

Law no. 240/2005
Regarding micro financing commercial companies

The Romanian Parliament adopts present law

Chapter I
General provisions

Art. 1. This law has the purpose to create the legal framework for the organization, operation and development of the micro financing commercial companies.

Art. 2. In the present law, the terms and expressions below shall have the following meaning:

- a) micro financing company: legal entity established for the purpose of granting micro credits to beneficiaries, which cannot engage in deposit taking activities or attract other reimbursable funds from the public, as defined in the Law no. 58/1998 regarding the banking activity, republished.
- b) micro credit: loan granted at the request of applicants, individual or legal entities, with a nominal value representing the RON equivalent of up to EUR 25,000 with a reimbursement period of maximum 60 months, for the purpose of developing an activity, a business or projects, of encouraging projects for community and economic development, initiatives of local communities and social programs with a view to improve the living standard of the local communities.
- c) applicant – any individual or legal entity that presents to the micro financing company a request to which is attached a proposal for the launch and development of a lucrative activity.
- d) beneficiary – any individual or legal entity that received a loan from the micro credit company according to the previously stated conditions
- e) micro financing: extension of micro credits to beneficiaries, according to the terms and conditions negotiated with the applicants, from its own funds, borrowed from or granted by financial institutions or donor-organizations or from public financial resources, according to regulations in force.

Chapter II

The establishment of the micro financing companies

Art. 3. The micro financing companies are financial companies established as joint stock companies, which operate in compliance with this law and, as compatible, according to the provisions of Law no. 31/1990 regarding commercial companies, republished.

Art. 4. (1) The main object of activity of micro financing companies consists exclusively in micro financing activities from internal funds, borrowed or attracted from financial institutions or donors or public financial resources, according to the law.

(2) The microfinance institutions could develop, as secondary object of activity, tuning services for the economic development of the micro credit beneficiaries, including consulting services, information, education and specialized training.

(3) For the purpose of carrying out the aforementioned activities, a micro financing company may perform the following operations:

a) to borrow or attract reimbursable or non-reimbursable funds, from resident or non-resident entities;

b) to accept as collateral deposits establish by the beneficiaries of the micro credits, with the condition that the amounts representing the guarantee to be deposited in a credit institution – Romanian legal person or Romanian branches of foreign financial institutions authorized by the National Bank of Romania;

c) to conclude legal deeds having as subject matter immovable and movable assets acquired as result of the forced or voluntary foreclosure of the collateral constituted upon granting the micro credit.

d) to manage public funds extended as micro credit funds by the governmental agencies.

(4) The micro financing companies will be able to do the activity mentioned in article 4. (3) (d), according to the conditions set by the Ordinance 40/2000 regarding the accreditation of credit agencies for the administration of public micro credit funds, approved with amendments through Law no. 376/2002.

(5) Borrowing and taking cash collateral according to paragraph (3) let. a) and b) do not represent deposit taking activities and do not require an authorization of the National Bank of Romania, according to the Law no. 58/1998.

(6) In case where the beneficiary of the micro credit does not respect the micro credit contract, the microfinance company is entitled to the amounts constituted as guarantee according to paragraph (3) let. b) as forced or voluntary foreclosure, having the right to use the respective amounts for micro lending activities.

(7) The micro financing company shall perform exclusively the activities set forth in the present article and shall not be entitled to grant mortgage credits, according to Law no. 190/1999, as amended and completed, concerning mortgage credits for real estate investments, or consumers credits, according to the Law no. 58/1998 as well as regulation of the National Bank of Romania regarding the mortgage credit and the consumer credit.

Art. 5. The establishment of the micro financing companies must be notified to the National Bank of Romania in term of 30 days from the date of incorporation in the trade register.

Art. 6. The micro financing companies have the obligation to notify to the National Bank of Romania any change regarding the first submitted documentation.

Art. 7 (1) The minimum share capital of micro financing companies shall be the RON equivalent of EUR 200,000.

(2) The minimum share capital of micro financing companies will be registered in cash at subscription.

(3) The shares of the micro financing companies are nominative.

Art. 8. (1) The name of micro financing companies will include the words “micro financing company” or the abbreviation thereof. The term “micro financing” may be used in

the name, letterhead, documents, commercials or advertising materials solely by the micro financing companies.

(2) The micro financing company shall not use in its name, letterhead, documents, the words “bank”, “national”, “state” "romanian", or other derivatives of such words, or any other words that might mislead the public with respect to the status or activities and operations of the micro financing company.

(3) The entities that do not fall under the provisions of this law may not use in their name or letterhead materials the term of “micro financing company” or other derivatives of such words that might mislead the public with respect of performance of micro financing activities in accordance with this law.

Chapter III

Operation of micro financing companies

Art. 9. (1) The micro financing company has to draft its internal crediting rules related to the micro credits extension activity, in order to ensure the confidentiality of the data and information supplied by the beneficiaries and to perform the micro financing activity according to the rules of a standing and prudential practice.

(2) The micro financing company has the obligation to organize appropriate internal control procedures in order to ensure performance of the activity in compliance with the requirements of the present law and its internal regulations.

Art. 10. (1) Each micro financing company shall contract an, in condition of the law. It can be contracting for quality only a financial audit company, authorized by the law to develop this activity in Romania.

(2) The independent financial auditor, shall:

- a) draft an annual report with respect to the financial standing of the micro financing company, which will reflect the status of the financial standing of the micro financing company, of its financial performance and treasury flows;
- b) analyze the internal control procedures, and, as the case may be, to make recommendations to the micro financing company for remedy thereof;
- c) provide to the micro financing company financial-accounting assistance, based on observance of specific regulations and independence principle, according to the law in-force;
- d) audit the internal crediting norms and draft a report in connection therewith;
- e) carry out any other activities provided by law with respect to the financial audit activity.

