

## **Credit Institutions Act**

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Text in Bulgarian: Закон за кредитните институции

### Chapter One

#### GENERAL PROVISIONS

**Article 1.** (1) This Act shall lay down the terms and procedures for authorisation (licensing), taking up and pursuit of the business, supervision and winding up of credit institutions in order to ensure a sound, reliable and secure banking system and safeguard the interests of depositors.

(2) Credit institutions shall be banks and electronic money institutions.

(3) The provisions of this Act shall furthermore apply, *mutatis mutandis*, to banks established by express law, in so far as otherwise provided by such law.

**Article 2.** (1) A bank shall be a legal person engaged in the business of receiving deposits or other repayable funds from the public and granting credits or other financing for its own account and at its own risk.

(2) A bank may also carry on the following activities, provided that they are included in its authorisation (license):

1. (amended, SG no. 23/2009, effective 1.11.2009, SG No. 24/2009, effective 31.03.2009) provision of payment transfer service, and after 1 November 2009 - provision of payment services in the meaning of the Payment Services and Payment Systems Act;

2. (supplemented, SG No. 23/2009, effective 1.11.2009, amended, SG No. 24/2009, effective 31.03.2009) issue and administration of other means of payment (payment cards, travellers' cheques and letters of credit) as long as these activities are not covered by subparagraph 1;

3. acceptance of valuables on deposit;

4. activity as a depository or trustee institution;

5. (repealed, SG No. 24/2009, effective 31.03.2009);

6. financial leasing;

7. guarantee transactions;

8. trading for own account or for account of customers in:

(a) (supplemented, SG No. 24/2009, effective 31.03.2009) money market instruments - cheques, bills, certificates of deposit, etc., with the exception of the cases referred to in subparagraph 9;

(b) foreign exchange and precious metals;

(c) (supplemented, SG No. 24/2009, effective 31.03.2009) financial futures, options, exchange and interest-rate instruments as well as other derivative instruments, with the exception of the cases referred to in subparagraph 9;

9. trading for own account or for account of customers in transferable securities, participation in securities issues and other services and activities under Article 5, (2) and (3) of the Markets in Financial Instruments Act;

10. (amended, SG No. 24/2009, effective 31.03.2009) money broking;

11. (amended, SG No. 24/2009, effective 31.03.2009) advice to companies regarding their capital structure, branch strategy and related issues, as well as advice and services in connection with transformation of companies and transactions for acquisition of enterprises;

12. (amended, SG No. 24/2009, effective 31.03.2009) acquisition of accounts receivable arising from the supply of goods or the provision of services (factoring);

13. acquisition and management of participating interests;

14. safe custody services;

15. collection, provision of information and reference on customer creditworthiness;

16. any other activities as may be specified by an ordinance of the Bulgarian National Bank (BNB).

(3) (Supplemented, SG No. 52/2007, effective 3.07.2007) The acquisition, registration, settlement, repayment and trading in government securities shall be carried on in accordance with the terms and procedure of the Government Debt Act . Trade in government securities on regulated markets in financial instruments and on multilateral trading facilities shall be carried out under the terms of the Markets in Financial Instruments Act.

(4) No bank may, acting by the nature of trade thereof, carry on any other activities other than those specified in paragraphs 1 and 2, save where this is necessary in connection with the pursuit of the business thereof or in the process of collection of receivables thereof on credits as granted. A bank may not establish or acquire undertakings for the purpose of carrying on ancillary services.

(5) (Amended, SG No. 24/2009, effective 31.03.2009) Receiving of deposits or other repayable funds from the public as well as the services under subparagraphs 3 and 4 of paragraph 2 may be carried on solely by:

1. a person which has been granted a bank licence (authorisation) by the BNB;
2. a bank whereof the registered office is in a third country, which has been granted a licence (authorisation) by the BNB to conduct banking business in the Republic of Bulgaria through a branch;
3. a bank which has been granted a licence (authorisation) for conduct of banking business by the competent bodies of a Member State, which provides services directly or through a branch within the territory of the Republic of Bulgaria.

(6) In addition to banks, electronic money may be issued by electronic money companies which:

1. have been granted a licence (authorisation) by the BNB;
2. have been granted a licence (authorisation) by the competent authorities of a Member State and provide services, directly or through a branch, within the territory of the Republic of Bulgaria.

**Article 3.** (Amended, SG No. 24/2009, effective 31.03.2009) (1) A financial institution shall be a person other than a credit institution whereof the principal business shall be the carrying on of one or more of the activities:

1. specified in Article 2 (2), subparagraphs 1, 2, 6 - 12;
2. acquisition of stakes in credit institutions or other financial institutions;
3. granting of credits with funds which have not been raised from receiving deposits or other repayable funds from the public.

(2) Financial institutions which are not subject to licensing (authorisation) or registration under another law shall be entered into a Register of the BNB in order to be able to operate. The Register shall be public and a certificate shall be issued upon registration in it.

**Article 3a.** (New, SG No. 24/2009, effective 31.03.2009) (1) In order to be entered in the register referred to in Article 3 (2), a financial institution with commercial registration in the territory of the Republic of Bulgaria shall meet the following requirements:

1. be established as a shareholding company, a limited liability company or a commandite company with shares and to have paid in the monetary contributions to the capital to the amount specified in an ordinance issued by the BNB;
2. the place of its main business shall be in the territory of the Republic of Bulgaria;

3. the persons managing and representing the company as well as the persons which directly or indirectly have a qualifying share participation in the capital of the company shall have the necessary qualification, professional experience and reputation.

(2) A foreign financial institution which will conduct business in the territory of the Republic of Bulgaria through a branch or directly shall be entered in the Register on the grounds of the notification and enclosed certificate referred to in Article 24 (2).

(3) The procedure for entering into and deletion from the Register referred to in Article 3 (2), as well as the documents required for the entering shall be specified in the ordinance referred to in paragraph 1, subparagraph 1.

(4) The Bulgarian National Bank shall refuse to enter a local or foreign financial institution in the Register if the institution does not meet the requirements for entering or if the required data and documents have not been submitted, or the submitted data and documents contain incomplete, contradictory or false information.

(5) The Bulgarian National Bank shall delete a local or foreign financial institution from the Register at the request of the institution or if the BNB establishes that:

1. the institution no longer complies with the requirements of this article;
2. the entry has been made on the grounds of false information or false documents;
3. the institution does not fulfil its obligations under this Act or the statutory documents related to its implementation, or other statutory requirements for its operations.

(6) The requirements for the operation of the financial institution shall be specified in the ordinance referred to in paragraph 1, subparagraph 1.

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

1. the Bulgarian National Bank, whereof the business shall be regulated by express law;
2. any licensed postal operators of universal postal service - in respect of monetary operations thereby effected characteristic of the operation thereof and regulated by express law;
3. credit unions granting credits solely to their members at the expense of contributions made by them and at their own risk.
4. (new, SG No. 24/2009, effective 31.03.2009) any persons who, as a profession, grant loans against pawned possessions (pawn brokers) according to conditions and under a procedure specified by the Council of Ministers.

**Article 5.** The prohibition on receiving deposits and other repayable funds from the public shall not apply to:

1. the Bulgarian State and municipalities or international public organisations whose members comprise one or more Member States - upon receipt of repayable funds in the cases

stipulated by law;

2. the activity of persons where such activity is expressly regulated by law and is subject to supervision aimed at safeguarding depositors and investors.

**Article 6.** (1) No person which does not hold a licence (authorisation) for conduct of banking business may include in the business name thereof or use in advertising or any other activity the word "банка" [bank] or any derivative thereof in any foreign language, or any other word which signifies the conduct of banking business.

(2) The prohibition referred to in paragraph 1 shall not apply to an institution whereof the name has been established or recognised by law or by an international agreement whereof the Republic of Bulgaria is a party, as well as where the context wherein the word "bank" is used clearly indicates that the said institution does not have the effecting of banking transactions as its objects.

(3) (Amended, SG No. 24/2009, effective 31.03.2009) The name of a bank may not resemble the name of another bank conducting banking business in the Republic of Bulgaria. This prohibition shall also apply where the resemblance is to the name of a reputable bank on the international financial market, unless where the latter agrees.

(4) A bank authorised in a Member State, which intends to conduct business within the territory of the Republic of Bulgaria, shall use the same name as the one used in the home Member State. If the name of such bank is similar to that of another bank operating in the Republic of Bulgaria, the BNB may require that the name be accompanied by other distinctive additions for the purposes of distinction.

## Chapter Two

### INCORPORATION AND MANAGEMENT OF A BANK

**Article 7.** (1) A bank shall be incorporated as a joint-stock company and, save in so far as otherwise provided by this Act, the Commerce Act shall apply thereto.

(2) The minimum required paid-up capital upon a bank's incorporation shall be no less than BGN 10 million.

(3) Contributions against subscribed shares to the minimum required capital under paragraph 2 may be solely monetary.

(4) A bank may open more than one branch within a single population centre, including the population centre where the said bank has the registered office thereof.

(5) The registered address and registered office of the bank as entered in the commercial register shall coincide with the place of its actual management and shall be located in the country where the bank actually carries on its business.

**Article 8.** Any bank shall issue solely dematerialised shares, and each share shall entitle the holder thereof to one vote.

**Article 9.** The Articles of Association of any bank shall state, in addition to the particulars prescribed in the Commerce Act, particulars of the transactions which the bank shall effect, the

powers to sign for and to represent the bank, as well as particulars of the internal control system of the bank.

**Article 10.** (1) A bank shall be managed and represented jointly by not less than two persons, at least one of them having command of the Bulgarian language. The said persons may not delegate the overall management and representation of the bank to any of them, but may empower third parties to perform specified acts.

(2) The persons under paragraph 1 shall manage the bank attending in person its registered office.

(3) No legal person shall be eligible for election to the Management Board or to the Board of Directors of any bank.

**Article 11.** (1) A member of the Management Board or the Board of Directors, as well as a procurist, except for those whose authorisation is solely for the business of a branch of a bank authorised in the Republic of Bulgaria, may be a person who:

1. holds an educational qualification degree not lower than Master, conferred thereon upon graduation from a higher educational establishment;

2. possesses qualifications and professional experience of banking adequate to the relevant education and, applicable to the persons referred to in sentence one of Article 10, paragraph 1 herein, previous experience of at least 5 years on a position requiring performance of managerial functions in a bank or a corporation or institution comparable to a bank, conforming to criteria determined by the BNB;

3. has no conviction for a premeditated offence at public law, unless he has been exonerated;

4. holds no previous membership of a management body or a supervisory body of, and no previous status as general partner in, any corporation dissolved by bankruptcy and leaving any creditor unsatisfied, within the two years last preceding the date of the adjudication in bankruptcy, regardless of whether his rights have been restored;

5. holds no previous membership of a management body or a supervisory body of a bankrupt bank within the two years last preceding the date of the adjudication in bankruptcy;

6. is under no lapsed or effective disqualification from occupying a position of property accountability;

7. is no spouse of any other member of a management body or a supervisory body of the bank, and is no lineal or collateral relative to any such person up to the third degree of consanguinity and does not actually live with such a member;

8. is not an insolvent debtor whereof the rights have not been restored.

9. (new, SG No. 24/2009, effective 31.03.2009) on the basis of the information collected about him/her, does not give rise to suspicions about his/her reliability and suitability or about possible conflicts of interest.

(2) (Amended, SG No. 24/2009, effective 31.03.2009) A member of the Supervisory Board of a bank or a representative of a legal entity in the Supervisory Board may be a person who meets the requirements of paragraph 1, subparagraphs 3 - 8, and is reliable and suitable for taking the job.

(3) (New, SG No. 24/2009, effective 31.03.2009) The persons referred to in paragraphs 1 and 2 can be selected or authorised following a prior approval by the BNB. The information and documents required as well as the procedure for granting or refusing of approval shall be defined in an ordinance issued by the BNB.

(4) (Renumbered from Paragraph 3, SG No. 24/2009, effective 31.03.2009) The particulars covered under subparagraphs 4 to 8 of paragraph 1 shall be verified by a declaration.

(5) (Renumbered from Paragraph 4, amended, SG No. 24/2009, effective 31.03.2009) Paragraphs 1 and 3 shall apply mutatis mutandis to managing directors of branches of banks having their registered office in a third country.

(6) (Renumbered from Paragraph 5, amended, SG No. 24/2009, effective 31.03.2009) Unless released from the respective body within a time limit as prescribed by the BNB, any person, who does not satisfy or no longer satisfies the requirements listed in paragraph 1, 2 or 5 and, in respect of the persons managing the bank, in Article 10 (1) herein as well, shall be removed from office by the BNB.

**Article 12.** (Repealed, SG No. 24/2009, effective 31.03.2009).

Chapter Three

## LICENSING AND PERMISSIONS

### Section I

#### Licence for banking business

**Article 13.** (1) A licence (authorisation) granted by the BNB shall be required for the conduct of banking business.

(2) Any application for the granting of a banking licence shall enclose:

1. the Articles of Association and any other instruments of incorporation of the applicant;
2. documents containing particulars of the subscribed capital and of the contributions made towards participating interests therein;
3. a business plan of the bank containing a detailed description of the activities to be performed, customer and product structures, the objectives, policy and strategy of the bank, a three-year financial forecast;
4. description of the management and organisational structure, including the activity of individual organisational units, allocation of responsibilities among executive directors and other officers, organisation and management of the information system of the bank, including the

information security arrangement;

5. description of the internal control systems and the risk management systems as well as an anti-money laundering programme;

6. the names and addresses of the members of the Supervisory Board and the Management Board (or of the Board of Directors) of the bank, and detailed particulars in writing of the qualifications and professional experience possessed thereby;

7. particulars in writing of the name/business name and residence/registered office of any persons who or which have subscribed for 3 and more than 3 per cent of the voting shares, as well as of the professional (business) activity thereof during the last preceding five years. Any such natural person and the legitimate representatives of any such legal persons shall submit declarations in writing:

(a) that the payments against subscribed shares have been effected with own funds;

(b) about the origin of the funds wherefrom payments have been effected for subscribed shares;

(c) of the taxes paid thereby during the last preceding five years;

8. in respect of the legal persons referred to in subparagraph 7 - a document of registration and particulars in writing regarding the persons holding shares or interests in the capital or property thereof or exercising control over them;

9. any other particulars and documents as may be laid down in an ordinance or required by the BNB for the purpose of ascertaining whether the circumstances necessary for assessment of the conditions for granting of a licence or refusal thereof exist.

(3) Payments towards participating interests shall be deemed to be effected with own funds where at the date of effecting the payment thereof:

1. for natural persons - the difference between their disposable funds on bank accounts and the amount of their liabilities is higher than the amount of the payment towards participating interests;

2. for legal entities - the amount of the payment towards participating interests is lower than both the net worth of the capital defined as the difference between assets and liabilities according to balance sheet; and lower than their disposable funds on bank accounts.

(4) The Bulgarian National Bank shall hold preliminary consultations with the competent banking supervision authority before granting a licence for banking business to:

1. a bank which will be a subsidiary of a bank that has been granted a licence in another Member State;



2. a bank which will be a subsidiary of a parent undertaking of another bank which has been granted a licence in another Member State;

3. a bank which is controlled by persons exercising control over another bank which has been granted a licence in another Member State.

(5) The Bulgarian National Bank shall hold preliminary consultations with the competent authority responsible for supervision of insurance company or investment intermediary in another Member State before granting a licence for banking business to:

1. a bank which will be a subsidiary of an insurance company or an investment intermediary that has been granted a licence in another Member State;

2. a bank which will be a subsidiary of a parent undertaking which has as a subsidiary an insurance company or an investment intermediary which has been granted a licence in another Member State;

3. a bank which will be controlled by persons exercising control over an insurance company or an investment intermediary which has been granted a licence in another Member State.

(6) Consultations with the competent supervision authorities shall cover issues concerning the shareholders, reputation and experience of the persons participating in the management of the companies under paragraph 4 or 5, evaluation of compliance with supervisory requirements as well as any other information as may be necessary for the granting of the licence.

**Article 14.** (1) Before pronouncing upon any application for licence, the BNB shall make all enquiries as may be necessary to establish the validity of the documents submitted and the financial position of the applicant.

(2) Prior to pronouncing upon any application for provision of services and activities covered under Article 5, (2) and (3) of the Markets in Financial Instruments Act, the BNB shall take into consideration the observations in writing of the Financial Supervision Commission, and said observations shall be presented within one month after being requested in writing by the BNB, together with documents enclosed thereto.

(3) A licence for conduct of banking business shall be granted, provided that the following conditions obtain simultaneously:

1. the Articles of Association and the other instruments of incorporation of the applicant are in conformity with law;

2. (amended, SG No. 24/2009, effective 31.03.2009) the Articles of Association of the applicant do not contain provisions which could prevent the application of the corporate management principles and best practices;

3. the capital of the bank and the paid-up portion thereof are not lower than the minimum required amount;

4. at BNB discretion, the activity which the applicant intends to carry on ensures the required reliability and financial stability.

5. the members of the Management Board (Board of Directors) and the Supervisory Board satisfy the requirements herein and no legal prohibition on holding the position has been imposed thereon;

6. at BNB discretion, the shareholders controlling more than three per cent of the votes with their acts or influence on decision-making could not harm the reliability or security of the bank or its operations;

7. at BNB discretion, there is no threat that the bank will be affected by risks arising from the non-bank business of its founders;

8. in the event of a financial holding company or a mixed-activity holding company - at BNB discretion - the parent undertaking will not prevent the exercise of supervision on a consolidated basis;

9. the persons who have subscribed for three or more than three per cent of the capital have effected payment towards participating interests with own funds;

10. it has not been established that existence of close links between the bank and other persons may prevent the effective exercise of banking supervision;

11. at BNB discretion, the requirements or difficulties in implementation of individual statutory or administrative acts of a third country governing one or more legal or natural persons with whom the bank has close links will not prevent the effective exercise of banking supervision;

12. at BNB discretion, the amount of the property possessed by the persons that have subscribed for 10 or more than 10 per cent of the capital and/or the scale and financial results of the business carried out by them correspond to the proposed acquisition of shareholding in the bank and do not raise doubt as to the reliability and capability of such persons, where necessary, to provide capital support to the bank;

13. the origin of the funds used for effecting payment towards participating interests by the persons who have subscribed for three or more than three per cent of the capital is clear and legitimate;

14. at BNB discretion, the business plan, the management and organisational structure of the bank, the internal control systems, the risk management systems, as well as the anti-money laundering programme ensure adequate risk management and the required reliability and financial stability of the bank;

15.(amended, SG No. 24/2009, effective 31.03.2009) the provision of Article 6 (3) has been complied with.

(4) Within three months after the receipt of any application and all required documents, the BNB shall take a decision on granting of a licence for conduct of banking business, provided the terms of Article 15 (1) are met, or shall refuse to grant a licence.

**Article 15.** (1) A licence for conduct of banking business shall be granted if within three months after receipt of the notice under Article 14 (4), proposition one herein, the applicant certifies that the following conditions have been fulfilled:

1. the persons who or which have subscribed for shares have made payments towards the said shares, whereof the aggregate value is not less than the minimum amount of capital required for conduct of banking business;

2. (amended, SG No. 24/2009, effective 31.03.2009) the members of the Management Board (Board of Directors) and the Supervisory Board satisfy the corresponding requirements specified in Article 11, and the other officers possess the required qualifications and professional experience;

3. buildings appropriate for conduct of banking business and the necessary technical equipment have been procured;

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

5. an internal control unit has been set up, and the employees appointed possess the professional qualifications and experience required for the operation;

6. reliable internal rules for management have been elaborated, including a clear organisational structure with precisely defined, transparent and adequate levels of responsibility and effective procedures for identification, management, monitoring and reporting of risks to which the bank might be exposed.

(2) The rules under subparagraphs 4 and 6 of paragraph 1 shall be comprehensive and shall correspond to the nature, scale and complexity of the bank's activity and shall be consistent with the risks to which the bank may be exposed in accordance with Article 39 (2).

(3) The Bulgarian National Bank may exclude from the licence for banking business particular transactions or activities should it deem that the applicant is not qualified to initiate said transactions or activities or where other requirements set out in law have not been fulfilled.

(4) If the applicant does not submit the required documents within the time limit under paragraph 1, the BNB shall refuse to grant a licence.

(5) Licences as granted shall be recorded in a register kept by the BNB.

(6) Where the licence authorises conduct of business under Article 2 (2) subparagraph 9, the BNB shall send a transcript of the licence to the Financial Supervision Commission.

(7) The Bulgarian National Bank shall notify the European Commission about:

1. the requirements for licensing of credit institutions;

2. any licence granted to a credit institution.

**Article 16.** (1) Apart from the cases covered under Article 15 (4) herein, the BNB shall refuse to grant a licence where it establishes that :

1. any of the conditions under Article 14 (3) does not exist;

2. the applicant has not submitted, within the time limits set, all the required particulars and documents under Article 13 (2) or the submitted documents contain incomplete, inconsistent or unreliable information.

(2) If the Financial Supervision Commission has submitted adverse observations under Article 14 (2), the BNB shall refuse to grant a licence for provision of services and activities under Article 5, (2) and (3) of the Markets in Financial Instruments Act.

- (3) The refusal to grant a licence shall be motivated.

- (4) Regardless of the time limits under Articles 14 and 15, the BNB shall grant or refuse to grant a licence within 12 months from receipt of the application.

**Article 17.** (1) To obtain a licence for conduct of banking business within the territory of the Republic of Bulgaria through a branch, a bank with a registered office in a third country shall file an application enclosing thereto:

1. a certified transcript of the instrument of registration of the bank and a document from the registration body containing current data about the registered address and registered office, the objects, the amount of the capital, the management system and the persons representing the bank;

2. a certified transcript of the authorization for conduct of banking business of the competent banking supervision authority of the bank's home country;

3. a certified transcript of the bank's Articles of Association;

4. a programme of the operations of the branch, including description of the activities under Article 1 (1) and (2) which it intends to carry on;

5. the organisational structure of the branch;

6. the annual financial statements for the last three years;

7. a written consent for opening a branch from the banking supervision authority of the bank's home country;

8. a written statement from the banking supervision authority of the bank's home country containing information about the financial position of the bank and a commitment for co-operation with the BNB;

9. particulars about the persons to whom management of the branch is entrusted, including particulars about their qualifications and professional experience in banking;

10. other particulars and documents as may be laid down in an ordinance or required by the BNB with a view to establishing all the circumstances necessary for determining whether the conditions for granting of a licence or refusal to grant a licence exist.

(2) No licence under paragraph 1 may confer on the branch the right to carry on activities which the bank may not conduct in its home country.

(3) A licence shall be granted where:

1. the competent banking supervision authority of the bank's home country in the third country exercises effective supervision over it and its branches abroad;

2. an agreement is concluded on supervision co-operation between the BNB and the competent supervision authority;

3. the bank is of repute on the international financial market and its financial position is reliable and sound;

4. the organisational structure of the bank is appropriate for the activities it intends to carry on;

5. the managing directors of the branch meet the requirements of this Act and have the required reputation;

6. the legislation of the third country does not prevent the exercise of effective supervision on a consolidated basis or the provision of the necessary information.

(4) The Bulgarian National Bank shall notify the European Commission and the European Banking Committee of any licence granted by it for conduct of banking business through a branch of a bank having its registered office in a third country.

(5) The Bulgarian National Bank shall refuse to grant a licence to a bank having its registered office in a third country for conduct of banking business within the territory of Bulgaria through a branch where the BNB determines that:

1. any of the conditions under paragraph 3 does not exist;

2. the competent banking supervision authority of the applicant bank's home country has not given consent to the said bank for opening a branch in the Republic of Bulgaria or has sent an opinion on unsatisfactory financial position or on infringements of the requirements for prudent banking;

3. the competent banking supervision authority of the applicant bank's home country does

not apply the reciprocity principle in ensuring access of banks with registration within the territory of Bulgaria to the relevant bank market on the territory of the third country.

**Article 18.** The representative office of any bank in the Republic of Bulgaria shall be obliged to submit to the BNB a transcript of the instrument of registration with the Bulgarian Chamber of Commerce and Industry within fourteen days after the date of issue of the said instrument. No such representative office may carry on commercial activity.

