

Ordinance No. 28 of 26 January 2006

Published in *Monitorul Oficial al României*, Part One, No. 89 of 31 January 2006

governing certain financial and fiscal measures

PART I

Regulations governing certain financial and fiscal operations

TITLE I

Provisions on lending activity performed by non-bank financial institutions

CHAPTER I

General provisions

SECTION 1

Scope

Art. 1. – This Title regulates the minimum access requirements for non-bank financial institutions to lending activity in order to ensure and maintain financial stability.

Art. 2. – (1) *Lending activity* represents any form of financing performed by non-bank financial institutions in compliance with the provisions of Art. 7 para. (1).

(2) The National Bank of Romania is the sole authority entitled to decide whether the activity performed by an entity is treated as lending activity and whether it is governed by the provisions of this Title.

Art. 3. – (1) Lending activity shall be performed through credit institutions defined in compliance with the provisions of Law No. 58/1998 on banking activity, as republished, and through non-bank financial institutions, based on the provisions of this Title and of special laws governing their activity.

(2) Entities other than those referred to in para. (1) may not perform lending activities with professional status in Romania.

SECTION 2

Definitions

Art. 4. – For the purpose of this Ordinance, the terms and logos given below shall mean:

- a) *non-bank financial institution* – legal person incorporated with a view to performing, with professional status, lending activities such as those referred to in Art. 7 para. (1) and whose financing sources arise from own resources or resources borrowed from credit institutions, from other financial institutions, or, as the case may be, from other sources provided for by special laws;
- b) *activities allowed to be performed by non-bank financial institutions* – the activities, as referred to in Art. 7 and Art. 8, performed based on the provisions of this Title and, as the case may be, based on the provisions of special laws governing their activity;
- c) *managers* – the persons who, consistent with incorporation documents and/or the decision of statutory bodies of non-bank financial institutions, are vested with the power to run and co-ordinate their day-to-day activities and to engage the liability of non-bank financial institutions;
- d) *significant shareholder* – the natural person, legal person or group of natural and/or legal persons acting jointly, who holds directly or indirectly 10 percent or more of share capital of a company, or of the voting rights, or a participation, allowing to exercise a significant influence over the management and business policy of the company;
- e) *notification* – the action of non-bank financial institutions, including the submission of documents set by the National Bank of Romania in order to be granted by it the document attesting the registration and allowing the performance of lending activity;
- f) *General Register of Non-bank Financial Institutions* (hereinafter referred to as “General Register”) – a register opened and kept by the National Bank of Romania, in which the non-bank financial institutions meeting the general requirements laid down under Chapter II, Section 1 are recorded;
- g) *Special Register of Non-bank Financial Institutions* (hereinafter referred to as “Special Register”) – a register opened and kept by the National Bank of Romania, in which the non-bank financial institutions meeting the requirements laid down under Art. 27 are recorded;
- h) *Entry Register of Mutual Benefit Societies and Pawnshops* (hereinafter referred to as “Entry Register”) – a register opened and kept by the National Bank of Romania, in which mutual benefit societies and pawnshops are recorded.

SECTION 3

Organisation and operation

Art. 5. – (1) Non-bank financial institutions shall be incorporated as joint-stock commercial companies. Organisation and operation of non-bank financial institutions are governed by the provisions of this Title, Law No. 31/1990–Commercial Companies Act, republished as subsequently amended and supplemented, and, as the case may be, by the provisions of other special laws in the field.

(2) Legal persons laid down in Chapter VIII shall be exempted from fulfilling the requirement of being incorporated as joint-stock commercial companies.

Art. 6. – (1) The name of an entity that may perform lending activity, based on the provisions of this Title, shall include the logo “non-bank financial institution” or its abbreviation “NFI”. The logo “non-bank financial institution” shall be used in names, headers, official documents, contracts or other such documents, or in advertising, only by non-bank financial institutions.

(2) Non-bank financial institutions may not use in names, headers or any other identification marks, words or logos that might mislead the general public in terms of the status or the activities and operations performed by non-bank financial institutions.

