Government Emergency Ordinance No.98/2006

on the supplementary supervision of credit institutions, insurance and/or reinsurance entities investment firms and asset management companies in a financial conglomerate

CHAPTER I

Scope of application and definitions

Art. 1 - This emergency ordinance lays down the rules for the supplementary supervision of regulated entities, Romanian legal entities, authorised under the applicable sectoral rules and that are part of a financial conglomerate in order to ensure the financial stability and to protect the depositors, the insurance policy holders and the investors.

Art. 2 - **(1)** In the meaning of this emergency ordinance, the terms and expressions below have the following content:

1. "*credit institution*" - a credit institution in the sense of the Emergency Ordinance No.99/2006 on credit institutions and capital adequacy;
2. "*insurance undertaking*" - an insurance undertaking in the meaning of the *Law No. 32/2000 on insurance entities and on the supervision of insurance*, as further amended and supplemented, as well as an insurance undertaking in a third country, that would require the authorisation under the provisions of the Law No.32/2000, if it had its registered office in Romania.;
3. "*investment services company"* - an investment services company in the meaning of the Law No. 297/2004 on the capital market, as further amended and supplemented;
4. "*investment firm*" – an investment firm in the meaning of the Emergency Ordinance No.99/2006 on credit institutions and capital adequacy, authorised in Member State to provide investment services as those stipulated in the Law No.297/2004, as well as an investment firm authorised in a third country that would require an authorisation under the provisions of the Law No.297/2004, if it had its registered office in Romania, and which is subject to prudential rules considered by the National Securities Commission at least as stringent to those laid dawn by the legislation applicable to investment services companies;

5. "*regulated entity*" - a credit institution, an insurance undertaking, a re-insurance undertaking, an investment services company an investment firm or an asset management company, authorized in Romania or in another Member State;

6. "*asset management company*" - an asset management company in the meaning of the Law No.297/2004, as well as an asset management company in a third country, that would require authorisation under the provisions of the Law no.297/2004, if it had its registered office in Romania;

7. "*reinsurance undertaking*" - a reinsurance undertaking within the meaning of the Law No.32/2000;

8. "*sectoral rules*" - the national legislation relating to the prudential supervision of regulated entities;

9. "*financial sector*" - a sector composed of one or more of the following entities:

a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of the Emergency Ordinance No.99/2006 on credit institutions and capital adequacy. These entities represent the banking sector;

b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of the Law No.32/2000. These entities represent the insurance sector;

c) an investment services company, an investment firm, an asset management company or a financial institution. These entities represent the investment services sector;

d) a mixed financial holding company.

10. "*parent undertaking*" - an entity in one of the following situations:

a) has a majority of the shareholders' or members' voting rights in another undertaking called a subsidiary undertaking;

b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking called a subsidiary undertaking and is at the same time a shareholder in or member of that undertaking;

c) has the right to exercise a dominant influence over an undertaking called a subsidiary undertaking of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions;

d) is a shareholder in or member of an undertaking, and a majority of the members of the administrative, management or supervisory bodies of that a subsidiary undertaking who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its

voting rights; this provision shall not be applied where another entity has against that entity the rights provided for at let. a), b) or c);

e) is a shareholder in or member of an undertaking, and controls alone, pursuant to an agreement with other shareholders in or members of that undertaking called a subsidiary undertaking, a majority of shareholders' or members' voting rights in that undertaking;

f) has the right to exercise or, in the opinion of the competent authorities, exercises a dominant influence or a control over another entity, called subsidiary undertaking;

g) the parent undertaking together with another entity, called subsidiary undertaking are managed on a unified basis by the parent undertaking.

11. "*subsidiary undertaking*" - an undertaking being in connection with the parent undertaking, in one of the situations stipulated at point 10; all the subsidiaries of a subsidiary shall also be considered as subsidiary undertakings of the parent undertaking;

12. "*participation*" - rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company's activities, or the direct or indirect ownership of 20 % or more of the voting rights or capital of an undertaking

13. "*group*" - a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as a group of undertakings linked to each other by a relationship, other than that between a parent undertaking and a subsidiary undertaking, namely a relationship where:

a) that undertaking and one or more other undertakings are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings;

b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings consist for the major part of the same persons being in exercise during the financial year up to the issuance of the financial consolidated statements;

14. "*close links*" - a situation in which two or more natural or legal persons are linked by:

a) "participation", which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or of the capital of an undertaking; or

b) "*control*", which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in point 10, or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more natural or legal persons are permanently linked to one and the same

person by a control relationship shall also be regarded as constituting a close link between such persons;

15. “*financial conglomerate*” - a group which meets, subject to Article 3, the following conditions:

a) a regulated entity is at the head of the group or at least one of the subsidiaries in the group is a regulated entity;

b) where there is a regulated entity at the head of the group, this is either a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of point 13;

c) where there is no regulated entity at the head of the group, the group’s activities mainly occur in the financial sector within the meaning of Art. 3 para (1);

d) at least one of the entities in the group is within the insurance sector and at least one is within the banking or investment services sector;

e) the consolidated and/or aggregated activities of the entities in the group within the insurance sector and the consolidated and/or aggregated activities of the entities within the banking and investment services sector are both significant within the meaning of Art. 3 para (2) or Art. (4).

