

Law No. 278 of 30 June
for the approval of Government Ordinance No. 10/2004
on the judicial reorganisation and winding-up
proceedings of credit institutions

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Sole Article. – Government Ordinance No. 10 of 22 January 2004 on the judicial reorganisation and winding-up proceedings of credit institutions, adopted pursuant to Article 1 subparagraph II.9 of Law No. 559/2003 on vesting the Government with the power to issue ordinances, as published in *Monitorul Oficial al României*, Part One, No. 84 of 30 January 2004, shall be approved with the following amendments and completions:

1. The title of the Ordinance shall read as follows:

“ORDINANCE
***on the winding-up of credit institutions*”**

2. Title I shall read as follows:

“TITLE I
***Winding-up proceedings of credit institutions*”**

3. Paragraph (1) under Article 1 shall read as follows:

“Article 1 – (1) The winding-up proceedings regulated by this Ordinance shall apply to credit institutions, Romanian legal persons, including their branches abroad.”

4. Letter a) of paragraph (1) under Article 2 shall read as follows:

“a) **interim administrator** - any natural or legal person appointed by the National Bank of Romania, and, in the case of credit co-operatives, the special administration committee appointed by the central body of the credit co-operatives empowered to take protection measures in order to prevent the assets of the credit institution from decreasing and its liabilities from increasing, starting with the time when a petition to open winding-up proceedings is filed and until the appointment of the liquidator;”

5. Letters b), c), d) and e) of paragraph (1) under Article 2 shall be repealed.

6. Subparagraph 3 of letter h) of paragraph (1) under Article 2 shall read as follows:

“3. the withdrawal of the credit institution’s authorisation in compliance with legal provisions, following the failure to restore to viability the credit institution;”

7. Paragraph (2) under Article 2 shall read as follows:

“(2) The terms: “**credit institution**”, “**Member State**”, “**home Member State**”, “**host Member State**”, “**branch**” and “**competent authority**” are defined by Law No. 58/1998 on banking activity, as subsequently amended and supplemented.”

8. The name of Chapter II under Title I shall read as follows:

***“CHAPTER II
Participants in the winding-up proceedings
of credit institutions”***

9. Article 3 shall read as follows:

“Article 3 – (1) Bodies applying the proceedings are: courts, the syndic, and the liquidator.

(2) The Court in whose jurisdiction the head office of the debtor credit institution is located, as registered in the trade register, shall be vested with the prerogative to decide on the implementation of the proceedings laid down in this Ordinance, except for appeals, and these proceedings shall be exercised by a syndic.

(3) The syndic is appointed, on a case-by-case basis, by the president of the Court from among the judges designated as syndics pursuant to Article 12 paragraph (3) of Law No. 92/1992 on judicial organisation, republished, as subsequently amended and supplemented.

(4) For the purposes of this Ordinance, the main tasks of the syndic shall be the following:

- a) to issue an order on opening of proceedings;
 - b) to rule on the challenge for cancellation of the debtor credit institution against the petition for the opening of proceedings, filed by the National Bank of Romania or by creditors;
 - c) to appoint, by court order, the liquidator, to set his powers, control his activity and, where appropriate, to replace him;
 - d) to rule on the writs filed by the liquidator or by the committee of creditors on cancelling collateral establishment or asset transfers prior to the order on opening of proceedings;
 - e) to hear the appeals initiated by the representative of the debtor credit institution’s shareholders or by its creditors against the measures taken by the liquidator;
 - f) to take the necessary measures arising from the examination of reports submitted by the liquidator and to solve the objections to them;
 - g) to confirm the plan of distribution of the proceeds from winding-up;
 - h) to authenticate the legal documents concluded by the liquidator, for whose validity the original copy is required;
 - i) to approve the winding-up proceedings and the transactions for purchasing assets and assuming liabilities;
 - j) to establish civil responsibilities for management bodies, statutory auditors, and the operating staff or the employees with control duties of the insolvent credit institution;
 - k) to issue an order on closing of proceedings.
- (5) The syndic’s orders are final and enforceable. They may be appealed separately.”

10. Article 4 shall read as follows:

“Article 4 – (1) For the orders issued by the syndic based on the provisions of Article 3, the Court of Appeal shall be the appeal authority.

