

# **THE BANKING ACT**

## **The Parliament of Romania passes the present law**

### **CHAPTER I GENERAL PROVISIONS**

#### **Section 1 Scope of the law (rules and regulations)**

Art. 1. In Romania, the business of banking is performed by the National Bank of Romania and by banks.

Other legal entities may be authorised to perform banking operations in compliance with the principles of the present law.

Art. 2. The present law is applicable to banks, Romanian legal entities, incorporated as companies, as well as to bank branches of foreign legal entities operating in Romania.

The provisions of Chapter X under the present law shall also apply to legal entities performing inter-bank fund transfers.

#### **Section 2 Definitions**

Art. 3. Under the present law, the terms and definitions stated below shall have the following meanings:

- a) The National Bank of Romania – the central bank of the Romanian state, a legal entity whose prerogatives are provided under the Statute of the National Bank of Romania and under the present law;
- b) bank – a legal entity authorised mainly to carry out deposit-taking operations and grant credits in its own name and account;
- c) subsidiary – a legal entity in which another person or group of people, acting jointly, hold 50 percent or more of the voting rights share, or a significant share that allows them to exercise effective control over the subsidiary's management or policies;
- d) branch – operational unit of a bank that is not a legal entity, directly performing, all or part of banking operations, within the limits of its mandate;
- e) affiliated to a bank – a subsidiary of the respective bank or a commercial company the bank is a subsidiary to, or a company which, together with the respective bank, is under the joint control of another commercial company;
- f) deposit – an amount of money entrusted under the following conditions:

- to be fully refunded, with or without interest or other facilities, upon request, or on a term agreed upon by the depositor with the depositary;
  - not to refer to the transfer of ownership, services rendering or guarantee granting;
- g) credit – any payment liability of an amount of money in exchange for the right to the reimbursement of the amount paid, as well as to the payment of any interest or other costs related to this amount or any extension of the maturity of a debt and any other purchasing liability of a debenture which includes a claim or of another right to the payment of an amount of money.

By maturity, a credit may be:

- short-term credit, whose reimbursement period shall not exceed 12 months;
  - medium-term credit, whose reimbursement period is between 1 and 5 years;
  - long term credit, whose reimbursement period may exceed 5 years;
- h) bank managers – entities of which at least two, according to the incorporation documents and/or the decision of the bank’s statutory bodies, are authorised to manage and co-ordinate the daily operations of the bank; they are authorised to engage the bank’s responsibility. They are the president and the vice-president(s) of the Board of Directors, in the case of banks that are Romanian legal entities, and the directors empowered to legally engage a foreign bank in Romania, authorised to operate within the Romanian territory through a branch;
- i) significant shareholder – the person who holds at least 5 percent of a bank’s stock;
- j) person – individual, legal entity or any group of individuals acting jointly, having or not the status of a legal entity;
- k) group of individuals acting jointly – two or more individuals who concluded an agreement in order to acquire or exercise a voting right, to accomplish a common policy in relation to the bank.

An agreement is considered as valid:

- between husbands, relatives or in-laws up to the second degree included, as well as between them and the companies under their effective control;
  - between a company, the president of the Board of Directors, and administrators of a company;
  - between a company and other companies under the direct or indirect effective control of the former company;
  - between companies under the effective control of the same person or persons;
- l) company under effective control – company in which a natural or legal entity:
- holds at least 50 percent of the voting rights;
  - has the right to appoint or replace the majority of the Board of Directors’ members;
  - may decide on the management and the financial and banking policies, on the basis of an agreement concluded with other shareholders or partners;

- m) licence – document issued by the National Bank of Romania, granting the right to perform the businesses specified therein;
- n) regulation – normative act issued by the National Bank of Romania for enforcing the present law which is compulsory for all banks. Regulations, norms, circular letters and other general normative acts issued by the National Bank of Romania are included in this category;
- o) order – document issued by the National Bank of Romania for setting forth the present law or a regulation, issued in virtue of the present law, compulsory for one or several banks;
- p) capital – value of net assets, calculated as differential between total assets and total liabilities recorded in the balance sheet according to the regulations of the National Bank of Romania; when incorporated, it represents the social capital.
- q) own funds – the bank’s own funds for which the calculation methodology and minimum level are established by the National Bank of Romania;
- r) lending documentation – documentation that lies at the basis of an agreement between a bank and person for the granting of loans, including at least:
- the current financial statements of the loan applicant, and of any of his guarantors including the cash flow forecast for the period of the loan reimbursement and the interest payment;
  - a description of the manner that full payment of debts is guaranteed and, as the case may be, an evaluation of the goods representing collateral;
  - a description regarding lending terms, including loan amount, interest rate, reimbursement schedule and debtor’s target or purpose when applying for a loan;
  - the signature of each person who authorised the loan on behalf of the bank.
- s) remedy measures – measures to remove the consequences of one or several of the infractions provided under Art. 69 that include:
- drawing up a plan to increase the bank’s own funds;
  - setting up – by the bank’s Board of Directors – of committees for supervision of loan administration, asset & liability management and/or internal audit;
  - suspension of the administrators for a period that shall not exceed one year or their replacement;
  - replacement of the executive directors and auditors;
  - improvement of the internal audit;
- t) sole debtor – any person or group of natural and/or legal persons to whom the bank is exposed and that are economically linked together, meaning that:
- one of the persons exercises direct or indirect control over the others;
  - the cumulative amount of the loans granted represents only one credit risk for the bank, since the persons are linked to such an extent that, if any of them faces difficulties in reimbursing the credit, one or all the others may face similar difficulties. For these entities, the following situations in particular shall be taken into account:

- they are subsidiaries of the same entity;
  - common management;
  - crossed guarantees;
  - direct commercial interdependence that cannot be substituted within a short period of time;
- u) exposure – any commitment made by a bank against one single debtor, effective or potential, which is recorded on or off balance sheet, including among others:
- loans;
  - discounted commercial papers;
  - investments in shares or other securities;
  - endorsed commercial papers;
  - guarantees issued;
  - letters of credit opened or confirmed;
- v) prudential banking supervision – the establishment of rules and indicators of banking prudence as well as monitoring their observance, with a view to prevent and limit banking risks and, ensuring stability and viability of the entire banking industry.

