

GOVERNMENT ORDINANCE No 39/1996
regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system^{*}

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CHAPTER I
General Provisions

Article 1. - (1) On the date this ordinance enters into force, the Deposit Guarantee Fund in the banking system, hereinafter referred to as the *Fund*, is established.

(2) The Fund is hereby established as a legal entity governed by public law. Its establishment and operation are set by own articles of association approved by the National Bank of Romania'Board, upon proposal from the Administrative Board of the Fund, with the advisory opinion of the Romanian Banking Association.

(3) The Fund's office is located in Bucharest.

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Government Ordinance No 39/1996 was republished in Monitorul Oficial al României, Part I, No 141 of 25 February 2002, and subsequently amended and supplemented by:

- Law No 571/2003 regarding the Fiscal Code, published in Monitorul Oficial al României, Part I, No 927 of 23 December 2003;
- Law No 178/2004 amending and supplementing Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system, published in Monitorul Oficial al României, Part I, No 489 of 1 June 2004 and rectified in Monitorul Oficial al României, Part I, No 844 of 15 September 2004;
- Law No 238/2005 amending and supplementing Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system, published in Monitorul Oficial al României, Part I, No 672 of 27 July 2005;
- Government Emergency Ordinance No 23/2006 amending and supplementing Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system, published in Monitorul Oficial al României, Part I, No 278 of 28 March 2006, approved with amendments and supplements by Law No 280/2006, published in Monitorul Oficial al României, Part I, No 600 of 11 July 2006;
- Government Emergency Ordinance No 129/2008 supplementing Article 5 of Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system, published in Monitorul Oficial al României, Part I, No 700 of 15 October 2008, approved by Law No 146/2009, published in Monitorul Oficial al României, Part I, No 303 of 8 May 2009;
- Government Emergency Ordinance No 80/2009 amending and supplementing Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system, published in Monitorul Oficial al României, Part I, No 200 of 30 March 2010.

Article 2.– (1) The purpose of the Fund, as Romania's officially acknowledged deposit-guarantee scheme, is to guarantee deposits and payouts to covered depositors, in accordance with the conditions and limits set by this ordinance.

(2) The Fund can also function as a special administrator, interim administrator or liquidator of the credit institutions.

(3) For the purposes of this ordinance, the following terms and expressions are defined as follows:

a) *deposit* – any credit balance, including the interest due, resulting from the funds existing in an account or from transitory situations derived from current banking operations and which the credit institution must repay under the legal and contractual conditions applicable, as well as any obligation pertaining to the credit institution evidenced by a debt security that it issued, except for the bonds set in Article 159 (6) of Regulation No 15/2004 regarding the authorisation and functioning of investments management companies, of collective investment undertakings and depositories, approved by Order of the Romanian National Securities Commission No 67/2004, with subsequent amendments;

b) *covered deposit* – any deposit in the records of the credit institution, that does not belong to the categories referred to in the annex and for which the Fund ensures payout;

c) *unavailable deposit* – the deposit due and payable that has not been paid by a credit institution under the legal and contractual conditions applicable thereto, in any of the following situations:

(i) The National Bank of Romania determined that the respective credit institution is unable, for reasons which are directly related to its financial situation, to repay the deposit and has no current prospect of being able to do so;

(ii) a court decision was issued in order to start the bankruptcy procedure for the credit institution, before the National Bank of Romania could ascertain the situation referred to in point (i);

d) *compensation* – the sum that the Fund pays to each covered depositor for the unavailable deposits, regardless of their number, within the coverage level and under the circumstances referred to in this ordinance;

e) *covered depositor* – the guaranteed deposit holder or, where appropriate, the person entitled to sums of money from that deposit;

f) *coverage level* – the maximum level of coverage per covered depositor and credit institution, established according to the law;

g) *contribution* – the non-reimbursable sum due to the Fund by the credit institutions taking part to the Fund, according to the provisions of this ordinance;

h) *joint account* – the account opened in the names of two or more persons or the account to which two or more persons are entitled and for which operations can be ordered under signature of at least one of these persons;

i) *credit institution* – entity whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; for the purposes of this ordinance, in the case of a credit cooperative network, the central entity is considered the credit institution;

j) *credit institutions authorized by the National Bank of Romania* – credit institution Romanian legal entities and Romanian branches of credit institutions in third States.

(4) Within the meaning of paragraph (3) (a), in order to calculate the credit balance, the rules concerning compensation shall apply, in accordance with the legal and contractual conditions applicable to the deposit.

(5) The meaning of the terms and expressions used throughout this ordinance and that have not been defined in paragraph (3) is the one referred to in the Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented.