Art. 11. The micro financing company shall observe the confidentiality of all its operations, including those referring to the identity and information submitted by beneficiaries, except for the provisions of art. 16.

Art. 12. The information regarding beneficiaries' operations shall be delivered solely in case of criminal cases in which the criminal action against the beneficiary's representative has been initiated, solely at written request of the court.

Art. 13. (1) Any person participating in the activity of the micro financing company shall be bound to observe the confidentiality and professional secret.

(2) The personnel of the micro financing company may not use for personal purposes or for those of a third party the information held or of which it is aware in any manner whatsoever.

(3) The personnel of the micro financing company shall not be entitled to use or to disclose, neither during its activity nor after completion thereof, any information or data that, if publicly known, could prejudice the interests or reputation of the micro financing company or of any of the clients thereof.

(4) The provisions of paragraphs (1)-(3) shall also apply to the persons that obtain information of the kind set forth above from the reports or documents of any kind of the micro financing company.

(5) The violation of the confidentiality clause can be reported by the empowered persons, according to the applicable laws.

Art. 14. The micro financing activity shall be carried out exclusively through accounts opened by the micro financing companies with credit institutions – Romanian legal persons or Romanian branches of foreign financial institutions authorized by the National Bank of Romania to operate on the Romanian territory.

Art. 15. (1) The micro financing companies, individually or within professional associations, may constitute their own executors body, whose activity shall be strictly referred to the enforcement of the executory titles held by the micro financing companies.

(2) The statute of executors' body of the micro financing companies shall be carried out based on the order of the Minister of Justice.

Art. 16. The micro financing companies are obliged to stipulate in their internal norms requirements regarding the beneficiary's profile, the credit related criteria and conditions, exposure towards a beneficiary and the aggregate exposure, for equity, according to the financing contracts, for borrowed funds.

Art. 17. The micro financing companies are obliged to report annually its micro credit portfolio structure to the National Bank of Romania.

Art. 18. The micro financing companies will report information regarding the banking risk and granted credits to the Central Banking Risks Office and the Credit Office, according to the provisions and applicable regulations.

Chapter IV

Micro credit contract and protection of beneficiaries

Art. 19. (1) The principles governing the grant of micro credits to beneficiaries are the following:

- a) substantiated proposal regarding initiation or development of an activity, business or projects, including community and economic development projects, local community initiatives and social programs;
- b) providing for transparency of micro financing operations and of equal treatment of beneficiaries by making available to the interested parties all information

regarding micro financing terms and conditions and by non-discriminatory applying the selection criteria of micro credit applicants;

- c) forbiddance of conditioning grant of micro credit by the acceptance by a beneficiary of certain services not related to the micro credit;
- d) carrying out the publicity and advertising activities in compliance with the free competition principles and with the beneficiaries' economic interests.

Art. 20. (1) The micro financing company will present to the micro credit solicitors, prior to signing the microcredit contract, all the conditions of this contract.

(2) The microcredit contract must include at least the following items:

- a) interest
- b) penalty interest
- c) applicable commissions and fees
- d) cost of supplementary services offered by the micro financing company
- e) payment of the loan
- f) real and/or personal collaterals
- g) destination and use of micro credit
- h) confidentiality clause
- i) signatories responsibility for violation of contract provisions
- j) all other costs that should be bear by the credit beneficiary

(3) The beneficiaries shall be entitled to the early repayment received. The condition early regarding the repayment of the micro credit must be stipulated in the micro credit contract through a distinct clause.

(4) The micro credit contract and real and personal securities related thereto are deemed executory title.

Art. 21. (1) It is forbidden to condition the grant of a micro credit by:

- a) purchase or sale of the shares of the micro financing company, irrespective of the form related thereto;
- b) acceptance by a beneficiary of other services not having connection with the micro credit;
- c) pledging of the shares or social parts of the beneficiary in order to guarantee the debts of the micro financing company.

Chapter V

Accounting and fiscal provisions

Art. 22. The micro financing companies shall organize and keep their own accounting books and records according to the provisions of the Accounting Law no. 82/1991, republished, as well as the rules of the Ministry of Public Finance for the approval of the accounting regulations, harmonised with the international accounting standards.

Art. 23. The micro financing companies may constitute, regulate and use specific credit risk provisions in accordance with laws in force.

Chapter VI

Associations of micro financing companies

Art. 24. (1) The micro financing companies may be associated in professional associations which represent their collective interests, as well as the interests of the micro credit beneficiaries before public authorities, analyze problems of mutual interest in micro financing field, promote cooperation, inform the association's members and the public of the micro financing operations and activities and organize services of mutual interest, under the law.

(2) The micro financing companies may adhere to similar international associations, observing the obligations arising out of the constitutive acts.

(3) The professional associations mentioned in paragraph (1), have the obligation to monitor the performance of the microfinance company and to calculate and publish performance indicators, at least on an annual basis.

Art. 25. The activity of micro financing companies carried on in accordance with the accounting and fiscal legal rules, is controlled by the authorized institutions of the Ministry of Public Finance in conditions of the law.

Chapter VII

Transitory and final provisions

Art. 26. The entities carrying out micro financing activities on the date of coming into force of this law have the obligation to comply with the requests of this law as follows:

- a) the provisions regarding the minimum registered capital of the micro financing company, within one year after coming into force of this law;
- b) the provisions regarding the independent financial auditor, the legal form and the name, shall be observed within 6 months after coming into force of this law; and
- c) the remaining provisions of this law upon coming into force of this law.