### **Section 3 Interdictions**

Art. 4. No entity is allowed to perform banking business on Romania's territory, without a licence issued by the National Bank of Romania.

Art. 5. No entity is allowed without the National Bank of Romania's authorisation to use the name "bank" or its derivatives, in relation to an operation, product or service, unless this use is established or recognised by law or by an international agreement, or unless it undoubtedly results, from the context in which the word "bank" is used, that it does not refer to the business of banking.

Art. 6. No foreign bank is allowed to engage directly in any banking business in Romania, except for the instance when the business is performed through a subsidiary incorporated as a bank, a Romanian legal entity, or through a branch previously licensed by the National Bank of Romania.

Art. 7. No entity, other than an authorised bank or other company authorised under the law, is allowed to engage in deposit-taking operations.

## **CHAPTER II ACTIVITIES LICENSED TO BE PERFORMED BY BANKS**

Art. 8. Banks, Romanian legal entities, as well as branches of foreign banks may perform, within the limits of the licence granted, the following activities:

- a) deposit-taking;
- b) loan agreements, factoring operations and discounting of commercial papers, forfeiting included;
- c) issuance and management of payment and credit instruments;
- d) payments and settlements;
- e) financial leasing;
- f) fund transfers;
- g) issuing guarantees and assuming commitments;
- h) transactions for their own account or for their clients' account with:
  - negotiable money instruments (cheques, bills of exchange, certificates of deposit);
  - foreign currency;
  - financial derivatives;
  - precious metals, objects thereof, gems;
  - securities;
- i) intermediation in securities investments and supply of related services;
- j) management of clients' portfolios, on their own account and at their own risk;
- k) securities custody and management;
- l) depository for collective securities investment bodies;
- m) renting of security safe boxes;
- n) financial and banking consulting;
- o) mandate operations.

Banks may perform the activities provided for by the legislation in force regarding securities and stock exchanges via distinct companies, specific to capital markets, that shall operate under the regulation and supervision of the National Commission for Securities, excepting activities that, according to this legislation, may be performed directly by banks.

Financial leasing operations shall be performed by banks via distinct companies, incorporated for this purpose.

### **CHAPTER III**

#### **BANK LICENSING**

Art. 9. Banks, Romanian legal entities, may operate only on the basis of the licence issued by the National Bank of Romania. Banks are to be set up as joint-stock companies, in accordance with the approval granted by the National Bank of Romania, in compliance with the legal provisions in force applicable to commercial companies.

The provisions of the previous paragraph apply, correspondingly, to foreign bank branches, foreign legal entities.

Art. 10. Foreign banks shall notify the National Bank of Romania about the establishment of representative offices in Romania, according to the regulations issued by the National Bank of Romania .

The representative offices of foreign banks shall limit their business to information, liaison and representation acts and they shall not perform any of the operations subject to the provisions of the present law.

Art. 11. The application for licensing shall be forwarded to the National Bank of Romania in the format established by the latter. The documentation that must accompany the application, the terms and the licensing procedure shall be established by regulations issued by the National Bank of Romania.

The terms under which the licence may be granted shall be regulated by the National Bank of Romania and shall refer, without being limited, to the following:

- a) qualification and professional expertise of bank managers;
- b) minimum level of the subscribed social capital that must be fully paid up in cash, at the moment of incorporation;
- c) feasibility study of the bank;
- d) bank's significant shareholders and founders;
- e) shareholders' structure;
- f) bank's head office;
- g) independent auditor, according to Art. 61.

Art. 12. The National Bank of Romania may require an applicant to supply additional information and documents, if those supplied are incomplete or insufficient.

Art. 13. Within a maximum of four months from the date the application was received, the National Bank of Romania shall approve the incorporation of the bank or shall deny the application and notify the applicant, in writing, with a statement of the reasons for denying the request.

Within a two-month period from the notification of the approval for setting up, in order to obtain the operating licence, the documents attesting the legal set up of the bank shall be submitted to the National Bank of Romania. For banks established by public subscription, the term for the presentation of the mentioned documents is eight months.

The National Bank of Romania shall decide on the operating licence for a bank within four months, at most, from the date of receiving the documents provided under par. 2.

Art. 14. The licence application shall be denied in the following instances:

- a) the documentation submitted is incomplete or is not drawn up according to the legal provisions in force;
- b) the documentation submitted is insufficient to determine whether:
- the bank will perform its business in compliance with the present law;
  - the reliability, skill and professional expertise of the bank managers and the quality of the significant shareholders are appropriate to fulfil the targets provided in the feasibility study and to perform the financial and banking operations;
- c) the social capital is lower than the minimum level established by the National Bank of Romania;
- d) the legal status is other than the one provided under Art. 9 of the present law;
- e) the assessment of the feasibility study and/or the annual reports of the foreign bank, as the case may be, shows that the bank cannot ensure the achievement of the targets set under conditions compatible with the well function of the banking industry and in accordance with the rules of prudent banking practices, capable to ensure a satisfactory security to its clients, or they do not correspond to the conditions existing on the market segment to be covered by the services rendered by the bank;
- f) the bank's managers, administrators or statutory auditors are not fully reliable, the skill and professional expertise is not adequate to their position according to Art. 25, or they were subject to one of the measures provided under Art. 69 or 70 of the present law;
- g) the quality of the founders or of the significant shareholders does not comply with the need to guarantee a sound and prudent management of the bank, for the following reasons:
- their financial power is not strong enough to avoid dependence on the distributed dividends or on other advantages that could be obtained from the bank, in order to meet their financial liabilities within the first three years of the bank's activity;
  - the source of the funds used to obtain the partnership status is an internal credit;
  - penal sentencing;
  - the legal persons, founders or significant shareholders, have served the bank for less than three years;
- h) prior to obtaining the licence, the founders must make public notice regarding the establishment or operation of the bank;
- i) the provisions of the present law or the regulations issued in support of its application are not observed.