16. “*mixed financial holding company*” - a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which together with other entities, constitutes a financial conglomerate;

17. “*competent authorities*” - the Romanian authorities or the authorities from another Member State which are empowered by law or other regulations to supervise credit institutions, and/or insurance undertakings and/or reinsurance undertakings and/or investment firms and/or investment financial services, respectively investment firms and/or asset management companies whether on an individual or a group-wide basis;

18. “*relevant competent authorities*” :

a) the Romanian competent authorities or the competent authorities from another Member State responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate;

b) the coordinator appointed in accordance with the provisions of Art. 26 if different from the authorities referred to at letter (a);

c) other competent authorities concerned, where relevant, in the opinion of the authorities referred to at letter (a) and (b); this opinion shall especially take into account the market share of the regulated entities of the conglomerate in other Member States, in particular if it exceeds 5 %, and the importance in the conglomerate of any regulated entity established in another Member State;

19. “*intra-group transactions*” - all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon any natural or legal person linked to the undertakings within that group by “close links”, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;
20. “*risk concentration*” - all exposures with a loss potential borne by entities within a financial conglomerate, which are large enough to threaten the solvency or the financial position in general of the regulated entities in the financial conglomerate; such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.
21. *Member State* – another EU Member State, as well as a state belongind to the European Economic Area;
22. “*Committee of Financial Conglomerates*” - the body established at the level of the European Union, according to the provisions of Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, having as competence the assistance of the European Commission in adopting the technical amendments of the Directive’s provisions, as well as the formulation of general assessment principles regarding the equivalence of the supplementary supervision exercised by the competent authorities from third countries, according to the provisions of Art.51.
23. „*Third countery”* – a state, another one than a Meber State in the meaning of point 21.
(2) Any subgroup of a group within the meaning of para (1) point 13 meets the criteria stipulated in this point shall be considered as a financial conglomerate.

CHAPTER II

Identifying a financial conglomerate

Art. 3 - (1) The activities of a group mainly occur in the financial sector, within the meaning of Article 2(15) (c), if the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole exceed 40 %.
(2) The activities in different financial sectors are significant within the meaning of Article 2(15) (e), if, for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the

solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group exceed 10 %.

(3) For the purposes of this emergency ordinance, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average. For the purposes of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

Art. 4 - (1) Cross-sectoral activities shall also be presumed to be significant within the meaning of Article 2(15) (e) if the balance sheet total of the smallest financial sector in the group exceeds the equivalent in RON of EUR 6 billion.

(2) If the group does not reach the threshold referred to in Art.3 para (2), but reaches the threshold referred to in para (1), the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate, or not to apply the provisions referred to risk concentration, intra-group transactions and internal control mechanisms and risk management processes, if they consider that the inclusion of the group in the scope of the supplementary supervision or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision, taking into account, for instance, the fact that:

a) the relative size of its smallest financial sector, measured either in terms of the average referred to in Art.3 para (2) or in terms of the balance sheet total or the solvency requirements of such financial sector does not exceed 5 %,; or

b) the market share measured in terms of the balance sheet total in the banking or investment services sectors and in terms of gross premiums written in the insurance sector, does not exceed 5 % in any Member State.

(3) Decisions taken in accordance with the provisions of this article shall be notified to the other competent authorities concerned.

Art. 5 - (1) For the application of the provisions referred to in Art.3 and Art.4, the relevant competent authorities may by common agreement:

a) exclude an entity when calculating the ratios, in the cases referred to in Article 17;

b) take into account compliance with the thresholds envisaged in Art.3 for three consecutive years so as to avoid sudden regime shifts, and disregard such compliance if there are significant changes in the group's structure.

(2) Where a financial conglomerate has been identified according to the provisions referred to in Art.3 and Art.4, the decisions referred to in the first paragraph shall be taken on the basis of a proposal made by the coordinator of that financial conglomerate.