(2) The Court shall rule on the appeal within 15 days from the lodging of the file with the Court of Appeal, and the parties shall be summoned in virtue of Articles 86-94 of the Civil Procedure Code in the case of the Bank Deposit Guarantee Fund and the liquidator, and by means of announcements published in two national newspapers in the case of the other parties. Where the National Bank of Romania files a petition on opening of winding-up proceedings, it shall be summoned in accordance with the provisions of Articles 86-94 of the Civil Procedure Code.

(3) By way of derogation from the provisions of Article 300 paragraphs (2) and (3) of the Civil Procedure Code, the syndic's orders shall not be suspended by the appeal authority. The appeal authority may suspend the following orders:

- a) the order to reject the appeal of the debtor credit institution, lodged in accordance with Article 16 paragraph (2);
- b) the order solving the objections to the plan of distribution of the proceeds from winding-up, in accordance with Article 26 paragraph (2)."

11. Article 5 shall read as follows:

"Article 5 – For the purposes of this Ordinance, the main tasks of the liquidator shall be the following:

- a) upon receiving the court order on opening of winding-up proceedings, he shall open with a bank, Romanian legal person or the branch of a foreign bank authorised to operate within the territory of Romania, two accounts, one in local currency and the other one in foreign exchange, bearing the heading "insolvent credit institution" and used solely for the winding-up proceedings. The amounts held in accounts with other financial and banking institutions shall be transferred upon the liquidator's request into the "insolvent credit institution" accounts. The liquidator shall immediately notify the National Bank of Romania the name of the commercial bank and the accounts opened with it, and thereafter the National Bank of Romania shall instantly transfer into these accounts the amounts of the credit institution recorded with it. Further operations of the credit institution under winding-up proceedings shall be performed through these accounts;
- b) to inventory the assets of the debtor credit institution and take the adequate measures to protect them, to affix seals at the opening of the winding-up proceedings, in accordance with the provisions of Law No. 64/1995 on the judicial reorganisation and winding-up proceedings, republished, as subsequently amended and supplemented;
- c) to examine the debtor credit institution's activity in respect of the actual state-of-affairs, to draw up an initial in-depth report on the causes and circumstances which led to insolvency by specifying the persons who may be responsible for the outcome; the report shall be submitted to the syndic for approval within 30 days at most from the opening of winding-up proceedings; upon the liquidator's request, the syndic may extend this period on well-founded grounds, by way of irrevocable conclusion;
- d) to hire, by observing the law, and supervise the personnel needed for the winding-up proceedings; the personnel may be recruited from among the employees of the debtor credit institution;
- e) to ensure management of the debtor credit institution, i.e. to carry out operations with regard to the winding-up proceedings, including loan rescheduling and the resetting of the interest rates related to the assets of the debtor credit institution, provided any new level of the interest rate is no lower than the latest reference rate announced by the

National Bank of Romania, as well as to take part in the interbank foreign exchange market, and take all the steps, such as downsizing staff in order to continuously cut operational and winding-up costs;

f) to maintain, cancel or withdraw from contracts concluded by the debtor credit institution, as well as to conclude new contracts necessary to the winding-up proceedings;

g) to carry out transactions, pay off debts, discharge sureties, waive real collateral provided they are confirmed by the syndic;

h) to conclude any document, initiate and co-ordinate any legal action or procedure, in the name of the debtor credit institution;

i) to take legal action in Court for cancellation of any establishment of collateral or transfer of patrimonial rights in favour of third parties and for the restitution by the latter of the assets transferred and of the value of other services supplied, performed by the debtor credit institution to the detriment of the creditors' interests, through:

1. free-of-charge transfer deeds performed within 3 years prior to the opening of proceedings; sponsorships for humanitarian reasons implemented by law are excepted;

2. commercial transactions, in which the value of the debtor credit institution's supplied services exceeds widely that received, performed in the 3 years prior to the opening of proceedings;

3. documents concluded within 3 years prior to the opening of proceedings, with the intention of all parties involved to conceal assets from their monitoring by creditors or to impinge on the creditors' rights in any other way;

4. ownership transfer deeds to a creditor in order to extinguish a prior debt or to the latter's benefit, performed within 180 days prior to the opening of proceedings, if the amount the creditor might obtain in case the debtor credit institution is wound up is lower than the value of the transfer deed;

5. establishing or perfecting real collateral for a claim unsecured for 120 days prior to the opening of proceedings;

6. early repayment of debts performed within 120 days prior to the opening of proceedings if their due date was set for a date subsequent to the opening of proceedings;