Article 3.–(1) Every credit institution authorized by the National Bank of Romania shall take part to the Fund in accordance with this ordinance, including for deposits drawn by their branches abroad. In the case of credit cooperative organisations, the central entity takes part to the Fund including for deposits drawn by its affiliated credit cooperatives.

(2) The deposits placed with credit institutions whose office is located in other Member States, which function in Romania, are guaranteed according to the applicable law in the Member State of origin. The Romanian branch of a credit institution whose office is in a different Member State can take part to the Fund, upon request, where the deposit-guarantee scheme, officially acknowledged in the Member State of origin, in which the respective credit institution takes part sets a coverage level below the one established according to the provisions of Article 6 (3) and/or a scope of the deposit-guarantee scheme which is narrower than the one established by this ordinance; participation only aims at the difference between the coverage level and/or for categories of deposits that are not guaranteed by the deposit-guarantee scheme in the Member State of origin.

(3) Notwithstanding the provisions of paragraph (1), credit institutions Romanian legal entities do not take part to the Fund for deposits drawn by their branches in third States that set the obligation of taking part in a different deposit-guarantee scheme, officially acknowledged by the respective third State.

(4) Credit institutions Romanian legal entities can take part, in what concerns deposits drawn by their branches in other Member States, in a deposit-guarantee scheme officially acknowledged in the host Member State, if it ensures a coverage level above the one established according to the provisions of Article 6 (3) and/or a scope of the deposit-guarantee scheme which is wider than the one established by this ordinance, for the difference in the coverage level and/or for those deposit categories that are not guaranteed by the Fund according to this ordinance.

(5) The Fund should take all necessary diligence in order to conclude cooperation agreements with those deposit-guarantee schemes in which credit institutions that operate in Romania take part through a branch that takes part to the Fund, where at least the procedures applicable for payouts to depositors of those branches, for meeting the deadlines and the conditions set by this ordinance shall be set.

(6) The Fund can also conclude cooperation agreements with other deposit-guarantee schemes than the ones referred to in paragraph (5).

CHAPTER II

Unavailable Deposits

Article 4.–(1) The credit institution who was asked to reimburse a deposit due and payable and could not fulfil its payment obligation in accordance with the contractual and legal conditions applicable, shall inform the National Bank of Romania about this within two working days, at the most, from the date the request was received.

(2) The notification shall include information referring to the reasons for which the payment was not made and to the immediate perspectives of fulfilling this obligation.

Article 5.– (1) The National Bank of Romania shall analyse whether the credit institution is in the situation referred to in Article 2 (3) (c) (i) as soon as possible, but no later than five working days from the date it was first acknowledged that the credit institution did not pay the deposits due and payable and, whether it is confirmed that the credit institution is in the above-mentioned situation, it shall inform the respective credit institution and the Fund, that same day, about the ascertainment of the fact that the deposits became unavailable.

(2) For the purpose of implementing paragraph (1), it is considered that the National Bank of Romania first acknowledged that the credit institution did not pay the deposits due and payable in the following situations:

a) the National Bank of Romania was notified by the credit institution according to the provisions of Article 4;

b) although it was not notified according to the provisions of Article 4, during its own investigations, the National Bank of Romania hereby ascertains that the credit institution is in the situation described in Article 4;

c) the competent authority in the Member State of origin of a credit institution operating in Romania through a branch that takes part to the Fund, in accordance with Article 3 (2), has notified the National Bank of Romania about the fact that the deposits of the credit institution in the Member State of origin became unavailable.

(3) In the situation referred to in Article 2 (3) (c) (i), the National Bank of Romania can take the measure of a special administration of the respective credit institution, and the provisions of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented, shall apply accordingly.

CHAPTER III **Compensations**

Article 6.– (1) The Fund shall guarantee, within the limits and conditions set by this ordinance, deposits, regardless of their currency, within a participating credit institution, except for deposits that belong to those deposit categories referred to in the list in the annex to this ordinance.

(2) In application of paragraph (1), where the deposits lodged with a participating credit institution become unavailable, the Fund shall ensure payouts, within the limits of the coverage level.

(3) The coverage level shall be set at an amount representing the lei equivalent of 50,000 EUR.

(4) The lei equivalent of the coverage level and, respectively, of the foreign currency sums that are taken into consideration in establishing compensations shall be calculated by using the exchange rates for those foreign currencies, communicated by the National Bank of Romania on the day the deposits became unavailable.

(5) For deposits lodged in other currencies than those for which the National Bank of Romania communicates exchange rates, the lei equivalent of the foreign currency sums that are taken into consideration in establishing compensations shall be calculated based on the last exchange rate used by the respective credit institution for the respective foreign currency, prior to the date the deposits became unavailable.