Art. 6 - For the application of the provisions referred to in Art.3, the relevant competent authorities may, in exceptional cases and by common agreement, replace the criterion based on balance sheet total with one or both of the following parameters, or add one or both of these parameters, respectively, income total, off-balance-sheet activities, if they are of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision under the present emergency ordinance.

Art. 7 - (1) For conglomerates already subject to supplementary supervision, for the application of provisions referred to in Art.3, if the ratios referred to in this article fall below 40 % and, respectively below 10 %, a lower ratio of 35 % and 8 % respectively shall apply for the following three years to avoid sudden regime shifts.
(2) Similarly, for conglomerates already subject to supplementary supervision, for the application of the provisions referred to in Art.4, if the balance sheet total of the smallest financial sector in the group falls below the equivalent in RON of EUR 6 billion, a lower figure of the equivalent in RON of EUR 5 billion shall apply for the following three years to avoid sudden regime shifts.
(3) During the period referred to in this article, the coordinator may, with the agreement of the other relevant competent authorities, decide that the lower ratios or the lower amount referred to in this article shall cease to apply.

Art. 8 - (1) The calculations referred to in this chapter regarding the balance sheet shall be made on the basis of the aggregated balance sheet total of the entities of the group, according to their annual accounts. For the purposes of this calculation, undertakings in which participation is held shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. However, where consolidated accounts are available, they shall be used instead of aggregated accounts.
(2) The solvency requirements referred to in Art.3 (2) and in Art.4 shall be calculated in accordance with the provisions of the applicable relevant sectoral rules.

Art. 9 - (1) The Romanian competent authorities who have authorised regulated entities shall, on the basis of Articles 2-8 and 10-14 identify any group that falls under the scope of the supplementary supervision.

For this purpose:

a) the Romanian competent authorities which have authorised regulated entities in the group shall cooperate closely, where necessary, inclusively with the competent authorities from other Member States

b) if a Romanian competent authority considers that a regulated entity authorised by that competent authority is a member of a group which may be a financial conglomerate, which has not already been identified, the respective competent authority shall communicate its view to the other competent authorities concerned.

(2) The coordinator appointed in accordance with Article 26 shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator.

The coordinator shall also inform the competent authorities which have authorised regulated entities in the group and the competent authorities of the Member State in which the mixed financial holding company has its head office, as well as the European Commission.

CHAPTER III

The supplementary supervision

SECTION 1

Scope of the supplementary supervision

Art. 10 - (1) Without prejudice to the provisions on supervision contained in the sectoral rules, the supplementary supervision of the regulated entities referred to in Article 1, is exercised to the extent and in the manner prescribed in this emergency ordinance.

(2) The following regulated entities shall be subject to supplementary supervision at the level of the financial conglomerate in accordance with Articles 15 to 45:

a) every regulated entity which is at the head of a financial conglomerate;

b) every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in a Member State;

c) every regulated entity linked with another financial sector entity by a relationship within the meaning of Article 2 point 13.

Art. 11 - (1) Any subgroup of a group, which meets the criteria to be considered a financial conglomerate, shall be subject to the supplementary supervision.

(2) Without prejudice to financial stability objectives, the appointed coordinator of a subgroup which is a financial conglomerate may decide not to exercise supplementary supervision to regulated entities at the level of that subgroup.

Art. 12 - Every regulated entity which is not subject to supplementary supervision in accordance with Article 10 (2), the parent undertaking of which is a regulated entity or a mixed financial holding company, having its head office in a third-country, shall be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in Article 51 and Article 52.

Art. 13 - (1) Where persons hold participations or capital ties in one or more regulated entities or exercise significant influence over such entities without holding a participation or capital ties, in other cases than those referred to in Article 10 (2) and in Article 12, the relevant competent authorities shall determine, by common agreement and taking also in consideration the objectives of the supplementary supervision foreseen in this emergency ordinance, whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if they constitute a financial conglomerate.

(2) In order to apply such supplementary supervision, at least one of the entities must be a regulated entity and the conditions set out in Article 2(15) (d) and (e) must be met.

(3) For the purposes of applying the first para to "credit co-operative organisations", the competent authorities take into account the public financial commitment of these groups with respect to other financial entities.

Art. 14 - Without prejudice to Articles 36 and 37, the exercise of a supplementary supervision at the level of the financial conglomerate shall in no way imply that the competent authorities are required to play a supervisory role on a stand-alone basis, in relation to mixed financial holding companies, third-country regulated entities in a financial conglomerate or unregulated entities in a financial conglomerate.

