

# Law on Credit Institutions

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## *Chapter One*

### **General Provisions**

**Article 1.** (1) This Law shall govern the terms and procedures for granting licenses, conducting activities, supervising and termination of credit institutions for the purpose of ensuring a stable, reliable and sound banking system and for protecting depositor interests.

(2) (repealed; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011)

(3) The provisions of this Law shall also apply to banks established under a separate law to the extent the other law does not provide for otherwise.

**Article 2.** (1) (amended; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) A bank (credit institution) shall be a legal entity which is engaged in the business of publicly accepting deposits or other repayable funds and extending loans and other financing for its own account and at its own risk.

(2) A bank may also conduct the following activities if they are covered by its license:

1. (amended; Darjaven Vestnik, issue 23 of 2009, effective as of 1 November 2009, amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009; amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) providing payment services within the meaning of the Law on Payment Services and Payment Systems;

2. (amended; Darjaven Vestnik, issue 23 of 2009, effective as of 1 November 2009, amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009; amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) issuance and administration of other means of payment (traveller's cheques and letters of credit) in so far as these activities do not fall under the scope of item 1;

3. acceptance of valuables on deposit;

4. depository and custodian activities;

5. (repealed; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009)

6. financial leasing;

7. guarantee transactions;

8. trading for its own account or for customers' account with:

a) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) money market instruments – cheques, bills of exchange, deposit certificates, and other beyond the cases under item 9;

b) foreign currency and precious metals;

c) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) financial futures, options, exchange and interest-rate instruments, and other derivative instruments beyond the cases under item 9;

9. (amended; Darjaven Vestnik, issue 52 of 2007, in force as of 1 November 2007) trading for its own account and for customers' account in transferable securities, underwriting issues in securities, and other services and activities under Article 5, paragraphs 2 and 3 of the Law on Markets in Financial Instruments;

10. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) money brokerage;

11. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) advice to companies concerning their capital structure, branch strategy and related issues, as well as advice and services concerning company transformations and transactions on acquiring enterprises;

12. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009; amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) acquisition of claims on loans and other forms of financing (factoring, forfeiting, *etc.*);

13. (new; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) issue of electronic money;

14. (former item 13; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) equity acquisition and management;

15. (former item 14; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) provision of bank safes;

16. (former item 15; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) collection and distribution of information and references on customers' creditworthiness;

17. (former item 16; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) other such activities defined in an Ordinance of the Bulgarian National Bank (BNB).

(3) (amended; Darjaven Vestnik, issue 52 of 2007, in force as of 3 July 2007) The acquisition, registration, settlement, payment and trade in government securities shall be effected pursuant to the procedure and terms of the Law on the Government Debt. Trade in government securities on regulated markets in financial instruments and multilateral trading facilities shall be effected pursuant to the procedure of the Law on Markets in Financial Instruments.

(4) A bank may not conduct in the line of business transactions other than those provided for under paragraphs 1 and 2, except where necessary for conducting its

activities or in the process of collecting its claims on credits made. A bank may set up or acquire institutions for providing ancillary services.

(5) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Accepting public deposits or other repayable funds, as well as the services as provided for in paragraph 2, items 3–4 shall only be carried out by:

1. a person who has been granted a bank license by the BNB;
2. a bank with a seat in a third country, which has been granted a license by the BNB to conduct bank activities in the Republic of Bulgaria through a branch;
3. a bank authorised by the competent authorities of a Member State to carry out bank activities, which provides services on the territory of the Republic of Bulgaria either directly or via a branch.

(6) (repealed; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011)

**Article 3.** (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) A financial institution is a person other than a credit institution whose principal activity is conducting one or more activities:

1. (amended; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) under Article 2, paragraph 2, items 1, 2, 6–13;
2. acquiring holdings in a credit institution or another financial institution;
3. extending loans with funds other than accepted deposits or other repayable funds.

(2) Financial institutions, which are not subject to licensing or registering under another law, shall be recorded in a register of the BNB in order to conduct activities. The register shall be public, and a certificate shall be issued thereof.

**Article 3a.** (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) To be recorded in the register under Article 3, paragraph 2, the financial institution whose trade registration is on the territory of the Republic of Bulgaria shall meet the following requirements:

1. (amended; Darjaven Vestnik, issue 105 of 2011) to be established as a joint-stock company, a limited liability company or a limited liability partnership with shares and to have own funds with a composition and in an amount as specified in a BNB ordinance;
2. the location where the principal business activity is carried out shall be situated on the territory of the Republic of Bulgaria;
3. the persons who manage and represent the company and those who directly or indirectly acquire a qualifying holding in the company's capital shall have the required qualification, professional experience and reputation.

(2) A foreign financial institution which intends to pursue activities on the territory of the Republic of Bulgaria through a branch or directly shall be recorded in the register based on the notification and the certificate under Article 24, paragraph 2.

(3) The procedure of recording and striking off the register under Article 3, paragraph 2, as well as all documents required for recording shall be specified in the ordinance under paragraph 1, item 1.

(4) The Bulgarian National Bank shall refuse to record a domestic or foreign financial institution in the register if it does not meet the requirements for recording or no required data or documents have been submitted or those submitted contain incomplete, contradictory or untrue information.

(5) The Bulgarian National Bank shall strike off the register a domestic or foreign financial institution at its request or if the BNB establishes that:

1. it no longer meets the requirements of this Article;
2. the record has been made on the basis of untrue information or incorrect documents;
3. it has stopped to fulfil the duties under this Law and the enactment acts thereto or other regulatory requirements for implementing its activity.

(6) Requirements to the activity of the financial institution shall be specified in the ordinance under paragraph 1, item 1.

(7) (new; Darjaven Vestnik, issue 105 of 2011) The ordinance under paragraph 1, item 1 shall determine the terms and conditions under which the Bulgarian National Bank may exempt from the registration requirement the financial institutions operating under Article 3, paragraph 1 with funds provided for the implementation of targeted projects and programmes of the European Union.

**Article 4.** The provisions of this Law shall not apply to:

1. the BNB whose activity is regulated by a separate law;
2. authorised postal operators of a universal postal service – about their funds operations which are typical of their activities as regulated in a separate law;
3. mutual aid funds extending loans only to their members on the account of contributions made by them and at their risk.
4. (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) persons who extend in the course of business loans against pledged items (pawn-broker's) under terms and a procedure as established by the Council of Ministers.

**Article 5.** The prohibition on accepting public deposits and other repayable funds does not apply for:

1. the Bulgarian state and the municipalities or international public organisations whose members are one or more Member States – for accepting repayable funds in the cases determined by law;
2. the activities of persons where this activity is explicitly regulated in a law and is subject to supervision aimed to protect depositors and investors.

**Article 6.** (1) A person who does not have a license to conduct bank activity shall not use either in his name or in his advertising or other activity the term 'bank' or any of its derivatives in a foreign language, or any other terms designating bank operations.

(2) The prohibition under paragraph 1 shall not apply to any institution whose name has been established or recognized by a law or an international agreement to which the Republic of Bulgaria is a signatory, as well as when the meaning with

which the term ‘bank’ has been used makes it clear that the institution’s subject of activity is not conducting bank transactions.

(3) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) The name of a bank may not bear a resemblance to the name of another bank operating in the Republic of Bulgaria. The prohibition shall apply also in the cases where the name bears a resemblance to the name of a recognised bank in the international financial market unless consent has been given by this bank.

(4) A bank licensed in a Member State, which intends to pursue activities on the territory of the Republic of Bulgaria, shall use the same name as the one it uses in the Member State where its seat is. Where the name of that bank bears a resemblance to the name of another bank, operating in the Republic of Bulgaria, the BNB may, for the sake of differentiation, request that additional distinctive features accompany the name.

## *Chapter Two*

### **Establishment and Management of a Bank**

**Article 7.** (1) A bank shall be established as a joint-stock company and, unless otherwise provided for by this Law, the Law on Commerce shall apply to it.

(2) The minimum paid-in capital when establishing a bank may not be less than BGN 10 million.

(3) Contributions for subscribed shares of up to the minimum required capital under paragraph 2 may only be in cash.

(4) A bank may open one or more branches in a different town or village, including in the town by location of its seat.

(5) The seat and management address entered into the trade register shall coincide with the location where the bank’s actual management takes place and shall be situated in the country where it effectively carries out its activities.

**Article 8.** A bank shall issue only book-entry shares. Each share shall entitle its holder to one vote.

**Article 9.** The Articles of Association of a bank shall also contain, in addition to the information required by the Law on Commerce, information on the bank transactions to be conducted, the authority to sign for and represent the bank, and the manner by which internal control will be exercised.

**Article 10.** (1) The bank shall be managed and represented jointly by at least two persons, at least one of whom shall be proficient in Bulgarian. They may not delegate the entire management and representation of the bank to only one of them, but may authorise third persons to take individual actions.

(2) The persons under paragraph 1 shall manage the bank by being personally present at its management address.

(3) Legal persons may not be elected members of the managing board or the board of directors of a bank.

**Article 11.** (1) A member of the managing board, the board of directors, as well as a procurator, with the exception of one whose powers relate only to the operation of a branch of a bank licensed in the Republic of Bulgaria, shall be a person who:

1. has a university education with a degree not lower than master's;
2. has the sufficient qualifications and professional experience in banking, and each of the persons under Article 10, paragraph 1, sentence one shall have at least five-year experience on a managerial position in a bank, or a company or in other company or institution comparable to a bank in accordance with the criteria set by the BNB;
3. has not been convicted of a premeditated crime of general character, unless rehabilitated;
4. has not been during the last 2 years prior to the date of decision declaring bankruptcy members of a managing or controlling body, or general partners in a company, which has been terminated by bankruptcy, if creditors have not been paid, notwithstanding whether his/her rights have been restituted;
5. has not been during the last 2 years, prior to the date of the decision declaring a bank bankrupt, member of its managing or controlling body;
6. was not deprived or has not been deprived of the right to hold positions of financial responsibility;
7. is not a spouse, or relative, in direct or lateral lineage up to the third degree to another member of the managing or controlling body of the bank and is not in factual cohabitation with such a member;
8. is not a non-rehabilitated bankrupt debtor;
9. (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) based on collected data, there is no grounds for suspicion about his reliability, suitability and possible conflict of interest.

(2) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) A member of the supervisory board of a bank or a representative of a legal person in the supervisory board shall be a person meeting the requirements provided for by paragraph 1, items 3–8 and acquiring reliability and suitability required for occupying this position.

(3) (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) The persons under paragraphs 1 and 2 shall be elected or authorized upon a preliminary approval by the BNB. The required information and documents, as well as the procedure for issuing or refusing the approval shall be defined in an ordinance of the BNB.

(4) (former paragraph 3; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) The circumstances under paragraph 1, items 4–8 shall be ascertained with a declaration.

(5) (former paragraph 4, amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Paragraphs 1 and 3 shall apply also to managers of third-country bank branches.

(6) (former paragraph 5, amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) A person who does not meet or ceases to meet the requirements of paragraphs 1, 2 or 5, and with regard to bank management – also Article 10, paragraph 1, shall be removed from office by the BNB, unless the competent authority dismisses him within the term set by the BNB.

**Article 12.** (repealed; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009)

### *Chapter Three*

## **Licensing and Permissions**

### Section I

#### **Banking License**

**Article 13.** (1) A license granted by the BNB shall be required for conducting bank activities.

(2) The application for granting a banking license shall be submitted in writing with the following documents attached:

1. Articles of Association and other Acts of Association of the;
2. documents containing information on the paid-in and subscribed shares;
3. a business plan of the bank with exhaustive description of the activities to be performed, customer and product structure, objectives, policy and strategy of the bank, financial forecast of development over a three-year period;
4. a description of the managing and organisational structure including the activities of individual organisational units, distribution of responsibilities among managing directors and other administrators, organisation and management of the bank's information system, including information security mechanism;
5. a description of the internal control systems and the risk management systems, and a programme of anti-money laundering measures;
6. the names and addresses of the members of the supervisory and managing boards (board of directors) of the bank, and detailed written information concerning their qualifications and professional experience;
7. written information about the name and address/seat of the persons who have directly or indirectly subscribed for three and more than three per cent of the voting shares, as well as about their professional (business) activity in the past five years; natural persons and lawful representatives of legal entities shall present in writing declarations stating:
  - a) that the payments against subscribed shares have been made with own funds;
  - b) the origin of the funds used to make those payments;
  - c) the taxes paid by them in the past five years.

8. a document of registration and written data about the persons holding shares or equity in their capital or property, or controlling them – for legal persons under item 7;

9. other information and documents as may be provided for in an ordinance or required by the BNB for the purpose of establishing circumstances necessary for making a judgement whether conditions for granting or refusing to grant a license are met.

(3) It shall be considered that the payments are made with own money where as of the date of the payment:

1. for natural persons – the difference between their available funds on bank accounts and their liabilities is higher than the amount of their contribution;

2. for legal persons – the amount of their contribution is less than both the capital net worth determined as the difference between assets and liabilities on their balance sheet, and their available funds on bank accounts.

(4) The Bulgarian National Bank shall hold preliminary consultations with the competent bank supervisory authority before granting a license for conducting banking activities to:

1. a bank, which will be a subsidiary to a bank that holds a license granted in another Member State;

2. a bank, which will be a subsidiary to a parent undertaking of another bank that has been granted a license in another Member State;

3. a bank, which will be controlled by persons exercising control over another bank that has been granted a license in another Member State.

(5) The BNB shall hold preliminary consultations with the competent supervisory authority of insurance undertakings or investment firms in another Member State before granting a license for conducting banking activities to:

1. a bank, which will be a subsidiary to an insurance undertaking or an investment firm that hold a license granted in another Member State;

2. a bank, which will be a subsidiary to a parent undertaking with an insurance undertaking or an investment firm as a subsidiary that have been granted a license in another Member State;

3. a bank, which will be controlled by persons exercising control over an insurance undertaking or an investment firm that have been granted a license in another Member State.

(6) Consultations with the competent supervisory authorities cover issues related to shareholders, reputation and experience of the person involved in the management of entities under paragraphs 4 or 5, the assessment of compliance with supervisory requirements, as well as any other information of relevance to granting the license.

**Article 14.** (1) Prior to ruling on an application for granting a license, the BNB shall make preliminary studies in order to establish the validity of the submitted documents, the applicant's reliability and financial status.

(2) (amended; Darjaven Vestnik, issue 52 of 2007, in force as of 1 November 2007) Prior to ruling on the request for providing services and activities under Article 5, paragraphs 2 and 3 of the Law on Markets in Financial Instruments, the BNB shall consider the written statement of the Financial Supervision Commission which shall be submitted within a month's time from the BNB's written request supported by the relevant documents.

(3) A license for conducting banking activity shall be issued if the following conditions are concurrently in place:

1. the Articles of Association and the other Acts of Association of the applicant comply with the law;

2. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) the applicant's Articles of Association do not contain provisions, which hinder the application of principles and the best practices of corporate management;

3. the bank's capital and its paid-in portion are not below the required minimum;

4. in BNB's judgement, the activities that the applicant intends to carry out ensures the required soundness and financial stability;

5. the members of the managing board (board of directors) and of the supervisory board meet the requirements hereof and are not subject to a legal injunction to hold such a position;

6. in BNB's judgment, the shareholders who are in control of more than three per cent of all votes, could not, either by their activities or through their influence on decision making, injure the safety or soundness of the bank or its operations;

7. in BNB's judgement, no danger exists for the bank to be affected by risks arising from the non-banking activities of its founding members;

8. in the existence of a financial holding company or mixed-activity holding company, the BNB considers that the parent undertaking will not place obstacles to conducting consolidated supervision;

9. the persons having subscribed three or above three per cent of the capital have made contributions with own money;

10. no evidence exists that the existence of close relations between the bank and other persons can hinder the efficient exercise of banking supervision;

11. in BNB's judgement, the requirements or difficulties in applying third country's particular regulative or administrative acts regulating one or more legal or natural persons, with whom the bank has close links, will not impede the efficient conduct of banking supervision;

12. in BNB's judgement, the amount of the property owned by the persons who have subscribed for 10 or above 10 per cent of the capital, and/or the activities conducted by them correspond in scale and financial performance to the subscribed interest in the bank and does not raise any suspicions about the reliability and suitability of these persons to support the bank's capital where needed;

13. the origin of funds for contributions used by the persons with subscriptions for three or above three per cent of the capital is transparent and legitimate;

14. in BNB's judgement, the business plan, the managerial and organisational structure of the bank, the internal control systems, the risk management systems and the programme of anti-money laundering measures ensure adequate risk management and the necessary soundness and financial stability of the bank;

15. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) the requirement of Article 6, paragraph 3 is complied with.

(4) Within three months from receipt of the application and all necessary documents the BNB shall take a decision to grant a banking license, if the conditions of Article 15, paragraph 1 are met, or shall refuse to grant a license.

**Article 15.** (1) A banking license shall be granted where within three months from receipt of the notification under Article 14, paragraph 4, recital one, the applicant certifies that the following additional conditions are in place:

1. the persons with subscribed shares have paid their contributions totalling not less than the minimum capital required for conducting bank activity;

2. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) the members of the managing board (the board of directors) and the supervisory board have met the relevant requirements of Article 11, and the other administrators have the required qualifications and professional experience;

3. the appropriate buildings and the necessary equipment have been provided for the bank activity;

4. internal control rules have been drafted, including clear administrative and accounting procedures;

5. an internal control office is established and the recruited employees have the qualifications and professional experience required for that activity;

6. sound internal management rules have been drafted which include a clear organisational structure with well-defined, transparent and adequate levels of responsibilities and efficient procedures for identifying, management, monitoring and reporting of the risks to which the bank might be exposed.

(2) The rules under paragraph 1, items 4 and 6 shall be comprehensive and relevant to the character, scale and complexity of the bank's operations and to take account of the risks, to which the bank may be exposed in accordance with Article 39, paragraph 2.

(3) The BNB may not include in the banking license certain transactions or activities, for which the BNB considers the applicant unqualified, or for which the other requirements, laid down in a law, are not met.

(4) Where the applicant fails to submit the required documents within the deadline set out in paragraph 1, the BNB shall refuse to grant a license.

(5) The licenses granted shall be recorded in a register kept by the BNB.

(6) Where the license granted gives authorisation for conducting activities under Article 2, paragraph 2, item 9, the BNB shall send a copy of the license to the Financial Supervision Commission.

(7) (amended; Darjaven Vestnik, issue 105 of 2011) The BNB shall notify the European Commission and the European Banking Authority (EBA) of:

1. the requirements for licensing of credit institutions;
2. every license granted to a credit institution.

**Article 16.** (1) In cases other than those of Article 15, paragraph 4, the BNB shall refuse granting a license where it has established that:

1. none of the conditions under Article 14, paragraph 3 are in place;
2. the applicant has failed to submit within the established deadlines all necessary information and documents under Article 13, paragraph 2, or the documents submitted contain incomplete, contradictory or unreliable information.

(2) (amended; Darjaven Vestnik, issue 52 of 2007, in force as of 1 November 2007) Where the Financial Supervision Commission has submitted a negative opinion under Article 14, paragraph 2, the BNB shall refuse to grant a license for providing services and activities under Article 5, paragraphs 2 and 3 of the Law on Markets in Financial Instruments.

(3) The refusal to grant a license shall state a reason.

(4) Irrespective of the deadlines under Articles 14 and 15, the BNB shall grant or refuse to grant a license within 12 months from receipt of the declaration.

**Article 17.** (1) In order to obtain a license to carry out bank activities on the territory of the Republic of Bulgaria through a branch, in addition to an application, a third-country bank shall submit an application with the following enclosures:

1. a verified copy of the registration certificate of the bank and a document issued by the registration authority containing current data on the seat and registered address, subject of activities, amount of capital, management system, and on the persons who represent the bank;

2. a verified copy of the permission for the conduct of bank activities issued by the authority competent for banking supervision where the seat of the bank is;

3. a verified copy of its Articles of Association;

4. a business plan including a description of the activities under Article 2, paragraphs 1 and 2, which it intends to conduct;

5. the organisational structure of the branch;

6. financial annual reports for the past three years;

7. a written consent for opening a bank branch given by the authority competent for banking supervision in the country where the seat of the bank is;

8. a written statement of the authority competent for banking supervision where the seat of the bank is containing information on the bank's financial status and a commitment for cooperation with the BNB;

9. data about the persons entrusted with the management of the branch, including their qualifications and professional experience in banking;

10. other information and documents as may be provided for in an ordinance or required by the BNB aimed at establishing all circumstances necessary for making a judgement whether conditions are in place for granting or refusal to grant a license.

(2) The license under Article 1 shall not grant to the branch the right to make transactions, which the bank is not allowed to effect in the country where its seat is.

(3) The license shall be granted only if:

1. the authority competent for banking supervision in the third country, where the seat of the bank is, supervises effectively the bank and its branches abroad;

2. an agreement of supervisory cooperation between the BNB and the competent supervisory authority has been concluded;

3. the bank is recognised in the international financial market and its financial status is sound and stable;

4. the bank's organisational structure is adequate to the activities it intends to conduct;

5. the managers of the branch meet the requirements hereof and possess the required reputation;

6. the third country's legislation does not create obstacles to the exercise of efficient banking supervision on a consolidated basis or to the provision of required information.

(4) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall notify the European Commission, the European Banking Authority and the European Banking Committee of every license granted by it to a bank to carry out activity through a third-country bank branch.

(5) The Bulgarian National Bank shall refuse to grant a license to a third-country bank to carry out banking activity on the territory of the Republic of Bulgaria through a branch, if it decides that:

1. none of the conditions under paragraph 3 are in place;

2. the authority competent for banking supervision where the seat of the bank-applicant is has not given approval to the bank to open a branch in the Republic of Bulgaria or has submitted a statement of the bank's unsatisfactory financial status or violations of prudent banking.

3. the authority competent for banking supervision where the seat of the bank-applicant is does not apply the reciprocity principle in providing access for banks incorporated on the territory of the Republic of Bulgaria to the respective bank market in a third country.

**Article 18.** The commercial representative office of a bank in the Republic of Bulgaria shall submit to the BNB a copy of its certificate of registration in the Bulgarian Chamber of Commerce and Industry within 14 days from its issuance. It may not carry out trading activities.

**Article 19.** In case of a refusal, the applicant may file another application for a banking license not earlier than 12 months from the entry into force of the refusal.

## Section II

**Mutual Recognition**

**Article 20.** (1) A bank licensed in a Member State may carry out the activities under Article 2, paragraphs 1 and 2 on the territory of the Republic of Bulgaria through a branch, if they are covered by its license and after the competent authority, which has granted the license, has notified the BNB thereof.

(2) In order to carry out banking activities on the territory of the Republic of Bulgaria through a branch, the bank licensed in a Member State shall set up one branch, irrespective of the number of the places of business.

**Article 21.** (1) The Bulgarian National Bank shall undertake the necessary actions to supervise the branch under Article 20 within two months of receipt of notification from the competent authority of the home Member State about the intention of the relevant bank to carry out activities on the territory of the Republic of Bulgaria. Within the same time period the BNB may specify the terms and conditions under which the bank must carry out its activity on the territory of the Republic of Bulgaria respecting the provisions related to general good.

(2) The bank licensed in a Member State may commence activities on the territory of the Republic of Bulgaria following receipt of notification to this effect from the BNB or following expiry of the time period prescribed in paragraph 1.

**Article 22.** A bank licensed in a Member State may directly conduct the activities under Article 2, paragraphs 1 and 2 on the territory of the Republic of Bulgaria, if they are covered by its license and after the BNB has been notified thereof by the competent authority, which has granted the license. Such a bank shall specify the names and addresses of the persons that will represent it before the BNB.

**Article 23.** (1) A bank licensed in the Republic of Bulgaria may carry out activities on the territory of another Member State through a branch, if these are covered by its banking license.

(2) The bank under paragraph 1 shall notify the BNB in writing about its intention to open a branch on the territory of another Member State. The notification shall contain information concerning:

1. the Member State on the territory of which it intends to open the branch;
2. the seat and address where it intends to register the branch and a correspondence address;
3. the persons who are assigned the branch management and representation along with a description of their responsibilities;
4. a business plan of the branch including a description of the activities under Article 2, paragraphs 1 and 2, which it intends to carry out;
5. the organisational structure of the branch;
6. other documents as provided for in a BNB ordinance.

(3) Where the BNB decides that the activities planned on the territory of another Member State are in line with the organisational structure and the financial status of

the bank, the BNB, within three months from receipt of the notification and all documents under paragraph 2, shall communicate to the supervisory authority of the host Member State the information received, and information on the amount of the bank's own funds and its capital adequacy ratio. The BNB shall also notify the applicant bank within the same time frame.

(4) The Bulgarian National Bank shall give a motivated refusal to provide information under paragraph 3 where:

1. the bank intends to carry out activities outside the scope of its license on the territory of another Member State;
2. it decides that the intended activities on the territory of another Member State do not comply with the bank's organisational structure and financial status;
3. it decides that the organisational structure of the branch does not ensure its safe and sound management.

(5) The BNB's refusal under paragraph 4 shall be granted in writing within three months from receipt of the notification and of all documents under paragraph 2, and shall be communicated to the applicant bank within the same time limit.

(6) The BNB's refusal under paragraph 4, as well as its non-resolution within the time limit, shall be subject to appeal pursuant to Article 151.

(7) (amended; *Darjaven Vestnik*, issue 105 of 2011) The Bulgarian National Bank shall notify the European Commission and the European Banking Authority of any refusal under paragraph 4.

(8) The bank under paragraph 1 shall notify the BNB and the competent authority of the host Member State about all changes in the circumstances declared under paragraph 2, items 2–6 not later than 30 days before this change has become effective.

(9) A bank licensed in the Republic of Bulgaria, which intends to exercise for the first time its right to directly carry out activities on the territory of another Member State, shall notify the BNB of its intentions by specifying the services it intends to provide on the territory of the host country. Within a month from receipt of the notification the BNB shall inform the competent authorities of the host Member State.

(10) The bank under paragraph 9 may directly carry out activities on the territory of another Member State if they are covered by its banking license.

**Article 24.** (1) A financial institution with a seat in a Member State may carry out via a branch or directly one or more activities under Article 3, paragraph 1 on the territory of the Republic of Bulgaria only if it is a subsidiary to a bank or if it is co-owned by two or more banks licensed in a Member State, if the Articles of Association or the Statutes of the financial institution explicitly provides for the conducting of the activities under Article 3, paragraph 1, as well as if the following conditions are concurrently in place:

1. the parent bank or the banks that jointly own the financial institution have been granted a license to carry out bank activities on the territory of the Member State whose jurisdiction governs the financial institution;

2. the financial institution *de facto* carries out one or more of the activities under Article 3, paragraph 1 on the territory of the home Member State whose jurisdiction governs the financial institution;

3. the parent bank or banks that jointly own the financial institution hold not less than 90 per cent of the votes in the financial institution's general meeting;

4. the parent bank or banks that jointly own the financial institution meet the requirements of the competent supervisory authority for prudential management of the financial institution and have declared before the BNB, after approval by the relevant supervisory authority, that they jointly and severally guarantee the commitments undertaken by the financial institution;

5. the financial institution and the activities it will carry out in the Republic of Bulgaria are effectively covered by the consolidated supervision over the parent bank or over any of the banks that own jointly the financial institution, which is carried out in keeping with the requirements hereof, including the minimum own funds requirements, large exposures control and limitations of holdings.