Art. 15. The provisions of Art. 11 – 14 shall be applied correspondingly to the branches of foreign banks, the licence application being forwarded to the National Bank of Romania by the respective foreign bank.

## CHAPTER IV

## LICENCE WITHDRAWAL

Art. 16. The National Bank of Romania may withdraw a licence granted to a Romanian bank or subsidiary, to a subsidiary or branch of a foreign bank:

- at the bank's request;
- as a sanction, according to Art. 69 par. 2, letter e);
- based on one of the following reasons:
  - a) the bank did not commence the operations for which it was licensed, within one year from the date of licensing, or it has not exercised, for more than six months, the prerogative of deposit-taking;
  - b) the licence was obtained based on a false declaration or by any other illegal means;
  - c) the shareholders decided to dissolve and liquidate the bank;
  - d) in case of a merger or split-up of the bank;
  - e) the authority of the country in which the head office of the foreign bank that set up a branch in Romania is located revoked the latter's licence to perform banking operations;
  - f) the licence of the bank the subsidiary of which is functioning in Romania was withdrawn.

Art. 17. The National Bank of Romania's decision to revoke the licence shall be notified in writing to the respective bank, subsidiary or branch, together with the statement of the reasons for this decision which shall be published in the Official Gazette of Romania (Monitorul Oficial al României), Part I, as well as in two nation-wide publications.

The decision to revoke the licence shall become effective upon publication in the Official Gazette of Romania, or on a future date, specified in the respective decision.

Art. 18. Upon the coming into force of the decision to revoke the licence, the bank, subsidiary or branch are forbidden to engage in any financial operation.

## CHAPTER V MERGER AND SPLIT-UP

Art. 19. The merger and split-up of banks shall be performed according to the provisions in force, as well as in compliance with the regulations issued by the National Bank of Romania.

Art. 20. The merger of two or several banks or the split-up of a bank is decided upon by each bank, according to its own Statute. Prior to beginning its operation, the bank or banks resulted from the merger or split-up, must obtain a licence from the National Bank of Romania.

## **CHAPTER VI**

### **BANK ORGANISATION AND MANAGEMENT**

Art 21. The organisation and management of banks shall be established through their certificates of incorporation, according to the commercial legislation in force and in compliance with the provisions of the present law.

Art. 22. In all its official documents, the bank must identify itself clearly through a minimum of data: the name under which the bank is registered in the Trade Register, its social capital, the address of its headquarters, number and date of the registration in the Trade Register, number and date of registration in the Bank Register.

Art. 23. The bank is bound through the signatures of at least two managers, having the competencies established by its own certificate of incorporation, or of at least two persons authorised by the former, according to the internal regulations of the bank and the regulations issued by the National Bank of Romania regarding this matter.

Art. 24. Each bank shall have its own operating regulation, approved by the statutory bodies, according to which it shall assume at least the following tasks:

- a) the organisation structure of the bank;
- b) the tasks of each bank department and the relations among them;
- c) the tasks of the branches and other secondary offices (branches, subsidiaries etc.);
- d) the tasks of the risk committee, committee for asset and liability management, credit committee. Establishment of these committees is compulsory for the bank to perform operations;
- e) the prerogatives and responsibility of the bank managers, executive directors, heads of branches and other subsidiaries of the bank as well as of other employees engaged in financial and banking operations for and on behalf of the bank;
- f) the internal audit of the bank.

Art. 25. The bank managers shall be Romanian residents and shall exercise exclusively the prerogatives for which they have been appointed, and at least one of them shall be a Romanian national. They shall be university graduates, must have worked for at least five years in the financial and banking business and must not have caused, in their former activities, the bankruptcy of any company.

The persons nominated as managers of the bank must be approved of by the National Bank of Romania before exercising their powers.

The National Bank of Romania may establish other regulations, and ethical and professional norms regarding the quality and activity of the bank staff.

Art. 26. If the bank's Board of Directors delegates a part of its prerogatives to a Managing Board, according to the laws in force, all bank managers shall sit on this board.

In this case, the chairman of the Board will also be the head of the Directors Committee.

Art. 27. Administrators of the bank shall only be individuals, with a maximum of eleven persons. The term of office shall not exceed four years, and may be renewed for the same term.

Besides the conditions stipulated by the legislation in force regarding administrators, a person shall not be elected in the Board of Directors of a bank, but if he was elected, he will lose his mandate, if:

- a) he is an employee of the said bank, except the bank's managers;
- b) he is an employee, an administrator or a statutory auditor of another bank, except the employees and administrators of a bank, elected as administrators of the respective bank's branch;
- c) in the last five years, his approval from the National Bank of Romania was cancelled according to Art. 69 or was replaced according to Art. 70, following a remedy measure taken by the bank.

Art. 28. Bank auditors may only be chartered accountants or authorised accountants, university graduates, according to the law in force, with at least five year experience in the financial and banking field, as well as audit companies licensed to perform this type of business on the territory of Romania.

The individuals, who, according to Art. 70 of the present law, were replaced in the last five years, following measures taken by the bank, cannot be bank auditors.

## **CHAPTER VII**

### **CONFLICT OF INTEREST**

Art. 29. The administrator shall notify the bank in writing about the nature and extent of his interest or material relation, if:

- a) he is a party in a contract concluded with the bank;
- b) he is the administrator of a legal person that is a party in a contract concluded with the bank;
- c) he has a material interest or a material relation with a person who is a party in a contract concluded with the bank, except deposit contracts or valuable custody contracts.