SECTION 2

Financial position

2.1 Capital adequacy

Art. 15 - (1) Without prejudice to the sectoral rules, supplementary supervision of the capital adequacy of the regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in this emergency ordinance and in the regulations issued according to this one.
(2) The regulated entities in a financial conglomerate shall ensure that, at the level of the financial conglomerate, there are always own funds available, at least equal to the capital adequacy requirements as calculated in accordance with one of the methods mentioned in article 16 (2), and with the technical principles provided for in the regulations issued in the appliance of this emergency ordinance.
(3) Regulated entities shall have in place adequate capital adequacy policies at the level of the financial conglomerate.
(4) The requirements referred to in the second and third para shall be subject to supervisory overview by the coordinator in accordance with the provisions of Chapter IV.
(5) The coordinator shall ensure that the calculation referred to in the para (2) is carried out at least once a year, if by regulations is not provided for a higher frequency, either by the regulated entity which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity by the mixed financial holding company or by the regulated entity of the financial conglomerate identified by the coordinator after the consultation with the other relevant competent authorities and with the regulated entities in the financial conglomerate, subject to supplementary supervision.
(6) The results of the calculation and the relevant data for the calculation shall be submitted to the coordinator by the regulated entity according to Art.1 which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the regulated entities in the financial conglomerate, subject to supplementary supervision.

Art. 16 - (1) For the purposes of calculating the capital adequacy requirements referred to in Article 15 (2), the following entities shall be included in the scope of supplementary supervision in

the manner and to the extent defined by the regulations issued according to this emergency ordinance:
a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of the Government Emergency Ordinance No.99./2006 on credit institutions and capital adequacy;
b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of the Law No.32/2000;
c) an investment services company, an investment company, an asset management company or a financial institution;
d) mixed financial holding companies.
(2) Supplementary capital adequacy requirements are calculated according to one of the following methods decided by the coordinator, after consultation with the other relevant competent authorities and the conglomerate itself: accounting consolidation method, deduction and aggregation method, book value/requirement deduction method.

Art. 17 - (1) The coordinator may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases:
a) if the entity is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral rules regarding the obligation of competent authorities to refuse the authorisation where the effective exercise of their supervisory functions is prevented;
b) if the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate;
c) if the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision.
(2) If several entities are to be excluded pursuant to letter b) of the first paragraph, they must nevertheless be included when collectively they are of non-negligible interest with respect to the objectives of supplementary supervision.
(3) In the case mentioned in letter c) of the first paragraph, except in cases of urgency, the coordinator shall consult the other relevant competent authorities before taking a decision.
(4) Under one of the cases provided for in letter (b) and (c) of the first paragraph, when the coordinator does not include a regulated entity in the scope of supplementary supervision, the competent authorities responsible for the supervision of that entity may ask the entity which is at the head of the financial conglomerate for information which may facilitate their supervision of the

regulated entity, even if the last entity is not situated in the same jurisdiction with the entity which is at the head of the financial conglomerate.

2.2 Risk concentration and intra-group transactions

Art. 18 - (1) Without prejudice to the sectoral rules, the supplementary supervision of the risk concentration and of the intra-group transactions of regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in this emergency ordinance and in the regulations issued according to this emergency ordinance.
(2) The regulated entities or mixed financial holding companies, by case, shall report on a regular basis to the coordinator any significant risk concentration at the level of the financial conglomerate, as well as all significant intra-group transactions of the regulated entities within a financial conglomerate, in accordance with the rules laid down in this emergency ordinance and in the regulations issued in its application.
(3) An intra-group transaction shall be presumed to be significant if its amount exceeds at least 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate.
(4) The necessary information shall be submitted to the coordinator by the regulated entity which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the regulated entities in the financial conglomerate, subject to the supplementary supervision.

Art. 19 - The risk concentrations and the intra-group transactions shall be subject to the supervisory overview by the coordinator, which will monitor in particular the possible risk of contagion in the financial conglomerate, the risk of a conflict of interests, the risk of circumvention of sectoral rules, as well as the level or volume of risks.

Art. 20 - (1) The competent authorities may set, by regulations issued according to this emergency ordinance, quantitative limits and take other supervisory measures that would achieve the objectives of supplementary supervision, with regard to any risk concentration at the level of a financial conglomerate.
(2) The competent authorities may set, by regulations issued according to this emergency regulation, quantitative limits and qualitative requirements, and take any other supervisory

measures that would achieve the objectives of supplementary supervision, with regard to intra-group transactions of regulated entities within a financial conglomerate.

Art. 21 - Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding risk concentration, if any, and intra-group transactions of the most important financial sector in the financial conglomerate, shall apply to that sector as a whole, including the mixed financial holding company.

