

# **Ordinance No. 26**

## **of 23 April 2009**

### **on Financial Institutions**

(Issued by the Bulgarian National Bank,  
published in the Darjaven Vestnik, issue 36 of 15 May 2009; amended,  
Darjaven Vestnik, issue 58 of 2010)

#### *Chapter One*

### **General Provisions**

#### *Subject*

**Article 1.** This Ordinance shall establish:

1. the procedure and necessary documents for entry and deletion of financial institutions under Article 3, paragraph 1 of the Law on Credit Institutions (LCI) in/from the register of the Bulgarian National Bank under Article 3, paragraph 2 of the LCI;

2. the requirements to be observed by financial institutions in conducting their activities, as well as their reports submitted to the BNB.

#### *Requirement for Registration*

**Article 2.** (1) A person with a commercial registration on the territory of the Republic of Bulgaria, who intends to conduct activities as a financial institution, shall meet the terms and conditions under Article 3a of the LCI and shall be entered in the register under Article 3, paragraph 2 of the LCI (the register) before carrying out the activity as a financial institution.

(2) A foreign financial institution that will conduct activity on the territory of the Republic of Bulgaria *via* a branch or directly shall be entered in the register if the conditions of Articles 24 and 27 of the LCI are in place.

#### *Register*

**Article 3.** (1) The Bulgarian National Bank shall keep a register of financial institutions pursuant to Article 3, paragraph 1 of the LCI.

(2) The following data on financial institutions shall be specified in the register referred to in paragraph 1:

1. the registration number of the financial institution' entry;
2. the unique identification code (URN) of the legal person;
3. the name and legal organizational structure of the legal person;
4. registered office and head office addresses, as well as the mailing address and persons for correspondence;

5. the conducted activities under Article 2, paragraph 2, items 2, 6–8, 10–12 and Article 3, paragraph 1, items 2 and 3 of the LCI;

6. the deletion from the register and the grounds thereof.

(3) The register is public, electronically available and is updated on the basis of the information submitted by financial institutions.

### *Capital*

**Article 4.** (1) The minimum required subscribed and paid-in capital for the entry of a financial institution in the register shall amount to:

1. where the financial institution will conduct activity under Article 2, paragraph 2, items 8, 10–11 and Article 3, paragraph 1, item 2 of the LCI: BGN 50,000;

2. where the financial institution will conduct activity under Article 2, paragraph 2, items 2, 6, 7 and 12 and Article 3, paragraph 1, item 3 of the LCI: BGN 250,000.

(2) Contributions up to the minimum required capital under paragraph 1 may only be in cash.

(3) The financial institution shall maintain at any time a capital in an amount not less than the amount specified in paragraph 1, item 1, respectively item 2.

### *Requirements for Qualification, Professional Experience and Reputation*

**Article 5.** (1) A person who manages and represents the financial institution shall meet the following requirements:

1. has a university education;

2. has at least three years professional experience in the field of economics, law, finance and computer science;

3. has not been convicted of a premeditated crime of general character, unless rehabilitated;

4. during the last two years has not been a member of a managing or controlling body, or general partner in a company, which has been terminated by bankruptcy, if creditors have not been paid;

5. has not been deprived of the right to hold positions of financial responsibility;

6. has not been included in the list under Article 5, paragraph 1 of the Law on Measures Against Terrorist Financing.

(2) The requirements under paragraph 1, items 3–6 shall also apply to natural persons who directly or indirectly have a qualified holding in the capital of the financial institution.

(3) The requirements under paragraph 2 shall also apply to the persons who by law represent the legal persons having directly or indirectly a qualified holding in the capital of the financial institution.

*Chapter Two***The Procedure and Documents for Entering in the Register.  
Refusal and Deletion***Documents for Registration*

**Article 6.** (1) To be entered in the register, a person with commercial registration on the territory of the Republic of Bulgaria who intends to conduct an activity as a financial institution shall submit a written application to the Bulgarian National Bank and a registration form as per a sample form of the Bulgarian National Bank.