**Article 19.** In case of a refusal, the applicant may file a new application for granting of a licence for conduct of banking business not earlier than 12 months from entry into force of the refusal thereof.

## Section II

### Mutual recognition

**Article 20.** (1) A bank licensed in a Member State may carry on through a branch within the territory of the Republic of Bulgaria the activities covered in Article 2 (1) and (2), provided that said activities are included in its licence and upon a notice thereof from the competent authority to the BNB.

(2) To carry on banking business within the territory of the Republic of Bulgaria through a branch the bank licensed in a Member State shall establish only one branch regardless of the number of places of operation.

**Article 21.** (1) The Bulgarian National Bank shall take necessary actions for exercise of supervision over the branch under Article 20 within two months from receipt of a notification from the competent authorities of the home country of the said bank's intention to conduct business within the territory of the Republic of Bulgaria. Within the term under sentence one the BNB may specify the conditions under which, in the interest of the general good, the bank may conduct its business within the territory of the Republic of Bulgaria.

(2) A bank licensed in a Member State may commence its activity within the territory of the Republic of Bulgaria upon receipt of a notification thereof from the BNB or after expiry of the time limit under paragraph 1.

**Article 22.** A bank licensed in a Member State may carry on directly within the territory of the Republic of Bulgaria the activities under Article 2 (1) and (2) should said activities be covered by its licence and upon a notification thereof to the BNB from the competent authority which has granted the licence. The bank shall specify the names and addresses of the persons who will represent it before the BNB.

**Article 23.** (1) A bank licensed in the Republic of Bulgaria may carry on activities within the territory of another Member State should said activities be covered by its licence for banking business.

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

1. the Member State within the territory of which it plans to establish the branch;
2. the registered address and registered office where it intends to register the branch, and the correspondence address;

3. the persons to whom management and representation of the branch is to be entrusted, including description of their responsibilities;

4. a programme of the operations of the branch, including description of the activities under Article 2 (1) and (2) which it intends to carry on;

5. the organisational structure of the branch;

6. other documents as laid down in a BNB ordinance.

(3) Should the BNB deem that the planned activity within the territory of another Member State is in accordance with the organisational structure and financial situation of the bank, within three months of receipt of the notification and all the documents referred to in paragraph 2, the BNB shall communicate the received information to the competent authorities of the host Member State, as well as the amount of own funds and the capital adequacy ratio of the bank. The BNB shall notify the applicant bank within the same time limit.

(4) The Bulgarian National Bank shall give reasons for its refusal to communicate the information referred to in paragraph 3 where:

1. the bank plans to carry on within the territory of another Member State an activity which is outside its scope of licence;

2. it deems that the planned activity within the territory of another Member State is not in conformity with the structural organisation and financial situation of the bank;

3. it deems that the structural organisation of the branch does not ensure its reliable and sound management.

(5) BNB refusal under paragraph 4 shall be issued in writing within three months of receipt of the notification and all the documents referred to in paragraph 2 and shall notify the bank thereof within the same time limit.

(6) BNB refusal under paragraph 4 as well as its failure to reply within the time limit set shall be subject to a right to apply to courts in accordance with the procedure of Article 151.

(7) The Bulgarian National Bank shall notify the European Commission of any refusal under paragraph 4.

(8) The bank under paragraph 1 shall notify the BNB and the competent authorities of the host Member State of any changes in the stated circumstances under subparagraphs 2 - 6 of paragraph 2 no later than 30 days before the change becomes effective.

(9) A bank licensed in the Republic of Bulgaria which intends to exercise for the first time its right to carry on activity directly within the territory of another Member State shall notify the BNB of its intentions, specifying the services to be provided within the territory of the host

Member State. Within one month of receipt of the notification the BNB shall inform the competent authorities of the host Member State.

(10) The bank as referred to in paragraph 9 may carry on directly activities within the territory of another Member State, provided that said activities are included in its licence for banking business.

**Article 24.** (1) A financial institution having its registered office in a Member State may carry on within the territory of the Republic of Bulgaria, either through a branch or directly, one or more of the activities referred to in Article 3 (1), provided that it is a subsidiary of a bank or a jointly-owned subsidiary of two or more banks licensed in a Member State, the Memorandum or the Articles of Association of which permit expressly the carrying on of the activities referred to in Article 3 (1) and which fulfills each of the following conditions:

1. the parent bank or banks which own jointly the financial institution are licensed for conduct of banking business within the territory of the Member State by the law of which the financial institution is governed;

2. the financial institution actually carries on one or more of the activities referred to in Article 3 (1) within the territory of the home Member State by the law of which the financial institution is governed;

3. the parent bank or banks which own jointly the financial institution hold 90% or more of the votes in the general meeting of the financial institution;

4. the parent bank or banks which own jointly the financial institution shall satisfy the competent authorities regarding the prudent management of the financial institution and have declared to the BNB, upon consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution;

5. the financial institution and the activities it is to carry on in the Republic of Bulgaria are effectively included in the consolidated supervision of the parent bank or of each of the banks which own jointly the financial institution, exercised in accordance with the provisions of this Act, including the minimum own funds requirements, control of large exposures and limitation of participations.

(2) Compliance with the conditions under paragraph 1 shall be verified by the competent authorities of the home Member State by a certificate, which shall form part of the notification to the BNB.

(3) If the BNB receives information from the competent authorities of the home Member State that the financial institution concerned has ceased to fulfill any of the conditions under subparagraphs 1 - 5 of paragraph 1, such financial institution shall lose its rights and all its activities shall become subject to the Bulgarian legislation.

**Article 25.** (1) A financial institution having its registered office in the Republic of Bulgaria may carry on within the territory of a Member State one or more of the activities under Article 3 (1), either through a branch or directly, should it be a subsidiary of a bank or a jointly-owned



subsidiary of two or more banks licensed in the Republic of Bulgaria and which fulfills each of the following conditions:

1. the Memorandum or the Articles of Association of the financial institution permits the provision of the services;

2. any of the requirements referred to in Article 24 (1) is fulfilled and the parent bank or banks which own jointly the financial institution have confirmed in writing compliance with said requirements.

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

(3) The procedure for issue of a certificate shall be laid down in a BNB ordinance.

(4) The Bulgarian National Bank shall exercise supervision on a consolidated basis over the financial institution referred to in paragraph 1 and shall monitor its shareholding structure in accordance with a procedure as set out in a BNB ordinance.

(5) In the exercise of supervision over the financial institution under paragraph 1 the BNB shall cooperate with the competent authorities of Member States subject to the conditions of professional secrecy.

(6) The provisions of this Article shall not apply to financial institutions which by virtue of another law have the right to carry on directly or through a branch activity in another Member State.

**Article 26.** (1) The parent bank or banks which own jointly the financial institution shall notify the BNB of any changes in the circumstances referred to in Article 25 (1) within seven days of occurrence thereof.

(2) The Bulgarian National Bank shall notify the competent authorities of the respective host Member State where the financial institution ceases to fulfill any of the conditions referred to in Article 25 (1).

**Article 27.** (1) The provisions of Articles 24 - 26 shall be applied mutatis mutandis to financial institutions which are subsidiaries of other financial institutions.

### Section III

#### Approvals and Permissions

(Title amended, SG No. 24/2009, effective 31.03.2009)

**Article 28.** (Amended, SG No. 24/2009, effective 31.03.2009) (1) Any natural or legal person as well as persons acting in agreement may not, without the prior written approval of the BNB, acquire directly or indirectly shares or voting rights related to shares in a bank licensed in the Republic of Bulgaria if as a result of the acquisition their holding would become qualifying holding or if such holding would reach or exceed the thresholds of 20, 33 or 50 percent of the shares or voting rights related to shares, or in the cases where the bank would become a subsidiary.

(2) A prior approval by the BNB is also required where the holding would become qualifying or the thresholds referred to in paragraph 1 would be reached or exceeded as a result of acquisition of shares in the stock exchange or another regulated securities market.

(3) Where as a result of objective circumstances outside the control of the persons their holding becomes a qualifying holding or the thresholds specified in paragraph 1 are reached or exceeded, the acquirers may not exercise the voting power attached to any such shares prior to obtaining approval from the BNB. For issuing of such approval the acquirers shall submit a request within one month of the moment in which the grounds for it arise. Should no such approval be requested within the deadline or should an approval be refused, the BNB may apply the measure referred to in subparagraph 15 of Article 103 (2).

(4) Prior to the approval of the BNB the shares referred to in paragraph 3 shall not be counted against the quorum of the General Meeting of the Shareholders.

(5) The Bulgarian National Bank shall hold preliminary consultations and co operate with the competent supervising authority of another Member State, where the applicant under paragraphs 1 - 3 is:

1. a credit institution, an insurer, a reinsurer, an investment intermediary or a managing company authorised in that other Member State, or

2. a parent company of another credit institution, insurer, reinsurer, investment intermediary or managing company authorised in that other Member State, or

3. person exercising control over a credit institution, insurer, reinsurer, investment intermediary or managing company authorised in that other Member State, or

(6) Where the applicant under paragraphs 1 - 3 is a person authorised by the Financial Supervision Commission, the BNB shall hold preliminary consultations and co operate with this Commission.

(7) The Bulgarian National Bank shall provide in a timely manner, upon request by the authorities referred to in paragraphs 5 and 6, the information required for the assessment of the acquisition applied for, which is important for the exercising of their supervisory functions. The Bulgarian National Bank may also provide these authorities with the information which it deems significant without a specific request from them.

**Article 28a.** (New, SG No. 24/2009, effective 31.03.2009) (1) In order to obtain approval, any person or persons acting in agreement shall inform the BNB through an application in writing of their decision for acquisition in the meaning of Article 28 (1) and (2), or of grounds that have arisen under Article 28 (3), and shall enclose all necessary documents specified in an ordinance issued by the BNB.

(2) The Bulgarian National Bank shall base its assessment on the documents and information, provided by the applicant, as well as on other information and documents at its disposal.

(3) Approval shall be granted taking into account the potential impact of the applicant on the credit institution, with a view to ensuring its future sound and reasonable management, and if the assessment has shown that the applicant is suitable and possesses the financial stability required. The assessment is made on the basis of each of the following criteria:

1. reputation of the applicant;
2. reputation and experience of each person who will manage the activities of the bank as a result of the acquisition requested;
3. the financial stability of the applicant with a view to the specific nature of the activity which the bank carries out or envisages to carry out;
4. compliance of the bank as at the time of acquisition and after that of the supervisory requirements established on the basis of the extant statutory framework, taking into account whether the group of which the bank will become a part, has a structure allowing the exercising of efficient supervision, whether there are any hindrances to the exchange of information between the competent authorities and whether there is a clear segregation of responsibilities among them;
5. absence of grounds for reasonable doubt that, in connection with the requested acquisition, money laundering or financing of terrorism has been performed, is being performed or has been attempted, or that the requested acquisition would increase the risk of this.

(4) The Bulgarian National Bank shall refuse to issue an approval if it establishes that the requested acquisition fails to satisfy any of the criteria listed in paragraph 3 or that the information provided by the applicant is incomplete, regardless of the fact that the procedure described in Article 28b (3) and (4) has been followed.

**Article 28b.** (New, SG No. 24/2009, effective 31.03.2009) (1) In the event that all necessary documents have been enclosed with the application referred to in Article 28a (1), within 2 business days the BNB shall send a written confirmation of receipt to the applicant. The confirmation shall contain the date on which the deadline for pronouncing on the application.

(2) The Bulgarian National Bank shall review the application for approval under Article 28 (1), (2) or (3) within 60 business days of the date on which the written confirmation referred to in paragraph 1 has been sent.

(3) If it deems this necessary for its assessment, the BNB may make a written request for provision of additional information not later than the 50th business day of the deadline under paragraph 2. The deadline under paragraph 2 is suspended for the period between the date on which the information has been requested and the date on which it is received.

(4) The suspension referred to in paragraph 3 cannot exceed 20 business days. Within the deadline under paragraph 2 the BNB may make an additional request for clarification or completion of the information provided without suspension of the deadline.

(5) In the event where the applicant under Article 28 (1), (2) or (3) is a person established in

a third country or a third country exercises supervision over it, or is a person from a Member State other than a credit institution, investment intermediary, insurer, reinsurer or collective investment scheme under Article 77x (1), subparagraph 8 of the Public Offering of Securities Act, the suspension referred to in paragraph 3 can be extended by the BNB to not more than 30 business days.

(6) The Bulgarian National Bank shall pronounce on the application within the deadline for making an assessment, with a well-grounded written act. Where the applicant is a person subject to supervision by a competent authority referred to in Article 28 (5) or (6), the opinion of this authority regarding the assessment of the requested acquisition shall be included in an objective manner in the justification of the act.

(7) The Bulgarian National Bank may set a deadline for the acquisition after the expiry of which the approval becomes void.

(8) The approval granted or the refusal for granting approval shall be communicated to the applicant within the deadline specified in paragraph 2, but not later than 2 business days after the decision is made. Upon a request by the applicant or at the discretion of the BNB the refusal for granting approval and the motives for it can be made public in an appropriate manner.

(9) If the BNB does not pronounce on the application within the deadline specified in paragraph 2, the requested acquisition shall be deemed to be approved.

(10) Where two or more applications for approval of acquisitions in the same bank have been submitted, the BNB shall review them independently of each other in accordance with the criteria specified in Article 28a and in compliance with the procedure under this Article.

(11) The requirements for applicants, the information and the documents used to assess compliance with the criteria specified in Article 28a (3), shall be specified in an ordinance issued by the BNB

**Article 29.** (Amended, SG No. 24/2009, effective 31.03.2009) (1) Without a written permission by the BNB the bank may not:

1. open branches in third countries;
2. change its name specified in the license;
3. transform itself;
4. perform banking transactions outside the scope of the license issued to it;
5. increase its capital with non-monetary contributions;
6. buy back shares issued by it;
7. decrease its capital;

8. establish or acquire control over a bank with headquarters abroad.

(2) The Bulgarian National Bank shall consider the applications for granting permissions under paragraph 1 within three months of their receipt. In the cases of subparagraph 3 of paragraph 1 the BNB shall consider the application upon presentation of permission from the Commission for the Protection of Competition, where granting of such permission is mandatory.

(3) The terms and procedure for the grant of permissions referred to in paragraph 1 as well as the grounds for refusal shall be established by an ordinance issued by the BNB.

**Article 29a.** (New, SG No. 24/2009, effective 31.03.2009) (1) Any transactions concluded, decisions made and actions performed without a prior approval in the events referred to in Article 28 (1) and (2), or without a prior permission in the events under Article 29 (1), shall be nil and void.

(2) The Central Depository shall enter in the Register of Shareholders of the bank acquisitions of shares, for which approval under Article 28 (1) and (2) is required, after the presentation of the approval, and in the events under Article 28b (9) - after receiving a confirmation by the BNB.

**Article 30.** (1) Upon passing a resolution on an increase of a bank's capital by means of payments raised from the shareholders, the General Meeting or the Management Board (Board of Directors), as the case may be, shall establish a time limit for effecting of the payments, which may not be longer than six months after entry of the resolution on the increase of the capital (in the court register). In the case of public offering of shares, the said time limit shall begin to run from the publication of the prospectus.

(2) Any shares in respect whereof the payments due have not been effected, or which have not been sold within the time limit, shall be cancelled, and the competent authority shall take action for alteration of the resolution up to the amount of actually paid-up capital. Any resolution on alteration must be passed not later than three months after expiry of the time limit referred to in paragraph 1.

(3) Should any resolution referred to in paragraph 2 be not passed within the established time limit, the [competent] court shall enter the respective alteration in the commercial register, acting on a submission by the BNB.

(4) (Amended, SG No. 24/2009, effective 31.03.2009) Should grounds for applying for permission arise in respect of any shareholders as a result of an alteration of the resolution, Article 28 (3) herein shall apply accordingly.

(5) The procedure established by paragraphs (2) and (3) shall furthermore apply where the BNB ascertains that the capital has been increased by non-cash assets without permission or that the resources whereby cash payments have been effected are not owned by the shareholder.

**Article 31.** (Amended, SG No. 24/2009, effective 31.03.2009) (1) A prior written approval under Article 28 shall also be required for any shareholder who or which, upon participation in an increase of a bank's capital by means of payments raised from the shareholders or through conversion of part of the debentures into shares, increases its holding, if as a result of this its holding reaches or exceeds the thresholds of 20, 33 or 50 per cent of the shares or voting rights

related to shares, and where the bank becomes a subsidiary.

(4) Should grounds for applying for approval arise in respect of any shareholders as a result of increasing the capital by an amount lower than the amount fixed in the resolution, Article 28 (3) herein shall apply accordingly.

(3) The documents and the information to be provided by the shareholder for the purpose of the assessment referred to in Article 28a shall be specified in an ordinance issued by the BNB.

(4) Upon violation of the requirement under paragraph 1 the acquisition of shares shall be effective, but the BNB may apply the measure referred to in subparagraph 15 of Article 103 (2) herein.

**Article 32.** (1) (Amended, SG No. 24/2009, effective 31.03.2009) Where any person acquires 3 or more than 3 per cent of the shares or the voting rights related to the shares in a bank licensed in the Republic of Bulgaria, the Central Depository shall notify the BNB of the name/business name and address/registered office of the said person within seven days after entry of the acquisition into the Register of Shareholders.

(2) A person referred to in paragraph 1 shall be obliged, when so requested by the BNB, to submit thereto the documents covered under subparagraphs 7 - 9 of Article 13 (2) herein within a time limit set by the BNB.

(3) Upon failure to comply with the requirement referred to in paragraph 2, as well as where the information provided is not sufficiently comprehensive and reliable, the measure referred to in subparagraph 15 of Article 103 (2) herein may be applied to that person.

(4) The Bulgarian National Bank shall furthermore be vested with the powers referred to in paragraph 3 where the BNB establishes that:

1. the person has submitted untrue particulars, or
2. by the activity or influence thereof on decision-making, the person may impair the reliability or security of the bank or of the operations thereof, or
3. the person has not paid contributions with own funds.

**Article 33.** (1) (Amended and supplemented, SG No. 24/2009, effective 31.03.2009) Any natural or legal person who/which intends to transfer, whether directly or indirectly, its qualifying holding in a bank licensed in the Republic of Bulgaria or to reduce its qualifying holding so that its shares or the voting rights related to these shares would fall below 20, 33 or 50 per cent of the capital, shall inform the BNB about:

1. the amount of the participating interest held thereby before the transfer;
2. the amount of the participating interest to be held thereby after the transfer.

(2) Where a bank ceases to be a subsidiary of a person, said person shall inform the BNB.

(3) The notifications referred to in paragraphs 1 and 2 shall be submitted not later than 10 days before occurrence of the circumstance thereof.

**Article 34.** (1) Banks licensed in the Republic of Bulgaria shall notify the BNB within seven days of coming to knowledge of any acquisition or transfer of shares in their capital as a result of which the participating interest of the shareholders would exceed or fall below one of the thresholds specified in Article 28 (1).

(2) The banks shall submit to the BNB by the 15th day of the month following every quarter a written information about the names of the shareholders holding a qualifying holding as well as about the amount of such holding.

**Article 35.** (Amended, SG No. 24/2009, effective 31.03.2009) A bank shall be registered with the commercial register upon presentation of the licence issued by the BNB, and any alterations covered under Article 29 (1) herein, upon submission thereto of the requisite permission as granted by the BNB.

#### Section IV

#### Withdrawal of licence

**Article 36.** (1) The BNB may withdraw a licence for conduct of banking business as granted where:

1. the bank fails to commence conduct of licensed banking business within twelve months after the grant of said licence;

2. any violations covered under Article 103 (1) herein have been committed;

3. the bank has submitted false particulars on the grounds of which the said licence was granted;

4. the bank has ceased to engage in business for more than 6 months;

5. the bank no longer fulfils the conditions under which the licence was granted;

6. the bank no longer possesses sufficient own funds or can no longer be relied on to fulfill its obligations to creditors, and in particular no longer provides security for the assets entrusted to it.

(2) The BNB shall mandatorily withdraw any bank's licence as granted on the grounds of insolvency where:

1. (supplemented SG No. 44/2009, effective 12.06.2009) the bank concerned has not met a due and payable monetary obligation for more than seven business days, if this failure is directly related to the financial situation of the bank, and no payment of the due monetary obligation can be expected, as judges by the Bulgarian National Bank.

2. its own funds are a negative value.

(3) (New, SG No. 44/2009, effective 1.09.2009) The decision under Paragraph 2 shall be

taken by the Bulgarian National Bank no later than 5 business days following the establishment of the insolvency.

(4) (Renumbered from Paragraph 3, SG No. 44/2009, effective 12.06.2009) The own funds of a bank shall be determined in accordance with the prudential supervision requirements and the rules laid down in Article 40 (1).

(5) (Renumbered from Paragraph 4, SG No. 44/2009, effective 12.06.2009) By the act of withdrawal of a licence, the BNB shall mandatorily appoint conservators, unless such have been appointed theretofore.

(6) (Renumbered from Paragraph 5, SG No. 44/2009, effective 12.06.2009) The provisions of Article 26 (1) and Article 34 of the Administrative Procedure Code regarding explanations and objections of the persons concerned shall not apply to issue of acts under this Article.

(7) (Renumbered from Paragraph 6, SG No. 44/2009, effective 12.06.2009) By the withdrawal of the licence the business of the bank shall be terminated and a compulsory liquidation shall be conducted.

**Article 37.** (1) Upon withdrawal of a bank's licence on the grounds of Article 36 (1), the BNB shall file a request to the commercial register for registration of the winding up and declaring it in liquidation.

(2) In the cases referred to in Article 36 (2) the BNB shall file a request to the competent court for initiation of bankruptcy proceedings.

(3) The decision of the BNB on withdrawal of a licence shall be promulgated in the State Gazette. The BNB shall furthermore take other measures necessary for informing the public about the revocation of the licence thereof.

(4) The BNB shall notify the European Commission of any licence withdrawal.

(5) Upon withdrawal of a licence for conduct of banking business of a bank which has a branch in a Member State, the BNB shall inform the competent supervision authority of the respective Member State on a timely basis.

**Article 38.** (1) The BNB may withdraw the licence for conduct of banking business of a bank from a third country for conduct of business through a branch on the grounds of Article 36 (1).

(2) The BNB shall withdraw the licence for conduct of banking business of a bank from a third country for conduct of business through a branch where the licence of the bank has been withdrawn by the competent authority in the country by its registered office.

(3) After the withdrawal of the licence of a bank from a third country the BNB shall take measures to notify the public of the licence withdrawal.

Chapter Four

OWN FUNDS, LIQUIDITY AND OTHER REQUIREMENTS



**Article 39.** (1) To ensure fulfillment of their obligations to creditors, banks shall possess own funds adequate to the risks assumed in the course of their business.

(2) Banks shall, at any time, maintain own funds exceeding or being equal to the amount of capital requirements for:

1. credit risk - for their overall activity;
2. position risk, settlement risk and counterparty risk - for their trading portfolio activity;
3. currency and commodity risk - for their overall activity;
4. operational risk - for their overall activity;
5. other risks inherent to their activity.

(3) The share capital of a bank as well as its own funds shall not fall below BGN 10 million.

(4) Banking groups and financial holding companies shall have adequate own funds in accordance with the requirements under paragraph 2 applicable to their subsidiaries.

**Article 40.** (1) The structure and elements of own funds, the capital adequacy requirements, the techniques and methods for calculation, the conditions for approval or recognition of evaluation models and approaches, as well as the terms and procedure for approval or recognition of persons who perform evaluation of risks shall be laid down in an ordinance of the BNB.

(2) In regard to the requirements under Article 39 the BNB shall:

1. grant permissions for inclusion or prescriptions for exclusion of certain items in the own funds;
2. recognise agencies for external credit evaluation or export insurance;
3. recognise netting agreements;
4. authorize and approve the application for prudential supervision purposes of sophisticated approaches and internal rating models for measurement of credit, operational and market risks;
5. permit application of alternative approaches and techniques;
6. recognise a supervisory treatment established in another Member State or a third country where such treatment is effected in compliance with the principles set out in this Act and the statutory instruments for its application.

(3) By the ordinance under paragraph 1 the BNB shall establish the terms and procedure for granting of permissions under paragraph 2.