Law 240 regarding Micro finance Companies was promulgated by the Romanian President with the Presidential Decree no. 626 from 15.07.2005, and was published in the Official Gazette no. 663 First Part from 26.07.2005

Published in the Official Journal under registration number 89 dated January 31, 2006

Ordinance no 28 dated January 26, 2006 regarding regulation of several fiscal and financial measures

On the basis of art. 108 of the Constitution of Romania, republished, and of art. 1 item 11.1 of Law no. 404/2005 regarding the ability of the Government to issue ordinances, **the Romanian Government** adopts present ordinance

Part I: Regulations of financial and fiscal activities

Title I: Provisions concerning credit activities developed by non-banking financial institutions

**Chapter I
General provisions**

**Section I
Purpose of the Law**

Art. 1. - This law regulates minimum conditions for non-banking financial institutions to grant loans in order to ensure and maintain financial stability.

Art. 2. - **(1)** Credit activities represents any form of financing, undertaken by non-banking financial institutions in accordance with the provisions of art. 7.

(2) The National Bank of Romania is the sole authority to decide if the activity developed by an entity represents credit activities and falls under the provisions of the present law.

Art. 3. – **(1)** In Romania, credit activities is undertaken by credit institutions defined in accordance with the provisions of Law no. 58/1998 concerning banking activity, republished and by non-banking financial institutions under the conditions established by the present law and other special laws that regulate their activities.

(2) Entities, other than the ones foreseen in par. 1, cannot develop credit activities with professional title in Romania.

**SECTION 2
Definitions**

Art. 4 In the present law, the terms and expressions below shall have the following meaning:

- a) non-banking financial institution – legal entity, with professional title, established for the purpose of undertaking credit activities of the nature foreseen in art. 7 par. 1 financed with its own funds or with funds borrowed from other credit or financial institutions, or, as the case may be, from other sources stipulated by special laws;

- b) activities that are allowed to be developed by non-banking financial institutions – activities foreseen in art. 7 and art. 8, that are developed on the basis of the provisions of the present title or of the special law which regulate the activity;
- c) managers – persons, who according to the constitutive acts and/or decision of the statutory bodies of the non-banking financial institutions, are empowered to manage and coordinate daily activities and are invested with the competence to assume responsibility on behalf of non-banking financial institutions ;
- d) significant shareholder – physical person or legal entity, or group of physical persons or legal entities who acts together and has a direct or indirect participation of ten times more the social capital of a society or a participation that allows a significant influence on the management and business policies of the society;
- e) notification – action developed by non-banking financial institutions, including submission of documentation required by the National Bank of Romania in order to obtain the document confirming their registration and allowing them to develop credit activities;
- f) The general register of non-banking financial institutions (General Register) – register opened and managed by the National Bank of Romania where the non-banking financial institutions that meet the general requirements foreseen in Chapter II – Section 1 are registered.
- g) The special register of non-banking financial institutions (Special Register) – register opened and managed by the National Bank of Romania where the non-banking financial institutions that meet the requirements foreseen in art. 27 are registered.
- h) Register of houses for mutual support and pawnshops (Register) - register opened and managed by the National Bank of Romania where houses for mutual support and pawnshops are registered.

SECTION 3

Organization and operation

Art. 5. – (1) Non-banking financial institutions are required to be established as commercial joint stock companies. Organization and operation of non-banking financial institutions are regulated by the provisions of this law, of Law 31/1990 regarding commercial companies, republished, with subsequent modifications, as well as of special laws relevant to the field.

(2) The juridical entities foreseen in chapter VII are exempted from the requirement to be established as commercial joint stock companies.

Art. 6. – (1) The name of an entity that can undertake credit activities under the provisions of the present law, will include the words “non-banking financial institution” or the abbreviation thereof. The term “non-banking financial institution” may be used in the name, letterhead, official acts, contracts or other similar documents, commercials or advertising materials solely by the non-banking financial institutions.

(2) Non-banking financial institutions shall not use in their name, letterhead, or in any other identification attributes words and expressions that might mislead the public with respect to the status or activities and operations of the non-banking financial institutions.

SECTION 4

Allowed activities

Art. 7. – (1) The non-banking financial institutions shall carry out the following credit activities:

- a) credit activities, including but not limiting to: consumers loans, mortgage loans, housing loans, micro credits, operational financing, factoring, discount and contractual operations,
- b. financial leasing,
- c. issuance of guarantees and commitments, including loan guarantee,
- d. loans guaranteed with personal belongings (pawned through pawning shops) ,
- e. loans for members of an association with non patrimonial purpose, established by free will of employees/retired, for the purpose of supporting them financially with loans(houses for mutual support)
- f. other forms of financing of credit nature.

(2) In developing their activities related to consumers' credits, the non-banking financial institutions may issue credit cards for their clients and undertake activities related to processing such transactions, by observing the regulations of the National Bank of Romania in the sector.

(3) Non-banking financial institutions may provide additional services and consultancy regarding their activities foreseen in paragraph 1.

(4) Non-banking financial institutions may carry out mandated activities in relation with other non-banking financial institutions and/or credit institutions related to the credit activities developed by them.

Art. 8. – (1) Non-banking financial institutions may develop, as the case may be, the following activities with goods and fixed assets:

- a) operations required for carrying out the activity;
- b) renting goods and fixed assets to third parties, including operational leasing, provided that the value of the rented goods and fixed assets do not exceed the limit established by the National Bank of Romania;
- c) operations with goods and fixed assets obtained from forced execution of the non-banking financial institutions' debts or from the user who gives up voluntarily the goods that are object of the financial leasing .

(2) Goods obtained from forced execution will be sold by the non-banking financial institutions within one year from the date when they have been obtained provided that such goods are not used under the conditions foreseen at par. 1 For justified reasons, the deadline may be extended only once with one year on the basis of the National Bank of Romania's approval.