Article 7. – (1) The level of the compensation shall be determined by deducting from the total sum of the guaranteed deposits held by the covered depositor with the respective credit institution on the date the deposits became unavailable the total value of the debts payable on the same date of the credit institution in what concerns the respective depositor. The compensation to be paid shall be within the coverage level applicable according to this ordinance.

(2) In the case of a joint account, the compensation level shall be determined, according to the provisions of paragraph (1), for each covered depositor that holds a quota of the account's balance, considering the quota that the depositor is entitled to according to the contractual and/or legal provisions. In the absence of this type of provisions, in view of establishing the compensations, the joint account's balance shall be divided into equal shares between the respective depositors.

(3) Where a depositor is not entitled to receive sums from an account, the sums that the depositor is not entitled to shall be included in the calculation of the compensation due to the person entitled to it, provided that the person entitled is identified or identifiable prior to the date the deposits became unavailable. If there are more persons entitled, in order to establish the compensation due to each of them, the provisions of paragraph (2) shall apply accordingly.

(4) In the case of a joint account, to which several persons are entitled as members of a lucrative association, association or collectivity of the same nature, without legal personality, in order to determine the compensation level, the deposit under joint account shall be considered as belonging to a single depositor.

(5) If a covered depositor is prosecuted for money laundering or for a crime related to money laundering, upon request from legally competent bodies, the Fund shall suspend payouts until the date it receives the proof of exemption from prosecution, discontinuation of proceedings, acquittal or, where appropriate, of dismissal of the file in question.

Article 8. – (1) The credit institutions taking part to the Fund must have appropriate computer systems to ensure a permanent complete and accurate record of all the data on covered depositors, their guaranteed deposits, the credit institution's debts chargeable by the depositors, as well as any other information necessary to establish the value of the compensation due to each covered depositor and to draw up the list of compensations to be paid.

(2) Within three working days from the last day of each semester, the participating credit institutions report to the Fund the information referred to in paragraph (1), following the structure established in the regulations they issued.

(3) Besides the reports mentioned in paragraph (2), while fulfilling its legal duties, the Fund can ask a participating credit institution the information referred to in paragraph (1).

(4) The sums representing the deposits and the obligations of a covered depositor towards the credit institution recorded in its records shall be taken into consideration when establishing the value of the payouts, assumed as correct and accurate, as long as the covered depositor does not prove otherwise.

CHAPTER IV
Financial Resources and Fund Indebtness

Article 9. – (1) The Fund has the following financial resources:

- a) initial, annual and special contributions of the credit institutions;
- b) earnings from recovering the Fund's debts;
- c) borrowings:
 - 1. from credit institutions, financial companies and other institutions, except for the National Bank of Romania;
 - 2. debenture loans through Fund securities issue;
 - 3. from the Government, according to the provisions of Article 15 (2);
- d) other resources – donations, sponsorship, financial assistance;
- e) resources from the investments of the available financial resources;
- f) other types of income, established according to the law.

(2) The financial resources referred to in paragraph (1) (a), (b), (c), and (f) shall be used for the payment of the covered deposits in accordance with the law, and the ones referred to in paragraph (1) (d) shall be used in compliance with the purpose of their granting.

(3) The financial resources referred to in paragraph (1) (e) shall be used to cover the Fund's current expenditure.

(4) In view of establishing the optimum necessary amount of financial resources, upon approval by the National Bank of Romania, the Fund shall establish, on a yearly basis, the target-degree of coverage of its exposure, computed as a ratio between the all the financial resources necessary to the Fund and the total amount of guaranteed deposits.

(5) In order to ensure the Fund's financial resources, each credit institution authorized by the National Bank of Romania shall grant, each year, upon the Fund's request, a stand-by credit line in lei. The conventions regarding the stand-by credit lines are usually concluded before the end of February of each year. The Fund shall pay from its financial resources, within 30 days from the expiry of the period for which the stand-by credit line is granted, a fee of maximum 0.5% for the sums not used.

(6) The order in which the resources are used is established by the Fund, based on the principle of costs optimization.

Article 10. – (1) The credit institutions shall pay the Fund the contributions referred to in Article 9 (1) in the national currency – leu.

(2) The payment of the initial, annual and special contributions of the credit institutions is made by credits granting based on the Fund's current accounts.

(3) The initial contribution shall be paid within 30 days from the date the operating permit issued by the National Bank of Romania was obtained, respectively, in the case of branches of credit institutions with their office in other Member States, from the date the quality of participant to the Fund was obtained. The initial contribution that should be paid by the credit institutions shall be established as follows:

- a) credit institutions authorized by the National Bank of Romania shall pay an initial contribution that equals 1% of the regulated initial capital applicable;

b) branches of the credit institutions in Member States that become participants to the Fund in compliance with Article 3 (2) shall pay an initial contribution whose level shall be determined according to the criteria established by the regulations issued by the Fund;

c) central entities of credit cooperatives shall pay an initial contribution of 1% of the regulated aggregate capital of the network.