(4) (New, SG No. 24/2009, effective 31.03.2009) After the BNB grants a permission in

accordance with paragraph 2, subparagraph 1, the provisions of the Obligations and Contracts Act and the Bank Bankruptcy Act, which envisage more favourable regime regarding the creditors' rights compared to the provisions of the contract, shall not apply to contracts for attracting by a bank of amounts to be included in its Tier II capital.

**Article 41.** (1) No bank may pay out dividends or distribute capital before setting aside the funds required for the Reserve Fund, as well as where any such distribution would result in non-conformity with the requirements laid down in the ordinance under Article 40 (1).

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

**Article 42.** (1) Any bank shall manage its assets and liabilities in a manner that allows it at any time to fulfill its due and payable obligations by:

1. adopting funding and liquidity plans consistent with the nature of its activity;
2. maintaining liquid funds to ensure mismatches between cash inflows and cash outflows;
3. maintaining a system for interest rate risk monitoring in all operations;
4. adjusting promptly the maturity structure of assets and liabilities upon a change in market conditions;
5. maintaining the necessary information about calculation of its liquidity position at any moment.

(2) Liquid assets, maturity structure of assets, liabilities and off-balance-sheet items and any other liquidity management requirements shall be laid down in an ordinance of the BNB.

**Article 43.** A bank shall periodically value the credits extended and the other risk-weighted exposures, and shall allocate provisions for impairment losses under criteria as the BNB shall establish by an ordinance.

**Article 44.** (1) No bank or group of banks shall incur large exposures whereof the percentage value of own funds exceeds at any time the established limits.

(2) Any bank or group of banks shall establish the exposure incurred thereby to a single person or to economically connected persons as the sum total of balance-sheet assets and off-balance-sheet items as defined by a BNB ordinance.

(3) The exposure incurred to any single person or economically connected persons shall be regarded as a "large exposure" when the value thereof has reached or exceeded 10 per cent of own funds of the bank or banking group.

(4) Any decision leading to the incurrence of a large exposure shall be made by the Management Board (Board of Directors). Where any such exposure exceeds 15 per cent, the decision shall be made unanimously.

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

(6) In the aggregate, the large exposures referred to in paragraph 3 may not exceed the octuple amount of own funds.

(7) The BNB shall establish the terms and procedure under which separate elements of the exposure may be weighted at less than 100 per cent or be excluded from the calculation of the ratios referred to in paragraphs 5 and 6 and under Article 45 (6).

**Article 45.** (1) Subject solely to the unanimous decision of its collective management body a bank may incur exposures to:

1. officers of the bank;
2. shareholders with shares entitling them to more than 10 per cent of the total number of votes in the General Meeting of Shareholders;
3. a shareholder whose representative is a member of the management or the supervisory body of the bank;
4. spouses, brothers, sisters and lineal relatives up to the third degree of consanguinity, including the persons under subparagraphs 1, 2 and 3;
5. legal persons in the management whereof the persons under subparagraphs 1 - 4 participate;
6. commercial companies in which the bank or a person under subparagraphs 1 - 4 participates in the management or has a qualifying holding;
7. third parties acting for the account of the persons under subparagraphs 1 - 6.

(2) In the cases of paragraph 1 the decision on incurrence of the exposure shall define the conditions thereunder.

(3) The procedure referred to in paragraph 1 shall not apply where:

1. the amount of the exposure to a person under subparagraphs 1 and 4 of paragraph 1 does not exceed the said person's annual remuneration;
2. the amount of the exposure to a single person under subparagraphs 2, 3, 5, 6 and 7 of paragraph 1 is less than one per cent of the bank's own funds, but not exceeding BGN 300,000.

(4) Banks may not provide more favourable conditions on exposures to the persons under paragraph 1, such as:

1. entering into a transaction which, due to its nature, purpose, characteristics or risk, the bank would not have normally concluded with clients outside the persons under paragraph 1;
2. collection of interest, fees and other pecuniary obligations or acceptance of collaterals not

lower than those required from other clients in similar cases.

(5) (Repealed, SG No. 24/2009, effective 31.03.2009).

(6) The total exposure of a bank to a person under paragraph 1 shall not exceed 10 per cent of its own funds and where said person is a bank, 20 per cent. The total amount of all incurred exposures of the bank to the persons under paragraph 1 may not exceed 20 per cent of its own funds.

(7) Within the meaning of this Article an exposure to a single person shall be the sum total of the balance-sheet assets and off-balance-sheet items as set out in the ordinance under Article 44 (2).

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

**Article 47.** (Amended, SG No. 24/2009, effective 31.03.2009) (1) The total amount of the qualifying holdings of a bank in undertakings other than credit institutions, financial institutions, undertakings for carrying out ancillary services or insurance companies may not exceed 50 per cent of its own funds and, together with its investments in immovable property and other tangible fixed assets which are not subject to lease agreements, its total own funds.

(2) The amount of the qualifying holding of a bank in any undertaking referred to in paragraph 1 may not exceed 10 per cent of its own funds.

Chapter Five

#### SPECIAL RULES FOR ELECTRONIC MONEY INSTITUTIONS

**Article 48.** (1) An electronic money institution shall be a joint-stock company engaged in the business of electronic money issuing.

(2) An electronic money institution may furthermore carry on the following activities:

1. provision of financial and non-financial services directly related to electronic money issuance such as:

(a) administering of electronic money by the performance of operational and other ancillary functions related to its issuance;

(b) issuing and administering of other means of payment but excluding the granting of any form of credit;

2. storing of data on electronic devices on behalf of other undertakings or public institutions.

(3) An electronic money institution may not carry on by the nature of trade other commercial activity falling outside the scope of paragraphs 1 and 2.

(4) The requirements for granting of an authorization (licence), supervision and winding up of a bank shall apply mutatis mutandis to electronic money institutions save as otherwise provided for herein.

(5) An electronic money institution that has been authorized by the competent authorities of a Member State may carry on within the territory of the Republic of Bulgaria, directly or through a branch, solely the services for issuance of electronic money excluding the ancillary services under paragraph 2.

(6) An electronic money institution shall not have holdings in other undertakings except where such undertakings perform operational or other ancillary activities related to electronic money issued or distributed by the electronic money institution concerned.

(7) The receipt of funds in exchange for electronic money issuance does not constitute receipt of deposits or other repayable funds within the meaning of this Act where the electronic money is issued immediately upon receipt of said funds.

**Article 49.** (1) The minimum required paid-up capital for incorporation of an electronic money institution shall not be less than BGN 2 million.

(2) The amount of own funds of an electronic money institution shall not fall below the amount under paragraph 1.

(3) The amount, structure and proportions of own funds available to electronic money institutions at all times as well as the assets in which they may invest shall be laid down in a BNB ordinance.

(4) The provisions of Chapter Four shall not apply to electronic money institutions.

**Article 50.** (1) Electronic money institutions shall have assets amounting to not less than the total amount of all financial liabilities related to outstanding electronic money.

(2) The type of assets, their evaluation and amount, conditions for risk management and limitations on market risks which electronic money institutions may incur from the investments under paragraph 1 shall be determined by a BNB ordinance.

(3) Should the value of the assets under paragraph 1 fall below the amount of financial liabilities related to outstanding electronic money, the electronic money institution in question shall take appropriate measures to remedy promptly its financial situation.

(4) For the purposes of paragraph 3 the BNB may permit for a certain period of time the value of financial liabilities of an institution related to outstanding electronic money to be guaranteed by assets other than those under paragraph 1 up to an amount not exceeding the lower of 5 per cent of the institution's financial liabilities or the amount of its own funds.

(5) Electronic money institutions shall have in place a sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms safeguarding the institution from financial and non-financial risks it might incur, including technical and procedural risks as well as risks related to its cooperation with undertakings carrying on operational or other ancillary functions related to the electronic money services provided by the institution concerned.

Chapter Six

## DISCLOSURE OF CONFLICT OF INTEREST. CONFIDENTIALITY

**Article 51.** (1) Any officer in a bank shall be obliged to disclose in writing to the management body of the bank concerned any commercial, financial or other business interest which the said officer or any member or members of the family thereof may have in the conclusion of any commercial transaction with the bank.

(2) A business interest shall exist where any of the following shall be a party to a contract with the bank:

1. the officer or a member of the family thereof;

2. any person wherewith the officer or any member of the family thereof is economically connected by:

(a) owning, directly or indirectly, a qualifying holding therein;

(b) being an officer thereof;

(c) being a partner in a general or limited partnership or a limited liability company.

(3) Any officer shall be obliged upon entering into office to declare in writing to the Management Board (or the Board of Directors, as the case may be) the names and addresses of any persons economically connected therewith and with any member or members of the family thereof and the business interest which the officer and the members of his family have with the bank at the time of submission of the declaration. Upon a change of the declared circumstances the officer shall submit a new declaration within seven days of occurrence of the change thereof.

(4) An officer, who has a business interest in the conclusion of a transaction with the bank, shall take part neither in the negotiations nor in the discussion and making of a decision on conclusion of the said transaction.

(5) In the discharge of the duties thereof, the officers and other employees of the bank shall be obliged to place the interests of the bank and of the clients thereof before their own interests.

(6) Any bank shall so organise the business thereof as to prevent a situation wherein the duties of the officers and the other employees of the bank to a client of the bank come into conflict with the duties of the said employees to another client, or wherein the said employees' own interests come into conflict with the duties thereof to a client of the bank.

**Article 52.** Any transaction concluded by an officer in violation of Article 51 herein shall be void. The nullity may be established by a court of law acting on motion by the bank, the BNB or another interested party.

**Article 53.** Should it be established that an officer violates Article 51 herein, the BNB shall obligate the competent body of the bank concerned to terminate the powers of the said officer within a specified time limit or shall remove the said officer from office unless dismissed within the time limit as specified.

**Article 54.** Banks shall adopt rules regulating the procedure for disclosure of conflict of

interest and ensuring confidentiality so as to prevent any prejudice to the interest of a client of the bank in favour of another client or of an officer or employee of the bank, as well as to the interest of the bank in favour of the interest of any officers or employees of the said bank.

#### Chapter Seven

#### RELATIONS BETWEEN BANKS AND BETWEEN BANKS AND CLIENTS THEREOF

**Article 55.** Banks may issue bonds and other debt securities denominated in lev and in foreign currencies, as well as rights arising therefrom.

**Article 56.** (Amended, SG No. 24/2009, effective 31.03.2009) (1) The Bulgarian National Bank shall establish and maintain an information system on the monetary liabilities of clients to the banks referred to in Article 2 (5), and to the financial institutions with main business under Article 2 (2), subparagraph 6 or Article 3 (1), subparagraph 3.

(2) Banks and financial institutions referred to in paragraph 1 shall be obliged to provide and be entitled to receive information from the system referred to in paragraph 1.

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

(4) The terms and procedure for the setting up and operation of the information system and for providing and receiving information from it shall be established by an ordinance issued by the BNB.

**Article 57.** (1) Any bank may accept money on a deposit account solely on declared terms and conditions which the bank shall be obliged to apply to all depositors.

(2) The above terms and conditions shall state:

1. the rates of interest and the method of computation of interest;
2. the periodicity of interest payments and specification of the rate of interest as variable and under what conditions;
3. the minimum amount of money received on deposit;
4. the time limit for notice of withdrawal and consequences upon earlier withdrawal of the deposit;
5. (amended, SG No. 44/2009, effective 12.06.2009) the applicable deposit-guarantee scheme, including the amount up to which deposits are guaranteed, the competent authority which pays the sums under the guaranteed deposits and the relevant payment period.

(3) (New, SG No. 44/2009, effective 12.06.2009) The bank shall mandatorily specify, both in the terms and conditions under Paragraph 2 and in the contract, the cases in which the deposits are not guaranteed as per the provisions and the procedure of the Bank Deposits Guarantee Act.

**Article 58.** (1) In granting credits, a bank shall mandatorily furnish the client, at no charge and in writing, with its lending terms and conditions which shall state:

1. particulars of the total costs of borrowing (charges, commission and other costs directly

related to the credit agreement) and of the objective criteria whereunder the said costs may change;

2. the interest rate expressed as an interest rate per annum, the method of computation of interest, and the conditions under which the interest can be changed until full repayment of the credit;

3. any additional obligations related to settlements;

4. the conditions and the costs for prepayment of the credit.

(2) The costs for the credit shall be laid down expressly and comprehensively in the credit agreement, including the cases of prepayment.

**Article 59.** (1) A bank shall display the deposit and lending terms and conditions thereof on premises accessible to clients.

(2) The deposit and lending terms and conditions shall be formulated in a clear and understandable format for the clients.

(3) (New, SG No. 44/2009, effective 12.06.2009) Upon a client's request, the bank shall also provide additional information about the conditions regulating the deposits and credits, including information about the conditions, procedure and time limits for paying out the guaranteed deposit amounts.

**Article 60.** (1) In granting credits, no bank may accept as security any shares issued thereby or by any persons connected therewith.

(2) (Amended, SG No. 59/2007) Where a credit or individual instalments thereof are not paid on the agreed payment dates as well as in the cases where the credit is subject to accelerated payment due to default on one or more instalments on the credit, the bank shall have the option to move for the issuance of an immediate enforcement order according to the procedure established by Article 418 of the Code of Civil Procedure on the basis of an abstract of the books of account thereof.

(3) The agreement may stipulate that the bank is entitled to sell by auction the item of property pledged according to a procedure established by an ordinance of the Minister of Justice and the BNB Governor. The said procedure shall not apply to any pledges created under the Registered Pledges Act.

(4) Any bank shall have the right to legal mortgage on any immovables and on the real rights thereto acquired in whole or in part by means of contracting a bank credit.

(5) Upon the full repayment of the credit the bank shall delete, release respectively, the securities as produced within 14 days from the client's request and payment of charges due.

**Article 61.** Any bank shall be entitled to require that borrowers submit accounting and other documents relating to the credit and the business thereof, as well as to verify the securities and whether the credits are utilized for the purpose wherefor they were granted.

Chapter Eight



## BANK AND PROFESSIONAL SECRECY

**Article 62.** (1) No bank employee, member of the management and supervisory bodies of a bank, BNB office holder, liquidator, trustee in bankruptcy or any other person working for a bank may disclose or use for their own benefit and for the benefit of any member of their families any information constituting bank secrecy.

(2) Bank secrecy shall be the facts and circumstances concerning balances and operations on accounts and deposits held by clients of the bank.

(3) Upon assumption of position, any bank employee shall sign a declaration pledging to safeguard bank secrecy.

(4) The provision of paragraph 1 shall furthermore apply to the cases where relations with the said person are terminated or his activity is suspended.

(5) Save to the BNB and for the purposes and under the terms of Article 56 herein, no bank may disclose any information under paragraph 2 about individual clients except with the consent of the client concerned or in pursuance of judgment of the court of law.

(6) Any court of law may furthermore order disclosure of the information covered under paragraph 2 acting on motion by:

1. a public prosecutor - should there be reason to believe that a criminal offence has been committed;

2. the minister of finance or a person authorised thereby - in the cases under Article 143 (4) of the Tax and Social Insurance Procedure Code ;

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

(a) evidences are presented that the person inspected has frustrated the conduct of a tax inspection or audit or has failed to keep accounts as required, or the said accounts are incomplete or false;

(b) a competent public authority has established by a written statement the occurrence of an event which has led to the destruction of the accounting records of the person inspected;

4. the Criminal Assets Identification Commission and the directors of the territorial directorates thereof;

5. the Director of the Public Financial Inspection Agency or officials authorised thereby, where a body of the Agency has established by a written statement that:

(a) the management of the organisation or person audited frustrates the conduct of inspection activities by the bodies of the Agency;

(b) the organisation or person audited fails to keep accounts, or the said accounts are incomplete or false;

(c) available data about deficiencies;

(d) a public authority has established by a written statement the occurrence of a fortuitous event which has led to the destruction of the accounting records of the organisation or person inspected;

6. (amended, SG No. 95/2009, effective 1.12.2009) the Director of the National Customs Agency and the Heads of customs where:

(a) it has been established by a written statement drawn up by the customs authorities that the person inspected has frustrated the conduct of a customs inspection and has failed to keep the required records, or the said records are incomplete or false;

(b) customs violations have been established by a written statement drawn up by the customs authorities;

(c) bank accounts must be distrained to secure any claims ascertained by the customs authorities and collectible thereby, as well as to secure the payment of fines, legal interest and other such;

(d) a public authority has established by a written statement the occurrence of a fortuitous event which has led to the destruction of the accounting records of the entity inspected by the customs authorities;

7. (amended, SG No. 69/2008, SG No. 93/2009, effective 25.12.2009) the Directors of the General Directorate for Combating Organised Crime, Criminal Police Directorate General and Pre-Trial Proceedings Directorate General of the Ministry of Interior II for the purpose of crime detection and investigation;

8. (amended, SG No. 109/2007) the Chairperson of the State Agency for National Security - where this is required to safeguard national security.

(7) The district judge shall rule on the motion under paragraph 6 by a motivated judgement in camera within twenty-four hours after the submission thereof, setting a time limit for disclosure of the information covered under paragraph 1. Any such judgment of the court shall not be subject to appeal.

(8) (Amended, SG No. 109/2007, SG No. 69/2008, SG No. 93/2009, effective 25.12.2009) When so requested in writing by the Director of the National Investigative Service, the Chairperson of the State Agency for National Security or the Directors of the Directorate General for Combating Organised Crime, the Criminal Police Directorate General and the Pre-Trial Proceedings Directorate General of the Ministry of Interior, as the case may be, banks shall be obliged to submit information on balances and movement in accounts held by a company wherein the State and/or a municipality holds an interest exceeding 50 per cent.

(9) When so requested in writing by the Chairperson on the State Commission on Information Security or by the chiefs of the security services and of the public order services, banks shall be obliged to provide information constituting bank secrecy about persons subject to security check under the terms and according to the procedure established by the Classified Information Protection Act . Any such request shall enclose a consent by the person checked to the disclosure of the said information.

(10) Should there be reason to believe that an organised criminal offence or money laundering has been committed the Chief Public Prosecutor or a deputy authorised thereby may require from banks to submit the facts and circumstances under paragraph 2. The requests as made to banks and the information received in response shall be kept in a register with the Chief Public Prosecutor and the BNB;

(11) (New, SG No. 105/2006) The Banks shall provide information to the Executive Director of the National Revenue Agency regarding the income from savings under the terms and procedure of Part Two, Chapter Sixteen, Division VI of the Tax And Social Insurance Procedure Code .

**Article 63.** (1) Professional secrecy shall be the information received or created by the BNB for the purposes of banking supervision or in relation thereto, the disclosure of which would harm the commercial interest or the repute of a bank or its shareholders. Professional secrecy shall not constitute official secrecy within the meaning of the Classified Information Protection Act .

(2) The information that is subject to publication or disclosure under a statutory instrument shall not constitute professional secrecy.

(3) The members of the management board, the employees, external auditors, experts and other persons working for the BNB shall be bound by the obligation of professional secrecy, including after termination of their relations with the BNB.

(4) The persons under paragraph 3 may use the information subject to professional secrecy only for the purposes and in the course of their duties. Such information may not be divulged or provided to persons or authorities other than those specified in Article 64.

(5) The restrictions under paragraph 4 shall not apply where the information is provided in summary or collective form such that the bank or the persons whom it concerns cannot be identified.

(6) The information received from a bank or another liable party hereunder may be returned to them without any limitation.

**Article 64.** (1) The persons under Article 63 (3) may provide information constituting professional secrecy to the following bodies in relation to the performance of their functions and duties:

1. the judicial authorities - in the cases of initiated criminal proceedings;
2. the court:

(a) in the cases of an appeal of an administrative act issued by the BNB in accordance with this Act;

(b) in relation to court proceedings concerning supervisory actions taken;

(c) in the cases of bank liquidation or bankruptcy proceedings opened, except for the information referring to third parties wishing to acquire the enterprise of the bank;

3. (amended, SG No. 109/2007) the financial supervision authorities in the Republic of Bulgaria, of the Bank Deposit Guarantee Fund and the State Agency for National Security - in the cases and according to a procedure laid down in joint instructions or agreements;

4. trustees in bankruptcy or liquidators of banks as well as the authorities responsible by law for overseeing a bank undergoing liquidation or bankruptcy proceedings;

5. auditors of the accounts of banks or other financial institutions as well as the persons responsible by law for overseeing the auditors of banks, insurance companies, investment intermediaries or other financial institutions;

6. the authorities of other Member States responsible for the supervision of financial institutions, insurance companies, financial markets or payment systems;

7. the authorities of other Member States involved in liquidation or bankruptcy proceedings concerning banks or in other similar procedures as well as the authorities of Member States responsible for overseeing banks undergoing bankruptcy, liquidation or other similar procedures;

8. the authorities of other Member States responsible for carrying out statutory audits of accounts of banks and other financial institutions as well as the authorities responsible for the statutory overseeing of auditors of banks;

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

10. the European Central Bank and the central banks of Member States.

(2) The authorities under paragraph 1 shall use the information received only for the purposes for which it has been provided and shall not provide it to third parties save for the performance of an obligation provided for by law.

(3) The authorities under paragraph 1, subparagraphs 3 - 10 may receive information from the BNB where they are bound by the obligation of professional secrecy analogous to that established herein.

(4) Where professional secrecy constitutes bank secrecy as well, the procedure for disclosure of bank secrecy as set out herein shall apply.

(5) The Bulgarian National Bank shall communicate to the European Commission and the

other Member States the names of supervisory bodies under paragraph 1, subparagraphs 4 and 5, which are entitled to receive information constituting professional secrecy.

**Article 65.** (1) The provision of Article 63 shall furthermore apply to the information received by the BNB from the competent supervision authorities of Member States. Such information may be used only in the course of performance of BNB supervisory duties and only for the following purposes:

1. to check that the conditions for the granting of bank licence under Chapter Three are fulfilled or to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;

2. to impose measures and sanctions under the terms of this Act;

3. in appeal of administrative acts of the BNB in administrative or court proceedings;

(2) The persons under Article 63 (3) may provide to the competent supervision authorities of Member States information subject to professional secrecy only if the information disclosed is subject to guarantees of professional secrecy by said authorities.

(3) The information received by the BNB from the competent supervision authorities of other Member States may be provided under the procedure of this Act to the authorities under Article 64 or to other persons and authorities only with the express written consent of the competent supervision authority of the Member State from which the information was received and subject to the conditions under which such consent was granted.

(4) The information received by employees of the BNB in conducting on-site inspections in a Member State may not be disclosed without the express written consent of the competent supervision authority of the Member State in which the inspection was conducted and subject to the conditions under which such consent was granted.

**Article 66.** Information constituting professional secrecy may be provided to the competent supervision authority of a third country on the basis of an agreement under Article 88 and provided that:

1. the recipient ensures at least the same protection of the information provided as that provided for herein;

2. the recipient is entitled to and agrees to provide information of the same type at BNB request;

3. the exchange of information is for the purpose of the performance of the supervisory functions of the supervision authority concerned;

4. the recipient has substantiated need of the requested information.

Chapter Nine

STORAGE, PROVISION AND DISCLOSURE OF INFORMATION

**Article 67.** Any bank shall create, maintain and update an information system containing:

1. the Articles of Association and the other internal regulations as last amended and supplemented;

2. data about the shareholders as set out by the BNB;

3. books containing minutes of all proceedings of General Meeting of Shareholders and of the other management bodies;

4. accounting information, showing clearly and accurately the type, amount and grounds of any transactions as concluded and the reflection thereof on the financial position of the bank, wherefrom it could be established whether the bank carries on business in accordance with the provisions of this Act;

5. information on clients, stating particulars of any transactions concluded therewith or for the account thereof, and of the credit and debit balances thereof;

6. any other information as may be required by this Act and the acts issued by the BNB.

**Article 68.** Any bank shall create and maintain files on each credit thereof, stating particulars of the client, the grounds, the terms and conditions and amount of the loan and the security furnished thereon, the decision of the competent body to grant the credit, and any other particulars related to the conclusion and performance of the agreement.

**Article 69.** Any bank and electronic money institution shall submit to the BNB returns and reports in a format, content and within time limits as prescribed thereby.

**Article 70.** (1) Once every six months, any bank shall be obliged to cause the publication in at least one national daily of a balance sheet and a profit and loss account.

