

Ordinance No. 10 of 22 January 2004
on the judicial reorganisation and winding-up
proceedings of credit institutions

Published in Monitorul Oficial al României, Part One, No. 84 of 30 January 2004

Pursuant to Article 108 of the Constitution of Romania, as republished, and to Article 1 subparagraph II.9 of Law No. 559/2003 on vesting the Government with the power to issue ordinances,

The Government of Romania passes the present Ordinance.

TITLE I

Judicial reorganisation and winding-up proceedings of credit institutions

CHAPTER I

General provisions

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

(2) The provisions of this Ordinance consistent with those of Government Emergency Ordinance No. 97/2000 on credit co-operative organisations, as approved and amended by Law No. 200/2002, shall apply to credit co-operatives.

Article 2 – (1) For the purposes of this Ordinance, the words and phrases listed below shall mean:

- a) **administrator** - any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;
- b) **liquidator** - any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;
- c) **administrative or judicial authorities** - the authorities which, according to the national law, are competent to decide on the reorganisation measures to be taken or on opening winding-up proceedings;
- d) **reorganisation measures** - the measures adopted by the administrative or judicial authorities which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including, among others, 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, Board members and shareholders are not considered as third parties;

e) **winding-up proceedings** - collective proceedings opened and monitored by the administrative or judicial authorities with the aim of realising assets of a credit institution under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

f) **financial instruments** - transferable securities, units in collective investment undertakings, money market instruments, financial futures contracts, including equivalent cash-settled instruments, forward interest-rate agreements, interest-rate, currency and equity swaps, options to acquire or dispose of any instruments falling within these categories, including equivalent cash-settled instruments, as well as currency and interest-rate options, commodities derivatives, and any other tradable instrument on a regulated market in a Member State or for which an application for admission to being traded on such market has been made;

g) **regulated markets** - the market of regulated and supervised financial instruments and which operates on a regular basis, is characterised by the fact that the regulations issued and submitted for adoption define the conditions for operation, for entering the market, the conditions governing the quotation of the financial instruments and the conditions that must be fulfilled by a financial instrument before it can be dealt on the market and observes the reporting and transparency requirements laid down by regulations in order to ensure investor protection;

h) **insolvency** - the state of the credit institution undergoing one of the following predicaments:

1. the obvious inability to pay its due debt by resorting to its liquid assets;
2. the solvency ratio of the credit institution falls below 2 percent;
3. where the credit institution's authorisation was withdrawn, pursuant to Law No. 58/1998 on banking activity, as subsequently amended and supplemented, following the failure to restore to viability the credit institution undergoing special administration;

i) **bilateral netting agreement** - any of the following:

1. any contract or clause embedded in a contract concluded by the debtor credit institution and any other entity, including natural persons, concerning operations with derivatives performed on regulated markets or over-the-counter markets, which lays down netting of payment obligations or contractual obligations, either current or future ones, arising from or relating to one or more such contracts, including any collateral, secondary or relating to them or

2. any contract or clause of a nature similar to those in subparagraph 1., which lays down netting of payment obligations or contractual obligations, either current or future ones, arising from one or more bilateral netting contracts, including any collateral, secondary or relating to them, based on which contractual bilateral netting may be achieved through one or more of the following manners:

a) extinction and/or repayment before maturity of any payment obligation or contractual obligation arising from one or more contracts of the nature set forth above;

b) calculation or estimation of a compensation, market or winding-up value or a value to replace any obligation which was paid or which was repaid before maturity pursuant to provisions of letter a);

- c) conversion into a single currency of any value calculated pursuant to the provisions of letter b);
 - d) compensation, to a net amount, of any values calculated pursuant to the provisions in letter b), after being converted in accordance with the provisions of letter c).
- (2) The terms: “credit institution”, “Member State”, “home Member State”, “host Member State”, “branch” and “competent authority” are defined by Law No. 58/1998.

CHAPTER II

Participants in the judicial reorganisation and winding-up proceedings of credit institutions

Article 3 – (1) Bodies applying the proceedings are: judicial authorities, the syndic, the special administrator, the administrator, 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 alone be empowered to decide on the implementation of the proceedings laid down in this Ordinance, except for appeals, and these proceedings shall be exercised by a Court and a syndic.

(3) The syndic is appointed, in each case, 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 prerogatives of the Court shall be the following:

- a) to decide on opening of proceedings;
- b) to rule on the challenge for cancellation of the debtor credit institution against the petition filed by the National Bank of Romania or by creditors, for opening of proceedings;
- c) to appoint, by court order, the syndic, the administrator, or the liquidator, to set their powers and, where appropriate, to replace them;
- d) to rule on the writ filed by the syndic or by the committee of creditors on cancelling collateral establishment or asset transfers prior to the decision of opening the proceedings;
- e) to hear the appeals of the debtor credit institution or of its creditors against the measures taken by the syndic, the special administrator, the administrator, and the liquidator;
- f) to confirm the reorganisation plan after its being voted by the creditors;
- 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 confirm transactions regarding the purchase of assets and the assumption of liabilities;
- j) to establish civil responsibility for governing bodies, statutory auditors, and the senior executives and managers of the insolvent credit institution ;
- k) to decide on closing the proceedings.