Art. 22 - The coordinator may apply at the level of the financial conglomerate the provisions of the sectoral rules on intra-group transactions and risk concentration, in particular to avoid circumvention of the sectoral rules.

Art. 23 - The coordinator shall inform the Committee of Financial Conglomerates about the principles they apply concerning the supervision of risk concentration and intra-group transactions.

2.3 Internal control mechanisms and risk management processes

Art. 24 - (1) Regulated entities shall ensure at the level of the financial conglomerate, adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(2) The risk management processes include:

a) sound governance and management with the approval and periodical review of the strategies and policies by the appropriate governing bodies at the level of the financial conglomerate with respect to all the risks they assume;

b) adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with the rules laid down in this emergency ordinance and in the regulations issued in its application;

c) adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all measures are taken to ensure that the systems implemented in all the undertakings included in the scope of the supplementary supervision are consistent so that the risks can be measured monitored and controlled at the level of the financial conglomerate.

(3) The internal control mechanisms include:

a) adequate mechanisms as regards capital adequacy to identify and measure all significant risks incurred and to appropriately relate own funds to risk;

b) sound reporting and accounting procedures to identify measure, monitor and control the intra-group transactions and the risk concentration.

(4) In all undertakings included in the scope of the supplementary supervision pursuant to Section 1 of Chapter III, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of the supplementary supervision.

(5) The processes and mechanisms referred to in paragraphs 1 to 4 shall be subject to the supervisory overview by the coordinator.

CHAPTER IV

Measures to facilitate supplementary supervision

SESCTION 1

Competent authority responsible for exercising the supplementary supervision (the coordinator)

1.1 Criteria for the appointment of the coordinator

Art. 25 - In order to ensure proper supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of the supplementary supervision, is appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office.

Art. 26 - (1) The appointment of the coordinator is based on the criteria provided for in the following para.

(2) Where a financial conglomerate is headed by a regulated entity, the coordinator shall be the competent authority which has authorised that regulated entity pursuant to the applicable relevant sectoral rules.

(3) Where a financial conglomerate is not headed by a regulated entity, the coordinator shall be the competent authority identified in accordance with the following principles:

a) where the parent of a regulated entity is a mixed financial holding company, the coordinator shall be the competent authority which has authorised that regulated entity pursuant to the applicable relevant sectoral rules;

b) where more than one regulated entity with a head office in Member States have as their parent the same mixed financial holding company, and one of these entities has been authorised in the Member State in which the mixed financial holding company has its head office, the coordinator shall be -the competent authority of the regulated entity authorised in that Member State.

c) Where more than one regulated entity, being active in different financial sectors, have been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity active in the most important financial sector.

d) Where the financial conglomerate is headed by more than one mixed financial holding company with a head office in different Member States and there is a regulated entity in each of these States, the coordinator shall be the competent authority of the regulated entity with the largest balance sheet total if these entities are in the same financial sector, or by the competent authority of the regulated entity in the most important financial sector;

e) where more than one regulated entity with a head office in Member States have as their parent the same mixed financial holding company and none of these entities has been authorised in the Member State in which the mixed financial holding company has its head office, the coordinator shall be the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector;

f) where the financial conglomerate is a group without a parent undertaking at the top, or in any other case, the coordinator shall be the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector.

(4) In particular cases, the relevant competent authorities may by common agreement waive the criteria referred to in para (2) and (3) if their application would be inappropriate, taking into account the structure of the conglomerate and the relative importance of its activities in different countries, and appoint a different competent authority as coordinator. In these cases, before taking their decision, the competent authorities shall give the conglomerate an opportunity to state its opinion on that decision.

1.2 Tasks of the coordinator

Art. 27 - (1) The tasks to be carried out by the coordinator with regard to the supplementary supervision shall be:

a) coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;

b) supervisory overview and assessment of the financial situation of a financial conglomerate

c) assessment of compliance with the rules on capital adequacy, of risk concentration and intra-group transactions as set out in Articles 15-23, as well as in the regulations issued in its application;
d) assessment of the financial conglomerate's structure, organisation and internal control system as set out in Article 24;
e) planning and coordination of the supervisory activities in going concern as well as in emergency situations, in cooperation with the relevant competent authorities involved;
f) other tasks, measures and decisions assigned to the coordinator by this emergency ordinance or deriving from the application of this one.
(2) When the coordonator of a financial conglomerate is a competent authority from Romania, this one shall perform the tasks provided for in para (1) over the entities from anothe Member State too.
(3) When the coordonator of a financial conglomerate is an authority from another Member State, this may perform, over the entities from Romnaia, the tasks provided for in para (1).
(4) In order to facilitate the supplementary supervision on a broad legal basis, the coordinator and the other relevant competent authorities, and where necessary other competent authorities concerned, shall have coordination arrangements in place.
The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process by the relevant competent authorities as referred to in Articles 3-9, 13, 15-17, 30, 48 and 51 regarding the supplementary supervision, as well as the procedures for cooperation with other competent authorities.
(5) Without prejudice to the possibility of delegating specific supervisory competences and responsibilities as provided for by the sectoral rules, the presence of a coordinator entrusted with specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.

