

Law No. 227 of 4 July 2007

approving **Government Emergency Ordinance No. 99/2006** on credit institutions and capital adequacy

Published in *Monitorul Oficial al României*, Part One, No. 480 of 18 July 2007

Sole article. – Government Emergency Ordinance No. 99 of 6 December 2006 on credit institutions and capital adequacy published in *Monitorul Oficial al României*, Part One, No. 1027 of 27 December 2006 is hereby approved, with the following amendments and supplements:

1. Para. (2) under Art. 4 shall be amended, reading as follows:

“(2) In the performance of the tasks assigned to it by law, the National Bank of Romania shall collect and process any relevant data and information, including those of a personal nature.”

2. Point 6 of para. (1) under Art. 7 shall be amended, reading as follows:

“6. *investment firm* – any legal person whose activity consists in providing one or more financial investment services to third parties and/or carrying on one or more investment activities on a professional basis, including financial investment companies, as defined by Law No. 297/2004 on capital market, as subsequently amended and supplemented. “Investment services and activities on a professional basis” means any of the services and activities listed below:

A. investment services and activities:

- a) registration and transmission of orders in relation to one or more financial instruments;
- b) execution of orders on clients’ behalf;
- c) dealing on own account;
- d) portfolio management;
- e) investment advice;
- f) underwriting financial instruments and/or placing financial instruments on a firm commitment basis;

g) placing financial instruments without a firm commitment basis;

h) operation of a multilateral trading facility;

B. ancillary services:

a) safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;

b) granting credits or loans to an investor so as to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is part of the transaction;

c) advice to undertakings on capital structure, industrial strategy and related matters as well as advice and services relative to mergers and acquisitions of undertakings;

d) foreign exchange services where these are connected to the provision of investment services;

e) investment research and financial analysis or other forms of general recommendation relative to transactions in financial instruments;

f) services related to underwriting on a firm commitment basis;

g) investment services and activities as well as ancillary services of the type included under points 1 and 2 of Annex 1 related to the underlying asset of the derivatives included under point 14¹ letters e), f), g) and j), where these are connected to the provision of investment or ancillary services;”.

3. After point 14 of para. (1) under Art. 7, point 14¹ shall be inserted, reading as follows:

“14¹. financial instruments:

a) transferable securities;

b) money market instruments;

c) units in collective investment undertakings;

d) options, futures, swaps, forward rate agreements and any other derivative contracts relative to securities, currencies, interest rates or profitability ratios, or other derivative instruments, financial indices or financial measures that may be settled physically or in cash;

e) options, futures, swaps, forward rate agreements and any other derivative contracts relative to commodities that must be settled in cash or may be settled in cash at the request of one of the parties (other than by reason of a default or other termination event);

f) options, futures, swaps, and any other derivative contracts relative to commodities that can be physically settled provided they are traded on a regulated market and/or a multilateral trading facility;

g) options, futures, swaps, forward rate agreements and any other derivative contracts relative to commodities, that can be physically settled not mentioned under letter f) and not being intended for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

h) derivative instruments for the transfer of credit risk;

i) financial contracts for differences.

j) options, futures, swaps, forward rate agreements and any other derivative contracts relative to weather variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the request of one of the parties (other than by reason of a default or other termination event), as well as any other derivative contracts relative to assets, rights, obligations, indices and measures not mentioned in this definition, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls.”

4. Art. 13 shall be amended, reading as follows:

“Art. 13. – The persons that are charged with the administration and/or management of the credit institution, in their capacity as Board members, managers, members of the supervision council or of the directorate, shall fulfil the requirements set forth in Chapter I of Title II, Part I.”

5. Para. (2) under Art. 18 shall be amended, reading as follows:

“(2) The activities provided for in para. (1), letters g)–k) shall include all the financial investment services laid down under Art. 7, para. (1), point 6, when referring to the financial instruments laid down under Art. 7, para. (1), point 14¹.”

6. Para. (2) under Art. 18 shall be amended, reading as follows:

“(3) The authorities referred to in paras. (1) and (2) shall be consulted especially when assessing the suitability of the shareholders/members of the credit institution, Romanian legal person, and the reputation and experience of the persons involved in the administration and/or management of another entity belonging to the same group, who are to be assigned administration and/or management tasks pertaining to the credit institution, Romanian legal person. For this purpose, they shall exchange information relevant for the granting of the authorisation, as well as for assessing compliance with the conditions for the pursuit of business on a permanent basis.”