(5) Court orders are final and enforceable. They may be appealed pursuant to the law.

Article 4 – (1) For the orders made by the Court 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 by virtue of Articles 86-94 of the Civil Procedure Code in the case of the National Bank of Romania, the Bank Deposit Guarantee Fund, the special administrator, the administrator or the liquidator, and by means of announcements published in two national newspapers in the case of the other parties.

(3) By way of derogation from Article 300 paragraphs (2) and (3) of the Civil Procedure Code, the Court 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 bankruptcy order made in accordance with Article 26 paragraph (1);
- c) the order solving the objections to the plan of distribution of the proceeds from winding-up, made in accordance with Article 107 of Law No. 64/1995 on the judicial reorganisation and winding-up proceedings, republished, as subsequently amended and supplemented.

Article 5 – For the purposes of this Ordinance, the main powers of the syndic shall be the following:

- a) to exercise control over the activity carried out by the special administrator, the administrator, or the liquidator;
- b) to call the meetings of creditors whenever necessary and to chair such meetings;
- c) to endorse the reorganisation plan prior to submitting it for approval to the creditors and to send the approved plan to the Court for confirmation;
- d) to endorse the plan of distribution of the proceeds from winding-up and to send the approved plan to the Court for confirmation;
- e) to take the necessary measures arising from the examination of reports submitted by the liquidator and to solve the objections to them, including the approval of the winding-up proceedings and of the transactions regarding the purchase of assets and the assumption of liabilities;
- f) to take legal action in Court for cancellation of any fraudulent deeds concluded by the debtor credit institution which are detrimental to the creditors' rights within three years prior to the opening of proceedings;
- g) 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 three 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 covered services exceed widely that received, in the three years prior to opening the proceedings;

3. documents concluded within three years prior to opening the 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 opening the proceedings, if the amount the creditor may 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, as republished.
- h) to approve the plan for realising assets from the debtor credit institution's estate until all financial obligations are paid;
- i) to notify the Court about any issue that may require a court ruling, in accordance with the powers set by this Ordinance;
- j) to draw up any proceeding documents under this Ordinance.

Article 6 – (1) In the discharge of their powers, involving the implementation of banking regulations, the Court, the syndic, the special administrator, the administrator, and the liquidator may ask the opinion of the National Bank of Romania, in its capacity as the banking supervision authority.

(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 judicial reorganisation and 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 syndic took such action.

(4) The provisions of Chapter II Section 3¹ “General Meeting of Partners/Shareholders. Committee of partners/shareholders” of Law No. 64/1995, republished, as subsequently amended and supplemented, shall accordingly apply to the judicial reorganisation and winding-up proceedings of credit institutions.

Article 7 – (1) During judicial reorganisation, at the request of the committee of creditors as provided for in Article 16 of Law No. 64/1995, republished, as subsequently amended and supplemented, of the syndic or of the National Bank of Romania, the Court may suspend the right of the debtor credit institution's governing bodies to represent the credit institution, to manage the assets of that credit institution, and to dispose of its assets; in this case, the Court shall appoint the administrator, and shall set his tasks and remuneration.

(2) By court order on opening winding-up proceedings, the Court shall suspend the right of the debtor credit institution's administrators to represent the credit institution, to manage and dispose of the assets of that credit institution, shall appoint the liquidator and shall establish his tasks and remuneration. 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.

(3) The Court shall suspend the rights of all the governing bodies – general meeting, Board members, executives – in the event that the National Bank of Romania requests the direct opening of winding-up proceedings for the credit institution.

(4) Provisions of Law No. 64/1995, republished, as subsequently amended and supplemented, on remuneration of the administrator and the liquidator shall apply accordingly.

Article 8 – The debtor credit institution and any of the creditors may appeal against the measures taken by the syndic, special administrator, administrator, and liquidator, in the specific cases laid down by law. The appeal shall be registered within 5 days from the date the measure was taken and it shall be ruled on within 15 days at most from the date the appeal was registered. If necessary, the Court shall hold a session, summoning the person who made the appeal, the debtor credit institution, the creditors, and the National Bank of Romania, in which the syndic shall take part.

Article 9 – (1) During any stage of the proceedings, on well-founded grounds, the Court may replace the syndic, the special administrator, the administrator or the liquidator, by way of irrevocable conclusion, issued by the Court Chamber; for this purpose, the Court shall ask the opinion of the National Bank of Romania.

(2) On the date the tasks of the new syndic/special administrator/administrator/liquidator are established by the Court, the tasks of the person previously appointed by the Court shall cease. The newly appointed syndic shall take over the tasks of the former syndic, who was replaced under Court supervision. The newly appointed special administrator/administrator/liquidator shall take over the tasks of the former special administrator/administrator/liquidator, who was replaced under the supervision of the syndic.

(3) The tasks of the special administrator are those laid down in Article 81 of Law No. 58/1998, as subsequently amended and supplemented, Articles 200 and 201 of Government Emergency Ordinance No. 97/2000, as approved and amended by Law No. 200/2002, while the tasks of the administrator are those stipulated in Article 18 of Law No. 64/1995, republished, as subsequently amended and supplemented, except for those laid down at letters d) and e).

(4) The debtor credit institution whose special administrator or administrator was appointed shall be subject to the National Bank of Romania's general regulations in the field.

