creditor of the credit institution or a person related to the credit institution;

b) the individuals referred to in letter a), as well as individuals assisting the special administrator in discharging its duties shall have good reputation, corresponding competence and sufficient professional work expertise and shall be independent, considering, in this context, the criteria provided by Law no.31/1990 on trading companies, republished, with further amendments and supplements, for the appointment of the independent administrator.

(4) If more than one individual are appointed to exercise the duties of the special administrator, the National Bank of Romania's decision shall define the division of powers among these individuals and their chain of command.

(5) The National Bank of Romania may replace the persons appointed as special administrator if they don't act in conformity with applicable laws or regulations, or orders or

instructions given by the National Bank of Romania, or if they no longer meet the conditions provided in para (3).

(6) All the expenses pertaining to the special administration, including those incurred by the Bank Deposit Guarantee Fund in the banking system upon performing special administration, shall be borne by the credit institution, subject to this measure. If one or more employees of the National Bank of Romania are designated to perform the special administrator's duties, their remuneration for the special administration shall be paid by the National Bank of Romania.

Art. 240[6] – (1) The special administrator shall act in accordance with the applicable law and rules, as well as with the orders and instructions given by the National Bank of Romania at any time in the course of the special administration, and shall be accountable only to the National Bank of Romania for the performance of duties and the exercise of powers as special administrator. The special administrator may hire other persons, such as auditors, attorneys, appraisers, other independent authorized experts to assist in the performance of his duties, and delegate specified administrative tasks in accordance with the instructions issued by the National Bank of Romania.

(2) Special administrator, and any other persons, that might be hired to assist in the performance of the special administration, shall not be personally liable for damages that might arise from actions taken or omissions in the performance of their duties in accordance with the law, unless it has been proved that the particular action giving rise to damages has been performed in bad faith or with gross negligence.

(3) Expenses in which the persons mentioned in para.(2) may have to incur to defend themselves in court shall be covered by the National Bank of Romania for all cases where the duties were performed in good faith and without negligence.

(4) The persons referred to in para.(2) shall keep the professional secrecy, according to the provisions provided in Chapter V, Title III, Part I.

Art. 240[7] – (1) The National Bank of Romania may set certain restrictions and/or conditions on the activity and administration of the credit institution under special administration, and may entirely or partially restrict the supplying of certain financial services. Any of such limitations, conditions and restrictions shall be notified to the special administrator who is responsible for their observance.

Art. 240[8] – (1) During the special administration, the mandate of the Board members and managers or that of the supervision council and the directorate, as appropriate, shall cease and the special administrator shall take over all the administration and management tasks of the credit institution.

(2) The functioning of the general meeting of shareholders shall be suspended during the special administration unless it is convened by the special administrator if there is need for its decision, according to Art.240[12] para.(3). In such cases, the special administrator shall establish the meeting's agenda, with the prior consultation of the National Bank of Romania, and the convened persons may not alter it, without prejudice to the rights of the shareholders accounting for at least 5% of the share capital to require the introduction of new items on the agenda, if the credit institution is listed on a regulated market.

(3) The shareholders accounting for at least 50% of the voting rights shall be allowed to submit to the special administrator viable proposals for the credit institution's financial recovery which can be taken into consideration in elaborating the action plan or in the formulation of proposals for amending it, according to the provisions of Art. 240[15] para.(1) and (3).

(4) Where the National Bank of Romania decided to suspend the voting rights of one or more shareholders with qualifying holdings in the credit institution, according to Art.230 para. (1), Art.230[1] para.(2) or, where appropriate, Art.240 para.(3) letter c), for the general meeting of shareholders shall be convened the shareholders whose voting rights were not suspended, the majority foreseen by the law, or as appropriate, by the Article of association for taking decisions, being reported, in this case, to the total share capital held by those shareholders.

Art. 240[9] - (1) After taking over the credit institution's administration, the special administrator shall, without delay, inform of this measure the credit institution's departments, branches, the correspondent credit institutions, the trade register and, where appropriate, the Bank Deposit Guarantee Fund in the banking system.

(2) The notification shall be in writing and shall also include the signature specimen of the special administrator. The notification addressed to correspondent credit institutions shall also include the mention that all further operations carried out through the credit institution's account shall be authorized only by the special administrator or by the persons expressly empowered by him.