(4) Where a credit institution does not pay the initial contribution within the time limit established by this ordinance, upon the Fund's request, the National Bank of Romania shall charge the amounts due from the credit institution's current account.

(5) In the case of the branches referred to in Article 3 (2) , in order to become a participant, the contribution has to be paid.

(6) The initial contribution paid by the credit institutions shall be considered as fiscally deductible expenditure.

(7) Credit institutions resulting from a merger, as well as credit institutions that still exist after a splitting process do not have to pay the initial contribution.

Article 11. – (1) Every participating credit institution shall pay the Fund an annual contribution whose value is determined by applying the percentage set by the Fund, upon approval by the National Bank of Romania, to the base representing the lei equivalent of the balance of the deposits guaranteed by the Fund, that appear in the records of the participating credit institution, determined on 31 December of the year preceding the year of the payout. In the case of the branches that obtain this quality in compliance with Article 3 (2), the provisions shall apply accordingly. In the case of the credit cooperative organizations, the guaranteed deposits balance is calculated based on the aggregate status of the balances representing the guaranteed deposits that appear in the records of the central entity and of the affiliated credit cooperatives.

(2) The annual percentage shall be notified to the credit institutions by the Fund before the end of February, at the latest, of the payment year and cannot exceed the maximum level of 0.5%.

(3) The annual contribution of each credit institution shall be established based on the statements that it sends to the Fund through a form, whose reporting format and date shall be established by the Fund.

(4) The first annual contribution due to the Fund by a new-participating credit institution shall be calculated by multiplying the 1/365 quota of the contribution determined according to the provisions of paragraph (1) with the number of days passed from the date the operating permit was obtained from the National Bank of Romania, respectively from the date of acceptance as a participant of branches in Member States, before the end of the year. Notwithstanding this rule, the new-participating credit institutions to the Fund resulting from a merger or split or that acquires, after the setting up, a portfolio of deposits shall pay the first annual contribution determined according to the provisions of paragraph (1). Where, for a credit institution, a court decision was issued for initiating the bankruptcy procedure or the liquidation of the credit institution has started on the shareholders/members' initiative according to the provisions of Article 40 of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented, or following a decision of the National Bank of Romania to withdraw the permit, according to the provisions of Article 41 of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented, the base for

calculating the contribution for the respective year shall be established according to the records of the credit institution of the last day of the quarter preceding the one when the court order for initiating the bankruptcy procedure was issued, respectively when the National Bank of Romania has confirmed the expiry of the validity of the credit institution's permit or has decided to withdraw its permit. The annual contribution that needs to be paid shall be calculated by multiplying the 1/365 quota of the contribution determined by applying the percentage set according to paragraph (2) to the base established in compliance with this paragraph, with the number of days from the beginning of the year until the date the court order for initiating the bankruptcy procedure was issued, respectively until the date the National Bank of Romania has confirmed the expiry of the validity of the credit institution's permit or has decided to withdraw its permit. The contributions owed and not paid to the Fund by bankrupt credit institutions shall be recovered by the Fund from the properties of the respective credit institutions.

(5) Every participating credit institution shall pay, before 30 April of the payment year, the annual contribution conform to the percentage notified by the Fund. Where the annual contribution is not paid within the set time limit, the provisions of Article 10 (4) shall apply accordingly.

(6) Annual contributions made by credit institutions are considered fiscally deductible expenditure.

Article 12. – (1) Where, upon the Fund's request, the Board of the National Bank of Romania considers that the Fund's resources are insufficient to meet the payment obligations, it can establish the payment of a special contribution by each credit institution, equal up to the level of the annual contribution of the respective financial year. Where the special contribution is not paid within the set time limit, the provisions of Article 10 (4) shall apply.

(2) The effective amount of the special contribution, as well as its payment time limit shall be established by the Board of the National Bank of Romania.

(3) The special contributions paid by the credit institutions in compliance with paragraphs (1) and (2) are fiscally deductible expenditure.

Article 13. – (1) Where the Fund has accumulated a level of own resources considered appropriate compared to the total of the guaranteed deposits, that appear in the records of the credit institutions participating to the Fund, the Administrative Board of the National Bank of Romania can decide, upon proposal from the Fund's Administrative Board, to suspend the payment of the yearly contributions.

(2) Where the Fund's resources drop below the level referred to in paragraph (1), the payment of the annual contributions shall be resumed.