7. Letter e) of para. (1) under Art. 38 shall be amended, reading as follows:

“e) the National Bank of Romania is not satisfied with the suitability of the persons ensuring the administration and/or management of the credit institution, because their reputation or professional expertise is inadequate to the nature, scale and complexity of the credit institution’s activity or is not in line with the need to ensure a prudent and sound management;”.

8. Letter c) of para. (2) under Art. 48 shall be amended, reading as follows:

“c) the identity of the persons responsible for the management of the branch;”

9. Para. (1) under Art. 52 shall be amended, reading as follows:

“Art. 52. – (1) Branches of credit institutions from other Member States shall publish in the Romanian language the accounting documents of the credit institution they belong to – annual financial statements, consolidated financial statements, the report prepared by the administration and/or management bodies and, as appropriate, the consolidated report prepared by the administration and/or management bodies, opinion of the persons responsible for auditing the annual and consolidated financial statements – prepared and audited in accordance with the legislation of the home Member State.”

10. Para. (3) under Art. 60 shall be amended, reading as follows:

“(3) If the credit institution persists in breaching the Romanian legislation in force, contrary to the measures taken by the home Member State and communicated to the National Bank of Romania, or if such measures prove inadequate or are not applicable in Romania, the National Bank of Romania may, after notifying the competent authority of the home Member State, take appropriate measures to prevent or punish further breaches of legal provisions and, in so far as is

necessary, to prevent the offending credit institution from initiating further transactions within Romania's territory. The National Bank of Romania shall notify the credit institution concerned about the measures to be taken."

11. Para. (1) under Art. 63 shall be amended, reading as follows:

"Art. 63 – (1) Before following the procedure provided for in Art. 60, the National Bank of Romania shall, in emergency cases, take any precautionary measures necessary to protect the interests of depositors, investors and other services beneficiaries. The European Commission and the competent authorities of the other Member States concerned shall be notified of such measures at the earliest convenience."

12. Art. 68 shall be amended, reading as follows:

"Art. 68. – The branch established in Romania may use the same name as that of the credit institution in the home third country. In the event of there being any danger of confusion, the National Bank of Romania shall, for the purposes of an adequate clarification, require that the name be accompanied by certain explanatory particulars."

13. Para. (1) under Art. 71 shall be amended, reading as follows:

"Art. 71. – (1) A credit institution in a third country shall designate at least two persons responsible for the management of the branch in Romania, who shall be empowered to legally engage the credit institution in Romania. Those persons shall enjoy sufficiently good reputation and expertise to discharge the assigned duties. The provisions under Chapter I of Title II, Part I, referring to the persons ensuring the management of credit institutions shall be applied accordingly."

14. Art. 74 shall be amended, reading as follows:

"Art. 74. – The authorisation granted to a branch of a credit institution from a third country may be withdrawn by the National Bank of Romania under the conditions provided for in Art. 39."

15. Para. (1) under Art. 76 shall be amended, reading as follows:

"Art. 76. – (1) Branches of credit institutions in third countries shall publish in the Romanian language the accounting documents of the credit institution they belong to – annual financial statements, consolidated financial statements, report of the Board members and/or managers, and,

as appropriate, the consolidated report of the Board members and/or managers, opinion of the persons responsible for auditing the annual and consolidated financial statements – prepared and audited in accordance with the legislation of the third country.”

16. Letter d) of para. (1) under Art. 81 shall be amended, reading as follows:

“d) the identity of the persons designated to ensure the management of the branch and information regarding their reputation and professional expertise.”

17. Letter d) under Art. 94 shall be amended, reading as follows:

“d) the suitability of the persons responsible for the administration and/or management of the resulting credit institution/institutions.”

18. Art. 106 shall be amended, reading as follows:

“Art. 106. – 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 fulfilment of all the requirements provided for in this Government Emergency Ordinance and the regulations issued for its enforcement.”

19. Art. 107 shall be amended, reading as follows:

“Art. 107. – (1) Where a credit institution opts for a unitary management system, in compliance with the legislation on commercial companies, its management is delegated by the Board of Directors to at least two managers.