(3) Non-banking financial institutions that develop activities foreseen in art. 7 par. 1 lett. b may give another use to the goods and fixed assets that are obtained from forced execution or voluntarily return of the user within one year from the date when they have been obtained.

SECTION 5

Interdictions

Art. 9. The non-banking financial institutions are forbidden to:

- a) engage in deposit taking activities or attracting other reimbursable funds from the public
- b) issue bonds, with the exception of public offer addressed to the qualified investors, in respect of the law regarding the capital market;
- c) include in their main object of activity any other activity that is not foreseen in art. 7 par. 1.
- d) include in their secondary object of activity any other activity that is not foreseen in art. 7 par. 2 – 4 and art. 8.

Art. 10. Entities that do not fall under the provisions of the present title shall not use in their name, letterhead or issued documents, the words “non-banking financial institution”, or other derivatives of such words that might mislead the public with respect to the development of credit activities on the basis of the present law.

Art. 11- The following persons cannot be appointed as founder, shareholder, manager administrator, financial auditor of a non-banking financial institution:

- a) persons nominated in the lists foreseen in art. 23 and 27 of Law no. 535/2004 regarding prevention and fighting against terrorism;
- b) No person who has been convicted by a criminal court of an offence involving corruption, money laundering, abuse of patrimony and position, bribery, fraud and use of fraud, misuse of funds, fiscal evasion, traffic of influence, fake testimony, or any other offence of moral turpitude that may lead to the conclusion that the premises for a sound management of non-banking financial institutions are not ensured.

Art. 12 – Non-banking financial institutions cannot develop the following activities:

- a) operations with goods and fixed assets with the exception of those foreseen in art. 8;
- b) pledge shares for the debts of the non-banking financial institutions;
- c) grant loans, on the condition to sale or purchase shares of non-banking financial institutions;

- d) grant loans guaranteed by the shares issued by non-banking financial institutions;
- e) grant loans provided that the client accepts other services that are not related to the respective credit activity.

Chapter II

Requirements and registers

Section I

General requirements

Art. 13

(1) The present section is applicable exclusively to the non-banking financial institutions that are subject to recording in the General Register.

(2) The non-banking financial institutions, when established, should meet cumulatively the general requirements foreseen thereof.

Art. 14

(1) The minimum share capital of non-banking financial institutions shall be established by regulations issued by the National Bank of Romania, provided that it is not less than the amount expressed in national currency (leu) equivalent of EUR 200,000. The National Bank of Romania may establish different limits of minimum share capital depending on the non-banking financial institution's type of activity.

(2) The minimum share capital of non bank financial institutions shall be registered integrally in cash at subscription.

(3) The shares issued by non-banking financial institutions can be only nominative shares.

(4) Non-banking financial institutions may increase the share capital by cash subscriptions, incorporation of reserves composed of net profit, dividends from the net profit of the shareholders after payment of tax on dividends and reported result, representing net profit.

Art. 15 – (1) Non-banking financial institutions are obliged to provide detailed information concerning quality of the significant shareholders, structure of the group to whom they belong, financing status of the group to the National Bank of Romania.

(2) The National Bank of Romania may require any kind of information concerning one of the entities belonging to the group.

Art. 16 – The managers of the non-banking financial institutions should meet at least the following conditions:

- a) to have a reputation suitable for the position;
- b) have not caused at any time bankruptcy of an economic agent;
- c) have university degree;

d) have expertise in a field considered relevant by the National Bank of Romania.

Art. 17 – (1) The non-banking financial institutions shall issue, by observing the regulations of the National Bank of Romania, internal norms for achieving their object of activity in conformity with the regulations of safe and sound practices.

(2) The non-banking financial institutions are obliged to stipulate in their internal norms requirements regarding the beneficiary's equity and the loan related criteria and conditions.

Art. 18 – (1) The non-banking financial institutions shall organize and keep their own accounting books and records according to the provisions of the Accounting Law no. 82/1991, republished, and the relevant specific regulations issued by the National Bank of Romania.

(2) The financial statements of the non-banking financial institutions shall be audited in accordance with the provisions of art. 48 and 49.

Art. 19 – The non-banking financial institutions establish, regulate and use specific credit risk provisions which are entirely deductible from the tax profit in accordance with the provisions of Law no. 571/2003 regarding the Fiscal Code. The classification of credits, the calculation of the necessary risk provisions, their establishment, regulation and use shall be made by applying the norms established by the National Bank of Romania regarding the classification of credits and investments, and constitution, regulation and use of credit risk provisions issued by credit institutions.

Art. 20 - The operations related to credit activity shall be carried out exclusively through accounts opened by non-banking financial institutions with credit institutions – Romanian legal persons or Romanian branches of foreign financial institutions authorized by the National Bank of Romania to operate on the Romanian territory, as well as their own cashiers of the non bank financial institutions.

Art. 21 – The non-banking financial institutions are obliged to report its credit portfolio structure to the National Bank of Romania and any other information requested for statistical and analysis purpose by the central bank, in compliance with the requirements established by its regulations.

Section 2

Notification

Art. 22 – (1) Setting up of non-banking financial institutions will be notified to the National Bank of Romania within 30 days form the date of registration into the Trade Register.

(2) The non-banking financial institutions shall perform the activities set forth in their object of activity after the document confirming their registration in the General Register has been received from the National Bank of Romania.

Art. 23 – (1) The notification procedure and required conditions will be established by regulations of the National Bank of Romania.