Art. 30. The obligation stipulated under Art. 29 devolves upon the administrator if he knew or should have known that such a contract had been concluded or was being be concluded.

Art. 31. The administrator of a bank is obliged to submit to the Board of Directors of the bank, whenever necessary, one a year at least, a written statement indicating the names and

addresses of his associates, as well as data concerning the material interests (financial, commercial, agricultural, industrial or the like) of the administrator and his family.

Art. 32. An administrator who has a material interest or a material relation, according to the meaning of Art. 29, 31 and 33, shall not participate in the debates concerning the contract and shall refrain from voting any matter related to this contract.

In order to have the quorum required for taking a decision regarding the respective contract, the administrator shall be considered present.

Art. 33. An interest shall be considered material, according to the meaning of the provisions of Art. 29 and 31, if it refers to the wealth, business or interests of the family (husband/wife, relatives and in-laws up to the second degree) of the person who has the interest.

Art. 34. When an administrator does not declare a conflict of interest, according to the provisions under the present chapter:

- a) the bank, one of the shareholders of the bank or the National Bank of Romania can require the court to cancel any contract wherein the administrator has an material undeclared interest according to the provisions under this chapter;
- b) The National Bank of Romania can ask the bank, according to Art.70, to suspend the administrator for a period which shall not exceed one year or to replace him.

## **CHAPTER VIII**

### **PROFESSIONAL SECRECY**

Art. 35. The bank shall respect the confidential nature of the transactions and services it provides, including the identity of account holders.

Art. 36. The staff of a bank, subject to the provisions of the present law, shall not be entitled, either during or after their term of service, to use or disclose facts or data, which becoming public, could harm the interests or the prestige of the bank or of any of its clients.

The above-mentioned provisions also apply to individuals who get such information from bank reports or documents.

Art. 37. Any member of a bank's Board of Directors, as well as all the individuals who take part in bank operations, are obliged to keep professional secrecy. Information regarding the deposits and the operations performed in the name of individuals or legal persons shall be disclosed only to the holders or their legal representatives, while in penal cases, when the penal action has been initiated against the holder, it will be disclosed following the written request of a prosecutor or a judge. The staff of the bank cannot use, for their benefit, the banking data they have or the data they have found out, in whatever way.

The provisions of par. 1 also apply to persons obtaining information on deposits and operations from audit and supervision activities or from bank reports or documents.

## **CHAPTER IX OPERATIONAL REQUIREMENTS**

### **Section 1 General provisions**

Art. 38. The business of banking is subject to the regulations and orders issued by the National Bank of Romania, regarding the implementation of the monetary, credit, foreign exchange, and payment policies, as well as banking prudence and banking supervision policies.

Banks shall run their business according to the rules of a prudent and sound banking practice and in compliance with the provisions of the law.

Alterations of the financial position of a bank are subject to approval by the National Bank of Romania, according to provisions of regulations issued by the National Bank of Romania. Recordation in the Trade Registry of the respective amendments shall be done only following the approval.

In their Statutes, banks shall not set forth any exceptions from the principle according to which a share gives the right to only one vote.

Shares issued by banks will be only nominative.

Art. 39. In order to start operating, within 30 days from the date of licensing, each bank shall open a current account with the National Bank of Romania, according to the regulations issued by the latter.

Money transfers performed through registration in the current account opened with the National Bank of Romania shall be irrevocable and unconditional.

Banks may also open other accounts with the National Bank of Romania under terms established by the National Bank of Romania.

### **Section 2 Capital requirements**

Art. 40. The social capital of a bank must be paid up in cash, upon its subscription.

Minimal social capital is established by the National Bank of Romania.

When the bank is incorporated, the capital shall be paid into a demand or time interest-bearing account opened with a bank, a Romanian legal entity, or with a branch of a foreign bank authorised to operate on the Romanian territory. The capital account shall be blocked until the bank is registered with the Trade Register.

Banks shall permanently maintain a minimum level of their social capital, in cash, according to the regulations issued by the National Bank of Romania.

The branches of foreign banks will permanently maintain an initial capital at the level established by the regulations of the National Bank of Romania as the minimum social capital of banks, Romanian legal entities.

Art. 41. Banks may increase their social capital by subscription of new cash participation, according to the current laws in force, but also by using the following sources:

- a) issue premiums and other capital-related premiums, cashed in full, left after the payment and coverage of the depreciated expenses incurred for such operations, as well as the reserves set up on account of such premiums;
- b) dividends from the net profit due to the shareholders after payment of the tax on dividends, according to the law in force;
- c) foreign currency reserves resulting from exchange rate revaluation related to the appreciation of the forex reserves representing the social capital in foreign currency;
- d) reserves built-up from the net profit recorded in the account balance, according to the last accounting balance sheet;
- e) favourable differences from asset revaluation may be included in reserves and used to increase the social capital.

Art. 42. Any alteration of a bank's social capital shall be approved by the National Bank of Romania.

Art. 43. Banks shall assign 20 percent of their gross profit to set up a reserve fund until this fund equals the social capital, then maximum 10 percent, until the moment when the fund reaches twice the amount of the social capital. After reaching this level, assignment of amounts to the reserve fund shall be done from the net profit.

Banks shall assign, from their gross profit, amounts designated to build up the general reserve for credit risk, within the limit of 2 percent of the balance of loans granted.

### **Section 3 Prudential requirements**

Art. 44. When granting loans, banks shall be careful that applicants are creditable in repaying loans at maturity. For this purpose, banks shall require applicants to guarantee the loans under the conditions established by their lending norms.