(2) Where a credit institution opts for a dual management system, the directorate comprises at least 3 members, in compliance with the legislation on commercial companies.

(3) The managers of the credit institution or, as appropriate, the members of the directorate shall perform solely the tasks they have been assigned, except for the managers of credit institutions who opted for a unitary management system and who may have the capacity of Board members as well.

(4) The persons mentioned in para. (3) may be employees of the credit institution as well.”

20. Paras. (1), (2) and (4) of Art. 108 shall be amended, reading as follows:

“Art. 108. – (1) Board members and managers or, as appropriate, the members of the supervision committee and the directorate of a credit institution should have a good reputation and sufficient expertise adequate to the nature, scale and complexity of the credit institution’s activity and of the entrusted tasks.

(2) The administration and/or management duties may be fulfilled by natural entities only.

.....

(4) The members of the Board of Directors or, as appropriate, of the supervision committee shall have the adequate skills and expertise to allow him to make well-grounded decisions concerning all the issues related to the activity of the credit institution on which they shall decide in compliance with their duties.”

21. Art. 110 shall be amended, reading as follows:

“Art. 110. – (1) Besides the conditions stipulated by the legislation in force regarding the Board members or, as appropriate, the members of the supervision committee, a person may not be elected to the Board of directors or, as appropriate, the supervision committee of a credit institution and if elected, he shall lose his mandate, where:

- a) he holds another position within the credit institution, except where, in the case of a unitary system, he is also the manager of the credit institution;
- b) in the past five years, the supervisory authority withdrew his authorisation to perform the administration and/or management duties relative to a credit institution, a financial institution or an insurance/reinsurance undertaking or another financial institution or he was replaced from the position held in such entities due to reasons attributable to him;
- c) he is forbidden, based on a legal provision, a court order or a decision made by another authority, to perform the administration and/or management duties relative to one of the entities referred to under letter b) or carry out business in one of the field specific to the above-mentioned entities.

(2) The provisions laid down in para. (1) shall be applied, accordingly, to the managers who are not Board members, and, as appropriate, to the members of the directorate.”

22. Para. (1) under Art. 112 shall be amended, reading as follows:

“Art. 112. – (1) Any person discharging administration and/or management duties or participating in the activity of a credit institution shall preserve confidentiality about any fact, data or information referred to in Art. 111, which he found out while discharging the duties related to the credit institution.”

23. After letter e) of para. (2) under Art. 113, letter f) shall be inserted, reading as follows:

“f) at the request of the official receiver, with a view to performing the forced sale, for the existence of the prosecuted debtors’ accounts.”

24. Para. (1) under Art. 129 shall be amended, reading as follows:

“Art. 129. – (1) In the case of the Standardised Approach, credit quality – including securitised exposures – may be determined by reference to the credit assessments of External Credit Assessment Institutions or of Export Credit Agencies, deemed eligible by the National Bank of Romania, based on specific criteria laid down in the regulations issued for the enforcement of this Government Emergency Ordinance.”

25. Letter b) under Art. 134 shall be amended, reading as follows:

“b) securitised exposures and securitisation positions;”.

26. Para. (3) under Art. 152 shall be repealed.

27. Para. (3) under Art. 166 shall be amended, reading as follows:

“(3) The National Bank of Romania, taking into account the proportionality principle, shall establish the frequency and extent of the reviews and assessments having regard to the size, systemic importance, nature, scale and complexity of the activities performed by each credit institution, Romanian legal person.

The reviews and assessments shall be updated at least on an annual basis.”

28. Letter a) of para. (1) under Art. 188 shall be amended, reading as follows:

“a) changes in the shareholding, organisational, administration and management structure of credit institutions in a group, which require the approval or authorisation of the National Bank of Romania;”.

29. Letter a) of para. (1) under Art. 191 shall be amended, reading as follows:

“a) changes in the shareholding, organisational, administration and management structure of credit institutions, and of financial investment companies respectively, which require the approval or authorisation of the National Bank of Romania and the National Securities Commission;”.

30. Para. (1) under Art. 196 shall be amended, reading as follows:

“Art. 196. – (1) The administration/management of a financial holding company, Romanian legal person, shall be ensured by at least two persons.”