SECTION 2

Cooperation and exchange of information between competent authorities

2.1 Exchange of information

Art. 28 - (1) Without prejudice to their respective responsibilities as defined under sectoral rules, the competent authorities responsible for the supervision of regulated entities in a financial conglomerate and the competent authority appointed as the coordinator for that financial

conglomerate shall cooperate closely with each other, providing one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and this emergency ordinance. In this regard, the competent authorities and the coordinator shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

(2) The competent authorities from Romania perfom the exchange of information with competent authorities from other Member States in order to execise their supplementary supervision tasks.

(3) This cooperation shall at least provide for the gathering and the exchange of information with regard to the following essential items:

a) identification of the group structure of all major entities belonging to the financial conglomerate, as well as of the competent authorities of the regulated entities in the group;

b) the financial conglomerate's strategic policies;

c) the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;

d) the financial conglomerate's major shareholders and management;

e) the organisation, risk management and internal control systems at financial conglomerate level;

f) procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;

g) adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities;

h) major sanctions and exceptional measures taken by competent authorities in accordance with sectoral rules or this emergency ordinance.

Art. 29 - The competent authorities may also exchange with the following authorities such information as referred to in Art.28 (3) as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks of the Member States, the European System of Central Banks and the European Central Bank.

Art. 30 - (1) Without prejudice to their respective responsibilities as defined under sectoral rules, the competent authorities concerned shall, prior to their decision, consult each other with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:

a) changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of competent authorities;
b) major sanctions or exceptional measures taken by competent authorities.
(2) A competent authority may decide not to consult the other competent authorities in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, the competent authority shall, without delay, inform the other competent authorities about the decision taken.

Art. 31 - (1) The coordinator may invite the competent authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the supplementary supervision pursuant to Art.25 and Art.26, to ask the parent undertaking for any information which would be relevant for the exercise of its coordination tasks as laid down in Art.27, and to transmit that information to the coordinator.
(2) Where the information referred to in Art.33 (2) and (3) has already been given to a competent authority in accordance with sectoral rules, the competent authorities responsible for exercising the supplementary supervision may apply to this authority to obtain the information.
(3) Where the coordinator needs information that has already been given to another competent authority in accordance with sectoral rules, the coordinator should contact this authority, if possible, in order to prevent the multiple gearing against different authorities involved in the supevision.
Art. 32 - (1) The collection or possession of information with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the competent authorities are required to play a supervisory role in relation to these entities on a stand-alone basis.
(2) Information received in the framework of the supplementary supervision, and in particular any exchange of information between competent authorities and between competent authorities and other authorities which is provided for in this emergency ordinance, shall be subject to the provisions on professional secrecy and communication of confidential information laid down in the sectoral rules.

2.2 Access to information

Art. 33 - (1) The legal persons included within the scope of supplementary supervision, whether or not a regulated entity, shall exchange amongst them any information which would be relevant for the purposes of supplementary supervision.

(2) The competent authorities responsible for exercising the supplementary supervision shall have access to any information which would be relevant for the purposes of supplementary supervision when approaching the entities in a financial conglomerate, either directly or indirectly, whether or not a regulated entity.

(3) The legal persons in Romania included within the scope of supplementary supervision, whether or not a regulated entity, supply information at the request of the coordonator, inclusively when this is a competent authority from another Member State.

2.3 Verification of information

Art. 34 - In applying this emergency ordinance, in specific cases, for verifying the information regarding a regulated or unregulated entity, which is part of a financial conglomerate and which is situated in another Member State, the Romanian competent authorities shall cooperate with the competent authorities of that Member State in order to have the verification carried out.

Art. 35 - (1) The competent authorities situated in another Member State that wish, in limited cases, to verify information concerning a regulated or unregulated entity from Romania, which is a part of financial conglomerate shall require to the competent authorities from Romania to have the verification carried out.

(2) The authorities who receive such a request shall, within the framework of their competences, act upon it either by carrying out the verification themselves, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself.

(3) The competent authority which made the request may, if it so wishes, participates in the verification when it does not carry out the verification itself.