(3) In the course of the special administration, the special administrator shall have unrestricted access to, and control over, the properties, offices, assets and the books of account and other records of the bank subject to special administration. In case of physically hinder, immediately upon request of the special administrator, law enforcement officials shall assist the special administrator to gain access to any premises of the bank and to gain control over and to secure such properties, assets, books and records.

Art.240[10] – (1) For credit institutions with branches in other Member States, the special administrator shall publish an extract of the decision of the National Bank of Romania on the initiation of special administration in the Official Journal of the European Union, by its prompt submission, by adequate means, to the Official Publications Office of the European Union, and in two national daily newspapers on the territory of each host Member State. Where appropriate, the provisions of Art.261 para.(3) shall be applied accordingly.

(2) – The extract of the decision shall mention, in the official language/languages of that/those Member State/States, especially the object and the legal ground regarding the initiation of special administration, the time limit of appeal and the authority where the decision may be disputed, by indicating its address.

(3) The implementing of measures adopted during the special administration shall not be conditioned upon the fulfilling of disclosure formalities referred to in para. (1) and (2).

(4) The special administrator shall carry on its tasks on the territory of the host Member States, subject to the provisions of Art.262, applied accordingly.

Art. 240[11] - (1) The tasks of the special administrator, determined by decision of the National Bank of Romania, may include any restoration measures, in the interest of the credit institution's depositors, that are necessary to preserve the value of the credit institution's assets, to remedy deficiencies in its administration and to collect its claims as well as any measures necessary to implement a restructuring of the credit institution' activity, in accordance with this Emergency Ordinance.

(2) As promptly as possible after its appointment, the special administrator shall establish the possibility and relative costs and merits of the following alternatives:

a) the restoration of the credit institution to viability;

b) the restructuring of the credit institution by the implementation of measures provided for

in Article 240^{12} para.(1);

c) a direct petition to the courts of bankruptcy of the credit institution.

(3) The special administrator's assessment according to para.(2) shall be substantiated in the report provided for in Art. 240^{15} and documented..

(4) Following his/her appointment, the special administrator shall ensure the safekeeping of the credit institution's assets and documentation. Within up to one month from the moment of his/her appointment, the special administrator is obliged to assess and to take the stock of the credit institution's assets and liabilities and prepare the financial statements that shall be submitted to the National Bank of Romania, together with the report referred to in Article 240^{15}.

(5) The restoration measures that could be taken by the special administrator may include the following:

a) negotiation of the credit institution's claims and/or setting their new maturity;

b) suspension of the deposit-taking and/or credit granting;

c) limitation or restructuring of the unprofitable activities, including the closing branches;

d) reduction of the expenses, including through rescaling the personnel;

e) improving the administration framework, strategies, processes and mechanisms implemented by the credit institution;

f) revaluation of the necessary provisions or of the treatment of credit institution's exposures in relation to the risks assumed;

g) mitigation of risks related to credit institution's operations, products and/or systems;

h) any other measures that the credit institution's Board members and managers, or the supervision council and the directorate, may adopt in compliance with the law;

i) halt fraudulent activities and abuses of any kind made by the related parties of the credit institution;

j) take legal actions in order to cancel fraudulent agreements, previously concluded by the credit institution, including the contracts where the credit institution's obligations are disproportionate as compared with the services performed by the other party of the contract;

k) notify the competent authorities if there are reasons to consider that infringements were committed.

Art. 240[12] - (1) The special administrator may be authorized by the National Bank of Romania to implement measures for restructuring the credit institution's activity which may include:

a) increasing the share capital;
b) writing down the share capital to absorb losses;
c) asset sales operations;
d) deposits transfer operations;
e) acquisition of assets and assumption of liabilities, where another credit institution or financial institution acquires assets of the credit institution under special administration and assumes its liabilities, in exchange;
f) merger with other credit institutions;
g) total or partial split-up.

(2) In the meaning of para.(1), the special administrator shall act in accordance with the instructions given by the National Bank of Romania which may specifically or generally indicate the implementation manner.

(3) Special administrator shall convene the general meeting of shareholders to decide on the implementation of the measures provided in para.(1) letters a), b), f) and g) and to limit or suspend the shareholders' preferential subscription right for new shares, in case of increasing the share capital. The implementation of the restructuring measures provided in para.(1) letters, c), d) and e), by derogation from the provisions of Art.153[22] of the Law no.31/1990 on commercial companies, republished, and subsequently amended and supplemented, as well as of the restoration measures provided in Art.240[11] para.(5) does not require an approval of the general meeting of shareholders.