SECTION 4

Allowed activities

Art. 7. – (1) Non-bank financial institutions may perform the following lending activities:

- a)** granting of credits, including, without being limited to consumer credits, mortgage credits, real-estate credits, micro-credits, financing of commercial transactions, factoring, discount, forfaiting operations;
- b)** financial leasing;
- c)** issuing of guarantees and assuming commitments, including credit guarantee;
- d)** granting of credits in exchange of goods for safekeeping, i.e. pledging via pawnshops;
- e)** granting of credits to members of non-profit-making associations based on free will of employees/pensioners in order to grant their members financial support, i.e. mutual benefit societies;
- f)** other lending forms in the nature of credits.

(2) Non-bank financial institutions, when performing activities related to consumer credit, may issue and manage credit cards for their customers and may perform activities associated with these processing transactions in accordance with the National Bank of Romania regulations in the field.

(3) Non-bank financial institutions may provide ancillary and advisory services related to the activities laid down in para. (1).

(4) Non-bank financial institutions may perform mandate operations in their relation to other non-bank financial institutions and/or credit institutions regarding the performed lending activity.

Art. 8. – (1) Non-bank financial institutions may perform, pursuant to Art. 7, as the case may be, the following operations in movable and immovable assets:

- a) operations needed to perform their activity;
- b) rental of movable and immovable assets to third parties, including operational leasing, provided that the value of the rented movable and immovable assets does not exceed the limit defined by National Bank of Romania norms;
- c) transactions in movable and immovable assets acquired following the foreclosure of non-bank financial institutions or the user's voluntary waiver of the assets subject to financial leasing contracts.

(2) Movable and immovable assets acquired following the foreclosure of non-bank financial institutions shall be sold by non-bank financial institutions within one year from the date of being acquired, unless these assets are used by observing the provisions of para. (1). For justified reasons, the time limit may be extended subject to approval by the National Bank of Romania.

(3) Non-bank financial institutions performing operations laid down in Art. 7 para. (1) letter b) shall be entitled to change the destination of movable and immovable assets acquired following the foreclosure or voluntary waiver by the user within one year from the date movable and immovable assets were acquired.

SECTION 5

Interdictions

Art. 9. – Non-bank financial institutions shall be forbidden to:

- a) accept deposits or other repayable funds from the general public;
- b) issue bonds, except public offering to qualified investors in the meaning of the law on capital market;
- c) include in their core business any other activity than that laid down under Art.7 para. (1);
- d) include in their secondary business any other activity than that laid down under Art.7 paras. (2)-(4) and Art.8.

Art. 10. – The entities failing to meet the provisions of this Title may not use in names, headers or documents they issue the logo “non-bank financial institutions” or any other derivative thereof, which might mislead the general public with regard to the performance of lending activities, based on the provisions of this Title.

Art. 11. – The following persons may not be founding members, significant shareholders, managers, administrators, financial auditors of a non-bank financial institution:

- a) the persons listed under Art. 23 and 27 of Law No. 535/2004 on prevention and fight against terrorism;
- b) the persons irrevocably convicted of corruption, money laundering, fraud, property violation, misuse of authority, bribery, forgery and use of forgery, misappropriation of funds, tax evasion, deriving undue benefits, influence peddling, perjury or any other penal offences.

Art. 12. – Non-bank financial institutions may not perform the following operations:

- a) transactions in movable and immovable assets, except for those referred to under Art. 8;
- b) pledging their own shares against the debts of the non-bank financial institution;
- c) granting credits conditioned by sale or purchase of the shares of the non-bank financial institution;
- d) granting credits secured by shares issued by non-bank financial institutions;
- e) granting credits conditioned by the customer's acceptance of other services not related to lending operation.

CHAPTER II

Requirements and registers

SECTION 1

General requirements

Art.13. – (1) This Section is applicable solely to the non-bank financial institutions which are subject to registration in the General Register.

(2) Upon establishment, non-bank financial institutions shall meet the general requirements as laid down in this section.

Art. 14. – (1) The minimum share capital of non-bank financial institutions shall be set by the National Bank of Romania regulations and shall not be lower than the equivalent in the domestic currency (*leu*) of EUR 200,000. The National Bank of Romania is entitled to set differentiated levels of minimum share capital in terms of the type of activity of the non-bank financial institutions.

(2) Minimum share capital of non-bank financial institutions shall be paid up in full, in cash, upon subscription.

(3) The shares issued by non-bank financial institutions shall be only nominal ones.