Article 10 – 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, within 10 days at most, shall open with a bank operating in Romania, selected by auction in terms of efficiency criteria concerning protection of creditors' interests, including the development of territorial network, two accounts, one in local currency (ROL) and another 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 by the liquidator 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 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 preserve the assets of the debtor credit institution, to affix seals at the beginning of the winding-up proceedings, in accordance with the provisions of Law No. 64/1995, republished, as subsequently amended and supplemented;
- c) to examine the debtor credit institution's activity in respect to the actual state-of-affairs, to draw up an 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; at the request of the liquidator, 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 in the winding-up proceedings; the personnel may be recruited from among the former 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 credit rescheduling and the resetting of the interest rate 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 denounce contracts concluded by the debtor credit institution, as well as to conclude new contracts necessary to the winding-up proceedings;
- g) 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 being applied special legal provisions;
- h) to receive the amounts in ROL and foreign exchange on account of the debtor credit institution and to register them within 24 hours with the new accounts of the debtor credit institution;
- i) 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, 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 ROL and transferred into the account opened in ROL;
 3. carrying out payments for the current operations of the debtor credit institution, as well as ensuring effective management of available deposits.
- j) to monitor the collection of claims from the estate of the debtor credit institution, resulting from the transfer of assets or amounts carried out by the credit institution, prior to the opening of proceedings;
- k) to sell 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 part or all assets of the debtor credit institution and takes over part or all its liabilities, including all guaranteed deposits. The purchase of assets and the assumption of liabilities may be performed on the basis of call or spot options. For the transactions laid down in this paragraph, the liquidator may collect a premium, from the acquiring credit institution, negotiated according to the quality of purchased assets and the 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, as equivalent, other assets or amounts of money;
 2. sale of assets, such as: buildings, land, transferable securities, the 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 realising assets, such as assignment of receivables or novations at a negotiated value, in the interest of the winding-up proceedings.
- l) to draw up a monthly report on the progress of the winding-up proceedings and the fulfilment of tasks by the liquidator, 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;
- m) 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;

- n) to notify the syndic about all the issues the solving of which requires his involvement;
- o) to conclude any act, initiate and co-ordinate any legal action or procedure, in the name of the debtor credit institution;
- p) to carry out any procedures stipulated by law.

CHAPTER III Proceedings

SECTION 1 Opening of proceedings. Effects of opening proceedings

Article 11 – The judicial reorganisation and winding-up proceedings shall commence by the submission to the Court of a petition by the debtor credit institution, or its creditors or by the National Bank of Romania.

Article 12 – (1) The insolvent debtor credit institution, as defined under Article 2 paragraph (1) letter h) subparagraphs 1. or/and 2., is bound to file a petition to the Court to be subject to the provisions of this Ordinance, within 30 days at most from the date the credit institution is declared insolvent.

(2) Provisions of subparagraph 1. “Debtor’s petition” of Section 1 under Chapter III “Proceedings” of Law No. 64/1995, republished, as subsequently amended and supplemented, shall apply accordingly to the debtor credit institution.

Article 13 – (1) Any creditor having a firm, liquid and enforceable claim may file a petition in Court against a debtor credit institution which has not fully honoured such a claim within at least 30 working days from the due date in the case of central bodies of credit co-operatives including their affiliates or within at least 7 working days from the due date in the case of the other credit institutions, according to the provisions of Article 29, paragraphs (1) and (2) of Law No. 64/1995, republished, as subsequently amended and supplemented.

(2) The creditor cannot file the petition without proving that, subsequent to the submission of a petition to block the debtor credit institution’s account, the National Bank of Romania, in its capacity as third custodian party, reported that the respective credit institution was insolvent.

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

(2) The National Bank of Romania shall immediately require the opening of winding-up proceedings for the debtor credit institution in one of the situations set forth in Article 2, paragraph (1) letter h), subparagraphs 2. or/and 3.

(3) The petition of the National Bank of Romania shall be accompanied by the following documents:

a) the decision of the National Bank of Romania Board to withdraw the respective credit institution's authorisation;

b) the evidence proving appointment of the special administrator, in the event that the debtor credit institution was not under the special administration procedure prior to the submission of the petition;

c) any other documents necessary to prove the rightness of the notification submitted to the Court.

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

(2) Upon receiving the notification as laid down in paragraph (1), in the event that the credit institution is not undergoing the special administration procedure, the National Bank of Romania shall appoint a special administrator and shall set his remuneration. The special administrator shall be assigned the tasks laid down in Article 9, paragraph (3).

(3) All expenses related to the procedure established by this Ordinance, including remuneration, shall be covered from the assets of the debtor credit institution.

(4) Should the accounts laid down in Article 10, letter a) lack available deposits, the amounts in the winding-up fund established by Law No. 64/1995, republished, as subsequently amended, shall be used.

Article 16 – (1) On the first session, the Court 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, and shall decide the opening of judicial reorganisation and winding-up proceedings.

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

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

(4) In the event that the petition submitted by the National Bank of Romania to commence the proceedings also includes the proposal to open without delay winding-up proceedings for the debtor credit institution, the latter shall appeal, within 15 days from the notification of the petition, being forbidden to engage in any other operations, against both the insolvency and the proposal to open immediately the winding-up proceedings. In this case, the Court shall rule on both petitions by the same order.