(4) The deadline for holding the general meeting of shareholders, except for that convened to decide on the merger or split-up is, for the first convene, of up to one week after the date of the publication of the convening, according to the law, or up to one week after the date of the notification by registered letter or electronic mail, with incorporated, attached or logically associated the extended electronic signature. The formalities of convocation may not be met if all the shareholders who may exercise their voting rights agree to hold a general meeting.

(5) The provisions of para.(4) shall not apply if the credit institution under the special administration is quoted on a regulated market, in which case the convocation shall be made according to the law specific to the capital market.

(6) If the general meeting of shareholders does not take the necessary decisions in cases provided for in para. (3), in the absence of any viable recovery solutions, the National Bank of Romania shall decide to withdraw the authorization of the credit institution, with proper application of Art. 240^{16} para.(2) lett.b).

Art. 240^{13} - (1) For the implementation of the measures regarding increasing or writing down the share capital, the following shall be taken into account:

a) where the increase of the share capital is necessary, for well-founded reasons, justified by an investor's serious intention to participate in the credit institution's capital, the special administrator may ask the general meeting of the shareholders to suspend the shareholders' preferential subscription right for new shares, in whole or in part, with the prior approval of the National Bank of Romania; in all other cases, the preferential right may be exercised within 14 days from the publication of the decision of the general meeting, according to the law;

b) any increase in the share capital should be done only after it has been written down to absorb all existing losses, or by adequate elements of own funds;

c) the increase in the share capital must guarantee at least a level of own funds enabling the credit institution to meet the prudential requirements provided by law and applicable regulations;

d) the decision on the reduction in the share capital to absorb losses will be in effect from the date of its publication according to the law, and the special administrator must take the necessary measures for the publication within the emergency procedure. In this case, the decision could not be subject to the opposition of the social creditors, according to Law no.31/1990, republished. The provisions of Art. 240^{21} - 240^{22} shall be applied accordingly.

Art. 240^{14} – (1) The operations of a credit institution under special administration, related to assets sale, deposits transfer, assets sale with assumption of liabilities and merger/split-up may be carried on to credit institutions or, as the case may be, to financial institutions which, in the opinion of the National Bank of Romania, have a financial standing that allows them for the acquisition of assets and/or assumption of liabilities and such operation does not put at risk the soundness and viability of their activity or if the case may be, their capacity to meet the prudential requirements, and in particular the requirements on the minimum level of own funds.

(2) In implementing the measures provided for by para.(1), the following requirements shall be met:

a) the alternative offers regarding credit institution's purchase and assumption transactions shall be evaluated with a view at maximizing the amounts payable, at market conditions, for assets involved in such a transaction; in this respect, the determination of the assets value at the reference date, shall be accomplished by an independent authorized expert, applying one or more alternative evaluation methods recognized by the law in force at the valuation date;

b) fair treatment and fair competition among institutions that indicate their intention for taking over should be ensured;

c) in effecting purchase and assumption transactions, priority shall be given to the transfer of guaranteed deposits;

d) in case of asset sale transactions, the contractual documentation concluded with the recipient institutions, shall not contain clauses providing for the restitution, in certain circumstances, of the transferred assets and corresponding payments;

e) the amounts that could result from transactions provided for in letter (a), less costs related to such transactions, shall be made available to the credit institution for its activity, or as the case may be, to pay the creditors in the event of liquidation/bankruptcy.

(3) For the implementation of restructuring measures referred to in Art. 240^{12} para.(1) letters c), d) and e), the consent of depositors or other creditors or debtors of the credit institution shall not be required. Notification thereof shall be given, immediately upon the execution of such measures, through a public announcement made by the special administrator on the *Monitorul Oficial al României*, Part Four and in one or more newspapers of general circulation, and where appropriate, through publicity provided in compliance with the provisions of Art.240^{10}. All interested parties may obtain the necessary information on the state of their claims or obligations from the credit institution under the special administration, and the special administrator shall take the necessary measures in this respect.

(4) If case of transfer of deposits and other claims, the depositors/accountholders may keep their accounts/deposits with the credit institution to which the transfer was made or may require the repayment of the deposited amounts.

(5) The purchasing institution shall be responsible only for the liabilities recorded in the financial statements produced by the special administrator, and subject to the terms of the purchase and assumption agreement.