(4) Non-bank financial institutions may raise the share capital by cash contributions and incorporation of reserves from net profit, of dividends from net profit due to shareholders after payment of dividend tax, and of retained earnings.

Art.15. – (1) Non-bank financial institutions shall provide detailed information to the National Bank of Romania concerning the quality of significant shareholders, the structure of groups the shareholders belong to, and the financial standing of the group as well.

(2) The National Bank of Romania may require any information about any entity belonging to the group.

Art. 16. – Managers of non-bank financial institutions shall fulfil at least the following requirements:

- a)** they must have the moral integrity required by their positions;
- b)** they must not have engendered bankruptcy of any entity;
- c)** they must hold a university degree;
- d)** they must have the experience in a field deemed relevant by the National Bank of Romania.

Art. 17. – (1) Non-bank financial institutions shall, in compliance with the NBR regulations, issue internal regulations for the purpose of performing their core business in accordance with the rules of a prudent and sound practice.

(2) The internal lending regulations of non-bank financial institutions shall establish rules concerning at least creditworthiness of the borrower, criteria and terms of lending.

Art. 18. – (1) Non-bank financial institutions shall organise and run the accounting records in compliance with the provisions of Law No. 82/1991–Accounting Act, as republished, and with the specific regulations issued by the National Bank of Romania, with the approval of the Ministry of Public Finance.

(2) Financial statements of non-bank financial institutions shall be subject to auditing in compliance with the provisions of Art. 48 and 49 hereof.

Art. 19. – Non-bank financial institutions shall set up, regulate and use specific credit risk provisions which are deductible from profit tax in accordance with the provisions of Law No. 571/2003 on Tax Code. Credit classification, setting the necessary specific credit risk provisions and the setting-up, regularisation and use thereof shall be performed by applying accordingly the National Bank of Romania’s regulations on classification of credits and placements and the setting-up, regularisation and use of specific credit risk provisions issued for credit institutions.

Art. 20. – Receipt and payment operations relative to lending activity shall be performed through accounts opened by non-bank financial institutions with credit institutions, Romanian legal entities, as well as with foreign credit institutions’ branches authorised by the National Bank of Romania to operate in Romania, and through the own cash offices of non-bank financial institutions.

Art. 21. – Non-bank financial institutions shall inform the NBR about the structure of the credit portfolio and shall provide any information required by the central bank, for statistical and analysis purposes, in accordance with the requirements laid down in the NBR regulations.

SECTION 2

Notification

Art. 22. – (1) The establishment of non-bank financial institutions shall be notified to the National Bank of Romania within 30 days from their inscription in the Trade Register.

(2) Non-bank financial institutions may perform the specific activities, as laid down in their scope of activity, only after receiving the document attesting the registration in the General Register from the National Bank of Romania.

Art. 23. – (1) The procedure and terms of notification shall be established through NBR regulations.

(2) The application for inscription in the General Register shall be accompanied by documents which concern, without being limited to, the following:

- a) incorporation act submitted by the Trade Register;
- b) inscription certificate from the Trade Register;
- c) information on the managers and administrators, i.e. identification data, along with curriculum vitae and criminal record;
- d) list of participations of non-bank financial institutions and significant shareholders / founding members / managers in other commercial companies;
- e) feasibility study that shall include at least the type of operations to be performed, organisation chart and estimates of the financial standing for the next two years;
- f) identity of financial auditor;
- g) internal regulations governing the operations to be performed.

Art. 24. – Any change to the documents initially submitted by non-bank financial institutions shall be notified to the NBR within 30 days from its occurrence.

SECTION 3

General Register

Art. 25. – (1) Following the notification to the NBR by non-bank financial institutions in accordance with the provisions of Art. 22 para. (1), they shall be registered and inscribed in the General Register of non-bank financial institutions kept at the National Bank of Romania provided their compliance with the requirements laid down in Section 1.

(2) The National Bank of Romania shall issue and send the document attesting their registration in the General Register to the non-bank financial institutions within 60 days from the notification date.

SECTION 4

Special requirements

Art. 26. – (1) This Section is applicable solely to the non-bank financial institutions which are subject to registration in the Special Register.

(2) The registration of non-bank financial institutions in the Special Register shall not exclude the meeting of general requirements laid down in Section 1.

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

(2) The criteria laid down in para. (1) may refer, without being limited, to the following:

- a) turnover;
- b) volume of credits;
- c) indebtedness;
- d) total assets;
- e) shareholders' equity.