7. documents concluded with persons having close links with the debtor credit institution in the one-year period prior to the opening of proceedings; the persons having close links with the debtor credit institution are laid down in Government Ordinance No. 39/1996 on the establishment and operation of the Bank Deposit Guarantee Fund, republished, as subsequently amended and supplemented;

j) to examine the claims against the debtor credit institution and raise objections, as the case may be; budgetary claims are not subject to this examination, in their case special legal provisions being applied;

k) to receive the amounts in domestic and foreign currency on account of the debtor credit institution and register them within 24 hours with the new accounts of the debtor credit institution, and to pay the running expenses necessary for the preservation and management of the debtor credit institution's estate, including the expenses incurred by the personnel hired in compliance with letter d), the payment made prior to completing the list of creditors, except for the remuneration of the liquidator and of the persons hired by him;

l) to take the necessary steps as regards the foreign exchange accounts of the debtor credit institution opened with corresponding credit institutions by:

1. notifying the corresponding credit institutions on the opening of winding-up proceedings of the debtor credit institution and on the freezing of the respective foreign exchange accounts;
 2. subsequently transferring, within the shortest delay, of the amounts in the new foreign-exchange account, for each currency, opened with the commercial bank; the amounts in the foreign exchange account shall be converted into domestic currency and transferred into the account opened in domestic currency;
 3. making payments for the current operations of the debtor credit institution, as well as ensuring effective management of available deposits;
- m) monitoring the collection of claims from the estate of the debtor credit institution, resulting from the transfer of assets or amounts of money carried out by the credit institution, prior to the opening of proceedings;
 - n) selling the assets and rights pertaining to the debtor credit institution's estate – all the procedures, steps, and techniques necessary to realise the assets of the insolvent credit institution – by observing the principle of presumed minimum cost and by obtaining satisfaction from the proceeds from those assets in order to pay off the debts to creditors through:
 1. transactions to purchase assets and assume liabilities by which a financially sound credit institution acquires, in part or in full, the assets of the debtor credit institution and takes over, in part or in full, the liabilities, including all guaranteed deposits. Purchasing of assets and assuming of liabilities may be performed on the basis of call or spot options. For the transactions laid down in this subparagraph, the liquidator may collect a premium, from the acquiring credit institution, negotiated according to the quality of purchased assets and assumed liabilities, payable when the estate is transferred and a premium for exerting the option, according to the term of option, payable upon the conclusion of negotiations. Upon the purchase, for the assets acquired through fraudulent operations, for which proofs are produced that they were acquired through fraud or theft of financial instruments, the parties may alter the original transaction and the acquiring credit institution shall receive from the liquidator, in exchange, other assets or amounts of money;
 2. sale of assets, such as: buildings, land, transferable securities, winding-up proceedings which shall be performed consistent with the provisions of Section 6 “Insolvency” under Chapter III of Law No. 64/1995, republished, as subsequently amended and supplemented;
 3. other techniques of realisation of assets, such as assignment of receivables or novations at a negotiated value, in the interest of the winding-up proceedings;
 - o) to call the first meeting of creditors and to establish the meeting agenda of the creditors' committee whenever necessary and to chair such meetings;
 - p) to draw up a monthly report on the progress of the winding-up proceedings and the fulfilment of his tasks, which shall be submitted to the syndic for approval; the report shall provide information on the total value of the claims against the debtor credit institution and on the total value of its realised assets, on the proceeds from extinction and collection of claims, as well as on the plan of distribution among creditors of the retrieved claims, on the expenses incurred;

- q) to draw up the final winding-up balance sheet; should the winding-up proceedings take longer than a fiscal year, the liquidator is bound to draw up the annual balance sheet and submit it to the relevant authorities at the terms stipulated by law;
- r) to notify the syndic about all the issues the solving of which requires his involvement, in compliance with his tasks, as laid down in this Ordinance;
- s) to carry out any procedures stipulated by law.”

12. Article 6 shall read as follows:

“Article 6 – (1) In the discharge of their powers, the syndic and the liquidator may ask the opinion of the National Bank of Romania, in its capacity as the banking supervisory authority in respect of any banking issue.

(2) The provisions of Chapter II Section 3 “Meeting of creditors. Committee of creditors” of Law No. 64/1995, republished, as subsequently amended and supplemented, shall accordingly apply to the winding-up proceedings of credit institutions, except for Article 13¹ paragraph (6) and Article 16 paragraph (2).