Art. 240[15] - (1) Within maximum 2 months from his appointment, the special administrator shall submit a written report to the National Bank of Romania, which shall document the following:

a) the measures taken since the special administration was implemented and their effects;

b) the evaluation of the possibility and relative merits and costs of a restoration, restructuring or, as the case may be, bankruptcy of the credit institution, including an assessment of the amounts likely to be realized in a liquidation of the bank;

c) the recommendations of the special administrator on the measures he considers appropriate, based on the evaluations made, which may include an action plan for the approval of the National Bank of Romania consisting of the implementation of any of the restructuring measures provided for in Art.240[12] para.(1), or a combination thereof, without excluding the application or carrying on the application of restoration measures provided in Art. 240[11] para.(2).

(2) The report mentioned in para.(1) shall be submitted together with documents regarding the inventory and assessment of the credit institution's assets and liabilities, the claims retrieval statement, the cost of preserving the assets and the statement on debt repayment, as well as the credit institution's balance sheet prepared in accordance with Art. 240[11] para.(4).

(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 independent authorized expert 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.

(4) The special administrator may ask the National Bank of Romania's approval to implement the measures provided in art. 246[1] para.(1) lett.c), d) and e) and in particular, to transfer guaranteed deposits, before submitting the report provided in para.(1), in emergency situations and given the opportunity for such measures to be achieved

(5) For well-founded reasons, the National Bank of Romania may, on recommendation of the special administrator, extend the time limit referred to in para. (1) for submitting the report by one month at most.

Art. 240[16] - (1) Within 15 days from receiving the special administrator's report, the National Bank of Romania shall decide upon the timeliness and period of time of maintaining the special administration and upon the recommendation of the special administrator and by case, shall approve, with or without amendments, or shall disapprove the proposed action plan.

(2) Where the National Bank of Romania considers that there are no favorable conditions for the restoration of the credit institution's financial standing so that it cannot be improved to the extent that the credit institution would fulfill the prudential requirements established by law or by the regulations issued for its enforcement, the National Bank of Romania may decide on the following, as appropriate:

a) implementation of the restructuring measures, according to the approved action plan or, in its absence, based on the evaluations provided in Art.240^{15} para.(1) lett.b) and setting of a time limit in which the special administrator shall undertake steps for the restructuring of the credit institution;

b) the withdrawal of the credit institution's authorization and informing the competent court in order to open winding-up proceeding, or, as the case may be, the withdrawal of the authorization followed by the dissolution and liquidation of the credit institution, in accordance with the provisions of Section 3 of this Chapter.

(3) The National Bank of Romania may require for the amendment of a previously approved action plan or may approve the amendment of the action plan made at the recommendation of the special administrator, whenever it considers as necessary, prior to and until the time of its fulfillment.

(4) While assessing the relative merits and costs of the different alternatives discussed in the special administrator's report, in accordance with Art.240^{15} para.(1) lett.b), and in deciding in accordance with para.(1), the National Bank of Romania pursuing firstly the objective of maintaining the financial stability and depositor's protection shall take into consideration the less costly alternative from this prospective.

(5) The adoption of measures for credit institution's restructuring during the special administration should seek to ensure the credit institution's creditors for a treatment that is no less favourable than that applicable if the restructuring measures would have not been implemented and the credit institution would have gone directly into liquidation, taking into account the estimated amounts due to them following the distribution, in case of bankruptcy, based on the estimates made in accordance with Art. 240^{15} para.(2).

Art. 240^{17} - (1) Throughout the special administration, the special administrator shall submit to the National Bank of Romania reports on the credit institution's financial standing and on the status of the measures implemented, at the dates set by the National Bank of Romania.

(2) The provisions of para.(1) do not prejudice the right of the special administrator to report to the National Bank of Romania on any impediments that occur in implementing the approved measures and to propose changes to such measures. The special administrator shall propose to the National Bank of Romania to withdraw the authorization of the credit institution, if these impediments are due to the opposition of the general meeting of shareholders to adopt the necessary decisions or are due to objective considerations that prevent from the implementation of the approved measures within a reasonable time, and no other viable solutions are foreseeing for resolution of the credit institution.

Art. 240[18] - (1) On the basis of the special administrator's reports, the National Bank of Romania may, at any time, decide to discontinue special administration in order to restart the credit institution's activity under its statutory bodies' control, or to withdraw the credit institution's authorization, the provisions of Art.240[16] para. (2) letter b) being applied accordingly.

