

Law No. 357 of 6 June 2002

on approving Government Emergency Ordinance No. 137/2001 amending and supplementing Law No. 58/1998 - The Banking Act

published in Monitorul Oficial al României, Part One, No. 446 of 25 June 2002

Sole Article - Government Emergency Ordinance No. 137/2001 amending and supplementing Law No. 58/1998 - The Banking Act, published in Monitorul Oficial al României, Part One, No. 446 of 25 June 2002 is hereby approved and shall be amended and supplemented as follows:

1. Under Article I, paragraph 5, letter e) of Article 14 reads as follows:

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

2. Under Article I, paragraph 7, letters h) and i) of Article 16 read as follows:

h) the shareholders no longer meet the requirements provided by the law and norms of a sound and cautious management of the bank or of an efficient supervision; i) the National Bank of Romania considers that maintaining the licence jeopardise the interests of depositors or other creditors of the bank, as the bank's own funds are no longer sufficient to normally effect operations, or there are elements which lead to the conclusion that in a short time the bank will not be able to honour its financial obligations towards 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;"

3. Under Article I paragraph 9, Article 25² reads as follows:

"Article 25² - The National Bank of Romania shall set by regulations further criteria for the valuation of the quality, activity and expertise to be met by bank managers or administrators, as well as other rules and ethic and professional norms to be met by bank employees, in order to ensure viability and credibility of the banking system."

4. Under Article I paragraph 14, Articles 52¹ and 52³ read as follows:

"Articles 52¹ - The quality of the shareholders and the composition of the groups they are part of shall meet the requirements for a 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 extent the provisions established by the present law and the related methodological notes are observed, to assess all the 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 paragraph 1.

.....
Article 52³ - The National Bank of Romania shall set by regulations further criteria for the valuation of bank shareholders' quality, to ensure a viable and stable banking system."

5. Under Article I, paragraphs 14¹ - 14⁴ are inserted after paragraph 14 and read as follows:

"14¹ - Article 59 reads as follows:

Article 59 - Banks' financial statements up to fiscal 2001, shall be assessed by chartered auditors and submitted to the relevant authorities in due time. Banks' Boards shall contract financial auditing services with auditors member of the Romanian Chamber of Financial Auditors, or international financial auditing institutions approved by the Romanian Chamber of Financial Auditors, according to the law on financial audit and to the Programme for implementation of bookkeeping regulations harmonized with EEC Directive IV-bis 86/635 and the international accounting standards.

14² - Article 60 reads as follows:

Article 60 - Provisions under Articles 58 and 59 also apply to foreign bank branches, the tasks of internal auditors being taken over by financial auditors, natural or legal persons licensed to operate in Romania.

Internal auditors' activities cease after completion of the assessment of the financial statement for fiscal 2001;

14³ Article 61 reads as follows:

Article 61 - Every bank shall conclude contracts for financial auditing services with natural or legal persons licensed by the Romanian Chamber of Financial Auditors by law.

Financial auditor:

- a) shall assist the bank in keeping accounting records according to the Romanian accounting law and the regulations issued by the National Bank of Romania, by 31 December 2001;
- b) shall issue an annual report along with his opinion assessing whether the financial statement correctly mirrors the bank's financial standing, financial performance, treasury flows as well as other information on its operation, in accordance with the professional standards published by the Romanian Chamber of Financial Auditors;
- c) shall analyse the practices and procedures of internal audit and auditors and should he consider them inappropriate he shall make recommendations;
- d) shall submit to the Board of the National Bank of Romania audit reports drawn up based on special mandate, especially on any frauds committed by a bank's Board members or employee, that may lead to significant losses for the bank.

As of 1 January 2002 banks shall organise the internal audit activity under the supervision of a financial auditor, natural or legal person, member of the Romanian Chamber of Financial Auditors.

14⁴ Article 62 reads as follows:

Article 62 - Starting with fiscal 2002, each bank shall publish financial statements following their approval by the shareholders' general meeting, based on the format established by the National Bank of Romania and approved by the Ministry of Public Finance according to the schedule provided for under Law No. 82/1991 - the Accounting Act, republished as amended and supplemented subsequently."

6. Under Article I paragraph 18, paragraph 2 of Article 79 reads as follows:

"The decision of the National Bank of Romania on establishing special administration shall be published entirely or in part in Monitorul Oficial al României, Part one."

7. Under Article I paragraph 18¹ is inserted after paragraph 18 and reads as follows:

"18¹ . Indent 5 of Article 81 reads as follows:

A notification on the establishment of special administration shall be published in Monitorul Oficial al României, Part IV."

8. Under Article III, paragraph 1 reads as follows:

"The National Bank of Romania shall appraise the quality of managers, Board members and shareholders of licensed banks so that, within 7 months after the enforcement of the present emergency ordinance, the requirements provided by Law No. 58/1998, amended by the present emergency ordinance and the related regulations for the enforcement of this law be fulfilled. For managers and Board members in office upon the coming into force of the present emergency ordinance, training and professional expertise requirements at the date of their approval remain valid."

The present law was adopted by the Chamber of Deputies in the meeting on 14 May 2002, by observing the provisions under Article 74 paragraph (2) of Romania's Constitution.