(2) The application under paragraph 1 shall contain the name, registered office and head office addresses of the applicant and the description of the activities to be performed under Article 2, paragraph 2, items 2, 6–8, 10–12 and Article 3, paragraph 1, items 2 and 3 of the LCI. The following documents related to the applicant shall be enclosed to the application:

1. a certified copy of the Articles of Association or Memorandum (Act) of Association;

2. documents evidencing that the required capital under Article 4 has been subscribed and paid-in in compliance with the activity which the applicant intends to conduct as a financial institution;

3. a certificate of actual standing on record with the Commercial Register as a joint-stock company, a limited liability company or a limited partnership with shares and UIC of the applicant;

4. a list of the shareholders or partners;

5. a list of the persons holding direct or indirect qualified interest in the capital of the applicant and documents certifying that these persons have required qualification, professional experience and reputation;

6. a list of the persons who will manage and represent the applicant and documents certifying that these persons have required qualification, professional experience and reputation;

7. financial statements: balance sheets, income statements, auditor's reports (where applicable) for the last two years of the legal person's business;

8. a document evidencing that the supervisory fee under Article 17 is paid;

9. a list of addresses of all the premises where the activity as a financial institution will be conducted.

(3) For the persons managing and representing the applicant, the following data and documents shall be enclosed to the application:

1. the name and personal data on identification, nationality, permanent and present addresses;

2. a completed questionnaire: a declaration about qualification, professional experience and reputation as per a sample form of the Bulgarian National Bank;

3. a conviction status certificate or a similar document in case of a foreign person;

4. a certified copy of the diploma of completed higher education;
5. a declaration that the circumstances under Article 5, paragraph 1, items 4–6 are met;
6. a certificate on the lack of tax and insurance obligations.

(4) For any natural person holding directly or indirectly qualified interest in the capital of the applicant, the following data and documents shall be enclosed to the application:

1. data, documents and declarations under Article 3, items 1, 3, 5 and 6;
2. a completed questionnaire: a declaration about qualification, professional experience and reputation as per a sample form of the Bulgarian National Bank;
3. a declaration on the origin of the funds used to make contributions for acquiring subscribed shares, respectively against participations in the applicant's capital.

(5) For any legal person holding directly or indirectly qualified interest in the capital of the applicant, the following data and documents shall be enclosed to the application:

1. an actual certificate from a commercial register that the entity is registered therein;
2. a certified copy of the Articles of Association, Memorandum (Act) of Association or other documents evidencing establishment of the company;
3. financial statements: balance sheets, income statements, auditor's reports (where applicable) for the last two years of the legal person's business;
4. a certificate on the lack of tax and insurance obligations;
5. a declaration on the origin of the funds used to make contributions for acquiring subscribed shares, respectively against participations in the applicant's capital;
6. data, documents and declarations under Article 3, items 1, 3, 5 and 6 for the persons managing and representing the legal person by law;
7. a completed questionnaire: a declaration under paragraph 4, item 2 with information about the legal person.

(6) In the cases where the applicant intends to include in the scope of its core operations performing activity in cash or non-cash manner under Article 2, paragraph 2, item 8, letter 'b' of the LCI, the following additional information and documents shall be enclosed to the application:

1. a list of the persons who will carry out foreign exchange transactions with information and documents about these persons as follows:
  - a) the names and personal data on identification, nationality, permanent and present addresses;
  - b) documents and declarations under Article 5, paragraph 1, items 3–6;
  - c) a diploma of completed education, a certificate for acquired additional qualification in relation to the transactions completed;
2. a certificate issued by the relevant internal affairs regional directorate, evidencing that the premises to the said business addresses meet the requirements of Ordinance No. I-171 on Organization and Control over Ensuring Security of Banks

and Non-bank Financial Institutions (Darjaven Vestnik, issue 70 of 2001; amended, issue 68 of 2004).

(7) The Bulgarian National Bank may require any additional documents necessary for certifying the requirements set out in the law and this Ordinance.