SECTION 3

Mixed financial holding companies

Art. 36 - (1) The effectively direction of the business shall be provided by 2 persons, which are of sufficiently good repute and have sufficient experience to perform those duties.

(2) The mixed financial holding companies shall notufy the coordinator the designation of the persons stipulated in (1), inclusively when the coordinator is a competent authority from another member State, in the terms established by regulations.

(3) The coordinator shall follow permanently to meet the requirements provided for in para (1), imposing the measureas or sanctions for the non-compliance of these provisions stipulated in art.43, and respectively in art.44.

Art. 37 - (1) The mixed financial holding companies, Romanian legal entities, shall organise and conduct the accounting in accordance with the provisions of the Accountin Law No.82/1991, republishe, and the specific acounting regulations issued in its appliance, shall make aut the annual financial statements that shall offer a real picture of the financial position, financial performance, cash flows and of thwe other information related to the activity carried aut at the level of the group.

(2) The members of the Board of directors and the persons who ensure the management of the mixed financial holding company shall be responsible for the appliance of para (1).

Art. 38 – The mixed financial holding companies are obliged to submit the consolidated financial statements to the coordinator, as well as other information required by the coordinator for the suppleemntary supervision purposes, in the terms and manner established by regulations.

Art. 39 - (1) The consolidated annual financial statements of the mixed financial holding companies shall be audited by the financial auditors approved by the coordinator. The coordinator may reject the designation of an auditor if this considers that the auditor does not have the proper independence and experience in order to perform the specific tasks.

(2) In order to audit the financial statement, each mixed financial holding company shall conclude contracts with the financial auditors, legal entities who, in accordance with the legislation in this field, may carry out in Romania the finacial audit activity.

(3) The mixed financial holding companies are obliged to replace periodically the financial auditor or to require to the financial auditor to replace periodically the team coordinator which perform the financial audit, in accordance with the coordinator requirements.

Art. 40 - (1) The coordinator shall have access to any documents issued by the financial auditors within the audit activity.
(2) The coordinator, together with the other relevant competent authorithies, and the financial auditors of the mixed financial holding companies shall met periodically in order to discuss aspect of commun interest related to the financial conglomerate activity. To these meetings, the persons who ensure the management of the mixed financial holding companies, and those who ensure the management of the regulated entities in a financial conglomerate shall be also invited.

Art. 41 - (1) The financial auditor of a mixed financial holding company shall inform the coordinator as soon as, exercising his attributions, learned about any act or decision related to the mixed financial holding company or a regulared entity within the financial conglomerate which:

a) represent a significant infringement of the emergency ordinance and/or the regulations or other documents issued in its appliance;

b) affects the financial conglomerate activity;

c) may conduct to a refuse of the financial auditor to express the opinion on the fianncial statements or to express an opinion with reserves.

(2) At the request of the coordinator, the financial auditor of the mixed financial holding company shall be obliged to supply any details, clarifications and explanations relating to the information included in the consolidated financial statements of the mixed financial holding company.
(3) The fulfilment in good faith by the financial auditor of the obligation to inform the coordinator, according to para. (1) and (2), shall not constitute a breach of the obligation to keep professional secrecy, which rests with the financial auditor according to the law or the contractual clauses, and shall not involve the financial auditor in liability of any kind.

Art. 42 – The coordinator may withdraw the approval granted to a financial auditor, when he does not perform correspondingly the duties provided by law or does not observe the particular requirements of professional and ethical conduct.

SECTION 4

Enforcement measures and sanctions

Art. 43 - Where the regulated entities in a financial conglomerate comply with the requirements regarding the capital adequacy, the risk concentration, the intra-group transactions, the internal control mechanisms and risk management processes, referred to in this emergency ordinance, but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the regulated entities' financial position, the coordinator may dispose with respect of the mixed financial holding company the following measures:

a) the conclusion of an agreement with the managers of the mixt financial holding company, which shall include a plan of remedial measures;

b) the request of information to the financial auditor;

c) the request for replacement of the financial auditor.