(5) Subsequent to the court order on opening of judicial reorganisation and winding-up proceedings and, as the case may be, opening of winding-up proceedings, as a result of the petition submitted in accordance with Articles 12, 13, and 14 and the appointment of the special administrator or the liquidator, the Court shall notify the parties referred to in the above-mentioned articles, the special administrator or the liquidator, and 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” or “credit institution under winding-up proceedings”. The notification shall be published in two national newspapers. In the case of a credit institution with branches abroad, the National Bank of Romania shall immediately notify the banking supervision authority in the host country about the opening of judicial reorganisation and winding-up proceedings, in accordance with the legal provisions.

(6) After the opening of proceedings, all the acts of the debtor credit institution shall bear, as the case may be, one of the headings laid down in paragraph (5).

Article 17 – (1) As from the date of opening the judicial reorganisation and winding-up proceedings, all judicial and extra-judicial actions with the aim of realising the assets of the debtor credit institution shall be suspended, except where the law provides otherwise.

(2) The opening of proceedings suspends any status of limitation of the actions laid down in paragraph (1). The status of limitation will resume after 30 days from the closure of proceedings.

(3) The legal actions taken by the liquidator in compliance with the provisions of this Ordinance are exempted from stamp duty payment.

(4) The date of the opening of the judicial reorganisation and winding-up proceedings is the date when deposits become unavailable.

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

(6) As from the date deposits become unavailable, depositors are entitled to receive, according to the law, compensations for the guaranteed deposits. As from the same date, the Bank Deposit Guarantee Fund takes over all rights of secured depositors proportionally to the value of the guaranteed deposits.

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 the opening of judicial reorganisation and winding-up proceedings.

Article 19 – (1) After the opening of judicial reorganisation and winding-up proceedings according to Article 16 paragraph (1) the former managers and 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.

(2) The syndic shall order the unavailability of the shares, subscribed share capital respectively, pursuant to the provisions of paragraph (1), in the dedicated registers or electronic accounts.

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

SECTION 2

Reorganisation plan. Reorganisation of credit institutions

Article 21 – (1) Provisions of Chapter III, Section 4 of the “Plan” of Law No. 64/1995, republished, as subsequently amended, shall be accordingly applied to the judicial reorganisation proceedings of credit institutions, except for Article 60, paragraph (3).

(2) The execution of the reorganisation plan of a credit institution shall not exceed the time limit of one year from its confirmation.

Article 22 – A copy of the proposed plan shall be sent to the National Bank of Romania, the representatives of which shall be summoned to attend the meeting convened by the syndic, pursuant to the provisions of Article 62, paragraph (2) of Law No. 64/1995, republished, as subsequently amended. The Court shall ask the National Bank of Romania’s opinion on the real chances of success of the proposed plan.

Article 23 – If no plan is confirmed and the time limit for the proposal of a plan, pursuant to Article 59 of Law No. 64/199, republished, as subsequently amended, has expired, the syndic shall ascertain the fulfilment of conditions prescribed in Article 77, paragraph (1) of the said law and shall notify the Court to open the winding-up proceedings immediately.

Article 24 – (1) Provisions of Chapter III, Section 5 “Reorganisation” of Law No. 64/1995, republished, as subsequently amended, shall be applied accordingly to the judicial reorganisation proceedings of credit institutions.

(2) The National Bank of Romania shall request the Court to open winding-up proceedings for the debtor credit institution in the case prescribed in Article 73, paragraph (1) of the Law No. 64/1995, republished, as subsequently amended.

Article 25 – All the reports that the special administrator, the administrator or the liquidator is obliged to draw up in accordance with the law shall be compulsorily sent to the National Bank of Romania as well.

SECTION 3
Winding-up of debtor credit institutions
Transactions regarding the purchase of assets and the assumption of liabilities

Article 26 – (1) The Court shall decide, by rightful conclusion, the opening of winding-up proceedings of the debtor credit institution:

a) in the cases laid down in Article 77 of Law No. 64/1995, republished, as subsequently amended;

b) in the case prescribed in Article 16, paragraph (4).

(2) Provisions of Chapter III, Section 6 “Winding-up” of Law No. 64/1995, republished, as subsequently amended, shall be applied accordingly also to the winding-up proceedings of credit institutions, except for Article 100, paragraph (2) as regards the opening of the winding-up proceedings after the disclosure of the schedule of claims and Article 108 on the ranking of claims lodged by creditors against the insolvent credit institution.

Article 27 – After the opening of the winding-up proceedings of a credit institution, based on a court order, the liquidator draws up the report provided for in Article 10 letter c) that should include, among others, proposals on the winding-up proceedings prescribed in Article 10, letter k), subparagraph 1.

Article 28 – After receiving the notification from the syndic and the approval of the Court regarding the winding-up proceedings prescribed in Article 10, letter k), subparagraph 1., the liquidator shall immediately initiate, if so provided for in the approved proceedings, negotiations regarding the purchase of assets and the assumption of 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 negotiation. Prior to the briefing, the liquidator and all the credit institutions attending the briefing shall sign a non-disclosure agreement which obliges them to keep, in compliance with the law, the professional secrecy as concerns the information in the inquiry application with regard to the insolvent credit institution subject to negotiation.