(8) If the documents required are irregular or additional information is necessary, the Bulgarian National Bank shall notify the applicant, setting a term for removal of irregularities and/or submission of the additional information.

### *Registration. Registration Certificate*

**Article 7.** (1) The Bulgarian National Bank shall enter the financial institution in the register no later than 30 days after the receipt of the application and required documents certifying compliance with the requirements under Articles 4–6.

(2) For the entry in the register, the financial institution shall submit the information under Article 6, paragraph 3, item 2, paragraph 4, item 2 and paragraph 5, item 7, as well as the registration form in electronic format, and thereafter the Bulgarian National Bank shall issue the certificate.

(3) The Bulgarian National Bank shall enter in the register under Article 3, paragraph 2 of the LCI a foreign financial institution, of which it has been notified by the home country's competent authorities that it intends to conduct activity *via* a branch or directly on the territory of the Republic of Bulgaria and for which a certificate under Article 24 of the LCI is attached.

### *Refusal of Registration*

**Article 8.** (1) The Bulgarian National Bank shall refuse registration of a person who intends to conduct activity as a financial institution in the register where:

1. the capital of the applicant no longer meets the requirements of this Ordinance;
2. persons who manage and represent the applicant no longer meet the requirements of this Ordinance;
3. persons holding qualified interest in the capital of the applicant no longer meet the requirements of this Ordinance;
4. the applicant has failed to submit all required documents or documents submitted contain incomplete, contradictory or incorrect information;
5. other provisions of this Ordinance have not been satisfied.

(2) The refusal for recording in the register shall be reasoned in writing.

### *Deletion of Registration*

**Article 9.** (1) The Bulgarian National Bank shall delete a financial institution from the register at its request where:

1. a decision has been taken to cease the activities under Article 2, paragraph 2, items 2, 6–8, 10–12 and Article 3, paragraph 1, items 2 and 3 of the LCI;
2. a decision has been taken to terminate the legal person's operation;
3. there is a reduction in the ratio under Article 13, paragraph 1;

4. there are other circumstances.

(2) In the cases under paragraph 1, the financial institution shall enclose the relevant documents in support and return the issued certificate of registration.

(3) The Bulgarian National Bank shall delete a financial institution from the register where:

1. the financial institution fails to commence the permitted activity within six months after the registration has been made;

2. the financial institution ceases to meet the registration requirements or other requirements under this Ordinance;

3. the financial institution has submitted false information or false documents on which the entry is made;

4. the financial institution does not fulfill its obligations under the LCI or legislative acts on its enactment or other regulatory requirements for conducting the activity;

5. the financial institution does not fulfill its obligations related to submission of information to the Central Credit Register, or violates the rules for its use;

6. the financial institution performs transactions and operations related to money laundering or in violation of the Law on Measures Against Money Laundering and its enactment acts.

(4) A person who has been removed from the register shall not carry out activity as a financial institution.

(5) In case of deletion from the register under paragraph 3, a person may submit a new application for registration no earlier than six months of the deletion from the register.

### *Notification of Changes after the Registration*

**Article 10.** Within a 15-day term the financial institution shall notify the Bulgarian National Bank of any change in the information and documents submitted in connection with registration, as well as it shall enclose certified copies of the documents evidencing the change. The registration form and questionnaires (declarations of the managing and representing persons, respectively persons holding qualified interest) containing new circumstances shall be submitted only electronically.

### *Data Storage*

**Article 11.** The Bulgarian National Bank shall store all documents submitted on paper and electronically by financial institutions for their registration and stated changes for a period of five years after the date of the financial institution's deletion from the register.

### *Chapter Three*

## **Conducting Activity Outside the Territory of the Republic of Bulgaria**

### *Issuing a Certificate under Article 25 of the LCI*

**Article 12.** (1) For issuing a certificate under Article 25 of the LCI, a financial institution with a registered office in the Republic of Bulgaria shall submit a written application to the Deputy Governor of the Bulgarian National Bank heading the Banking Supervision Department with the documents under Article 25, paragraph 1 of the LCI enclosed to the application.