(2) Any bank shall furthermore disclose other information in a format, content and within time limits as laid down in a BNB ordinance.

**Article 71.** (1) Within ten days after the decision is made, banks shall notify the BNB of:

1. any personal changes in the management board, supervisory board, board of directors and authorised procurators;

2. any reduction or increase of capital;

3. the opening or closing of a branch in the Republic of Bulgaria, and any suspension of the effecting of banking operations by any such branch;

4. any discontinuance of the effecting of a specified type of banking transactions;

5. the incurrence of any large exposure referred to in Article 44 or an exposure referred to in Article 45;

6. any alterations in the Articles of Association and in the other internal regulations of the bank;

7. the appointment of an auditor under Article 76 herein.

(2) Should any bank find itself in a state of insolvency, the persons who manage and represent the said bank shall be obliged to notify this occurrence forthwith to the BNB.

(3) (Amended, SG No. 24/2009, effective 31.03.2009) Any changes in the members of the Management Board (or the Board of Directors, as the case may be), of the Supervisory Board, any authorisation of procurators, as well as any alteration in the Articles of Association shall be registered in the Commercial Register following an approval by the BNB. Approval shall be deemed to have been granted if the BNB has not objected within ten days after notification thereof. In the event of objections a copy of the act shall be sent to the Registry Agency.

**Article 72.** (1) A bank shall submit to the BNB copies of the Articles of Association, regulations, directives and any other instruments thereof containing provisions on the scope of and procedure for effecting of operations, the capital and the internal organisation of the bank, within ten days after adoption of any such instruments or after introduction of alterations therein, as the case may be.

(2) Banks shall submit to the BNB copies of the minutes of general meetings of shareholders within 10 days after said meeting.

(2) Banks shall maintain at the BNB a certified and promptly updated list of the persons authorized to manage and represent the bank, including the operations of its branches, together with a description of the powers thereof and specimens of the signatures thereof.

#### Chapter Ten

#### ORGANISATION, INTERNAL CONTROL, AND ANNUAL ACCOUNTS

**Article 73.** (1) (Amended, SG No. 24/2009, effective 31.03.2009) The competent management body of a bank shall adopt and periodically update in line with the good internationally recognised practices for corporate management of banks:

1. the organisational structure of the bank;
2. the procedure for determination and delegation of authorities and responsibilities of officers;
3. the strategy and action plan of the bank;
4. the risk management and control policy;
5. the procedure for preparation and the scope of management information;
6. the organisation of operational control, including the rules and procedures for approving, effecting and reporting of operations;
7. the internal rules and procedures for risk monitoring and effectiveness of control systems and for reporting of weaknesses detected in the organisation and operations of structural units.

(2) Paragraph 1 shall apply mutatis mutandis to branches of banks from third countries.

(3) (New, SG No. 24/2009, effective 31.03.2009) The Bulgarian National Bank may make recommendations and prescriptions for enhancing the corporate management in line with the best internationally recognised practices and follow-up their implementation.

(4) (Renumbered from Paragraph 3, SG No. 24/2009, effective 31.03.2009) Banks shall adopt lending rules which shall contain at least:

1. the information required from the borrower;
2. the method of evaluation of borrower creditworthiness and its warrantors and guarantors;
3. the method of evaluation of collaterals provided;
4. the method of evaluation of the effectiveness of the project proposed for financing;
5. the procedure for taking decision on granting a credit according to its type;
6. the procedure for utilization and repayment of the credit;
7. the procedure for control over the use of the credit for the stated purpose, current financial situation of the debtor and its warrantors and the sufficiency of collateral;
8. type of credit and other sanctions and the manner of their application.

**Article 74.** (1) Any bank shall establish a specialised internal control unit, whereof the principal officers shall be elected and dismissed by the General Meeting of Shareholders.

(2) The principal officers of the internal control unit shall notify forthwith the BNB of any violations detected by the said unit in the management of the bank which have led or might lead to material detriment to the bank.

(3) The banks shall adopt rules for the organisation and operation of internal control and shall set up control systems consistent with the volume of effected operations, diversity of transactions and types of risks arising therefrom, in accordance with a BNB ordinance.

**Article 75.** (1) Banks shall prepare the financial statements in pursuance of the Accountancy Act and according to the requirements of the BNB.

(2) Banks and banking groups shall submit to the BNB financial statements showing the financial position thereof both on a stand-alone and on a consolidated basis.

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

**Article 76.** (1) The annual financial statements of each bank as well as the supervision reports stipulated by the BNB shall be audited and certified by a specialised auditing entity which



shall be a registered auditor under the Independent Financial Audit Act .

(2) The persons who have any material interest in a bank other than the interests of depositors or who are employees or representatives of the bank, shall be ineligible for appointment as independent auditors or participate in the audit of the said bank.

(3) One and the same person may not be an independent auditor of the same bank for a period exceeding 5 consecutive years.

(4) Any bank shall coordinate in advance with the BNB the appointment of an independent auditor.

(5) An independent auditor may not be a person where it or the registered auditors therein have not complied with the provisions of the repealed Banking Act (promulgated, SG No. 52/1997, supplemented, SG No. 15/1998, amended, SG Nos . 21, 52, 70 and 98/1998, Nos. 54, 103 and 114/1999, Nos. 24, 63, 84 and 92/2000, No. 1/2001, Nos. 45, 91 and 92/2002, No. 31/2003, Nos. 19, 31, 39 and 105/2005, Nos. 30, 33 and 34/2006) or this Act and the instruments for its application in the last three years before their nomination for independent auditors.

(6) Where the BNB has made no objection within 14 days from the date of the request for agreement, it shall be deemed that the proposal for an independent auditor is agreed.

(7) In the report thereof, any independent auditor shall give an opinion on the circumstances regarding the presentation of a true and fair view of the bank's property and financial position and on the financial results of operations. The independent auditor shall furthermore examine and give an auditor opinion on:

1. the reliability of the internal control systems;

2. compliance of the supervision reports prepared by the bank with the provisions of this Act and the instruments for its application.

(8) The results of the audit of the annual financial statements shall be furthermore stated in a separate report for supervision purposes, prepared in accordance with the requirements of a BNB ordinance. Said report shall be submitted to the BNB.

**Article 77.** (1) Independent auditors shall notify forthwith in writing the BNB of any circumstances of which they have become aware in the course of the audit and which:

1. constitute violation of the laws, regulations and BNB acts governing the banking business;

2. affect or might affect the normal operation of the bank;

3. result or might result in a situation where the bank will not be able to settle its monetary liabilities;

4. result in a refusal by the independent auditor to certify the statements or certification

thereof with qualification;

5. related to actions of an officer of the bank which cause or might cause material damages to the bank or its customers;

6. related to incorrect or incomplete data in the statements and reports submitted by the banks to the BNB on a regular basis.

(2) Independent auditors of banks shall be obliged, at a written request by the BNB, to submit the relevant documentation concerning the circumstances under paragraph 1 as well as other information and documents obtained in the course of the audit.

(3) Independent auditors of companies which have close links with the bank, arising from control relationships, shall notify forthwith the BNB upon detection of circumstances analogous to those set forth in paragraph 1.

(4) Independent auditors shall not be held responsible for violation of relevant legal or contractual terms and conditions on confidentiality in the cases where they have provided information to the BNB in good faith under the terms of this Act.

**Article 78.** (1) The annual financial statements of the operations of a branch in the Republic of Bulgaria of a credit institution with head office in a third country shall be audited and certified by a specialised auditing entity which shall be a registered independent auditor under the Independent Financial Audit Act and shall be published in accordance with the Accountancy Act

(2) Paragraph 1 shall not apply to branches of credit institutions authorized in a Member State.

(3) A credit institution authorized in a Member State or with a head office in a third country, carrying on activity in the Republic of Bulgaria through a branch, shall publish in Bulgarian its annual financial statements on a stand-alone and consolidated basis as well as the auditors' report in accordance with the provisions of the Accountancy Act.

(4) The annual financial statements and the report of the credit institution under paragraph 3 shall be presented in the form and content required in the country in which it is authorized, where this is a Member State, or a third country where its head office is located. After the publication the annual financial statements and the report shall be made available at the branch at any time.

## Chapter Eleven

### BANKING SUPERVISION

#### Section I

##### General rules

**Article 79.** (1) The BNB shall exercise supervision over the business of the banks for their compliance with the rules established by this Act and the instruments for its application to ensure reliable and sound management of the banks and the risks to which they are or might be exposed as well as maintenance of own funds adequate to such risks.

(2) The BNB shall make a supervisory review of the rules, strategies, procedures, and mechanisms introduced in banks in pursuance of the provisions of this Act and the instruments for its application and shall evaluate the risks to which the banks are or might be exposed. On the basis of the review and evaluation, the BNB shall determine whether the rules, strategies, procedures and mechanisms introduced by the banks, the manner of their implementation, as well as the own funds held thereby ensure a sound management and coverage of their risks.

(3) The frequency and intensity of the supervision review and evaluation under paragraph 2 shall be established having regard to the size of the bank, its systemic importance, the nature, scale and complexity of its business. The supervision review under paragraph 2 shall be conducted at least once annually.

(4) The supervision under paragraphs 1 - 3 shall cover the activity of banks authorized in the Republic of Bulgaria, including their activity carried on through a branch or directly within the territory of a member State or a third country.

(5) The BNB shall furthermore exercise supervision over the activity of branches of banks of a third country, and in the cases set out in this Act - over the activity of branches of banks of Member States.

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

(7) The BNB shall furthermore have the powers under Article 80 (1) and (3) in respect of legal persons controlled by a bank where this is required for the supervision purposes under paragraphs 1 and 6.

(8) The BNB, its bodies and the persons thereby authorized shall not incur liability for any detriment inflicted in the exercise of the supervisory functions thereof save as where they have acted willfully.

(9) Any undertaking, which could be circumstantially presumed to conduct banking business without authorization, shall submit to the BNB any required information and documents upon request. To this end, the authorized persons may conduct on-site inspections.

(10) The BNB shall be entitled to bring claims to court for revocation of unlawful decisions of the General Meeting of Shareholders of a bank or its management bodies within one month from BNB notification of the decision.

(11) For granting of permissions, issuing of documents, as well as for provision of administrative services arising from the exercise of banking supervision, the banks shall pay to the BNB fees to an amount and according to a procedure as established by the Governing Board of the BNB.

**Article 80.** (1) The BNB shall have the right to require that any bank and any shareholders therein submit all appropriate accounting and other documents, as well as information on the

business thereof, and it may conduct on-site inspections through the agency of employees and other persons thereby authorized.

(2) For the exercise of supervision on a consolidated basis the BNB shall have the right to require from parent undertakings and subsidiaries of banks all necessary documents and information.

(3) The banking supervision authorities shall be entitled to:

1. (supplemented, SG No. 24/2009, effective 31.03.2009) free access to the office premises and the information systems of any person which conducts banking business;

2. require that documents be produced, and collect information in connection with the fulfilment of the assignment thereof;

3. appoint external independent experts;

4. appoint an external auditor of the bank to conduct a financial or other audit of a bank;

5. conduct cross-inspections in other bank and non-bank organisations;

6. attend the meetings of the management and supervisory bodies of the banks, giving opinions to be recorded in the minutes of the meetings.

7. (new, SG No. 24/2009, effective 31.03.2009) require copies of documents, certified by the persons referred to in Article 10 (2) or by a person authorised thereof, and set deadlines for their presentation.

(4) In exercising its supervisory powers the BNB may assign independent experts to evaluate the assets of a bank and require from the bank to state the results of the evaluation in its financial or supervision reports.

(5) (Amended, SG No. 109/2007) On-site inspections may be conducted jointly with the State Agency for National Security, the Financial Supervision Commission and other competent bodies.

(6) The public authorities and office holders shall render assistance, within the powers thereof, to the banking supervision authorities in the performance of the functions thereof.

## Section II

Special rules for supervision of banks authorized in a Member State

**Article 81.** (1) Supervision of banks authorized in Member States and carrying on activity within the territory of the Republic of Bulgaria through a branch shall be conducted by the supervision authorities of the home Member State. In exercising their supervisory functions over branches carrying on activity within the territory of the Republic of Bulgaria such authorities may conduct on-site inspections exercising the powers under Article 80 (3).

(2) The BNB shall have the right to conduct at any time on-site inspections of the branches of banks under paragraph 1 under the terms and procedure of this Act.

(3) Supervision over the liquidity of the branches of banks under paragraph 1 shall be conducted by the BNB in cooperation with the competent supervision authorities of the home Member State.

(4) Branches of banks under paragraph 1 shall comply with the requirements for liquidity maintenance set out in this Act and the ordinances for its application as well as the requirements of BNB ordinances relating to its monetary policy. Branches of banks under paragraph 1 shall furthermore apply the measures set out by the European Central Bank upon Republic of Bulgaria's adoption of the euro as legal tender.

(5) For statistical purposes, the BNB shall require from banks in Member States that have branches within the territory of the Republic of Bulgaria to submit periodic reports on their activity in this country. The form and content of such reports shall be set out in ordinances issued by the BNB.

(6) The measures set out by the BNB as part of its monetary policy and applied to the branches of banks under paragraph 1 may not be more stringent and restrictive than those taken against banks authorized in the Republic of Bulgaria.

**Article 82.** (1) Where a bank authorized in a Member State and having a branch or providing directly services within the territory of the Republic of Bulgaria does not comply with the applicable legal provisions for conduct of banking business in this country, the BNB shall apply the measure under Article 103 (2) subparagraph 3.

(2) Should the bank under paragraph 1 fail to take necessary actions to remove the breach, the BNB shall send a written notification to the competent authority of the home Member State and shall file a request to said authority to take all the necessary measures to remedy the situation. In such cases the BNB shall require a notification of the measures taken by the competent banking supervision authority of the home Member State.

(3) Where the measures taken by the competent banking supervision authority of the home Member State prove to be inadequate or impracticable, or should such measures fail to result in removal of the breach, the BNB may, upon notification to the competent banking supervision authority in the home Member State, take all the measures and actions admissible by Bulgarian law for removal of the breach and/or penalising the bank under paragraph 1. Where necessary, the BNB may impose a full or partial ban on effecting of transactions on the bank under paragraph 1.

(4) The BNB shall furthermore have the rights under paragraphs 1 - 3 should a bank authorized in a Member State conducting banking business within the territory of the Republic of Bulgaria violate provisions relating to the safeguarding of the interest of depositors or another material public interest. The BNB may apply all the necessary measures and sanctions against such a bank, including the imposition of a ban on the respective bank on effecting of transactions within the territory of the Republic of Bulgaria.

(5) The measures and sanctions applied by the BNB shall be communicated in writing through the persons representing the bank within the territory of the Republic of Bulgaria.

(6) In the cases referred to in paragraphs 3 and 4 the bank concerned shall be obliged to fulfill the measures and sanctions imposed by the BNB.

(7) The BNB shall notify forthwith the European Commission of cases where measures under paragraph 3 have been applied.

**Article 83.** (1) In emergency cases and where adoption of measures for protection of the depositors and/or other clients of a bank is required under Article 82 (1), the BNB may impose the required measures before applying the procedure under Article 82. In such cases the BNB shall notify forthwith the European Commission and the competent supervision authorities of the Member States concerned.

(2) The BNB shall cancel or modify the measures under paragraph 1 at its discretion or on the basis of a decision of the European Commission taken after consultations with the competent supervision authorities of the Member States concerned.

**Article 84.** Upon receipt of a notification from a competent supervision authority of withdrawal of the authorization for conduct of banking business of a bank having a branch or providing services within the territory of the Republic of Bulgaria, the BNB shall take measures for immediate discontinuation of the business of such bank in this country and for protection of the interests of its depositors.

**Article 85.** Banks authorized in Member States may advertise freely their banking services within the territory of the Republic of Bulgaria, using all available means of communication while complying with the relevant provisions of the Bulgarian legislation as to the form and substance of the advertising activity.

**Article 86.** In regulating the activity and exercising its supervisory powers the BNB may not impose requirements or restrictions which lead to a more favourable treatment of branches of credit institutions having their head offices in a third country than that of branches of banks authorized in a Member State.

### Section III

#### Supervision cooperation

**Article 87.** (1) In exercising its supervisory powers the BNB shall cooperate with competent supervision authorities of Member States concerned where a bank authorized in the Republic of Bulgaria carries on its activity through a branch in another Member State or where a bank from another Member State carries on its activity through a branch in the Republic of Bulgaria.

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

1. the management and ownership of credit institutions as necessary for the supervision or inspection of the conditions for their authorization;

2. the supervision of credit institutions on a stand-alone and consolidated basis, including

their liquidity, solvency, deposit guarantee, limitation on large exposures, risk management, administrative and accounting procedures and internal control mechanisms.

(3) The competent supervision authorities of a Member State responsible for the supervision of banks with branches within the territory of the Republic of Bulgaria may, on a prior notice to the BNB, inspect themselves or with the assistance of expressly authorized persons the information under paragraph 2 at the branch operating within the territory of the Republic of Bulgaria. The on-site inspections shall cover the information and circumstances referred to in paragraph 2.

(4) Upon receipt of a written notice under paragraph 3, the BNB shall provide support to the foreign supervision authority.

(5) The BNB may, following a prior notice to the competent supervision authorities of Member States concerned, conduct on-site inspections in the Member State concerned regarding the activity of banks authorized in the Republic of Bulgaria and carrying on activity within the territory of a Member State through a branch.

(6) Upon a request from the competent authorities of the home Member State for the purposes of supervision of branches of banks from Member States carrying on activity within the territory of the Republic of Bulgaria, the BNB shall conduct on-site inspection. A representative of the competent authority of the home Member State or an auditor thereby authorized may also participate in such on-site inspections.

(7) The BNB may request from the competent authority of the host Member State to conduct on-site inspection over the activity of a branch of a bank authorized in the Republic of Bulgaria which carries on activity within the territory of the host Member State.

**Article 88.** In exercising its supervisory functions the BNB may enter into bilateral agreements with other central banks or supervision authorities of third countries on cooperation and exchange of information on a reciprocal basis subject to assumption of commitment for safeguarding bank and professional secrecy.

#### Section IV

##### Supervision on a consolidated basis

**Article 89.** (1) (Previous text of Article 89 - SG No. 52/2007) The BNB shall exercise supervision on a consolidated basis of banks, banking groups, financial holding companies and mixed-activity holding companies subject to the terms and procedure of this Act and the instruments for application thereof.

(2) (New, SG No. 52/2007) Also included in the scope of the supervision on a consolidated basis under this Act shall be management companies in the manner and to the extent applicable to 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 authorized in the Republic of Bulgaria, supervision on a consolidated basis shall be exercised by the BNB.

(2) Where the parent undertaking of a bank authorized in the Republic of Bulgaria is a

parent financial holding from a member State or a parent financial holding from the European Union incorporated in a Member State, supervision on a consolidated basis shall be exercised by the BNB.

(3) Where credit institutions authorized in two or more Member States have as their parent the same parent financial holding company in the Republic of Bulgaria or the same parent financial holding company in the EU incorporated in the Republic of Bulgaria, supervision on a consolidated basis shall be exercised by the BNB, provided that one of the subsidiary credit institutions is authorized in the Republic of Bulgaria.

(4) Where the parent undertakings are financial holding companies registered in different Member States and have as subsidiaries credit institutions authorized in each of said Member States, supervision on a consolidated basis shall be exercised by the BNB where the credit institution with the largest balance sheet total is authorized by it.

(5) Where credit institutions authorized in different Member States have as their parent one and the same financial holding company and none of these credit institutions has been authorized in the Member State in which the financial holding company was registered, supervision on a consolidated basis shall be exercised by the BNB where the credit institution with the largest balance sheet total is authorized by it.

(6) By agreement with the competent authorities of the Member States concerned the BNB may waive the criteria under paragraphs 3, 4 and 5 if their application would be inappropriate, taking into account the credit institutions participating in the holding company and the relative importance of their activities in different Member States. The agreement shall stipulate the competent authority to exercise supervision on a consolidated basis. In the cases covered by paragraphs 3, 4 and 5, before conclusion of the agreement, the BNB and the competent authorities of the Member States concerned shall give the EU parent credit institution or the parent financial holding company or the credit institution with the largest balance sheet total, as appropriate, to state its opinion.

(7) The BNB shall notify the European Commission of any agreement under paragraph 6 according to which it will exercise supervision on a consolidated basis.

**Article 91.** (1) Where a competent authority of a Member State has excluded from the supervision on a consolidated basis a bank authorized in the Republic of Bulgaria, the BNB may request from the parent undertaking to submit information which could facilitate the supervision of said bank.

(2) Where the BNB has excluded from the supervision on a consolidated basis subsidiaries of credit institutions or financial holding companies of Member States, it may request from the subsidiaries concerned information for the purposes of supervision.

**Article 92.** In exercising supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies the BNB shall:

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



2. plan and coordinate supervisory activities in going concern as well as in emergency situations in cooperation with the competent authorities of Member States involved;

3. cooperate with the competent authorities of Member States for the purposes of establishing internal models relating to the capital requirements under Article 39.

**Article 93.** (1) Where an emergency situation arises within a banking group which potentially jeopardizes the stability of the financial system of the Republic of Bulgaria or another Member State where entities of the group have been authorized, the BNB, exercising the supervision on a consolidated basis, shall notify the competent authorities of the Member States involved, their central banks or the other bodies carrying on the monetary policy of these Member States.

(2) For the purposes of exercising supervision on a consolidated basis the BNB shall, when it needs information which has already been given to another competent authority, contact this authority wherever possible in order to prevent duplication of reporting.

**Article 94.** (1) For the purposes of supervision on a consolidated basis the BNB shall enter into written coordination and cooperation arrangements with the competent supervision authorities of the Member States concerned. Under these arrangements with the competent authorities of Member States the BNB may be entrusted with additional supervisory tasks.

(2) Where a bank authorized in the Republic of Bulgaria is controlled by a credit institution in another Member State, the BNB may, on the basis of an agreement with the competent supervision authority of the parent credit institution, delegate it the responsibility for the supervision of the subsidiary bank.

(3) Where a bank authorized in the Republic of Bulgaria is a parent undertaking of a credit institution set up in another Member State, the BNB may, on the basis of an agreement with the competent supervision authority of the Member State concerned, assume the responsibility for the supervision of the subsidiary credit institution.

(4) The BNB shall notify the European Commission of the existence and content of the agreements under paragraphs 2 and 3. The BNB shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.

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

(2) Essential is any information that could affect the evaluation of the financial stability of a credit or financial institution in the Member State concerned.

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

1. identification of the group structure, of all major credit institutions, as well as of the competent authorities exercising supervision of the credit institutions in the group;

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

3. adverse developments in credit institutions or in other entities in the group, which could seriously affect the activity of credit institutions;

4. sanctions and measures taken by the BNB in accordance with this Act, including the imposition of additional capital requirements or limitations concerning the use of operational risk internal models for the calculation of the own funds for supervision purposes.

(4) On a request from the competent authorities of a Member State exercising supervision of subsidiaries of EU parent credit institutions or of credit institutions controlled by EU parent financial holding companies supervised by the BNB on a consolidated basis, the BNB shall provide the information which is appropriate for the exercise of their supervisory functions.

(5) Where the BNB needs information on the supervision of a bank controlled by an EU parent credit institution licensed in another Member State, the BNB shall contact the authority responsible for the supervision on a consolidated basis in the Member State concerned when it is possible that this authority has the necessary information.

(6) Prior to taking a decision which is of importance for the activity of a competent supervision authority, the BNB shall consult the competent supervision authority of the other Member State where this decision refers to:

1. changes in the shareholder, organisational or management structure of credit institutions in a banking group, which require the authorization of the BNB;

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

(7) In the cases under paragraph 6, subparagraph 2 the BNB shall consult the competent authority responsible for the supervision on a consolidated basis.

(8) The BNB may decide not to hold the consultations under paragraphs 6 and 7 in cases of urgency or where such consultation may jeopardize or prevent the effectiveness of the decision. In this case the BNB shall, without delay, inform the competent authorities under paragraphs 6 and 7.

**Article 96.** The persons managing a financial holding company shall be of good repute and shall have adequate experience to perform their responsibilities.