(3) The committee of creditors may take legal action in Court to cancel some transfers of assets made by the debtor credit institution to the detriment of creditors unless the liquidator took such action.

(4) After the opening of winding-up proceedings, the General Meeting of Shareholders shall appoint a representative who shall act on its behalf until the end of proceedings.”

13. Article 7 shall read as follows:

“Article 7 – (1) By court order on opening of winding-up proceedings, the syndic shall appoint the liquidator and shall establish his tasks. By way of derogation from the provisions of Article 3 of Government Ordinance No. 79/1999 on organisation of the activity of persons involved in reorganisation and winding-up proceedings, as approved by Law No. 505/2002, the Bank Deposit Guarantee Fund may be appointed as liquidator.

(2) Upon opening the winding-up proceedings by court order, the rights and tasks of the General Meeting, Board of Directors and executive management of the credit institution shall cease automatically.

(3) By court order on opening of winding-up proceedings, the syndic shall set the liquidator’s remuneration, according to the provisions of Law No. 64/1995, republished, as subsequently amended and supplemented.”

14. Article 8 shall read as follows:

“Article 8 – (1) The representative of the debtor credit institution’s shareholders and the committee of creditors may appeal against the measures taken by the liquidator.

(2) The appeal shall be registered within 5 days from the filing of the reports laid down in Article 5 letters c) and p).

(3) The syndic shall rule on the appeal within 10 days from the registration date, in the Court Chamber, by summoning the appellant and the liquidator. If he deems it necessary, he may suspend the execution of the appealed measure. The syndic shall also summon the National Bank of Romania in the event the latter filed the petition on opening of proceedings.”

15. Article 9 shall read as follows:

“Article 9 – (1) During any stage of the proceedings, on well-founded grounds, the syndic may replace the liquidator, by way of irrevocable conclusion, issued by the Court Chamber.

(2) On the date the tasks of the new liquidator are established, the tasks of the person previously appointed shall cease. The newly appointed liquidator shall take over the tasks of the former liquidator under the supervision of the syndic.”

16. Article 10 shall be repealed.

17. Article 11 shall read as follows:

“Article 11 – The winding-up proceedings are started by a petition filed by the debtor credit institution, its creditors or the National Bank of Romania.”

18. Article 14 shall read as follows:

“Article 14 – (1) The National Bank of Romania in its capacity of banking supervisory authority shall file a petition to open the winding-up proceedings against the credit institution undergoing one of the situations laid down in Article 2, paragraph (1) letter h).

(2) The petition of the National Bank of Romania shall be accompanied by the decision of the National Bank of Romania Board to withdraw the respective credit institution’s authorisation and by any other documents necessary to prove the rightfulness of giving formal notice to the Court.”

19. Article 15 shall read as follows:

“Article 15 – (1) Subsequent to filing the petition, according to Articles 12, 13, and 14, the syndic shall immediately notify thereon the parties referred to in these articles.

(2) The National Bank of Romania shall appoint an interim administrator and shall set his remuneration upon his submitting an application or upon receiving the notification referred to in paragraph (1). If, on that date, the credit institution is undergoing the special administration procedure, the tasks of the interim administrator shall be performed by the person who was previously appointed as special administrator or by the members of the special administration committee, as the case may be, pursuant to this Ordinance.

(3) The expenses related to the interim administration shall be covered by the debtor credit institution. The interim administrator may be recalled from office by the National Bank of Romania.

(4) Where the credit institution has not been under special administration, the tasks of the debtor credit institution’s Board shall be automatically suspended on the date the interim administrator is appointed until his mandate expires. The Board may appeal against the petition filed, in compliance with Articles 13 and 14, during its suspension.

(5) The interim administrator may take only the measures necessary to prevent assets from decreasing and liabilities from increasing.

(6) Starting with the date a creditor or the debtor credit institution files a petition pursuant to Articles 12 and 13 and from the moment an interim administrator is appointed, the authorisation of the credit institution shall be granted only with a view to taking conservatory measures and carrying out current operations. The interim administrator shall neither take new deposits nor grant new loans. The ongoing contracts shall be

executed in compliance with their terms or in accordance with the agreement between parties.

(7) Where a credit institution is undergoing the situation laid down in paragraph (4), its executive management is subordinated to the interim administrator. Where the chairman of the Board of Directors is also the president of the credit institution, he shall keep the president position after the Board is suspended, pursuant to paragraph (4), until the mandate of the interim administrator expires.