(2) The competent authorities of the home Member State shall certify the existence of all conditions under Article 1 by means of a certificate, which is part of the notification to the BNB.

(3) If the BNB receives information from the competent authorities of the home Member State that the relevant financial institution no longer meets any of the conditions under items 1–5 of paragraph 1, this financial institution shall lose its rights under paragraph 1, and its activities shall be regulated in full by the requirements of the Bulgarian law.

**Article 25.** (1) A financial institution with a seat in the Republic of Bulgaria may carry out one or more activities under Article 3, paragraph 1 on the territory of a Member State either through a branch or directly if it is a subsidiary to a bank or is jointly owned by two or more banks licensed in the Republic of Bulgaria, and in the simultaneous existence of the following conditions:

1. the Articles of Association or the Statutes of the financial institution include provision of the services;

2. all the requirements under Article 24, paragraph 1 are in place and the parent bank or the banks which jointly own that financial institution have confirmed in writing the existence of these requirements.

(2) Where it establishes that the conditions under paragraph 1 are in place, the BNB shall issue a certificate, which shall be sent to the competent authorities of the host Member State.

(3) The procedure for issuing a certificate shall be laid down in an ordinance issued by the BNB.

(4) The Bulgarian National Bank shall exercise a consolidated supervision over the financial institution under paragraph 1 and shall monitor its shareholders' structure following a procedure set forth in an ordinance issued by the BNB.

(5) In the course of supervision of the financial institution under paragraph 1, the BNB shall co-operate with the competent authorities of the Member States while being bound by an obligation to keep professional secrecy requirements.

(6) The provisions of this Article shall not apply to financial institutions, which by virtue of a separate law are entitled to carry out, directly or through a branch, activities in another Member State.

**Article 26.** (1) The parent bank or the banks that jointly own the financial institution shall notify the BNB of any changes in the circumstances under Article 25, paragraph 1 within 7 days from their occurrence.

(2) The Bulgarian National Bank shall notify the competent authorities of the respective host Member State, if a financial institution under Article 25 no longer meets any of the conditions under Article 25, paragraph 1.

**Article 27.** The provisions of Articles 24–26 shall apply *mutatis mutandis* also to financial institutions, which are subsidiaries to other financial institutions.

### Section III

#### Approvals and Permissions

(title amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009)

**Article 28.** (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) Any natural or legal person, as well as persons acting in concert, may not, without the preliminary approval by the BNB, directly or indirectly acquire shares or voting rights in a bank licensed in the Republic of Bulgaria, if as a result of such acquisition their holding becomes qualifying or if this holding reaches or exceeds the thresholds of 20, 33 or 50 per cent of the shares or voting rights. Such approval shall also be required in the event where a bank becomes a subsidiary.

(2) Preliminary approval from the BNB shall also be required where holdings become qualifying or the thresholds under paragraph 1 are reached or exceeded as a result of acquisition of shares in the stock exchange or another regulated market of securities.

(3) Where due to objective circumstances which are not of persons' own will, their holding becomes qualifying or the thresholds under paragraph 1 are reached or exceeded, the acquirers may not exercise their voting rights on these shares until they have received the BNB approval; they shall submit a proposal for issuance of the approval within one month from the occurrence of the grounds thereof. If no approval is requested within the set term or no such approval is granted, the BNB may impose the measure under Article 103, paragraph 2, item 15.

(4) Prior to the approval of the BNB, the shares under paragraph 3 shall not be taken into consideration when the quorum of shareholders' general meeting is formed.

(5) The Bulgarian National Bank shall hold preliminary consultations and co-operate with the competent supervisory authority in a Member State where the proposed acquirer under paragraphs 1–3 is:

1. a credit institution, insurance or reinsurance undertaking, investment firm or management company licensed in a Member State; or
2. a parent undertaking of another credit institution, insurance, reinsurance undertaking, investment firm or management company licensed in a Member State; or
3. a person exercising control over a credit institution, insurance, reinsurance undertaking, investment firm or management company licensed in a Member State.

(6) Where the proposed acquirer under paragraphs 1–3 is a person licensed by the Financial Supervision Commission, the BNB shall hold consultations in advance and cooperate with the Commission.

(7) The Bulgarian National Bank shall provide without undue delay, upon request of the authority under paragraphs 5 and 6, the information required for the assessment of proposed acquisition that makes it possible to exercise effective supervision. The BNB may on its own initiative provide all essential information without explicitly expressed request.

**Article 28a.** (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) To obtain approval, any person or persons acting in concert shall notify the BNB via a written proposal of their decision on acquisition within the meaning of Article 28, paragraph 1 or 2 or of the occurrence of grounds under Article 28, paragraph 3 and attach all necessary documents provided for in a BNB ordinance.

(2) The Bulgarian National Bank shall carry out an assessment based on the documents and information provided by the proposed acquirer, as well as on the basis of other information and documents at disposal.

(3) An approval shall be issued having regard to the likely influence of the proposed acquirer on the credit institution in order to ensure its sound and prudent management and on the basis of the assessment which shows suitability and financial soundness of the proposed acquirer. The assessment shall be based on each of the following criteria:

1. the reputation of the proposed acquirer;
2. the reputation and experience of any person who will direct the business of the bank as a result of completion of the proposed acquisition;
3. the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged;
4. whether the bank will be able as of the moment of acquisition to comply and continue to comply with the prudential requirements based on the effective legislative framework, in particular whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
5. whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(4) The BNB shall refuse to issue an approval if it ascertains that the proposed acquisition does not meet any of the requirements under paragraph 3 or that the information provided by the acquirer is incomplete, irrespective of the procedure carried out under Article 28b, paragraphs 3 and 4.

**Article 28b.** (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) Where all required documents are attached to the proposal under Article 28a, paragraph 1, the BNB shall within two business days send a written confirmation to the proposed acquirer certifying its receipt. The confirmation shall specify the date on which the term for ruling on the proposal expires.

(2) The BNB shall consider the proposal for approval under Article 28, paragraphs 1, 2, or 3 within 60 business days from the date of sending the written confirmation under paragraph 1.

(3) If necessary for carrying out the assessment, the BNB may address a written request for providing additional information no later than the 50th business day from the term under paragraph 2. For the period between the date of information request and the date of its receipt, the term under paragraph 2 shall be suspended.

(4) The period of suspension under paragraph 3 may not exceed 20 business days. Within the term under paragraph 2, the BNB may address an additional request to clarify or complete the submitted information without causing any suspension.

(5) In case the proposed acquirer under Article 28, paragraphs 1, 2 or 3 is a person with a seat in a third country or is subject to supervision of a third country, or is a person of a Member State other than a credit institution, investment firm, insurance, reinsurance undertaking and undertaking for collective investment under Article 77x, paragraph 1, item 8 of the Law on Public Offering of Securities, the suspension under paragraph 3 of the term of assessment may be extended by the BNB no more than 30 business days.

(6) The BNB shall rule on the proposal within the set term of assessment by issuing a motivated written statement. Where the proposed acquirer is a person subject to supervision of a competent authority under Article 28, paragraph 5 or 6, the motives to the statement shall also include an objective opinion of this authority concerning the assessment of the proposed acquisition.

(7) The BNB may specify a term for making the acquisition and after its expiry, the approval is declared null and void.

(8) The BNB shall communicate to the proposed acquirer the issued approval or refusal within the term under paragraph 2, but not later than two business days after taking the decision. Upon the request of the proposed acquirer or at the BNB's discretion, the refusal and motives thereto may be made accessible to the public in an appropriate manner.

(9) If the BNB does not rule on the proposal within the term under paragraph 2, the proposed acquisition shall be deemed approved.

(10) Where two or more proposals have been filed for approval of acquisitions in the same bank, the BNB shall review them separately according to the criteria under Article 28a and in compliance with the procedure under this Article.

(11) The requirements to the proposed acquirer, information and documents on the basis of which the compliance with the criteria under Article 28a, paragraph 3 is assessed shall be laid down in an ordinance issued by the BNB.

Article 29. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Without the written permission of the BNB, a bank may not:

1. open branches in a third country;
2. alter its name as designated in the license;
3. be transformed;
4. conduct bank transactions beyond the scope of the license granted;
5. increase its capital by non-cash contributions;
6. buy back its own shares;
7. reduce its capital;
8. establish or acquire control over a bank with a seat abroad.

(2) The Bulgarian National Bank shall consider the application for permission pursuant to paragraph 1 within three months after receipt thereof. In the cases under paragraph 1, item 3, the BNB shall consider the application if a permission is presented from the Commission on Protection of Competition, where its issuance is obligatory.

(3) The terms and procedures for granting the permissions under paragraph 1, and the reasons for refusal shall be laid down in an ordinance issued by the BNB.

**Article 29a.** (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) Transactions, decisions and actions concluded and taken without preliminary approval in the cases under Article 28, paragraphs 1 and 2 or without permission under Article 29, paragraph 1 shall be declared null and void.

(2) The Central Depository shall enter in the shareholders' book of the bank the acquisition of shares, for which an approval is required under the procedure of Article 28, paragraphs 1 and 2, upon submission of the approval, and in the cases of Article 28b, paragraph 9 after the receipt of confirmation thereof by the BNB.

**Article 29b.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Transformation of a bank through merger shall be allowed only with another bank. A permission for transformation shall be issued only if the newly established company has already obtained a bank license.

(2) Transformation of a bank through bank takeover shall be allowed only if the acquiring company is a bank. Bank takeover may be conducted with another bank, a payment institution, an investment intermediary or a financial institution.

(3) A permission for bank takeover under paragraph 2 shall not be issued if the license of the acquiring bank has not given it a right to conduct activities of the acquired company.

(4) A permission for transformation of a bank, licensed by the Bulgarian National Bank shall not be issued by means of a change in the legal form or through assignment of the entire property to the sole owner.

(5) To obtain a permission for splitting or spinning off, the acquiring or newly established companies respectively shall have the relevant license, if as a consequence of the succession, they acquire rights and obligations raised in conducting activities for which a license is required.

**Article 30.** (1) When the general meeting or the managing board (the board of directors) respectively, takes a decision to increase a bank's capital with shareholders' contributions, it shall set a term for contribution payments not longer than 6 months from recording the capital increase. For public offering of shares, the term shall be effective as of the date of publication of the prospectus.

(2) Shares on which no contribution payments have been made or which have not been sold in the time limits shall be cancelled and the respective authority shall take action to reduce the capital to the amount of actually paid-in capital. The decision on a change shall be taken not later than three months after expiry of the term under paragraph 1.

(3) If the decision under paragraph 2 has not been taken within the time limit required, the said change shall be entered in the trade register upon request by the BNB.

(4) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) For shareholders in respect whereof a ground for applying for a permission arises as a result of the change in the decision, Article 28, paragraph 3 shall apply.

(5) Paragraphs 2 and 3 shall apply respectively in case the BNB ascertains that the capital has been increased with non-cash contributions without permission or if the cash contributions are made with money not owned by the shareholder.

**Article 31.** (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) A prior written approval under Article 28 shall be required also for a shareholder who, by participation in a bank's capital increase through shareholders' contributions or through conversion of bonds into shares increases its stake, if as a result, its holding becomes qualifying, or reaches or exceeds the 20, 33, or 50 per cent threshold of the shares or voting rights on shares, as well as if the bank becomes a subsidiary.

(2) Article 28, paragraph 3 shall accordingly apply to shareholders in respect whereof a ground for applying for an approval arises as a result of capital increase with an amount lower than the amount set in the decision for the capital increase.

(3) The required documents and information submitted by the shareholders for carrying out the assessment under Article 28a shall be defined in an ordinance issued by the BNB.

(4) In case of a breach of the requirement under paragraph 1, the acquisition of shares triggers legal effect; however, the BNB may impose the measure pursuant to Article 103, paragraph 2, item 15.

**Article 32.** (1) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Where a person has acquired 3 or more than 3 per cent of the shares or the voting rights on shares in a bank licensed in the Republic of Bulgaria, the Central Depository shall notify the BNB of the person's name and address (seat) within seven days following the recording of acquisition in the book of shareholders.

(2) The person under paragraph 1 shall, at BNB request, submit the documents under Article 13, paragraph 2, items 7–9 within time limits set by the BNB.

(3) Where the person has failed to meet the requirement under paragraph 2 and the information submitted is insufficient or unreliable, the measure under Article 103, paragraph 2, item 15 shall be imposed.

(4) The Bulgarian National Bank shall also have the powers under paragraph 3 provided it has established that:

1. the person has submitted false data; or
2. through his actions or influence over decision making, that person may harm the soundness or the security of the bank, or its operations; or
3. the person has not made contributions with own money.

**Article 33.** (1) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Any natural or legal person who intends to dispose of, directly or indirectly, its qualifying holding in a bank licensed in the Republic of Bulgaria or to reduce its qualifying holding so that his shares or voting rights on shares fall below 20, 33 or 50 per cent, respectively, of the capital, shall notify the BNB about:

1. the amount of holding he owns prior to such disposal;
2. the amount of holding which he will own following such disposal.

(2) In case a bank ceases to be a subsidiary to a person, the latter shall notify the BNB thereof.

(3) The notifications pursuant to the paragraphs 1 and 2 shall be made within 10 days prior to occurrence of such circumstance.

**Article 34.** (1) The banks licensed in the Republic of Bulgaria shall notify the BNB within 7 days from becoming aware of any acquisition or disposal of shares of their capital, as a result of which the shareholders' holdings exceed or fall below any of the thresholds given in Article 28, paragraph 1.

(2) The banks shall submit to the BNB, by the 15<sup>th</sup> day of the month following each quarter, written information about the names of the shareholders that hold a qualifying holding as well as the size of their holding.

**Article 35.** (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) The recording of a bank into the trade register shall be effected upon presenting the license issued by the BNB, and of the changes pursuant to Article 29, paragraph 1 upon presenting the relevant BNB permission.

## Section IV

### **Withdrawal of a License**

**Article 36.** (1) The Bulgarian National Bank may withdraw a granted banking license where:

1. the bank fails to commence the permitted bank activity within 12 months after the license has been granted;
2. violations under Article 103, paragraph 1 have been committed;
3. the bank has submitted false information, which provided a basis for granting the license;
4. the bank has ceased activities for more than 6 months;
5. the bank no longer meets the conditions, under which its license was granted;
6. the bank has insufficient own funds, or it can not be considered that it will continue to meet its obligations to creditors, including where it does not ensure the security of the assets entrusted to it.

(2) The Bulgarian National Bank shall withdraw the license granted to a bank due to insolvency, where:

1. (amended; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009; amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) a bank fails to pay its obligation due for more than 7 business days if it is directly related to the bank's financial status and at BNB discretion, no repayment on obligations due may be expected in a reasonable period of time; or

2. the amount of bank's own funds is negative.

(3) (new; Darjaven Vestnik, issue 44 of 2009, effective as of 1 September 2009) The decision under paragraph 2 shall be taken by the BNB within five business days from establishing the insolvency.

(4) (former paragraph 3; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009) The bank's own funds shall be determined according to the supervision requirements and rules prescribed in the ordinance pursuant to Article 40, paragraph 1.

(5) (former paragraph 4; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009) By the act of withdrawing the license, the BNB shall appoint conservators, if these have not been appointed before.

(6) (former paragraph 5; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009) The provisions of Article 26, paragraph 1 and Article 34 of the Code on Administrative Procedure regarding the explanations and objections of persons concerned shall not apply upon issuance of the acts pursuant to this Article.

(7) (former paragraph 6; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009) After withdrawing a bank's license, the bank's activities shall cease and compulsory liquidation shall take place.

**Article 37.** (1) After withdrawing a bank's license, the BNB shall file a request to the trade register to record the termination of the activities and the declaration of its liquidation.

(2) In the cases of Article 36, paragraph 2, the BNB shall file a petition to the competent court to institute bankruptcy proceedings.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) The BNB decisions on withdrawal of a license shall be announced in the Trade Register. The Bulgarian National Bank shall further take any other measures that are necessary to inform the public of the withdrawal of the relevant license.

(4) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall notify the European Commission and the European Banking Authority of every bank license withdrawn.

(5) Upon withdrawing the banking license of a bank with a branch operating in a Member State, the BNB shall notify on a timely basis the competent supervisory authority of the relevant country thereof.

**Article 38.** (1) The Bulgarian National Bank may withdraw the banking license of a third-country bank for the conduct of activities via a branch on the grounds of Article 36, paragraph 1.

(2) The Bulgarian National Bank shall withdraw the banking license of a third-country bank for the conduct of activities via a branch, where the license of the bank has been withdrawn by the competent authority of the home Member State.

(3) Upon withdrawing the license of a third-country bank, the BNB shall take the necessary measures to notify the public thereof.

## *Chapter Four*

### **Own Funds, Liquidity and Other Requirements**

**Article 39.** (1) To ensure the fulfilment of their obligations to creditors, banks shall hold own funds adequate to the risks inherent in their activities.

(2) Banks shall, at all times, maintain own funds which exceed or equal the sum total of the capital requirements for:

1. credit risk in their overall activities;
2. (amended; Darjaven Vestnik, issue 105 of 2011) position risk in their trading portfolio activities;
3. (amended; Darjaven Vestnik, issue 105 of 2011) foreign currency, commodity and settlement risks in their overall activities;
4. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) operational risk in their overall activities;
5. other risks related to their activities.

(3) A bank's shareholders' equity capital, as well as its own funds may not fall below BGN 10 million.

(4) Banking groups and financial holdings shall have adequate own funds in keeping with the requirements of paragraph 2 that are applicable to their subsidiaries.

**Article 40.** (1) The own funds structure and elements, the capital adequacy requirements, calculation approaches and methods, the terms of approval and recognition of assessment models and approaches, as well as the terms and procedures for approval or recognition of persons involved in risk measurement, shall be determined in an ordinance of the BNB.

(2) In relation to the requirements of Article 39, the BNB shall:

1. grant permissions for inclusion or prescriptions for exclusion of certain positions in own funds;
2. recognise external credit rating agencies or export insurance agencies;
3. recognise netting agreements;
4. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) for supervisory purposes give permission to and approve the use of:
  - a) internal rating models for credit risk measurement;
  - b) advanced approaches for operational risk measurement;
  - c) internal models for market risk and counterparty risk measurement.
5. give permission to the use of alternative approaches and techniques;
6. recognise a supervisory treatment established in another Member State or in a third country, if such a treatment is in line with the principles established in this Law and in the acts issued on its implementation.

(3) By the ordinance pursuant to paragraph 1, the BNB shall determine the terms and procedures for granting the permissions under paragraph 2.

(4) (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009; amended; Darjaven Vestnik, issue 105 of 2011) As regards the contracts for attracting funds by a bank in order to be included as elements of its capital after a permission issued by the BNB under the procedure of paragraph 2, item 1, the provisions of the Law on Obligations and Contracts and the Law on Bank Bankruptcy which provide for a more favourable regime to the rights of creditors compared to those under the contract shall not apply.

**Article 41.** (1) Banks may not pay out dividends or distribute capital before setting aside the necessary funds for its Reserve Fund, as well as if that would lead to violating the requirements laid down in the ordinance pursuant to Article 40, paragraph 1.

(2) The banks' funds in the Reserve Fund may not be used for distribution of dividends without BNB's permission.

**Article 42.** (1) A bank shall manage its assets and liabilities in a way which would, at any time, ensure payments of its obligations which have fallen due, by means of:

1. adopting plans for financing and for liquidity, which reflect the specific nature of its activities;

2. maintain liquid funds to cover any gaps between incoming and outgoing cash flows;

3. maintain a monitoring and control system of interest rate risk in all of its operations;

4. adjusts on a timely basis the maturity structure of assets and liabilities upon a change in market conditions;

5. maintains the necessary information for calculation of its liquidity position at any time.

(2) The liquid assets, the maturity structure of assets, liabilities and off-balance-sheet items, and other liquidity management requirements shall be determined in an ordinance issued by the BNB.

**Article 43.** A bank shall periodically assess its credits and other risk exposures, and shall allocate provisions for impairment losses according to criteria set by an ordinance of the BNB.

**Article 44.** (1) Banks and bank groups may not, at any time, exceed the established ratios of large exposures to their own funds.

(2) Banks and bank groups shall establish an exposure to one person or to economically connected persons as a sum of the balance-sheet assets and off-balance-sheet items determined by an ordinance of the BNB.

(3) An exposure to one person or economically connected persons shall be considered large, in case it is equal to or exceeds 10 per cent of the own funds of the bank or the bank group.

(4) A decision resulting in a large exposure shall be adopted by the managing board (board of directors). Provided the exposure exceeds 15 per cent, the decision shall be adopted unanimously.

(5) The exposure to one person or economically connected persons may not exceed 25 per cent of the own funds of the bank or the bank group.

(6) (repealed; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010)

(7) (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) The Bulgarian National Bank shall establish by an ordinance the terms and procedure for the inclusion of a particular exposure with a reduced amount or for their exclusion in determining the ratios under paragraph 5.

(8) (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) An exposure to other credit institution or investment intermediary or economically related persons, one of which a credit institution or an investment intermediary, may exceed the ratio pursuant to paragraph 5 under the conditions determined by an ordinance of the BNB.

**Article 45.** (1) Only by a unanimous decision of its managing body, a bank may establish exposures to:

1. administrators of the bank;

2. shareholders holding shares entitling them to more than 10 per cent of all votes in the shareholders' general meeting;

3. a shareholder whose representative is a member of a managing or supervisory body of the bank;

4. spouses, brothers, sisters and relatives of direct lineage up to third degree including, of persons under items 1, 2, and 3;

5. legal persons, in whose management persons under items 1–4 are involved;

6. commercial undertakings, in which the bank or a person under items 1–4 participates or has a qualifying interest;

7. third persons acting on the account of the persons under items 1–6.

(2) In the cases under paragraph 1 the decision establishing an exposure also sets the terms thereof.

(3) The procedure under paragraph 1 shall not apply where:

1. the amount of an exposure to a person under paragraph 1, items 1 and 4 does not exceed its annual remuneration;

2. the amount of an exposure to a person under paragraph 1, items 2, 3, 5, 6, and 7 is less than 1 per cent of the bank's own funds but not exceeding BGN 300,000.

(4) Banks may not give preferential conditions under the exposures to persons under paragraph 1, which are expressed in:

1. entering into a transaction, which due to its nature, purpose, characteristics or risk the bank, in the course of its customary activity, would not effect with customers outside the persons under paragraph 1;

2. collecting interest, fees or other payments due or accepting collaterals, which are lower than those required from other customers in similar cases.

(5) (repealed; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009)

(6) (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) A bank's total exposure to a person under paragraph 1, which is not a credit institution or an investment intermediary, may not exceed 10 per cent of its own funds. The total amount of all exposures of a bank to persons under the first sentence may not exceed 20 per cent of the bank's own funds.

(7) Within the meaning of this Article, an exposure to one person shall be the sum total of the balance-sheet assets and off-balance sheet items determined by the ordinance under Article 44, paragraph 2.

**Article 46.** Administrators that have granted credits in violation of Articles 44 and 45 shall be jointly and severally liable with the borrower for the amounts extended.

**Article 47.** (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) The total amount of the bank's qualifying holdings in undertakings other than credit institutions, financial institutions, auxiliary services companies or insurance undertakings may not exceed 50 per cent of its own funds, and together with its investments in real estate and other tangible fixed assets not subject to a lease contract: the bank's own funds.

(2) The amount of qualified holding of a bank in an undertaking may not exceed 10 per cent of its own funds.

### *Chapter Five*

## **Special Rules for an Electronic Money Institution**

(repealed; Darjaven Vestnik, issue 101 of 2010)

**Article 48.** (repealed; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011)

**Article 49.** (repealed; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011)

**Article 50.** (repealed; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011)

### *Chapter Six*

## **Disclosure of Conflicts of Interest. Fiduciary Obligations**

**Article 51.** (1) Any administrator of a bank shall disclose in writing to the bank's managing body any commercial, financial or other business interest that he or members of his family have with regard to a commercial transaction concluded with the bank.

(2) Business interest shall exist wherever a party to a contract with the bank is:

1. the administrator or a member of his family;
2. a person to whom the administrator or a member of his family is economically connected by:
  - a) having, directly or indirectly, a qualifying holding;
  - b) being an administrator of that person;
  - c) being a partner in a general partnership, limited liability partnership, or a limited liability company.

(3) Any administrator shall, upon taking office, declare in writing to the managing board (board of directors) the names and addresses of the persons economically connected to him or members of his family and the business interests both the administrator and the members of his family have with the bank at the time the declaration is submitted. Upon a change in the declared circumstances, the administrator shall file a new declaration within 7 days after such a change takes effect.

(4) Any administrator who has a business interest in the conclusion of a particular transaction with the bank shall not participate in the negotiations or in the discussion and decision on its conclusion.

(5) In performing their functions, administrators and other employees of a bank shall be obliged to place the interests of the bank and its customers before their own interests.

(6) Banks shall organise such an activity in a manner that prevents situations where the obligations of administrators and other employees to a customer of the bank come into conflict with their obligations to another customer, or their own interests come into conflict with their obligations to a customer of the bank.

**Article 52.** Transactions concluded by an administrator in violation of Article 51 shall be null and void. Such voidness may be declared by the Court at the request of the bank, the BNB or another person concerned.

**Article 53.** Upon establishment of a violation of Article 51 by an administrator, the BNB may oblige the bank's competent authority to terminate his powers within a specified term, or remove him from office, if he has not been dismissed within the specified term.

**Article 54.** Banks shall adopt rules to establish the procedure for disclosing conflicts of interests and ensuring the fiduciary character in order to prevent a bank customer's interest from being impaired because of another bank customer, administrator or employee, or the bank's interest from being impaired because of the interests of its administrators or employees.

## *Chapter Seven*

### **Relations between Banks and between Banks and Their Customers**

**Article 55.** Banks may issue in levs and foreign currency bonds, other debt securities, as well as rights related thereto.

**Article 56.** (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall establish and maintain an information system on customers' monetary obligations to banks under Article 2, paragraph 5 and to financial institutions whose main activity is under Article 2, paragraph 2, item 6 or under Article 3, paragraph 1, item 3, as well as to payment institutions and electronic money institutions extending loans under Article 19 of the Law on Payment Services and Payment Systems.

(2) Banks and financial institutions under paragraph 1 shall provide and may receive information from the system under paragraph 1.

(3) Article 64 shall accordingly apply to the access to the information system.

(4) The conditions and the procedure for the establishment and functioning of the information system, as well as for the provision and receipt of information shall be determined by an ordinance of the BNB.

**Article 57.** (1) A bank may accept money on deposit only if it has announced the terms and conditions which shall apply to all customers-depositors.

(2) Terms and conditions under paragraph 1 shall contain:

1. the interest rates and the method of calculating the interest;

2. the intervals for interest payments, and whether the interest rate is variable and under what conditions;

3. the minimum amount acceptable for deposit;

4. the notice period and consequences of an early withdrawal of the deposit;

5. (amended; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009) the applied deposit-guarantee scheme, including the amount up to which deposits are guaranteed, the competent body which shall pay the funds on guaranteed deposits and the term of payment.

(3) (new; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009) The bank must specify in the terms and conditions under paragraph 2 and in the contract the cases in which deposits shall not be guaranteed under the conditions and procedure of the Law on Bank Deposit Guaranty.

(4) (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) In case of a time deposit with a fixed interest rate the bank may not reduce the interest rate until the expiry of the contract.

(5) (new; Darjaven Vestnik, issue 77 of 2011) Where the bank offers a deposit whose interest rate is linked to the yield of an investment in units of collective investment schemes or offers advice to its customers on such a deposit, it shall provide its customers with the key investor information document in accordance with Article 59, paragraph 3 of the Law on Collective Investment Schemes and Other Undertakings for Collective Investments. Upon ascertaining infringements under the first sentence, the Bulgarian National Bank shall notify the Financial Supervision Commission thereof.

**Article 58.** (1) When granting a credit, the bank offers its customers in writing, free of charge, its lending conditions which shall at least contain:

1. information on the total costs of the credit (fees, commissions, and other costs directly related to the credit agreement), and on the objective criteria on the basis of which these costs may be altered;

2. the interest rate, as an annual interest rate, the method of calculating the interest, and the conditions for changing the interest rate until full repayment of the credit;

3. the additional obligations related to payments;

4. the conditions for and costs of the early repayment of the credit.

(2) The costs of the credit shall be explicitly and exhaustively determined by a credit agreement, including the cases of early repayment.

(3) (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) Where the instalment of the non-retail loan increases, due to the change of the interest rate or fees, the bank shall notify the client in a manner agreed between the parties prior the change has been entered into force.

(4) (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) Where the change of the interest rate resulting from a change to a reference rate, is publicly disclosed by using appropriate tools, and the information for the new in-

terest rate can be found at the business premises and on the website of the creditor, paragraph 3 shall not apply.

**Article 59.** (1) The bank shall announce the terms and conditions for deposits and credits on premises accessible to customers.

(2) The terms and conditions for deposits and credits shall be formulated in a clear and understandable manner.

(3) (new; Darjaven Vestnik, issue 44 of 2009, effective as of 12 June 2009) At customer request, the bank shall provide additional information on the terms and conditions for deposits and credits, including the procedure and term of paying the guaranteed funds on deposits.

**Article 60.** (1) When granting credits, the bank may not accept as collateral shares issued by the said bank or by persons connected to it.

(2) (amended; Darjaven Vestnik, issue 59 of 2007, in force as of 1 March 2008) Where a credit or individual instalments thereon are not repaid on the agreed payment dates, and in the cases where the credit is called ahead of schedule because one or more instalments thereon have not been repaid on time, the bank shall have the right to obtain an order for immediate execution under the provisions of Article 418 of the Code of Civil Procedure on the basis of a statement of account.

(3) The credit agreement may provide for the bank the right to sell the collateralized item at an auction, under a procedure established jointly by an ordinance of the Minister of Justice and the Governor of the BNB. This procedure shall not apply to special collaterals provided for by the Law on Registered Pledges.

(4) The bank shall be entitled to a legal mortgage on real estate and property rights thereto to be acquired entirely or partially through the use of a bank credit.

(5) Upon full repayment of a credit, the bank shall delete, respectively release, the provided collateral, within 14 days from the customer's request and the payment of the relevant fees.

**Article 61.** Banks may require from borrowers to submit reporting and other documents connected with the credit and their activities, as well as to conduct examinations regarding the collateral and the use of the credit for the agreed purpose.

## *Chapter Eight*

### **Bank and Professional Secrecy**

**Article 62.** (1) Bank employees, members of the bank's managing and controlling bodies, officials from the BNB, liquidators, receivers, as well as any other persons working for the bank, may not disclose, or use to their personal benefit or to the benefit of the members of their families, information which is bank secrecy.

(2) Bank secrecy shall be facts and circumstances concerning the balances and transactions on accounts and deposits of the bank's customers.

(3) All bank employees when taking office shall sign a declaration regarding the keeping of bank secrecy.

(4) The provisions of paragraph 1 shall also apply to cases where the relations of the said persons concerned have ceased or their activities have been discontinued.

(5) Except for the BNB and for the purposes of and pursuant to the conditions set forth in Article 56, a bank may disclose information under paragraph 1 on individual customers only with their consent or pursuant to a court ruling.

(6) The Court shall be entitled to decide on disclosure of information under paragraph 2 and upon demand of:

1. the Public Prosecutor, should there be information that a crime has been committed;

2. the Minister of Finances or a person authorized by him – in case of Article 143, paragraph 4 of the Tax and Social Insurance Procedure Code;

3. the director of the territorial directorate of the National Revenue Agency where:

a) evidences have been submitted that the person subject to inspection has prevented the conduct of an examination or inspection or has not kept proper accounting, or that said accounts are imperfect or false;

b) by an act of a competent government authority evidencing the occurrence of an event which has led to the destruction of the accounting records of the person inspected;

4. the Commission in Charge of Identifying Property Acquired through Criminal Activity and the directors of its territorial directorates;

5. the director of the Agency of State Financial Control or officials authorised by him where by an act of the authority it has been ascertained that:

a) the managers of the organisation or entity inspected have prevented the conduct of control activity by the Agency;

b) the organisation or entity inspected has not kept any accounting records as required or said records are incomplete or false;

c) there is data on deficiencies;

d) by an act of a public authority it has been ascertained the occurrence of a fortuitous event which has led to the destruction of accounting records of the organisation or entity inspected;

6. (amended; Darjaven Vestnik, issue 95 of 2009, effective as of 1 December 2009) the director of the Customs Agency and the heads of the customs where:

a) by an act of a customs authority, it has been ascertained that the person subject to inspection has prevented the conduct of a customs inspection or has not kept proper accounting or that it has been incomplete or false;

b) by an act of a customs authority it has been ascertained that customs requirements have been violated;

c) bank accounts must be attached to secure due claims collected by customs authorities, as well as to secure the collection of fines, legal interest or other;

d) by an act of a competent government authority evidencing the occurrence of a fortuitous event which has led to the destruction of accounting records of the entity subject to customs inspection;

7. (amended; Darjaven Vestnik, issue 69 of 2008, issue 93 of 2009, effective as of 25 December 2009; amended; Darjaven Vestnik, issue 105 of 2011) the directors of the Combating Organized Crime Chief Directorate and the Criminal Police Chief Directorate of the Ministry of Interior – for the purposes of disclosure and investigation of crimes;

8. (amended; Darjaven Vestnik, issue 109 of 2007) the chairman of the State National Security Agency – where it is required for the protection of the national security.

(7) The regional judge shall take a motivated decision in camera on the motion under paragraph 6 no later than 24 hours after its submission, fixing the time limit for disclosure of the information under paragraph 1. The court ruling is not subject to appeal.

(8) (amended; Darjaven Vestnik, issue 109 of 2007, issue 69 of 2008, issue 93 of 2009, effective as of 25 December 2009; amended; Darjaven Vestnik, issue 105 of 2011) On a written request of the Director of the National Investigation Service, of the Chairman of the State National Security Agency or of the Directors of the Combating Organized Crime Chief Directorate and the Criminal Police Chief Directorate of the Ministry of Interior, banks shall provide information on the balances and flow of funds on accounts of undertakings with over 50 per cent state and/or municipal interest.

(9) On a written request from the Chairman of the State Commission on Information Protection or directors of the security services and public order services, banks shall provide information, which is bank secrecy, on persons subject to investigation for reliability under the terms and the procedure of the Law on Protection of Classified Information. The investigated person's consent to disclosure of this information shall be enclosed to the request.

(10) Where there is data on organised crime or on money laundering, the Prosecutor General or a deputy, authorised by him, may request the bank to provide the data provided for in paragraph 2. The requests addressed to the bank and the information received as an answer shall be filed in a register at the Prosecutor General and at the BNB.

(11) (new; Darjaven Vestnik, issue 105 of 2006) Banks shall submit to the Executive Director of the National Revenue Agency information on savings income according to the conditions and under the procedure of Part Two, Chapter Sixteen, Section VI of the Tax and Social Insurance Procedure Code.

**Article 63.** (1) Professional secrecy shall be the information which the BNB obtains or generates for banking supervision purposes or in relation thereto, and whose disclosure could damage the commercial interest or reputation of a bank or

its shareholders. Professional secrecy shall not be official secrecy in the sense of the Law on Protection of Classified Information.

(2) Information that is subject to publication or disclosure under a legal act shall not be professional secrecy.

(3) The members of the Governing Council, employees, external auditors, experts and other persons working for the BNB shall keep the professional secrecy even after the termination of their relations with the BNB.

(4) The persons under paragraph 3 may use the information which is professional secrecy only for the purpose and during the performance of their official duties. This information may not be disclosed or provided to persons or authorities other than those specified in Article 64.

(5) The restrictions under paragraph 4 shall not apply if the information is in consolidated or summary form so that the bank or the persons it relates to cannot be identified.

(6) The information received from a bank or another person bound by this Law may be provided back to them without any restrictions.

**Article 64.** (1) The persons under Article 63, paragraph 3 may provide information which is professional secrecy to the following authorities in performing their functions or duties:

1. the judicial authorities – where criminal proceedings have been initiated;
2. the court:
  - a) in case of appeal against a BNB's administrative act issued under this Law;
  - b) in relation to a lawsuit concerning undertaken supervisory actions;
  - c) in case of initiated liquidation or bankruptcy proceedings against a bank, except the information relating to third parties who wish to purchase the bank as a going concern.
3. (amended; Darjaven Vestnik, issue 109 of 2007) the financial supervision authorities in the Republic of Bulgaria, the Bulgarian Deposit Insurance Fund, and the State National Security Agency, in the cases and according to a procedure set out in joint instructions or agreements;
4. the receivers or liquidators of banks, and the bodies which by law exercise control of a bank under liquidation or bankruptcy proceedings;
5. the auditors of financial statements of banks or other financial institutions, and the persons who by law exercise control over the auditors of banks, insurance undertakings, investment firms or other financial institutions;
6. the authorities of other Member States entrusted with the public duty to supervise financial institutions, insurance undertakings, financial markets or payment systems;
7. the authorities of other Member States which are involved in liquidation or bankruptcy proceedings of banks or in other similar proceedings, and the authorities of Member States which are responsible for the oversight of banks under bankruptcy, liquidation or other similar proceedings;

8. the authorities of other Member States which are responsible for the legally required audits of the financial statements of banks and other financial institutions, and the authorities which by law exercise oversight over banks' auditors;

9. the authorities which administer deposit-guarantee schemes in Member States;

10. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) the European Central Bank and the Member States' central banks in their capacity as monetary authorities, where this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system, including in case of emergency situation under Article 93, paragraph 1;

11. (new; Darjaven Vestnik, issue 105 of 2011) the European Systemic Risk Board (ESRB), where this information is relevant for the exercise of its statutory tasks under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ, L 331/1 of 15 December 2010), hereinafter referred to as 'Regulation (EU) No 1092/2010', including in case of emergency situation under Article 93, paragraph 1.

(2) (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) In an emergency situation as referred to in Article 93, paragraph 1, the persons under Article 63, paragraph 3 may communicate information constituting professional secrecy to the authorities of the Republic of Bulgaria and other Member States, responsible for legislation on the supervision of credit and financial institutions, investment intermediaries and insurance companies, where this information is relevant for the exercise of their tasks.

(3) (former paragraph 2; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) The authorities under paragraph 1 shall use the received information only for the purposes for which it has been provided and shall not disclose or provide it to third parties, unless in meeting an obligation provided for in a law.

(4) (former paragraph 3; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) The authorities under paragraph 1, items 3–10, may receive information from the BNB only if they are bound by an obligation to keep professional secrecy analogous to that provided for in this Law.

(5) (former paragraph 4; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) Where the professional secrecy is bank secrecy as well, the procedure for disclosing bank secrecy provided for in this Law shall apply.

(6) (former paragraph 5; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) The Bulgarian National Bank shall communicate to the European Commission and the other Member States the names of the overseeing bodies under paragraph 1, items 4 and 5, which may receive information that is professional secrecy.

**Article 65.** (1) The provision of Article 63 shall also apply to the information received by the BNB from the Member States' competent supervisory authorities. This information may be used only for the performance of the BNB supervisory responsibilities and only for the following purposes:

1. to check if the conditions for granting a bank license have been met under Chapter Three, or to facilitate the supervision on a consolidated or a solo basis in carrying out this activity, including for monitoring liquidity, solvency, large exposures, managerial and accounting procedures, and internal control mechanisms;

2. to apply measures and sanctions in accordance with this Law;

3. in proceedings for appeal against administrative acts of the BNB in an administrative or judicial procedure.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) The persons under Article 63, paragraph 3, may provide the Member States' competent supervisory authorities and the European Banking Authority with information that is professional secrecy provided that these authorities keep this secrecy.

(3) Any information received by the BNB from other Member States' competent supervisory authorities may be provided in accordance with this Law to the authorities under Article 64 or to other persons or authorities only with the express written consent of the competent supervisory authority of the Member State which has disclosed the information and in observance of the conditions for giving this consent.

(4) Any information received by the BNB employees during on-site examinations in a Member State may not be provided without the express written consent of the competent supervisory authority of the Member State where the examination took place and in observance of the conditions for giving this consent.

**Article 66.** Any information that is professional secrecy may be provided to a third-country competent supervisory authority on the basis of an agreement under Article 88 and provided that:

1. the recipient ensures at least the same level of protection of information as provided for in this Law;

2. the recipient is authorised and agrees to provide information of the same type where demanded by the BNB;

3. the information exchange is intended for the performance of the supervisory functions of the said supervisory authority;

4. the recipient has justified needs of the requested information.

## *Chapter Nine*

### **Storage, Provision and Disclosure of Information**

**Article 67.** A bank shall establish, keep and update an information system containing:

1. its Articles of Association and other internal rules and all amendments thereto;

2. data on its shareholders as required by the BNB;

3. books with the minutes of meetings of the Shareholders' General Meeting and of other managing bodies;

4. accounting information showing clearly and accurately the type, amount and the grounds for concluded transactions and the effect thereof on the bank's financial position, which may be used as a basis for determining whether the bank pursues its activity in compliance with the provisions of this Law;

5. information showing for each customer particulars of the bank's transactions with or for the account of that customer and the credit and debit balances thereof;

6. other information as required according to this Law and the acts adopted by the BNB.

**Article 68.** A bank shall create and keep credit files of any customer credit, containing data about the customer, the grounds for, the terms and conditions and the amount of the credit and its collateral, the decision of the competent authority for the extension of the credit and any other information in relation to the conclusion of the contract and the performance thereof.

**Article 69.** (amended; Darjaven Vestnik, issue 101 of 2010, effective as of 30 April 2011) Banks shall submit to the BNB reports in the format, content and time limits established by the BNB.

**Article 70.** (1) A bank shall publish its balance sheet and profit and loss account every 6 months in at least one central daily newspaper.

(2) A bank shall also disclose other information in the format, content and in the time limits as required in a BNB ordinance.

**Article 71.** (1) Banks shall notify the BNB in writing within 10 days of the decisions made regarding:

1. any personnel changes in their managing board and supervisory board, the board of directors respectively, including the authorisation of procurators;

2. any reduction or increase in the capital;

3. any opening or closing down of branches in the Republic of Bulgaria, and the temporary suspension of their bank operations;

4. any interruption of a certain type of bank transactions;

5. any large exposure under Article 44 or an exposure under Article 45;

6. any amendments made to the Articles of Association and other internal rules of the bank;

7. auditors appointed under Article 76.

(2) Should a bank become insolvent, the persons who manage and represent it shall forthwith notify the BNB of this circumstance.

(3) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Any changes in the membership of the managing board (the board of directors), supervisory board, authorisation of procurators, as well as any amendments to the Articles of Association shall be entered in the Commercial Register following the approval of the BNB. The approval shall be deemed to have been given if the

BNB has not made an objection within 10 days from notification thereof. In case of an objection, a copy of it shall be submitted to the Registry Agency.

**Article 72.** (1) A bank shall submit to the BNB copies of its Articles of Association, regulations, instructions, and other documents containing provisions regarding the scope and procedures for conducting operations, the capital and the internal organisation of the bank, within 10 days following their adoption, or after amending or supplementing them.

(2) A bank shall submit to the BNB a copy of the minutes of the Shareholders' General Meeting within 10 days after the respective meeting.

(3) A bank shall maintain with the BNB a certified and updated list of the persons authorised to represent the bank, including as regards activities of its branches, accompanied by a description of their powers and specimens of their signatures.

## *Chapter Ten*

### **Organisation, Internal Controls and Annual Accounts**

**Article 73.** (1) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) The competent managing body of each bank shall adopt and regularly review in accordance with the best internationally recognized practices for corporate governance of banks:

1. the bank's organisation structure;
2. the procedure for defining and delegating the administrators' powers and responsibilities;
3. the bank's strategy and action plan;
4. the risk management and control policy;
5. the procedure for generating and the scope of the management information;
6. the operational control organisation, including rules and procedures for approving, carrying out and reporting transactions;
7. the internal rules and procedures for risk management and control systems efficiency and for reporting the established weaknesses in the organisation and work of structural units;
8. (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) systems for prevention against the risk of money laundering.

(2) Paragraph 1 shall apply also to third-country bank branches.

(3) (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) The Bulgarian National Bank shall make recommendations and prescriptions for improving corporate governance in accordance with the best internationally recognized practices and monitor their implementation.

(4) (former paragraph 3; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Banks shall adopt rules for their credit activities, which shall contain at least:

1. the information required from the credit applicant;

2. the way of assessing the creditworthiness of the applicant (and his guarantors);
3. the way of evaluating the offered collateral;
4. the way of evaluating the efficiency of the project offered to be funded with the credit;
5. the procedure for making a decision on the extension of a credit, in accordance with its type;
6. the way of using and repaying the credit;
7. the procedure for controlling the use of the credit according to the purpose for granting it, the current financial position of the borrower and his guarantors, and the adequacy of the collateral;
8. the various types of credit and other sanctions and the procedure for imposing them.

**Article 73a.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Banks shall have in place sound, effective and complete strategies and processes on an ongoing basis to assess and maintain the amount, types and distribution of internal capital that they consider adequate to cover the nature and level of all risks to which they are or might be exposed.

(2) The strategies and processes under paragraph 1 shall be subject to regular internal review to ensure that they remain comprehensive and proportional to the nature, scale and complexity of the activities of the banks.

**Article 73b.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Banks shall adopt and implement a policy for the remuneration of their employees.

(2) In relation to administrators and other persons, whose rights and obligations have a significant influence on the risk profile, policies shall be consistent with the business strategy and long-term objectives of the bank. Remuneration policy shall promote sound risk management and shall not be conducive to risk taking that goes beyond the risk profile of bank.

(3) Remuneration policy shall be built on principles ensuring compliance with the size, internal organisation of the bank and the nature, scope and complexity of activities carried out by the bank. Principles and requirements for the remuneration policy and its disclosure shall be governed by an ordinance of the BNB.

**Article 74.** (1) A bank shall establish a specialised internal audit office, and its management shall be appointed and dismissed by the Shareholders' General Meeting.

(2) The management of the internal audit office shall forthwith inform the BNB of any violations found out in the bank's governance, which have resulted or may result in substantial damages for the bank.

(3) Banks shall adopt rules for the organisation and activities of the internal control and shall set up control systems covering the volume of operations, the variety of transactions and the types of risk arising from them, in compliance with an ordinance of the BNB.

**Article 75.** (1) Banks shall prepare their financial statements based on the Law on Accountancy, and in compliance with the requirements of the BNB.

(2) Banks and banking groups shall submit to the BNB financial statements which reflect their financial position both individually and on a consolidated basis.

(3) Banks that are subsidiaries in a banking group, financial holding company or mixed activity holding company shall submit to the BNB consolidated financial statements of the group or the holding company they are part of.

**Article 76.** (1) The annual financial statements of each bank and the supervisory reports as determined by the BNB shall be audited and certified by a specialised auditing company which is a registered auditor under the Law on the Independent Financial Audit.

(2) The persons who have material interests in a bank other than the interests of a depositor, or who are employees or representatives of the bank, may not be chosen for auditors of the bank or take part in its audit.

(3) (repealed; Darjaven Vestnik, issue 105 of 2011)

(4) Each bank shall in advance coordinate its choice of an auditor with the BNB.

(5) (amended; Darjaven Vestnik, issue 105 of 2011) A person shall not be an auditor if he or the registered auditors within its structure have not respected the requirements of this Law and the acts on its enactment for the last three years before their proposal for auditors.

(6) The bank shall be notified in writing of the BNB's objection under paragraph 5 within 14 days from the date of the request for coordination. If within this 14-day period the BNB does not make any objection, the proposal shall be considered approved by the BNB.

(7) In their report, the auditors shall render an opinion whether the bank's property and financial position, and its financial result have been truly presented. The auditor shall also review and express an opinion on:

1. the reliability of internal control systems;

2. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) the compliance of the bank's annual financial statements and supervisory reports with the requirements of this Law and the ordinances for its implementation.

(8) (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) The results of the audit under paragraph 7 of the annual financial statements shall be presented in a separate report for supervisory purposes, prepared as required by an ordinance of the BNB. This report shall be submitted to the BNB.

**Article 77.** (1) The auditors shall forthwith and in writing inform the BNB about any circumstances that have become known to them during the audit and which:

1. are breaches of the laws, by-laws and the BNB's acts which regulate banking activities;

2. affect or might affect the bank's normal operation;

3. lead or might lead to a situation where the bank is unable to fulfil its monetary obligations;

4. make the auditor refuse to certify the financial statements or express his dissent upon certifying the financial statements;

5. are related to actions of the bank's administrator that cause or might cause substantial damages to the bank or its customers;

6. are related to untrue or incomplete data in the statements and reports that banks regularly present to the BNB.

(2) The auditors of banks shall, upon the BNB's written request, submit to the BNB the relevant documentation on the circumstances under paragraph 1, and any other information or documents obtained during the audit.

(3) The auditors of the undertakings, who have close links with the bank as a result of relations of control, shall forthwith inform the BNB when they find out circumstances similar to those specified in paragraph 1.

(4) Auditors shall bear no responsibility for the breach of any legal or contractual provisions on confidentiality in the cases where they have in good faith submitted information to the BNB in accordance with this Law.

**Article 78.** (1) The annual financial statement of the activity of the branch on the territory of the Republic of Bulgaria of a credit institution with a seat in a third country shall be audited and certified by a specialized auditing company, which is a registered auditor pursuant to the Law on the Independent Financial Audit, and shall be published pursuant to the Law on Accountancy.

(2) (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) Paragraph 1 shall not apply to branches of credit institutions licensed in a Member State, as well as to branches of credit institutions from third countries in which the accounting framework is equivalent to the requirements of the Council Directive of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (86/635/EEC) and for which there is a reciprocal treatment.

(3) A credit institution licensed in another Member State or having a seat in a third country, which conducts activity through a branch in the Republic of Bulgaria, shall publish, in Bulgarian and pursuant to the requirements of the Law on Accountancy, its financial statements on a solo and consolidated basis, as well as the auditor's report.

(4) The annual financial statement and the report of the credit institution under paragraph 3 shall be presented in a form and content compliant with the requirements of the country where the credit institution is licensed, if this is a Member State, or where its seat is, if this is a third country. The annual financial statement and the report shall be available at the branch at any time after their publication.

## *Chapter Eleven*

### **Banking Supervision**

#### Section I

#### **General Rules**

**Article 79.** (1) The Bulgarian National Bank shall supervise the activities of banks to ensure the observance of the rules in this Law and the acts on its implementation, the sound and safe management of banks and the risks they are exposed to or may be exposed to, and the maintenance of own funds adequate to the risks.

(2) The Bulgarian National Bank shall review the rules, strategies, procedures and mechanisms which banks have introduced to comply with this Law and the acts on its implementation and shall assess the risks to which banks are or may be exposed. On the basis of the review and the evaluation, the BNB shall determine whether the rules, strategies, procedures and mechanisms adopted by banks, the way they are applied, and their own funds ensure stable management and coverage of risks.

(3) The frequency and intensity of the supervisory review and evaluation under paragraph 2 shall depend on the size of the respective bank, its systemic importance and nature, the volume and complexity of its activities. The review and evaluation under paragraph 2 shall be updated at least on an annual basis.

(4) The supervision under paragraphs 1–3 shall cover the activities of the banks licensed in the Republic of Bulgaria, including the activities they carry out through a branch or directly on the territory of a Member State or a third country.

(5) The Bulgarian National Bank shall also supervise the activities of third-country bank branches, and in the cases as specified in this Law – the activities of branches of banks from Member States as well.

(6) The activities of a financial holding company, or a mixed activity holding company which has a bank-subsidiary, shall be subject to supervision on a consolidated basis by the BNB, unless otherwise provided for in a legal act.

(7) The Bulgarian National Bank also have the powers under Article 80, paragraphs 1 and 3 also over legal persons controlled by a bank if this is relevant for the purposes of the supervision under paragraphs 1 and 6.

(8) The Bulgarian National Bank, its bodies and the persons authorised by them shall not be liable for any damages caused in exercising their supervisory functions, unless they have acted with intent.

(9) Undertakings which, in certain circumstances, may be assumed to be conducting banking operations without a permit shall submit, upon demand from the BNB, the required information and documents. For this purpose, the authorised persons may carry out on-site inspections.

(10) The Bulgarian National Bank may petition the court to repeal illegitimate decisions of a bank's Shareholders' General Meeting or its managing bodies within one month from BNB's notification of the respective decision.

(11) For the issuance of permits and documents and for the provision of any administrative services that result from the banking supervision, banks and other persons shall pay the BNB fees following a procedure and in an amount as determined by the BNB Governing Council.

**Article 79a.** (1) (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010; former wording of Article 79a; Darjaven Vestnik, issue 105 of 2011) In exercising its duties under this Law, the BNB shall:

1. (amended; Darjaven Vestnik, issue 105 of 2011) participate in the activities of the European Banking Authority (EBA);

2. (amended; Darjaven Vestnik, issue 105 of 2011) follow the guidelines, recommendations, standards and other measures approved by the European Banking Authority, except in the cases where there are grounded reasons not to apply the measures which shall be stated thereof.

(2) (new; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall cooperate with the European Banking Authority and provide the European Banking Authority with all the information required by it to carry out its duties in accordance with the terms and provisions of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ, L 331/12 of 15 December 2010), hereinafter referred to as 'Regulation (EU) No 1093/2010'.

**Article 79b.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) Exercising its supervisory functions to a bank licensed in Republic of Bulgaria, which operates in one or more Member States, or to a bank licensed in another Member State which operates through a branch in the Republic of Bulgaria, the BNB shall duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

**Article 80.** (1) The Bulgarian National Bank may require banks and their shareholders to submit to it all the relevant accounting and other documents, and any information on their activities, and may conduct on-site inspections through the employees and other persons authorised by it.

(2) For the consolidated supervision performance, the BNB may require parent companies and banks' subsidiaries to provide all the relevant documents and information.

(3) The banking supervisory authorities shall have the right to:

1. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) free access to the office premises and information systems of the persons conducting banking activity;

2. demand documents and collect information in relation to the performance of the task assigned;

3. appoint external independent experts;

4. appoint an external auditor for a bank, who will carry out a financial or other type of audit;

5. conduct counter examinations in other bank and non-bank undertakings;

6. attend the meetings of the managing and controlling bodies of banks and express opinions that are to be written down in the minutes of the meeting;

7. (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) demand copies of documents verified by the persons under Article 10, paragraph 1 or a person authorized by them and determine the term of their submission.

(4) In exercising its supervisory powers, the BNB may appoint independent experts to evaluate bank's assets and may require that the bank reflect the results of this evaluation in its financial statements or supervisory reports.

(5) (amended; Darjaven Vestnik, issue 109 of 2007) On-site inspections in a bank may be carried out jointly with employees of the State National Security Agency, the Financial Supervision Commission or other competent authorities.

(6) Government authorities and officials shall render assistance, within their powers, to the banking supervisory authorities in the performance of their functions.

## Section II

### **Special Rules for the Supervision of Banks Licensed in a Member State**

**Article 81.** (1) Banks licensed in a Member State, which operate on the territory of the Republic of Bulgaria through a branch, shall be supervised by the competent supervisory authorities of the home Member State. When supervising branches operating on the territory of the Republic of Bulgaria, these authorities may carry out on-site inspection using their powers under Article 80, paragraph 3.

(2) The Bulgarian National Bank may at any time carry out on-site inspections in the branches of banks under paragraph 1 in accordance with this Law.

(3) The liquidity of banks' branches under paragraph 1 shall be supervised by the BNB jointly with the competent banking supervisory authority of the home Member State.

(4) The branches of banks under paragraph 1 shall meet the liquidity requirements as set in this Law and the ordinances on its implementation, and the provisions of BNB ordinances in relation to its monetary policy. Banks' branches under paragraph 1 shall also apply the measures as defined by the European Central Bank once the Republic of Bulgaria adopts the euro as its official legal tender.

(5) For statistical purposes, the BNB shall require that Member States' banks with branches on the territory of the Republic of Bulgaria submit regular reports on their activities in this country. The format and content of these reports shall be defined in ordinances issued by the BNB.

(6) The measures, which the BNB takes as part of its monetary policy and applies to banks' branches under paragraph 1, may not be more stringent and restrictive than those imposed on the banks licensed in the Republic of Bulgaria.

**Article 82.** (1) Where a bank licensed in a Member State, which has a branch or directly provides services on the territory of Bulgaria, does not comply with the applicable legal provisions on banking in the country, the BNB shall apply the measure under Article 103, paragraph 2, item 3.

(2) If the bank under paragraph 1 fails to take the necessary steps to put an end to the violation, the BNB shall send a written notification to the competent authority of the home Member State and shall request this authority to take all necessary measures to put an end to the violation. In these cases the BNB shall demand a notification of the measures taken by the competent banking supervisory authority of the home Member State.

(3) If the measures taken by the competent banking supervisory authority of the home Member State prove to be inappropriate or inapplicable, or if these measures do not stop the violation, the BNB, having notified the competent authority of the home Member State thereof, may take any measures and actions pursuant to the Bulgarian law in order to put an end to the violation and/or may impose sanctions on the bank under paragraph 1. Whenever necessary, the BNB may fully or partially prohibit the transactions of the bank under paragraph 1.

(4) The Bulgarian National Bank shall have the rights under paragraphs 1–3 also in the cases where the bank licensed in a Member State, which carries out activities on the territory of the Republic of Bulgaria, violates any provisions on the protection of depositors' interest or another important public interest. It may impose all the necessary measures and sanctions on such a bank, including imposing a prohibition on the respective bank's carrying out transactions on the territory of the Republic of Bulgaria.

(5) The measures and sanctions imposed by the BNB shall be communicated in writing through the persons who represent the bank on the territory of the Republic of Bulgaria.

(6) In the cases under paragraphs 3 and 4, the bank concerned shall fulfil the measures and sanctions imposed by the BNB.

(7) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall forthwith notify the European Commission and the European Banking Authority of the cases where measures under paragraph 3 have been imposed.

**Article 83.** (1) (amended; Darjaven Vestnik, issue 105 of 2011) In cases of urgency and whenever measures are required to protect the depositors and/or other customers of a bank under Article 82, paragraph 1, the BNB may impose the necessary measures before applying the procedure of the preceding Article. In these cases, the BNB shall forthwith notify the European Commission, the European Banking Authority and the competent supervisory authorities of the interested Member States.

(2) The Bulgarian National Bank shall cancel or change the measures under paragraph 1 at its discretion or based on a decision of the European Commission which has been made after consultations with the competent supervisory authorities of the interested Member States.

**Article 84.** Upon a notification from a competent supervisory authority of the withdrawal of the banking licence of a bank which has a branch or provides services on the territory of the Republic of Bulgaria, the BNB shall take measures to immediately stop the activities of this bank in the country and to protect the interests of its depositors.

**Article 85.** Banks licensed in Member States may freely advertise their banking services on the territory of the Republic of Bulgaria, using all available communication devices and in compliance with the relevant requirements of the Bulgarian law regarding the form and content of such advertising activities.

**Article 86.** In regulating the activities and in exercising its supervisory powers, the Bulgarian National Bank may not set requirements or restrictions which lead to a preferential treatment of the branches of credit institutions with seats in a third country over the branches of banks licensed in a Member State.

### Section III

#### Supervisory Cooperation

**Article 87.** (1) In exercising its supervisory powers, the BNB shall cooperate with the relevant competent authorities of the Member States where a bank licensed in the Republic of Bulgaria carries out activities through a branch in another Member State or where a bank from another Member State carries out activities through a branch in the Republic of Bulgaria.

(2) For the cooperation purposes under paragraph 1, the BNB shall exchange with the relevant competent authorities of the Member States any information and documents on:

1. the management of and ownership over credit institutions needed by the supervision or for the examination of the conditions of their licensing;
2. the supervision of credit institutions on a solo or consolidated basis, including their liquidity, solvency, deposit insurance, large exposures restrictions, risk management, administrative and accounting procedures, and internal control mechanisms.

(3) The competent supervisory authorities of a Member State which are responsible for the supervision of banks with branches on the territory of the Republic of Bulgaria, after a prior notice to the BNB, may carry out, on their own or with the assistance of duly authorised persons, a verification of the information under paragraph 2 in the branch operating on the territory of the Republic of Bulgaria. The on-the-spot verifications shall cover the information and circumstances specified in paragraph 2.

(4) Upon a written notice under paragraph 3, the Bulgarian National Bank shall provide assistance to the foreign supervisory authority.

(5) The Bulgarian National Bank, after a prior notice to the relevant competent authorities of Member States, may carry out on-the-spot verifications in the respective country regarding the activities of banks licensed on the territory of the Republic of Bulgaria and performing activity on the territory of the Member State through a branch.

(6) Where requested by the competent authority of the home Member State, for the purpose of supervising branches of banks from Member States performing activity on the territory of the Republic of Bulgaria, the BNB shall carry out an on-the-spot verification. A representative of the competent authority of the home Member State or an auditor authorised by it may take part in these verifications.

(7) The Bulgarian National Bank may request the competent authorities of a host Member State to carry out an on-the-spot verification of the activities of a branch of a bank licensed in the Republic of Bulgaria, which carries out activities on the territory of the host Member State.

**Article 87a.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) The Bulgarian National Bank may address a request to the consolidating supervisor, if any, or to the competent authority of the home Member State, for a branch of a bank licensed in a Member State through which it operates in the Republic of Bulgaria, to be considered as significant. The request shall provide reasons for considering the branch to be significant with particular regard to the following:

1. whether the market share of the branch of a bank in terms of deposit exceeds 2 per cent in the Republic of Bulgaria;
2. the likely impact of a suspension or closure of the operations of the bank on market liquidity and the payment and clearing and settlement systems in the Republic of Bulgaria; and
3. the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the Republic of Bulgaria.

(2) The Bulgarian National Bank, and the competent authorities of the home Member State and the consolidating supervisor, if any, shall reach a joint decision on the designation of a branch as being significant within two months of the receipt of a request.

(3) If no joint decision is reached within the term under paragraph 2, the BNB shall take its own decision within a further period of two months. The Bulgarian National Bank shall transmit the decision to the consolidating supervisor and to the competent authority of the home Member State.

(4) (new; Darjaven Vestnik, issue 105 of 2011) If, prior to expiry of the term under paragraph 2, any of the competent authorities concerned has referred the matter to the European Banking Authority, the Bulgarian National Bank shall defer its decision under paragraph 3 and await the decision that the European Banking Authority may take in accordance with Article 19, paragraph 3 of Regulation (EU)

No 093/2010. In this case, the Bulgarian National Bank shall take the decision under paragraph 3 in conformity with the decision of the European Banking Authority.

(5) (former paragraph 4; Darjaven Vestnik, issue 105 of 2011) The decisions referred to in paragraphs 2 and 3 shall be fully reasoned and shall take into account any views and reservations of the consolidating supervisor or the competent authority of the home Member State.

(6) (former paragraph 5; Darjaven Vestnik, issue 105 of 2011) The designation of a branch as being significant shall not affect the rights and responsibilities of the BNB under this Law.

**Article 87b.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) The Bulgarian National Bank shall participate in taking the decision on the request of the competent authority of the home Member State for a branch of a bank to be considered as significant, where:

1. the bank is licensed in the Republic of Bulgaria; or
2. the Bulgarian National Bank is a consolidating supervisor to that bank.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) The decision under paragraph 1 shall be taken within two months of the receipt of a request. If the Bulgarian National Bank considers that a joint decision cannot be reached, it has the right to refer the matter to the European Banking Authority prior to expiry of this term.

(3) If no joint decision under paragraph 1 is reached within two months and the competent authority of the host Member State has taken its own decision, it is mandatory for the BNB.

(4) The Bulgarian National Bank shall communicate to the competent authority of a host Member State where a significant branch is established the information referred to in Article 95, paragraph 3, items 3 and 4 and carry out the tasks referred to in Article 92, paragraph 1, item 3 in cooperation with the competent authority of the host Member State.

(5) Where an emergency situation arises within a bank, licensed in the Republic of Bulgaria with a significant branch, which potentially jeopardises the financial stability in the Republic of Bulgaria or in the host Member State, the BNB shall alert the authorities referred to in Article 64, paragraph 1, item 10 and Article 64, paragraph 2.

(6) The designation of a branch as being significant shall not affect the rights and responsibilities of the BNB under this Law.

**Article 87c.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Where Article 92e does not apply and the BNB exercises supervision to a bank with significant branches in other Member States, the BNB shall establish and chair a college of supervisors with competent authorities from those Member States to facilitate the cooperation under Article 87 and Article 87b, paragraphs 4 and 5. The establishment and functioning of the college shall be based on written arrangements determined after a consultation with relevant competent authorities.

(2) The Bulgarian National Bank shall determine the competent authorities which will participate in a meeting or in an activity of the college, considering the

relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Members States concerned referred to in Article 79b and the obligations referred to in Article 87b, paragraphs 4 and 5.

(3) The Bulgarian National Bank shall keep all members of the college fully informed, in advance, of the organization of such meetings, the main issues to be discussed and the activities to be considered. The Bulgarian National Bank shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

(4) Where Article 92f does not apply, and a significant branch is designated in the Republic of Bulgaria, the Bulgarian National Bank shall participate in a supervisory college chaired by the competent authority of the home Member State.

**Article 88.** (amended; Darjaven Vestnik, issue 105 of 2011) In performing its supervisory functions, the BNB may conclude agreements with other central banks or supervisory authorities of third countries on cooperation and information exchange on a reciprocal basis, making the commitment to keep bank and professional secrecy.

## Section IV

### Supervision on a Consolidated Basis

**Article 89.** (1) (previous wording of Article 89; Darjaven Vestnik, issue 52 of 2007, in force as of 1 November 2007) The Bulgarian National Bank shall carry out supervision on a consolidated basis over banks, banking groups, financial holding companies and mixed activity holding companies in accordance with the terms and procedure of this Law and the acts on its implementation.

(2) (new; Darjaven Vestnik, issue 52 of 2007, in force as of 1 November 2007) The management companies shall also be included in the scope of supervision on a consolidated basis under this Law in the same manner and to the same extent as financial institutions.

**Article 90.** (1) Where the parent undertaking is a parent credit institution in the Republic of Bulgaria or a parent credit institution from the European Union licensed in the Republic of Bulgaria, consolidated supervision shall be exercised by the BNB.

(2) Where the parent undertaking of a bank licensed in the Republic of Bulgaria is a parent financial holding company in a Member State or an European Union financial holding company, set up in a Member State, consolidated supervision shall be exercised by the BNB.

(3) Where the parent undertaking of credit institutions licensed in two or more Member States is the same parent financial holding company in the Republic of Bulgaria or the European Union parent financial holding company, set up in the Republic of Bulgaria, consolidated supervision shall be exercised by the BNB if one of the subsidiary credit institutions is licensed in the Republic of Bulgaria.

(4) Where parent undertakings are financial holding companies registered in different Member States and they have subsidiary credit institutions licensed in each

one of these states, consolidated supervision shall be exercised by the BNB if the credit institution with the largest balance sheet total is licensed by the BNB.

(5) Where credit institutions licensed in different Member States have the same financial holding company as a parent undertaking and one of these credit institutions is not licensed in the Member State where the financial holding company is registered, consolidated supervision shall be exercised by the BNB if the credit institution with the largest balance sheet total is licensed by the BNB.

(6) By common agreement with the competent authorities of the respective Member States, the BNB may waive the criteria under paragraphs 3, 4 and 5 if their application would be inappropriate, taking in account the credit institutions being part of the holding company and the relative importance of their activities in the respective Member States. The agreement shall appoint the competent authority that will exercise supervision on a consolidated basis. In the cases under paragraphs 3, 4 and 5, before concluding the agreement, the BNB and the competent authorities of the respective Member States shall give the European Union parent credit institution, or the European Union parent financial holding company, or the credit institution with the largest balance sheet total an opportunity to state its opinion.

(7) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall notify the European Commission and the European Banking Authority of any agreement under paragraph 6 under which the BNB shall exercise supervision on a consolidated basis.

**Article 91.** (1) Where a competent authority of a Member State has exempt from consolidated supervision a bank licensed in the Republic of Bulgaria, the BNB may demand from the parent undertaking information that would facilitate the supervision of this bank.

(2) Where the BNB has exempt from consolidated supervision subsidiaries of credit institutions or financial holding companies from Member States, it may demand from the respective subsidiaries information for the purposes of supervision.

**Article 92.** (former text of Article 92; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) In exercising supervision on a consolidated basis of European Union parent credit institutions and credit institutions controlled by European Union parent financial holding companies, the BNB shall:

1. coordinate the gathering and dissemination of relevant and essential information in going concern and in emergency situations;

2. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) plan and coordinate ongoing supervisory activities in cooperation with the respective competent authorities from Member States;

3. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) plan and coordinate supervisory activities in cooperation with the competent authorities involved, and where necessary, with central banks in the preparation for and during emergency situations, including adverse developments in banks or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management.

(2) (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010; amended; Darjaven Vestnik, issue 105 of 2011) The planning and coordination of supervisory activities referred to in paragraph 1, item 3, shall include the measures referred to in Article 95, paragraph 7, item 2, the preparation of joint assessments, the implementation of contingency plans and communication to the public.

(3) (new; Darjaven Vestnik, issue 105 of 2011) Where the respective competent authorities do not cooperate with the Bulgarian National Bank to the extent required for carrying out the tasks of the Bulgarian National Bank under paragraph 1, the Bulgarian National Bank may refer the matter to the European Banking Authority.

(4) (new; Darjaven Vestnik, issue 105 of 2011) Where a consolidating supervisor of another Member State fails to carry out the tasks assigned by its national legislation, corresponding to those under paragraph 1, the Bulgarian National Bank may refer the matter to the European Banking Authority.

**Article 92a.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) In the case of applications for the permissions referred to in Article 40, paragraph 2, item 4, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company, subject to supervision exercised by the BNB, the BNB shall work together, in full consultation with all other competent authorities, within six months after the submission of the application, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.

(2) The application shall be submitted to the BNB and it shall forward a copy of the application to the other competent authorities without delay.

(3) In the absence of a joint decision within the term referred to in paragraph 1, the BNB shall make its own decision.

(4) (new, Darjaven Vestnik, issue 105 of 2011) If, prior to expiry of the term under paragraph 1, the matter has been referred to the European Banking Authority, the Bulgarian National Bank shall defer its decision under paragraph 3 and await any decision that the European Banking Authority may take in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010. In this case, the BNB shall take the decision under paragraph 3 in conformity with the decision of the European Banking Authority.

(5) (former paragraph 4; Darjaven Vestnik, issue 105 of 2011) The decisions under paragraphs 1 and 3 shall be fully reasoned and shall take into account the views and reservation of the other competent authorities expressed during the six months period under paragraph 1. The decisions shall be provided to the applicant and the decision referred to in paragraph 3 – to the other competent authorities.

**Article 92b.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Upon receipt of a request from a competent authority of a Member State in connection with the received application for a permission under Article 40, paragraph 2, item 4, submitted by an EU parent credit institution and its subsidiaries, one of which is a credit institution, licensed in the Republic of Bulgaria, or jointly by

the subsidiaries of an EU parent financial holding company, one of which is a credit institution, licensed in the Republic of Bulgaria, the BNB shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.

(3) (new; Darjaven Vestnik, issue 105 of 2011) If the Bulgarian National Bank considers that a joint decision cannot be reached, it has the right to refer the matter to the European Banking Authority prior to expiry of the term under paragraph 2.

**Article 92c.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Where the BNB is a consolidating supervisor in application of Article 73a, Article 79, paragraphs 2 and 3, and measures imposed for a violation under Article 103, paragraph 1, item 11, the BNB and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company, shall make a joint decision to determine the adequacy of the consolidated level of own funds held by the parent institution with respect to its financial situation and risk profile and to determine the additional capital requirement under Article 103, paragraph 2, item 5 to each entity within the banking group or financial holding company and on a consolidated basis.

(2) The joint decision shall be reached within four months after submission by the BNB of a report containing the risk assessment of the group in accordance with Article 73a, Article 79, paragraphs 2 and 3 and the measure imposed for a violation under Article 103, paragraph 1, item 11 to the other competent authorities. The joint decision shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) In the absence of such a joint decision within the term under paragraph 2, a decision on the application of Article 73a, Article 79, paragraphs 2 and 3, the measure related to a violation under Article 103, paragraph 1, item 11 and the measure under Article 103, paragraph 2, item 5 shall be taken on a consolidated basis by the BNB after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. Before taking the decision, the BNB shall, on its own initiative or at the request of any of the other competent authorities concerned, consult the European Banking Authority, taking into account such advice and explaining any significant deviation therefrom.

(4) (new; Darjaven Vestnik, issue 105 of 2011) If prior to expiry of the term under paragraph 2, the matter has been referred to the European Banking Authority, the Bulgarian National Bank shall defer its decision under paragraph 3 and await any decision that the European Banking Authority may take in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010. In this case, the BNB shall take the decision under paragraph 3 in conformity with the decision of the European Banking Authority.

(5) (former paragraph 4; Darjaven Vestnik, issue 105 of 2011) The joint decisions under paragraphs 1 and 3 shall be set out in a document containing the fully reasoned decision which shall be provided to the EU parent credit institution, and

under paragraph 3 – to the other competent authorities. The reasoning of the decision under paragraph 3 shall duly consider the views of other competent authorities expressed within the term pursuant to paragraph 2.

(6) (former paragraph 5; Darjaven Vestnik, issue 105 of 2011) The decisions referred to in paragraphs 1 and 3 shall be updated on an annual basis or, in exceptional circumstances, where any of the other competent authorities make a written and fully reasoned request to the BNB to update the decision on the application of the measure under Article 103, paragraph 2, item 5. In the latter case, the update of the decisions referred to in paragraphs 1 and 3 shall be made by the BNB only with the participation of the competent authority making the request.

**Article 92d.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Where a bank licensed in the Republic of Bulgaria is a subsidiary of an EU parent credit institution or an EU parent financial holding company, the BNB shall participate in taking a joint decision to determine the adequacy of the consolidated level of own funds held by the parent institution with respect to its financial situation and risk profile and to determine the additional capital requirement to each entity within the banking group or financial holding company and on a consolidated basis.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) In the absence of a joint decision referred to in paragraph 1 within four months, the BNB may request the consolidating supervisor to consult the European Banking Authority.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) In the absence of such a joint decision, the BNB shall take an own decision regarding application of Article 73a, Article 79, paragraphs 2 and 3, a measure imposed against a bank in relation to violation under Article 103, paragraph 1, item 11 and a measure under Article 103, paragraph 2, item 5 after duly considering the views of the consolidating supervisor and consultation by the European Banking Authority, where such consultation has been requested.

(4) (new; Darjaven Vestnik, issue 105 of 2011) If prior to expiry of the term under paragraph 2, the matter has been referred to the European Banking Authority, the Bulgarian National Bank shall defer its decision under paragraph 3 and await any decision that the European Banking Authority may take in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010. In this case, the BNB shall take the decision under paragraph 3 in conformity with the decision of the European Banking Authority.

(5) (former paragraph 4; Darjaven Vestnik, issue 105 of 2011) The decisions referred to in paragraphs 1 and 3 shall be updated on an annual basis. Where an emergency situation arises, the BNB may address a fully reasoned request for reconsidering the decision under paragraph 1 or the own decision of the consolidating supervisor in order to update the decision on the application of a measure under Article 136, paragraph 2 of Directive 2006/48/EC.

**Article 92e.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) (1) Where the Bulgarian National Bank is a consolidating supervisor it shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Articles 92, 92a, 92c and Article 93 and subject to the confidentiality requirements of paragraph 5 of the Community Law, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

(2) Colleges of supervisors shall provide a framework to carry out the following tasks:

1. (amended; Darjaven Vestnik, issue 105 of 2011) exchanging information among the competent authorities and the European Banking Authority in accordance with Article 21 of Regulation (EU) No 1093/2010;

2. agreeing on voluntary entrustment of tasks and voluntary delegation of responsibility where appropriate;

3. determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 79, paragraphs 2 and 3 and Article 103, paragraph 1, item 11;

4. increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 93, paragraph 2 and Article 95, paragraph 2;

5. consistently applying the prudential requirements under Directive 2006/48/EC across all entities within a banking group without prejudice to the options and discretions available in EU legislation;

6. applying Article 92, paragraph 1, item 3 taking into account the work of other forums that may be established in this area.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall cooperate closely with the European Banking Authority and with other competent authorities participating in the colleges of supervisors. The confidentiality requirements under Articles 63, 64 and 65 shall not prevent exchanging confidential information within colleges of supervisors.

(4) For the establishment and functioning of the colleges the Bulgarian National Bank shall conclude written arrangements referred to in Article 94 after consultation with other competent authorities.

(5) (amended; Darjaven Vestnik, issue 105 of 2011) The European Banking Authority and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company and the competent authorities of a host country where significant branches are established, central banks as appropriate, and third countries' competent authorities subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Chapter 1, Section 2 of Directive 2006/48/EC may participate in colleges of supervisors.

(6) The Bulgarian National Bank shall chair the meetings of the college and shall determine which competent authorities will participate in a meeting or in an activ-

ity of the college, taking into account the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 79b and the obligations referred to in Article 87b, paragraphs 3 and 4.

(7) The Bulgarian National Bank shall keep all members of the college fully informed, in advance, of the organization of such meetings, of main issues to be discussed and the activities to be considered. The Bulgarian National Bank shall also keep all the members of the college fully informed, in a timely manner, of the decisions taken in those meetings and the measures carried out.

(8) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall inform the European Banking Authority of the activities of the college of supervisors, including in emergency situations, and communicate to it all information that is of particular relevance for the purpose of supervisory convergence.

(9) The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the Bulgarian National Bank under this Law.

**Article 92f.** (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) Where the Bulgarian National Bank carries out supervision on an individual basis over a bank, which is a subsidiary of an EU parent credit institution or an EU parent financial holding company, it shall participate in a college of supervisors, organised by the respective consolidating supervisory authority. In these cases, the BNB shall have the rights and obligations of the competent authority ensuing from Article 92e.

**Article 93.** (1) (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010; amended; Darjaven Vestnik, issue 105 of 2011) In case of an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in financial markets which potentially jeopardise the market liquidity and stability of the financial system in the Republic of Bulgaria or in other Member States where entities of a group have been licensed or where significant branches are established, the BNB, exercising supervision on a consolidated basis, shall alert as soon as practicable, the European Banking Authority, the European Systemic Risk Board and the authorities referred to in Article 64, paragraph 1, item 10 and Article 64, paragraph 2 of the respective Member States, and shall communicate all information that is essential for the pursuance of their tasks.

(2) If for the purposes of the consolidated supervision exercised by the BNB, the BNB needs information that has already been communicated to another competent authority, in order to prevent duplication of its reporting, the BNB shall contact the respective competent authority whenever possible.

**Article 94.** (1) For the purposes of the consolidated supervision, the Bulgarian National Bank shall sign written coordination and cooperation arrangements with the competent supervisory authorities of the respective Member States. The

BNB may take responsibility for the performance of additional supervisory tasks, by agreement with the competent authorities of Member States.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) Where a bank licensed in the Republic of Bulgaria is controlled by a credit institution in another Member State, on the basis of an agreement under Article 28 of Regulation (EU) No 1093/2010 with the competent supervisory authority of the parent credit institution, the BNB may delegate to it the responsibility for supervising the subsidiary bank.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) Where a bank licensed in the Republic of Bulgaria is the parent undertaking of a credit institution set up in another Member State, on the basis of an agreement under Article 28 of Regulation (EU) No 1093/2010 with the competent supervisory authority of the Member State, the BNB may take the responsibility for supervising the subsidiary credit institutions.

(4) (amended; Darjaven Vestnik, issue 105 of 2011) The BNB shall notify the European Banking Authority of the conclusion and content of the agreements under paragraphs 2 and 3. The BNB shall also submit information on the agreements to the competent authorities of the other Member States and the European Banking Committee.

**Article 95.** (1) The Bulgarian National Bank shall provide the respective competent authorities of the Member States with the information which is essential for the exercise of their supervisory functions.

(2) Essential information shall be any information that could materially influence the assessment of the financial soundness of a credit or financial institution in a Member State.

(3) The essential information under paragraph 2 shall include at least the following items:

1. identification of the banking group structure, including the major credit institutions, as well as of the competent authorities supervising the credit institutions in the group;

2. procedures for the collection and verification of information of the credit institutions in a banking group;

3. difficulties in credit institutions or in other entities in the group, which could seriously affect the credit institutions' activities;

4. supervisory sanctions and measures taken by the BNB in accordance with this Law, including the imposition of additional capital requirements or restrictions on the use of operational risk internal models for the calculation of the own funds requirements for supervisory purposes.

(4) At the request of the competent authorities of a Member State, supervising the subsidiaries of European Union parent credit institutions or credit institutions controlled by European Union parent financial holding companies in relation to which the BNB exercises consolidated supervision, the BNB shall provide the information that is relevant for the exercise of their supervisory functions.

(5) Where the BNB needs information for supervising a bank controlled by an European Union parent credit institution licensed in another Member State, it shall contact the competent authority responsible for supervision on a consolidated basis in the respective Member State where the relevant information may already be available to that competent authority.

(6) (new; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank may refer to the European Banking Authority situations where:

1. material information has not been submitted to the Bulgarian National Bank by a competent authority of a Member State;

2. a request for exchanging information has been rejected or has not been acted upon within a reasonable time.

(7) (former paragraph 6; Darjaven Vestnik, issue 105 of 2011) Prior to making a decision that is of importance for the competent supervisory authority's activities, the BNB shall consult the competent supervisory authority in another Member State where the decision relates to:

1. changes in the shareholder, organisational or management structure of a bank in a banking group, which require the approval of the BNB;

2. supervisory sanctions or measures taken by the BNB, including the imposition of additional capital requirements or restrictions on the use of operational risk internal models for the calculation of the own funds requirements for supervisory purposes.

(8) (former paragraph 7; Darjaven Vestnik, issue 105 of 2011) In the cases under paragraph 7, item 2, the BNB shall also consult the competent authority responsible for supervision on a consolidated basis.

(9) (former paragraph 8; amended, Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank may decide not to have consultations under paragraphs 7 and 8 in cases of urgency or where such consultation may hinder or jeopardise the effectiveness of the respective decision. In this case, the BNB shall, without delay, inform the competent authorities under paragraphs 7 and 8.

**Article 96.** The persons who direct the business of a financial holding company must have a good reputation and sufficient expertise to perform their duties.

**Article 97.** (1) Where a mixed activity holding company is the parent undertaking of one or more banks licensed in the Republic of Bulgaria, the BNB may require from the holding company and its subsidiaries any information that would be relevant for the purposes of the consolidated supervision of the subsidiary banks.

(2) The Bulgarian National Bank may carry out, on its own or with the assistance of duly appointed persons, on-the-spot verification of the received information under paragraph 1.

(3) If the mixed activity holding company or one of its subsidiaries is an insurance undertaking, the BNB may verify the information received under paragraph 1 or under Article 99.

(4) If the mixed holding company or one of its subsidiaries is not set up in the Republic of Bulgaria, the information received under paragraph 1 may also be verified under Article 100.

(5) For supervision on a consolidated basis purposes, the BNB may demand the information under paragraph 1 from the respective supervisory authority in a Member State.

(6) The Bulgarian National Bank shall provide the information under paragraph 1 at the request of the authority responsible for supervision on a consolidated basis in a Member State.

(7) The BNB's powers for collecting information under paragraphs 1 and 5 shall not imply that the BNB is required to exercise supervision on a solo basis over the mixed activity holding company and its subsidiaries which are not banks or over its subsidiaries which are not included in the scope of the supervision on a consolidated basis.

**Article 98.** (1) Where the BNB is the authority responsible for supervision on a consolidated basis of a parent undertaking that is not set up in the Republic of Bulgaria, the BNB may request the supervisory authority in a Member State to collect from the parent undertaking the information relevant for the consolidated supervision and to provide it to the BNB.

(2) Where a parent undertaking is set up in the Republic of Bulgaria but the BNB does not exercise supervision on a consolidated basis, the BNB may, on demand of the competent authority responsible for supervision on a consolidated basis, require from the parent undertaking any information that is relevant for supervision on a consolidated basis and provide it to that competent authority.

(3) The BNB's powers for collecting information under paragraphs 1 and 2 shall not imply that the BNB is required to exercise supervision on a solo basis over the parent undertaking when it is a financial holding company, a financial institution or an ancillary services undertaking.

**Article 99.** (1) Where exercising consolidated supervision of banks, financial holding companies or mixed activity holding companies, whose one or more subsidiaries are insurance undertakings or investment firms subject to authorisation, the BNB shall cooperate and exchange information with the competent authorities responsible for supervising insurance undertakings and/or investment firms.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall keep a list of the financial holding companies it supervises on a consolidated basis. The BNB shall communicate this list to the competent authorities of the other Member States, to the European Commission and the European Banking Authority and shall notify them of any changes therein.

**Article 100.** (1) At the request of a competent supervisory authority of a Member State, the BNB shall verify particular information on a credit institution, financial holding company, financial institution, ancillary services undertaking, mixed activ-

ity holding company or its subsidiary, which carries out activities on the territory of the Republic of Bulgaria.

(2) The verification under paragraph 1 may be carried out by the BNB on its own, by the competent authority that requested the verification, with its participation or by an external auditor or expert.

(3) When a credit institution, financial holding company, financial institution, ancillary services undertaking, mixed activity holding company or its subsidiary carries out activities in a Member State, the BNB may request the respective supervisory authority in the Member State to verify the particular information on that person.

(4) In the case under paragraph 3 the BNB may request to carry out the verification on its own or to take part in it.

**Article 101.** (1) When a bank licensed in the Republic of Bulgaria is a subsidiary of a credit institution or a financial holding company from a third country and no supervision on a consolidated basis is exercised over it by the BNB or another supervisory authority in a Member State, the BNB shall verify if the subsidiary bank is included in the scope of supervision on a consolidated basis compliant with the principles of this Law.

(2) The Bulgarian National Bank shall carry out the verification under paragraph 1 at its initiative or at the request of the parent undertaking or a subsidiary insurance undertaking or subsidiary investment firm authorised in a Member State, and shall have consultations with the competent authorities supervising these persons.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) In carrying out the verification under paragraph 1, the BNB shall take account of the European Banking Committee position on whether the supervision on a consolidated basis rules of the respective third country would achieve the consolidated supervision objectives in compliance with the European Community legislation. After the end of the verification and before making a decision, the BNB shall also consult the European Banking Authority.

(4) If it finds out that no supervision on a consolidated basis is exercised or that the exercised supervision does not comply with the principles of this Law, the BNB may apply to the subsidiary bank appropriate supervisory techniques in order to achieve the objectives of supervision on a consolidated basis over the bank in accordance with this Law.

(5) The Bulgarian National Bank shall apply the supervisory techniques under paragraph 4 after consultations with the Member States' competent authorities supervising the persons under paragraph 1 and with the supervisory authority in the third country.

(6) The Bulgarian National Bank shall take part in consultations at the request of a competent authority of another Member State in cases where this competent authority intends to apply supervisory techniques in order to achieve the objectives of supervision on a consolidated basis.

(7) The Bulgarian National Bank may request the establishment of a financial holding company with registered office on the territory of any Member State and to which the principles of supervision on a consolidated basis provided for in this Law shall apply.

(8) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall communicate the supervisory techniques under paragraph 4 to the European Commission, the European Banking Authority and the other supervisory authorities concerned.

## Section V

### Supervisory Disclosure

**Article 102.** (1) The Bulgarian National Bank shall disclose the following information:

1. the provisions of laws, ordinances, administrative rules and guidance in the field of regulation of banking activity;
2. the manner of the BNB's exercise of the options and discretions provided for in the European Union law;
3. the general criteria and methodologies the BNB uses in the review and evaluation under Article 79, paragraph 2.
4. aggregate statistical data on key elements of the banking supervision exercised by the BNB without prejudice to the professional secrecy provisions.

(2) The disclosure shall be sufficient to enable a meaningful comparison of the approaches adopted by the BNB with those adopted by the competent authorities of the other Member States.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) The disclosure shall be carried out in a manner and a format coordinated by the BNB with the European Banking Authority.

## Section VI

### Supervisory Measures

**Article 103.** (1) The Bulgarian National Bank may impose the measures under paragraph 2 when the BNB finds out that a bank or any of its administrators or shareholders have committed certain offences, consisting of:

1. the violation or bypassing of the provisions of this Law, legal or other acts and the BNB guidelines;
2. the breach of a fiduciary duty;
3. the conclusion of banking transactions which affect the bank's financial stability or banking transactions which, through the use of fictitious persons, frustrate or bypass the application of this Law, legal or other acts and the BNB guidelines;
4. the non-fulfilment by the bank of any written commitments to the BNB;

5. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) carrying out transactions or other actions in violation of the banking license granted to the bank or of any other permission or approval given by the BNB;

6. the prevention of exercising banking supervision;

7. threatening depositors' interests;

8. effecting any transactions or operations representing money laundering or in violation of the Law on the Measures against Money Laundering and the acts on its implementation;

9. threatening the stability of payment systems;

10. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) the violation of the conditions under which the bank's license has been granted or other permission or approval that has been given;

11. reduction of own funds by 20 per cent or more when applying a supervisory test for a sudden and unexpected change in the interest rates, specified in the ordinance under Article 40, paragraph 1.

(2) In the cases under paragraph 1 the BNB may:

1. issue a written warning to the bank;

2. convene a shareholders' general meeting or call a session of the managing and supervisory boards (board of directors) by setting the agenda of this meeting or session;

3. issue written orders to cease and eliminate such violations;

4. issue written orders for actions intended to improve the bank's financial position;

5. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010; amended; Darjaven Vestnik, issue 105 of 2011) impose on the bank more stringent prudential requirements than those imposed on it in normal operation; where a bank does not meet the requirements of Article 73, paragraph 1 and Article 73a or in the review and evaluation under Article 79, paragraph 2 it has been established that it does not provide sound management and coverage of risks, the BNB shall impose additional capital requirement above the minimum required, if as a result of self-application of other measures it is not expected within a reasonable time the bank to improve sufficiently its rules, procedures, mechanisms and strategies. In imposing the additional capital requirement, the following shall be taken into account:

a) the quantitative and qualitative aspects of the bank's assessment process referred to in Article 73a;

b) the current adequacy of the bank's internal rules and procedures for management and control referred to in Article 15, paragraph 1, items 4 and 6;

c) the outcome of the supervisory review and evaluation carried out in accordance with Article 79, paragraph 2;

6. issue written orders for the bank to take action and change interest rates, maturity structure, and other terms and conditions relating to the bank's policy and operations;

7. limit the bank's activity by prohibiting to conduct certain transactions, activities or operations;
8. constrain the volume of certain types of activities conducted by the bank;
9. oblige the bank to increase its capital by a written notification;
10. disallow payment of dividends or distribution of capital in any form whatsoever;
11. forbid a foreign bank to carry out activities through a branch or directly; where a permanent prohibition has been imposed on the activities of a bank's branch, the bank's respective body shall make a decision to stop the activities of the branch, to settle the relations with the bank's creditors and to strike the branch off the respective Trade Register;
12. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009; amended; Darjaven Vestnik, issue 105 of 2011) demand a reduction in the bank's operating expenses, including in variable remuneration as a percentage of total net revenues when it is inconsistent with the maintenance of a sound capital base and/or prohibit their payment;
13. demand changes in the bank's internal rules and procedures;
14. (amended; Darjaven Vestnik, issue 105 of 2011) issue written orders for the bank to dismiss one or more individuals authorised to manage and represent the bank, as well as members of the management board, board of directors or supervisory board; if within the time limit set by the BNB the bank has not dismissed the respective person, the BNB may remove that person from office and appoint another person in his place until conducting the respective vote; from the day of receiving the BNB's act on the dismissal, the powers of the person subject to the measure shall be terminated and his managerial or representative actions after this date shall have no effect for the bank;
15. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) temporarily suspend the voting rights of a shareholder and/or issue written orders to a shareholder to dispose of the shares held by him within 30 days;
16. forbid the conduct of transactions and operations with persons who have close links with the bank or who belong to the same consolidation group as that of the bank, or who are members of the bank's managing bodies, or who control the bank or have a qualifying holding or take part in the management of the persons controlling the bank;
17. attach additional requirements for the bank in connection with its activity;
18. require a rehabilitation plan that will be implemented by the bank after the approval by the BNB;
19. appoint two or more conservators in the bank for a specified period of time;
20. place the bank under special supervision in accordance with Articles 115–121 in case of insolvency danger;
21. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) withdraw the bank's license for conducting bank activity or any other permis-

sion or approval given by the BNB; by the act of the withdrawal of the license, the BNB shall in all cases appoint conservators, provided they have not been appointed prior to the issuance of this act.

(3) In cases of implementation of measures under paragraph 2, the provisions of Article 26, paragraph 1 and Article 34 of the Code on Administrative Procedure, regarding clarifications and objections of parties concerned, shall not apply.

(4) All acts on imposing the measures under paragraph 2 shall come immediately into effect.

(5) (amended; Darjaven Vestnik, issue 105 of 2011) The Bulgarian National Bank shall have the right to require an announcement of any acts on implementing the measures under paragraph 2, respectively entry of any circumstances arising from imposing such measures in the Trade Register.

(6) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) When the voting rights of shareholders are temporarily suspended under paragraph 2, item 15, the amount of the shares held by them shall not be taken into consideration when the quorum for holding the shareholders' general meeting and for taking decisions by this meeting is formed. In these cases, if the soundness and safety of the bank's management or its operations is endangered, the BNB may impose on the bank the measures under paragraph 2, items 7, 10 and 19.

(7) The Bulgarian National Bank takes appropriate measures under paragraph 2 against a bank licensed in the Republic of Bulgaria which operates, through a branch or directly, on the territory of another Member State when it has been notified by the competent authorities of the host country that this bank does not observe the applicable legal provisions on banking in the respective Member State. The type and character of the measures taken shall be communicated to the competent authorities of the host Member State.

(8) (amended; Darjaven Vestnik, issue 52 of 2007, in force as of 1 November 2007) The Bulgarian National Bank shall mandatorily withdraw a bank's permit for conducting activities under Article 5, paragraphs 2 and 3 of the Law on Markets in Financial Instruments, if the Financial Supervision Commission has requested this by a reasoned proposal.

(9) In the cases under paragraph 1 the BNB may impose the respective appropriate measures under paragraph 2 even on the branches of banks from a third country and its administrators, as well as on the branches of banks from a Member State and their administrators, in accordance with Section II of this Chapter.

(10) In case of violation of this Law or ordinances for its implementation committed by a financial holding company or a mixed activity holding company, or permitted by a person managing a financial holding company or a mixed activity financial holding company, the BNB may impose the measures under paragraph 2 on the financial holding company or the mixed activity financial holding company, and on its administrators.

(11) When imposing the measures under paragraph 9, the BNB shall cooperate with the competent authorities of the respective Member States.

**Article 104.** (1) (amended; Darjaven Vestnik, issue 105 of 2011) In the cases where the BNB has imposed the measure under Article 103, paragraph 2, items 2 or 9, the shareholders' general meeting shall be convened by the BNB by means of an invitation announced in the Trade Register. In this case, Article 223, paragraphs 1–3 and 5, and Article 223a of the Trade Register, as well as the provisions of the bank's articles of association on convening the shareholders' general meeting shall not apply.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) The shareholders' general meeting shall not open up and take place in less than 7 days before the announcement of the invitation in the Trade Register.

(3) If no quorum is reached in the cases under paragraph 1, a new session of the shareholders' general meeting shall be convened on the next business day and it shall be deemed legitimate regardless of the capital represented at that session. The date of the second session shall be specified in the invitation to the first session.

(4) (amended; Darjaven Vestnik, issue 105 of 2011) In the cases under Article 103, paragraph 2, item 9, the time limit set by the shareholders' general meeting for subscribing and paying the subscribed shares may not be more than 30 days from the date of the announcement of the invitation for subscribing shares in the Trade Register.

(5) (amended; Darjaven Vestnik, issue 105 of 2011) In the cases under Article 103, paragraph 2, item 9, the provision of Article 194, paragraph 3, the second sentence of the Law on Commerce shall not apply, and the shareholders' right under Article 194, paragraphs 1 and 2 of the Law on Commerce shall extinguish within 14 days after the announcement of the invitation for subscribing shares in the Trade Register.

(6) If shareholders who hold a qualifying holding, with their activities or influence over the bank's management have damaged its soundness or stability, or if at the BNB's discretion they are not financially capable to increase the capital up to an amount set by the BNB, the BNB, when imposing the measure under Article 103, paragraph 2, item 9, may restrict or deprive the bank's shareholders of their rights to participate, in accordance with their shares in the increase of the capital under Article 194, paragraphs 1 and 2 of the Law on Commerce.

(7) In the cases under paragraph 6, the BNB may require from the bank to increase its capital under the condition that the new shares shall be bought by persons set by the BNB and at prices set by the BNB.

(8) When applying the measure under Article 103, paragraph 2, item 9, as well as in the cases where the increase in capital under Article 110 and Article 118, regarding a bank that is a public undertaking, the provisions of Articles 112–112c from the Law on the Public Offering of Securities shall not apply and the procedure set out in the Law of Commerce and this Law shall be observed.

## Section VII

### Conservator

**Article 105.** (1) The conservator shall be a natural person.

(2) The conservator shall meet the requirements specified in Article 11, paragraph 1. He shall not have relations with the bank, or with any of its debtors, which cause reasonable suspicions with regard to his impartiality.

(3) Appointed conservators shall make unanimous decisions and exercise their powers jointly, unless otherwise provided for by the BNB.

(4) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) The conservator shall declare to the BNB in writing the circumstances under paragraph 2, second sentence and Article 11, paragraph 4. He shall forthwith notify the BNB of any changes in these circumstances.

**Article 106.** (1) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Conservators shall be appointed and dismissed by the BNB, whereas the requirement for issuance of a certificate under Article 11, paragraph 3 shall not apply.

(2) Except in the cases under paragraph 3, the term for a bank to be managed by conservators shall not exceed six months in total. Provided within this time the license of the bank has not been withdrawn, with the expiry of this period, the conservators' powers shall be terminated and the powers of all the bank's bodies shall be restored.

(3) If the BNB has withdrawn the license of a bank, conservators' powers shall be terminated after the appointment of a liquidator, respectively a receiver, by the Court.

(4) The Bulgarian National Bank may at any time terminate the powers of a conservator and appoint another in his stead. The act shall not be subject to appeal.

(5) Upon the issuance of an act on the appointment of a conservator, the BNB shall deliver it to the respective bank and shall publish a statement to this effect in at least one central daily newspaper.

**Article 107.** (1) Upon the appointment of the conservators, all powers of the supervisory and management boards of the bank, respectively the board of directors, shall be terminated, and shall be exercised by the conservators in so far as no limitations have been specified in the act of their appointment.

(2) During the tenure of the conservators, the shareholders' general meeting may be convened only by the conservators and may take decisions only on issues on the agenda announced by them. Under the provisions of Articles 109 and 110, conservators shall exercise the powers of the shareholders' general meeting.

(3) The Bulgarian National Bank may issue mandatory prescriptions for the conservators in relation to their activity.

(4) Conservators may delegate some of their powers to other persons, including administrators whose powers have been terminated.

(5) Conservators shall be accountable for their activities only to the BNB, and shall forthwith submit upon request a report on their performance.

(6) Any actions and transactions on behalf and for the account of the bank done without the prior authorization of the conservators shall be void.

**Article 107a.** (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) (1) By the act of the conservator's appointment the BNB may:

1. confer on him the right to approve the decisions of the bodies under Article 107, paragraph 1, that retain their powers; their decisions shall not be acted upon without the prior approval of the conservator;

2. specify the transactions, activities and operations that the bank may carry out only with the prior permission of the conservator.

(2) In addition to the powers under paragraph 1 the conservator is entitled to:

1. an access to all documents about the meetings of the bodies under Article 107, paragraph 1;

2. attend the meetings and put issues on the agenda;

3. order examinations of issues specified by him to be carried out by the specialized service for internal audit.

**Article 108.** (1) Conservators shall have unrestricted access to and control over the offices, books of accounts and other documentation of the bank, as well as over the bank's property and subsidiaries.

(2) At the request of the conservators, the Public Prosecutor's Office and bodies of the Ministry of Internal Affairs shall be obliged to assist the conservators in exercising their powers under paragraph 1.

(3) Forthwith upon their appointment, the conservators shall ensure protection of the assets of the bank, and may take all the necessary steps aimed at protecting the bank's assets, record, and information, including by:

1. changing the rules for external access to the bank's buildings and offices;

2. changing the passwords to the bank's computers and granting access only to a limited number of employees;

3. issuing to authorized employees new type of entrance passes to the bank's premises and controlling the access of other employees to those premises.

(4) Conservators shall terminate the powers of all persons authorized to make payments or transfers or take any action on behalf and for the account of the bank and shall authorize other persons.

(5) Conservators shall inform correspondent banks, registrars and agents of securities, and persons managing assets for the account of the bank, as well as any relevant third parties regarding the circumstances under paragraph 4.

(6) Within five days after their appointment, the conservators shall send to any branch of the bank, including to its branches in Member States and third countries, and to its subsidiaries a copy of the BNB's act concerning their appointment.

(7) Conservators shall suspend the payment of dividends or other form of capital distribution to shareholders and any payments to administrators, with the exception

of employment remuneration and remuneration for services provided by them to the bank at the conservators' request.

**Article 109.** (1) In case the license of the bank has not been withdrawn conservators are empowered to take decisions on a bank restructuring by a takeover or merger with another bank, subject to approval by the BNB upon submission of a permit by the Commission on Protection of Competition, where its issuance is obligatory. In such cases conservators shall exercise all the powers of the shareholders' general meeting, as provided for in the Law on Commerce in relation to the restructuring.

(2) The Bulgarian National Bank shall give the approval under paragraph 1 only if it decides that the restructuring shall not result in any violation in the acquiring or newly incorporated bank of the requirements to performing banking activities under this Law and the acts on its implementation, and that all liabilities of the bank managed by the conservators shall be assumed in the process of restructuring.

**Article 110.** (1) If the license of a bank has not been withdrawn the conservators, upon approval by the BNB, may take a decision to increase the capital through issuing new shares which shall be offered to the shareholders. Contributions up to the amount of the issued value shall be deposited in whole within the term fixed by the conservators.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) In the cases under paragraph 1, the provision of Article 194, paragraph 3, second sentence of the Law on Commerce shall not apply, and the shareholders' right under Article 194, paragraphs 1 and 2 of the Law on Commerce shall extinguish within 14 days after announcement of the invitation for share subscription in the Trade Register.

(3) Unsubscribed shares and shares for which no contribution payments have been made under paragraph 2 shall be offered by the conservators to other persons.

(4) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) If the license of a bank, which does not meet the requirements under Article 39, paragraphs 2 and 3, has not been withdrawn, the conservators, upon approval by the BNB, may take a decision to increase the capital through issuing new shares, and to revoke the shareholders' rights under Article 194, paragraphs 1 and 2 of the Law on Commerce. In such cases, the new shares shall be offered without applying the procedure under Article 194 of the Law on Commerce. Persons subscribing in the capital increase shall acquire new shares provided that they have obtained BNB's approval, if such is required.

(5) The Bulgarian National Bank shall grant an approval under paragraph 1, where:

1. the bank's shareholders have not, with their activities or their influence to the bank's management, impaired its reliability or security; or

2. in the BNB's opinion, the bank's shareholders do not have available the financial resources to increase the capital up to the amount set by the BNB; or

3. in the BNB's opinion, allowing the shareholders to exercise their rights under Article 194, paragraphs 1 and 2 of the Law on Commerce may prevent the increase of the bank's capital or delay it to a time unacceptable for the bank's rehabilitation.

**Article 111.** (1) The conservators may take actions and measures aimed at the bank's rehabilitation, including coming to an agreement with the bank's creditors on the reduction, rescheduling and novation of their claims.

(2) The conservators may stop the execution of decisions made by the general meeting or by the bank's management bodies.

**Article 112.** (1) A conservator shall exercise his powers with due care. He shall be liable only for damages caused by his premeditated actions.

(2) All employees of the bank shall be obliged to assist a conservator in exercising his powers.

**Article 113.** A conservator shall receive for his work remuneration for the account of the bank as set by the BNB.

**Article 114.** (1) The Bulgarian National Bank may appoint a conservator at a branch of a bank with a seat in a third country, whereas in such cases the provisions of this section shall apply accordingly.

(2) A conservator under paragraph 1 shall only obey the instructions of the BNB.

## Section VIII

### Special Supervision in Case of Risk of Insolvency

**Article 115.** (1) For the purpose of rehabilitating a bank at risk of insolvency, the BNB may place such a bank under special supervision.

(2) There is a risk of insolvency in a bank where:

1. its overall capital adequacy ratio is below the minimum level set; or
2. the bank's liquid assets in BNB's opinion will be insufficient to enable the bank to fulfil its obligations on the day they become due, or
3. the bank has not met in time one or more of its obligations to its creditors when they have become due.

(3) The term of conservatorship may not exceed six months. If prior to the imposition of this measure, conservators have been appointed under Article 103, paragraph 2, item 19, the six-month term shall start from the conservators' appointment date.

**Article 116.** (1) In the cases under Article 115, paragraph 1, the BNB shall place a bank under special supervision by:

1. appointing conservators, if such have not been previously appointed, and determining their powers;
2. setting the term and conditions of special supervision.;

(2) In the cases under paragraph 1, the BNB may:

1. reduce the interest rates on the bank's obligations down to their average market rate;

2. suspend for a set term the full or partial payment of all or some of its obligations;
3. restrict in part or in full the bank's activities;
4. set conditions and additional requirements with regard to the rules for disposition of the bank's property;
5. order forced increase of the capital, including by depriving current shareholders from the right to subscribe in the increase;
6. remove from office the members of the board of directors, of the managing and supervisory boards respectively;
7. temporarily suspend the voting rights of shareholders holding directly or indirectly more than 10 per cent of the voting shares, provided they have impaired the reliability and stability of the bank by their actions or influence on the bank's management;
8. order the forced reduction of the bank's equity capital by the amount of the losses accumulated by the bank.

(3) The registerable circumstances under paragraphs 1 and 2 shall be entered in the Trade Register at the request of the BNB.

**Article 117.** (1) Any forced equity capital reduction shall be enforced if the losses accumulated by the bank cannot be covered by the general purpose reserves, including by the previous years' retained earnings.

(2) In the cases under Article 116, paragraph 2, item 8, simultaneously with the capital reduction, a decision for a capital increase under the provisions of Article 203 of the Law on Commerce shall be made. In such a case, the bank's shareholders shall lose their right to acquire a portion of the new shares corresponding to their shares before the increase of capital under Article 194, paragraphs 1 and 2 of the Law of Commerce.

**Article 118.** (1) In the cases under Article 116, paragraph 2, item 5 or 8, the BNB may order the capital increase to be effected subject to the condition that the new shares are to be acquired by the Bulgarian Deposit Insurance Fund or by financial institutions approved by the BNB.

(2) In the cases under Article 116, paragraph 2, item 8, the new shares shall be acquired at their face value. In the cases under Article 116, paragraph 2, item 5, the new shares shall be acquired at their issued value. The issued value shall be determined by dividing the own funds reported on the bank's balance sheet by the number of shares in the capital, observing the requirement under Article 176, paragraph 2 of the Law on Commerce.

(3) (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) Where the Bulgarian Deposit Insurance Fund subscribes in a bank's capital increase under paragraph 1, no approval by the BNB under Article 28 shall be required.

(4) Where the BNB has ordered an increase, or a decrease and increase of a bank's capital, a conservator shall exercise the general meeting's powers, and shall

set the conditions, procedure and timeframes for subscription and payment of shares. In such cases the capital increase and decrease procedure, as provided for in bank's articles of association, shall not apply.

(5) In the cases under Article 116, paragraph 2, item 7, the amount of shares held by a shareholder divested of voting rights shall not be taken into account when calculating the necessary quorum for conducting a shareholders' general meeting and for decision-making by this meeting.

**Article 119.** (1) (amended; Darjaven Vestnik, issue 105 of 2011) Actions and transactions carried out by a bank in violation of Article 116, paragraph 2, items 1–4 after the announcement of the BNB's decision in the Trade Register shall be void.

(2) In the cases under Article 116, paragraph 2, item 2, the executory proceedings, including executory proceedings under the Law on Registered Pledges against a bank's property shall be suspended.

(3) In the cases under Article 116, paragraph 2, item 2, the following shall be permitted:

1. meeting obligations under payment orders accepted for settlement by a bank prior to placing it under special supervision.

2. execution of payment orders resulting from exercising of rights, or meeting of obligations under financial collateral arrangements if the orders were issued before or on the date the bank was placed under special supervision, or if the counterparty to the collateral arrangement provides evidence that it has not known about the placement of the bank under special supervision.

3. effecting netting operations through a payment system.

4. execution of monetary obligations relating to the bank's operational expenses or occurring after the special supervision date as a result of legal transactions and actions carried out by the conservators and necessary for the bank's rehabilitation.

(4) In the cases under Article 116, paragraph 2, item 2 and for the period during which the BNB has exercised this power, the bank shall not be considered to have been in delay with regard to the execution of monetary obligations that have been suspended.

(5) In the cases under Article 116, paragraph 2, item 2, the bank shall not be held financially liable for failure to execute obligations the execution of which was suspended by special supervision. During the term of special supervision no penalty rates for delay or damages shall accrue with regard to the bank's monetary obligations, whose execution was suspended, and any contractually agreed interest on such obligations shall accrue but shall be paid after special supervision is lifted.

**Article 120.** (1) The conservators in case of special supervision shall have the powers under Section VII and this section, unless otherwise provided for in the BNB's act on their appointment.

(2) The conservators in case of special supervision may:

1. stop the execution of decisions made by the general shareholders' meeting or the management bodies of a bank;

2. terminate without prior notice contracts concluded prior to imposing special supervision, with the bank owing indemnification if these contracts are unfavourable for the bank and their provisions deviate from current market conditions.

**Article 121.** Within one month after their appointment, the conservators in case of special supervision shall present to the BNB an accounting report and a report on the current condition of the bank. They may also suggest measures to be taken pursuant to Article 103, paragraph 2.

## *Chapter Twelve*

### **Liquidation, Sale of an Enterprise and Closing a Branch**

#### Section I

#### **Voluntary Liquidation**

**Article 122.** (1) A decision for voluntary liquidation of a bank may be made by the shareholders' general meeting after BNB's prior permission.

(2) In addition to the request for a permission under paragraph 1, the bank shall submit to the BNB a liquidation plan approved by the bank's management body.

(3) The Bulgarian National Bank shall grant such permission if it has ascertained that the bank is solvent and is able to meet without delay its obligations to creditors.

(4) With the issuance of the permission by the BNB the bank's license is considered no longer effective. The BNB shall take the necessary steps to notify the general public about this act of making the license no longer effective.

(5) The Bulgarian National Bank may refuse to grant permission for voluntary liquidation if:

1. it has concluded that the bank will not be able to meet without delay or settle otherwise its obligations to creditors;

2. it has concluded that the proposed liquidation plan is not in the interest of the bank's creditors;

3. the documents submitted by the bank contain incomplete, contradictory or insufficient information;

4. any additionally requested documents, necessary to assess if the conditions for issuance of a permission or for refusal thereof are present, have not been provided within the set time limit.

(6) The terms and conditions and the procedure for issuance of permission for voluntary liquidation shall be provided for in an ordinance issued by the BNB.

**Article 123.** Expenses incurred in relation to liquidation shall be:

1. the liquidators' remuneration;

2. the employment remuneration, social security contributions and other sums due under employment contracts with the employees of a bank in liquidation proceedings;

3. the remuneration of the experts, consultants and authorized representatives hired by the liquidator in relation to exercising his powers;

4. any other expenses under contracts signed and activities necessitated by the liquidation proceedings.

**Article 124.** (1) The receivables due to the bank's depositors shall be deemed claimed before the liquidator.

(2) The liquidator shall make a list of claimed receivables of the bank's creditors, which shall be made available to them in the bank's premises.

(3) The liquidator shall distribute the funds accumulated in the process of a bank's liquidation proceedings under the procedure set forth in Article 94, paragraph 1, items 1–8 of the Bank Bankruptcy Law.

(4) The creditors with claims related to expenses necessitated by the liquidation proceedings shall be paid when the payment falls due, and if not paid on the maturity date, they shall be satisfied under the provisions of Article 123, item 4.

**Article 125.** (1) Should the liquidator find out in the process of voluntary liquidation that the bank is insolvent within the meaning of Article 36, paragraph 2, he shall propose to the BNB to file a petition for instituting bankruptcy proceedings with the court. The liquidator shall enclose to its proposition a report and documents certifying the bank's financial position.

(2) The Bulgarian National Bank shall conduct an inspection with regard to the proposition under paragraph 1.

(3) Provided the proposition under paragraph 1 is justified, the BNB Governor, on the grounds of a report by the Deputy Governor heading Banking Supervision Department, shall issue an order establishing that the bank is insolvent, and shall petition the court for initiating bankruptcy proceedings.

(4) The court shall consider the BNB's petition under the conditions and procedure provided for in the Bank Bankruptcy Law.

## Section II

### Forced Liquidation

**Article 126.** Liquidators shall be appointed by the Bulgarian Deposit Insurance Fund in any bank whose banking license has been withdrawn pursuant to Article 36, paragraph 1;

**Article 127.** (1) A liquidator in bank liquidation proceedings may only be a natural person.

(2) The provisions of Article 25, paragraphs 1 and 2 of the Bank Bankruptcy Law shall apply to a liquidator of a bank respectively.

(3) The powers of a bank liquidator shall be exercised by no less than two persons.

(4) The Bulgarian National Bank shall be entitled to make inspections at any time to check if the requirements under paragraph 2 are met. If the BNB finds out that the

liquidator does not meet these requirements, it may petition the Bulgarian Deposit Insurance Fund for his release from office.

(5) If the requirements under this article have been met, the conservators of the bank may be appointed as liquidators.

(6) The provisions of Article 34 of the Bank Bankruptcy Law shall apply to a liquidator of a bank, respectively.

**Article 128.** (1) A liquidator shall submit to the BNB and the Bulgarian Deposit Insurance Fund reports of a type and with content and deadlines set by the BNB Deputy Governor heading the Banking Supervision Department.

(2) A liquidator shall deposit the funds received through realizing the bank's property or collection of the bank's claims into special accounts in levs, respectively foreign currencies.

**Article 129.** The provisions of Articles 123 and 124 shall also apply to forced liquidation proceedings.

**Article 130.** (1) Should the Bulgarian Deposit Insurance Fund or the liquidator find out in the process of forced liquidation of a bank that the bank is insolvent within the meaning of Article 36, paragraph 2, item 2, or that the bank has not met for more than 60 days any of its obligations that have become due, he shall propose to the BNB to file a petition for instituting a bankruptcy proceedings with the court. The Bulgarian Deposit Insurance Fund or the liquidator shall enclose to its proposition a report and documents certifying the bank's financial position.

(2) The Bulgarian National Bank shall conduct an inspection with regard to the proposition under paragraph 1.

(3) Provided the proposition under paragraph 1 is justified, the BNB Governor on the grounds of a report by the Deputy Governor heading the Banking Supervision Department, shall issue an order establishing that the bank is insolvent, and shall petition the court for the initiation of bankruptcy proceedings.

(4) The court shall consider the BNB's petition under the terms and conditions and the procedure set forth in the Bank Bankruptcy Law.

### Section III

#### **Sale of a Bank Enterprise**

**Article 131.** (1) A bank enterprise may be sold only to another bank subject to the prior permission of the BNB for the enterprise sale transaction.

(2) Simultaneously with the enforcement of the contract for the sale of a bank enterprise, voluntary liquidation proceedings are initiated for this bank.

(3) Prior to concluding the transaction for the sale of a bank enterprise, the bank shall file a request with the BNB for prior approval of the transaction and for the permission under Article 122, paragraph 1.

(4) The market valuation of the bank enterprise, a draft sale contract and other documents, as provided for in an ordinance issued by BNB shall be enclosed to the request under paragraph 3.

(5) (amended; Darjaven Vestnik, issue 105 of 2011) In case of a sale of a bank enterprise, the creditors of the purchasing bank and of the selling bank shall be notified by a notice announced in the Trade Register and published in at least two central daily newspapers. In such cases, Article 15, paragraph 1, second sentence of the Law on Commerce shall not apply.

(6) The Bulgarian National Bank may not approve the sale of the bank enterprise and may refuse to issue a permission for voluntary liquidation, if:

1. it has concluded that the purchasing bank will not be able to meet in due time or settle otherwise its obligations to creditors, including to the selling bank's creditors;

2. it has concluded that the interest of the seller's and the purchaser's creditors will not be sufficiently protected in the event of a sale;

3. it has concluded that the sale will result in violation on the part of the purchasing bank of the requirements for conducting bank operations pursuant to this Law and the acts on its implementation;

4. the documents submitted by the bank contain incomplete, contradictory or insufficient information; or

5. any additionally requested documents necessary to assess if the conditions for issuance of a permission or for refusal thereof are present, have not been provided within the set time limit.

(7) The liquidator of a bank the enterprise of which was sold, shall distribute among the bank's shareholders the price received for the sold bank after the expiry of the term under Article 16a, paragraph 1 of the Law on Commerce.

(8) A bank under liquidation proceedings may be sold as an enterprise or taken over by another bank only with the permission of the BNB. The Bulgarian National Bank shall give this permission only if the bank's liabilities are assumed by the acquiring or taking over bank, and if it considers that the circumstances under paragraph 6 or Article 109, paragraph 2 are present.

## Section IV

### Closing a Bank Branch

**Article 132.** (1) Where a bank licensed in the Republic of Bulgaria decides to close a branch abroad, it shall immediately notify the BNB enclosing a plan detailing the manner of settlement of obligations arisen in relation to the activity of the branch.

(2) The Bulgarian National Bank shall ascertain if the plan proposed sufficiently protects the interest of the bank's creditors abroad, and if it ensures the settlement of relations with them within an appropriate timeframe. The Bulgarian National Bank may make objections against the plan within 30 days from its submission, and give instructions to the bank accordingly.

(3) The bank has the right to proceed with the implementation of the plan after it has been approved by the BNB.

(4) The branch may not be closed before all the relations between the bank and its creditors in the respective country have been settled.

(5) Prior to applying for the deregistration of the branch from the respective public register, the persons representing the bank shall file with the BNB a declaration in writing that all relations between the bank and its creditors in the respective country arisen in relation to the activity of the branch have been settled.

(6) The provisions of paragraphs 1–5 shall also apply where a third country bank licensed to conduct activity through a branch on the territory of the Republic of Bulgaria decides to close its branch in the Republic of Bulgaria.

### *Chapter Thirteen*

## **Reorganization Measures and Winding-up Procedures**

### Section I

#### **General Provisions**

**Article 133.** (1) Reorganization measures shall be measures against a domestic or foreign bank taken by the BNB or the competent authorities of another Member State, as well as by the courts thereof, against a bank including its branches in a Member State with the purpose of protecting or restoring its financial stability. These measures may affect third parties' pre-existing rights, including measures related to suspension of payments, stop of executory proceedings or reduction of the amount of claims against the bank, and other similar measures.

(2) Winding-up procedures shall be liquidation or bankruptcy procedures against a bank licensed in the Republic of Bulgaria or in another Member State, including against its branches abroad, or a forced winding-up of a branch of a Bulgarian bank in a Member State, or in a third country, a branch of a bank established in a Member State, as well as any other similar procedure relating to terminating the activity and collective proceedings for the liquidation and distribution of a bank's assets, instituted and controlled by the respective administrative or judicial authorities of a Member State, including where proceedings end up with a composition, or in another similar way.

(3) Within the meaning of this Chapter, the shareholders and administrators of a bank shall not be deemed third parties.

### Section II

#### **Reorganization Measures**

**Article 134.** (1) The Bulgarian National Bank shall be the competent authority for imposing reorganization measures against a bank licensed in the Republic of Bulgaria, including against its branches within the territory of Member States. The conditions and the procedure of implementation and appeal against any such

measures, as well as any legal consequences thereof, shall be provided for by the Bulgarian law, unless otherwise provided for in this chapter.

(2) When imposing reorganization measures against a bank with branches in other Member States, the BNB shall notify in a timely manner the competent authorities of these Member States prior to imposing the measures, and where this is impossible, with a view to protecting the interest of the bank's creditors – simultaneously with their implementation. The BNB shall specify in the notification any legal and other consequences of the measure's implementation.

(3) Within two business days from their issuance, the BNB acts imposing reorganization measures shall be published in at least two national daily newspapers in the Republic of Bulgaria.

(4) The BNB acts on the implementation of reorganization measures, including acts on the implementation of reorganization measures against a branch of a third-country bank, shall be published in summary in the Official Journal of the European Union, and in two national papers in each Member State where the respective bank has a branch. The summary of the act shall be published in Bulgarian and in the languages of the Member States in which the respective bank conducts activity.

(5) The summary of the act under paragraph 4 shall contain a description of the legal and actual grounds for the issuance of the act, the name and address of the court before which the act may be appealed against, and the time limit for lodging an appeal.

**Article 135.** (1) Prior to implementing reorganization measures against a branch of a bank with a seat in a third country, which has also branches on the territory of one or more Member States, the BNB shall notify the competent authorities of these Member States about its intention to implement reorganization measures against such a branch, and about their legal and other consequences. Where such prior notification of competent supervisory authorities is not possible, the BNB shall notify them immediately after the implementation of the measures.

(2) Where the BNB deems necessary to implement reorganization measures against a bank from a Member State within the territory of the Republic of Bulgaria, the BNB shall notify the competent authorities of the home Member State.

**Article 136.** (1) Reorganization measures implemented by a competent authority of a Member State against a bank licensed in this Member State shall be recognized directly and without any formalities in the Republic of Bulgaria, and from the moment they are subject to enforcement, they will take direct effect against any branch of a bank conducting activity in the Republic of Bulgaria, as well as against third parties in the Republic of Bulgaria. The legal consequences of reorganization measures shall be provided for in the law of the respective Member State, unless otherwise provided for in this Law.

(2) Persons administering within the territory of the Republic of Bulgaria reorganization measures implemented by a competent authority of a Member State shall enjoy the same status and powers as they have pursuant to the legislation of this

Member State. However, these persons shall apply the Bulgarian law in the realization of the bank's assets within the territory of the Republic of Bulgaria and in the settlement of employment relations arising within the territory of the Republic of Bulgaria.

(3) Reorganization measures imposed by a competent authority of a Member State against a branch of a foreign bank licensed in a third country shall be recognized directly and without any formalities in the Republic of Bulgaria, and from the moment they are subject to enforcement, they shall take effect against third parties in the Republic of Bulgaria.

### Section III

#### **Winding-up Procedures of a Bank**

**Article 137.** (1) The Bulgarian court or administrative authorities shall be competent to rule on the initiation of liquidation procedures or opening of bankruptcy proceedings against a bank licensed in the Republic of Bulgaria. The ruling of these authorities shall have effect against the bank's branches in other Member States.

(2) Unless otherwise provided for in this Law, the Bulgarian law shall apply with regard to the liquidation proceedings and bankruptcy proceedings against a bank licensed in the Republic of Bulgaria, including with regard to:

1. goods which fall within the scope of the proceedings and the legal regime governing goods, acquired by the bank after opening the proceedings;
2. the rights of the bank and the powers of its liquidator or receiver;
3. the conditions under which set-offs may be invoked;
4. the consequences of opening the proceedings for the current contracts the bank is a party to;
5. the effect of the proceedings on the lawsuits brought by individual creditors against the bank;
6. the claims lodged against the bank and the legal regime they are subject to if arising after the opening of the proceedings;
7. the procedure and requirements for lodging and accepting the claims against the bank;
8. the rules governing the distribution of proceeds from liquidated assets, ranking of creditors' claims against the bank, and the rights of creditors who have been partially satisfied after the opening of the bankruptcy proceedings by virtue of a right in re or through a set-off;
9. the conditions for closure of bankruptcy proceedings and the consequences thereof;
10. creditors' rights after the closure of proceedings;
11. the regime governing the costs of proceedings;
12. the conditions and procedure for declaring the legal acts detrimental to creditors' interest void, voidable, or unenforceable.

**Article 138.** (1) The Bulgarian National Bank shall notify in a timely manner the competent authority of the respective Member States in which the bank under Article 137, paragraph 1 conducts activity through a branch, that the initiation of forced liquidation or opening of bankruptcy proceedings has been petitioned for, or that a permission for voluntary liquidation of this bank has been granted respectively.

(2) The Bulgarian National Bank shall notify the competent authority under paragraph 1 about the ruling on the initiation of liquidation or opening of bankruptcy proceedings, and shall inform it about the legal and other consequences thereof.

(3) The notification procedure under paragraphs 1 and 2 shall also apply to cases of winding up of a branch in the Republic of Bulgaria of a bank with a seat in a third country, when the same bank has a branch in another Member State. In such cases, the BNB and the competent authority shall coordinate their activities within the proceedings with the respective competent administrative and judicial authorities in other host Member States.

**Article 139.** (1) The ruling of the competent judicial or administrative authority on the liquidation, opening of a winding-up procedure of a bank licensed in a Member State, which conducts business on the territory of the Republic of Bulgaria, shall be recognized directly and without any further formalities in the Republic of Bulgaria and shall take effect in this country from the moment the ruling has come into effect and has taken effect within the territory of the respective Member State, where the proceedings were opened.

(2) The ruling under paragraph 1 shall be subject to registration in the location of the seat of the branch in the Republic of Bulgaria. The registration of the ruling shall have an effect of notification.

(3) Under a winding-up procedure of a bank under paragraph 1, the law of the Member State in which the bank is licensed shall apply, unless it is otherwise provided under this Law.

**Article 140.** (1) A liquidator or receiver of a bank licensed in the Republic of Bulgaria having branches in other Member States shall publish in the Bulgarian language an extract of the court ruling on the initiation of liquidation, opening of bankruptcy proceedings against the bank in the Official Journal of the European Union and at least in two national newspapers in each Member State the bank has branches in.

(2) The liquidator or receiver of a bank under paragraph 1 shall be obligated to notify and invite in writing the bank's creditors from other Member States, whose address is known, to lodge their claims, except for the creditors whose claims are not subject to lodging as they are deemed accepted *ex officio* by the receiver or liquidator.

(3) The invitation to the creditors under paragraph 2 shall mandatorily contain information in Bulgarian about:

1. the initiation of liquidation or opening of bankruptcy proceedings against a bank under paragraph 1;

2. the time limits for lodging claims;
3. any requirement for enclosing evidence;
4. the authority with which the claims or observations regarding claims should be filed and the requirements for lodging claims;
5. the consequences of not lodging claims in time, or not lodging them at all, including any consequences of the termination of liquidation or bankruptcy proceedings against a bank in the Member State where it is licensed.

(4) The invitation under paragraph 2 shall inform if creditors with preferential claims, or claims secured in re, should lodge them in view of their acceptance, and any other material circumstances relating to claims.

(5) The invitation sent to creditors under paragraph 2 shall be headed *Invitation to lodge a claim: time limits to be observed* written in all official languages of the European Union. When lodging of observations is required in relation to the claims, the invitations shall be headed *Invitation to submit an observation relating to a claim: time limits to be observed* written in all official languages of the European Union.

(6) Any creditor under paragraph 2, including a creditor which is a public body, shall be entitled to lodge its claims, or to submit observations in relation to them in the official language or in one of the official languages of the respective Member State. In such a case the claim is lodged under the heading *Lodging a claim* in the Bulgarian language.

(7) The liquidator or receiver shall be authorized to require a translated version in Bulgarian of the documents under paragraph 6.

(8) Unless otherwise provided for by law, each creditor under paragraph 2 shall send copies of the documents certifying his claim, if any, and shall specify the nature of claim, date on which it arose, and its amount, and whether he alleges any preference, security in re, or reservation of title, and also what assets are covered by the security.

(9) The claims of all creditors of a bank with a seat in the Republic of Bulgaria, which is under a liquidation or for which bankruptcy proceedings are opened, shall be treated equally, and shall be accorded the same ranking for payment based on the same criteria, regardless whether they have been incurred within the territory of the Republic of Bulgaria or of other Member States.

(10) The liquidator and receiver shall regularly and suitably notify the creditors of a bank under paragraph 1, which is under liquidation or for which bankruptcy proceedings are opened, regarding the progress of the proceedings.

## Section IV

### **Common Provisions Governing Reorganization Measures or Winding-up Procedures**

**Article 141.** (1) In the event of implementation of reorganization measures or opening of winding-up procedures against a bank, the legal consequences shall be provided for, as follows:

1. employment contracts and the relations in connection thereto – by the law of the Member State applicable to the respective employment contract.

2. the contracts conferring a right to make use of or acquire immovable property – by the law of the Member State in which the property is located, with the said law also providing for what property is movable and what immovable.

3. the bank’s rights in respect of immovable property, ship, or aircraft, which rights are subject to registration in a public register – by the law of the Member State in which the register is kept.

**Article 142.** (1) The implementation of reorganization measures or the opening of winding-up procedures against a bank shall not affect the rights in re of creditors or third parties in respect of tangible or intangible assets of, including movable and immovable ones, individually or generically defined property or property pools belonging to the bank but situated in another Member State during the implementation of these measures or the opening of a winding-up procedure against the bank.

(2) The rights under paragraph 1 shall include:

1. the right to request the liquidation or to liquidate assets and to satisfy oneself against the proceeds of liquidation, including where the assets have been pledged as collateral or mortgaged;

2. the right of preferential satisfaction of a claim by virtue of a lien in respect of a claim or assignment of a claim by way of a security;

3. the right of a person having rights over a property to demand the return or restitution thereof by anyone having possession or use of it without any legal ground;

4. the usufruct right over the assets pledged as collateral.

(3) A right entered in a public register and enforceable against third parties, by virtue of which a right under paragraph 1 can be acquired, shall be deemed a right under paragraph 1.

(4) The provision of paragraph 1 shall not preclude the possibility to petition the court to declare by a court order specific legal acts as void, or voidable, or unenforceable pursuant to Article 137, paragraph 2, item 12.

**Article 143.** (1) The implementation of reorganization measures or opening of a winding-up procedure against a bank purchasing property do not affect the seller’s rights over this property under a contract for the sale with reservation of title until the full payment of the price, where at the time of implementation of these measures or the opening of a winding-up procedure against the bank, the property was situated within the territory of another Member State.

(2) The implementation of reorganization measures or initiation of a winding-up procedure against a bank which sells property under a contract under paragraph 1 shall not constitute grounds for rescinding or termination of the contract if the property was delivered, neither is it an obstacle to the acquisition of title over the property by the purchaser where during the implementation of these measures or the opening of a winding-up procedure against the bank, the property subject of sale was situated within the territory of a another Member State.

(3) The provisions of paragraphs 1 and 2 do not preclude the possibility for petitioning the court to declare by a court order specific legal acts as void, or voidable, or unenforceable pursuant to Article 137, paragraph 2, item 12.

**Article 144.** (1) The implementation of reorganization measures or the opening of a winding-up procedure against a bank does not affect the creditors' right to set off their claims against the bank's claims to them, when the conditions for doing this of the law applicable to the bank's claim are present.

(2) The provision of paragraph 1 shall not preclude the possibility to petition for specific legal acts to be declared by the court void, voidable, or unenforceable under Article 137, paragraph 2, item 12.

**Article 145.** Where reorganization measures are implemented or a winding-up procedure is opened against a bank, the applicable law shall be:

1. for the title or any other rights over financial or other instruments, the existence or transfer of these rights requires their entry in a register, posting to an account, or registration with a centralized depository institution located or maintained in a Member State – the law of the Member State where the respective register, account or centralized depository institution is maintained or located;

2. for the netting agreements – the law applicable to the contract containing the netting provision;

3. for the repurchase agreements – the law applicable to the repurchase contract, provided it does not contravene the provisions of item 1;

4. for the transactions effected in a regulated market – the law applicable to the contract governing these transactions, provided it does not contravene the provisions of item 1;

5. for any pending lawsuit with regards to assets or rights the bank was divested of – the law of the Member State where the respective lawsuit is conducted.

**Article 146.** (1) The persons administering the reorganization measures, the liquidator, receiver, or any other competent judicial or administrative authority of a home Member State, shall take all necessary steps for the entry of the reorganization measures or the initiation of a winding-up procedure against a bank in the respective trade, property, or other public register within the territory of the Republic of Bulgaria in the cases where this registration is mandatory under Bulgarian law.

(2) The costs of registration under paragraph 1 shall be part of the costs on reorganization measures or on the winding-up procedure against the bank.

**Article 147.** (1) The provisions of Article 137, paragraph 2 shall not apply to the rules for declaring as void, voidable or unenforceable specific legal acts injuring all creditors, where the person invoking the act provides evidence that the law of another Member State applies to the act detrimental to all creditors, and this law does not allow for any contestation of the act in question in the particular case.

(2) Where a reorganization measure ruled by a judicial authority contains any rules of voidness, voidability or unenforceability of specific legal acts detrimental to all creditors, which acts have been implemented before the implementation of the

measure itself, the rule under Article 134, paragraph 1, second sentence shall not apply to the cases under paragraph 1.

**Article 148.** The validity of an act concluded after the implementation of the reorganization measure or after the initiation of a winding-up procedure against a bank, by virtue of which the bank disposes for consideration of an immovable property, ship or aircraft subject to registration in a public register, or financial or other instruments or rights in such instruments, the existence or transfer of which requires their entry in a register, account or with a centralized depositary institution, which is located or maintained in a Member State, shall be determined under the law of the Member State where this property is located, or the register, account or depositary is maintained.

**Article 149.** All persons providing or receiving information in relation to the notification or consultative procedures under this chapter shall be obliged to keep banking and professional secrecy.

**Article 150.** (1) The decision of the competent authority in a Member State with regard to the appointment of a person administering the reorganization measures or winding-up procedures against a bank licensed in this Member State shall have effect within the territory of the Republic of Bulgaria. Persons appointed as administrators or liquidators of a bank licensed in a Member State shall prove their appointment by providing a verified copy of the act for their appointment accompanied by a translation in the Bulgarian language, which need not be legalized.

(2) Persons appointed under paragraph 1, as well as the persons authorized by them, shall also have the right to exercise their powers ensuing from the law in the Member State with regard to a branch of the bank located within the territory of the Republic of Bulgaria, except otherwise provided for in this law. They shall assist the creditors of the respective bank in the Republic of Bulgaria in relation to exercising their rights.

(3) When the persons appointed under paragraph 1 exercise their powers within the territory of the Republic of Bulgaria, they shall be obliged to comply with the Bulgarian legislation, including with the procedures for realization of assets and providing information to employees. When exercising their powers, they may not use force or rule on legal disputes.

## *Chapter Fourteen*

### **Issuance of and Appeal against Administrative Acts**

**Article 151.** (1) Individual administrative acts under Articles 14–17, 36, 38, 103, paragraph 2, items 20 and 21 and paragraph 8, shall be issued by the BNB Governing Council on a motion by the Governor and the Deputy Governor heading the Banking Supervision Department, and in all other cases by the said Deputy Governor or an official authorized by him.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) The administrative acts under paragraph 1 shall be reasoned and come immediately into effect, and registration procedures in the Trade Register in connection with these acts shall not be subject to suspension.

(3) The administrative acts under paragraph 1 may be challenged before the Supreme Administrative Court with regard to their legality. The Court may not suspend the execution of the act until it comes up with an ultimate ruling on the appeal.

(4) In the court proceedings under paragraph 3, if needed, the court shall appoint experts to provide to the court accounting or economic expert appraisals out of a list of experts approved by the chairman of the Supreme Administrative Court. The experts shall have high qualification and experience in banking. The conditions and procedure for inclusion in or taking off the list shall be provided for in an ordinance issued jointly by the BNB and the Minister of Justice.

(5) The cases where the BNB has not come up with a decision on an application for a license within six months after the application was filed together with all required documents and information, shall be treated as tacit refusal, which may be appealed against following the procedure under paragraph 3. Cases where the BNB has not come up with a decision on an application for a license within twelve months after the same was filed shall also be construed as a tacit refusal.

(6) The cases where the BNB has not come up with a decision on an application for a permit within three months after the application was filed together with all required documents and information, shall be treated as tacit refusal, which may be appealed against following the procedure under paragraph 3.

(7) The individual administrative acts under this Law shall be notified to their addressees by serving them against a signature or by a registered letter with advice of delivery. Serving by registered letter with advice of delivery shall be to the person's permanent address if it is a natural person or to its seat and registered address if it is a legal person.

(8) When the administrative act is not served in one of the methods laid down in paragraph 7, the act shall be deemed served after it has been put at a specially assigned location on the BNB premises. The latter circumstance shall be certified in a statement drawn up by officials designated by an order of the Deputy Governor heading the Banking Supervision Department.

## *Chapter Fifteen*

### **Administrative Penalty Provisions**

**Article 152.** (1) Whoever commits or permits the commitment of a violation under this Law or the regulatory acts governing its enforcement, provided the act does not constitute a crime shall be sanctioned by a fine from BGN 1000 to BGN 4000 and in case of repeated violation – from BGN 3000 to BGN 12,000.

(2) (amended; Darjaven Vestnik, issue 105 of 2011) If the violator under paragraph 1 is a bank, it shall be sanctioned by a financial penalty from BGN 50,000 to BGN 200,000, and in case of repeated violation – from BGN 200,000 to BGN 500,000.

(3) (amended; Darjaven Vestnik, issue 105 of 2011) If the violator under paragraph 1 is a legal person other than bank, it shall be sanctioned by a financial penalty from BGN 5000 to BGN 20,000, and in case of repeated violation – from BGN 20,000 to BGN 50,000.

(4) (repealed; Darjaven Vestnik, issue 105 of 2011)

**Article 152a.** (new; Darjaven Vestnik, issue 105 of 2011) (1) Whoever communicates false information or circumstances of a bank which may be detrimental to its reputation and credibility shall be sanctioned by a fine from BGN 2000 to BGN 5000, and in case of repeated violation – from BGN 3000 to BGN 10,000.

(2) Where the violation under paragraph 1 was perpetrated through the mass media, the fine shall be from BGN 5000 to BGN 10,000, and in case of repeated violation – from BGN 8000 to BGN 20,000.

(3) If the violator under paragraph 1 or 2 is a legal person, it shall be sanctioned by a financial penalty as follows:

1. in case of paragraph 1 – from BGN 10,000 to BGN 30,000, and in case of repeated violation from BGN 30,000 to BGN 50,000;

2. in case of paragraph 2 – from BGN 20,000 to BGN 50,000, and in case of repeated violation from BGN 50,000 to BGN 150,000.

**Article 153.** (1) (amended; Darjaven Vestnik, issue 105 of 2011) Statements of the violations found under Articles 152 and 152a shall be drawn up by officials authorized by the Deputy Governor heading the Banking Supervision Department.

(2) Penalty enactments shall be issued by the Deputy Governor heading the Banking Supervision Department, or by an official authorized by him.

(3) Drawing up of the statements, issuance, appeal and execution of penal decrees shall be made pursuant to the Administrative Violations and Penalties Law.

## Additional Provisions

§ 1. (1) Within the meaning of this law:

1. ‘Administrator’ shall be:

a) a member of a supervisory or management board (board of directors) of a bank;

b) a procurator of a bank and any person, whose position according to a bank’s internal structure includes management and control of structural units directly related to the implementation of the principal subject of activity of the bank;

c) the management of the specialized internal control office.

2. ‘Deposit’ shall be any amount received with the commitment to be repaid, except if granted as:

a) a credit from a bank;

b) earnest money or regretful money providing for the execution of a commercial or other transaction;

c) an advance payment under a contract for a sale or provision of a service, or another activity, which is subject to repayment in case of default on the contract;

d) for other purposes in cases as specified by the BNB.

3. 'Publicly accepted deposits or other repayable funds' shall be the acceptance of deposits or other repayable funds of more than 30 persons other than banks or other institutional investors. Bonds or other debt securities issued in a manner other than the procedure under the Law on Public Offering of Securities are considered as publicly accepted deposits or other repayable funds, where:

a) the issues of bonds or other debt securities that are acquired at their primary offering by more than 30 persons in total other than banks or other institutional investors;

b) this is one of the principal activities of the issuer and;

c) the issuer provides loans or other financial services as a line of business.

4. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) 'Connected persons' shall be:

a) spouses, lineal relatives up to any degree and collateral relatives up to the fourth degree of consanguinity and relatives by marriage up to the third degree of affinity inclusive;

b) partners;

c) persons where one of them participates in the management of the other person's undertaking or subsidiary;

d) persons where one and the same legal or natural person is a member of their management or controlling body, including the case where the natural person is a legal person;

e) an undertaking and a person who holds more than 10 per cent of an undertaking's stakes or voting shares;

f) persons where one of them controls the other person;

g) persons whose activity is controlled by a third person or its subsidiary;

h) persons who jointly control a third person or its subsidiary;

i) persons where one of them is the other person's commercial representative;

4a. (new; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) 'Persons acting in concert' shall be two or more persons about whom, based on the relations between them or between each of them and a third party according to their market behaviour or the transactions concluded between them, a well-grounded conclusion may be drawn that they exercise or will exercise the rights on the shares held by them in the bank in compliance with the explicit or silent agreement with another shareholder. Such are the connected persons as well.

5. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009; amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) 'Economically related persons' shall be two or more persons who are to be regarded

as constituting a single risk because they are so interrelated that, if one of them were to experience financial problems, in particular in funding or repayment of obligations, the other or all other would also be likely to encounter funding or repayment difficulties. Such are two or more persons related in one or several of the following ways:

a) spouses and lineal and collateral relatives twice removed;

b) (repealed; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010);

c) the persons under item 4, letters 'c – h'.

6. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) 'Qualifying holding' shall exist where one person holds directly or indirectly 10 per cent or more of the capital or voting rights in the general meeting of shareholders of an undertaking, or where the shares in the capital or the voting rights in the general meeting of shareholders held enable this person to exercise substantial influence over the management of the undertaking.

6a. In specifying the qualifying holding the following is taken into consideration:

a) the voting rights, held by a third person with whom the person has concluded an agreement about following a long-term common policy of managing the company by exercising jointly the voting rights held by them;

b) the voting rights held by a third party with whom the person has concluded an agreement about the temporary transfer of these rights;

c) the voting rights over shares provided as collateral to the person if he is able to control the voting rights over them and has explicitly declared his intent to exercise them;

d) the voting rights over shares provided for use to the person;

e) the voting rights that are held or may be exercised under item 6a, letters a – d by the undertaking over which the person has control;

f) the voting rights over shares deposited with the person which he may exercise at its discretion without special instructions on the part of shareholders;

g) the voting rights held by third persons on their behalf but for the account of the person;

h) the voting rights the persons may exercise as an agent in the cases where he may exercise them at his discretion without special instructions on the part of the shareholders;

6b. In specifying the qualifying holding the following is not taken into consideration:

a) the shares acquired solely with a view to executing clearing and settlement operations within the ordinary settlement cycle which may not be longer than three business days since the transaction has been effected as well as when the shares are held by custodians as such and provided they may exercise the voting rights related to shares only at the shareholders' instruction issued in writing or electronically;

b) shares held by a market maker in his capacity as such, provided he has been granted a license of an investment intermediary, does not participate in the management of the undertaking or has any influence on the undertaking for buying shares or maintaining their prices;

c) the voting rights or shares that may be owned by investment intermediaries or credit institutions as a result of buying an issue of financial instruments and/or selling financial instruments on the basis of a firm commitment under Article 5, paragraph 2, item 6 of the Law on Markets in Financial Instruments provided these rights are not exercised or used in any other way for interfering in the management of the issuer and in so far as they shall be transferred within a year following their acquisition.

6c. In specifying the qualifying holding regarding the voting rights of the managing undertaking's parent undertaking, the voting rights of the managing undertaking related to shares in an individual portfolio, managed by it under Article 202, paragraph 2, item 1 of the Law on Public Offering of Securities, provided the managing undertaking exercises its voting rights independently from the parent undertaking, are excluded. This shall not apply to the cases where the parent undertaking or another undertaking, controlled by the parent undertaking, has invested in voting shares managed by the managing undertaking which is not entitled to exercise them at his discretion, but only in compliance with direct or indirect instructions on the part of the parent undertaking or of another undertaking controlled by the parent undertaking.

6d. In specifying the qualifying holding regarding the voting rights of the investment intermediary's parent undertaking that has been granted a license for conducting bank operations under Article 3 of Directive 93/22/EEC of the Council of 10 May 1993 on investment in the securities field, the voting rights of an investment intermediary related to shares in an individual portfolio managed by him according to § 1, item 7 of the Additional Provisions of the Law on Markets in Financial Instruments are excluded, provided the investment intermediary:

a) is authorized to manage an individual portfolio under Article 4, paragraph 2, item 4 of the Law on Markets in Financial Instruments;

b) may manage, through adopting adequate measures, the voting rights related to shares only at an instruction given in writing or electronically or guarantee that individual portfolios are managed independently from other services and under terms that are equivalent to the terms of Directive 85/611/EEC of the Council of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

c) exercises its voting rights independently from the parent undertaking.

6e. Item 6d is not applicable to cases where the parent undertaking or another undertaking controlled by the parent undertaking has invested in voting shares included in an individual portfolio, managed by the investment intermediary that has no right to exercise them at its discretion but only in compliance with direct or indirect in-

structions on the part of the parent undertaking or another undertaking controlled by the parent undertaking.

7. 'Control' shall mean a relationship whereby a person (controlling person):

a) holds more than half of the votes of the general meeting of another legal person (subsidiary undertaking), or

b) is entitled to designate more than half of the members of the managing or controlling body of another legal person (subsidiary undertaking), while this person is also a shareholder or a partner in that legal person, or

c) is entitled to exercise a decisive influence over a legal person (subsidiary undertaking) by virtue of a contract, executed with this person, or its articles of association or its statutes, if permissible under the legislation applicable to the subsidiary undertaking; or

d) is a shareholder or a partner in an entity, and:

aa) more than half of the members of the managing or controlling body of that legal person (subsidiary undertaking) who have performed their functions during the preceding and the current financial year and up to the moment of preparation of the consolidated financial statements, have been determined solely as a result of the exercise of its voting rights, or

bb) which controls on its own, by virtue of a contract with other shareholders or partners in such a legal person (subsidiary undertaking) more than half of the votes in the general meeting of this legal person, or

e) is able in another way following the judgement of the competent authorities, to exercise a decisive influence on decision-making of another legal person (subsidiary undertaking).

For the purposes of letters 'a', 'b' and 'd', the voting rights of any other subsidiary undertaking in respect of which the parent undertaking exercises control as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

For the purposes of letters 'a', 'b' and 'd', the voting rights of the controlling entity must be reduced by the voting rights attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof, as well as by the voting rights attaching to shares held by way of security, provided that the voting rights are exercised by order or in the interest of the person providing the security.

For the purposes of letters 'a' and 'd' the voting rights of the controlling entity must be reduced by the voting rights held by the subsidiary undertaking itself by a person, controlled by it, or by a person acting in his own name but on behalf of the controlling entity of the subsidiary undertaking.

8. 'Parent undertaking' shall be a legal person which exercises control over one or more undertakings (subsidiaries).

9. 'Subsidiary' shall be a legal person controlled by another legal person (parent undertaking). Legal persons, which are subsidiaries of a subsidiary are also deemed subsidiaries of the parent undertaking.

10. 'Close links' shall mean a situation in which two or more natural or legal persons are linked in any of the following ways:

- a) where one person holds, directly or through a controlled person, 20 per cent or more of the votes in the general meeting or of the capital of another person, or
- b) through relations of control, or
- c) continuously with one and the same third party through relations of control.

11. 'Bank group' shall exist where the parent undertaking is a bank having as its subsidiaries other credit institutions and/or financial institutions;

12. 'Financial holding company' shall exist where a parent undertaking is a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, provided at least one of these subsidiaries is a credit institution, and which is not a mixed-activity financial holding company within the meaning of the Law on Supplementary Supervision of the Financial Conglomerates.

13. 'Mixed-activity holding company' shall exist where a parent undertaking, other than a credit institution, financial holding company or a mixed-activity financial holding company within the meaning of the Law on Supplementary Supervision of the Financial Conglomerates Law has at least one subsidiary, which is a credit institution.

14. 'Distribution of capital' shall be the provision of money or other property of a bank to its shareholders with the exception of provision of new shares resulting from an increase in the capital by capitalization of profit.

15. 'Member State' shall be a country, member of the European Union, or other country, which belongs to the European Economic Area.

16. 'Home Member State' shall be a Member State whose competent authorities have issued a license to a credit institution.

17. 'Host Member State' shall be a Member State in which a credit institution from a Member State has a branch or in which it provides services directly.

18. 'Third country' shall be a state that is not a Member State within the meaning of item 15.

19. 'Competent authorities' shall be the BNB and the national authorities of other Member States which are empowered by a regulatory act to supervise credit institutions.

20. 'License' shall be any document, irrespective of its form issued by the competent authorities of a Member State or a third country by virtue of which the right to conduct activity as a credit institution is granted.

21. 'Ancillary services undertaking' shall be an undertaking the principal activity of which consists owning or management of property, provision of data processing

services or any other similar activity, which is ancillary to the principal activity of one or more credit institutions.

22. 'Branch' shall be a duly registered place of business, which constitutes a legally dependent part of a credit institution, through which some or all activities the credit institution is licensed for are carried out directly.

23. (amended; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009) 'Financial brokerage' shall be an intermediation in interbank lending.

24. 'Derivative Instruments' shall be rights and obligations whose value is directly or indirectly influenced by the price of securities, foreign currencies, goods, interest rates, indices, by credit risk rating, or other similar variables.

25. 'Family' shall include spouses, linear relatives, brothers, sisters, and persons in relations of durable cohabitation.

26. 'Parent credit institution in a Member State' shall be a credit institution having as a subsidiary another credit or financial institution, or holds a participation in such an institution, and which is not itself a subsidiary of another credit institution licensed in the same Member State, or of a financial holding company set up in the same Member State.

27. 'European Union parent credit institution' shall be a parent credit institution in a Member State, which is not a subsidiary of another credit institution licensed in a Member State, or of a financial holding company set up in a Member State.

28. 'Parent financial holding company in a Member State' shall be a financial holding company which is not itself a subsidiary of a credit institution licensed in the same Member State, or of a financial holding company set up in the same Member State.

29. 'European Union parent financial holding company' shall be a parent financial holding company in a Member State, which is not a subsidiary of a credit institution licensed in a Member State, or of another financial holding company set up in a Member State.

30. A violation shall be 'repeated' when it is committed within a one year period of time from the entering into force of the penal decree, through which a sanction is imposed for the same kind of violation.

31. (new; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010) 'Consolidating supervisor shall be a competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institution and credit institutions controlled by EU parent financial holding companies.

(2) (repealed; Darjaven Vestnik, issue 24 of 2009, effective as of 31 March 2009)

**§ 2.** To the extent it has not been otherwise provided for in this Law, the BNB's functions with regard to the supervision of the banking system shall be carried out individually and independently by the BNB Deputy Governor heading the Banking Supervision Department, or by officials authorized by him/her.

§ 3. Organization and control providing for the security of banks and financial institutions shall be set by an ordinance issued jointly by of the Minister of Interior and the Governing Council of the Bulgarian National Bank.

§ 4. (amended; Darjaven Vestnik, issue 94 of 2010, effective as of 31 December 2010; amended; Darjaven Vestnik, issue 105 of 2011) This Law shall transpose into the Bulgarian legislation the requirements of Directive 89/117/EEC of the Council on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State, regarding the publication of annual accounting documents, Directive 2000/46/EC of the European Parliament and the Council on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, Directive 2001/24/EC of the European Parliament and the Council on the reorganisation and winding up of credit institutions, Directive 2006/48/EC of the European Parliament and the Council on the taking up and pursuit of the business of credit institutions (recast), Directive 2009/111/EC of the European Parliament and the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management (OJ, L 309/97 of 17 November 2009) and Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ, L 331/120 of 15 December 2010).

### **Transitional and Final Provisions**

§ 5. The Law on Banks (published in the Darjaven Vestnik, issue 52 of 1997; amended, issues 15, 21, 52, 70 and 98 of 1998; issues 54, 103 and 114 of 1999; issues 24, 63, 84 and 92 of 2000; issue 1 of 2001; issues 45, 91 and 92 of 2002; issue 31 of 2003, issues 19, 31, 39 and 105 of 2005; issues 30, 33 and 34 of 2006) shall be repealed.

§ 6. The banks that have been granted banking licenses pursuant to the repealed Law on Banks (published in the Darjaven Vestnik, issue 52 of 1997; amended, issues 15, 21, 52, 70 and 98 of 1998; issues 54, 103 and 114 of 1999; issues 24, 63, 84 and 92 of 2000; issue 1 of 2001; issues 45, 91 and 92 of 2002; issue 31 of 2003, issues 19, 31, 39 and 105 of 2005; issues 30, 33 and 34 of 2006) shall, within three months from the entry into force of this Law, take a decision for amending their articles of association in accordance with this Law and for applying to renew their licenses. The acts for renewal of licenses shall be issued by the BNB Governor.

§ 7. Foreign banks of Member States that have been granted a license for conduct of banking activity through a branch in the Republic of Bulgaria before the entry

into force of this law, shall continue their activity in the country without observing the requirement to notify under Article 20, paragraph 1 and without receiving an announcement or waiting for the expiry of the term under Article 21, paragraph 2.

**§ 8.** The regulatory acts issued by the Bulgarian National Bank for the purpose of implementing the repealed Law on Banks (published in *Darjaven Vestnik*, issue 52 of 1997; amended, issue 15 of 1998, amended, issues 21, 52, 70 and 98 of 1998, issues 54, 103 and 114 of 1999, issues 24, 63, 84 and 92 of 2000, issue 1 of 2001, issues 45, 91 and 92 of 2002, issue 31 of 2003, issues 19, 31, 39 and 105 of 2005, issues 30, 33 and 34 of 2006 ) shall be effective to the extent they do not run counter to this Law.

**§ 9.** (1) The requirements of this Law shall also apply for the administrative procedures already initiated by the BNB before the entry into force of the Law.

(2) The administrative acts issued by the BNB in relation to the repealed Law on Banks (published, issue 52 of 1997, amended, issue 15 of 1998, amended, issues 21, 52, 70 and 98 of 1998, issues 54, 103 and 114 of 1999, issues 24, 63, 84 and 92 of 2000, issue 1 of 2001, issues 45, 91 and 92 of 2002, issue 31 of 2003, issues 19, 31, 39 and 105 of 2005, issues 30, 33 and 34 of 2006 ), which were not subject to appeal before the court, may not be appealed before the court pursuant to this Law.

**§ 9a.** (new; *Darjaven Vestnik*, issue 52 of 2007, in force as of 1 November 2007) Everywhere in this Law, the wording ‘Article 54, paragraphs 2 and 3 of the Law on Public Offering of Securities’ shall be replaced by ‘Article 5, paragraphs 2 and 3 of the Law on Markets in Financial Instruments’.

**§ 10.** (1) Procurators of a bank who were employed as such at the time this Law comes into force, with the exception of those whose authorisation is with regard to the activity of an individual branch, shall be dismissed where they have failed to obtain a certificate under Article 11, paragraph 2 within two months following the entry into force of this Law.

(2) The BNB shall remove from office the persons under paragraph 1, unless they have been dismissed by the relevant body within 30 days following the expiry of the term under paragraph 1.

**§ 11.** Upon a decision of the Governing Council of the Bulgarian National Bank the restrictions of Article 11, paragraph 1, items 4 and 5 of this Law, Article 234, paragraph 2, item 1 of the Law on Commerce and Article 25, paragraph 1, items 4 and 13 of the Law on Bank Bankruptcy may be abolished with regard to:

1. a member of a managing or controlling body of a bank, in which the BNB has acquired after 1 October 1995 more than 50 per cent of the voting shares, if that person was appointed by the competent body after BNB’s acquisition of such holding took place, was not previously a member of its managing or controlling body and was relieved from responsibility by the shareholders’ general meeting of that bank;

2. a member of a managing or controlling body of a bank, in which the Banking Consolidation Company held more than 50 per cent of the voting shares, if the person, appointed after 1 January 1994 on a motion by the Banking Consolidation

Company, was not previously a member of a managing or controlling body of the bank and was relieved from liability by the shareholders' general meeting.

§ 12. Mutual aid credit cooperatives of private farmers, established as per the agricultural capital fund scheme in compliance with the agreements for utilization of the financial grant, concluded between the government of the Republic of Bulgaria and the European Commission, may continue their activity as financial institutions within the meaning of this law and following a procedure set by the Council of Ministers.

§ 13. The Governing Council of the Bulgarian National Bank shall issue ordinances for the implementation of chapters one, two, three, four, five, seven, nine, ten, eleven, twelve and thirteen of this Law.

§ 14. The following amendments shall be made to the Law on Commerce (published in Darjaven Vestnik, issue 48 of 1991, amended, issue 25 of 1992, issues 61 and 103 of 1993, issue 63 of 1994, issue 63 of 1995, issues 42, 59, 83, 86 and 104 of 1996, issues 58, 100 and 124 of 1997, issues 52 and 70 of 1998, issues 33, 42, 64, 81, 90, 103 and 114 of 1999, issue 84 of 2000, issues 28, 61 and 96 of 2002, issues 19, 31 and 58 of 2003, issues 31, 39, 42, 43, 66, 103 and 105 of 2005, issue 38 of 2006):

1. In Article 187 f, paragraph 3 the word "non-bank" shall be deleted.
2. Articles 433 and 434 shall be repealed.
3. Articles 451–454 shall be repealed.
4. Chapter Thirty Seven shall be amended as follows:

### *Chapter Thirty Seven*

## **Contract for Leasing a Safe Deposit Box**

### **Definition**

**Article 605.** (1) Under a contract for leasing of a safe deposit box a lessor provides to the lessee against consideration a safe deposit box in a secured room for use for a determined period of time. The safe deposit boxes are used for safekeeping of valuables, securities, and other items and documents. Only the lessee shall have access to the contents of the safe deposit box.

(2) The contract for leasing a safe deposit box may be with declared or not declared contents of the deposit before the lessor.

(3) The lessor shall not have the right to possess a copy of the key to the safe deposit box delivered to the lessee.

### **Prohibited Items**

**Article 606.** (1) No items may be placed in the safe deposit box which could endanger the safety of the box and lessor, as well as items the acceptance of which is prohibited by law.

(2) The lessor shall control in an appropriate manner the compliance with the requirement under paragraph 1, without disclosure of the contents of the deposit, in the case it has not been declared.

(3) In the case of non-compliance with the obligation under paragraph 1, the lessor may avoid the contract forthwith.

### **Rights of the Lessor on Default of Payment**

**Article 606a** (1) Where a contract is avoided due to default on payment of the agreed remuneration, the lessor may demand the opening and ascertainment of the contents of the safe deposit box, with participation of a notary. The items found in the safe deposit box shall remain for keeping with the lessor, to which indemnity shall be due for expenses as well as a fee.

(2) For its claims under the contract the lessor shall be entitled to lien on the deposit in the safe deposit box.’

4. In Article 655, paragraph 2:

a) in item 8 after the wording ‘paragraph 2’ shall be supplemented ‘of this law or Article 29, paragraph 1, items 6 or 7 of the Law on Bank Bankruptcy’;

b) item 9 shall be amended as follows:

9. ‘not have been imposed a measure under Article 65, paragraph 2, item 11 of the Law on Banks or under Article 103, paragraph 2, item 14 of the Law on Credit Institutions.’

**§ 15.** The following amendments are made to the Law on Bank Bankruptcy (published in Darjaven Vestnik, issue 92 of 2002, amended, issue 67 of 2003, issue 36 of 2004, issues 31 and 105 of 2005, issues 30 and 34 from 2006):

1. In Article 1:

a) the current text becomes paragraph 1

b) new paragraph 2 is added:

(2) “For the bankruptcy proceedings for a bank having branches in Member States, the provisions of Chapter Thirteen of the Law on Credit Institutions shall also apply.

2. In Article 3, paragraph 2 the wording ‘Article 21, paragraph 2 of the Law on Banks’ shall be replaced by ‘Article 36, paragraph 2 of the Law on Credit Institutions.’