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

(2) The BNB may carry out itself or with the assistance of specifically appointed persons to that end on-the-spot inspections to verify the information received under paragraph 1.

(3) If a mixed-activity holding company or one of its subsidiaries is an insurance company,

the BNB may furthermore verify the information received under paragraph 1 in accordance with the procedure laid down in Article 99.

(4) If a mixed-activity holding company or one of its subsidiaries is not set up in the Republic of Bulgaria, the information received under paragraph 1 may furthermore be verified in accordance with the procedure laid down in Article 100.

(5) For the purposes of supervision on a consolidated basis the BNB may require the information under paragraph 1 from the supervision authority concerned situated in a Member State.

(6) The BNB shall provide the information under paragraph 1 upon request from the authority responsible for the supervision on a consolidated basis in a Member State.

(7) The BNB powers for gathering of information under paragraphs 1 and 5 shall not create obligations for supervision on a stand-alone basis of the mixed-activity holding company or its non-bank subsidiaries or of its subsidiaries which are not included in the scope of the supervision on a consolidated basis.

**Article 98.** (1) Where the BNB is responsible for supervision on a consolidated basis of a parent undertaking which is not set up in the Republic of Bulgaria, the BNB may request from the competent supervision authority in the Member State to gather from the parent undertaking the information which would be necessary for the supervision on a consolidated basis and forward it to the BNB.

(2) Where the parent undertaking is set up in the Republic of Bulgaria but the BNB does not exercise supervision on a consolidated basis, upon request from the authority responsible for the supervision on a consolidated basis the BNB shall be entitled to require from the parent undertaking the information which would be necessary for the supervision on a consolidated basis and forward it to this competent authority.

(3) The BNB powers for gathering of information under paragraphs 1 and 2 shall not create obligations for supervision on a stand-alone basis of the parent undertaking where it is a financial holding company, financial institution or an ancillary services company.

**Article 99.** (1) In the exercise of supervision on a consolidated basis of banks, financial holding companies or mixed-activity holding companies which have as subsidiaries one or more insurance companies or investment intermediaries whose activity is subject to authorization, the BNB shall cooperate and exchange information with the competent authorities responsible for the supervision of insurance companies and/or investment intermediaries.

(2) The BNB shall update a list of financial holding companies over which it exercises supervision on a consolidated basis. The BNB shall provide this list to the competent authorities of the other Member States and the European Commission and shall notify them of any changes in the list.

**Article 100.** (1) Upon request from a competent supervision authority of a Member State the BNB shall carry out verification of specific information about a credit institution, financial holding company, financial institution, ancillary services undertaking, mixed-activity holding company carrying on activity within the territory of the Republic of Bulgaria.

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

(3) Where a credit institution, financial holding company, ancillary services undertaking, mixed-activity holding company, its subsidiary carries on activity in a Member State, the BNB may request from the supervision authority in the Member State to carry out verification of specific information about said person.

(4) In the case under paragraph 3 the BNB may request to carry out independent verification or to participate in the carrying out of this verification.

**Article 101.** (1) Where a bank authorized 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 supervision authority of a Member State, the BNB shall check whether the subsidiary bank is covered by supervision on a consolidated basis in accordance with the principles laid down in this Act.

(2) The BNB shall make the check under paragraph 1 at its initiative or upon request from the parent undertaking or a subsidiary insurance company or investment intermediary authorized in a Member State and shall hold consultations with the competent authorities exercising supervision of these persons.

(3) In carrying out the check under paragraph 1 the BNB shall take into account the opinion of the European Banking Committee on whether the rules for supervision on a consolidated basis of the third country involved would achieve the goals of supervision on a consolidated basis in accordance with the *acquis communautaire*. Upon completion of the check and before taking a decision the BNB shall consult the Committee.

(4) Should the BNB establish that no supervision on a consolidated basis is exercised or the supervision exercised is not in compliance with the principles of this Act, it may apply to the subsidiary bank appropriate supervisory techniques to achieve the objectives of supervision on a consolidated basis of the bank pursuant to this Act.

(5) The BNB shall apply the supervisory techniques under paragraph 4 upon consultations with the competent authorities of other Member States responsible for supervision of the persons under paragraph 1, as well as with the supervision authority of a third country.

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

(7) The BNB may require the establishment of a financial holding company with a head office within the territory of any Member State in respect of which the principles of supervision on a consolidated basis laid down in this Act will apply.

(8) The BNB shall communicate the supervisory techniques under paragraph 4 to European

Commission and other supervision authorities concerned.

#### Section V

##### Supervisory disclosure

**Article 102.** (1) The BNB shall disclose the following information:

1. the texts of laws, regulations, rules and general guidance in the field of prudential regulation;

2. the manner of exercise by the BNB of the dispositive norms of the *acquis communautaire* and the norms entitling to discretion;

3. the general criteria and methodologies used by the BNB in the supervisory review and evaluation referred to in Article 79 (2);

4. without prejudice to the provisions on professional secrecy, aggregate statistical data on key aspects of the implementation of the prudential framework by the BNB.

(2) The disclosure of information shall enable a meaningful comparison of the approaches adopted by the BNB and those adopted by the competent authorities of the other Member States.

(3) Disclosure shall be carried out in a manner and in a format coordinated by the BNB with the European Commission.

#### Section VI

##### Supervisory measures

**Article 103.** (1) The BNB may apply the measures covered under paragraph 2 where it establishes that a bank or officers thereof, or shareholders therein have committed violations constituting:

1. violation or circumvention of the provisions of this Act, of the statutory and other instruments and directives of the BNB;

2. breach of the requirements for confidentiality;

3. conclusion of banking transactions which affect the financial stability of the bank or banking transactions which by using a dummy prevent or circumvent application of the provisions of this Act, of the statutory and other instruments and directives of the BNB;

4. breaches of commitments in writing assumed by the bank to the BNB;

5. (supplemented, SG No. 24/2009, effective 31.03.2009) effecting of transactions or other actions in violation of the licence for banking business as granted or of another authorisation or approval as granted by the BNB;

6. obstruction of the exercise of banking supervision;

7. jeopardizing the interests of depositors;

8. effecting of transactions and operations constituting money laundering or violating the Measures against Money Laundering Act and the instruments for application thereof;

9. jeopardizing the stability of the payment system;

10. (supplemented, SG No. 24/2009, effective 31.03.2009) breaching the conditions on the basis of which the licence for banking business or another authorisation or approval has been granted to the bank;

11. reduction of the own funds of the bank by 20 or more than 20 per cent upon application of a supervisory test of abrupt or unexpected change in interest rates as laid down in the ordinance under Article 40 (1).

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

1. issue a written warning to the bank;

2. convene a General Meeting of Shareholders or schedule a meeting of the Management Board and the Supervisory Board (the Board of Directors) determining the agenda for holding the general meeting or meeting;

3. issue a written order to cease and desist from the violations as committed;

4. issue a written order to take measures for improving the financial condition of the bank;

5. impose on the bank stricter supervisory requirements than the requirements established therefor during the normal operation of the bank;

6. order the bank in writing to take action to revise the interest rates, the maturity structure and the other terms relating to the bank's policy and operations;

7. restrict the business of the bank, prohibiting it from effecting specified transactions, actions or operations;

8. restrict the volume of specific types of activities carried on by the bank;

9. obligate the bank in writing to increase the capital thereof;

10. forbid the payment of dividend or the distribution of capital in another form;

11. forbid conduct of banking business by a foreign bank through a branch or directly; where a permanent ban on the conduct of banking business by a branch of a bank is imposed, the relevant body of the bank shall take decision on termination of the activity of the branch, settling relationships with the bank's creditors and deletion of the branch from the commercial register;

12. (supplemented, SG No. 24/2009, effective 31.03.2009) require reduction of the operating expenses of the bank and/or forbid the payment of bonuses, premiums, tantiems and other forms of additional remuneration to the administrators of the bank outside the main remuneration stated in their management contracts;

13. require changes in the internal rules and procedures of the bank;

14. order the bank in writing to remove one or more persons authorized to manage and represent the bank, as well as members of the Management Board or the Board of Directors; if the bank does not remove the person concerned within the time limit set by the BNB, the BNB may remove him from office; as of the day of receipt of the BNB act on removing from office of the addressee of the measure his powers shall cease and any management and representation actions performed by said person shall have no effect on the bank since that date;

15. (amended, SG No. 24/2009, effective 31.03.2009) temporarily suspend the voting right of a shareholder and/or order in writing a shareholder to transfer the shares thereby held within 30 days;

16. forbid effecting of any transactions and operations with persons with whom the bank is in close ties or which belong to the same consolidated group as the bank, or which are members of the management bodies of the bank, or which exercise control over the bank, or which have a qualifying holding or participate in the management of the persons which exercise control over the bank;

17. set additional requirements to the bank in connection with the licensed banking business thereof;

18. require submission of a rehabilitation plan to be implement by the bank following approval by the BNB;

19. appoint two or more conservators of the bank for a specified period;

20. put the bank under special supervision under the terms and procedure of Articles 115 - 121 in the event of a threat of insolvency;

21. (supplemented, SG No. 24/2009, effective 31.03.2009) withdraw the licence for conduct of banking business or another permission or approval thereby granted; by the act of withdrawal of the licence the BNB shall mandatorily appoint conservators, should such have not been appointed prior to the issuing of the said act.

(3) Upon application of the measures under paragraph 2, the provisions of paragraph 1 of Article 26 and Article 34 of the Administrative Procedure Code regarding explanations and objections of parties concerned shall not apply.

(4) Any acts for application of the measures under paragraph 2 shall be subject to immediate execution.

(5) The BNB shall have the right to require registration with the commercial register of the circumstances under paragraph 2 subject to registration and promulgation in the State Gazette of the acts under paragraph 2, subparagraphs 19, 20 and 21. Promulgation shall be in the first number of the State Gazette, issued after the day of receipt of the request or not later than the next number.

(6) (Amended, SG No. 24/2009, effective 31.03.2009) Where the voting rights of a shareholder have been temporarily suspended in accordance with the procedure of paragraph 2, subparagraph 15, the amount of shares held thereby shall not be counted against the quorum required for holding a General Meeting of the Shareholders and for voting decisions at such a meeting. In such cases, should any risk to the reliability or security in the management of the bank or of the operations thereof arise, the BNB may apply the measures referred to in subparagraphs 7, 10 and 19 of paragraph 2 in respect of the said bank.

(7) The BNB shall take appropriate measures under paragraph 2 in respect of a bank authorized in the Republic of Bulgaria, conducting banking business through a branch or directly within the territory of another Member State upon receipt of a notification by the competent authorities of the host country that the bank does not comply with the applicable legal provisions for conduct of banking business in the Member State concerned. The type and nature of the measures taken shall be communicated to the competent authorities of the host Member State.

(8) The BNB shall mandatorily withdraw the licence (authorisation) of a bank for carrying on activity under Article 5, (2) and (3) of the Markets in Financial Instruments Act where the Financial Supervision Commission so requests on a motivated proposal.

(9) In the cases of paragraph 1 the BNB may furthermore apply the appropriate measures under paragraph 2 in respect of branches of a bank of a third country and their officers as well as in respect of branches of banks of a Member State and their officers subject to the requirements of Section II.

(10) In case of violation of this Act or the instruments for its application by a financial holding company or a mixed-activity holding company or a person managing a financial holding company or a mixed-activity holding company, the BNB may apply measures under paragraph 2 in respect of the financial holding company or the mixed-activity holding company as well as in respect of its officers.

(11) The BNB shall cooperate with the competent authorities of Member States concerned in applying the measures under paragraph 9.

**Article 104.** (1) In the cases where the BNB has applied the measure under Article 103 (2) subparagraphs 2 and 9 the General Meeting of Shareholders shall be convened by the BNB by an invitation to be promulgated in the State Gazette in the first number issued after the BNB decision or in the next number in the latest. In this case Article 223 (1) - (3) and (5) and Article 223a of the Commerce Act as well as the provisions of the bank's Articles of Association regarding the convening of the general meeting shall not apply.

(2) The General Meeting of Shareholders shall be opened and held not earlier than seven days from promulgation of the invitation in the State Gazette.



(3) Should there be no quorum in the cases of paragraph 1 a new General Meeting of Shareholders shall be scheduled for the next business day and it shall be valid regardless of the capital represented therein. The date of the new meeting shall be specified in the invitation for the initially planned meeting.

(4) In the cases under Article 103 (2) subparagraph 9 the time limit set by the General Meeting for subscription and payments effected towards participating interests in the subscribed shares may not exceed 30 days from the date of promulgation in the State Gazette of the invitation for subscription of shares.

(5) In the cases under Article 103 (2) subparagraph 9 the provision of Article 194 (3) sentence two of the Commerce Act shall not apply and the right of the shareholders under Article 194 (1) and (2) of the Commerce Act shall lapse within 14 days after the promulgation in the State Gazette of the invitation for subscription of shares.

(6) Where shareholders with qualifying holdings with their activity or influence on the management of the bank have affected its reliability or security or if in the opinion of the BNB they do not have financial means for participation in the increase of the capital up to the amount set by the BNB, the BNB has the right, when applying the measure under Article 103 (2) subparagraph 9, to restrict and deprive the shareholders of the bank from their right to participate in the increase of the capital under Article 194 (1) and (2) of the Commerce Act in proportion to their holding.

(7) In the cases of paragraph 6 the BNB may obligate the bank to increase its capital on condition that the new shares will be purchased by persons and at prices set by the BNB.

(8) Upon application of the measure under Article 103 (2) subparagraph 9 as well as in the cases of increasing the capital pursuant to Article 110 and Article 118 of a bank which is a public company, the provisions of Articles 112 - 112c of the Public Offering of Securities Act shall not apply; in these cases the procedure laid down in the Commerce Act and in this Act shall apply.

## Section VII

### Conservator

**Article 105.** (1) Only a natural person may serve as a conservator.

(2) Any conservator must meet the requirements of Article 11 (1) herein. He shall not be in relationship with the bank concerned or with any debtor thereof which raises a reasonable doubt about his impartiality.

(3) Any persons who have been appointed conservators shall make decisions unanimously and shall exercise the powers thereof jointly, unless the BNB determines otherwise.

(4) (Amended, SG No. 24/2009, effective 31.03.2009) Any conservator shall declare in writing to the BNB the circumstances covered under sentence two in paragraph 2 and paragraph 4 of Article 11. Any conservator shall be notify the BNB forthwith of any alteration in any such circumstances.

**Article 106.** (1) (Amended, SG No. 24/2009, effective 31.03.2009) Any conservator shall be appointed and removed by the BNB and the requirement for issuance of approvals under Article 11 (3) shall not apply.

(2) Apart from the cases covered under paragraph 3, the period wherefor any bank is managed by conservators may not exceed six months in aggregate. If the licence of the bank is not withdrawn within any such period, the powers of the conservators shall be terminated by the lapse of the period and all bodies of the bank shall be reinstated in the rights thereof.

(3) If the BNB has withdrawn the licence of a bank, the powers of the conservators shall be terminated upon the appointment by the competent court of law of a liquidator or a trustee in bankruptcy, as the case may be.

(4) The BNB may at any time terminate the powers of a conservator and appoint a replacement. The BNB act shall not be subject to appeal.

(5) Upon issuing an act of appointment of a conservator, the BNB shall serve the said act forthwith on the bank concerned and shall cause a notice to be published in at least one national daily.

**Article 107.** (1) Upon the appointment of conservators, all powers vesting in the bank's Supervisory Board and Management Board or Board of Directors, as the case may be, shall be suspended and shall be exercised by the said conservators, save in so far as the act of appointment thereof does not provide for any limitations.

(2) During the incumbency of the conservators, the General Meeting of Shareholders may be convened solely by the conservators and may pass resolutions on the agenda announced thereby. Under the terms of Articles 109 and 110 herein, the conservators shall exercise the powers of the General Meeting of Shareholders.

(3) The BNB may issue mandatory directions to the conservators in connection with the operation thereof.

(4) The conservators may delegate some of the powers thereof to other persons, including bank officers whereof the powers have been suspended.

(5) The conservators shall be accountable for the operation thereof solely to the BNB and, upon request, shall forthwith submit thereto a report on the performance thereof.

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

**Article 107a.** (New, SG No. 24/2009, effective 31.03.2009) (1) With the act for appointing a conservator the BNB may:

1. give him/her the right to approve the decisions of the bodies referred to in Article 107 (1) which have kept their powers; their decisions shall not be valid without the approval of the conservator;

2. specify the deals, activities and transactions that the bank may perform only following a prior permission by the conservator;

(2) In addition to the powers specified in paragraph 1 the conservator shall be entitled to:

1. access to all documents related to the meetings of the bodies referred to in Article 107 (1);

2. attend the meetings and propose that items are included in the agenda;

3. assign to the specialised internal audit function to carry out inspections in connection with matters specified by him/her.

**Article 108.** (1) Conservators shall have unlimited access to, and control over, the premises of the bank concerned, the accounting and other documents, the property and subsidiaries of the bank concerned.

(2) At the conservators' request, the prosecuting magistracy and the authorities of the Ministry of the Interior shall be obligated to render assistance for the exercise of the conservators' powers covered under paragraph 1.

(3) Immediately after appointment thereof, the conservators shall provide for conservation of the assets of the bank by taking all the necessary actions aimed at safeguarding the assets, documents and information of the bank, including:

1. modify the procedures for entering the buildings of the bank and premises;

2. alter passwords for access to the bank's computers and grant access solely to a limited number of employees;

3. issue new type of pass for entry in the premises of the bank to the authorized employees and control access of other employees to such premises.

(4) Conservators shall terminate the powers of all persons who were able to bind the bank concerned or to perform any act whatsoever on behalf and for the account of the bank concerned, and authorize other persons;

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

(6) Within five days after the appointment thereof, any conservators shall transmit to each branch of the bank concerned, including its branches in Member States and third countries, and to subsidiaries thereof a transcript of the BNB act of appointment.

(7) Conservators shall suspend the payment of dividend or distribution of capital in another form to shareholders, as well as payments to officers, save as remuneration for work performed under employment contract or services rendered thereby to the bank concerned at the conservators' request.

**Article 109.** (1) Where the bank's licence has not been withdrawn, the conservators thereof shall have the right to make a decision on the transformation of the bank concerned through merger with or acquisition by another bank, subject to approval by the BNB upon presentation of a permission from the Commission for the Protection of Competition, where granting of such a permission shall be mandatory. In such cases conservators shall exercise all the powers of the General Meeting of Shareholders as set out in the Commerce Act in relation to the transformation thereof.

(2) The BNB shall grant permission under paragraph 1 solely if it determines that the transformation will not lead to violation of the provisions for conduct of banking business under this Act and the instruments for application thereof by the acquiring or newly established bank, as well as provided all obligations of the bank managed by conservators are assumed upon the transformation.

**Article 110.** (1) Where the bank's licence has not been withdrawn, the conservators thereof, subject to approval by the BNB, may decide on an increase of the capital by issuing of new shares which the said conservators shall offer to the shareholders. Payments towards any such new shares up to the amount of the issue price thereof shall be made in full within a time limit established by the conservators.

(2) In the cases of paragraph 1 the provision of Article 194 (3) sentence two of the Commerce Act shall not apply, and the shareholders' right under Article 194 (1) and (2) of the Commerce Act shall lapse within 14 days after promulgation in the State Gazette of the invitation for subscription of new shares.

(3) Any unsubscribed shares, as well as any shares payments under which have not been effected according to paragraph 2, shall be offered by the conservators to other persons.

(4) (Amended, SG No. 24/2009, effective 31.03.2009) Where the licence of a bank has not been withdrawn, which does not satisfy the requirements of Article 39 (2) and (3), the conservators thereof, subject to approval by the BNB, may decide on an increase of the capital by issuing of new shares and divest the shareholders of the their rights under Article 194 (1) and (2) of the Commerce Act. In such cases the new shares shall be offered without applying the procedure of Article 194 of the Commerce Act. The persons participating in the increase of the capital shall acquire the new shares provided they obtain approval by the BNB, where such approval is required.

(5) Approval by the BNB under paragraph 4 is required where:

1. the shareholders of the bank by their acts or influence in management have threatened its stability or soundness, or

2. at BNB discretion, the shareholders of the bank do not have financial means to increase the capital up to the amount determined by the BNB, or

3. at BNB discretion, providing of the opportunity for exercise of the shareholders' rights under Article 194 (1) and (2) of the Commerce Act may prevent or delay, for the purposes of the bank's rehabilitation, the increase of the bank's capital for unacceptable period of time.

**Article 111.** (1) Conservators may take actions and measures aimed at rehabilitation of the bank concerned, including negotiation with the bank's creditors of reduction, rescheduling and novation of their claims.

(2) Conservators may stop the implementation of resolutions passed by the general meeting or the management bodies of the bank.

**Article 112.** (1) A conservator shall exercise his powers with the care of sound stewardship. A conservator shall be liable solely for any willfully inflicted detriment.

(2) All employees of the bank concerned shall cooperate with the conservator in the exercise of the powers thereof.

**Article 113.** Any conservator shall receive for his services a remuneration for the account of the bank concerned to an amount fixed by the BNB.

**Article 114.** (1) The BNB may appoint a conservator at a branch of a bank having its head office in a third country and in such cases the provisions of this Section shall apply accordingly.

(2) The conservator under paragraph 1 shall be subject solely to BNB orders.  
Section VIII

Special supervision in danger of insolvency

**Article 115.** (1) In order to rehabilitate a bank which is in danger of insolvency the BNB may put this bank under special supervision.

(2) Danger of insolvency of a bank exists in where:

1. its total capital adequacy ratio is below the minimum level set, or
2. the liquid assets of the bank, in the BNB opinion, would not be sufficient for the bank to be able to settle its liabilities when they fall due, or
3. the bank has not fulfilled on a timely basis one or more due liabilities to its creditors.

(3) The time limit for the special supervision shall not exceed six months. If conservators were appointed under the terms of Article 109 (2) subparagraph 19 before the application of this measure, the six-month time limit shall run from the date of the appointment of the conservators.

**Article 116.** (1) In the cases under Article 115 (1) the BNB shall put the bank under special supervision and shall:

1. appoint conservators, where no conservators have been appointed and shall determine their powers;
2. specify the term and conditions of the special supervision.

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

1. reduce the interest on the bank's liabilities to the average market rate;

2. suspend for a specified period in full or in part execution of all or part of its obligations;
3. restrict its activity in full or in part;
4. stipulate conditions and additional requirements to the procedure for disposal with the bank's property;
5. order compulsory increase of its capital, including by depriving existing shareholders of the right to participate in the increase;
6. remove from office the members of the Board of Directors, the Management Board and the Supervisory Board, as the case may be;
7. deprive temporarily from voting right shareholders holding directly or indirectly more than 10 per cent of the voting shares where they have affected the soundness and security of the bank by their actions or influence;
8. order compulsory reduction of the share capital of the bank by the amount of the loss accumulated by the bank.

(3) The circumstances subject to registration under paragraphs 1 and 2 shall be entered in the commercial register at BNB request.

**Article 117.** (1) Compulsory reduction of the share capital shall be applied where the loss accumulated by the bank cannot be covered by the general reserves, including retained earnings from previous years.

(2) In the cases covered by Article 116 (2) subparagraph 8, a resolution on increasing the capital under the terms of Article 203 of the Commerce Act shall be passed simultaneously with the reduction of the capital. In this case the shareholders of the bank shall lose the right under Article 194 (1) and (2) of the Commerce Act to acquire part of the new shares in proportion to their share in the capital.

**Article 118.** (1) In the cases under Article 116 (2) subparagraph 5 or 8, the BNB may order the increase of the capital to be made on condition that the new shares would be acquired by the Bank Deposit Guarantee Fund or financial institutions approved by the BNB.

(2) In the cases under Article 116 (2) subparagraph 8, the new shares shall be acquired at par value. In the cases under Article 116 (2) subparagraph 5, the new shares shall be acquired at issue value. The issue value shall be determined by dividing the own funds according to balance sheet by the number of shares in its capital subject to the provision of Article 176 (2) of the Commerce Act .

(3) (Amended, SG No. 24/2009, effective 31.03.2009) Where the Bank Deposit Guarantee Fund participates in the increase of a bank's capital under the terms of paragraph 1, no approval by BNB under Article 28 shall be required.

(4) Where the BNB has ordered an increase or reduction of the capital of a bank, the conservator shall exercise the rights of the general meeting and shall determine the conditions,

procedure and time limits for subscription of shares and payment of contributions. In these cases the procedure for increasing or reducing the capital laid down in the Articles of Association of the bank shall not apply.

(5) In the cases under Article 116 (2) subparagraph 7, the shares held by the shareholder deprived from voting right shall not be counted against the required quorum for holding the General Meeting of Shareholders and passing a resolution thereby.

**Article 119.** (1) Any actions and transactions effected by the bank in violation of Article 116 (2) subparagraphs 1 - 4 shall be void after promulgation of the BNB decision in the State Gazette.

(2) In the cases under Article 116 (2) subparagraph 2 execution proceedings, including execution proceedings under the Registered Pledges Act against the property of the bank shall be stopped.

(3) In the cases under Article 116 (2) subparagraph 2 the following is allowed:

1. execution of obligations that have arisen from payment orders accepted for settlement by the bank before putting it under special supervision;

2. execution of payment orders arising from exercise of rights or performance of obligations under financial security agreements where the orders were given before or on the date of putting the bank under special supervision or where the counterparty on the security proves that it has not been aware of the fact that the bank was put under special supervision;

3. execution of netting operations through the payment system;

4. execution of monetary obligations relating to the bank's support or arisen after the date of the special supervision as a result of legal actions performed by the conservators and necessary for the rehabilitation of the bank.

(4) In the cases under Article 116 (2) subparagraph 2 and for the period in which the BNB has exercised such power it shall be deemed that the bank has not defaulted on the monetary obligations the execution whereof has been stopped.

(5) In the cases under Article 116 (2) subparagraph 2, the bank shall not bear financial liability for non-performance of the obligations whose execution has been stopped by the special supervision. For the term of the special supervision no default interest and penalty shall be charged on the monetary obligations whose execution has been stopped, and contractual interest on such obligations shall accrue but shall be paid after lifting of the special supervision.

**Article 120.** (1) Conservators in special supervision have the powers under Section VII and this Section, unless the BNB act of their appointment states otherwise.

(2) Conservators in special supervision may:

1. stop the implementation of resolutions passed by the general meeting or the management bodies of the bank;

2. terminate without notice contracts concluded before the imposition of the special supervision and the bank shall not owe indemnity in the cases where such contracts are unfavourable for the bank and their covenants deviate from effective market conditions.

**Article 121.** Within one month from appointment thereof, conservators in special supervision shall submit to the BNB financial statements and a report on the current state of the bank. They may furthermore propose imposition of the measures under Article 103 (2).

#### Chapter Twelve

### LIQUIDATION, SALE OF ENTERPRISE AND CLOSING OF A BRANCH

#### Section I

##### Voluntary liquidation

**Article 122.** (1) A resolution on voluntary liquidation of a bank may be passed by the General Meeting of Shareholders subject to a prior permission by the BNB.

(2) Together with the request for granting a permission under paragraph 1 the bank shall submit to the BNB a liquidation plan approved by its management body.

(3) A permission shall be granted if the BNB satisfies itself that the bank concerned is solvent and has sufficient liquid assets to pay without delay the obligations thereof to the creditors thereof.

(4) The licence of the bank shall be deemed invalidated upon the granting of the permission by the BNB. The BNB shall take the necessary measures to inform the public of the invalidation thereof.

(5) The BNB may refuse to grant a permission for voluntary liquidation where:

1. it determines that the bank will not be able to pay without deferment or settle otherwise its obligations to the creditors;

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

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

4. additionally required documents necessary to decide on whether the conditions for granting a permission or for refusal exist have not been submitted within the time limit set.

(6) The terms and procedure for granting a permission for voluntary liquidation shall be laid down in a BNB ordinance.

**Article 123.** Costs for liquidation shall be:

1. the remuneration of the liquidators;



2. salaries, social security contributions and other payables under employment contracts with employees of the bank in liquidation proceedings;

3. the remuneration of the experts, advisors and attorneys hired by the liquidator in relation to exercise of his powers.

4. other expenses on concluded contracts and activities incurred for the liquidation proceedings.

**Article 124.** (1) The claims of the depositors of the bank shall be deemed lodged to the liquidator.

(2) The liquidator shall draw up a list of the lodged claims of the creditors of the bank, which shall be made available to them in the premises of the bank.

(3) The liquidator shall distribute the funds received in the liquidation proceedings of a bank in accordance with the terms of Article 94 (1) subparagraphs 1 - 8 of the Bank Bankruptcy Act .

(4) Creditors on claims related to expenses incurred on the liquidation proceedings shall receive payment at maturity and where they have not received payment at maturity, they shall satisfy themselves under the terms of Article 123 (4).

**Article 125.** (1) Should the liquidator of a bank ascertain in the process of voluntary liquidation that the bank concerned is insolvent within the meaning of Article 36 (2), the liquidator shall move to the BNB to submit a petition in bankruptcy to the court of law. The liquidator shall enclose with any such motion a report and documents certifying the bank's financial position.

(2) The BNB shall check the motion under paragraph 1.

(3) If the motion under paragraph 1 is valid, the Governor of the BNB, based on a report by the Deputy Governor heading the Banking Supervision Department, shall issue an order establishing that the bank is in a state of insolvency and shall petition the court of law to open bankruptcy proceedings.

(4) The court of law shall examine the BNB petition under the terms and according to the procedure laid down in the Bank Bankruptcy Act .

## Section II

### Compulsory Liquidation

**Article 126.** The Bank Deposit Guarantee Fund shall appoint liquidators of a bank the licence for conduct of banking business whereof has been withdrawn on the grounds of Article 36 (1).

**Article 127.** (1) Only a natural person may serve as liquidator in liquidation proceedings of a bank.

(2) The provisions of Article 25 (1) and (2) of the Bank Bankruptcy Act shall apply mutatis mutandis to the liquidator of a bank.

(3) The powers of a liquidator of a bank shall be exercised by at least two persons.

(4) The BNB shall have the right at any time to check compliance with the requirements of paragraph 2. Should the BNB establish that the liquidator does not meet the requirements, it may file a request to the Bank Deposit Guarantee Fund for his removal.

(5) Should the requirements of this Article be satisfied, conservators of the bank may be appointed as liquidators.

(6) The provision of Article 34 of the Bank Bankruptcy Act shall apply, mutatis mutandis, to the liquidator of a bank.

**Article 128.** (1) The liquidator shall submit to the BNB and the Bank Deposit Guarantee Fund reports and statements whose form, content and time limits shall be set by the Deputy Governor of the BNB heading the Banking Supervision Department.

(2) The liquidator shall deposit the funds received from cashing the bank's property or from collection of the bank's receivables on special accounts in lev, foreign currency respectively.

**Article 129.** The provisions of Articles 123 and 124 shall furthermore apply to the compulsory liquidation proceedings.

**Article 130.** (1) Should the Bank Deposit Guarantee Fund or the liquidator of a bank ascertain in the process of compulsory liquidation of a bank that the bank concerned is insolvent within the meaning of Article 36 (2) subparagraph 2 or that the bank has not settled its due and payable monetary obligations over 60 days, the Fund/liquidator shall move to the BNB to submit a petition in bankruptcy to the court of law. The Fund/liquidator shall enclose with any such motion a report and documents certifying the bank's financial position.

(2) The BNB shall check the motion under paragraph 1.

(3) If the motion under paragraph 1 is valid, the Governor of the BNB, based on a report by the Deputy Governor heading the Banking Supervision Department, shall issue an order establishing that the bank is in a state of insolvency and shall petition the court of law to open bankruptcy proceedings.

(4) The court of law shall examine the BNB petition under the terms and according to the procedure laid down in the Bank Bankruptcy Act .

### Section III

#### Sale of a bank enterprise

**Article 131.** (1) The enterprise of a bank may be sold solely to another bank, provided that the BNB grants a prior approval of the transaction for sale of the enterprise.

(2) Voluntary liquidation proceedings shall be opened in respect of the bank simultaneously with the entry into force of the agreement for sale of the bank enterprise.

(3) Before entering into the agreement for sale of the bank enterprise the bank shall file a request to the BNB for prior approval of the transaction and for granting a permission under Article 122 (1).

(4) Enclosed to the request under paragraph 3 shall be a market evaluation of the enterprise of the bank, a draft sale agreement and other documents as laid down in a BNB ordinance.

(5) Upon a sale of a bank enterprise the creditors of the seller bank and the buyer bank shall notify each other through an announcement in the State Gazette promulgated in at least two national dailies. In these cases Article 15 (1) sentence two of the Commerce Act shall not apply.

(6) The BNB shall not approve the transaction for sale of the bank enterprise and refuse to grant a permission for voluntary liquidation where:

1. it determines that the buyer bank will not be able to pay on a timely basis or settle otherwise its obligations to the creditors, including the creditors of the seller bank;

2. it determines that the interests of the creditors of the seller and the buyer will not be protected sufficiently in the sale;

3. it determines that the sale will result in the buyer bank breaching the requirements for conduct of banking business under this Act and the instruments for application thereof;

4. the documents submitted by the bank contain incomplete, misleading or insufficient information, or

5. additionally required documents necessary to decide on whether the conditions for granting a permission or for refusal exist have not been submitted within the time limit set.

(7) The liquidator of a bank whose enterprise has been sold shall distribute the proceeds received from the sale among the shareholders of the bank after expiry of the time limit under Article 16a (1) of the Commerce Act .

(8) A bank in liquidation proceedings may be sold as an enterprise or may merge into another bank solely by a permission of the BNB. The BNB shall grant any such permission solely where the obligations of the bank concerned are entirely assumed by the acquiring or absorbing bank and if it determines that the circumstances covered under paragraph 6 or Article 109 (2) herein exist.

#### Section IV

##### Closing of a bank branch

**Article 132.** (1) Where a bank authorized (licensed) in the Republic of Bulgaria decides to close a branch abroad, it shall notify forthwith the BNB, enclosing a detailed plan of the manner of settling the obligations arisen in relation to the activity of the branch.

(2) The BNB shall determine whether the proposed plan safeguards sufficiently the interests of the bank's creditors abroad and whether it ensures settlement of the relationships therewith within an appropriate time limit. The BNB may make objections against the plan within 30 days from submission thereof and give relevant instructions to the bank.

(3) The bank may commence implementation of the plan upon its approval by the BNB.

(4) The branch may not be closed before all relationships between the bank and the creditors in the respective country have been settled.

(5) Before filing the application for deletion of the branch from the relevant public register, the persons representing the bank shall submit to the BNB a written declaration that all relationships between the bank and the creditors in the respective country, which have arisen in relation to the activity of the branch, have been settled.

(6) The provisions of paragraphs 1 - 5 shall apply, mutatis mutandis, to the cases where a bank from a third country which has been authorized to carry on activity through a branch within the territory of the Republic of Bulgaria decides to close its branch in the Republic of Bulgaria.

#### Chapter Thirteen

### REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS

#### Section I

##### General provisions

**Article 133.** (1) Reorganisation measures shall be the measures against a local or foreign bank taken by the BNB or the competent authorities of another Member State as well as their courts of law against a bank, including its branches in a Member State, intended to preserve and restore its financial situation and which could affect third parties' pre-existing rights, including measures involving the suspension of payments, suspension of execution proceedings or reduction of claims on the bank and other similar measures.

(2) Winding-up proceedings shall be the measures for liquidation or bankruptcy of a bank authorized (licensed) in the Republic of Bulgaria or another Member State, including in respect of its branches abroad, or compulsory termination of the activity of a branch of a Bulgarian bank in a Member State or a third country, a branch of a bank established in a Member State as well as any other similar procedure relating to termination of the activity and conduct of collective proceedings with the aim of realising the bank's assets and distributing the proceeds thereof, opened and monitored by the competent administrative or judicial authorities of a Member State, including where the proceedings are terminated by a composition or other similar measure.

(3) Within the meaning of this Chapter the shareholders of the bank and its officers shall not be deemed third parties.

#### Section II

##### Reorganisation measures

**Article 134.** (1) The BNB shall be the competent body for adoption of reorganisation measures in respect of a bank authorized (licensed) in the Republic of Bulgaria, including its branches within the territory of the Member States. The terms and procedures for appeal against such measures as well as their legal effects shall be governed by the Bulgarian law, save in so far as provided otherwise in this Chapter.

(2) Where the BNB adopts reorganisation measures in respect of a bank which has branches

in other Member States, the BNB shall notify promptly the competent authorities of such Member States before implementation of the measures, and should this be impossible, in view of safeguarding the interests of the creditors of the bank, simultaneously with the implementation thereof. The BNB shall specify in the notification the legal and other effects of the application of the measure.

(3) Within two business days from the date of issuance thereof, the BNB acts of implementation of reorganisation measures shall be published in at least two national dailies in the Republic of Bulgaria.

(4) The BNB acts of implementation of reorganisation measures, including the acts of adoption of reorganisation measures for a branch of a bank from a third country, shall be promulgated in summary in the Official Journal of the European Union and in two national newspapers of every Member State in which the bank has a branch. The summary of the act shall be promulgated in Bulgarian and in the languages of the Member States in which the said bank carries on banking activity.

(5) The summary of the act under paragraph 4 shall contain a description of the legal and factual grounds for the issuance of the act, the name and address of the court of law where it can be appealed as well as the deadline for appeal.

**Article 135.** (1) Before implementing reorganisation measures in a branch of a bank with head office in a third country, which has branches within the territory of one or more Member States as well, the BNB shall notify the competent authorities of such countries of its intention to implement reorganisation measures in the said branch as well as of the legal and other effects thereof. In the cases where it is impossible to notify in advance the competent supervision authorities, the BNB shall notify them immediately afterwards.

(2) Where the BNB determines that reorganisation measures must be implemented within the territory of the Republic of Bulgaria in respect of a bank from a Member State, the BNB shall notify the competent authorities of the home Member State thereof.

**Article 136.** (1) Reorganisation measures implemented by a competent authority of a Member State in respect of a bank authorized in that Member State shall be recognised directly and without further formalities in the Republic of Bulgaria and shall become effective against the branch of the bank carrying on its activity in the Republic of Bulgaria as well as against any third parties in the Republic of Bulgaria once they become effective in that Member State. The legal effects of the reorganisation measures shall be governed by the law of the respective Member State, save in so far as otherwise provided herein.

(2) The persons who administer within the territory of the Republic of Bulgaria reorganisation measures adopted by a competent authority of a Member State shall have the same status and powers which they are entitled to by law to exercise within the territory of that Member State. Such persons shall enforce the Bulgarian law in the realisation of assets of the bank within the territory of the Republic of Bulgaria and in settling relations under employment contracts which have arisen within the territory of the Republic of Bulgaria.

(3) Reorganisation measures implemented by a competent authority of a Member State in respect of a bank authorized in a third country shall be recognised directly and without further

formalities in the Republic of Bulgaria and shall become effective against third parties in the Republic of Bulgaria once they become effective in that Member State.

### Section III

#### Winding-up proceedings for a bank

**Article 137.** (1) The Bulgarian administrative or judicial authorities alone shall be competent to decide on the liquidation or the opening of bankruptcy proceedings concerning a bank authorised (licensed) in the Republic of Bulgaria. The decision of such authorities shall be furthermore effective against the branches of the bank established in other Member States.

(2) Save in so far as otherwise provided in this Act, the Bulgarian legislation shall apply to liquidation or bankruptcy proceedings of a bank authorised (licensed) in the Republic of Bulgaria, including in particular:

1. the goods subject to the proceedings and the treatment of goods acquired by the bank after the opening of the proceedings;
2. the rights of the bank and the powers of its liquidator or trustee in bankruptcy;
3. the conditions under which set-offs may be invoked;
4. the effects of opening the proceedings on current contracts to which the bank is party;
5. the effects of the proceedings on proceedings brought by individual creditors against the bank;
6. the claims which are to be lodged against the bank and the treatment of claims arising after the opening of the proceedings;
7. the rules governing the lodging and admission of claims;
8. the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors of the bank who have obtained partial satisfaction after the opening of bankruptcy proceedings by virtue of a right in re or through a set-off;
9. the conditions for, and the effects of, the closure of bankruptcy proceedings;
10. creditors' rights after the closure of the proceedings;
11. who is to bear the costs and expenses incurred in the proceedings;
12. the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors;

**Article 138.** (1) The BNB shall notify on a timely basis the competent authority of the Member States in which the bank under Article 137 (1) carries on its banking activity through a branch that a compulsory liquidation has been petitioned or the opening of bankruptcy proceedings or that a permission for voluntary liquidation has been granted to said bank.

(2) The BNB shall notify the competent authority under paragraph 1 of the decision on initiation of liquidation or the opening of bankruptcy proceedings as well as of the legal and other effects arising therefrom.

(3) The procedure for notification under paragraphs 1 and 2 shall furthermore apply to the cases of winding-up of a branch in the Republic of Bulgaria of a bank with headquarters in a third country where said bank has established a branch in another Member State. In these cases the BNB and the competent authority shall coordinate their actions within the proceedings with the competent administrative and judicial authorities in the other host Member States.

**Article 139.** (1) The decision of the competent administrative or judicial authority on the liquidation, opening of winding-up proceedings concerning a bank authorized in a Member State and carrying on its banking activity within the territory of the Republic of Bulgaria shall be recognised directly and without further formalities in the Republic of Bulgaria and shall be effective in this country once the decision has entered into force and has become effective within the territory of the respective Member State where the proceedings has been opened.

(2) The decision under paragraph 1 shall be subject to entry by the registered office of the branch in the Republic of Bulgaria. The entry of the decision shall have disclosure effect.

(3) In winding-up proceedings in respect of a bank under paragraph 1 the law of the Member State in which the bank is authorized shall apply, unless this Act provides otherwise.

**Article 140.** (1) The liquidator or trustee in bankruptcy of a bank authorised (licensed) in the Republic of Bulgaria with branches in other Member States shall publish in Bulgarian an extract from the decision on the opening of liquidation proceedings in respect of the bank, opening of bankruptcy proceedings, as the case may be, in the Official Journal of the European Union and in at least two national newspapers in each of the Member States where the bank has branches.

(2) The liquidator or trustee in bankruptcy of the bank under paragraph 1 shall notify and invite in writing the creditors of the bank from other Member States whose addresses are known to lodge their claims, except for the creditors where the legislation of the home State does not require lodgement of the claim and whose claims are regarded as officially admitted by the trustee in bankruptcy or the liquidator.

(3) The invitation to the creditors under paragraph 2 shall contain information in Bulgarian about:

1. the opening of the liquidation or bankruptcy proceedings of the bank under paragraph 1;
2. the time limits for lodgment of claims;
3. the requirement for presenting evidence;
4. the body empowered to accept the lodgment of claims or the observations relating to claims and the requirements for lodgment of claims;
5. the consequences from non-lodgment of claims within the prescribed time limits or non-

lodgment at all, including the consequences after the closure of the liquidation or bankruptcy proceedings of the bank in the country where it is authorized.

(4) The invitation under paragraph 2 shall indicate whether creditors whose claims are preferential or secured in re need lodge their claims with a view to their recognition, as well as other essential circumstances regarding the claims.

(5) The invitation to be sent to the creditors under paragraph 2 shall have the following heading: "Invitation to lodge a claim. Time limits to be observed" in all official languages of the European Union. Where observations relating to claims shall be submitted, the invitation shall have the following heading: "Invitation to submit observations relating to a claim. Time limits to be observed" in all official languages of the European Union.

(6) Any creditor under paragraph 2, including a public authority, shall have the right to lodge claims or to submit written observations relating to claims in the official language or in at least one of the official languages of the respective Member State. In this case the claim in Bulgarian shall be lodged under the following heading "Предявяване на вземане" (Lodgment of a claim).

(7) The liquidator or the trustee in bankruptcy shall have the right to require submission of a translation into Bulgarian of the documents under paragraph 6.

(8) Unless otherwise provided by this Act, any creditor under paragraph 2 shall send copies of the documents supporting its claim, if any, and shall specify the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security in re or reservation of title in respect of the claim and what assets are covered by his security.

(9) The claims of all creditors of a bank authorised (licensed) in the Republic of Bulgaria in respect of which liquidation or bankruptcy proceedings has been opened shall be treated in the same way and accorded the same ranking as claims of an equivalent nature regardless of whether they have arisen within the territory of the Republic of Bulgaria or within the territory of other Member States.

(10) The liquidator or trustee in bankruptcy shall keep the creditors of the bank under paragraph 1 regularly informed, in an appropriate manner, in respect of which liquidation or bankruptcy proceedings are opened, with regard to the progress in the proceedings.

#### Section IV

#### Provisions common to reorganisation measures and winding-up proceedings

**Article 141.** Where reorganisation measures and winding-up proceedings in respect of a bank are implemented the legal effects thereof shall be governed as follows:

1. employment contracts and relationships thereof - by the law of the Member State applicable to the employment contract;

2. contracts conferring the right to make use of or acquire immovable property - by the law of the Member State within the territory of which the immovable property is situated. That law



shall determine whether property is movable or immovable.

3. rights in respect of immovable property, a ship or an aircraft subject to registration in a public register - by the law of the Member State under the authority of which the register is kept.

**Article 142.** (1) The adoption of reorganisation measures or the opening of winding-up proceedings in respect of a bank shall not affect the rights in re of creditors or third parties in respect of tangible or intangible, movable or immovable assets - both specific assets and collections of indefinite assets as a whole - belonging to the bank, which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings in respect of the bank concerned.

(2) The rights referred to in paragraph 1 shall mean in particular:

1. the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

2. the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

3. the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

4. a right in re to the beneficial use of assets.

(3) The right, recorded in a public register and enforceable against third parties, under which a right within the meaning of paragraph 1 may be obtained, shall be considered a right under paragraph 1.

(4) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 137 (2) subparagraph 12.

**Article 143.** (1) The adoption of reorganisation measures or the opening of winding-up proceedings concerning a bank purchasing an asset shall not affect the seller's rights based on a reservation of title until full payment of the price where at the time of the adoption of such measures or opening of such proceedings the asset is situated within the territory of a Member State other than the State in which the said measures were adopted or the said proceedings were opened

(2) The adoption of reorganisation measures or the opening of winding-up proceedings concerning a bank selling an asset under a contract referred to in paragraph 1, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the adoption of such measures or the opening of such proceedings concerning the bank the asset sold is situated within the territory of a Member State other than the State in which such measures were adopted or such proceedings were opened.

(3) Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 137 (2) subparagraph 12.

**Article 144.** (1) The adoption of reorganisation measures or the opening of winding-up proceedings concerning a bank shall not affect the right of creditors to demand the set-off of their claims against the claims of the bank, where such a set-off is permitted by the law applicable to the bank's claim.

(2) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 137 (2) subparagraph 12.

**Article 145.** The governing law in respect of reorganisation measures and winding-up proceedings concerning a bank shall be:

1. the enforcement of proprietary rights or other rights in financial instruments or other instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located;

2. netting agreements shall be governed solely by the law of the contract which governs such agreements;

3. without prejudice to point 1, repurchase agreements shall be governed solely by the law of the contract which governs such agreements;

4. without prejudice to point 1, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions;

5. a pending lawsuit concerning an asset or a right of which the bank has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

**Article 146.** (1) The administrator of reorganisation measures, liquidator, trustee in bankruptcy or any other competent judicial or administrative authority of the home Member State shall take all the necessary measures to record the reorganisation measures or the decision to open winding-up proceedings concerning a bank in the respective property register, commercial register and any other public register kept in the Republic of Bulgaria where such registration is mandatory according to Bulgarian legislation.

(2) The costs of registration shall be regarded as costs and expenses incurred in the reorganisation measures or the winding-up proceedings.

**Article 147.** (1) Article 137 (2) shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State and that law does not allow any means of challenging that act in the case in point.

(2) Where a reorganisation measure decided on by a judicial authority provides for rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole performed before adoption of the measure, Article 134 (1) sentence two shall not apply in the cases provided for in paragraph 1 of this Article.

**Article 148.** Where by an act concluded after the adoption of a reorganisation measure or

the opening of winding-up proceedings concerning a bank, the bank disposes, for consideration, with an immovable asset, ship or aircraft subject to registration in a public register or financial instruments or other instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system held or located in a Member State the validity of that act shall be governed by the law of the Member State within the territory of which the immovable asset is situated or under the authority of which that register, account or deposit system is kept.