Art. 28. – (1) Following the fulfilment of the criteria and the registration in the Special Register, non-bank financial institutions shall observe all the requirements laid down in paras. (2)-(5).

(2) The quality of shareholders and the structure of groups they belong to shall ensure prudent and sound management over non-bank financial institutions and shall allow efficient supervision. The shareholders shall:

- a) have a stable financial standing in order to prove satisfactorily the origin of the funds for acquiring the participation in non-bank financial institutions and create prerequisites for its possible financial backing;
- b) provide enough information to ensure transparency for the identification of the group they belong to;
- c) provide information about the significant shareholders in accordance with the requirements established by NBR regulations.

(3) Managers and administrators of the non-bank financial institution shall fulfil the following professional qualification and experience requirements:

- a) managers should have a university degree and experience of at least 2 years in one of the fields deemed relevant by the National Bank of Romania;
- b) at least one of the administrators should have experience of at least one year in the accounting and financial field.

(4) The organisation and management of non-bank financial institutions shall imply the following:

- a) non-bank financial institutions shall be governed by their own by-law, which shall lay down in detail the tasks and powers of each department referred to in the organisation chart, as well as interdepartmental liaison;
- b) non-bank financial institutions shall establish, as part of their organisation chart, at least one risk management committee and one audit committee, the

minimum tasks of which shall be laid down by the National Bank of Romania regulations;

c) the management of non-bank financial institutions shall be ensured by at least two managers, employees of the concerned institution, appointed in compliance with the Articles of Incorporation thereof;

d) the managers shall ensure the day-to-day management of the activity of non-bank financial institutions, shall exercise solely the duties related to the position which they were appointed to and at least one of them shall have a certificate of Romanian language proficiency;

e) the administrators of non-bank financial institutions shall be natural persons only.

(5) Non-bank financial institutions shall observe prudential requirements, which arise out, without being limited to, of:

a) own funds;

b) exposure to a single debtor and aggregate exposure;

c) exposure to the persons having special relationships with non-bank financial institutions;

d) asset quality, setting-up and use of risk provisions;

e) organisation and internal control.

Art. 29. – (1) Non-bank financial institutions shall draft internal norms with a view to enforcing special requirements and shall submit them to the National Bank of Romania within 5 days from the day of commencing activity.

(2) The modifications to internal norms on performing activity shall be submitted to the National Bank of Romania within 5 days from the day they were approved by statutory bodies.

(3) The National Bank of Romania may ask non-bank financial institutions to modify the internal norms when they fail to comply with the requirements of this Title, of the applicable regulations and of an activity carried out on prudent and sound foundations.

SECTION 5

Special Register

Art. 30. – (1) When non-bank financial institutions comply with the criteria referred to in the National Bank of Romania's regulations, they shall be automatically registered with the Special Register and shall be subject to the National Bank of Romania supervision.

(2) The National Bank of Romania shall issue and send the non-bank financial institutions the document attesting their registration with the Special Register.

Art. 31. – Non-bank financial institutions registered with the Special Register shall be kept in the General Register database as well.

Art. 32. – (1) Non-bank financial institutions registered with the Special Register shall observe the obligations referred to in Section 4 and the regulations issued

thereto, irrespective of their observance or non-observance of the criteria considered when they were registered with the Special Register.

(2) The National Bank of Romania shall further exercise its supervisory prerogatives over non-bank financial institutions which no longer fulfil the criteria laid down in Art. 27 para. (2).

SECTION 6

Entry Register

Art. 33. – (1) Upon notification to the National Bank of Romania by the mutual benefit societies and pawnshops, they shall be recorded with the Entry Register kept at the National Bank of Romania.

(2) The National Bank of Romania shall issue and send the document attesting their registration with the Entry Register to the mutual benefit societies and pawnshops within 30 days from the notification date.

CHAPTER III

Monitoring and supervision

Art. 34. – (1) With a view to achieving financial stability objectives, the National Bank of Romania shall monitor the non-bank financial institutions registered with the General Register and shall exercise prudential supervision over the non-bank financial institutions registered with the Special Register, which perform activities within the Romanian territory.

(2) The National Bank of Romania shall monitor the observance of requirements laid down in the laws applicable to non-bank financial institutions, based on the reports made in compliance with this Title and on the regulations issued for its enforcement, including via on-site inspections.