(2) Where for identifying the existence of the conditions for issuing or refusing a certificate, further information is required, the Bulgarian National Bank may require its submission by the applicant, by the parent bank or any of banks that jointly hold the financial institution. The Bulgarian National Bank shall also set a deadline for submission.

(3) Within one month, the Bulgarian National Bank shall review the documents and come up with a decision on the application under paragraph 1.

(4) The Bulgarian National Bank shall issue the required certificate provided the conditions under Article 25, paragraph 2 of the LCI are simultaneously met.

(5) The Bulgarian National Bank shall refuse issuance of the required certificate where the requirements under Article 25, paragraph 2 of the LCI are not met.

(6) The certificate shall be forwarded to the competent authority of the Member State where the financial institution will conduct activity *via* a branch or directly. A copy of the certificate or refusal to issue a certificate shall be sent to the applicant.

### *Chapter Four*

## **Requirements to the Operation of a Financial Institution**

### *Requirements to Core Operations*

**Article 13.** (1) Core operations of a financial institution are present where the ratio of the activities under Article 2, paragraph 2, items 2, 6–8, 10–12 and Article 3, paragraph 1, items 2 and 3 of the LCI is not less than 50 per cent of the total activity of the legal person according to the financial statements.

(2) The ratio under paragraph 1 is calculated on the basis of the net income from core operations to the total income from activity or the balance sheet value of the asset corresponding to the core operations to total assets.

(3) For a newly established entity, ratios under paragraph 2 shall be calculated on the basis of data from financial statements for the first six months activity.

(4) The financial institution shall notify the Bulgarian National Bank in case of reduction of the ratio under paragraph 1.

(5) If the circumstance under paragraph 1 is not present more than six months, the Bulgarian National Bank shall delete the financial institution from the register on its own initiative, unless the deletion has been already requested by the financial institution.

### *Requirements to Rules and Information*

**Article 14.** (1) The financial institution must adopt and implement internal rules governing its activity, which include:

1. a clear organization structure and allocation of responsibilities;
2. effective procedures for identification, management, control and reporting of the risks to which the financial institution is exposed or might be exposed;
3. adequate internal control mechanisms, including reliable and effective administrative and accounting procedures.

(2) The financial institution which conducts activities under Article 3, paragraph 1, item 3 of the LCI must adopt and implement internal rules and general terms to the contracts with customers, which must contain:

1. data on the total cost of the loan (fees, commissions and other costs directly related to the loan agreement) and objective criteria on which these costs may be changed;
2. the interest rate expressed as annual interest rate, method for calculating the interest rate, as well as conditions under which the interest rate might be changed until the full repayment of the loan;
3. conditions and costs in case of early repayment of the loan.

(3) The requirements under paragraph 2 shall apply *mutatis mutandis* to the activity under Article 2, paragraph 2, item 6 of the LCI.

(4) The general provisions under paragraphs 2 and 3 shall be announced in the premises to which customers have access and where possible in electronic form.

(5) In granting consumer loans, the requirements of the Law on Consumer Credit shall apply to the contracts with costumers.

(6) The provisions of contracts with costumers shall be formulated in a clear and understandable way.

(7) The financial institution conducting activity under Article 2, paragraph 2, item 6 and Article 3, paragraph 1, item 3 of the LCI shall submit to the Bulgarian National Bank rules and general provisions under paragraphs 2 and 3 within 30 days of the entry in the register, respectively their change.

(8) A financial institution which is a liable person under the Law on Measures against Money Laundering shall submit to the Bulgarian National Bank a copy of internal rules on measures against money laundering and terrorist financing approved by the Chairman of the National Security Government Agency within 30 days of their approval, respectively endorsement of accepted changes.

### *Reporting Requirements*

**Article 15.** (1) Each financial institution shall prepare and submit to the Bulgarian National Bank:

1. financial statements in a form and content set by the Bulgarian National Bank by the 10th day of the month following the reporting quarter;

2. annual financial statements (on a solo and/or consolidated basis), audited and certified (where applicable) by a specialized auditing company by the 30th of April of the year following the reporting year; the financial institutions shall submit as an integral part of their annual financial statements a report on the activity of the entity, as well as a report of an independent auditor, where applicable.