31. After para. (1) under Art. 196, para. (1¹) shall be inserted, reading as follows:

“(1¹) The persons appointed to perform administration and/or management duties, in their capacity as Board members, managers, members of the supervision committee or the directorate, as appropriate, should have a good reputation and sufficient expertise for discharging the assigned duties.”

32. The introductory part and letters a), e), f) and h) of para. (1) under Art. 204 shall be amended, reading as follows:

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

a) conclude an agreement with the Board members or, as appropriate, with the members of the undertaking’s directorate, which shall include a plan of remedial measures;

.....

e) suspend one or more persons discharging administration and/or management duties relative to the undertaking;

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

.....
h) impose a fine on the persons discharging administration and/or management duties relative to the undertaking, ranging from 1 to 6 net salaries, according to the amount realised in the month prior to the establishment of the breach.”

33. Para. (3) under Art. 204 shall be amended, reading as follows:

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

34. Art. 205 shall be amended, reading as follows:

“Art. 205. – The National Bank of Romania shall co-operate with the other competent authorities concerned in order to ensure that the measures or sanctions imposed, in compliance with the provisions of this Government Emergency Ordinance, on financial holding companies, mixed-activity holding companies or the persons discharging administration and/or management duties, produce the desired results, especially when a financial holding company or a mixed-activity holding company, with its head office within the Romanian territory, has the central administration or the main establishment within the territory of another Member State.”

35. Para. (4) under Art. 226 shall be amended, reading as follows:

“(4) In case of imposition of special administration, the National Bank of Romania shall also decide to withdraw the approval granted to persons discharging administration and/or management duties, and to the financial auditor of the credit institution, Romanian legal person, and to suspend the voting rights of shareholders/members, as appropriate.”

36. Art. 228 shall be amended, reading as follows:

“Art. 228. – The National Bank of Romania may apply sanctions in compliance with the provisions of this Government Emergency Ordinance in the cases referred to in Art. 226 para. (1)

or if it finds that a credit institution, Romanian legal person, and/or any of the persons discharging administration and/or management duties, or the persons appointed to head the departments or branches of the credit institution are found guilty of:

- a) infringement of any of the provisions of this Government Emergency Ordinance, of the regulations issued for its enforcement or the regulations issued by credit institutions, or the regulations for immediate enforcement adopted within the EU in the fields governed by this Government Emergency Ordinance;
- b) infringement of the measures taken by the National Bank of Romania;
- c) infringement of any of the conditions or restrictions stipulated in the authorisation;
- d) performance of fictitious operations, with a view to reporting an inaccurate financial standing or exposure of the credit institution;
- e) failure to report, delayed reporting or reporting inaccurate data to the National Bank of Romania.”

37. The introductory part of para. (1) under Art. 229, letters c) and d) of para. (1) and para. (2) shall be amended, reading as follows:

“Art. 229. – (1) In the cases listed in Art. 228, the National Bank of Romania may apply the following sanctions:

.....

- c) fine applicable to persons discharging administration and/or management duties relative to the credit institution and the persons appointed to head its departments and branches, in amount of 1 to 6 net average salaries in the credit institution, in the month prior to the establishment of the breach;
- d) withdrawal of the approval granted to the persons discharging administration and/or management duties relative to the credit institution;

.....

(2) The sanctions referred to in para. (1) may be applied simultaneously with the measures laid down in Art. 226 para. (2) and Art. 230 or independently thereof.”

38. Para. (4) under Art. 229 shall be amended, reading as follows:

“(4) The sanctions referred to in para. (1) letters c) and d) shall be applicable to the persons found guilty of the breach, as such breach would not have occurred had the respective persons properly discharged their tasks and duties associated with their position, which were established in compliance with the company law, the provisions of this Government Emergency Ordinance and the regulations issued for its enforcement and internal regulations.”

39. Para. (1) under Art. 230 shall be amended, reading as follows:

“Art. 230. – (1) Where persons possessing qualifying holdings in a credit institution, Romanian legal person, no longer fulfil the requirements provided by law and the regulations issued for its enforcement regarding the quality of the credit institution’s shareholding, or if they pursue a policy that jeopardises the credit institution’s prudent management, the National Bank of Romania shall take appropriate measures to put an end to that situation. For this purpose, regardless of any other measures or sanctions against the credit institution or the persons discharging 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.”