Art. 45. Banks shall comply with the following prudential requirements stated in the regulations of the National Bank of Romania:

- a) the minimum solvency level, determined as a ratio between the level of the bank's own funds and the total risk weighted assets and off-balance sheet items;

- b) maximum exposure to a single debtor, expressed in a percentage as a ratio between the total value of the maximum exposure and the level of the bank's own funds;
- c) maximum aggregate exposure, expressed in percentage as a ratio between the total value of large exposures and the level of the bank's own funds;
- d) minimum level of liquidity determined according to the maturity of the bank's claims and liabilities;
- e) the classification of loans granted and related unpaid interest due, and the setting up of specific risk provisions;
- f) foreign currency position, expressed in percentage according to the level of the bank's own funds;
- g) management of the bank's resources and investments;
- h) expansion of the branch and subsidiary network.

Art. 46. Banks, Romanian legal entities, may open, branches, subsidiaries, agencies in Romania under the terms provided by the regulations of the National Bank of Romania.

The provisions of par. 1 shall correspondingly apply to the branches of foreign banks.

Banks, Romanian legal entities, may open representative offices and branches or may establish subsidiaries abroad, only with the prior approval of the National Bank of Romania, according to the regulations issued by the latter.

Art. 47. A bank shall not distribute dividends from its profit if, following this distribution, the bank solvency is below the minimum level established by the regulations of the National Bank of Romania.

Art. 48. The total amount of the long-term investments of a bank in securities issued by a commercial company that is not engaged in one or more financial activities provided under Art. 8 of the present law shall not exceed:

- 20 percent of the share capital of the respective company; and
- 10 percent of the bank's own funds.

The total amount of the bank's long-term investments in securities issued by such companies shall not exceed 50 percent of the bank's own funds.

Art. 49. The total amount of a bank's investments in securities, placed in the bank's name and account, may not exceed 100 percent of the bank's own funds, with the exception of investments in government securities.

Art. 50. Loans granted to persons in special relations with the bank or to its staff, including their families, can only be allowed under conditions established by the regulations of the National Bank of Romania.

#### **Section 4**

##### **Significant shareholders**

Art. 51. Any person who intends to purchase a participation of at least 5 percent of the bank's social capital, must get the prior approval of the National Bank of Romania, according to regulations issued by the latter.

Art. 52. Any significant shareholder who intends to increase his participation, so that the proportion of the share capital held reaches or exceeds the level represented by multiples of 5 percent, must first get the approval of the National Bank of Romania.

#### **Section 5**

##### **Prohibited transactions**

Art. 53. Banks shall not perform the following operations:

a) engagement in transactions with movables and real estate. Transactions with such goods required by the bank's operations and for the employees' use, as well as transactions with movables and real estate acquired following the enforced collection of the bank's claims will be excepted.

Movables and real estate acquired following the enforced collection of claims, others than those required for carrying out the activity and for the employee use, shall be sold by the bank within one year term from the date of their purchase. For owned real estate, the term may be extended with the approval of the National Bank of Romania;

b) acquisition of the bank's own shares or their being held in pledge for the bank's debts. Redemption of the bank's own shares in order to reduce the social capital, which is subject to a prior approval of the National Bank of Romania, shall be excepted;

c) granting of loans or other services rendered to clients, conditioned by the sale or purchase of the bank's shares;

d) granting loans secured with shares issued by the bank;

e) accepting deposits, securities or other valuables, when the bank is under cessation of payments;

f) deposit-taking, if most of the deposits come from the bank's employees. Operations of investment funds and other financial operations based on the mutuality principle will be excepted.

#### **Section 6**

##### **Documents stipulated by contract, registers and records**

Art. 54. Each bank shall draw up and keep at its head office documents and ledgers in Romanian, consisting of the following:

- a) certificate of incorporation and Statute, as well as all additional documents through which these have been amended;
- b) a register of its shareholders, according to the laws in force;
- c) the minutes and decisions of the General Meeting of the Shareholders;
- d) the minutes of meetings and decisions of the Board of Directors;
- e) the registers and accounts which show the position of its operations fairly and correctly, the explanation of transactions and its financial standing, so as to allow the National Bank of Romania to determine if the bank has complied with the provisions of the present law;
- f) own regulations regarding its operations, as well as all their amendments;
- g) other records required by the present law or by the provisions of the regulations issued by the National Bank of Romania.

The documents stipulated under letters a) and f) are to be sent to the National Bank of Romania and the documents representing the daily update of entries for each bank client, the characteristics of the transactions with that client or in his account and the balance owed to the client or by the client are to be kept at the head office of the bank or at its secondary offices.

Art. 55. Each bank shall draw up and keep, at its head office or at its secondary offices, one copy of the appropriate lending documentation and any information regarding its business relations with clients and other entities whom the National Bank of Romania might provide in its regulations and that are made available to the authorised staff of the National Bank of Romania, upon request.

Art. 56. All lending and collateral operations performed by the banks shall be recorded in the documents stipulated in the contract so as to clearly reflect all terms and conditions of the respective transactions. These documents shall be kept by banks and made available to the authorised staff of the National Bank of Romania, upon request.

The agreements for bank loans, as well as the real and personal collateral, set up in order to guarantee the bank loans, shall be considered as executory contracts.

From the date the executory contract becomes effective, interest shall be further calculated and recorded by the bank, as an off-balance sheet item together with the respective loans.

## **Section 7**

### **Accounts, financial statements and their control**

Art.57. Banks shall permanently keep their accounting ledgers according to the provisions of the accounting law and the regulations specific for their implementation, and shall also draw up appropriate financial statements to accurately reflect their operations and financial position.

The accounting records and the financial statements of a bank shall also reflect the operations and financial standing of its branches and subsidiaries, on individual basis and, as the case may be, on a consolidated basis.

Art.58. The National Bank of Romania establishes rules regarding bookkeeping and balance sheets which need prior approval by the Ministry of Finance.