(2) (new; Darjaven Vestnik, issue 58 of 2010) Financial institutions which have been entered in the BNB register under Article 3, paragraph 2 of the Law on Credit Institutions and perform activities under Article 2, paragraph 2, item 8, letter ‘b’ of the Law on Credit Institutions shall on a daily basis submit to the BNB information on the type, amount and exchange rate of the foreign currency bought and sold under a procedure set in joint instructions of the Deputy Governor heading the Banking Supervision Department and the Deputy Governor heading the Banking Department.

(3) (former paragraph 2; Darjaven Vestnik, issue 58 of 2010) Financial institutions shall keep at least five years all accounting documents and other information related to their core operations under Article 2, paragraph 2, items 2, 6–8, 10–12 and/or Article 3, paragraph 1, items 2 and 3 of the Law on Credit Institutions, including information on contracts concluded. The term for keeping the documents related to the concluded contracts shall start on the date of termination of contractual relationships.

## *Chapter Five*

### **Control**

#### *Examination of Data Accuracy*

**Article 16.** (1) The banking supervisory authorities of the Bulgarian National Bank shall conduct examinations, including on-site, of the accuracy of the reports and submitted to the Bulgarian National Bank, of the rules, general provisions, as well as of any other data under this Ordinance and the LCI.

(2) The Bulgarian National Bank may require financial institutions to submit reports and documents with the aim of identifying all circumstances which are essential for the reporting with the Bulgarian National Bank or other information relevant to the control carried out by the Bulgarian National Bank in relation with the enactment of this Ordinance.

(3) The banking supervisory authorities of the Bulgarian National Bank shall have the powers under Article 80 of the LCI in exercising on-site examinations over financial institutions.

(4) The persons authorized by the Deputy Governor of the Bulgarian National Bank heading the Banking Supervision Department may for control purposes under paragraphs 1–3 require additional data regarding the legal status and activity of the financial institutions.

### *Fees*

**Article 17.** The Bulgarian National Bank shall collect a fee of BGN 3000 for administrative costs related to consideration of applications for registration.

## **Transitional and Final Provisions**

§ 1. This Ordinance is issued pursuant to Article 3a, paragraph 3 and § 13 of the Law on Credit Institutions. The Ordinance is adopted by Resolution No. 53 of 23 April 2009 of the Governing Council of the Bulgarian National Bank.

§ 2. This Ordinance shall repeal Ordinance No. 26 of 2006 on the Financial Houses (published in the *Darjaven Vestnik*, issue 7 of 2007; amended; *Darjaven Vestnik*, issue 19 of 2007).

§ 3. In order to be registered, the financial houses incumbent upon the entry into force of this Ordinance and licensed by the Bulgarian National Bank shall file an application and documents under Article 6, paragraph 1, paragraph 3, item 2, paragraph 4, item 2, paragraph 5, item 7 to the Bulgarian National Bank.

§ 4. For the Fund Equity and National Guarantee Fund established pursuant to the Law on the Bulgarian Development Bank, the entry in the register is made officially.

§ 5. The financial institutions incumbent upon the entry into force of this Ordinance shall file an application for registration until 30 September 2009.

§ 6. The cooperatives under § 12 of the LCI incumbent upon the entry into force of this Ordinance shall be registered on the grounds of a certificate for compliance with the requirements of the Decree No. 343 of 30 December 2008 of the Council of Ministers issued by the Minister of Agriculture or a person authorized by him, and continue their activity under the procedure established by the Council of Ministers.

§ 7. Financial institutions registered until 31 May 2009 shall submit their first reports under Article 16, paragraph 1, item 1 as of 30 June 2009.

§ 8. The Deputy Governor of the Bulgarian National Bank heading the Banking Supervision Department shall issue instructions on the enactment of this Ordinance.