- Unofficial translation -

Law No.231/2010
approving the Government Emergency Ordinance no. 26/2010
amending and supplementing Government Emergency Ordinance no. 99/2006
on credit institutions and capital adequacy and of other acts

The Romanian Parliament is adopting this law

Article I – Government Emergency Ordinance no.26/2010 amending and supplementing the Government Emergency Ordinance no.99/2006 on credit institutions and capital adequacy published in the Romanian Official Journal, Part 1, no. 208/1 April 2010 is hereby approved, with the following supplements:

1. On article I, before point 1 shall be introduced a new point as follows:

„On article 1, paragraph 5 shall be amended as follows:

(5) The provisions of this emergency ordinance shall not apply to the central banks of Member States. Other institutions that are not subject to the provisions of 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, as published in the Official Journal of the European Union L 177 of 30 June 2006, amended and supplemented, as laid down in Article 2 of that Directive, shall not benefit from the treatment provided by this emergency ordinance for credit institutions from the other Member States set up for the purposes of this emergency ordinance. Such institutions, with the exception however of the central banks of the Member States, shall be treated as financial institutions for the purposes of Chapter II of Title III, Part I.

2. On Article I, after point 8 shall be introduced point 8^1, as follows:

„8^1. Article 24 shall be amended as follows:

Art. 24 - (1) Every credit institution shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management.

(2) The governance arrangements, processes and mechanisms referred to in para.(1) shall be comprehensive and proportionate, related to the nature, scale and complexity of the activities

of the credit institution. The principles, technical criteria and other requirements considered shall be established by regulations issued in the application of this emergency ordinance. The internal control mechanisms shall provide at least the organising of the risk management tasks, and compliance with conformity and internal audit.

(3) The National Bank of Romania shall collect information on the number of individuals per credit institution in pay brackets of at least EUR 1 million or equivalent including the business area involved and the main elements of salary, bonus, long-term award and pension contribution and shall forward that information to the Committee of European Banking Supervisors.

(4) The National Bank of Romania shall use aggregate quantitative information on remuneration, broken down by business area, provided by credit institutions in compliance with the transparency and disclosure requirements, to benchmark remuneration policies and practices and shall provide the Committee of European Banking Supervisors with that information."

3. On Article I, after point 10 shall be introduced point 10^1, as follows:

„10^1. On Article 37, after paragraph (3) shall be introduced paragraph (4), as follows:

(4) With a view on assessing the quality of the persons and entities involved or linked to the submitted authorisation project, on the request of the National Bank of Romania, the National Office for Prevention and Control of Money Laundering shall provide information on the risk of money laundering or terrorist financing relating to the persons or entities concerned."

4. On Article I, after point 12 shall be introduced points 12^1 and 12^2, as follows:

„12^1. On Article 69, after paragraph (2), shall be introduced paragraph (2^1), as follows:

(2^1) The provisions of Article 37 para.(4) are also applicable accordingly, also regarding the request of information relating to the persons and entities involved or linked to the authorisation project of the branch of the credit institution in the third country.

12^2. On Article 72, the introductory part of paragraph (1) shall be amended as follows:

„Art.72 - (1) In assessing the quality of the credit institution in a third country, inclusively that of the persons owning qualifying holdings in that credit institution, the criteria

provided for in Article 26 para. (1), which shall be applied accordingly, as well as at least the following shall be taken into account:”

5. On Article I, after point 13 shall be introduced points 13^1 şi 13^2, as follows:

„13^1. Article 104 shall be amended as follows:

Art. 104 – The governance arrangements of a credit institution, the processes to identify, manage, monitor and report the risks, the internal control mechanisms as well as the remuneration policies and practices shall be established by its Articles of Association and internal regulations, according to the legislation in force applicable to commercial companies and in compliance with the provisions of this emergency ordinance and the applicable regulations.

13^2. Article 106 shall be amended as follows:

Art. 106 – Without prejudice to the principles, rules and practices agreed within the European Union in the field of corporate governance in the credit institutions, as they result from the regulations issued by the National Bank of Romania, the Board members and the managers or, as appropriate, the supervision committee and the directorate of the credit institution shall discharge the duties and tasks provided for in the legislation on commercial companies, and they are responsible for the fulfillment of all requirements provided for in this emergency ordinance and the regulations issued for its enforcement.”

6. On Article I, after point 15 shall be introduced points 15^1 – 15^7, as follows:

„15^1. Articole 123 shall be amended as follows:

Art. 123 – For the purpose of providing stability and soundness of the performed activity and/or of fulfilling of the commitments assumed, each credit institution shall keep an adequate level of its own funds, in compliance with Article 126.”

15^2. On Article 143, after paragraph (3) shall be introduced paragraph (4), as follows:

(4) The provisions of paragraphs (1) – (3) shall be applied in compliance with the provisions of Aricle 122.

15^3. On Article 148, after paragraph (1), shall be introduced paragraph (1^1), as follows:

(1[1]) The provisions of paragraph (1) shall be applied in compliance with the provisions of Article 122.

15[4]. Article 149 shall be amended as follows:

Art. 149 – The credit institutions are responsible for the internal assessment process of the capital adequacy to its own risk profile.

15[5]. On Article 150, after paragraph (2), shall be introduced paragraph (3), as follows:

(3) The provisions of Article 37 paragraph (4) shall be also applied for requiring of information relating to persons or entities involved or linked to the amendments in the position of the credit institution to the conditions underlied for its authorisation.