Article 29 – Depending on the interest shown by the credit institutions attending the briefing, the liquidator shall draw up an inquiry application for the purchase of assets and the assumption of liabilities, which includes, mainly, the following:

a) classes of assets and liabilities to be traded and their volume classified in terms of liquidity and enforceability;

b) the winding-up value of each class of assets;

c) the premium to be set by the liquidator and paid by the bidding credit institutions, and which is established in terms of several elements, among which the quality of assets and liabilities, the celerity of the operation;

d) the time limit for the inquiry applications to be submitted to the liquidator by the respective credit institutions.

Article 30 – The liquidator shall communicate, under non-disclosure terms, the inquiry application for the purchase of assets and the assumption of liabilities to the bidding credit institutions chosen by him, which attended the briefing and showed interest in such a transaction.

Article 31 – Within the time limit for the submission of bids prescribed in the inquiry application, which cannot exceed 15 calendar days, the bidding credit institutions shall send the liquidator, in a sealed envelope, their bids for the proposed transactions of purchasing assets and assuming liabilities.

Article 32 – The liquidator shall immediately examine the bids and shall choose, based on the principle of presumed minimum cost, the bid submitted by the bidding credit institution/institutions with which he will conclude the arrangement for the purchase of assets and the assumption of liabilities.

Article 33 – Depending on the quality of assets of the insolvent credit institution, the acquiring credit institutions may assume, in a differentiated manner, in accordance with the law, the liabilities, only the guaranteed deposits or deposits as a whole, both guaranteed and non-guaranteed, or may take over insolvent credit institution in its entirety.

Article 34 – Where no bids are received within the time limit prescribed in the inquiry application or where the bids submitted 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 will pay compensations within the shortest delay, according to the law.

Article 35 – Where the transaction regarding the purchase of assets and the assumption of liabilities is confirmed by the Court, the latter shall likewise establish the remuneration of the liquidator.

Article 36 – Provisions of Article 17, paragraphs (4³) and (4⁴) of Law No. 64/1995, republished, as subsequently amended, are applicable to the special administrator, administrator and liquidator, except for the Bank Deposit Guarantee Fund when the latter holds one of these capacities.

Article 37 – (1) The proceeds from the sale of assets of the debtor credit institution encumbered, in favour of the creditor, by mortgages, pledges, or other movable guarantees *in re* or liens, of any kind, shall be distributed as follows:

a) charges, stamp duties or any other expenses related to the sale of the respective assets, including the expenses necessary for their preservation and management, as well as the remuneration of the special administrator, administrator or liquidator;

b) claims of secured creditors, including the entire capital, interests, capital increases and penalties of any kind, as well as expenses.

(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 18. If, after the payment of the amounts laid down in paragraph (1), a gain results, it shall be deposited by the liquidator for the account of the debtor credit institution.

(3) A secured creditor is entitled to participate in any distribution of proceeds, made prior to the sale of the secured asset. The proceeds from such distributions shall be subtracted from the proceeds the creditor is entitled to receive subsequent to the sale of the secured asset, if this is necessary to prevent such a creditor from receiving more than he would receive in case the secured asset would be sold prior to the distribution.

Article 38 – Claims shall be paid in ROL, in case of insolvency, as follows:

1. Charges, stamp duties and any other expenses related to the judicial reorganisation and winding-up proceedings, including the expenses necessary for the preservation and management of the assets of the debtor credit institution, as well as the remuneration of the persons hired, according to the law, including the special administrator, the administrator or the liquidator, as the case may be;

2. Claims arising from the debtor's activity after the opening of proceedings;

3. Claims stemming from labour contracts concluded for six months at most prior to the opening of the proceedings.

4. Budgetary claims, claims of the Bank Deposit Guarantee Fund, as well as claims of the National Bank of Romania arising from the loans the latter granted to the respective credit institution;

5. Claims arising from Treasury operations, interbank operations, retail banking, operations in securities, other banking operations as well as claims from goods deliveries, provision of services or other works, from rents, and other unsecured claims;

6. Subordinated claims ranking as follows:

a) credits granted to the debtor legal person by a partner or shareholder holding at least 10 percent of the share capital;

b) claims arising from free deeds;

7. Claims of the shareholders of the insolvent credit institution, namely the claims of the members of credit co-operatives affiliated to the central body of the insolvent credit co-operatives, deriving from the residual right of their quality, according to statutory and legal provisions.

CHAPTER IV

Responsibility of governing bodies, statutory auditors, senior executives and/or managers of the insolvent credit institution

Article 39 – (1) The Court may decide that a portion of the insolvent credit institution's liabilities be borne by the members of the governing bodies, statutory auditors, financial auditors, senior executives and/or managers having held the respective positions in the 3 years prior to opening of the proceedings, provided that they contributed to the insolvency of the credit institution, by one of the following deeds:

- a) used the institution's assets or loans in their own interest;
- b) performed commercial operations in their own interest, allegedly on behalf of the credit institution;
- c) ordered to carry on a business, in their own interest, which was obviously leading the credit institution to cessation of payments;
- d) kept fictitious accounting records, concealed them or failed to keep accounting records in accordance with the law;
- e) embezzled or concealed part of the bank's assets or fictitiously increased the credit institution's liabilities;
- f) used ruinous means to acquire funds for the credit institution to delay cessation of payments;
- g) granted loans, by breaching the prudential requirements under the regulations in force, as well as the effective bylaws;
- h) made or ordered to make preferential payments to a creditor to the prejudice of the other creditors in the month prior to opening of the proceedings;
- i) drew up financial statements, other accounting statements or reports, by breaching the law;
- j) failed to identify and notify about deeds resulting in fraud and estate mismanagement during internal auditing and did not observe their tasks.

(2) The implementation of the provisions under paragraph (1) does not call into question the implementation of the criminal law for infringements.

Article 40 – The amounts paid in accordance with Article 39 paragraph (1) shall become part of the debtor credit institution's estate and shall be destined to pay off debts.

Article 41 – With a view to taking the measures provided under Article 39 paragraph (1), the Court may be notified by the syndic, special administrator, administrator, liquidator or any of the creditors, the National Bank of Romania, or can act *ex officio*, based on the data in the brief, and shall order insuring measures.

Article 42 – The enforced execution against the persons provided under Article 39 paragraph (1) shall be performed in compliance with the provisions in the Civil Procedure Code.

Article 43 – (1) The judicial reorganisation and the winding-up proceedings shall be closed, as follows:

a) the judicial reorganisation measure by pursuing the activity or by winding-up based on a plan, shall be terminated by the Court, at the syndic's request, by a composition, subsequent to the fulfilment of all payment obligations assumed in the above-mentioned plan. Where proceedings open with reorganisation, but then end in winding-up, they shall be terminated in compliance with the provisions of letter b);

b) the winding-up proceedings shall be terminated by the Court, at the syndic's request, by a composition, subsequent to the Court's approval of the final report, when all the funds or assets of the insolvent credit institution have been distributed and the funds, unclaimed by the persons entitled to them within 90 days from the date of the final report, have been registered by the liquidator with the Savings Bank – C.E.C. - S.A. or have been deposited with another credit institution and the statement of account shall be submitted to the Court. The decision shall be communicated in writing or shall be published in at least two national newspapers to all the parties involved in compliance with the provisions of Law No. 64/1995, republished, as subsequently amended.

(2) Subsequent to the opening of winding-up proceedings of the debtor credit institution, the liquidator shall send the documents of the debtor credit institution for preservation to the county department of national archives, or, as the case may be, to the national archives department in Bucharest, in compliance with Law No. 16/1996 on National Archives, as subsequently amended and supplemented. Within 60 working days from the date the Court issued the decision relating to the closing of winding-up proceedings, the liquidator shall send to the county department of national archives, or, as the case may be, to the national archives department in Bucharest, the remaining documents of the debtor credit institution.

Article 44 – During any stage of the proceedings, the Court may order the closure of the proceedings where the debtor credit institution's estate lacks the assets or they are insufficient to cover the operational costs and no creditor offers to pay the amounts outstanding.

Article 45 – The provisions of this Ordinance shall be supplemented to bring them into line with those of Law No. 64/1995, republished, as subsequently amended, as well as with those of the Civil Procedure Code.

TITLE II
Regulation of international private law relations concerning insolvent credit institutions

CHAPTER I
Scope

Article 46 – The present title comprises:

- a) regulations indicating the laws applicable to the judicial reorganisation and winding-up proceedings of insolvent credit institutions, Romanian legal persons, including their branches abroad, as well as for the branches on the Romanian territory of the insolvent foreign credit institutions;
- b) regulations setting up the framework of mutual information and consultation between the involved authorities on the credit institutions' reorganisation measures and winding-up proceedings.

CHAPTER II
Judicial reorganisation and winding-up proceedings of the credit institutions Romanian legal persons and their branches established in other Member States

SECTION 1
Powers and applicable law

Article 47 – (1) The competent Court established in compliance with the Romanian law shall be the sole authority vested with the power to decide on the implementation of judicial reorganisation and winding-up proceedings in 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 judicial reorganisation and winding-up proceedings, including on the practical effects such proceedings may have. Unless informing is possible prior to adopting the decision, it shall be made immediately thereafter.

(3) The provisions of the preceding paragraphs do not impinge on the provisions regarding the exercise of appeals against the Court's orders.

Article 48 – (1) The opening of judicial reorganisation and 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:

1. the treatment and implementation of the judicial reorganisation measure;
2. the treatment and implementation of the 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 powers of the credit institution and the liquidator;
- c) the conditions under which set-offs may be invoked;
- d) the effects of the winding-up proceedings on current contracts to which the credit institution is party;
- e) the effects of winding-up proceedings on proceedings of forced sale, brought by individual creditors, with the exception of lawsuits pending with the Courts in other Member States, case in which 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 the 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 bear 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 the creditors.

(2) The provisions of paragraph (1) are not applicable to:

- a) the legal documents, rights and proceedings laid down in Articles 37-40, 42, 43, and 45-47 of Law No. 637/2002 on the regulation of the international private law relations concerning insolvency, where the provisions of the above-mentioned law shall apply accordingly;
- b) the enforcement of proprietary right or other rights in instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system, held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located;
- c) repurchase agreements and transactions carried out on a regulated market shall be governed by the law of the contract which governs such agreements and transactions;
- d) the netting agreements, which shall be subject to the law applicable to those contracts.

SECTION 2

The publication of the decision to open the judicial reorganisation and winding-up proceedings and the appointment of the administrators or liquidators

Article 49 – (1) The competent Court shall take immediately the necessary steps with a view to publishing an extract of the decision to open the judicial reorganisation and winding-up

proceedings in the Official Journal of the European Communities and in two national newspapers of each host Member State.

(2) The extract from the decision to be published shall specify, in the official language or one of the official languages of the respective Member States the purpose and legal basis of the decision taken, as well as the time limits for lodging appeals, including the date of expiry of the time limits, and the address of the competent Court.

(3) The judicial reorganisation and winding-up proceedings shall apply irrespective of the publication provided in paragraph (1) and shall be fully effective as against creditors.

Article 50 – (1) The competent Court may request that the decision to open judicial reorganisation or winding-up proceedings against a credit institution be registered in the land register, the trade register and any other public register kept in the other Member States.

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

(3) The costs of the registration shall be regarded as costs and expenses incurred in the proceedings.

Article 51 – (1) The administrator or, as the case may be, 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 decision passed by the competent Court which appointed him or based on a certificate, issued by it, without further formality.

(2) The administrator or, as the case may be, the liquidator shall be entitled to exercise on the territory of the host Member States all the powers he is entitled to in compliance with the Romanian law. He may also appoint other persons to assist or represent him on the territory of the respective Member State, specifically, in order to help creditors overcome any 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 from that Member State. The powers may not include the use of force or the right to rule on legal proceedings or disputes.

Article 52 – (1) Where an obligation has been honoured for the benefit of a credit institution which is not a legal person and which is the subject of insolvency proceedings opened in another State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings.

(2) Where such an obligation is honoured before the publication provided for in Article 49 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of winding-up proceedings; where the obligation is honoured after the publication provided for in Article 49 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

SECTION 3
Provision of information to known creditors and their rights

Article 53 – (1) After the opening of judicial reorganisation and winding-up proceedings of a credit institution, Romanian legal person, having branches in other Member States, the administrative or judicial authority or, as the case may be, the administrator or the liquidator, shall without delay individually inform known creditors who have their normal places of residence, domiciles or head offices in other Member States.

(2) The information, provided by the dispatch of a notice, shall in particular deal with time limits, penalties laid down in regard to those time limits and legal provisions for accepting the lodgement of claims; the competent authority shall register the requests for lodging the claims or the observations concerning the claims, as well as the other measures or proceedings laid down. The notice shall also indicate the preferential claims or secured *in re* claims, which are not subject to verification.

Article 54 – (1) Any creditor of a debtor credit institution, who has his domicile, normal place of residence or, as the case may be, head office in a Member State other than Romania, including public authorities, shall have the right to lodge claims or to submit written observations relating to their claims against the credit institution, which shall be reported to the liquidator. The lodgement of claims or, as the case may be, the observations shall be submitted in the official language or one of the official languages of the respective Member State, but they shall bear the heading “Lodgement of claims” or, as the case may be, “Submission of observations relating to claims” in Romanian.

(2) The claims of creditors who have their domiciles, normal places of residence or, as the case may be, head offices outside the Romanian territory shall be treated in the same way and accorded the same ranking as claims of an equivalent nature of creditors having their domiciles, normal places of residence or, as the case may be, head offices in Romania.

(3) The creditors exercising the right laid down in paragraph (1) shall send copies of supporting documents relating to claims, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether they allege preference, security *in re* and other similar rights relating to these claims and what assets are covered by the security.

(4) At the liquidator’s request, the creditors shall also provide a translation into Romanian of the lodgement of claims or, as the case may be, the submission of observations relating to claims and of the documents handed in.

(5) Liquidator shall keep creditors regularly informed, in an appropriate manner, particularly with regard to progress in realising the assets of the debtor credit institution.

CHAPTER III

Judicial reorganisation and winding-up proceedings applicable to branches operating in Romania of credit institutions in other Member States

Article 55 – The administrative or judicial authorities of the home Member State shall alone be empowered to decide on the implementation of one or more measures relating to the reorganisation or the opening of winding-up proceedings in regard to a credit institution, including its branches established in other Member States. The law of the home Member State shall be applied consistent with the provisions of Article 48 paragraph (1). The provisions of Article 48 paragraph (2) shall apply to the branches operating in Romania of credit institutions in other Member States.

Article 56 – (1) If the reorganisation or winding-up proceedings were opened against a credit institution in a Member State operating on the territory of Romania, these 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) The reorganisation or winding-up proceedings shall be applied in compliance with the legislation of the home Member State, with the exceptions referred to in Article 48 paragraph (2).

(3) Upon receiving the notice from the competent authority in the home Member State, the National Bank of Romania shall without delay inform, by publishing in *Monitorul Oficial al României*, Part IV, of the opening of reorganisation or winding-up proceedings.

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

(5) The persons empowered to implement measures adopted by the administrative or judicial authority in the home Member State shall take action on the territory of Romania on the basis of a certified copy of the original decision appointing them or of a certificate issued by the administrative or judicial authority, along with a translation into Romanian, without further formality.