Article 14. – The contributions made by the credit institutions shall not be reimbursed, including in the case of judicial liquidation or winding-up of a credit institution.

Article 15. – (1) The Fund can ask the Government to guarantee its borrowings, the latter having to take a decision in that respect within 15 days from the date of the request.

(2) In exceptional cases where the Fund's financial resources are insufficient to cover payouts, the Government offers the Fund, as a loan, the necessary amounts, within 15 working days, at the most, from their request by the Fund. The funds' source is represented by the privatizing income recorded in the current account of the State's Treasury, and the granting/reimbursement

conditions for the loan granted by the Government to the Fund shall be established by Government decision.

CHAPTER V

Bank Accounts and the Use of the Fund's Resources

Article 16. – (1) The Fund can open accounts, where appropriate, with credit institutions and financial institutions in the country or abroad.

(2) The financial resources available, referred to in Article 9 (1), can be invested by the Fund in:

a) government securities, sovereign securities and securities issued by the National Bank of Romania;

b) term deposits, certificates of deposit and other financial instruments of the credit institutions;

c) government securities issued by the Member States of the European Union, securities issued by the United States of America Department of the Treasury, investments that can be done starting with the date Romania joined the European Union.

(3) When establishing the financial instruments and their issuers, referred to in paragraph (2), minimising the risks, ensuring the efficiency and liquidity of the respective investments shall be taken into consideration. The strategy concerning the Fund's exposure with regard to each financial instrument, as well as to each issuer, shall be decided on an annual basis by the Administrative Board of the Fund, upon approval by the Administrative Board of the National Bank of Romania.

(4) The Fund's profit, resulting from the difference between the incomes referred to in Article 9 (1) (e) and its expenditure, is tax free and is allotted for the setting up of an annual profit participation fund, within a percentage of up to 1% of the profit, upon approval by the Fund's Administrative Board, and the difference shall be used to complete the Fund's resources, intended for the payment of the guaranteed deposits, as well as for financing its tangible and intangible investments, according to the income-expenses budget, approved by the National Bank of Romania.

CHAPTER VI

Payouts

Article 17. – (1) The Fund shall ensure payouts to covered depositors, according to the conditions and limits established by this ordinance.

(2) Notwithstanding the provisions of Article 6 (2), no compensation is owed for deposits resulting from transactions for which final court orders have been issued for money laundering, according to the legislation in the field of preventing and fighting money laundering.

(3) The fact of classifying deposits in the category of the deposits referred to in paragraph (2) shall be made by the Fund, based on the information received from competent authorities, from the credit institution whose deposits had become unavailable or from the liquidator appointed by the court, where appropriate.

(4) Covered depositors are exempt from any fees or taxes for the compensation received.

Article 18. – (1) Within 10 working days from the date the deposits become unavailable, according to Article 2 (3) (c) (i) or (ii), the Fund shall set the date for starting the payouts, the

duration of the payouts and the means to conduct the payouts and shall ensure the publishing, as soon as possible, of this information on the Fund's website and in at least two nation wide newspapers.

(2) The obligation to publish the information referred to in paragraph (1) at the headquarters of every territorial unit shall be incumbent upon the credit institution whose deposits had become unavailable, as well as upon the credit institution that was mandated to conduct the payouts.

(3) Payouts should start, according to the date set by the Fund in compliance with the provisions of paragraph (1), within 20 working days, at the most, from the date when the deposits became unavailable.

(4) Notwithstanding the provisions of paragraph (3), the National Bank of Romania can approve, upon the Fund's request in absolute exceptional circumstances, the extension, with a maximum of 10 working days, of the date for starting the payouts.

(5) The information referred to in paragraph (1) shall include at least the following elements:

a) the credit institutions that shall be mandated to conduct the payouts, including their territorial units;

b) the period during which payouts can be conducted through the mandated credit institutions;

c) the procedure of obtaining the unpaid compensations during the period referred to in point (b);

d) means of payment, documents, conditions and formalities necessary for obtaining the compensation;

e) the procedure of ruling on disputes referring to the data appearing on the lists based on which payouts are conducted.

(6) The Fund shall not be able to appeal to the time limits set for starting the payouts and for the duration of the payouts, mentioned by this article, in order to decline payouts to a covered depositor that could not benefit from this right within the above-mentioned time limits.

Article 19. – (1) The covered depositors that are not satisfied with the compensations can address the Fund in writing for a solution to their situation.

(2) The Fund shall answer these notifications within 5 working days from the date they were received.

(3) Where the persons mentioned in paragraph (1) are not satisfied with the solution offered by the Fund, they can address the competent court.