15[6]. On Article 159, paragraph (2) shall be amended as follows:

(2) Credit institutions shall adopt formal policies to comply with the transparency and disclosure requirements laid down, and have policies for assessing the appropriateness of their disclosures, including their verification and frequency. Credit institutions shall also have policies for assessing whether their disclosures convey their risk profile comprehensively to market participants; where those disclosures do not convey the risk profile comprehensively to market participants, credit institutions shall publicly disclose the information necessary in addition to that required in accordance with paragraph 1, but only information which is material and not proprietary or confidential in accordance with the technical criteria set out in the regulations referred to in paragraph (1) shall be disclosed'.

15[7]. After Article 163 shall be introduced Article 163[1], as follows:

Art. 163[1] – The provisions of Articles 159 – 163 shall be applied in compliance with the provisions of Article 122."

7. On Article I, after point 28 shall be introduced points 28[1] and 28[2], as follows:

„28[1]. On Article 225, after paragraph (1) shall be introduced paragraph (2), as follows:

(2) 'The measures and sanctions referred to in the first paragraph, the financial and non-financial measures, shall be effective and proportionate with the deeds and irregularities, taking in consideration their gravity and consequences, as well as the personal and real circumstances of the committed deed, having a dissuasive effect'.

28^2. On Article **226 paragraph (2), after letter e) shall be introduced letters e^1) and e^2), as follows:**

e^1) requiring credit institutions to limit variable remuneration as a percentage of total net revenues when it is inconsistent with the maintenance of a sound capital base;

e^2) requiring credit institutions to use net profits to strengthen the capital base."

8. On Article I, after point 29 shall be introduced point 29^1, as follows:

„29^1. On Article 226, after paragraph (3) shall be introduced paragraph (3^1), as follows:

(3^1) 'For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Article 166, the National Bank of Romania shall assess whether any imposition of a specific own funds requirement in excess of the minimum level is required to capture risks to which a credit institution is or might be exposed, taking into account the following:

(a) the quantitative and qualitative aspects of the credit institutions' internal assessment process referred to in Article 148;

(b) the governance arrangements, processes and mechanisms of the credit institution referred to in Article 24;

(c) the outcome of the review and evaluation carried out in accordance with Article 166.'

9. On Article I, after point 30 shall be introduced point 30^1, as follows:

„30^1. On Article 229, paragraph (3) shall be repealed."

10. On Article I, after point 32 shall be introduced points 32^1 and 32^2 as follows:

„32^1. On Article 231, after paragraph (2) shall be introduced paragraph (3), as follows:

(3) The suspension of exercising the voting rights shall cease starting with the date of approving the aquiring or increasing of a qualifying holding, under the conditions of this emergency ordinance, by applying the appropriate procedures referred to in Article 25 paragraphs (3) – (9).

32^2. After Article 231, shall be introduced Article 231^1, as follows:

Art. 231^{1} – (1) The provisions of Article 231 paragraph (1) and (3) shall also apply to a proposed acquirer which, although complying with the obligation of notification, according to Article 25 paragraph (1), is acquiring the proposed acquisition before its approval according to the provisions of this emergency ordinance.

(2) If as a result of the assessment, the National Bank of Romania does oppose the proposed acquisition in writing, the provisions of Article 232 paragraphs (1) – (3) will become applicable."

11. On Article I, point 36, on Article 240^{15}, after paragraph (3) shall be introduced article (3^{1}), as follows:

„**(3^{1})** The independent authorised expert referred to in paragraph (3) and in Article 240^{14} paragraph (2) lett.a) shall have appropriate experience in the field of assessing the banking assets, shall be an active member of the Chamber of Financial Auditors of Romania and shall be agreed by the National Bank of Romania; it is considered that these conditions are fulfilled by the financial auditor approved by the National Bank of Romania in compliance with the provisions of Article 155 para.(1). The financial auditor which carried on specific proffesional activities in the credit institution under special administration during the past 5 years, shall not fulfill the specific tasks of the independent authorised expert."

12. On Article I, after point 38 shall be introduced point 38^{1}, as follows:

„38^{1}. On article 367, paragraph (1) shall be amended as follows:

Art. 367 - (1) In case of organisation to the level of credit cooperative of structures regarding the management and control of risks, internal audit, conformity, treasury, credit activity, as well as any other activities which may expose the credit cooperative to significant risks, the persons appointed to conduct the business of these structures shall be approved by the central body before starting the performance of the responsibilities, according to the regulations issued by the central body."

13. After Article III shall be introduced Article III^{1}, as follows:

„Art. III^{1} – Until 31 December 2012, the time limits established in Article 182^{2} para.(1) and in Article 182^{3} are of 6 months."

Art. II – Credit institutions shall ensure the compliance with the principles and rules in matters of remuneration policies, established by regulations issued for the application of the

Government Emergency Ordinance no.99/2006, as further amended and supplemented, as amended and supplemented by this law, including in the case of:

a) remunerations established according to the contracts concluded before 31 December 2010 inclusively, which are due and paid after that date;

b) remunarations due, but not yet paid, before the date of 31 December 2010 inclusively, for activities performed during the year 2010.

Art. III – This law shall enter into force after 3 days from its publication in Romania's Official Gazette, Part I, with the following exceptions:

a) the provisions of Article I point 2, point 5 regarding the amendment introduced on point 13^1, and points 7, 8 and 9 shall enter into force on 1 January 2011;

b) the provisions of Article I point 6 regarding the amendment introduced on point 15^6 shall enter into force on 31 December 2011.

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This law is transposing the provisions of the following Directives of the European Union:

1. the provisions of Article 1 of Commission Directive 2010/16/EU of 9 March 2010 amending Directive 2006/48/EC of the European Parliament and of the Council as regards the exclusion of a certain institution from the scope of application, published in the Official Journal of the European Union (JOUE) no. L 60 of 10 March 2010;

2. the provisions of Article 1 points 3, 4, 10, 11 and of Article 3 paragraphs 1 and 2 of Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies.