

# Emergency Ordinance No. 137 of 18 October 2001

## amending and supplementing Law No. 58-The Banking Act

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Pursuant to provisions under Article 114, para. (4) of the Constitution of Romania, the Government of Romania issues the following emergency ordinance.

**Article 1** - Law No. 58/1998-The Banking Law, published in *Monitorul Oficial al României*, Part One, No. 121 of 23 March 1998, shall be amended and supplemented as follows:

**1. Letters i) and k) of Article 3 read as follows:**

"*significant shareholder* - natural/legal person or groups of natural/legal persons acting together and directly or indirectly holding at least 5% of the company's share capital or of the voting rights, or a quota allowing to exert significant influence on the management and policy of the company;

.....

k) *group of persons taking concerted action* - two or more natural or legal persons pursuing a common policy vis-à-vis the company."

**2. Letters j) and l) are repealed.**

**3. After Article 3, Articles 3<sup>1</sup> and 3<sup>2</sup> are inserted, reading as follows:**

"Article 3<sup>1</sup> - A group of persons is supposed to take concerted action when it is made up of:

- a) spouses, relatives and kins to the second degree;
- b) persons mentioned under letter a) as well as companies under their control;
- c) a company, managers and individuals exerting control over it;
- d) companies under control of the same individual/individuals or legal person/persons.

A company is under the control of a person in one of the following situations:

- a) the individual or legal person holds at least 50% of the voting rights;
- b) the individual or legal person is empowered to designate or replace the majority of the members of a company's Board of Directors;
- c) may decide or influence a company's management or policy.

Article 3<sup>2</sup> - The National Bank of Romania may decide which group of persons is acting in concert by also considering other situations than those mentioned under Article 3<sup>1</sup>."

**4. Letter b) of Article 14 is repealed.**

**5. Letters e), f) and g) of Article 14 read as follows:**

"e) examination of the submitted documentation leads to the conclusion that the bank cannot ensure fulfilment of its goals as required by the smooth functioning of the banking system and prudent banking practices in order to ensure a satisfactory safety for its clients, or these goals do not meet the conditions on the segment of the market to be covered by the services provided;

f) the quality of bank's managers and administrators, or that of the auditors, as the case may be, does not meet the goals and the requirements of the banking activity by law nor does it observe prudential and sound banking practices;

g) the quality of shareholders does not meet the requirements of sound and prudent management and effective supervision;"

**6. Letter j) is inserted after letter i) of Article 14 and reads as follows:**

" the National Bank of Romania considers as insufficient the supervision in the country of origin of the bank applying for approval to open a branch."

**7. Letters g) - k) are inserted after letter f) of Article 16 and read as follows:**

"g) a court order for commencement of the bank insolvency procedure has been passed, should the bank still be licensed to operate on the date the court order was issued;

h) the shareholders can no longer be trusted to meet the requirements of a sound and cautious management of the bank or of an effective supervision;

- i) the National Bank of Romania considers that maintaining the licence may jeopardise the interests of depositors or other creditors, or that the presence of the bank in the market is no longer justified, as its operations do not meet the goals for which the bank was established, or the operation can be carried out only by raising funds at interest rates much higher than those on the market;
- j) the bank's management was not ensured by at least two persons for 3 months at most;
- k) any other requirements on which the issue of the licence was based are no longer met."

**8. Article 25 reads as follows:**

" Article 25 - The bank's managers shall have a good reputation, qualification and competence to accomplish the goals and operate by law and prudent banking practices, with a view to ensuring soundness of the banking system, as well as protecting the interests of depositors and other creditors.

Each of the persons mentioned under para. 1 shall be approved by the National Bank of Romania prior to begin fulfilling their tasks.

The National Bank of Romania is vested with the power to analyse to what extent the minimum requirements of the present law and the related methodological notes are observed, to assess all circumstances and information regarding the activity, reputation, moral integrity and background of each person and decide whether the respective person fulfils the requirements under para. 1."

**9. Articles 25<sup>1</sup> and 25<sup>2</sup> are inserted after Article 25 and read as follow:**

"Article 25<sup>1</sup> - At least two persons shall ensure the management of the bank. The managers of the bank shall be residents of Romania, shall exert exclusively the position they have been designated for, and at least one of them must be a Romanian citizen. They should be university graduates in economics, law or any other fields of financial and banking activity, or be graduates of post university courses in one of the above mentioned fields and have an experience of no less than seven years in financial/banking activity. Bank administrators should have an experience of no less than three years in financial/banking business.

Article 25<sup>2</sup> - The National Bank of Romania may set other criteria for the valuation of the quality, activity and expertise to be met by future bank managers, as well as other rules and ethic and professional norms to be met by bank employees."

**10. Letter d) is inserted after letter c) of para. 2 of Article 27, reading as follows:**

"d) it is against the law, court order or decision of another authority to manage a bank, a credit co-operative, a financial institution or an insurance company."

**11. Article 45 reads as follows:**

"Article 45 - Banks shall observe the prudential rules established for every entity and for the entire system, or the regulations issued by the National Bank of Romania, as the case may be, and which concern the following:

- a) solvency;
- b) liquidity;
- c) largest exposure to a single debtor and maximum aggregate exposure;
- d) exposure to connected lending;
- e) foreign exchange risk;
- f) quality of assets, establishment and use of risk provisions;
- g) organisation and internal audit."

**12. The title of section 4 of Chapter IX reads as follows:**

"SECTION 4:  
Shareholders"

**13. Article 51 reads as follows:**

"Article 51 - Prior to becoming a significant shareholder of a bank, any individual, legal person or group shall win approval of the National Bank of Romania, in compliance with the regulations issued by the National Bank of Romania."

**14. Articles 52<sup>1</sup>, 52<sup>2</sup> and 52<sup>3</sup> are inserted after Article 52 and read as follow:**

"Article 52<sup>1</sup> - The quality of the shareholders and the composition of the group they are part of shall ensure sound and prudent management of the bank and allow effective supervision with a view to ensuring a credible and viable banking system, as well as protecting the interests of depositors and other creditors.

The National Bank of Romania is vested with the power to analyse to what extend the provisions established by the present law and the related methodological notes are observed, to assess all circumstances and information regarding the activity, reputation and moral integrity of the persons mentioned under Articles 51 and 52, as well as to inquire about the source of the funds designed to acquire the shares and decide on whether they comply with the

provisions under para. 1 of Article 52<sup>2</sup>.

Article 52<sup>2</sup> - According to the provisions under Article 52<sup>1</sup>, the persons mentioned under Articles 51 and 52 shall fulfil at least the following conditions:

- a) to enjoy sound financial standing that justify the amount destined to acquire equity interest and ensure financial support for the bank;
- b) to supply sufficient information to ensure transparency of the group's composition the person is part of;
- c) legal persons that have been operating for no less than 3 years, except for those resulting from merger or split of legal entities that have been operating for no less than 3 years;
- d) to be adequately supervised by the relevant authority of the country of origin.

Article 52<sup>3</sup> - The National Bank of Romania may set by regulations further criteria for the valuation of bank shareholders' quality, to ensure a stable and viable banking system."

**15. Letter d) under para. 2 of Article 69 reads as follows:**

"d) cancellation of the approval for managers/administrators of a bank;"

**16. Letter d) is inserted after letter c) of Article 70 and reads as follows:**

"d) cancellation of the approval for significant shareholders and/or suspension of the voting right of the other shareholders should the respective persons no longer meet the requirements established by the present law and its methodological notes regarding the quality of bank shareholders, or should their individual or common policy jeopardise sound and prudent management of the bank to the detriment of depositors' and other creditors' interest."

**17. Two paragraphs are inserted after para. 1 of Article 70, reading as follows:**

"Voting right shall be suspended, should the approval for the significant shareholders be cancelled. Shareholders in the situation mentioned under letter d) may no longer acquire bank shares."

**18. Article 79 reads as follows:**

"Article 79 - Special administration measures may be established in case that the National Bank of Romania finds that:

- a) special supervision measures produced no effect within 120 days;
- b) the solvency ratio computed consistent with the regulations of the National Bank of Romania in relation to own funds does not exceed half of the minimum level established by the said regulations;
- c) the bank has repeatedly infringed the provisions of the law or of the methodological notes.

The decision of the National Bank of Romania on imposing the special administration shall be published entirely or as abstract in the *Monitorul Oficial al României*, Part One, in several national dailies. Special administration measures may also be established by the National Bank of Romania upon notifying the court on the commencement of the insolvency procedure."

**19. A new paragraph is inserted after para. 3 of Article 82, reading as follows:**

"The special administrator shall continue to manage the bank should the National Bank of Romania decide to withdraw his licence and notify the court with a view to commencing insolvency proceedings until a final and irrevocable court order is issued."

**20. Articles 83<sup>1</sup> and 83<sup>2</sup> are inserted after Article 83, reading as follows:**

"Article 83<sup>1</sup> - Execution of the National Bank of Romania's orders remain in place until a decision is taken by the National Bank of Romania according to para. 1 of Article 83 or, as the case may be, a final an irrevocable order is given by court in compliance with para. 2 of the said Article.

Article 83<sup>2</sup> - The National Bank of Romania is the sole authority empowered to decide on the criteria of opportunity, valuations and qualitative analyses on which its decisions are based. The court shall rule on the legitimacy of the National Bank of Romania's decisions should they be disputed."

**Article II.** - Applications for licensing not complying with the provisions of Law No. 58/1998 and unsolved by the date the present law and its methodological notes take effect may be withdrawn and submitted again to the National Bank of Romania. Unless the application for licensing is withdrawn, the errors shall be corrected by the end of the term for which the National Bank of Romania shall decide on them according to the provisions of Article 13 para. Nos. 1 and 3 of Law no. 58/1998. Otherwise, the provisions of Article 14 of the law shall apply.

**Article III.** - The National Bank of Romania shall assess the quality of managers, administrators and shareholders of the licensed banks and shall take the necessary measures so as to ensure observance of provisions of Law No. 58/1998, as amended by the present emergency ordinance and the related methodological notes within 7 months from coming into force. Requirements set for managers with the approval of the National Bank of Romania prior to enforcement date of the present emergency ordinance remain in place.

The term established under para. 1 may be extended by the National Bank of Romania by 3 months but no more than

once.

The National Bank of Romania may apply the sanctions mentioned under Article 69 para. 2 letters d) and e) and/or take the measures stipulated under Article 70 letters c) and d) or Article 16 of Law No. 58/1998, as the case may be, should the provisions of the law be infringed.

**Article IV.** - Law No. 58/1998 - The Banking Law published in the *Monitorul Oficial al României*, part one, No. 121/23 March 1998, as amended subsequently and including the amendments hereof, shall be republished in *Monitorul Oficial al României*, Part One, upon passing of the present emergency ordinance by the Parliament, thereby renumbering the Articles.