(8) On the date the liquidator is appointed, the tasks of the interim administrator shall cease automatically.”

20. Article 16 shall read as follows:

“Article 16 – (1) At the first session, the syndic shall examine the petition and, in the event that the debtor credit institution does not dispute insolvency in the case of petitions submitted by the parties referred to in Articles 13 and 14, shall order the opening of winding-up proceedings.

(2) The appeal against the opening of winding-up proceedings may be lodged within 5 days from the date of the notification with regard to filing the petition.

(3) The syndic shall rule on the appeal within 10 days from lodging the appeal.

(4) Subsequent to the court order on opening of winding-up proceedings, the syndic shall immediately notify the parties referred to in Articles 12 and 13, the liquidator, the Bank Deposit Guarantee Fund, as well as the trade register where the debtor credit institution is registered, in order for the latter to bear the heading “insolvent credit institution”. The notification shall be published in two national newspapers.

(5) Where a credit institution has branches abroad, the National Bank of Romania shall immediately notify the banking supervisory authority in the host country about the opening of winding-up proceedings, in accordance with the provisions of this Ordinance.

(6) The syndic shall immediately notify the National Bank of Romania by fax, e-mail or telephone about his order on opening of winding-up proceedings of the debtor credit institution on the same day the court order is given. The National Bank of Romania shall close immediately after the final settlement of the respective day, in accordance with the regulations in force, the accounts of the debtor credit institution opened with it and shall transfer the holdings into the “insolvent credit institution” accounts opened with a commercial bank according to Article 5.

(7) From the date of opening of proceedings, all the documents of the debtor credit institution shall bear the heading laid down in paragraph (4).”

21. Paragraphs (1), (4) and (5) under Article 17 shall read as follows:

“Article 17 – (1) From the date of opening of winding-up proceedings, all judicial or extra-judicial actions with the aim of realising the assets of the debtor credit institution shall be suspended, except as otherwise provided by the law.

.....
(4) The date of opening of winding-up proceedings is the date when deposits become unavailable, as defined in accordance with the provisions of Government Ordinance No. 39/1996, republished, as subsequently amended and supplemented.

(5) Apart from the cases provided by law or those authorised by the syndic, all the documents, operations and payments made by the debtor credit institution subsequent to the opening of winding-up proceedings are rendered void.”

22. Paragraph (6) under Article 17 shall be repealed.

23. Article 18 shall read as follows:

“Article 18 – No interest, penalty of any kind or expense shall be added to the claims against the debtor credit institution as from the date of opening of winding-up proceedings.”

24. Paragraph (1) under Article 19 shall read as follows:

“Article 19 – (1) After the opening of winding-up proceedings according to Article 16 paragraph (1) the former managers as well as the significant shareholders of the debtor credit institution are forbidden, subject to being rendered void, to alienate, without the approval of the syndic, the shares or, as the case may be, the subscribed share capital of the debtor credit institution.”

25. Article 20 shall read as follows:

“Article 20 – The employees of the credit institution undergoing winding-up proceedings shall appoint two representatives to attend the procedure of realisation of assets, consisting in wages and other pecuniary rights.”

26. Articles 21-25 of Section 2 under Chapter III, Title I, shall be repealed.

27. Article 26 shall read as follows:

“Article 26 – (1) The provisions of Chapter III, Section 6 “Insolvency” of Law No. 64/1995, republished, as subsequently amended and supplemented, shall apply accordingly to the winding-up proceedings of credit institutions, except for Article 100 paragraph (2) and Article 108.

(2) The remuneration of the liquidator shall be paid on a quarterly basis only after he submits the reports referred to in Article 5, letters c) and p), on the proceeds from winding-up and collection of claims, and the calculation method of the respective remuneration, and after the syndic approved the said method. The syndic may extend by one month at the most the period to submit the report and the plan of distribution. The plan of distribution shall be registered at the Court’s clerk office and the liquidator shall notify each of the creditors about it. A copy of the report and of the plan of distribution shall be posted at the court’s door. Any of the creditors may lodge objections to the liquidator’s report, the plan of distribution and the remuneration to be paid within 10 days from posting the report. In such cases, the syndic shall hold a briefing with the liquidator and the creditors, within 10 days from the notification by the creditors, to meet by one court order all the objections.