Banks shall present to the National Bank of Romania their financial statements consisting of their balance sheet items, as well as other data required by the National Bank of Romania, at the terms and in the format established by regulations.

Art. 59. The bank's balance sheet shall not be accepted as valid by the authorities in charge, without being checked and signed by the bank's statutory auditors.

Art. 60. The provisions of Art. 58 and 59 also apply to the branches of foreign banks, the tasks of the statutory auditors being fulfilled by chartered accountants and authorised accountants, university graduates, or by audit companies authorised to perform this type of activity in Romania.

The branches of the foreign banks shall draw up a balance sheet covering both their operations and the operations of their secondary offices.

Art. 61. Each bank shall appoint an independent auditor. They may appoint as auditor only an accounting expert company, authorised by law to perform this type of activity in Romania.

The independent auditor shall:

- a) Assist the bank in keeping the accounting ledgers according to the Romanian accounting legislation and the regulations of the National Bank of Romania;
- b) Draw up an annual report including his/her opinion, to show whether the financial statements accurately reflect the bank's position;
- c) Analyse the practices and procedures of the internal auditors and of the statutory auditors and, when considered inadequate, s/he shall make recommendations to the bank to rectify them;
- d) Advise the National Bank of Romania about any fraud of an administrator or employee, that could result in a significant loss for the bank.

Art. 62. Each bank shall publish its balance sheet, following approval by the General Meeting of the Shareholders, together with the independent auditor's opinion regarding these matters in the format and at the terms established by the National Bank of Romania and the Ministry of Finance.

## **CHAPTER X**

### **FUND TRANSFERS**

Art. 63. Fund transfers are organised as part of the business of banking, with the purpose of finalising settlement and avoiding the risk of payment default. Each bank bears the responsibility for the legality and discipline of fund transfers between its offices.

The licence for fund transfer systems and for the legal entities performing the transfer of funds between banks shall be granted by the National Bank of Romania.

The banking means of payment and fund transfer circuits are approved beforehand for each bank by the National Bank of Romania in order to protect consumers and to encourage efficient cashless payments.

Art. 64. In order to strengthen the discipline of cashless payments and to reduce the costs of banking operations, the National Bank of Romania may authorize, upon request, a legal entity to act as a interbank clearing house.

No collective arrangement for performing interbank mutual clearings and interbank settlements shall be valid on Romania's territory, without prior authorisation from the National Bank of Romania.

Art. 65. Besides settlements, legal entities mentioned under Art. 64 may receive, upon request, authorisation from the National Bank of Romania to perform other fund administration services within the maximum limit of one working day, as well as any other services which could contribute to the fulfilment of the purpose provided for in the certificate of incorporation and in the business norms.

## **CHAPTER XI**

### **PRUDENTIAL SUPERVISION OF BANKS**

Art. 66. The National Bank of Romania supervises the operations performed by banks, Romanian legal entities and the branches of foreign banks, on the basis of prudential reports drawn up according to the present law and the regulations of the National Bank of Romania on the implementation of this law, as well as through on-site and off-site inspections:

- at the head offices of banks, branches and other subsidiaries in the country and abroad;
- at the head offices of foreign banks' branches of and their subsidiaries.

Art. 67. The on-site inspections are performed by the staff of the National Bank of Romania, authorised in these matters, or by independent auditors appointed by the National Bank of Romania.

In the case of branches and subsidiaries of foreign banks, the on-site inspection teams may also include representatives of the supervising authority from the country of origin of the foreign bank.

For the supervision of the Romanian banks operating abroad, the National Bank of Romania shall co-operate with the banking supervision authorities of the respective states.

The information regarding foreign banks operating in Romania may be supplied to the banking supervision authorities in the country of origin only on a mutual basis.

Art. 68. Banks are obliged to allow the staff of the National Bank of Romania and the independent auditors, appointed according to the provisions under Art. 67 who perform the on-site inspection,

to examine their records, accounts and operations and to provide the documents and information related to the administration, audit and operations of the bank, as they are requested.

## **CHAPTER XII**

### **ADJUSTMENT MEASURES AND SANCTIONS**

Art. 69. In case that the National Bank of Romania finds that a bank and/or any of its administrators, executive managers or statutory auditors are guilty of:

- a) infringement of one of the provisions of the present law or of the regulations or orders issued by the National Bank of Romania in application of the present law;
- b) infringement of any of the conditions or restrictions stipulated in the licence granted to the bank;
- c) performance of fictitious, ungrounded operations;
- d) failure to report, delayed reporting or reporting inaccurate data regarding the prudential banking indicators or any other indicators provided for by the regulations of the National Bank of Romania;
- e) non-observance of the measures established through inspections or following these inspections;
- f) endangering the credibility and viability of the bank through mismanagement of the funds entrusted to them,

the National Bank of Romania may apply the following sanctions:

- a) written warning to the bank;
- b) limitation of the bank's operations;
- c) fine ranging from 0.1 to 1% of the bank's social capital, equivalent to 1 to 6 average salaries/bank in the previous month, applicable to the bank, or to the managers, executive directors or statutory auditors on the date the infraction was acknowledged. The fines levied become revenues for the state budget;
- d) withdrawal of the authorisation granted to the bank managers;
- e) withdrawal of the bank's licence.

Art. 70. The National Bank of Romania may take the following measures, after acknowledgement:

- a) conclusion of a written agreement with the Board of Directors of the bank, which should contain a program of adjustment measures;
- b) compelling the faulty banks to take measures to remedy the consequences of the acknowledged infractions;

c) enforcement of special supervision and administration methods according to the provisions under Chapter XIII.

Art. 71. Findings described in this chapter, which are offences against banking discipline, will be made by the staff of the National Bank of Romania, authorised in these matters by the authorities mentioned under par. 2.

The documents for application of the measures and sanctions under this chapter shall be issued by the governor or vice-governors, in the manner stipulated in the regulations issued by the National Bank of Romania for this purpose.