(2) The application of being registered in the General Register will be supported by the following documents, including but not limited to:

- a. constitutive act from the Trade Register;
- b. registration certificate from the Trade Register;
- c. information regarding managers and administrators, particularly identification data together with curriculum vitae and legal record;
- d. list of participant non-banking financial institutions and of significant shareholders/founders/managers of other commercial societies;
- e. feasibility study that will include, at least the type of activities foreseen to be developed, organizational structure and financial estimates for the next two years;
- f. identity of the financial auditor;
- g. internal norms that regulate the activities developed.

Art. 24 – Non-banking financial institutions must notify to the National Bank of Romania all modifications regarding the initial documentation submitted within 30 days from the date the modification has taken place.

Section 3

General Register

Art. 25

- (1) Further to the notification of the non-banking financial institutions to the National Bank of Romania, in compliance with the provisions of art. 22, par. 1, they will be registered to the General Register of the non-banking financial institutions, kept by the National Bank of Romania, provided that they meet the requirements presented in Section 1.
- (2) The National Bank of Romania shall issue and send to the non-banking financial institutions the document confirming registration in the General register, within 60 days from the date of the notification.

Section 4

Specific requirements

Art. 26 –

- (1) The present section is applicable exclusively to the non-banking financial institutions that are subject to recording in the Special Register.
- (2) Registering the non-banking financial institutions in the Special Register shall not exempt them from compliance with general requirements foreseen in Section 1.

Art. 27 – (1) The National Bank of Romania shall establish through regulations criteria for registering the non-banking financial institutions in the Special Register.

(2) – Criteria mentioned in par. 1, may refer to the following, but are not limited to:

- a) turnover;
- b) total amount of loans;
- c) rate of indebtedness;
- d) total amount of assets;
- e) own funds.

Art. 28

(1) Fulfilling the criteria and registration in the Special Register may impose the non-banking financial institutions to meet cumulatively the requirements foreseen in par (2) –(5):

(2) The quality of the shareholders and the structure of the group they belong to should guarantee a safe and sound management of the non-banking financial institutions and should allow an efficient monitoring:

- a) should have a stable financial situation, to justify satisfactorily the origin of the funds used for the share capital of the non-banking financial institutions and to create premises for a potential financial support;
- b) to provide sufficient information, to ensure enough transparency for identification of the group;
- c) to provide information regarding the important shareholders in compliance with the requirements established by National Bank of Romania regulations;

(3) The managers and administrators should meet the following criteria regarding qualification and professional experience:

- a) managers should hold a university degree and a minimum 2-year experience in a field considered relevant by the National Bank of Romania;
- b) at least one of the administrators should have a minimum 1 year experience in accountability.

(4) The organization and management of non-banking financial institutions should take into consideration the following:

- a) non-banking financial institutions shall have their own regulation which details all the competences and obligations of any department of the organizational structure as well as the relations between the departments;
- b) the non-banking financial institutions shall include in their structure at least one committee for managing the risks and one audit committee and their minimum competences will be established by the National Bank of Romania;
- c) the management of the non-banking financial institutions should include at least 2 managers and employees designated in accordance with the status of the society;
- d) the managers should ensure management of day-to-day activities of the non-banking financial institutions, should perform exclusively their duties and at least one of them should know the Romanian language;

e) the administrators of the non-banking financial institutions could be only physical persons

(5) The non-banking financial institutions should comply with the requirements for prudence, that refer, but are not limited to:

- a) own funds;
- b) exposure to a debtor or aggregated exposure;
- c) exposure to third parties having special relations with non-banking financial institutions;
- d) quality of assets, establishment and use of risk provisions;
- e) organization and internal audit.

Art. 29 – (1) Non-banking financial institutions shall prepare internal norms in order to apply special requirements and submit to the National Bank of Romania within 5 days from the date of starting the activities.

(2) The changes of the internal norms concerning the development of activities shall be transmitted to the National Bank of Romania within 5 days from the date they have been approved by the relevant bodies.

(3) The National Bank of Romania may request the non-banking financial institutions to modify their internal norms in case they do not comply with the requirements of the present title, of applicable regulations and of developing a safe and sound activity.

Section 5

Special Register

Art. 30 – (1) Once the criteria foreseen by the regulations issued by the National Bank of Romania are met, the non-banking financial institutions are automatically registered in the Special Register and shall be subject of the National Bank of Romania's monitoring.

(2) – The National Bank of Romania shall release and send to the non-banking financial institutions the document confirming their registration on the Special Register.

Art. 31 – The non-banking financial institutions registered in the Special Register will also remain in the database of the General Register.

Art. 32 – (1) The non-banking financial institutions registered in the Special Register shall comply with the requirements established by Section 4 and with the regulations applicable to them, disregarding of the fact that the criteria existent at the moment of registration in the Special Register are observed or not.

(2) – The National Bank of Romania may continue to apply its monitoring prerogatives on the non-banking financial institutions that do not observe the criteria foreseen in art. 27 par (2).

Section 6

Register

Art. 33 – (1) Further to the notification of the houses for mutual support and pawnshops to the National Bank of Romania, they will be registered in the Register kept by the National Bank of Romania.

(2) – The National Bank of Romania shall release and send to the houses for mutual support and the pawnshops the document confirming their registration in the Register within 30 days from the date of notification.

Chapter III

Monitoring and control

Art. 34 – (1) In order to ensure stability of the non-banking financial system, the National Bank of Romania monitors the non-banking financial institutions registered in General Register and controls the non-banking financial institutions registered in the Special Register, that develop their activity on Romanian territory.

(2) Monitoring the observance of the requirements foreseen by the legislation applicable to the non-banking financial institutions is undertaken by the National Bank of Romania on the basis of the reporting required by the provisions of the present title and its regulations of applicability, including inspections at the headquarters of the non-banking financial institutions.