(3) Non-bank financial institutions shall, upon request, send any information to the National Bank of Romania.

Art. 35. – In exercising the tasks laid down hereof, the National Bank of Romania shall perform, whenever necessary, on-site inspections by the agency of its staff with powers in the field.

Art. 36. – Non-bank financial institutions shall allow the National Bank of Romania staff who perform on-site inspections to examine their records, accounts and operations and shall provide them with all the documents and information on their management, internal control and operations, in the manner they are required.

Art. 37. – (1) The National Bank of Romania shall issue regulations governing the regime of non-bank financial institutions on the quality of legal entities reporting to the Credit Information Bureau of the National Bank of Romania.

(2) The sending by the Credit Information Bureau of credit risk information in its database to non-bank financial institutions shall not be treated as a breach of the obligation to observe bank secrecy.

CHAPTER IV

Merger, splitting-up and winding-up

Art. 38. – (1) The provisions of this Chapter are applicable solely to the non-bank financial institutions which are subject to registration in the General Register and the Special Register.

Art. 39. – The merger or splitting-up of non-bank financial institutions shall be performed in compliance with the applicable legal provisions.

Art. 40. – (1) The merger may be performed:

- a) between two or several non-bank financial institutions;
- b) between non-bank financial institutions and credit institutions, except the institutions issuing e-money.

(2) The merger and splitting-up performed by observing the provisions of para.(1) shall be notified to the National Bank of Romania.

(3) Where the merger or splitting-up of a non-bank financial institution results in new non-bank financial institutions, they shall follow the notification procedure laid down in Chapter II, Section 2.

Art. 41. – The winding-up of non-bank financial institutions shall be performed in compliance with the specific laws in the field.

CHAPTER V

Contract documents, registers and records

Art. 42. – (1) Non-bank financial institutions shall prepare and keep at their registered office documents and records in the Romanian language comprising:

- a) Memorandum of Association and the Articles of Incorporation, and all addenda for their amendment;
- b) the shareholders' register, except for the cases where shareholders record-keeping is managed by an independent register office, according to the law;
- c) decisions of the General Meeting of Shareholders;
- d) minutes of the meetings and decisions of the Board of Directors and of the committees set up in accordance with this Title or with the National Bank of Romania regulations and, as the case may be, of the committees set up based on the decision of the statutory bodies;
- e) registers and accounting records highlighting in a clear and accurate manner the institution's activity, explaining its transactions and financial standing, so that the

National Bank of Romania should establish whether these institutions comply with the provisions of this Title;

f) own regulations regarding the performance of the activity, as well as any amendments thereto;

g) other records required by this Title or by the National Bank of Romania regulations.

(2) The documents referred to in para. (1) letters a) and f), along with the modifications, shall be sent to the National Bank of Romania.

Art. 43. – (1) Non-bank financial institutions shall draw up and keep at their registered office and/or secondary offices a copy of the credit documentation, as well as the information on their business relations with customers and other persons, which the National Bank of Romania's regulations may require; such information shall be made available to the NBR authorised staff upon request.

(2) Provided the obligation of making available the documents mentioned under para. (1) to the NBR authorised staff upon request is fulfilled, non-bank financial institutions may also keep these documents in other appropriate locations.

Art. 44. – All credit- and collateral-related operations performed by non-bank financial institutions shall be mentioned in the contract documents which must clearly specify all terms and conditions of the concerned transactions. These documents shall be kept by non-bank financial institutions and made available to the NBR authorised staff upon request.

Art. 45. – (1) Credit contracts, in the meaning of Art. 7 para. (1), as well as real and personal collateral set up in order to guarantee the credit shall be treated as enforceable decisions.

(2) The collateral set up in favour of the non-bank financial institution in order to guarantee the credits that comply with the publicity requirements stipulated by law shall have precedence of the non-bank financial institutions over third parties, the State included, whose claims and guarantees have subsequently met the publicity requirements.

CHAPTER VI

Annual financial statements and their auditing

Art. 46. – Non-bank financial institutions shall permanently keep their accounting records in compliance with the provisions of Law No. 82/1991, as republished, and of the specific regulations issued for its enforcement and shall prepare financial statements accurately reflecting the information on their financial standing, financial performance, treasury flows and any other information concerning the activity carried out.