Art. 44 - (1) Where the regulated entities or the mixed financial holding companies within a financial conglomerate do not comply with the requirements regarding the capital adequacy, the risk concentration, the intra group transactions, the internal control mechanisms and risk management processes, referred to in this emergency ordinance and in the regulations issued in its appliance, or do not observe the special conditions imposed or the engagements assumed under the supplementary supervision, or do not observe any measure imposed according to the Art.43, the coordinator may apply with respect to the mixed financial holding company the following sanctions:

a) written warning;

b) temporary suspension (of one, more or all) of the managers;

c) fine applicable to the mixed financial holding company, ranging from 0.05% to 1% from the turnover realized during the previous financial year by the regulated entity in the insurance sector, as a subsidiary of the mixed financial holding company, that has the higher turnover, and from the minimum capital of the regulated entity within the banking sector and investment services, as subsidiary of the mixed financial holding company; if this sector contents more subsidiaries as regulated entities, the quantum of the fine shall be determined by taking into consideration the highest minimum capital level of the regulated entity; the minimum and the maximum level of the fine are the highest values resulting from the calculation performed as above mentioned;

d) fine applicable to the managers, ranging from 1 to 6 net average salaries in the entity, according to the salary in the month before the fact was found;
e) request for replacement of the manager/managers by the mixed financial holding company.
(2) During the suspension of the managers, decided by the by the coordinator in accordance with para (1) let.b), the mixed financial holding company company shall nominate a person to effectively direct the business of the undertaking during an interim period, with the observance of Article 36 para (1).
(3) The volume of the fines shall be compared to the seriousmess of the carried aut deeds. The collected fines shall be recognised as revenue to the state budget in the district belonging to the coordinator.

Art. 45 - The coordinator shall inform those competent authorities of its findings, according to Art.43 and Art.44.

Art. 46 - For the purposes of the supplementary supervision, the competent authorities may apply to the regulated entities under the scope of their supervision, any measures or sanctions foreseen in the sectoral rules.

Art. 47 - (1) When the coordinator of a financial conglomerate is an authority from another member State, this may apply too sanctions against the mixed financial holding companies, Romanian legal entities.
(2) When the coordinator of a financial conglomerate is a competent authority from Romania, this may apply too sanctions against a mixed financial holding company from another Member State.

Art. 48 - For the purposes of this emergency ordinance, in order to coordinate their supervisory actions, the coordinator and the other competent authorities shall conclude coordination agreements, if necessarily in accordance with the provisions of art.43-47.

Art. 49 - If a regulated entity in a financial conglomerate makes use of it's affiliation in a financial conglomerate, in order to partially or totally avoid the application of the sectoral rules, the competent authorities shall have the power to take the necessary supervisory measures or sanctions foreseen by the corresponding sectoral rules.

Art. 50 – The deeds provided for in art.44 le are not applicable the provisions of the Emrgency Ordinance No.2/2001 on the legal framework of the criminal offences, as subsequently amended and supplemented.

CHAPTER V

Relations with third countries

SECTION 1

Parent undertakings from third countries

Art. 51 - Without prejudice to the sectoral rules, in the case referred to in Article 12, the Romanian competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office in a third country, are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of this emergency ordinance on the supplementary supervision of regulated entities. The verification shall be carried out by the Romanian competent authority which would be the coordinator if the criteria set out in Article 26(1) were to apply, on the request of the parent undertaking or of any of the regulated entities authorised in a Member State or on its own initiative. That competent authority shall consult the other relevant competent authorities, and shall take into account any applicable guidance prepared by the Financial Conglomerates Committee. For this purpose the competent authority shall consult the Committee before taking a decision.

Art. 52 - (1) In the absence of an equivalent supervision referred to in art.51, relevant competent authorities shall nominate a coordinator and shall apply to the regulated entities, by analogy, the provisions concerning the supplementary supervision of regulated entities referred to in Article 10(2), or competent authorities may apply one of the methods set out in paragraph (2).
(2) The competent authorities may apply other methods which ensure an appropriate supplementary supervision of the regulated entities in a financial conglomerate. These methods must be agreed by the coordinator, after consultation with the other relevant competent authorities. The competent authorities may in particular require the establishment of a mixed financial holding company which has its head office in a Member State, and apply this emergency ordinance to the regulated entities in the financial conglomerate headed by that holding company. These methods must allow the fulfilling of the objectives of supplementary supervision settled by this emergency

ordinance and must be notified to the other competent authorities involved and to the European Commission.

SECTION 2

Cooperation with third-country competent authorities

Art. 53 - For the purpose of supplementary supervision foreseen by this emergency ordinance, the competent authorities may conclude agreements regarding the means of exercising the supplementary supervision of regulated entities in a financial conglomerate of regulated entities in a financial conglomerate, with one or more third countries.

Art. 54 - The competent authorities shall inform the European Commission, the Banking Advisory Committee, the Insurance Committee and the Financial Conglomerates Committee about the resulting situation of negotiations and by case about the results of the conclusion of agreements.

CHAPTER VI

Final provisions

Art. 55 - In applying this emergency ordinance, the National Bank of Romania, the National Securities Commission and the Commission for Insurance Supervision shall issue common regulations.

Art. 56 - This emergency ordinance shall enter into force on January 1st, 2007.