(3) The non-banking financial institutions are required to send to the National Bank of Romania any information requested by them.

Art. 35 – For monitoring and control, the National Bank of Romania undertakes inspections at the headquarters of the non-banking financial institutions through its empowered personnel.

Art. 36 – The non-banking financial institutions are required to allow the personnel of the National Bank of Romania to carry out the inspection, to examine the records, accounts and operations and to provide all documents and information related to management, internal control and operations of the non-banking financial institutions, as it may be requested.

Art. 37 – (1) The National Bank of Romania shall issue regulations concerning inspection regime of non-banking financial institutions related to the quality of the declared juridical persons at the Center of Banking Risks of the National Bank of Romania.

(2) It is not considered infringement of the banking secret the submission of bank risk related information to the Center of Banking Risks from the non-banking financial institutions' database .

Chapter IV

Merger, division and liquidation

Art. 38 –The present section is applicable exclusively to the non-banking financial institutions that are subject to recording in the General and Special Registers.

Art. 39 – Merger or division of non-banking financial institutions shall be made in compliance with the applicable law.

Art. 40 – (1) Merger may be:

- a) between two or more non-banking financial institutions;
- b) between non-banking financial and credit institutions, with the exception of the institutions that issue electronic coin.

(2) Merger and division, under the provisions of par. 1, are notified at the National Bank of Romania.

(3) If as a result of the merger/division of a non-banking financial institution, new non-banking financial institutions establish, then they are required to observe the notification procedure foreseen in Chapter II – Section II.

Art. 41 – Liquidation of non-banking financial institutions observes the applicable legislation.

Chapter V

Contractual documents, registers and records

Art. 42 – (1) Non-banking financial institutions prepare and keep, at their headquarters, documents and records, in the Romanian language, comprising:

- a) contract of society and status, as well as additional acts that brought subsequent modifications;
- b) register of shareholders, with the exception of the cases where the record of shareholders is kept by an independent register society, according to the law;
- c) minutes and decisions of the General Assembly of Shareholders;
- d) minutes and decisions of Board of Directors and other committees according to the law or the regulations of the National Bank of Romania and, as the case may be, of the committees established by decision of statutory bodies;
- e) records and book-keeping that clearly and accurately record the status of activity, explain the transactions and the financial status so as to allow the National Bank of Romania to determine if the provisions of the present law has been observed;
- f) own regulations concerning development of activity as well as subsequent amendments;
- g) other records a required by the provisions of the present law or of the regulations of the National Bank of Romania.

(2) Documents listed in par. 1 lett. a) and f) as well as subsequent modifications should be submitted to the National Bank of Romania.

Art. 43

(1) The non-banking financial institutions shall record and keep at their headquarters a copy of the loan related documentation and any other information related to the business relations with their clients and other persons who are foreseen in the regulations of the National Bank of Romania and shall put them at the disposal of the authorized personnel of the National Bank of Romania, at their specific request.

(2) By complying with the requirement to make them available to the empowered personnel of the National Bank of Romania at their request, the non-banking financial institutions may keep the documents mentioned in par. 1 in other suitable placements.

Art. 44 – All credit and guarantee operations undertaken by the non-banking financial institutions should be recorded in the contractual documents so as to result clearly all the conditions related to the respective transactions. These documents should be kept by the non-banking financial institutions and put at the disposal of the authorized personnel of the National Bank of Romania, at their specific request.

Art. 45 –

(1) Credit contracts, in respect of art. 7 par. 1, as well as personal and real guarantees, established for the purpose of guaranteeing the credit, constitutes executive titles.

(2) Guarantees constituted in favor of the non-banking financial institutions for the purpose of guaranteeing the credits, which observe the commercials related requirements according to the law, gives priority to the non-banking financial institutions in relation with the third parties, including the state, for which debts and guarantees fulfilled the commercials related requirements before.

Chapter VI

Accounts, financial records and their control

Art. 46 – The non-banking financial institutions should permanently have book-keeping, in compliance with the provisions of the Law no. 82/1991, republished, and its specific application norms and prepare financial records that accurately indicate the financial status, financing performances, cash flows and other information related to the developed activity.

Art. 47 – The non-banking financial institutions are obliged to submit to the National Bank of Romania their financial records, as well as other data and information requested by the National Bank of Romania, observing the terms and forms established by regulations.

Art. 48 – (1) The financial records of the non-banking financial institutions registered in the General Register shall be audited by financial auditors, physical and juridical persons.

(2) The financial records of the non-banking financial institutions registered in the Special Register shall be exclusively audited by financial auditors, juridical persons, agreed by the National Bank of Romania, on the basis of their proved experience in financial audit activities.

Art. 49 – (1) In order to have the financial records audited, the non-banking financial institutions shall conclude contracts with financial auditors, physical or juridical persons, authorized by the Chamber of Financial Auditors in Romania, according to the law.

(2) The financial auditor:

- a) shall prepare an annual report accompanied by his/her opinion, that indicates if the financial records show an accurate image of the financial position, financing performance and cash flow of the non-banking financial institutions and other information related to the activities developed according to the professional standards published by the Chamber of Financial Auditors of Romania;

- b) shall provide, at the request of the National Bank of Romania, any details, clarifications and explanations concerning the information comprised in the financial records of the non-banking financial institutions;
- c) shall analyze the practices and procedures of internal control and audit, and in case they are not compliant, shall make recommendations, in writing, to the non-banking financial institutions registered in the Special Register to improve them.

(3) The report of the financial auditor together with his/her opinion shall be presented to the General Assembly of the Shareholders and shall be published together with the annual financial records.

Art. 50 – (1) The financial auditor shall inform the National Bank of Romania as soon as he/she becomes aware, while exercising his/her duties, of any act or fact related to the activity of the non-banking financial institutions or to the entities where the non-banking financial institutions hold participation, that:

- a) constitutes a serious infringement of law and/or regulations or acts issued for its applicability, by which the conditions of developing non-banking financial activities are established;
- b) may affect the patrimony of the non-banking financial institutions or its good functioning;
- c) may lead to the refusal of the auditor to express his/her opinion concerning the financial records of the non-banking financial institution or the express his/her opinion with reserves.

(2) Accomplishing in good faith of the obligation of the financial auditor to inform the National Bank of Romania is not an infringement of the professional secret and he/she cannot be financially responsible for it.

Art. 51 – Every non-banking financial institution shall publish the financial records after their approval by the General Assembly of the Shareholders, observing the forms established by the National Banks of Romania and the terms according to the law.

Chapter VII

Penalties

Art. 52 – (1) National Bank of Romania shall apply penalties to the non-banking financial institutions and/or any of their managers and administrators, if they are found guilty of:

- a) infringement of the provisions of the present title or regulations issued by the National Bank of Romania or the non-banking financial institution's own regulations;
- b) recording fake operations with no real support;
- c) not reporting, reporting with delays or reporting inaccurate information concerning the financial stability indicators, prudence indicators or other indicators foreseen in the regulations of the National Bank of Romania;
- d) infringement of the measures established by the National Bank of Romania;
- e) mismanagement of the patrimony;

(2) In the cases foreseen in par. 1, the National Bank of Romania may apply the following penalties:

- a) written warning for non-banking financial institutions;
- b) fine applicable to the non-banking financial institutions, amounting 0.01%-0.5% of the social capital, by derogation from the provisions of art. 8 of Government Ordinance no. 2/2001 regarding the juridical regime of penalties, approved with subsequent modifications through Law 180/2002;
- c) fine applicable to the administrators and managers, amounting to 1-6 net average salaries/non-banking financial institution, in accordance with the salaries' status one month before it becomes aware of the fact;
- d) suspension of the credit activity;
- e) Banning to develop credit activity and, implicitly, erase from the registers where the non-banking financial institutions are registered.

(3) The fees collected by applying par. 2 lett. b and c represent income to the state budget.

(4) The application of the penalties foreseen in art. 52 par. 2 is due in one year from the date it has been acknowledged, but not more than three years from the date the deed was made.

(5) The application of penalties does not exclude material, civil, administrative and criminal responsibility, as the case may be.

Art. 53 – The National Bank of Romania may impose remedial measures for the deficiencies found and their effects.

Art. 54 – The acts for the applications of the measures and penalties foreseen in the present chapter are issued by the governor or vice-governor of the National Bank of Romania, with the exception of the penalties foreseen in art. 52 par. (2) lett. e), for which the applicability falls under the responsibility of the Board of Directors.

Art. 55 – (1) Acts issued for the applicability of the present title may be disputed within 15 days from the date they have been submitted to the Board of Directors of the National Bank of Romania, which pronounces by decision within 30 days from the date of notification.

(2) The decision of the Board of Directors may be disputed at the High Court of Cassation and Justice within 15 days from notification.

(3) The execution of the acts issued by the National Bank of Romania is not suspended until a decision is passed by the National Bank of Romania according to par. (1), or, as the case may be, until a definitive and irrevocable decision is passed by the court according to par. 2.

(4) The National Bank of Romania is the sole authority to pronounce upon the opportunities, assessments and quality analysis that provide justification for its issued acts. In case the acts of the National Bank of Romania are disputed, the court shall pass on the legality of the acts.

Chapter VII

Special provisions applicable to the houses for mutual support and pawnshops

Art. 56

(1) The provisions of the present chapter is applicable exclusively to the non-banking financial institutions that are subject to recording in the Register.

(2) The provisions of chapter I, II, section 6, IX and X are applicable to houses for mutual support and pawn shops.

Art. 57 – Houses for mutual support shall develop credit, in compliance with the provisions of the special laws applicable to them and of the present law, by observing the following requirements:

- a) registration in the Register kept by the National Bank of Romania;
- b) compliance with the provisions of the special law that regulate their activities in respect of organization, functioning and association;
- c) Limiting the credit activity in accordance with the provisions of the special law that regulate their activities;
- d) Limiting the financing sources in accordance with the provisions of the special law that regulate their activities.

Art. 58 – Pawnshops shall develop credit activities in compliance with the provisions of the applicable laws and present title, by observing the following requirements:

- a) registering in the Register kept by the National Bank of Romania
- b) organization and management in compliance with Law 31/1990, republished, with subsequent modifications
- c) the credit activity developed shall be limited to that foreseen in art. 7 par 1 lett d and shall be the sole object of activity

Art. 59 – The procedures and requirements for registering the houses for mutual support and pawnshops in the Register, as well as the form of reporting and the requested information shall be established by the National Bank of Romania through regulations, depending on the specific of their activities.

Chapter IX

Transitory Provisions

Art. 60

(1) The non-banking financial institutions that are organized and function on the basis of the provisions of the present title, with the exception of houses for mutual support and pawnshops, disregarding of their form of organization at the moment the present title enters into force, shall start the procedure to change their juridical form in joint stock commercial societies and to fulfill the general requirements, in order to obtain permission to develop credit activities according to the title.

(2) The paw shops shall have any of the organization forms foreseen in Law 31/1990, republished, with subsequent modifications.

Art. 61 – (1) Within 30 days from the date of entering into force of the present ordinance, the entities that fall under the present title shall submit to the National Bank of Romania a

declaration signed by their legal representatives, accompanied by the Finding Certificate issued by the Trade Register, or, as the case may be, the proof of registering in the register of associations and foundations, found at the court where their headquarters is assigned, with maximum 15 days before the submission to the National Bank of Romania.