Article 20. – (1) The credit institution whose deposits have become unavailable according to the provisions of Article 2 (3) (c) (i) or, where appropriate, the liquidator appointed by the court, shall inform the Fund the day following the ascertainment of the deposits' unavailability about the information referred to in Article 8 (1).

(2) Within 10 working days from the date the deposits became unavailable, the respective credit institution or, where appropriate, the liquidator appointed by the court shall send the Fund any amending or supplementary information that might lead to ensuring the accuracy of the information sent according to paragraph (1).

(3) Notwithstanding the provisions of paragraph (2), the credit institution or, where appropriate, the liquidator appointed by the court, can send the Fund the information that it did not know of within the time limit referred to in paragraph (2) and after the expiry of this time limit.

Article 21. – Based on the information referred to in Article 20, the Fund shall verify the list of compensations to be paid sent by the credit institution or the appointed liquidator and shall draw

up the final list, that it shall send to the credit institution mandated to make the payments to covered depositors with at least 24 hours prior to the date the payouts start.

Article 22. – (1) In view of conducting the payouts, the Fund shall mandate one or several credit institutions, selected based on certain criteria established through the regulations that it issued.

(2) Before the end of February of each year, the Fund's Administrative Board shall establish for the following 12 months, upon approval by the National Bank of Romania's Board, the credit institutions mandated according to paragraph (1).

Article 23. – (1) Without prejudice to any other rights of the covered depositors, the Fund shall be subrogated to their right to a sum that equals the sum of the compensation owed according to the final list of the compensations to be paid, referred to in Article 21.

(2) Where deposits became unavailable in accordance with the provisions of Article 2 (3) (c) (ii), the Fund shall record, in accordance with the provisions of the Insolvency Law No 85/2006, as further amended and supplemented, in the Court's registry the sum of the compensations that it shall pay to covered depositors, resulting from the evidence drawn up in accordance with Article 21.

(3) Where deposits became unavailable in accordance with the provisions of Article 2 (3) (c) (i), the measure of the special administration was taken and, subsequently, the National Bank of Romania ordered that the special administration be discontinued and the activity of the credit institution resumed under the supervision of its statutory bodies, the unavailability of the deposits shall cease at the date the National Bank of Romania ordered that the activity of the credit institution be resumed and, notwithstanding the provisions of paragraph (1), it shall immediately pay the Fund the sum corresponding to the payments that it made as compensations for the guaranteed deposits.

Article 24. – The credit institution's obligation towards its depositors shall be diminished by the sum corresponding to the payments made to the Fund as compensations for the guaranteed deposits.

Article 25. – At regular intervals, the Fund shall inform the credit institution or, where appropriate, the liquidator appointed about the compensations paid to depositors.

Article 26. – (1) In order to achieve the objectives of the liquidation procedure, the Fund can employ, through a contract, individuals, companies or institutions specialized in liquidation or consultancy activities in this field. The institution or the company shall be appointed by public procedure.

(2) In the case of individuals, the payment for the services provided shall be established through negotiation, as a lump sum or as percentages of the recovered value, percentages that can be differentiated depending on the conditions set by the Fund for the respective services provided.

Article 27. – Depositors' debts, other than the ones paid by the Fund, shall be compensated from the properties of the credit institution, in accordance with the provisions of Government Ordinance No 10/2004 regarding the bankruptcy of credit institutions, approved with amendments and supplements by Law No 278/2004, as further amended and supplemented.

CHAPTER VII

Fund Management and Administration

Article 28. – (1) The Fund is administered by an Administrative Board consisting of seven members.

(2) The Administrative Board consists of:

- a) three members appointed by the National Bank of Romania, of which one shall be appointed Chairman of the Fund's Administrative Board;
- b) two members appointed by the Romanian Banking Association;
- c) a member appointed by the Ministry of Public Finances;
- d) a member appointed by the Ministry of Justice.

(3) The members of the Fund's Administrative Board are appointed for a term of office of three years that can be renewed.

(4) The members of the Administrative Board whose terms of office have expired shall serve until their successors are appointed.

(5) The Chairman of the Fund's Administrative Board can be replaced, in case of absence or temporary inability to attend, by a member of the Administrative Board that he/she appointed or, in the absence of such an appointment, by the oldest member of the Administrative Board.

(6) In case of incompatibility or absolute inability to perform their duties by one of the members of the Fund's Administrative Board, the appointment of his/her replacement shall be in compliance with paragraph (2) for the remaining period of the term of office. It shall be considered an absolute inability to perform their duties any circumstance that creates an unavailability of 90 consecutive days.

(7) The members of the Fund's Administrative Board shall receive an allowance within the limit of 20% of the wage that the Fund's Director receives.