(6) The persons referred to in paragraph (5) shall be entitled to exercise on the territory of Romania all the powers which they are entitled to exercise in accordance with the legislation of the home Member State. They may also appoint persons to represent them on the territory of Romania, including for the purpose of assisting the creditors in the course of the respective measures.

(7) In exercising their powers on the territory of Romania, the persons referred to in paragraph (5) shall comply with the Romanian legislation, particularly with regard to procedures for the realisation of assets and the provision of information to the Romanian employees of the foreign credit institution. The powers may not include the use of force or the right to rule on legal proceedings or disputes.

TITLE III General provisions

CHAPTER I Other provisions

Article 57 – (1) The provisions of this Ordinance shall be supplemented, to the extent of their compatibility, with the provisions of Law No. 105/1992 on regulating international private law relations.

(2) The competent Court in compliance with the Romanian law shall without delay inform, via the National Bank of Romania, the competent authorities in the host Member States of the decision of opening the proceedings, including the practical effects which such proceedings may have, if such a decision concerns the branch in Romania of a credit institution which has its head office in other state than a Member State, but which has branches in other Member States. Unless the informing is possible before the decision is adopted, it shall be provided immediately thereafter. In case the opening of winding-up proceedings is decided, the communication shall also include the fact that the authorisation of the respective branch has been withdrawn.

Article 58 – Persons required to receive or divulge information in connection with the information or consultation procedures laid down by the present Ordinance shall be bound by professional secrecy in compliance with the provisions of Article 3 paragraph (7) and Article 55 of Law No. 101/1998 on the Statute of the National Bank of Romania, as subsequently amended and supplemented, and with the provisions of Chapter VIII of Law No. 58/1998, as subsequently amended and supplemented, with the exception of any judicial authorities to which existing national provisions apply.

Article 59 – In case of opening winding-up proceedings, for statistical purposes, credit institutions shall be considered as further being included in the bank sector. The reports that must be drawn up and submitted by the liquidator to the National Bank of Romania, as well as the frequency and manner of their being submitted, shall be set by means of regulations by the National Bank of Romania.

Article 60 – The Court shall notify on the same day the National Bank of Romania about its decision to open the winding-up proceedings of the debtor credit institution. Upon being notified about the decision of the Court to open winding-up proceedings, the National Bank of Romania shall close immediately after the end of the payment settlement of the respective day, in compliance with regulations in force, the accounts of the debtor credit institution opened with it and shall transfer the amounts into the “insolvent credit institution” account opened with a commercial bank according to Article 10.

Article 61 – (1) Any bilateral netting agreement, as laid down in Article 2 letter i), concluded by the debtor credit institution is valid and may be executed and/or is opposable to the debtor credit institution, the debtor or any guarantor of his, in accordance with the conditions of the agreement between parties, and shall not be suspended, cancelled or confined in any other way by an act of the bodies responsible for applying the judicial reorganisation and the winding-up proceedings.

(2) The sole obligation that may be payable or receivable for the account of the debtor credit institution on the basis of a bilateral netting agreement is that of honouring or requiring to honour the net obligation arising from a netting agreement, an obligation that may consist of the payment of a net amount and/or of honouring contractual obligations.

(3) None of the powers granted by this Ordinance to the bodies which apply the proceedings shall result in disposing of the bilateral netting agreement by extinction and/or by repayment before maturity, on the basis of the agreement, of payment obligations or contractual obligations arising from one or several agreements as those referred to in Article 2 letter i), subparagraphs 1. and 2. These powers may be exercised solely over the net amount arising from the application of the bilateral netting agreement.

(4) For the purpose of this Article, a bilateral netting agreement and all the other related agreements shall be considered as one agreement and, for this purpose, except in cases where the fraudulent intention of the parties is proved, the bodies applying the proceedings shall not preclude, require to cancel or decide to invalidate, as the case may be, the operations with derivatives made on the basis of agreements that are related to a bilateral netting agreement, because these operations set up preferential treatment for the benefit of some creditors within 180 days before the date of opening proceedings.

(5) No application for issuing an ordinance by the President of the Court or any other emergency procedure shall be used to confine, delay or suspend the execution of a bilateral netting agreement in compliance with this Article.

CHAPTER II

Transitory and final provisions

Article 62 – The profit gained during the progress of the judicial reorganisation and the winding-up proceedings of the credit institutions is subject to taxation in accordance with legal provisions.

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

(2) On the date of entering into force of this Ordinance, Romania shall inform the European Commission of the entering into force of the excepted provisions.

Article 64 – The provisions of this Ordinance shall apply solely to proceedings opened after the date of its entering into force, except for the provisions of Article 43 paragraph (2), which shall apply also to the current proceedings on the date of entering into force of this Ordinance.

Article 65 – On the date of entering into force of this Ordinance, Law No. 83/1998 on the winding-up proceedings of the credit institutions, published in *Monitorul Oficial al României*, Part One, No. 159 of 22 April 1998, as subsequently amended and supplemented, shall be repealed.

PRIME MINISTER
ADRIAN NĂSTASE

Countersigning:
The Minister of Public Finance
Mihai Nicolae Tănăsescu

Done at Bucharest, 22 January 2004.