40. Para. (2) under Art. 232 shall be amended, reading as follows:

“(2) The Board of Directors and the directorate of the credit institution are responsible for the implementation of measures necessary for the cancellation of shares in accordance with the provisions of para. (2) and for the sale of the newly issued shares.”

41. Para. (1) under Art. 234 shall be amended, reading as follows:

“Art. 234. – (1) The imposition of sanctions shall be lost by limitation within one year from notification, but no later than 3 years from the date the deed was perpetrated.”

42. Letters a) and f) of para. (1) under Art. 238 shall be amended, reading as follows:

“a) supervision of the manner in which Board members and managers of the credit institution, or the supervision council and the directorate, as appropriate, act to establish and implement the necessary remedial measures to rectify the deficiencies or, as appropriate, the recommendations formulated or measures taken by the National Bank of Romania, according to this Government Emergency Ordinance;

.....
f) forwarding of recommendations to the National Bank of Romania with a view to taking certain remedial measures or imposing the sanctions provided by law, where the Board members and the managers of the credit institution, or the supervision council and the directorate, as appropriate, fail to comply with the measures set by the commission.”

43. Paras. (2) and (3) under Art. 238 shall be amended, reading as follows:

“(2) The Special Supervision Commission shall not substitute the credit institution’s managers or directorate, as appropriate, in relation to the business management and the prerogative to engage the credit institution. The responsibility for the legality, authenticity, accuracy and opportunity of the performed operations and of the documents drawn up by the credit institution, is exclusively incumbent on the credit institution’s managers or directorate, as appropriate, and/or on the persons who draw up and sign the documents concerned in accordance with their prerogatives and duties.

(3) During the performance of special supervision, the General Meeting of Shareholders, the Board members and the managers of the credit institution or the supervision council and the directorate, as appropriate, shall not take measures contrary to those adopted by the Special Supervision Commission.”

44. Letter d) of para. (1) under Art. 240 shall be amended, reading as follows:

“d) the requirement regarding the discharging of administration and/or management duties is no longer fulfilled.”

45. Art. 244 shall be amended, reading as follows:

“Art. 244. – 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 tasks of the credit institution’s Board members/managers.”

46. Letter e) of para. (2) under Art. 246 shall be amended, reading as follows:

“e) 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, during regular administration.”

47. Art. 247 shall be amended, reading as follows:

“Art. 247. – By exception from the provisions of Art. 246, where special administration was implemented in accordance with the provisions of Art. 240 para. (1) letter d), 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 under regular administration, in accordance with the law, by the credit institution’s Board members and managers, or by the supervision council and the directorate.”

48. Para. (1) under Art. 249 shall be amended, reading as follows:

“Art. 249. – (1) With a view to adopting any decisions concerning the credit institution’s standing in areas exceeding his prerogatives, including the takeover of the credit institution concerned, by merger/split-up, by other credit institutions, the special administrator may convene the General Meeting of Shareholders/Members of the credit institution. 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.”

49. The introductory part of para. (2) under Art. 252 shall be amended, reading as follows:

“(2) Where the special administrator’s report shows that there are no favourable conditions for the credit institution’s financial standing to be improved to the extent that the credit institution would fulfil the prudential requirements established by law or by the regulations issued for its enforcement or, as appropriate, the credit institution’s new Board members and/or managers were not appointed and approved, the National Bank of Romania may decide on the following, as appropriate:”.

50. Paras. (1), (3) and (4) under Art. 253 shall be amended, reading as follows:

“Art. 253. – (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 or, as appropriate, the new persons designated to act as the credit institution’s Board members and/or managers

were appointed and approved, the National Bank of Romania may decide upon the discontinuation of special administration and resumption of the credit institution's activity under its statutory bodies' control.

.....
(3) 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.

(4) Prior to the appointment and approval of the persons referred to in para. (3), the special administrator shall ensure the administration and management of the credit institution.”

51. Para. (1) under Art. 275 shall be amended, reading as follows:

“Art. 275. – (1) The decisions taken by the National Bank of Romania according to the provisions referred to in this Government Emergency Ordinance, regarding a credit institution, including those concerning the persons designated to act as the credit institution's Board members and/or managers, persons in charge of departments or branches of the credit institution or concerning shareholders may be disputed – within 15 days from notification – to the National Bank of Romania Board, which is to make a rightful decision within 30 days from the notification date.”