Article 29. – Members of the Fund's Administrative Board have to be Romanian residents, with a degree in Economics or Law, enjoying a good reputation and honorability and with a professional experience of at least five years in the financial-banking field, to have held a continuous leading approval during the last five years, in the case of those that were previously appointed as financial institutions leaders.

Article 30. – (1) The members of the Administrative Board:

- a) cannot be spouses, relatives or akin up to the second degree;
- b) should not have been declared bankrupt;
- c) have to have a clean criminal record.

(2) Members of the Fund's Administrative Board cannot participate in the decision-making process regarding a credit institution where one of the persons referred to in paragraph (1) (a) is employed.

Article 31. – (1) Membership in the Fund's Administrative Board ceases in the following cases:

- a) at the end of the term of office;
- b) through resignation;
- c) in case of incompatibility;
- d) through replacement, according to Article 28 (6);
- e) in the cases referred to in paragraph 30 (1);
- f) through revocation.

(2) The revocation of any member of the Fund's Administrative Board is done under the same circumstances as for their appointment, where the leader of the institution whose representative was revoked shall make a new proposal within 10 days.

Article 32. – (1) The Administrative Board shall meet at least once a month in an ordinary meeting.

(2) The Administrative Board can be summoned for an extraordinary meeting by the Chairman, by own initiative or upon request from any member of the Administrative Board.

(3) The Administrative Board shall be summoned in writing, at least five working days before the meeting.

(4) The notice shall include the agenda, the date and documents to be discussed, as well as the place where the meeting shall be held.

(5) The meetings are to be held at the Fund's office or in any other place mentioned in the notice.

(6) Where immediate actions are necessary, the time limit of five days can be reduced, and the summoning shall be made verbally.

(7) The Administrative Board shall make a valid deliberation in the presence of at least five of its members.

(8) The decisions of the Administrative Board shall be adopted with simple majority of the total of its members.

(9) The meeting's minutes, which include the order of the deliberations, the decisions taken, the number of votes expressed and the separate opinions, where appropriate, shall be signed by all the members attending the meeting.

Article 33. – The tasks of the Fund's Administrative Board are the following:

a) to analyze, express opinions and submit to the National Bank of Romania's Board for approval:

1. the Fund's articles of association and the regulations issued by the Fund according to the law;
2. the Organisational Structure, the personnel structure, as well as the wage policy;
3. the Fund's revenue-expense budget;
4. the suspension and resuming of the contributions, according to Article 13;
5. the establishing of the special contributions, their level and their payment time limit, according to the provisions of Article 12 (1) and (2);
6. the Fund's loans, including the stand-by credit lines type, as well as securities issue by the Fund;
7. the annual activity report and the annual accounts;
8. the annual strategy concerning the Fund's exposure, whose main objectives are the minimizing of the risk and the liquidity of the investments, and as additional objective, their efficiency; the criteria for selecting the investments shall be quantified and prioritized depending on these three objectives;
9. the annual establishing of the target-degree of coverage of the Fund's exposure for determining its optimum necessary amount of financial resources, as well as establishing the percentage for the credit institution's annual contribution;

b) to analyze and approve:

1. the appointment and dismissal of the members of the Executive Board;

2. the proposals concerning the means, maximum levels, time limits and circumstances of the investments established by the annual strategy concerning the Fund's exposure;
3. the naming of the Fund as a special administrator, interim administrator or liquidator for credit institutions;
4. the conclusion of contracts with natural or legal entities, Romanian or foreign, concerning services provision in the field of liquidations, assistance and specialized consultancy, based on a public procedure;
5. the requests for tender and offers from credit institutions, in the case of transactions concerning assets purchase and liabilities assuming, according to the legal regulations concerning the credit institutions bankruptcy procedure;
6. the proposals from the reports drawn up, according to the legal provisions, by the Fund as a liquidator, the reports drawn up, where appropriate, by the Fund as a special administrator or interim administrator, materials that include solutions and proposals that need the approval of the Administrative Board and that are related both to the above-mentioned qualities and to the lender quality of bankrupt credit institutions, other materials related to the implementation of the Fund's regulations, the good carrying out of its activity;
7. the report concerning the selection of financial auditors based on a tendering procedure;
8. the internal control system, including internal auditing;
9. the implications, for the Fund, of the court decision concerning the beginning of the bankruptcy procedure and establishing the measures to be taken, based on the director's proposals, regarding the means to liquidate credit institutions that have gone bankrupt, respectively payouts to depositors;
10. the Fund's requests about receiving from the National Bank of Romania and from the participating credit institutions all the documents and information needed for its proper operation;
11. the Fund's internal regulations, as well as regulations issued in compliance with the liquidation procedures in the case of those credit institutions where the Fund is their liquidator;
12. the percentage for the setting up of the annual profit participation fund;
13. other requested information and reports about the Fund's activity;
14. the carrying out of any other tasks set by law or given by the National Bank of Romania's Board.