(2) If, as a result of the implementation of the restructuring measures, only a partial transfer of the credit institution's assets and liabilities or only a partial split-up were made, and other viable solutions for the recovery or for the complete takeover of the concerned credit institution are not foreseen, the National Bank of Romania shall decide to withdraw the authorization and, as the case may be, shall notify the competent court of the initiation of the bankruptcy proceedings.

Art. 240[19] - (1) Where, on the basis of the special administrator's reports, the National Bank of Romania finds that during the period of special administration the credit institution's financial standing improved to the extent that the prudential requirements, established by this Government Emergency Ordinance and the regulations issued for its enforcement are met, the National Bank of Romania shall decide upon the discontinuation of special administration with resumption of the credit institution's activity under its statutory bodies' control. In this respect the special administrator shall take the necessary measures in order to designate the new persons that will carry out the tasks of Board members and/or managers of the credit institution.

(2) A statement on ending the special administration shall be published in accordance with the provisions of Art. 240[1] para. (2) and, as the case may be in accordance with the provisions of Art. 240[10].

(3) Prior to the appointment and approval by the National Bank of Romania of the persons referred to in para. (1), the special administrator shall ensure the administration and management of the credit institution.

Art. 240[20] – Where the National Bank of Romania decides to withdraw the credit institution's authorization and to inform the competent court in order to open bankruptcy proceedings, according to Government Ordinance No.10/2004 on bankruptcy of credit institutions, as approved with amendments and supplements by Law No.278/2004, until the appointment of a syndic judge of the liquidator, the administration of the credit institution shall be ensured by the special administrator.

Art. 240[21] - (1) Any person who has been prejudiced by the measures provided for and implemented during special administration in accordance with the provisions of this emergency ordinance, may file a petition to the competent court asking to be compensate for the damage caused, within 15 days from the date he/she knew or should have known the occurrence of the prejudice.

(2) If the court considers the applicant's claims to be justified, it may grant the compensations in the amount to be determined as a difference between the estimated amount that could have been received in case of bankruptcy and the actual amounts received following the distribution of amounts resulted from the liquidation of all the assets of the credit institution, made in accordance with the succession of debt extinction provided by the Government Ordinance No.10/2004, as approved, with amendments and supplements by Law No.278/2004. The estimated amount shall be determined for the date when special administration was initiated.

(3) Compensations shall be bearing by a special fund established in this purpose and administered by the Bank Deposit Guarantee Fund in the banking system.

Art. 240[22] - (1) Any measure taken during special administration shall not be suspended or invalidated, even in the bankruptcy proceedings of credit institutions. If the court rules that the measures are unlawful, the party favoured with the ruling shall be entitled to initiate a legal action for damages caused by the implementation of the unlawful measure, except in cases covered by criminal law.

(2) During the litigation related to these measures, the court shall rule on the lawfulness of them, the National Bank of Romania being the sole authority empowered to decide on the grounds of opportunity, on assessments and qualitative analyses which have given reason for such measures.

37. Articles 241 – 254 are repealed

38. Title IV – Electronic Money Institutions of Part II – Specific provisions, Articles 321 – 332 are repealed

39. After **Article 404** is introduced **Article 404[1],** as follows:

Art. 404[1] - (1) The payment systems shall ensure the unrestricted access to the system of the payment service providers, credit institutions and payment institutions, in the meaning of the Emergency Government Ordinance no.113/2009 on payment services, based on objective, non-discriminatory and proportionate rules, that will not inhibit the access more than is necessary to safeguard the payment system against specific risks such as settlement risk, operational risk and business risk and to protect the financial and operational stability of the payment system.

(2) Payment systems shall impose on payment service providers, on payment service users or on other payment systems none of the following requirements:

a) any restrictive rule on effective participation in other payment systems;

b) any rule which discriminates the payment institutions in relation to the rights and obligations of participants;

c) any restriction on the basis of institutional status.

(3) Paragraphs 1 and 2 shall not apply to:

a) payment systems designated by the National Bank of Romania according to the Law no.253/2004 on the final feature of settlements in the payment system and in the settlement systems of operations with financial instruments, to which this law is applicable;

(b) payment systems composed exclusively of payment service providers belonging to a group composed of entities linked by capital where one of the linked entities enjoys effective control over the other linked entities;

(c) payment systems where a sole payment service provider, whether as a single entity or as a group, fulfills cumulatively the following conditions: acts or can act as the payment service provider for both the payer and the payee and is exclusively responsible for the management of

the system, and in the meantime licenses other payment service providers to participate in the system and the latter have no right to negotiate fees between or amongst themselves in relation to the payment system although they may establish their own pricing in relation to payers and payees.