Art. 47. – Non-bank financial institutions shall submit to the National Bank of Romania their financial statements, as well as any other data and information required by the NBR, within the pre-set time periods and in the form set by its regulations.

Art. 48. – (1) The financial statements of non-bank financial institutions recorded in the General Register shall be audited by financial auditors, natural or legal persons.

(2) The financial statements of non-bank financial institutions recorded in the Special Register shall be audited solely by financial auditors, legal entities, agreed upon by the National Bank of Romania, based on their experience in performing the financial audit activity.

Art. 49. – (1) For the purpose of auditing the financial statements, non-bank financial institutions shall conclude agreements with financial auditors, natural or legal persons – as the case may be – licensed by the- Financial Auditors Chamber in Romania, according to the law.

(2) The financial auditor:

- a) shall draft an annual report which includes his opinion certifying whether the financial statements provide accurate information on the institutions' financial standing, financial performance, treasury flows and any other information concerning the activity carried out by the non-banking financial institution, in accordance with the professional standards published by the Financial Auditors Chamber in Romania;
- b) shall provide, at the request of the NBR, any details, clarifications, explanations regarding the data in the financial statements of the non-bank financial institutions;
- c) shall assess the internal audit and control practices and procedures and – where they are deemed inadequate – shall make recommendations to the non-bank financial institution recorded in the Special Register to take remedial measures.

(3) The financial auditor's report and his accompanying opinion shall be presented to the General Meeting of Shareholders and shall be made public along with the annual financial statements.

Art. 50. – (1) In the discharge of his duties, the financial auditor shall immediately inform the National Bank of Romania when he finds any action or fact related to the activity of the non-bank financial institution or to the other entities where the non-bank financial institution holds participations, action or fact that:

- a) represents a serious infringement of the law and/or of the regulations or documents issued for its enforcement which lay down the conditions for carrying out the non-bank financial institution's activity;
- b) affects financial standing and the smooth functioning of the non-bank financial institution;
- c) may lead to the auditor's refusal to express his opinion on the non-bank financial institution's financial statements or to express his qualified opinion.

(2) The financial auditor's fulfilment in good faith of the obligation to notify the National Bank of Romania shall not be treated as a breach of the obligation

to keep the professional secrecy according to the law and shall not hold the financial auditor materially liable.

Art. 51. – Each and every non-bank financial institution shall publish its financial statements, after being approved by the General Meeting of Shareholders, in the form set by the National Bank of Romania and within the pre-set time periods provided by law.

CHAPTER VII

Sanctions

Art. 52. – (1) The National Bank of Romania shall impose sanctions on the non-bank financial institutions when finding that a non-bank financial institution and/or any of its administrators or managers are guilty of:

- a) infringement of the provisions hereof, or of the regulations issued by the National Bank of Romania or of non-bank financial institution's internal regulations;
- b) performance of fictitious, unsubstantiated operations;
- c) failure to report, delayed or inaccurate data reporting of financial stability indicators, prudential indicators or other indicators set forth in the NBR regulations;
- d) non-observance of the measures established by the National Bank of Romania;
- e) asset mismanagement;

(2) In any of the instances referred to under para. (1), the National Bank of Romania may impose the following sanctions:

- a) written warning to the non-bank financial institution;
- b) a fine applicable to the non-bank financial institution, ranging between 0.01% and 0.5% of its share capital, by exception from the provisions under Art. 8 of Government Ordinance No. 2/2001 on the legal regime of infringements, as approved, amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented;
- c) a fine applicable to administrators, managers, ranging between 1 and 6 net average wages/non-bank financial institution, according to the payroll for the month preceding the date when the deed was found;
- d) suspending the lending activity;
- e) imposing a ban on lending activity and implicitly excluding the institution from all registers where it was recorded.

(3) The collected fines upon enforcing the provisions under para. (2) letters b) and c) shall represent government budget revenues.

(4) The enforcement of the sanctions set forth under Art. 52 para. (2) shall be lost by limitation within one year from the date of receiving the notice, but no later than 3 years from perpetrating the deed.

(5) The enforcement of the sanctions may not remove material, civil, administrative or criminal liability, as applicable.

Art. 53. – The National Bank of Romania may impose remedial measures in relation to any deficiencies found and their effects.