3. Article 8 shall be:

a) In paragraph 1 the wording ‘Article 21, paragraph 2 of the Law on Banks’ is replaced by ‘Article 36, paragraph 2 of the Law on Credit Institutions’;

b) A new paragraph 2 is created:

“(2) Bankruptcy proceedings shall also be initiated for a bank under liquidation proceedings, which under Articles 125 or 130 of the Law on Credit Institutions has been established to be in bankruptcy.”;

c) the current paragraph 2 shall be paragraph 3

d) the current paragraph 3 shall become paragraph 4 and the wording ‘Article 21, paragraph 2 from the Law on Banks’ shall be replaced with ‘Article 36, paragraph 2 from the Law on Credit Institutions’ and in front of the words “later on” “no” should be added; 4. In Article 9, paragraph 2 is amended as follows:

‘(2) Only the ground or grounds under Article 36, paragraph 2 of the Law on Credit Institutions, on the basis of which the license has been revoked, shall be specified in the central bank’s petition under paragraph 1. In the cases under Article 125 or 130 of the Law on Credit Institutions, only the ground or grounds for the insolvency of the bank, on the basis of which the Governor’s order was issued, shall be specified in the petition’

5. Article 11 :

a) in paragraph 1, the figure ‘10’ is replaced by ‘15’ ;

b) new paragraphs 4 and 5 are created,;

‘(4) The shareholders that held more than 5 per cent of the bank’s capital as at the date of banking license withdrawal may take part in the proceedings for the consideration of the central bank’s petition.

(5) If the act of the central bank under Article 9, paragraph 3 has come into force, the court shall initiate bankruptcy proceedings against the bank.’;

c) paragraph 6 is created:

(6) Where the central bank’s act under Article 9, paragraph 3 has not come into force as it was appealed against before the court, the court shall suspend the proceedings until the completion of the administrative legal dispute. The suspension of the proceedings shall not preclude the enforcement of preliminary security measures”.

d) the current paragraphs 5 and 6 become paragraphs 7 and 8 respectively;

6. In Article 13, the principal wording of paragraph 1 “of this law in connection with Article 21, paragraph 2 from the Law on Banks is amended with ‘and if the conditions under Article 11, paragraph 5 are in place.’

7. In Article 14, the wording ‘...or if the central bank’s act under Article 9, paragraph 3 is repealed by an effective court decision.’ is added at the end.

8. In Article 18, paragraph 2 the wording ‘Law on Banks’ shall be replaced by the wording ‘Law on Credit Institutions’.

9. In Article 21, paragraph 1 the wording ‘Article 21, paragraph 2 of the Law on Banks’ shall be replaced by the wording ‘Article 36, paragraph 2 of the Law on Credit Institutions’.

10. In Article 56:

a) in paragraph 1 the wording ‘safe deposit box’ shall be replaced with ‘safe box’

b) in paragraph 2 the wording ‘safe deposit boxes’ shall be replaced by ‘safe boxes’

c) in paragraph 3 in the first sentence the wording ‘safe deposit box that has not been released’ shall be replaced by ‘safe box that has not been released’ and in the second sentence the wording ‘safe deposit box’ shall be replaced by ‘safe box’.

11. In Article 59, paragraph 4 the wording ‘Article 21, paragraph 2 of the Law on Banks’ is replaced by “Article 36, paragraph 4 of the Law on Credit Institutions”.

12. In Article 80, paragraph 5 after the word ‘a parent undertaking’ a comma is placed, and the wording ‘from the list under Article 61, paragraph 2 of the Law on Banks’ shall be replaced by ‘meeting the requirements of Article 76 of the Law on Credit Institutions’.

§ 16. The following amendments are made to the Law on Bank Deposit Guaranty (published in the Darjaven Vestnik, issue 49 of 29 April 1998; amended, issues 73, 153 and 155 of 1998; issue 54 of 1999; issue 109 of 2001; issue 92 and 118 of 2002; issues 31 and 39 of 2005):

1. Article 5, paragraph 1, item 7 shall be amended as follows:

‘7. Financial institutions as per Article 3 of the Law on Credit Institutions’.

2. In Article 8, item 2 the wording ‘paragraph 2’ shall be replaced by ‘paragraph 3’.

3. In Article 10, paragraph 3 the wording ‘non-bank financial institutions within the meaning of Article 1, paragraph 5 of the Law on Banks’ shall be replaced by the wording ‘financial institutions within the meaning of Article 3 of the Law on Credit Institutions’.

4. Article 12 is amended as follows:

a) in paragraph 1, new item 9 is created as follows:

‘9. make a decision on the acquisition of shares in a bank under the procedure and conditions of Article 118, paragraph 1 of the Law on Credit Institutions, and on their disposal.’

b) in paragraph 2 the wording ‘Article 52 of the Law on Banks’ shall be replaced by the wording ‘Article 62 of the Law on Credit Institutions’.

c) a new paragraph 4 is created as follows:

“(4). For the purpose of decision-making under paragraph 1, item 9, the BNB shall provide to the Fund with the necessary information”.

d) current paragraph 4 becomes paragraph 5;

5. In Article 19 the wording ‘Article 21, paragraph 2 or Article 65, paragraph 2 of the Law on Banks’ shall be replaced by the wording ‘the Law on Credit Institutions’.

6. In Article 20, paragraph 3 after the wording ‘Article 65, paragraph 2 of the Law on Banks’ the wording ‘or pursuant to Article 103, paragraph 2 of the Law on Credit Institutions’ shall be added.

7. Article 22 is amended as follows:

a) a new paragraph 2 is created:

“(2) The Fund’s resources may be also used for the acquisition of shares in a bank in the cases of Article 118, paragraph 1 of the Law on Credit Institutions Law, if the Fund decides that this could save higher costs of payments made on guaranteed deposits.”

b) The current paragraph 2 becomes paragraph 3;

§ 17. The Law on the Bulgarian National Bank (published in the *Darjaven Vestnik*, issue 46 of 10 June 1997; amended, issues 49 and 153 of 1998; issues 20 and 54 of 1999; issue 109 of 2001; issue 45 of 2002; issues 10 and 39 of 2005, issue 37 of 2006 ) shall be amended and supplemented as follows:

1. in Article 13 after the word ‘bank’ and the words ‘and commercial secrecy’ shall be replaced by ‘commercial and another secrecy protected by law’.

2. In Article 16 :

a) Item 3 is amended as follows:

‘3. fix the interest, fees and commissions related to the bank’s activity’;

b) item 15 is amended as follows:

‘15. grant, refuse to grant, and withdraw licenses of banks and electronic money institutions pursuant to procedures and the terms of the Law on Credit Institutions’;

c) item 16 is created:

‘16. Place banks and electronic money institutions under special supervision pursuant to the procedures and the terms of the Law on Credit Institutions’;

3. Sentence three in Article 20, paragraph 3 shall be deleted.

4. In Article 23:

a) a new paragraph 1 is created:

‘(1) Official secrecy shall be the information related to the preparation for production of Bulgarian banknotes and coins; the technical parameters of the censors for reading of security features of Bulgarian banknotes and coins; physical protection systems and information security management systems of the bank and its subsidiaries; information related to transportation and protection of values, as well as other facts and circumstances, the unauthorised access to which might adversely affect the interest of the state or another interest protected by law, specified by the Bulgarian National Bank Governor pursuant to Article 26, paragraph 3 of the Law on Protection of Classified Information.’

b) in paragraph 2 after the wording ‘bank or commercial secrecy’ shall be replaced by ‘bank, commercial and another secrecy protected by law’.

5. In Article 27 :

a) in paragraph 1 the wording ‘may be redeemed or exchanged’ is replaced by ‘the Bulgarian National Bank and the banks shall redeem or exchange’;

b) in paragraph 2 a comma shall be placed after the word ‘houses’ the wording ‘and exchange bureaux’ shall be replaced by ‘exchange bureaux and service suppliers’;

c) in paragraph 3, the wording ‘The institutions under paragraph 2’ shall be replaced by ‘The persons under paragraph 2, as well as the competent government authorities’.

d) new paragraph 5 is created as follows:

‘(5) Banks and service suppliers shall sort out Bulgarian banknotes and coins, which are unfit for circulation. They may not provide to customers such banknotes and coins.’

e) paragraphs 6 and 7 shall be created:

‘(6) Banks and service suppliers shall submit to the BNB the Bulgarian banknotes and coins, which are unfit for circulation.

(7) Reproduction of Bulgarian banknotes and coins shall take place only after the BNB’s written consent.’

f) the current paragraph 5 shall become paragraph 7.

6. Article 42 is amended as follows:

‘**Article 42.** The Bulgarian National Bank shall compile the balance of payments and the monetary and interest rate statistics, as well as the statistics of the financial accounts of this country. For this purpose, all government and municipal authorities, as well as legal entities and natural persons, shall provide information to the Bulgarian National Bank in accordance with a procedure established by the Bulgarian National Bank’.

7. The name ‘Additional Provision’ is amended as follows: ‘Additional Provisions’

8. In the Additional Provisions a new § 1a shall be included:

“**§1a.** ‘A service supplier’ shall be a person, who carries out in his line of business activities and operations in banknotes and coins, including their sorting out, safekeeping, transportation and/or distribution;’

**§ 18.** Article 3, paragraph 2, item 1 of the Law on the Measures against Money Laundering (published, Darjaven Vestnik, issue 85 of 1998; amended, issue 1 of 2001, issue 102 of 2001, issue 31 of 2003, issues 103 and 105 of 2005, issues 30 and 54 of 2006) shall be amended as follows:

‘1. The Bulgarian National Bank, credit institutions that carry out activities within the territory of the Republic of Bulgaria, financial houses, exchange bureaux, as well as persons providing money transfer services from Bulgaria to abroad or vice versa, acting on their own or someone else’s behalf ;’

**§ 19.** The Law on Funds Transfers, Electronic Payment Instruments and Payment Systems (published, Darjaven Vestnik, issue 31 of 2005; amended, issue 99 of 2005, issue 30 of 2006) shall be amended and supplemented as follows:

1. In Article 25 paragraph 3 shall be created:

‘(3) When executing cross-border payments of up to EUR 50 thousand between the Republic of Bulgaria and another Member State of the European Economic Area, each performing institution shall apply the same charges and commission fees as the ones applied by it for identical payments made in euro in the Republic of Bulgaria.’

2. An Article 40a shall be created:

### **‘Charges and commission fees for cross-border electronic payment transactions**

**Article 40a.** (1) Cross-border electronic payment transactions shall be:

1. cross-border transfers of funds effected by means of electronic payment instruments other than those ordered and executed by persons who execute cross-border

payments and/or cross-border electronic payment transactions as part of their trading activities;

2. cross-border cash withdrawals by means of an electronic payment instrument, or loading or unloading of value units on/from an electronic payment instrument *via* POS terminals at the trading premises of the issuer or of a person signatory to an agreement for accepting such payment instrument.

(2) When executing cross-border electronic payment transactions in euro of up to EUR 50,000 between the Republic of Bulgaria and another Member State of the European Economic Area, any person effecting cross-border payments and/or cross-border electronic payment transactions as part of his trading activities shall apply the same charges and commission fees as the ones applied by him for identical transactions in euro effected in the Republic of Bulgaria.”

3. In Article 60, paragraph 3, item 1, the wording “with a seat in the Republic of Bulgaria” shall be deleted.

**§ 20.** The Law on Access to Public Information (published, Darjaven Vestnik, issue 55 of 2000, amended, issues 1 and 45 of 2002, issue 103 of 2005, issues 24 and 30 of 2006) shall be amended as follows:

1. In Article 7, paragraph 1 the wording “classified information constituting state or” shall be replaced by ‘classified information or’;

2. In Article 37, paragraph 1 item 1, the wording ‘information constituting state or official secrecy’ shall be replaced by ‘information or other protected secrecy in cases provided for by law’.

**§ 21.** The Law on Restriction of the Administrative Regulation and Control of Economic Activity (published, Darjaven Vestnik, issue 55 of 2003; amended, issue 59 of 2003; amended, issue 107 of 2003, issues 39 and 52 of 2004, issues 31 and 87 of 2005, issues 24 and 38 of 2006) in the Annex to Article. 9, paragraph 1, item 2 shall be amended as follows:

‘1. Banking activity, activity of electronic money institutions, and activity of a system operator of payment systems.’

**§ 22.** In the Law on Public Offering of Securities (published, Darjaven Vestnik, issue 114 of 1999, amended, issues 63 and 92 of 2000, issues 28, 61, 93 and 101 of 2002, issues 8, 31, 67 and 71 of 2003, issue 37 of 2004, issues 19, 31, 39, 103 and 105 of 2005, issues 30, 33 and 34 of 2006) shall be amended as follows:

1. In Article 54:

a) in paragraph 4, item 1 the wording ‘Article 1, paragraph 1 of the Law on Banks’ shall be replaced by “Article 2, paragraph 1 of the Law on Credit Institutions”;

b) in paragraph 6 the wording ‘under the terms and the procedure of the Law on Banks’ shall be deleted;

c) in paragraph 7 the wording ‘which have been granted a license for effecting transactions under the terms and the procedure of the Law on Banks’ shall be deleted.

2. In Article 56a, paragraph 2, the wording ‘the Law on Banks’ shall be replaced by ‘the Law on Credit Institutions’.

3. In Article 77b, paragraph 1, item 2 the wording ‘Article 21, paragraph 2 of the Law on Banks’ shall be replaced by ‘Article 36, paragraph 2 of the Law on Credit Institutions’.

4. In Article 77n, paragraph 1 the wording “Article 21, paragraph 2 or Article 65, paragraph 2 of the Law on Banks” shall be replaced by “the Law on Credit Institutions”.

5. In Article 173, paragraph 2:

a) in item 2 the wording “under the terms and the procedure of the Law on Banks” shall be deleted;

b) at the end of item 5 the following shall be added ‘or in accordance with Article 103, paragraph 2, items 14, 19 or 20 of the Law on Credit Institutions’.

6. paragraph 2 of § 3, shall be repealed.

**§ 23.** In the Tax and Social Insurance Procedure Code (published, Darjaven Vestnik, issue 105 of 2005, amended, issues 30, 33 and 34 of 2006) the wording ‘non-bank’ shall be deleted.

1. In Article 143, paragraph 4 the wording ‘Article 52 of the Law on Banks’ shall be replaced by ‘Article 62 of the Law on Credit Institutions’.

2. In Article 212, paragraph 3 the wording ‘nonbank financial’ shall be replaced by ‘financial’ and the wording ‘safe deposit box’ shall be replaced by ‘safe deposit box’.

3. In Article. 262, paragraph 1 the wording ‘safe deposit boxes’ shall be replaced by ‘safe boxes’.

**§ 24.** In the Social Insurance Code (published, Darjaven Vestnik, issue 110 of 1999, issue 55 of 2005; Decision No. 5 of the Constitutional Court of 2000; amended; issue 64 of 2000, issues 1, 35, 41 of 2001, issues 1, 10, 45, 74, 112 119 and 120 of 2002, issues 8, 42, 67, 95 112 and 114 of 2003, issues 12, 21, 38, 52, 53, 69, 70, 112 and 115 of 2004, issues 38, 39,76, 102, 103, 104 and 105 of 2005, issue 17, 30, 34 and 56 of 2006) shall be amended as follows:

1. At the end of Article 123a, paragraph 2, item 5 the wording ‘or pursuant to Article 103, paragraph 2, items 14, 19 or 20 of the Law on Credit Institutions’ shall be added.

2. In Article 344, paragraph 5 the wording ‘Article 65, paragraph 2 of the Law on Banks’ shall be replaced by the wording ‘Article 103, paragraph 2 of the Law on Credit Institutions’.

**§ 25.** In the Criminal Code (published, Darjaven Vestnik, issue 26 of 1968; amended, issue 29 of 1968, issue 92 of 1969, issues 26 and 27 of 1973, issue 89 of 1974, issue 95 of 1975, issue 3 of 1977, issue 54 of 1978, issue 89 of 1979, issue 28 of 1982, corrected, issue 31 of 1982, issue 44 of 1984, issues 41 and 79 of 1985, corrected, issue 80 of 1985, issue 89 of 1986, corrected, issue 90 of 1986, corrected, issue 37, 91 and 99 of 1989, issues 10, 31 and 81 of 1990, issues 1, 86, 90 and 105

of 1991, issue 54 of 1992, issue 10 of 1993, issues 50 and 97 of 1995, No. 19 of the Constitutional Court of 1995; issue 102 of 1995, issue 107 of 1996, issue 62 and 85 of 1997; issue 120 of 1997; Decision No. 19 of the Constitutional Court of 1997; issues 83, 85, 132, 133 and 153 of 1998; issues 7, 51 and 81 of 1999; issues 21 and 51 of 2000; issue 98 Decision No. 14 of the Constitutional Court of 2000; amended, issues 41 and 101 of 2001, issues 45 and 92 of 2002, issues 26 and 103 of 2004, issues 24, 43, 76, 86 and 88 of 2005) in Article 2276, paragraph 4 the wording 'Law on Banks' shall be replaced by the 'Law on Credit Institutions'.

**§ 26.** In Article 16, paragraph 5 of the Currency Law (published, Darjaven Vestnik, issue 83 of 1999, issue 45 of 2002, issue 60 of 2003, issue 36 of 2004, issue 105 of 2005, issues 43 and 54 of 2006) the wording 'Article 64 of the Law on Bank' shall be replaced by the wording 'Article 80 of the Law on Credit institutions'.

**§ 27.** In the Law on Government Financial Inspection (published, Darjaven Vestnik, issue 33 of 2006) in Article 10, paragraph 3, the wording 'Article 52, paragraph 5, item 3 of the Law on Banks' shall be replaced by the wording 'Article 62, paragraph 6, item 5 of the Law on Credit Institutions'.

**§ 28.** In § 2, paragraph 3 in the Additional Provisions of the Law on Mortgage-backed Bonds (published, Darjaven Vestnik, issue 83 of 2000) the wording 'Article 41, paragraph 2 of the Law on Banks' shall be replaced by 'Article 73, paragraph 3 of the Law on Credit Institutions'.

**§ 29.** The Law on Financial Supervision Commission (published, Darjaven Vestnik, issue 8 of 2003, amended, issues 31, 67 and 112 of 2003, issue 85 of 2004, issues 39, 103 and 105 of 2005, issue 30 of 2006) shall be amended as follows:

1. In Article 15, paragraph 1, item 5 the wording 'Article 65, paragraph 2 of the Law on Banks' shall be replaced by 'Article 103, paragraph 2 of the Law on Credit Institutions'.

2. In Article 18, paragraph 7, the wording 'Article 52 of the Law on Banks' shall be replaced by 'Article 62 of the Law on Credit Institutions'.

**§ 30.** In the Law on Corporate Income Tax (published, Darjaven Vestnik, issue 115 of 1997; corrected, issue 19 of 1998, amended, issues 21 and 153 of 1998, issues 12, 50, 51, 64, 81, 103, 110 and 111 of 1999, issues 105 and 108 of 2000, issue 34 and 110 of 2001, issue 45, 61, 62 and 119 of 2002, issues 42 and 109 of 2003, issues 18, 53 and 107 of 2004, issues 39, 88, 91, 102, 103 and 105 of 2005, issues 30 and 34 of 2006) in § 1, item 47 of the Additional Provisions the wording 'non-bank financial institutions pursuant to the Law on Banks' shall be replaced by 'financial institutions pursuant to the Law on Credit Institutions'.

**§ 31.** In § 1 of Additional Provisions of the Law on the Measures against Financing of Terrorism (published, Darjaven Vestnik, issue 16 of 2003, amended, issue 31 of 2003, issue 19 of 2005) the wording 'transactions under Articles 1 and 2 of the Law on Banks' shall be replaced by 'activities under Article 2, paragraphs 1 and 2 of the Law on Credit Institutions'.

**§ 32.** In the Law on the Protection of Competition (published, Darjaven Vestnik, issue 52 of 1998; issue 112 of 1998 – Decision No. 22 of the Constitutional Court of 1998; amended, issue 81 of 1999, issue 28 of 2002, issues 9 and 107 of 2003, issue 105 of 2005, issue 37 of 2006) the following amendments shall be made:

1. In Article 23, item 1 before the word ‘and’ the word non-bank shall be deleted.  
and

2. In Article 24, paragraph 5 the word ‘non-bank’ shall be deleted.

**§ 33.** In Article 12, paragraph 2 of the Law on Investment Promotion (published, Darjaven Vestnik, issue 97 of 1997; corrected, issue 99 of 1997, amended, issues 29 and 153 of 1998, issue 110 of 1999, issue 28 of 2002, issue 37 of 2004, corrected, issue 40 of 2004, amended, issue 34 of 2006) the word ‘non-bank’ shall be deleted.

**§ 34.** In Article 35, paragraph 2 of the Law on Agricultural Producers Support (published, Darjaven Vestnik, issue 58 of 1998; amended, issues 79 and 153 of 1998, issues 12, 26, 86 and 113 of 1999, issue 24 of 2000, issues 34 and 41 of 2001, issues 46 and 96 of 2002, issue 18 of 2004, issues 14 and 105 of 2005, issues 18, 30 and 34 of 2006 ) the wording ‘Law on the Banks’ shall be replaced by ‘Law on Credit Institutions’ .

**§ 35.** In the Law on Consumer Protection (published, Darjaven Vestnik, issue 99 of 2005.; amended., issues 30, 51 and 53 of 2006 ) the following amendments are made:

1. In § 13, item 12, letter ‘κ’ of the Additional Provisions the wording ‘safe deposit box’ shall be replaced by ‘safe box’.

2. In § 34 of the Additional and Final Provisions the wording ‘paragraph 2, item 7’ shall be replaced by ‘paragraph 2, item 8’.

**§ 36.** This Law shall enter into force on the effective date of the Treaty of Accession of the Republic of Bulgaria to the European Union with the exception of § 35, item 2, which enters into force on the date of the publication of this Law in Darjaven Vestnik.

This Law is adopted by the Fortieth National Assembly on 13 July 2006 and the official seal of the National Assembly was affixed on it.

**LAW**  
**on Amendment**  
**of the Law on Tax-insurance Procedure Code**

(Published in the Darjaven Vestnik, issue 105 of 2006,  
in force as of 1 January 2007)

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**Transitional and Final Provisions**

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§ 26. The provisions of § 4, 12, 15, 16, 17, 19, 20, 21, 22 and 23 shall come into force as of 1 January 2007 and the provisions of § 7 and 18 shall come into force of 1 July 2007.

**Transitional and Final Provisions**  
**to the Law on Markets in Financial Instruments**

(Published in the Darjaven Vestnik, issue 52 of 2007,  
in force as of 1 November 2007)

§ 27. (1) This Law shall come into effect as of 1 November 2007 with the exception of § 7, items 6, 7, 8, 18, 19, 22 – 24, 26 – 28, 30 – 40, item 44, ‘b’, items 47, 48, item 49, ‘a’, items 50 – 62, 67, 68, 70, 71, 72, 75, 76, 77, item 83, ‘a’ and ‘d’, item 85, ‘a’, items 91, 93, 94, item 98, ‘a’, ‘aa’, sentence two about the replacement, ‘bb’, sentence two about the replacement, ‘cc’, sentence two about the replacement and ‘dd’, sentence two about the replacement, item 99, ‘d’ and ‘e’, item 101, ‘b’ and item 102, § 8, § 9, item 4, ‘a’, items 5 and 7, § 14, item 1 and § 19, which shall come into effect three days from the publication of the Law in the Darjaven Vestnik.

(2) § 7, items 6, 7 and 8 shall be into force till 1 November 2007.

**LAW  
on Amendment  
of the Law on Credit Institutions**

(Published in the Darjaven Vestnik, issue 24 of 2009,  
in force as of 31 March 2009)

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**Additional Provisions**

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§ 34. This Law shall put into force the provisions of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ, L 247 1 of 21 September 2007).

**Transitional and Final Provisions**

§ 35. The licenses of the banks with registered offices in the Republic of Bulgaria are updated within a six-month period from the entry into force of this Law based on an application filed by them to the BNB accompanied by a decision on amendments to their Articles of Association under the amendments to Article 2, paragraph 2. The licenses of the banks with registered offices in a third country that conduct banking operations in the Republic of Bulgaria through a branch office are updated in the same way upon assessing the compliance of Article 2, paragraph 2 with the respective bank’s permitted subject of activity. The license update acts shall be issued by the BNB Governor.

§ 36. (1) Financial institutions under Article 3, paragraph 2 shall be registered by the BNB within a six-month period from the entry into force of this Law.

(2) The requirements provided for under Article 3a, paragraph 1, item 1 regarding the legal and organisational form shall not apply in registering the cooperatives under § 12 of the Transitional and Final Provisions.

§ 37. (1) The existing upon the entry into force of this Law administrative proceedings for issuance of licenses under Articles 28 and 31 shall be closed using the current procedure.

(2) Persons acting in concert, whereof a ground for applying for an approval arises upon the entry into force of this Law in compliance with Article 28, shall file an application within a three-month period. Provided the specified deadline is not met or an approval is denied, the BNB may enforce the measures provided for under Article 103, paragraph 2, item 15.

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§ 50. This Law shall come into effect as of the date of its publication in the Darjaven Vestnik.

**LAW**  
**on Amendment**  
**of the Law on Bank Deposit Guaranty**

(Published in the Darjaven Vestnik, issue 44 of 2009,  
in force as of 12 June 2009)

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**Transitional and Final Provisions**  
**of the Law on Amendment of the Law on Credit Institutions**

(Published in the Darjaven Vestnik, issue 94 of 2010,  
in force as of 31 December 2010)

§ 22. Until 31 December 2012, the term under Article 92c, paragraph 2 shall be six months.

§ 23. This Law shall come into force as of 31 December 2010.

**LAW**  
**on Amendment**  
**of the Law on Payment Services and Payment Systems**

(Published in the Darjaven Vestnik, issue 101 of 2010, in force as of 30 June 2011)

**Transitional and Final Provisions**

§ 69. This Law shall come into effect as of 30 June 2011 except for: paragraphs 1–16, § 41–56 and § 62 and 66 which shall come into effect as of 31 December 2010.

paragraphs 60 and 68 which shall come into effect as of 31 December 2010.

**Relevant Community Legislation**

Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on Financial Collateral Arrangements

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 Amending Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purpose of Money Laundering

Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the Reorganisation and Winding Up of Credit Institutions

Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the Taking Up, Pursuit of and Prudential Supervision of the Business of Electronic Money Institutions

Directive 2000/28/EC of the European Parliament and of the Council of 18 September 2000 Amending Directive 2000/12/EC Relating to the Taking Up and Pursuit of the Business of Credit Institutions

Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 Relating to the Taking Up and Pursuit of the Business of Credit Institutions

Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on Settlement Finality in Payment and Securities Settlement Systems

Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on Investor-Compensation Schemes

Council Directive of 10 June 1991 on Prevention of the Use of the Financial System for the Purpose of Money Laundering

The Eleventh Council Directive of 21 December 1989 on Disclosure Requirements in Respect of Branches Opened in a Member State by Certain Types of Company Governed by the Law of Another State

Council Directive 89/117/EEC of 13 February 1989 on the Obligations of Branches Established in a Member State of Credit Institutions and Financial Institutions Having Their Head Offices Outside That Member State Regarding the Publication of Annual Accounting Documents

Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 Relating to the Taking Up and Pursuit of the Business of Credit Institutions