Art.II – The reserves in the balance representing the general reserve for credit risk and the fund for general banking risks, set up according to the law, may be used for the purpose they have been established, respectively for decreasing of the loan losses and, as appropriate, from items constituting risk bearing assets specific for the banking activity.

Art.III – (1) Any application for approval of transforming an entity into a credit institution, submitted to the National Bank of Romania before entering into force of this emergency ordinance, being under examination on that date, shall be settled as follows:

a) the application shall be rejected if the National Bank of Romania has not taken any decision until that date on the approval of the transformation process, according to the regulations issued within this meaning;

b) the application shall be assessed according to the applicable regulations issued, regarding the authorization of functioning of the credit institution, as a result of transformation, if the National Bank of Romania has approved the transformation process.

(2) For any situations referred to in para.(1) lett.b) shall be applicable the regulations issued by the National Bank of Romania in compliance with the provisions of Section 2 of Chapter VII, Title I of Part I of the Government Emergency Ordinance no.99/2006, approved with amendments and supplements by Law no.227/2007, as further amended and supplemented.

Art.IV- On Article 2 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, published in Monitorul Oficial al României, Part I, no.904 of 12 December 2002, as further amended and supplemented, the first part of lett.f) shall be amended as follows:

"f) financial institution - an undertaking, with or without legal personality, other than a credit institution, which carries out one or more of the operations included in Art.18 para.(1), lett.b)

– l), lett.n) and lett.n[1]) of the Government Emergency Ordinance no.99/2006, approved with amendments and supplements by Law no.227/2007, with further amends and supplements, including the postal services providers, performing payment services and specialized entities carrying out the activities of currency exchanges. In this category are included also:"

Art.V – On Art.III para.(1) of the Government Emergency Ordinance no.53/2008 on amending and supplementing the 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 published in Monitorul Oficial al României, Part I, no.333 of 30 April 2008, lett.a) and b) shall be amended as follows:

a) the National Bank of Romania, for credit institutions and payment institutions;

b) the National Office on prevention and fighting against money laundering, for postal services providers, performing payment services according to the applicable national legislative framework.

Art.VI – Art.2 para.(2) of the Regulation on applying the provisions 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, approved by the Government Decision no.594/2008, published in Monitorul Oficial al României, Part I, no.444 of 13 June 2008 shall be amended as follows:

"(2) In the meaning of para.(1) lett.d), specialized entities carrying out the activities of currency exchanges, payment institutions providing only those payment services referred to in Art.8 lett.f) of the Government Emergency Ordinance no.113/2009 on payment services, as well as postal services providers carrying out payment services, shall not be considered third parties."

Art.VII – The provisions of this emergency ordinance shall enter into force on the date of its publication, with the following exceptions:

a) the provisions of Art.I, point 4, points 16-18, points 20-23 and points 25-28 which shall enter into force on 31 October 2010;

b) the provisions of Art.I, points 1-3, points 5, 6, 10, 12, 15 and 38, which shall enter into force on 30 April 2011;

c) the references on lett.n[1]) of Art.IV which shall enter into force on 30 April 2011

The provisions of Art.I, point 36 are transposing the provisions of Art.3, 4, 6 and 7, of Art.20-33 and of Art.34 para.(2) of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganization and winding up of credit institutions, published in the Official Journal of the European Community (JOCE) no.L 125 of 5 Mai 2001.

The provisions of Art.I, points 1-3, 5, 6, 8, 10, 12, 15 and 38 and, respectively those of Art.IV are transposing the provisions of Art.19 para.(1), Art.20, Art.21 para.(1) and Art.22 para.(1) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, published in the Official Journal of the European Community (JOCE) no.L 267 of 10 October 2009.

The provisions of Art.I, points 16-18, points 20-23 and points 25-28 are transposing the provisions of Art.1 para.(2) lett.c), para.(3)-(6) and para.(31)-(33) of Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management, published in the Official Journal of the European Community (JOCE) no.L 302 of 17 November 2009.

The provisions of Art.I, points 7 and 39 and those of Art.IV – VI are transposing the provisions of Art.28, 91 and 92 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, published in the Official Journal of the European Community (JOCE) no.L 319 of 5 December 2009.