**Article 149.** All persons required to receive or divulge information in connection with the information or consultation procedures laid down in this Chapter shall be bound by bank and professional secrecy.

**Article 150.** (1) The decision of the competent authority of a Member State on appointment of a person responsible for the administration of reorganisation measures or winding-up proceedings for a bank authorised in the said Member State shall be effective within the territory of the Republic of Bulgaria. The person's appointment shall be evidenced by a certified transcript of the original decision appointing him, together with a translation in Bulgarian which is not legalised.

(2) The appointed persons under paragraph 1 shall be entitled to exercise all the powers which they are entitled to exercise within the territory of the home Member State and in respect of the branch within the territory of the Republic of Bulgaria, unless otherwise provided by this Act. They may also assist the creditors of the bank in the Republic of Bulgaria in relation to the exercise of their rights.

(3) In exercising their powers within the territory of the Republic of Bulgaria, the appointed persons under paragraph 1 shall comply with the Bulgarian law, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

#### Chapter Fourteen

#### ISSUE OF, AND APPEAL AGAINST, ADMINISTRATIVE ACTS

**Article 151.** (1) Individual administrative acts referred to in Articles 14 - 17, 36, 38, 103 (2) subparagraphs 20 and 21 and (8) herein shall be issued by the Governing Board of the BNB on motion by the Governor and Deputy Governor heading the Banking Supervision Department, and in all other cases by the Deputy Governor or by an office holder authorized thereby.

(2) Administrative acts under paragraph 1 shall be motivated and subject to immediate execution.

(3) The administrative acts covered under paragraph 1 shall be subject to appeal before the Supreme Administrative Court as to their conformity with the law. The Court may not stay the execution of an act until pronouncement on the appeal.

(4) In the legal proceedings under paragraph 3, where a court accounting expert appraisal or court economic expert appraisal is required, the court shall appoint experts from the list approved by the Chairman of the Supreme Administrative Court. The experts shall have high qualifications and experience in banking. The terms and procedure for adding or removing experts from the list shall be laid down in an ordinance issued jointly by the Minister of Justice and the BNB

Governor.

(5) In the cases where the BNB has not pronounced on an application for granting of a licence within 6 months from submission of the application and all the required documents and information, an implicit denial shall be deemed to exist, which may be appealed under the procedure of paragraph 3. An implicit denial shall furthermore exist where the BNB has not pronounced on an application for granting of a license within 12 months of submission thereof.

(6) In the cases where the BNB has not pronounced on an application for granting of a permission within three months from submission of the application and all the required documents and information, an implicit denial shall be deemed to exist, which may be appealed under the procedure of paragraph 3.

(7) Individual administrative acts hereunder shall be communicated to their addressees by delivery against signature or by registered mail with advice of delivery. Delivery by registered mail with advice of delivery shall be made at the permanent address of the person, if it is a natural person, or at its headquarters and registered address if it is a legal entity.

(8) Where the administrative act is not delivered by one of the means specified in paragraph 7, it shall be deemed delivered on putting it on a specifically designated place in the BNB premises. This circumstance shall be ascertained by a protocol executed by office holders determined by an order of the Deputy Governor heading the Banking Supervision Department.

#### Chapter Fifteen

#### ADMINISTRATIVE PENALTY PROVISIONS

**Article 152.** (1) Any person, who commits or suffers another to commit a violation of this Act or of any statutory instrument issued for the application thereof, shall be liable to a fine of BGN 1,000 to BGN 4,000, and for repeated violation - BGN 3,000 to BGN 12,000, unless the act constitutes a criminal offence.

(2) Any person, who circulates false information or particulars regarding a bank, thereby injuring the reputation of the bank and impairing the credibility thereof, shall be liable to a fine of BGN 2,000 to BGN 5,000, and for repeated violation - BGN 3,000 to BGN 10,000, unless the act constitutes a criminal offence.

(3) Should the violation referred to in paragraph 2 be committed through a mass communication medium, the offender shall be liable to a fine of BGN 5,000 to BGN 10,000, and for repeated violation - BGN 8,000 to BGN 20,000.

(4) Where the offender is a legal person, it shall be liable to a pecuniary penalty as follows:

1. in the cases under paragraph 1 - BGN 20,000 to BGN 70,000, and for repeated violation - BGN 50,000 to BGN 100,000;

2. in the cases under paragraph 3 - BGN 50,000 to BGN 200,000, and for repeated violation - BGN 80,000 to BGN 250,000.

**Article 153.** (1) Written statements on ascertainment of any violation covered under Article

152 herein shall be drawn up by office holders authorized by the Deputy Governor heading the Banking Supervision Department.

(2) Penalty decrees shall be issued by the Deputy Governor heading the Banking Supervision Department. or by an office holder authorized thereby.

(3) The drawing up of written statements, the issue, appeal against, and execution of penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act .

#### ADDITIONAL PROVISIONS

§ 1. (1) Within the meaning of this Act:

1. "Officer" shall be:

(a) a member of a Supervisory or Management Board (Board of Directors) of a bank;

(b) procurators and the persons whose position, according to the internal structure of the bank, includes performance of functions for management and control over structural units which have direct responsibility for carrying on the principal business of the bank;

(c) the management of the specialised internal control unit.

2. "Deposit" shall be any amount received upon obligation to repay, unless given:

(a) as a loan by a bank;

(b) as liquidated damages or earnest securing performance of a commercial or another transaction;

(c) as advance payment on a contract of sale or on a contract for the provision of a service or another activity and forfeitable in the event of non-performance of the contract;

(d) for any other purposes in cases as specified by the BNB.

3. "Receiving deposits or other repayable funds from the public" shall be receiving deposits or other repayable funds from more than 30 persons which are not banks or other institutional investors. Where bonds or other debt securities are issued under the terms and procedure other than the Public Offering of Securities Act , receiving deposits or other repayable funds from the public shall be deemed to exist where:

(a) bond issues or other debt securities issues have been acquired at the initial offering by more than 30 persons which are not banks or other institutional investors;

(b) this is one of the principal activities of the issuer, and

(c) the issuer grants credits by the nature of trade thereof or provides other financial services by the nature of trade thereof.

4. (Amended, SG No. 24/2009, effective 31.03.2009) "Connected persons" shall be:

(a) spouses, lineal relatives up to any degree, collateral relatives up to the fourth degree of consanguinity inclusive, and relatives by marriage up to the third degree of affinity inclusive;

(b) partners;

(c) any two persons, of whom or of which one participates in the management of the other or in the management of a subsidiary thereof;

(d) any number of persons with one and the same legal or natural person participating in the management or supervisory body thereof, even where the natural person represents a legal person;

(e) a company in respect of a person which or who holds more than 10 per cent of the voting interests or shares issued by the said company;

(f) any two persons, or which or whom one exercises control over the other;

(g) any number of persons, whereof the business is controlled by a third party or by a third party's subsidiary;

(h) any number of persons, who or which jointly control a third party or a subsidiary thereof;

(i) any two persons, of whom or of which one is commercial agent of the other;

4a. (New, SG No. 24/2009, effective 31.03.2009) "Persons acting in agreement" shall be two or more persons for whom or for which, on the basis of the nature of the relationships among them or between any of them and a third party and according to their market behaviour or the business transactions closed between them, it can be reasonably assumed that they exercise or will exercise the rights related to the shares in the bank held by them in line with an explicit or silent agreement with another shareholder. The same is valid for connected persons.

5. (Amended, SG No. 24/2009, effective 31.03.2009) "Economically connected persons" shall be two or more persons, which are financially (in terms of business) related in such a way that in the event of financial problems arising in connection with one person it is likely that the other person or all other persons will experience difficulties in the financing of their activities or in the discharging of their obligations (bearers of a shared risk). These are two or more persons connected in one or more of the following manners:

(a) spouses and lineal and collateral relatives up to the second degree of consanguinity;

(b) employer and employee;

(c) the persons under subparagraph 4, letters "c" to "h";

6. (Amended, SG No. 24/2009, effective 31.03.2009) "Qualifying holding" shall be in existence where one person holds directly or indirectly 10 or more than 10 per cent of the capital or the voting rights in the general meeting of shareholders or where the holding of shares in the capital or the voting rights in the general meeting of shareholders makes it possible to exercise a significant influence over the management of the undertaking.

6a. (New, SG No. 24/2009, effective 31.03.2009) When the qualifying holding is determined, the following shall be also included:

(a) the voting rights held by a third party with which the person has concluded an agreement for following a stable common policy for company management by joint exercising of the voting rights held by the person and the third party;

(b) the voting rights held by a third party, with which the person has concluded an agreement envisaging their temporary transfer;

(c) the voting rights related to shares, given to the person as a security, provided that the person can control the voting rights related to these shares and has explicitly declared intention to exercise them;

(d) the voting rights related to shares granted for use to the person;

(e) the voting rights which are held or can be exercised in accordance with subparagraph 6a, letters "a" - "d" by a company, controlled by the person;

(f) the voting rights related to shares, deposited with the person, which the person can exercise at its own discretion without special instructions from the shareholders;

(g) the voting rights held by third parties on their name but at the expense of the party;

(h) the voting rights which can be exercised by the person in the capacity of proxy, where the person can exercise these rights at its own discretion without special instructions from the shareholders.

6b. (New, SG No. 24/2009, effective 31.03.2009) When the qualifying holding is determined, the following shall not be included:

(a) the shares acquired solely for the purpose of clearing and settlement within the normal settlement cycle, which cannot exceed three business days of the closing of the transaction, as well as shares held by trustees in their capacity provided that the latter can exercise the voting rights related to the shares only upon instructions from the client given in writing or electronically;

(b) the shares held by a market-maker in this capacity, provided that the market-maker has obtained a licence for operating as an investment intermediary, does not participate in the management of the company and does not influence the company to buy the shares or maintain their prices;

(c) the voting rights or the shares which investment intermediaries or credit institutions might hold as a result of undertaking issues of financial instruments and/or selling financial instruments on the basis of a fixed commitment, as envisaged in Article 5 (6), subparagraph 6 of the Markets in Financial Instruments Act, provided that these rights are not exercised or used in any manner for the purpose of interfering in the management of the issuer and as long as they are transferred within one year following their acquisition.

6c. (New, SG No. 24/2009, effective 31.03.2009) When the qualified holding is determined, the voting rights of the managing company, related to shares included in individual portfolios managed by it in accordance with Article 202 (2), subparagraph 1 of the Public Offering of Securities Act, shall not be included in the voting rights of the parent company of the managing company, provided that the managing company exercises these voting rights independently of the parent company. This shall not apply in the cases where the parent company or another company controlled by the parent company has made an investment in voting shares, managed by the managing company, and the managing company does not have the right to exercise these rights at its own discretion but only in accordance with direct or indirect instructions given by the parent company or the other company controlled by the parent company.

6d. (New, SG No. 24/2009, effective 31.03.2009) When the qualified holding is determined, the voting rights of an investment intermediary, authorised to conduct business in accordance with Article 3 of Directive 93/22/ EEC of 10 May 1993 on investment services in the securities field, the voting rights being related to shares included in individual portfolios managed by it in accordance with § 1, subparagraph 7 of the Additional Provisions of the Markets in Financial Instruments Act, shall not be included in the voting rights of the parent company of the investment intermediary, provided that the investment intermediary:

(a) has the right to manage individual portfolios in accordance with Article 5 (2), subparagraph 4 of the Markets in Financial Instruments Act;

(b) can exercise the voting rights related to the shares only on the basis of instructions given in writing or electronically, or can guarantee that the management of the individual portfolio is performed independently of other services and under conditions equivalent to the conditions specified in Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), by undertaking appropriate steps;

(c) exercises its voting rights independently of the parent company.

6e. (New, SG No. 24/2009, effective 31.03.2009) Subparagraph 6d shall not apply in the cases where the parent company or another company controlled by the parent company has made an investment in voting shares, included in an individual portfolio managed by the investment intermediary, and the investment intermediary does not have the right to exercise these rights at its own discretion but only in accordance with direct or indirect instructions given by the parent company or the other company controlled by the parent company.

7. "Control" shall be in existence where a person (the controlling party):



(a) holds more than half of the votes in the general meeting of another legal person (subsidiary), or

(b) is in a position to appoint, whether directly or indirectly, more than one half of the members of the management or supervisory body of another legal person (subsidiary), being a shareholder or partner in said person, or

(c) is in a position to exercise decisive influence over the legal person (subsidiary) by virtue of a contract concluded with said person or by virtue of its Articles of Association, where this is admissible by the legislation applicable to the subsidiary, or

(d) is a shareholder or a partner in a company, and:

(aa) more than one half of the members of the management or supervisory body of another legal person (subsidiary), who have performed the relevant functions in the previous and current financial years and up to the time of preparation of the financial statements have been appointed solely as a result of the exercise of its voting right, or

(bb) which controls independently by virtue of a contract with other shareholders or partners in said legal person (subsidiary) more than one half of the votes in the general meeting of said legal person, or

(e) may in any other way, at the judgement of the competent authorities, exercise decisive influence on decision-making regarding the business of another legal person (subsidiary).

In the cases of letters "a", "b", "c" and "d" added to the votes of the controlling party shall be the votes of the subsidiaries over which it exercises control as well as the votes of persons acting on their own behalf but for its account or for the account of its subsidiary.

In the cases of letters "a", "b", "c" and "d" the votes of the controlling party shall be reduced by the votes attaching to shares held for the account of a person other than the controlling party or its subsidiary, as well as by the votes attaching to shares which are subject to pledge where the rights therein are exercised on instruction and in the interest of the pledgor.

In the cases of letters "a" and "d" the votes of the controlling party shall be reduced by the votes attaching to shares held by the subsidiary itself through a person controlled thereby or through a person acting on its own behalf but for the account of the controlling party and the subsidiary.

8. "Parent undertaking" shall be a legal person exercising 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 the subsidiary shall be considered subsidiaries of the parent undertaking.

10. "Close links" shall be in existence where two or more natural or legal persons are linked

in any of the following ways:

(a) through the holding by one person, directly or through a controlled person, of 20 or more than 20 per cent of the votes in the general meeting or the capital of another person, or

(b) through control relationships, or

(c) permanently with one and the same person through control relationships.

11. "Banking group" shall be in existence where the parent undertaking is a bank and has as subsidiaries other credit institutions and/or financial institutions.

12. "Financial holding company" shall be in existence where the parent undertaking is a financial institution whose subsidiaries are exclusively or predominantly credit or financial institutions, provided that at least one of said subsidiaries is a credit institution and the parent undertaking is not a mixed-activity financial holding company within the meaning of the Supplementary Supervision on Financial Conglomerates Act .

13. "Mixed-activity holding company" shall be in existence where the parent undertaking is other than a credit institution, financial holding company or a mixed-activity financial holding company within the meaning of the Supplementary Supervision on Financial Conglomerates Act and has at least one subsidiary which is a credit institution.

14. "Distribution of capital" shall be any provision of money or other property of the bank to shareholders thereof with the exception of allotment of new shares issued as a result of increase of capital through capitalisation of profit.

15. "Member State" shall be a country which is a member of the European Union or another country which belongs to the European Economic Space.

16. "Home Member State" shall be a Member State whereof the competent authorities have granted an authorization (licence) to a credit institution.

17. "Host Member State" shall be a Member State in which a credit institution of a Member State has a branch or provides services directly.

18. "Third country" shall be country other than a Member State within the meaning of subparagraph 15.

19. "Competent authorities" shall mean the BNB, as well as the national authorities of the other Member States which have the right by a statutory instrument to exercise supervision over credit institutions.

20. "Authorisation (licence)" shall be an instrument issued in any form by the competent authorities of a Member State or a third country by which the right to carry on the business of a credit institution is granted.

21. "Ancillary services undertaking" shall be an undertaking the principal activity of which consists in owning or managing 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 place of business registered in accordance with the established procedure, which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions.

23. (Amended, SG No. 24/2009, effective 31.03.2009) "Financial broking" shall be intermediation in the event of interbank crediting.

24. "Derivative instruments" shall be rights and obligations the value of which is affected directly or indirectly by the price of securities, foreign currencies, goods, interest rates, indices, credit risk evaluation or other similar variable values.

25. "Family" shall comprise spouses, lineal relatives, brothers, sisters, as well as the persons living together permanently.

26. "Parent credit institution in a Member State" shall be a credit institution which has a credit institution or a financial institution as a subsidiary or which holds an interest in such an institution, and which is not itself a subsidiary of another credit institution authorized in the same Member State, or of a financial holding company set up in the same Member State.

27. "EU parent credit institution" shall be a parent credit institution in a Member State which is not a subsidiary of another credit institution authorized in any Member State, or of a financial holding company set up in any Member State.

28. "Parent financial holding company in a Member State" shall be a financial holding company which is not a subsidiary of a credit institution authorized in the same Member State, or of a financial holding company set up in the same Member State.

29. "EU parent financial holding company" shall mean a parent financial holding company which is not a subsidiary of a credit institution authorized in any Member State, or of another financial holding company set up in any Member State.

30. "Repeated" shall be any violation committed within one year from entry into force of a penal decree imposing a sanction for the same type of violation.

(2) (Repealed, SG No. 24/2009, effective 31.03.2009).

**§ 2.** Save in so far as otherwise provided by this Act, the functions of the BNB regarding banking supervision shall be discharged by the Deputy Governor heading the Banking Supervision Department, personally and independently or by office holders authorized thereby.

**§ 3.** The arrangements for, and control over, the security of banks and financial institutions shall be regulated by an ordinance of the Minister of the Interior and the Governing Board of the Bulgarian National Bank.

**§ 4.** This Act shall introduce the provisions 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 of 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 of the Council on the reorganisation and winding up of credit institutions, and Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions (recast).

#### TRANSITIONAL AND FINAL PROVISIONS

**§ 5.** This Act shall supersede the Banking Act (promulgated, State Gazette No. 52/1997; supplemented SG No. 15/1998; amended SG Nos. 21, 52, 70 and 98/1998, Nos. 54, 103 and 114/1999, Nos. 24, 63, 84 and 92/2000, No. 1/2001, Nos. 45, 91 and 92/2002, No. 31/2003, Nos. 19, 31, 39 and 105/2005, Nos. 30, 33 and 34/2006 ).

**§ 6.** The banks which have been granted a licence for conduct of banking business under the procedure of the superseded Banking Act (promulgated, State Gazette, No. 52/1997; supplemented, No. 15/ 1998; amended, Nos. 21, 52, 70 and 98/1998, Nos. 54, 103 and 114 /1999, Nos. 24, 63, 84 and 92/2000, No. 1/2001, Nos. 45, 91 and 92/2002, No. 31/2003, Nos. 19, 31, 39 and 105/2005, Nos. 30, 33 and 34/2006) shall, within three months of entry into force of this Act, take a decision on modification of their Articles of Association in accordance with this Act and file an application to the BNB on updating their licence. The acts of licence update shall be issued by the BNB Governor.

**§ 7.** Foreign banks of Member States which have been granted licence for conduct of banking business through a branch in the Republic of Bulgaria before entry into force of this Act shall continue their activity in the country without meeting the requirement for notification under Article 20 (1) and without receiving a notice or waiting expiry of the time limit under Article 21 (2).

**§ 8.** By-laws issued by the BNB regarding the application of the superseded Banking Act (promulgated, State Gazette, No. 52/1997; supplemented, No. 15/ 1998; amended, Nos. 21, 52, 70 and 98/1998, Nos. 54, 103 and 114/1999, Nos. 24, 63, 84 and 92/2000, No. 1/2001, Nos. 45, 91 and 92/2002, No. 31/2003, Nos. 19, 31, 39 and 105/2005, Nos. 30, 33 and 34/2006) shall remain in force in so far as they do not contravene this Act.

**§ 9.** (1) The provisions of this Act shall furthermore apply to pre-existing administrative proceedings to the BNB.

(2) Administrative acts issued by the BNB on the superseded Banking Act (promulgated, State Gazette, No. 52/1997; supplemented, No. 15/ 1998; amended, Nos. 21, 52, 70 and 98/1998, Nos. 54, 103 and 114/1999, Nos. 24, 63, 84 and 92/2000, No. 1/2001, Nos. 45, 91 and 92/2002, No. 31/2003, Nos. 19, 31, 39 and 105/2005, Nos. 30, 33 and 34/2006), which were not subject to appeal before court may not be appealed before court under the procedure of this Act.

**§ 9a.** (New, SG No. 52/2007) Everywhere in the Act the words "Article 54 (2) and (3) of the Public Offering of Securities Act" shall be replaced by "Article 5, (2) and (3) of the Markets in Financial Instruments Act.

**§ 10.** (1) Pre-existing procurators of a bank upon entry into force of this Act, except those whose authorization refers to the activity of a specific branch, shall be discharged from office should they fail to obtain a certificate under Article 11 (2) within two months from entry into force of this Act.

(2) The BNB shall remove from office the persons under paragraph 1 if they have not been

removed by the relevant body within 30 days after expiry of the term under paragraph 1.

**§ 11.** By a decision of the Governing Board of the BNB the restrictions under Article 11 (1), subparagraphs 4 and 5 of this Act, under Article 234 (2) subparagraph 1 of the Commerce Act and under Article 25 (1) subparagraphs 4 and 13 of the Bank Bankruptcy Act may be lifted for:

1. a member of a management or controlling body of a bank in which the BNB has acquired after 1 October 1995 over 50 per cent of the voting shares, where the person has been elected by the competent body after acquisition by the BNB of said participation, had not been a member of its management or controlling body before that and has been released from liability by the general meeting of shareholders of the bank;

2. a member of a management or controlling body of a bank in which the Bank Consolidation Company AD has held over 50 per cent of the voting shares, where the person has been elected after 1 January 1994 on a proposal from the Bank Consolidation Company AD, had not been a member of the bank's management or controlling body before that and has been released from liability by the general meeting of shareholders of the bank.

**§ 12.** Credit unions of private farmers set up under the capital fund scheme by virtue of concluded contracts between the government of the Republic of Bulgaria and the European Commission on utilization of grants shall continue operating as financial institutions within the meaning of this Act and in accordance with a procedure established by the Council of Ministers.

**§ 13.** The Governing Board of the BNB shall issue ordinances on the application of chapters one, two, three, four, five, seven, nine, ten, eleven, twelve and thirteen.

**§ 14.** The Commerce Act (promulgated, State Gazette, No. 48/1991; amended, No. 25/1992, Nos. 61 and 103/1993, No. 63/1994, No. 63/1995, Nos. 42, 59, 83, 86 and 104/1996, Nos. 58, 100 and 124/1997, Nos. 52 and 70/1998, Nos. 33, 42, 64, 81, 90, 103 and 114/1999, No. 84/2000, Nos. 28, 61 and 96/2002, Nos. 19, 31 and 58/2003, Nos. 31, 39, 42, 43, 66, 103 and 105/2005, No. 38/2006) shall be amended as follows:

1. In Article 187f (3) the word "non-bank" shall be deleted.

2. In chapter twenty nine "Banking transactions":

(a) section IV Articles 433 and 434 shall be repealed;

(b) section IX Articles 451, 452, 453 and 454 shall be repealed.

3. A new chapter thirty seven with Articles 605 - 606a shall be created:

"Chapter Thirty Seven

CONTRACT FOR RENT OF SAFE DEPOSIT BOX

Definition

**Article 605.** (1) By the contract of rent of safe deposit box the lessor grants to the lessee for a fixed term against a fee the use of a safe deposit box in secured premises. The safe deposit box shall be used for safeguarding of valuables and securities, other items and documents. Only the lessee shall have access to the safe deposit box.

(2) The contract for rent of safe deposit box may be with declared or undeclared content of the deposited items before the lessor.

(3) The lessor shall not have the right to possess a copy of the key of the safe deposit box delivered to the lessee.

#### Forbidden items

**Article 606.** (1) No items threatening the security of the safe deposit box and the lessor as well as items the acceptance of which is prohibited by law may be put in the safe deposit box.

(2) The lessor shall control in appropriate manner compliance with the requirements of paragraph 1 without detecting the content of the deposited items where it is not declared.

(3) On failure to fulfill the obligation under paragraph 1 the lessor may break the contract immediately.