Art. 72. The application of sanctions stipulated under Art. 69 shall be prescribed in two years from the date the infraction was committed.

Application of the sanctions does not remove the material, civil, administrative or penal responsibility, as the case may be.

Art. 73. The voting rights of the significant shareholders who did not receive the approval of the National Bank of Romania , according to section 4 of Chapter XI, shall be suspended.

The National Bank of Romania shall order the main shareholders, mentioned under par. 1, to sell, within 3 months, their shares exceeding the participation approved by the National Bank of Romania. If the shares were not sold at the expiration of the period prescribed the National Bank of Romania shall order the bank to cancel those shares, to issue and sell new shares bearing the same number, so that the price cashed from the sale may be recorded as being at the disposal of the initial holder, after deducting the expenses due for the sale.

Art. 74. Infractions stipulated under section 3, Chapter 1, committed by individuals shall be punished with imprisonment from one month to two years or fines.

## **CHAPTER XIII**

### **MEASURES FOR IMPLEMENTING SPECIAL SUPERVISION AND SPECIAL ADMINISTRATION OF BANKS**

Art.75. The National Bank of Romania, in its quality of prudential supervision authority for banks, may decide upon the measures that establish special supervision and special administration of banks.

#### **Section 1**

##### **Measures to establish special supervision of banks**

Art. 76. The Board of Directors of the National Bank of Romania may decide to take steps in establishing special supervision of banks, for infringement of the law or of the prudential regulations issued by the National Bank of Romania, acknowledged by the supervision actions and/or the analysis of the bank reports, as well as in the case of finding a poor financial standing.

The special supervision shall be provided by a commission, incorporated with this purpose, consisting of 5-7 specialists of the National Bank of Romania, of which one member shall be elected as chairman and another one as vice-chairman.

Art. 77. The tasks of this commission are established by the Board of Directors of the National Bank of Romania and refer mainly to the following:

- a) supervising the way the bank acts to establish and implement the necessary measures to remedy the shortcomings mentioned in the supervision document drawn up by the inspection team of the National Bank of Romania;
- b) approval of documents drawn up by the statutory bodies of the bank, regarding the financial standing and its harmonisation with prudential regulations, as well as compulsory suspension or ruling out of such documents;
- c) alteration of the bank's own regulations;
- d) limitation and/or suspension of some banking activities and operations for a certain period of time;
- e) any other measures considered necessary to remedy the bank's position.

The Special Supervision Commission does not substitute the bank's body.

During the special supervision, the General Meeting of Shareholders, the Board of Directors and the management body of the bank shall not take measures contrary to those adopted by the Special Supervision Commission.

The members of the Special Supervision Commission have access to all the documents and ledgers of the bank, and shall respect the secrecy of the banking operations.

Art. 78. The Special Supervision Commission shall submit periodic reports on the bank's position to the Board of Directors of the National Bank of Romania for consideration.

According to the conclusions based on the reports, the Board of Directors of the National Bank of Romania shall decide upon the suspension or continuation of the special supervision, which may not exceed a period of 120 days from the date of its commencement. In the event that further serious shortcomings are found in the bank's activity, the Board of Directors of the National Bank of Romania may decide, on an individual basis, to take special administrative measures.

## **Section 2**

### **Special measures for the management of banks**

Art.79. Special administrative measures may be taken when the National Bank of Romania finds or is notified regarding the following situations:

- a) the special supervision measures were not efficient in a period of up to 120 days;
- b) there is certain information leading to the conclusion that the bank will become insolvent in the next 90 days;

The value of the bank's assets and liabilities shall be calculated according to the evaluation procedures provided for in the regulations of the National Bank of Romania.

In order to determine the value of the assets and liabilities of a bank at a further date, the anticipated incomes and expenses of the bank shall be taken into account until the respective date.

Art. 80. Special administration activity is carried out by a special administrator appointed by the Board of Directors of the National Bank of Romania. The special administrator may also be a specialised legal person incorporated according to the law.

Art. 81. The special administrator takes over all the tasks of the Board of Directors subject to the special administration regime.

During the period of special administration, the voting right regarding the appointment and revocation of the administrators and the shareholders' right to receive dividends, the prerogatives of the Board of Directors and statutory auditors, as well as the remuneration of the administrators and statutory auditors shall be suspended.

The special administrator shall notify, in due time, the departments of the bank, as well as the secondary offices regarding the adoption of such measures.

The special administrator shall manage the bank establishing the optimal conditions to preserve the assets and to collect the debts, in the best interest of depositors and other creditors.

A notification advert regarding the establishment of special administration measures shall be published in the Official Gazette and in several national newspapers.

Art. 82. Within 45 days from his appointment, the special administrator shall present a written report to the Board of Directors of the National Bank of Romania regarding the bank's financial position and the possibility to recover its position in terms of financial security and shall enclose documents referring to the evaluation of the bank's assets and liabilities, the assets recovery, the costs of maintaining the assets and the squaring of accounts.

Within 15 days from the receipt of the report of the special administrator, the Board of Directors of the National Bank of Romania shall decide upon the extension of the powers of the special administrator for a limited period of time or shall revoke the licence and shall notify the bodies authorised by law to start the bank liquidation proceedings.

The special administrator whose activity was extended shall periodically submit reports on his evaluation of the bank's financial position.

If the Board of Directors of the National Bank of Romania finds, based on the special administrator's report, that the bank has recovered financially and complies with the prudential supervision parameters established by law and by the regulations of the National Bank of Romania, the special administrative measures will be cancelled and the bank may resume its operations under the control of statutory bodies.

## **CHAPTER XIV**

### **METHODS OF APPEAL**

Art. 83. The documents issued for the application of the present law may be contested within 15 days from their submission to the Board of Directors of the National Bank of Romania, which is to decide within 30 days from notification.