(3) All expenses shall be covered from the estate of the debtor credit institution.”

28. Article 28 shall read as follows:

“Article 28 – After being granted the approval of the syndic regarding the winding-up proceedings prescribed in Article 5, letter n), subparagraph 1, the liquidator shall immediately initiate, if so provided in the approved winding-up proceedings, the negotiations on purchasing assets and assuming liabilities; to this end, the liquidator shall hold a briefing with all the credit institutions deemed eligible by the former in order to inform them of the terms and conditions of the negotiations. Prior to the briefing, the liquidator and all the credit institutions attending the briefing shall sign a non-disclosure agreement binding them to keep, in compliance with the law, the professional secrecy as concerns the information in the call for tenders with regard to the insolvent credit institution subject to negotiations.”

29. Article 34 shall read as follows:

“Article 34 – Where no tenders are received within the time limit prescribed in the call for tenders or where the submitted tenders do not meet the feasibility requirements of such a transaction or if the syndic does not endorse the transaction, the winding-up shall be made by the other methods provided for in this Ordinance, and the liquidator, other than the Bank Deposit Guarantee Fund, shall immediately inform the Bank Deposit Guarantee Fund which shall pay compensations within the shortest delay, according to the law.”

30. Article 35 shall read as follows:

“Article 35 – Where the transaction on purchasing assets and assuming liabilities is approved by the syndic, he shall likewise establish the remuneration of the liquidator.”

31. Article 36 shall read as follows:

“Article 36 – Provisions of Article 17, paragraphs (4¹) and (4²) of Law No. 64/1995, republished, as subsequently amended and supplemented, are applicable to the liquidator, except for the Bank Deposit Guarantee Fund when the latter holds one of these capacities.”

32. Letters a) and b) of paragraph (1) under Article 37 shall read as follows:

“a) charges, stamp duties or any other expenses related to the sale of the respective assets, including the expenses for their conservation and management, as well as the remuneration of the liquidator or of the persons hired by him;
b) claims of secured creditors, including the entire capital, interests and penalties of any kind, as well as expenses.”

33. Paragraph (2) under Article 37 shall read as follows:

“(2) Where the proceeds from the sale of these assets are insufficient to fully cover the respective secured claims, the difference shall be covered by unsecured claims granted to creditors in order to supplement the claims prescribed in Article 38. If, after the payment of the amounts laid down in paragraph (1), a gain results, it shall be added by the liquidator to the estate of the debtor credit institution.”

34. Subparagraph 1 under Article 38 shall read as follows:

“1. charges, stamp duties and any other expenses related to the winding-up proceedings, including the expenses for the conservation and management of the assets of the debtor credit institution, as well as the remuneration paid to the persons hired, according to the law, including to the liquidator.”

35. The introduction of paragraph (1) under Article 39 shall read as follows:

“Article 39 – (1) The syndic may order that a portion of the insolvent credit institution’s liabilities be borne by the members of the management bodies, statutory auditors, auditors, operating staff and/or employees with control duties that held the respective positions in the 3 years prior to the opening of proceedings, provided that they contributed to the insolvency of the credit institution by one of the following deeds:”

36. Article 41 shall read as follows:

“Article 41 – With a view to taking the measures provided under Article 39 paragraph (1), the syndic may be notified by the liquidator, by a shareholder or by any of the creditors, by the National Bank of Romania, or may act *ex officio*, based on the data in the file, and shall order ensuring measures.”

37. Paragraph (1) under Article 43 shall read as follows:

“Article 43 – (1) The winding-up proceedings shall be closed by the syndic, at the liquidator’s request, by an order on closing of proceedings, subsequent to the syndic’s approval of the final report, when all the funds or assets of the insolvent credit institution were distributed and the funds unclaimed by the eligible persons within 90 days from the date of the final report were registered by the liquidator with the Savings Bank – C.E.C. S.A. or were deposited with another credit institution, and the statement of account shall be submitted to the syndic. The order on closing of proceedings shall be communicated in writing or shall be published in at least two national newspapers to all the parties, in compliance with the provisions of Law No. 64/1995, republished, as subsequently amended and supplemented.”

38. Article 44 shall read as follows:

“Article 44 – During any stage of the proceedings, the syndic may order the closing of proceedings where the debtor credit institution’s estate lacks the assets or they are insufficient to cover administrative costs and no creditor offers to pay the amounts outstanding.”