#### Rights of the lessor upon non-payment

**Article 606a.** (1) Upon breaking of a contract due to non-payment of the agreed fee, the lessor may demand opening and ascertainment of the content of the safe deposit box in the presence of a notary public. Items found in the safe shall remain with the lessor for safeguarding and compensation for the expenses and a fee shall be due to the latter.

(2) For its receivables under the contract the lessor shall have the right to retain the deposited items in the safe deposit box."

#### 4. In Article 655 (2) :

(a) after the words "para. 2" in subparagraph 8 the following shall be added: "of this Act or Article 29 (1) subparagraphs 6 or 7 of the Bank Bankruptcy Act";

(b) subparagraph 9 shall be modified as follows:

"9. the measure under Article 65 (2) subparagraph 11 of the Banking Act or under Article 103 (2) subparagraph 14 of the Credit Institutions Act shall not have been applied to him."

**§ 15.** The Bank Bankruptcy Act (promulgated, State Gazette, No. 92/2002; amended, No. 67/2003, No. 36/2004, Nos. 31 and 105/2005, Nos. 30 and 34/2006) shall be supplemented as follows:

#### 1. In Article 1 :

(a) the existing wording shall become paragraph 1;

(b) paragraph 2 shall be created:

"(2) The provisions of chapter thirteen of the Credit Institutions Act shall furthermore apply to the bankruptcy proceedings of a bank with branches in Member States."

2. In Article 3 (2) the words "Article 21 (2) of the Banking Act" shall be replaced by "Article 36 (2) of the Credit Institutions Act."

3. In Article 8 :

(a) in paragraph 1 the words "Article 21 (2) of the Banking Act" shall be replaced by "Article 36 (2) of the Credit Institutions Act";

(b) a new paragraph 2 shall be created:

"(2) Bankruptcy proceedings shall be furthermore opened against a bank in liquidation proceedings in respect of which it has been established under the terms of Art., 125 or Article 130 that it is in a state of insolvency.";

(c) existing paragraph 2 shall become paragraph 3;

(d) existing paragraph 3 shall become paragraph 4 and the words therein "Article 21 (2) of the Banking Act" shall be replaced with "Article 36 (2) of the Credit Institutions Act" and the word "no" shall be added before the words "later";

(e) existing paragraph 4 shall become paragraph 5 the words therein "Article 21 (2) of the Banking Act" shall be replaced with "Article 36 (2) of the Credit Institutions Act".

4. Paragraph 2 of Article 9 shall be amended to read as follows:

"(2) The request of the Central Bank under paragraph 1 shall specify solely the ground or grounds under Article 36 (2) of the Credit Institutions Act on the basis of which the licence has been withdrawn. In the cases under Art. 125 or Article 130 of the Credit Institutions Act the request shall specify solely the ground or grounds for the bank's insolvency on the basis of which the order of the governor has been issued."

5. In Article 11 :

(a) in paragraph 1 the figure "10" is replaced by "15";

(b) new paragraphs 4 and 5 shall be created:

"(4) Shareholders which at the date of withdrawing the licence for banking business held more than 5 per cent of the bank's capital may intervene in the proceeding for examination of the petition of the Central Bank.

(5) Where the act of the Central Bank under Article 9 (3) has entered into force, the court shall open bankruptcy proceedings against the bank.";

(c) paragraph 6 shall be created:

"(6) In the cases where act of the Central Bank under article 9 (3) has not entered into force due to court appeal thereof, the court shall suspend the proceedings until closure of the administrative legal dispute. Suspension of proceedings shall not preclude imposition of preliminary security measures.";

(d) former paragraphs 4 and 5 shall become paragraphs 7 and 8, respectively.

6. In Article 13 (1) in the wording before subparagraph 1 the words "of this Act in connection with Article 21 (2) of the Banking Act" shall be replaced by "and where the conditions of Article 11 (5) exist".

7. In Article 14 at the end shall be added "or if a decision has entered into force on the BNB act under Article 9 (3) to be repealed".

8. In Article 18 (2) the words "the Banking Act" shall be replaced by "the Credit Institutions Act".

9. In Article 21 (1) the words "Article 21 (2) of the Banking Act" shall be replaced by "Article 36 (2) of the Credit Institutions Act".

10. In Article 56 :

(a) in paragraph 1 the words "bank deposit box" shall be replaced by "safe deposit box";

(b) in paragraph 2 the words "bank deposit boxes" shall be replaced by "safe deposit boxes";

(c) in paragraph 3 in the first sentence the words "Bank deposit box which is not vacated" shall be replaced by "Safe deposit box which is not vacated", and in second sentence the word "deposit box" shall be replaced by "safe deposit box".

11. In Article 59 (4) the words "Article 21 (2) of the Banking Act" shall be replaced by "Article 36 (2) of the Credit Institutions Act".

12. In Article 80 (5) after the word "enterprise" a comma is added and the words "from the list under Article 61 (2) of the Banking Act" shall be replaced by "which meets the requirements of Article 76 of the Credit Institutions Act".

**§ 16.** The Bank Deposit Guarantee Act (promulgated, State Gazette, No. 49/1998; amended, Nos. 73, 153 and 155/1998, No. 54/1999, No. 109/2001, Nos. 92 and 118/2002, Nos. 31 and 39/2005) shall be amended and supplemented as follows:

1. Article 5 (1) subparagraph 7 shall be amended as follows:

"7. financial institutions under Article 3 of the Credit Institutions Act;".

2. In Article 8 subparagraph 2 the words "paragraph 2" shall be replaced by "paragraph 3".

3. In Article 10 (3) the words "non-bank institutions within the meaning of Article 1 (5) of



the Banking Act" shall be replaced by "non-bank financial institutions within the meaning of Article 3 of the Credit Institutions Act".

4. Article 12 :

(a) subparagraph 9 shall be created in paragraph 1:

"9. take decisions on acquisition of shares under the terms and according to the procedure of Article 118 (1) of the Credit Institutions Act as well as on transfer thereof.";

(b) in paragraph 2 the words "Article 52 of the Banking Act" shall be replaced by "Article 62 of the Credit Institutions Act ";

(c) a new paragraph 4 shall be created:

"(4) To make the decisions under paragraph 1, subparagraph 9 the Bulgarian National Bank shall provide the Fund with the necessary information.";

(d) former paragraph 4 shall become paragraph 5.

5. In Article 19 the words "Article 21 (2) or Article 65 (2) of the Banking Act" shall be replaced by "the Credit Institutions Act".

6. In Article 20 (3) after the words "Article 65 (2) of the Banking Act" shall be added "or under Article 103 (2) of the Credit Institutions Act ".

7. Article 22 :

(a) a new paragraph 2 shall be created:

"(2) The amounts in the Fund may be used for acquisition of shares in a bank in the cases of Article 118 (1) of the Credit Institutions act where the Fund determines that this could prevent higher expenses for payment of amounts under guaranteed deposits.";

(b) former paragraph 2 shall become paragraph 3.

**§ 17.** The Bulgarian National Bank Act (promulgated, State Gazette, No. 46/1997; amended, Nos. 49 and 153/ 1998, Nos. 20 and 54 /1999, No. 109/2001, No. 45/2002, Nos. 10 and 39/2005, No. 37/2006) shall be amended and supplemented as follows:

1. In Article 13 (1) the words "bank and commercial secret" shall be replaced by "bank, commercial and other legally protected secret".

2. In Article 16 :

(a) subparagraph 3 shall be amended as follows:

"3. determine the interest, fees and commissions in relation to the bank's activity;"

(b) subparagraph 15 shall be amended as follows:

"15. grant, refuse to grant and withdraw licences of banks and electronic money institutions under the terms of the Credit Institutions Act;"

(c) subparagraph 16 shall be created:

"16. put banks and electronic money institutions under special supervision under the terms of the Credit Institutions Act;"

3. In Article 20 (3) sentence three shall be deleted.

4. In Article 23 :

(a) a new paragraph 1 shall be created:

"(1) Official secret shall be the information relating to the preparation for production of Bulgarian banknotes and coins; the technical parameters of the sensors for reading of security elements of Bulgarian banknotes and coins; the systems for physical security and the information security of the bank and its subsidiaries; the information on the transportation and security of valuable parcels and other facts and circumstances the unauthorized access to which would affect adversely the interests of the State or any other legally protected interest as determined by the Governor of the Bulgarian National Bank in accordance with Article 26 (3) of the Classified Information Protection Act.";

(b) in paragraph 2 the words "bank or commercial secret" shall be replaced by "bank, commercial and other legally protected secret".

5. In Article 27 :

(a) in paragraph 1 the words "may be replaced or exchanged" shall be replaced by "the Bulgarian National Bank and the banks shall replace and exchange";

(b) in paragraph 2 after the word "houses" a comma shall be added and the words "exchange bureaus" shall be replaced by "exchange bureaus and providers of services";

(c) in paragraph 3 the words "The institutions under paragraph 2" shall be replaced by "The Persons under paragraph 2 as well as the competent government authorities";

(d) a new paragraph 5 shall be created:

"(5) Banks and providers of services shall separate any Bulgarian banknotes and coins which are not fit for use in the current banknote and coin circulation. They shall not provide to customers such banknotes and coins.";

(e) new paragraphs 6 and 7 shall be created:

"(6) Banks and providers of services shall submit to the BNB banknotes and coins which are not fit for use in the current banknote and coin circulation.

(7) Reproduction of Bulgarian banknotes and coins shall be carried on upon a written consent by the BNB."

(f) former paragraph 5 shall become paragraph 8.

6. Article 42 shall be amended as follows:

"Article 42. The Bulgarian National Bank shall compile the balance of payments and shall maintain the monetary and interest statistics as well as the statistics of the financial accounts of the country. To this end, all government and municipal authorities and legal and natural persons shall submit to the BNB information in accordance with the procedure prescribed by it."

7. The heading "Additional Provision" shall be amended as follows" "Additional Provisions".

8. In the additional provisions § 1a shall be created:

"§ 1a. "provider of services" shall be a person carrying on in the nature of trade thereof activities and operations with banknotes and coins, including categorisation, storage, transportation and/or circulation thereof."

§ 18. In the Measures against Money Laundering Act (promulgated, State Gazette, No. 85/1998; amended, No. 1/2001, No. 31/2003, Nos. 103 and 105/2005, Nos. 30 and 54/2006) Article 3 (2) subparagraph 1 shall be amended as follows:

"1. The Bulgarian National Bank, credit institutions carrying on activity within the territory of the Republic of Bulgaria, financial houses, exchange bureaus and the persons providing services for funds transfer from the country abroad or vice versa, acting on their behalf on behalf of other persons;"

§ 19. The Funds Transfers, Electronic Payment Instruments and Payment Systems Act (promulgated, State Gazette, No. 31/2005; amended, No. 99/2005, No. 30/2006) shall be amended and supplemented as follows:

1. Paragraph 3 shall be created in Article 25 :

"(3) In execution of cross-border transfers in euro to the amount of up to EUR 50,000 between the Republic of Bulgaria and other country member of the European Economic Space any implementing institution shall apply the same fees and commissions as those applied by it on identical transfers in euro executed in the Republic of Bulgaria."

2. Article 40a shall be created:

"Fees and commissions on cross-border electronic payment transactions  
**Article 40a.** (1) Cross-border electronic payment transactions shall be:

1. cross-border funds transfers effected through EPI except for transfers ordered or executed by persons which effect cross-border transfers and/or cross-border electronic payment transactions as part of their nature of trade;

2. cross-border cash withdrawal through EPI or loading or reduction of monetary value on/from EPI through terminals in the commercial premises of the issuer or a person having entered into a contract for acceptance of the payment instrument.

(2) In effecting cross-border payment transactions in euro up to the amount of EUR 50,000 between the Republic of Bulgaria and other country member of the European Economic Space any person effecting cross-border transfers and/or cross-border electronic payment transactions as part of its nature of trade shall apply the same fees and commissions as those applied by it on identical transfers in euro executed in the Republic of Bulgaria."

3. In Article 60 (3) subparagraph 1 the words "with registered address in the Republic of Bulgaria" shall be deleted.

**§ 20.** The Access to Public Information Act (promulgated, State Gazette, No. 55/2000; amended, Nos. 1 and 45/2002, No. 103/ 2005, Nos. 24 and 30/2006) shall be amended as follows:

1. In Article 7 (1) the words "classified information constituting state or" shall be replaced by "classified information or".

2. In Article 37 (1) subparagraph 1 the words "information constituting state or official secret" shall be replaced by "information or other protected secret in the cases provided by law".

**§ 21.** The Act Restricting Administrative Regulation and Administrative Control over Economic Activity Act (promulgated, State Gazette, No. 55/2003; corrected No. 59/2003; amended, No. 107/ 2003, Nos. 39 and 52/2004, Nos. 31 and 87/2005, Nos. 24 and 38/ 2006) in the appendix to Article 9 (1) subparagraph 2 point 1 shall be amended as follows:

"1. Banking activity, activity as electronic money institution as well as activity as system operator of payment systems."

**§ 22.** The Public Offering of Securities Act (promulgated, State Gazette, No. 114/1999; amended; Nos. 63 and 92/2000, Nos. 28, 61, 93 and 101/2002, Nos. 8, 31, 67 and 71/2003, No. 37/2004, Nos. 19, 31, 39, 103 and 105/2005, Nos. 30, 33 and 34/2006) shall be amended and supplemented as follows:

1. In Article 54 :

(a) in paragraph 4, subparagraph 1 the words "Article 1 (1) of the Banking Act" shall be replaced by the words "Article 2 (1) of the Credit Institutions Act";

(b) in paragraph 6 the words "under the terms and according to the procedure of the Banking Act" shall be deleted;

(c) in paragraph 7 the words "which have been granted licence for effecting transactions under the terms and according to the procedure of the Banking Act" shall be deleted.

2. In Article 56a (2) the words "Banking Act" shall be replaced by the "Credit Institutions Act".

3. In Article 77b (1) subparagraph 2 the words "Article 21 (2) of the Banking Act" shall be replaced by the words "Article 36 (2) of the Credit Institutions Act".

4. In Article 77o (1) the words "Article 21 (2) or Article 65 (2) of the Banking Act" shall be replaced by the words "the Credit Institutions Act".

5. In Article 173 (2) :

(a) in subparagraph 2 the words "under the terms and according to the procedure of the Banking Act" shall be deleted;

(b) at the end of subparagraph 5 shall be added "or under Article 103 (2) subparagraphs 14, 19 or 20 of the Credit Institutions Act".

6. Paragraph 2 in § 3 of the transitional and final provisions shall be repealed.

**§ 23.** The Tax Insurance Procedure Code (promulgated, State Gazette, No. 105/2005; amended, Nos. 30, 33 and 34/2006) shall be amended as follows:

1. In Article 143 (4) the words "Article 52 of the Banking Act" shall be replaced by "Article 62 of the Credit Institutions Act".

2. In Article 212 (3) the words "non-bank financial" shall be replaced by "financial" and the words "bank deposit boxes" shall be replaced by "safe deposit boxes".

3. In Article 262 (1) the words "bank deposit boxes" shall be replaced by "safe deposit boxes".

**§ 24.** The Social Insurance Code (promulgated, State Gazette, No. 110/1999, No. 55/2000 - Decision No. of the Constitutional Court of 2000; amended; No. 64/ 2000; Nos. 1, 35 and 41/2001, Nos. 1, 10, 45, 74, 112, 119 and 120/ 2002, Nos. 8, 42, 67, 95, 112 and 114/2003, Nos. 12, 38, 52, 53, 69, 70, 112 and 115/ 2004, Nos. 38, 39, 76, 102, 103, 104 and 105/2005, Nos. 17, 30, 34 and 56/2006) shall be amended and supplemented as follows:

1. At the end of Article 123a (2) subparagraph 5 shall be added "or under Article 103 (2) subparagraphs 14, 19 or 20 of the Credit Institutions Act".

2. In Article 344 (5) the words "Article 65 (2) of the Banking Act", shall be replaced by "Article 103 (2) of the Credit Institutions Act".

**§ 25.** In the Criminal Code (promulgated, State Gazette, No. 26/1968; corrected, No. 29/1968; amended, No. 92/ 1969, Nos. 26 and 27/1973, No. 89/1974, No. 95/1975, No. 3/1977, No. 54/1978, No. 89/1979, No. 28/1982; corrected, No. 31/1982; amended, No. 44/1984, Nos. 41 and 79/1985; corrected, No. 80/1985; amended, No. 89/1986; corrected, No. 90/1986; amended, Nos. 37, 91 and 99/1989, Nos. 10, 31 and 81/1990, Nos. 1 and 86/1991; corrected, No. 90/1991; amended, No. 105/1991, No. 54/1992, No. 10/1993, No. 50/1995, No. 97/1995 - Decision No. 19

of the Constitutional Court of 1995; amended, No. 102/1995, No. 107/1996, Nos. 62 and 85/1997, No. 120/1997 - Decision No. 19 of the Constitutional Court of 1997; amended, Nos. 83, 85, 132, 133 and 153/1998, Nos. 7, 51 and 81/1999, Nos. 21 and 51/2000, No. 98/2000 - Decision No. 14 of the Constitutional Court of 2000; amended, Nos. 41 and 101/2001, Nos. 45 and 92 /2002, Nos. 26 and 103/2004, Nos. 24, 43, 76, 86 and 88/2005) in Article 227b (4) the words "Banking Act" shall be replaced by "the Credit Institutions Act".

**§ 26.** In the Foreign Exchange Act (promulgated, State Gazette, No. 83/1999; amended, No. 45/2002, No. 60/2003, No. 36/2004, No. 105/2005, Nos. 43 and 54/2006) in Article 16 (5) the words "Article 64 of the Banking Act" shall be replaced by "Article 80 of the Credit Institutions Act".

**§ 27.** In the Public Financial Inspection Act (promulgated, State Gazette, No. 33/2006) in Article 10 (3) the words "Article 52 (5) subparagraph 3 of the Banking Act" shall be replaced by "Article 62 (6) subparagraph 5 of the Credit Institutions Act".

**§ 28.** In the Mortgage Bond Act (promulgated, State Gazette, No. 83/2000) in § 2 (3) of the additional provisions the words "Article 41 (2) of the Banking Act" shall be replaced by "Article 73 (3) subparagraph 5 of the Credit Institutions Act".

**§ 29.** The Financial Supervision Commission Act (promulgated, State Gazette, No. 8/2003; amended, Nos. 31, 67 and 112/2003, No. 85/2004, Nos. 39, 103 and 105/200, No. 30/2006) shall be amended as follows:

1. In Article 15 (1) the words "Article 65(2) of the Banking Act" shall be replaced by "Article 103 (2) of the Credit Institutions Act".

2. In Article 18 (7) the words "Article 52 of the Banking Act" shall be replaced by "Article 62 of the Credit Institutions Act".

**§ 30.** In the Corporate Income Tax Act (promulgated, State Gazette, No. 115/1997; corrected, No. 19/1998; amended, Nos. 21 and 153/1998, Nos. 12, 50, 51, 64, 81, 103, 110 and 111/1999, Nos. 105 and 108/2000, Nos. 34 and 110/2001, Nos. 45, 61, 62 and 119/2002, Nos. 42 and 109/2003, Nos. 18, 53 and 107/2004, Nos. 39, 88, 91, 102, 103 and 105/2005, Nos. 30 and 34/2006) in § 1 , subparagraph 47 of the additional provision the words "non-bank financial institutions under the Banking Act" shall be replaced by "financial institutions under the Credit Institutions Act".

**§ 31.** In the Measures Against the Financing of Terrorism Act (promulgated, State Gazette, No. 16/2003; amended, No. 31/2003, No. 19/2005) in § 1 of the additional provision the words "transactions under Articles 1 and 2 of the Banking Act" shall be replaced by "activities under Article 2 (1) and (2) of the Credit Institutions Act".

**§ 32.** The Protection of Competition Act (promulgated, State Gazette, No. 52/1998, No. 112/1998 - Decision No. 22 of the Constitutional Court of 1998; amended, No. 81/1999, No. 28/2002, Nos. 9 and 107/2003, No. 105/2005, No. 37/2006) shall be amended as follows:

1. In Article 23 (1) in the text before letter "a" the word "non-bank" shall be deleted.

2. In Article 24 (5) the word "non-bank" shall be deleted.

**§ 33.** In Investment Promotion Act (promulgated, State Gazette, No. 97/1997; corrected, No. 99/1997; amended, Nos. 29 and 153/1998, No. 110/1999, No. 28/2002, No. 37/2004; corrected, No. 40/2004; amended, No. 34/2006) in Article 12 (2) the word "non-bank" shall be deleted.

**§ 34.** In the Agricultural Producers Support Act (promulgated, State Gazette, No. 58/1998;

amended, Nos. 79 and 153/ 1998, Nos. 12, 26, 86 and 113/1999, No. 24/2000, Nos. 34 and 41/2001, Nos. 46 and 96/2002, No. 18/2004, Nos. 14 and 105/200, Nos. 18, 30 and 34/2006) in Article 35 (2) the words "Banking Act" shall be replaced by "the Credit Institutions Act".

**§ 35.** The Consumer Protection Act (promulgated, State Gazette, No. 99/2005; amended, Nos. 30, 51 and 53/2006) shall be amended as follows:

1. In § 13 subparagraph 12, letter "j" of the additional provisions the words "bank deposit boxes" shall be replaced by "safe deposit boxes".

2. (Effective 21.07.2006) In § 34 of the transitional and final provisions the words "paragraph 2, subparagraph 7" shall be replaced by "paragraph 2, subparagraph 8".

**§ 36.** This Act shall enter into force on the day of entry into force of the EU Treaty of Accession of the Republic of Bulgaria, save for § 35, subparagraph 2, which shall enter into force on the day of promulgation of the Act in the State Gazette.

This Act has been adopted by the 40th National Assembly on 13 July 2006 and bears the official seal of the National Assembly.

Act Amending and Supplementing the Credit Institutions Act

(SG No. 24/2009, effective 31.03.2009)

#### ADDITIONAL PROVISION

§ 34. This Act introduces 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 authorisations of banks with headquarters in the Republic of Bulgaria shall be updated within 6 months of the entry into force of this Act on the basis of applications submitted by them to the BNB accompanied by decisions for amendments in their Articles of Incorporation in line with the amendments in Article 2 (2). Authorisations of banks with headquarters in a third country, which conduct business in the Republic of Bulgaria through a branch, shall be updated in accordance with the same procedure following a consideration of the correspondence between Article 2 (2) and the permitted scope of operations of the corresponding bank. The acts for updating the authorisations shall be issued by the Governor of BNB.

§ 36. (1) The financial institutions referred to in Article 3 (2) shall be registered with the BNB within 6 months of the entry into force of this Act.

(2) The requirements of Article 3a (1), subparagraph 1 regarding the legal and organisational form shall not apply to the registration of credit unions in the meaning of § 12 of the Transitional

and Final Provisions.

§ 37. (1) The administrative proceedings for issuing of permissions under Articles 28 and 31, which have not been closed at the time of entry into force of this Act, shall be completed following the existing procedures.

(2) Persons acting in agreement, with regard to which at the time of entering into force of this Act grounds arise for approval following the procedure of Article 28, shall submit an application within three months. Should this deadline not be met or should an approval be refused, the BNB may apply the measure referred to in subparagraph 15 of Article 103 (2).

SUPPLEMENTARY PROVISIONS to the Act to Amend and Supplement the Excise

#### Duties and Tax Warehouses Act

(SG No. 95/2009, effective 1.01.2010)

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§ 96. This act shall enter into force on 1 January 2010 save for § 1, § 2, subparagraphs 1, 3, 4 and 6, § 3 and 4, § 5, subparagraphs 1 and 4, § 6, 7, 8, 10 and 11, § 13, subparagraph 1, letters "b" and "c", § 15 and 16, § 20, subparagraph 2, § 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 41, 42, 45, 46, 47, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 81, 82, 86, 87, 88, 90, 91, 92, 93, 94 and 95, which shall enter into force on the day of promulgation of the Act in the State Gazette and § 2, subparagraphs 2 and 5, § 5, subparagraph 3, § 20, subparagraph 1, § 34, 43, 44, 48, 77, 79, 80, 83, 84, 85 and 89, which shall enter into force on 1 April 2010.