The decision of the Board of Directors may be appealed to the Supreme Court of Justice within 15 days from notification.

## **CHAPTER XV**

### **TRANSITORY PROVISIONS**

Art. 84. Banks and branches of foreign banks, licensed upon the coming into force of the present law, are considered to have an authorisation issued according to the provisions of the present law.

Art. 85. The applications for licensing which have not been solved by the coming into force of the present law and which do not comply with its provisions may be cancelled and submitted again by the applicants according to the provisions of the present law.

Art. 86. For banks, Romanian legal entities, and for the branches of foreign banks whose organisation, administration, financial position and operations do not comply with the requirements of the present law or with the regulations issued for their application, the National Bank of Romania shall establish, through regulations and orders, the period within which they must comply with the provisions of the present law.

## **CHAPTER XVI**

### **FINAL PROVISIONS**

Art. 87. All licences issued and those still valid shall be registered by the National Bank of Romania in the Banking Register that is always available to the public.

Art. 88. Banks may set up a professional association to represent their collective interests in relation with the public authorities, to analyse matters of common interest, promote co-operation, inform its members and the public and organise services of common interest. The Bankers Association shall co-operate with the National Bank of Romania.

Separately or within the Bankers Association, banks will be entitled to set up their own body of executors whose activity will be strictly to collect banks' claims.

The statute of this body of executors will be approved by an order of the minister of justice.

Art. 89. Following the Government's decision and with the approval of the National Bank of Romania, banks may perform financing operations to stimulate small and medium-sized companies, restructure, modernise and privatise trading companies, as well as for to support and stimulate exports, infrastructure development and other public interest utilities.

The amounts required for the financing operations provided under par. 1 may be allocated from public funds any by the respective banks, by loan agreements with Romanian or foreign financial institutions, as well as from funds raised on the domestic or international capital markets, being guaranteed by the Romanian government, through the Ministry of Finance.

Banks performing financing operations according to the provisions of the previous paragraphs, are exempt, according to the respective activities, from the payment of the profit tax, as well as from the distribution and payment of dividends and the tax on dividends, the respective amounts being intended to increase their reserve funds.

Art. 90. Institutions, other than banks, authorised by law to perform banking operations are subject to the authorisation, prudential supervision and regulations of the National Bank of Romania.

According to the provisions of the previous paragraph, the appropriate legislation regarding the Savings Bank and the legislation regarding credit co-operatives shall be amended accordingly.

Art. 91. All regulations and orders issued by the National Bank of Romania in applying the present law will be published in the Official Gazette of Romania, Part I.

Art. 92. The present law comes into force within 30 days from its publication in the Official Gazette of Romania.

The law shall be completed with the provisions of the legislation applicable to commercial companies, if they do not infringe on the provisions of the present law.

Art. 93. The National Bank of Romania shall issue regulations and orders to put into practice the present law within 180 days since its coming into force.

Art. 94. On the date the present law comes into force, the following laws shall be abrogated: Law No. 33/1991 regarding the business of banking, published in the Official Gazette of Romania, Part I, No. 70 effective as of 3 April 1991, Law No. 36/1997 for approval of the Government Ordinance No. 40/1996 regarding the alteration and supplementation of regulations concerning the increase of the social capital of banking companies, published in the Official Gazette, Part I, No. 54 effective as of 1 April 1997, as well as any other inconsistent provisions.

Exceptions from the provisions of the previous paragraph are the current regulations of the National Bank of Romania which shall remain in force until new regulations are adopted.

The law was adopted by the Chamber of Deputies and the Senate in the joint meeting on February 19, 1998, in accordance with provisions of Art. 74, par. (1) and of Art.76, par. (2) of the Constitution of Romania.

**Chairman of the Chamber of Deputies,**

**ANDREI IOAN CHILIMAN**

Bucharest March 5, 1998

No. 58.

Pursuant to Art. 77, par. (1) and Art. 99 par. (1) of the Constitution of Romania;

The President of Romania promulgates the Banking Law and orders its publication in the Official Gazette of Romania.

**President of Romania,**

**EMIL CONSTANTINESCU**

Bucharest March 4, 1998

No. 86

BANKING LAW No. 58/1998

**EMERGENCY ORDINANCE NO. 24/25 MARCH 1999**  
**amending The Banking Act – Law No. 58/1998**

**ISSUER: The Romanian Government**

Published in MONITORUL OFICIAL AL ROMÂNIEI No. 130/31 March 1999

In virtue of Art. 114 par. (4) in The Constitution of Romania,

The Romanian Government issues the following Emergency Ordinance:

**SOLE ARTICLE**

The Banking Law No. 58/1998 published in “Monitorul Oficial al României”, Part I, No. 121/23 March 1998, shall be amended as follows:

1. Letter h) in Art.3 shall read as follows:

h) the bank’s senior staff – the persons, at least two, which, consistent with the articles of agreement and/or the decision by the bank’s governing bodies, are empowered to conduct and co-ordinate the bank’s day-to-day activities, and to represent the bank. They may be the chairman and one or several vice-chairmen of the Board of Directors or, as the case may be, the director general and one or several deputy directors general, members in the Executive Committee, for banks with Romanian legal personality, and the directors empowered to engage the foreign bank licensed to operate in Romania via a branch in legal matters.

2. The last provision under letter g) in Art. 14 shall read as follows:

– legal entities acting as founders or major shareholders and with less than three years in business; legal persons resulting from mergers or spin-offs provided that one of the participants in the merger and the legal entity subject to the spin-off, respectively, with at least three years in business shall be exempted;

3. Par. 2 under Art. 26 shall be repealed.

**RADU VASILE**

**Prime-minister**

Countersign:

Decebal Traian Reme<sup>o</sup>

Radu Sârbu

Emil Iota Ghizari – Vice-governor

Minister of Finance

Chairman of the SOF Board

p. The NBR Governor