52. Art. 315 shall be amended, reading as follows:

“Art. 315. – (1) In order to benefit, on a regular basis, from the government premium, the saving-lending contracts must be concluded for a period of at least five years, without necessarily proving that the saved amount was used for housing purposes, and it is compulsory that neither total nor partial reimbursements out of the saved amounts should be made before the expiry date of the saving-lending contract.

(2) The provisions of para. (1) shall not apply to the following:

a) the amount saved and/or the contracted amount is made available after allotment and the saver uses the amount for housing purposes;

b) in case of transfer of the saving-lending contract, the amount saved or the contracted amount is used for housing purposes by the transferor after allotment;

c) in case of demise of the person who saved money for housing purposes, or of his spouse, or the persons have become totally and permanently incapacitated after the conclusion of the saving-lending contract;

d) the person who saved money for housing purposes has become unemployed and the unemployment period lasts for at least nine successive months and the person is still unemployed on the date the withdrawal of the amount is requested.”

53. Para. (1) under Art. 338 shall be amended, reading as follows:

“Art. 338. – (1) The authorisation of credit co-operatives shall be performed under the conditions applicable to credit institutions provided for in Chapter II of Title I, Part I, except for Art. 11 and Art. 17, whose provisions shall not be applicable to the credit co-operatives within the network.”

54. Art. 355 shall be amended, reading as follows:

“Art. 355. – (1) The General Meeting of Shareholders of a credit co-operative organisation shall convene whenever necessary, under the terms and conditions provided by law, in order to decide on all the issues that fall within the field of competence of the ordinary and extraordinary general meetings of a joint-stock company, and in the case of credit co-operatives, to appoint from among the members of the Board of Directors or of the directorate, as appropriate, the credit co-operative representatives in the General Meeting of Shareholders of the central body.

(2) The General Meeting of Shareholders of the credit co-operative organisation may delegate to the Board of Directors or to the directorate, as appropriate, under the conditions laid down in the articles of association, the power to change the core business, to decide on the relocation of the registered office, to set up or dissolve branches, and, as appropriate, to appoint representatives in the General Meeting of Shareholders of the central body.”

55. Art. 356 shall be amended, reading as follows:

“Art. 356. – At the level of a credit co-operative network, there should be a single management system of the credit co-operative organisations within the network.”

56. Art. 357 shall be amended, reading as follows:

“Art. 357. – The Board of Directors or, as appropriate, the directorate of a credit co-operative organisation may decide on the conclusion of legal documents granting the right to acquire,

alienate, rent, exchange or pledge as collateral some of the assets of the credit co-operative organisation, whose value exceeds one fifth of the book value of its assets on the date of signing the legal document, only with the approval of the General Meeting of Shareholders and, in the case of credit co-operatives, also with the approval of the central body to which the credit co-operative organisation is affiliated.”

57. Art. 358 shall be amended, reading as follows:

“Art. 358. – The monthly remuneration of the members of the Board of Directors or, as appropriate, of the supervision council of a credit co-operative organisation, as laid down in the articles of association or by the decision of the General Meeting of Shareholders, shall not exceed 20% of the gross remuneration of the general manager/manager or of the directorate chairman, as applicable.”

58. Art. 367 shall be amended, reading as follows:

“Art. 367. – (1) The persons appointed as members of the Board of Directors or, as appropriate, of the supervision council of credit co-operatives must have the approval of the central body before starting to exercise their duties, except for the first members of such entities, in case of credit co-operatives established simultaneously with the central body.

(2) The National Bank of Romania may require the central body to withdraw the approval of the persons laid down in para. (1) where they were appointed by breaching of applicable legal provisions, or where the activity carried out by such members led to the worsening of the credit co-operative’s financial standing and/or to the infringement of prudential requirements by the credit co-operative.”

59. Para. (1) and the introductory part of para. (2) under Art. 373 shall be amended, reading as follows:

“Art. 373. – (1) The members of the Board of Directors or, as appropriate, of the supervision council of the central body shall be elected by the General Meeting of Shareholders from among the persons appointed for this purpose by the representatives of the affiliated credit co-operatives. Apart from the discrepancies and prohibitions laid down by the law, a person may not carry out administration and/or management tasks simultaneously at the central body and at a credit co-operative.