39. Article 45 shall be repealed.

40. Article 46 under Chapter I, Title II, shall be repealed.

41. The name of Chapter II under Title II shall read as follows:

“CHAPTER II
Winding-up proceedings of credit institutions, Romanian legal persons,
and of their branches established in other Member States”

42. Article 47 shall read as follows:

“Article 47 – (1) The competent Court established in compliance with Article 3 paragraph (2) is the sole authority vested with the power to decide on the enforcement of winding-up proceedings upon a credit institution, Romanian legal person, including its branches established in other Member States.

(2) The competent Court shall immediately inform, via the National Bank of Romania, the competent authorities of the host Member States on its decision to open winding-up proceedings, including on the material effects such proceedings may have. Unless informing is possible prior to adopting the decision, it shall be made immediately thereafter.

(3) The provisions of paragraphs (1) and (2) shall not impinge on the provisions regarding the exercise of appeals against the syndic’s orders.”

43. Paragraph (1) under Article 48 shall read as follows:

“Article 48 – (1) The opening of winding-up proceedings of a credit institution authorised in Romania, including its branches set up in other Member States shall be governed by the Romanian law as regards treatment and enforcement of winding-up proceedings, referring in particular to:

- a) the goods subject to winding-up proceedings and the treatment of goods acquired by the credit institution after the opening of winding-up proceedings;
- b) the tasks of the credit institution and of the liquidator;
- c) the conditions under which set-offs may be put forward;
- d) the effects of winding-up proceedings on ongoing contracts to which the credit institution is party;
- e) the effects of winding-up proceedings on forced sale proceedings initiated by individual creditors, with the exception of lawsuits pending with the Courts in other Member States, case in which the provisions of paragraph (2) shall apply;
- f) the claims which are to be lodged against the credit institution and the treatment of claims arising after the opening of winding-up proceedings;
- g) the rules governing the lodging, verification and admission of claims;
- h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right *in re* or through a set-off;
- i) the conditions for and the effects of the closure of winding-up proceedings;
- j) creditors’ rights after the closure of winding-up proceedings;
- k) who is to cover the costs and expenses incurred in the winding-up proceedings;
- l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the rights of all creditors.”

44. Letter c) of paragraph (2) under Article 48 shall read as follows:

“c) repurchase agreements and agreements underlying the transactions carried out on a regulated market shall be governed by the law applicable to such agreements, unless the provisions of letter b) are breached;”

45. The name of Section 2 under Chapter II, Title II, shall read as follows:

“SECTION 2
Publication of the order on opening of winding-up proceedings
and the appointment of liquidators”

46. Paragraphs (1) and (3) under Article 49 shall read as follows:

“Article 49 – (1) The syndic shall take immediately the necessary steps with a view to publishing an extract of the decision to open the winding-up proceedings in the Official Journal of the European Communities and in two national newspapers of each host Member State.

.....
(3) The winding-up proceedings shall apply irrespective of the publication provided in paragraph (1) and shall produce legal effects in respect of creditors.”

47. Paragraphs (1) and (2) under Article 50 shall read as follows:

“Article 50 – (1) The syndic may request that the order on opening of winding-up proceedings against a credit institution be registered in the real-estate register, the trade register and any other public register kept in other Member States.

(2) The syndic shall take the necessary measures to ensure such registration whenever necessary in compliance with the law of the respective Member State.”

48. Article 51 shall read as follows:

“(1) The liquidator appointed in compliance with the law shall take action on the territory of the host Member States based on a certified copy of the original order passed by the competent Court which appointed him, issued by it, without further formality.

(2) The liquidator shall exercise on the territory of the host Member States all the powers he is entitled to in compliance with the Romanian law. He may appoint other persons to assist or represent him on the territory of the respective Member States, particularly to help creditors overcome potential difficulties encountered during the winding-up proceedings.

(3) In exercising his powers, the liquidator shall comply with the law of the Member State on the territory of which he takes action, in particular with regard to procedures for the realisation of assets and the provision of information to the employees of the credit institution in the respective Member State. The liquidator may not use force and may not rule on litigations or disputes.”

49. Paragraph (1) under Article 53 shall read as follows:

“Article 53 – (1) After the opening of winding-up proceedings of a credit institution, Romanian legal person, with branches opened in other Member States, the liquidator shall without delay and individually inform the known creditors who have their regular places of residence, domiciles or head offices in other Member States.”