Art. 54. – The documents establishing the measures and the sanctions laid down in this Chapter shall be issued by the NBR Governor or Deputy Governors, except for the sanctions referred to under Art. 52 para. (2) letter e), whose imposition is incumbent on the NBR Board.

Art. 55. – (1) The documents issued for the enforcement hereof may be disputed within 15 days from their submission to the NBR Board, which shall pass a decision within 30 days from its notification.

(2) The decision of the Board may be appealed to the High Court of Cassation and Justice within 15 days from its notification.

(3) Until the National Bank of Romania passes a decision according to para.(1) or, as the case may be, until the Court passes a final and irrevocable decision, according to the provisions of para. (2), the NBR decision shall not be deferred.

(4) The National Bank of Romania is the sole authority entitled to decide on the timeliness, qualitative assessments and analyses underlying its decisions. The Court shall rule on the legitimacy of the NBR decisions, should they be disputed.

CHAPTER VIII

Provisions applicable to mutual benefit societies and pawnshops

Art. 56. – (1) The provisions of this Chapter shall apply only to the entities that must be registered with the Entry Register.

(2) The provisions under Chapter I, Chapter II, Section 6, Chapter IX and Chapter X shall also apply to mutual benefit societies and pawnshops.

Art. 57. – Mutual benefit societies shall perform lending in compliance with the provisions hereof and of the special law applicable to them, by observing the following requirements:

- a) to register with the Entry Register kept by the National Bank of Romania;
- b) to maintain the same organisation, operation and association form in compliance with the provisions of the special law regulating their activity;
- c) to limit the lending activity in compliance with the provisions of the special law regulating their activity;
- d) to limit financing sources according to the special laws regulating their activity.

Art. 58. – Pawnshops shall perform the lending activity in compliance with the provisions hereof and with the legal provisions in force, by observing the following requirements:

- a) to register with the Entry Register kept at the National Bank of Romania;
- b) to be organised and to operate according to Law No. 31/1990, republished as subsequently amended and supplemented;
- c) to limit the lending activity to that set forth under Art. 7 para. (1) letter d), which shall represent their main scope of business.

Art. 59. – The procedure and requirements regarding the registration of mutual benefit societies and pawnshops with the Entry Register, as well as the form of the reporting data and information shall be established by NBR regulations, in accordance with the specific performed activity.

CHAPTER IX

Transitory provisions

Art. 60. – (1) Non-bank financial institutions, except for mutual benefit societies and pawnshops, irrespective of their legal status on the enforcement date hereof, shall change their legal status into joint-stock commercial companies and shall fulfil the general requirements with a view to being licensed to perform lending, as laid down herein.

(2) Pawnshops may choose to be organised in any legal status laid down by Law No. 31/1990, republished as subsequently amended and supplemented.

Art. 61. – (1) Within 30 days from coming into force of this Ordinance, non-bank financial institutions shall submit to the NBR a statement signed by their legal representatives, accompanied by the certificate issued by the Trade Register or, as the case may be, by the proof of having registered with the associations' and foundations' register, kept by the court clerk's office where their head office is located, issued at most 15 days prior to its submission to the NBR.

(2) The statement referred to in para. (1) shall include the following information:

- a) the name of the manager(s), their address and contact telephone number;
- b) total assets, volume of extended loans, shareholders' equity, liabilities, indebtedness (ratio of liabilities to shareholders' equity) and turnover, recorded at the end of the last two fiscal years;
- c) the list of non-bank financial institutions' participations held in other companies, the company profile, the percentage and the amount of the participations in the share capital of the concerned entity;
- d) other data and information required by the NBR, on a case by case basis.

(3) Mutual benefit societies and pawnshops shall submit only the documents listed under para. (1) and para. (2) letters a) and d).

(4) The certificate issued by the Trade Register, referred to in para. (1), shall include at least the following information:

a) name, registered address, legal form, subscribed, paid-up in kind or in cash share capital, core and secondary business, legal status;

b) data on associates/shareholders, value of share capital/shares subscribed and paid-up;

c) stock in trade.

(5) The NBR may decide on the extension of the time limit referred to in para.(1) by at most 30 days, in case of well-grounded requests.