(2) Beside the tasks laid down in the legislation on commercial companies, the Board of Directors or, as appropriate, the directorate of the central body shall also have the following tasks relative to the network of affiliated credit co-operatives:”.

60. After para. (2) under Art. 373, para. (3) shall be inserted, reading as follows:

“(3) The Board of Directors may not delegate to the managers the tasks laid down in para. (2).”

61. Art. 383 shall be amended, reading as follows:

“Art. 383. – By way of derogation from the provisions of Law No. 31/1990 on commercial companies, republished, as subsequently amended and supplemented, credit co-operatives counting up to 5,000 co-operative members may appoint a single manager, who will have to assign the management tasks to at least one manager or, as appropriate, they may appoint a single general manager under the permanent control of a person carrying out the tasks of the supervision council.”

62. Para. (4) under Art. 392 shall be amended, reading as follows:

“(4) The persons acting as Board members and/or managers of a central body, the staff of the central body and any person acting on the account of a central body shall keep the professional secrecy in accordance with Art. 214 while exercising the tasks of this institution referred to in para. (3).”

63. Para. (5) under Art. 393 shall be amended, reading as follows:

“(5) The rules for the enforcement of the measures in accordance with para. (1) shall be issued by the managers or, as appropriate, by the members of the directorate of the central body, consistent with the general regulations issued for this purpose.”

64. Art. 412 shall be amended, reading as follows:

“Art. 412. – The following deeds shall be deemed as infringements and shall be punished by imprisonment from one year to 3 years:

a) the deed of a Board member, manager or, as appropriate, of a member of the supervision council or of the directorate or any employee of a credit institution who, in bad faith, infringes the provisions of Art. 171 or, in any other way, prevents the National Bank of Romania from exercising supervision;

b) the deed of any person entrusted with the administration and/or management tasks relative to a financial holding company or a mixed-activity holding company who infringes the provisions of Art. 166 and Art. 176-203 with a view to preventing the National Bank of Romania from exercising supervision of credit institutions.”

65. Para. (1) under Art. 415 shall be amended, reading as follows:

“Art. 415. – (1) The credit institutions, Romanian legal entities, the branches of credit institutions in third countries and payment system administrators, which at the date of entry into force of this Government Emergency Ordinance were licensed by the National Bank of Romania and operate in Romania, are considered to hold an authorisation in accordance with the provisions of this Government Emergency Ordinance.”

66. After Art. 416, Art. 416¹ shall be inserted, reading as follows:

“Art. 416¹. – As of the date of coming into force of this Government Emergency Ordinance, any reference in the existing pieces of legislation to Law No. 541/2002 on collective saving and lending for housing, as subsequently amended and supplemented, shall be deemed as reference to Part II, Title II ‘Savings banks for housing’ herein or to the corresponding chapters in this Government Emergency Ordinance, as appropriate.”

67. After para. (3) under Art. 418, para. (4) shall be inserted, reading as follows:

“(4) In the cases set forth by law and whenever the official receiver deems it necessary, the police, the gendarmerie or any other law enforcement agents, as appropriate, shall assist the official receiver in carrying out the forced sale. At the request of the relevant court of law or of the official receiver, any persons owing money to or holding assets of the prosecuted debtor, which fall under the scope of the investigation under the law, shall provide the required information for performing the forced sale. Furthermore, at the request of the relevant court of law or of the official receiver, institutions, credit institutions and any other persons shall immediately disclose in writing any data and information necessary for the forced sale, notwithstanding any contrary provisions of special laws.”

68. After Art. 421, Art. 421¹ shall be inserted, reading as follows:

“Art. 421¹. – The definitions laid down in Art. 7, para. (1), points 6 and 14¹ shall also apply when enforcing the provisions of Law No. 297/2004 on the capital market, as subsequently amended and supplemented.”

69. When mentioning the transposition of community norms governing credit institutions and investment firms, point 6 shall be inserted after point 5, reading as follows:

“6. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, published in the Official Journal of the European Union L145 of 30 April 2004: Art. 4, para. (1), point 1), subpara. 1 and Annex 1.”