50. The name of Chapter III under Title II shall read as follows:

“CHAPTER III
Reorganisation and winding-up proceedings applicable to branches in Romania of
credit institutions from other Member States”

51. Paragraphs (2)-(4) shall be inserted after paragraph (1) under Article 55, reading as follows:

“(2) Administrative or judicial authorities are those authorities which, according to the national law, are competent to decide on the reorganisation measures to be taken or on the opening of winding-up proceedings.

(3) The reorganisation measures are those measures adopted by administrative or judicial authorities which are intended to preserve or restore the financial standing of a credit institution and which could affect the third parties’ pre-existing rights, including the measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; the persons who are involved in the internal activity of credit institutions, administrators and shareholders are not considered as third parties.

(4) The winding-up proceedings are those collective proceedings opened and monitored by administrative or judicial authorities with the aim of realisation of assets of a credit institution under the supervision of those authorities, including where the proceedings are terminated by a composition or other similar measure.”

52. Paragraphs (1), (2) and (4) under Article 56 shall read as follows:

“Article 56 – (1) Where the reorganisation or winding-up proceedings were opened in respect of a credit institution in a Member State operating on the territory of Romania, those measures shall be fully effective without further formality on the territory of Romania and shall produce effects in accordance with the conditions and starting with the date laid down in the legislation of the Member State concerned.

(2) Reorganisation or winding-up proceedings shall be applied in compliance with the legislation of the home Member State and by observing the provisions of Article 48.

.....
(4) The competent administrative or judicial authorities in the home Member State, the administrator or the liquidator shall announce the order on opening of reorganisation or winding-up proceedings to the trade register where the branch of the respective credit institution is registered with a view to making the adequate specifications. The above-mentioned authorities shall also send the announcement for publication to two national newspapers in Romania.”

53. Paragraphs (4¹) and (4²) shall be inserted after paragraph (4) under Article 56, reading as follows:

“(4¹) **Administrator** – any person or body designated by administrative or judicial authorities whose task is to administer reorganisation measures.

(4²) **Liquidator** – any person or body designated by administrative or judicial authorities whose task is to administer winding-up proceedings.”

54. Article 57 shall read as follows:

“Article 57 – (1) The provisions of this Ordinance shall be supplemented by the provisions of Law No. 64/1995, republished, as subsequently amended and supplemented, and with the provisions of Law No. 105/1992 on regulating international private law matters.

(2) The National Bank of Romania shall inform without delay the competent authorities in the host Member States of the reorganisation measures or of the order on opening of winding-up proceedings, which was taken in a non-Member State with regard to a credit institution and its branch in Romania, where the credit institution has its head office in a state other than a Member State and has opened branches in other Member States.

(3) The notification shall be submitted immediately after the National Bank of Romania has withdrawn the authorisation of the branch following the opening of winding-up proceedings or as soon as the National Bank of Romania was informed about the reorganisation measures taken with regard to the respective branch. The notification shall also specify that the authorisation of the branch in Romania has been withdrawn.”

55. Article 60 shall be repealed.

56. Paragraph (5) under Article 61 shall read as follows:

“(5) No emergency procedure shall be used to confine, delay or suspend the execution of a bilateral netting agreement in compliance with this Article.”

57. Article 62 shall read as follows:

“Article 62 – In the legislative pieces in force, the phrase “**judicial reorganisation and winding-up proceedings of credit institutions**” shall be replaced by “**winding-up proceedings of credit institutions**”, in compliance with the provisions of this Ordinance.”

58. Paragraph (1) under Article 63 shall read as follows:

“Article 63 – (1) The provisions of this Ordinance shall enter into force within 30 days from its publication in *Monitorul Oficial al României*, Part One, except for the provisions of Title II and of Article 57 paragraphs (2) and (3), which shall enter into force on the date of Romania’s accession to the European Union.”

59. Article 64¹ shall be inserted after Article 64, reading as follows:

“Article 64¹ – Article 82³ of Law No. 58/1998 on banking activity, as subsequently amended and supplemented, shall read as follows:

«Article 82³ – Where the National Bank of Romania finds that the financial recovery of the credit institution is not possible, it shall withdraw the respective credit institution’s authorisation and shall notify the competent Court with the aim of opening winding-up proceedings.»”

The Parliament of Romania passed this Law by observing the provisions of Articles 75 and 76 paragraph (1) of the Constitution of Romania, as republished.