(2) The declaration mentioned in par. 1 shall include the following information:

- a) name of the manager (president of the Board of Directors/director), address and telephone number where he/she can be contacted;
- b) total amount of assets, total amount of credits, own resources, borrowed resources, indebtedness rate (ratio between borrowed sources/social capital) and turnover resulting from the credit activities, recorded at the end of the last 2 financial exercises;
- c) list of the non-banking financial institutions participant in other societies, society profile, share of social capital;
- d) other information requested by the National Bank of Romania.

(3) The houses for mutual support and pawnshops shall submit exclusively the documents mentioned in par. (1) and (2) letter a) and d).

(4) The Finding Certificate issued by the Trade Register, foreseen in par. 1, shall include at least the following information:

- a) name, address of the headquarters, juridical form, social capital (subscribed, cash or in nature), object of activity (main and auxiliary), juridical status;
- b) information on associates/shareholders, value of social parts/shares;
- c) commercial fund (working points).

(5) The National Bank of Romania may extend the deadline mentioned in par. 1 with maximum 30 days, on the basis of justified requests.

Art. 62 – (1) On the basis of declarations foreseen in art. 61, the National Bank of Romania shall prepare a list including the entities foreseen in art. 61 which shall be made available to them, through its territorial branches, and shall be published in two national distributed newspapers in order to facilitate the re-organization according to the present title.

(2) Within 60 days from the expiration of the deadline foreseen in art. 61 par. 1., the National Bank of Romania shall prepare regulations for law applicability and establish criteria for classifying the non-banking financial institutions with a view to monitor and control them, on the basis of the analysis of the information included in the declarations foreseen in art. 61.

(3) In case the declaration foreseen in art. 61 is not submitted in the form and at the deadlines specified, the entities shall not be authorized to develop credit activities.

Art. 63 (1) Within 6 months from the date of entering into force of the present ordinance, the entities that fall under the present law, with the exceptions of houses for mutual support and pawnshops, shall undertake the required measures to meet the general requirements and shall observe the notification formalities, foreseen in Chapter II – Section II.

(2) The feasibility study mentioned in art. 23 par. 2 letter e shall be replaced with a description of the developed activities, organizational structure and the financial status for the last 2 years.

(3) Houses for mutual support and pawnshops shall observe the registration formalities within 90 days from the date of entering into force of the present ordinance, in accordance with the regulations issued by the National Bank of Romania.

(4) The pawnshops shall be re-organized in compliance with art. 60 par 2, within 6 months from the date of entering into force of the present ordinance.

Art. 64 – (1) The non-banking financial institutions registered in the General Register, which meet the criteria mentioned in art. 27 for registering in the Special Register are required to prove the compliance with the special requirements provided in chapter II – Section 4 within 6 months from the date they have been registered in the General and Special Registers.

(2) The National Bank of Romania may extend the deadline provided in par. 1 with maximum 6 months for justified requests.

Art. 65 – The National Bank of Romania shall establish the procedure and registration deadlines for non-banking financial institutions active at the date of entering into force of the present ordinance.

Art. 66 – (1) The entities, which under the terms provided in art. 61, 63 and 64 do not meet with the requirements of the present title, shall not be able to develop credit activity and to conclude new contracts.

(2) Pawnshops and houses for mutual support that do not fall under the terms provided in art. 61, 63 par 4 shall not be able to develop credit activity and to conclude new contracts.

(3) Contracts concluded by the date of entering into force of the present law and fall under its applicability, shall not be extended through additional acts and remain valid until their end.

Art. 67 – Loans obtained until date of entering into force of the present ordinance through emission of bonds shall be implemented until their end.

Art. 68 –

(1) Subscriptions in nature to share capital of the non-banking financial institutions until the date of entering into force of the present ordinance shall be assimilated in cash.

(2) The increase of the social capital amount of the entities found under the terms of the present title, for reaching the amount stipulated by the present title and the regulations of the National Bank of Romania, within the period foreseen by the transitory provisions, will be assimilated exclusively in cash.

Chapter X

Final Provisions

Art. 69 – (1) Provisions of the present title shall be applied appropriately including to the Romanian branches of the non-banking financial institutions headquartered on the territory of another state;

(2) Starting with the accession date of Romania to the European Union, the requirements related to development of credit activities the Romanian, monitoring and control for the Romanian branches of the non-banking financial institutions headquartered on the territory of

the Member States of the European Union shall be established on the basis of the cooperation agreements concluded with those countries.

Art. 70 – (1) The non-banking financial institutions may constitute professional associations that represent collective interests, as well as interests of the beneficiaries for the public authorities and that analyze the issues of mutual interest from the relevant field. The professional associations shall cooperate with National Bank of Romania.

(2) The non-banking financial institutions may adhere to similar profile international associations, by observing the obligations incurred by the constitutive acts.

Art 71 –

(1) The present title shall be completed with the provisions of the applicable special legislation, provided that the provisions of the present title are not contradicted.

(2) By the date the present title enters into force, any contradictory provision is repealed.

(3) Apart or within the professional association, non-banking financial institutions may create their own body of executors, whose activity will be strictly related to carrying out their executory titles. The statute of this body of executors will be approved by order of the Minister of Justice.

Art. 72 – The National Bank of Romania shall prepare the regulations related to the applicability of the present title, which are to be published in the Official Gazette of Romania – Part 1.

The present ordinance enters into force within three days from the date of publication on the Official Gazette of Romania – Part I.

Prime – Minister

Calin Popescu – Tariceanu

Countersigned:

Minister of Public Finance

Sebastian Teodor Gheorghe Vladescu

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