Art. 62. – (1) Based on the statements referred to in Art. 61, the NBR shall draw up a list of non-bank financial institutions which will be put at their disposal, through its branches, and shall be published in two national dailies, with a view to facilitating the reorganisation based on this Title.

(2) Based on the analysis of the information in Art. 61, within 60 days from the expiry of the pre-set time period laid down in Art. 61 para. (1), the NBR shall issue regulations in pursuance of the Law and shall set the criteria for the classification of non-bank financial institutions from the monitoring and supervision perspective.

(3) If non-bank financial institutions fail to submit, in the pre-set form and time periods, the statement referred to in Art. 61, they shall no longer be allowed to perform lending activity.

Art. 63. – (1) Within 6 months from the date this Ordinance comes into force, non-bank financial institutions, except for mutual benefit societies and pawnshops, shall take the necessary steps to meet the general requirements and shall comply with the notification formalities stipulated in Chapter II – Section 2.

(2) The feasibility study set forth under Art. 23 para. (2) letter e) shall be replaced by a description of the activity performed, of the organisational structure and the financial statements for the last two years.

(3) Mutual benefit societies and pawnshops shall complete the registration formalities within 90 days from the date this Ordinance comes into force, in accordance with the regulations to be issued by the National Bank of Romania.

(4) Pawnshops shall be reorganised pursuant to Art. 60 para. (2) within 6 months from the coming into force hereof.

Art. 64. – (1) Non-bank financial institutions registered with the General Register that meet the criteria referred to in Art. 27 regarding registration with the Special Register shall, within 6 months from the date they were registered with the General Register and the Special Register, produce evidence of their fulfilling the special requirements referred to in Chapter II – Section 4.

(2) The NBR may decide to extend the time limit referred to in para.(1), by 6 months at most, in the case of well-grounded requests.

Art. 65. – The NBR shall issue regulations to establish the procedure and the pre-set time periods for recording in the registers the non-bank financial institutions operating at the date this Ordinance comes into force.

Art. 66. – (1) Non-bank financial institutions that, within the pre-set time periods referred to in Articles 61, 63 and 64, fail to meet the requirements set by this Title, shall no longer be allowed to perform lending activity and shall no longer conclude new contracts.

(2) The mutual benefit societies and pawnshops which fail to meet the time periods and the requirements referred to in Art. 61 and Art. 63 para. (4) respectively shall no longer be allowed to perform lending activity and shall no longer conclude new contracts.

(3) The contracts which are concluded prior to the date this Ordinance comes into force and which are circumscribed to it shall no longer be extended by addenda, remaining valid until their expiry date.

Art. 67. – The credits contracted by bond issue prior to the date this Ordinance comes into force shall remain valid until their maturity date.

Art. 68. – (1) Contributions in kind to the share capital of non-bank financial institutions made prior to the date this Ordinance comes into force shall be treated as contributions in cash.

(2) Throughout the period set forth in the transitory provisions, the share capital of non-bank financial institutions may be increased – in order to reach the level stipulated herein and in the NBR regulations – only through cash contributions.

CHAPTER X

Final provisions

Art. 69. – (1) The provisions of this Title shall also apply accordingly to the branches in Romania of non-bank financial institutions whose head offices are located in another state.

(2) Starting with the date of Romania's accession to the EU, the requirements on their lending activity, monitoring and supervision for the branches in Romania of non-bank financial institutions whose head offices are located in EU Member States, shall be established based on co-operation agreements concluded with the authorities in the home Member States.

Art. 70. – (1) Non-bank financial institutions may be incorporated as professional associations capable of representing their collective interests as well as the interests of the beneficiaries against public authorities and of analysing the issues of mutual interest in their field of activity. Professional associations may co-operate with the NBR.

(2) Non-bank financial institutions may join international associations in the same field of activity, abiding by the obligations arising from the incorporation documents.

(3) Non-bank financial institutions may set up their own board of executors – either separately or within the professional association – whose activity

shall be strictly related to enforcing any of their decisions. The status of the board of executors shall be approved by order of the Ministry of Justice.

Art. 71. – (1) This Title shall be supplemented by the provisions of the applicable special legislation, provided they are not in breach of the provisions hereof.

(2) On the date this Ordinance comes into force, any contrary provisions shall be repealed.

Art. 72. – The NBR shall issue regulations for the enforcement of this Title, which shall be published in *Monitorul Oficial al României*, Part One.