Article 34. – (1) The tasks of the Chairman of the Fund's Administrative Board are the following:

- a) to establish the agenda and convene the Administrative Board in compliance with the law;
- b) to conduct the meetings of the Fund's Administrative Board;
- c) to ask the director or, in his/her absence, his/her replacements, to present the materials that are on the agenda;
- d) to appoint a member of the Fund's Administrative Board to replace him/her in case of temporary inability to participate;
- e) to make proposals concerning the appointment of members of the Executive Board;
- f) to sign employment contracts with members of the Executive Board and to establish their wages, as well as the respective allowances;

- g) to allow premiums and other incentives to the Executive Board and to approve the proposals to offer premiums to employers, presented by the director;
- h) to ensure that the revenue-expense budget, the annual accounts, the annual business reports, as well as the proposals concerning the allotment of the Fund's profit are presented before the Fund's Administrative Board;
- i) to control the director's activity;
- j) to ensure the application of the decisions issued by the National Bank of Romania's Board. It also ensures the application of the decisions issued by the Fund's Administrative Board and its information about the manner in which the decisions are applied;
- k) to fulfil any other tasks in compliance with the legal provisions or given by the National Bank of Romania's Board or the Fund's Administrative Board.

(2) The Chairman of the Fund's Administrative Board, together with the director, shall submit and present, where appropriate, to the National Bank of Romania's Board the material referred to in Article (33) (a). It shall submit for approval, to the Fund's Administrative Board, the measures that have to be taken in order to accomplish the tasks set by the National Bank of Romania's Board.

Article 35. – The Fund's director shall manage at an operational level, its current activity, ensure the application of the decisions issued by the National Bank of Romania's Board and by the Fund's Administrative Board and inform about how they shall be applied. The tasks of the Fund's Director are the following:

- a) to represent the Fund in its relations with the National Bank of Romania, the credit institutions, the ministries and other specialized bodies of the Central Public Administration, local public authorities, other individuals and legal entities, Romanian or foreign, as well as before the courts and the arbitrary bodies;
- b) to submit to the Fund's Administrative Board, for opinion, respectively, for approval, the documents referred to in Article 33 (a) and (b);
- c) to ensure the investment of the Fund's financial resources, for the purpose of risk minimizing and investments liquidity, as main objectives, as well as the investment's efficiency, as additional objective, according to the annual strategy approved by the National Bank of Romania's Board, as well as according to the decisions of the Fund's Administrative Board, that shall receive monthly information about the implementation of the annual strategy;
- d) to ensure the investments referred to in the revenue-expense budget approved are carried out, in compliance with the regulations in force and within the limits of the approved levels;
- e) to ensure the publishing of the list of credit institutions whose clients enjoy the guarantee of having their deposits reimbursed and their subsequent amendments;
- f) to ensure the completion of all the necessary procedures for carrying out the payments referred to by law, in case of deposits becoming unavailable;
- g) to monitor and control the Fund's activity concerning administration and liquidation in the case of credit institution, as well as payouts to covered depositors; to state in what concerns the measures to be taken during the Fund's activity in the situations listed; to monitor the liquidators' activities in what concerns the bankrupt credit institutions, where the Fund is only a lender;
- h) to conclude, modify and cancel individual employment contracts of the Fund's employees;

- i) to incur the expenditure related to the Fund's operation, within the limits of the provisions of the revenue-expense budget approved;
- j) to ensure the organisation and exercise of internal control and internal auditing, according to the rules set by the Fund;
- k) to conclude contracts regarding the provision of services in the field of liquidations, assistance and specialized consultancy with Romanian or foreign natural or legal entities;
- l) to fulfil any other task given in compliance with the legal provisions or by the Fund's Administrative Board.

CHAPTER VIII

Annual Accounts and Their Control

Article 36. – The Fund shall organize and manage the accounts, according to the provisions of the Accounting Law No 82/1991, republished, and of its own specific regulations confirmed by the National Bank of Romania and by the Ministry of Public Finances.

Article 37. – In order to fulfil its tasks, the Fund must have adequate mechanisms for internal control and auditing, which shall be established through by-laws, in accordance with the legal regulations.

Article 38. – (1) In view of auditing the financial statements, the Fund shall conclude a contract with a financial auditor, legal entity, authorized by the Chamber of Financial Auditors of Romania.

(2) The financial auditor's report, together with its opinion, shall be submitted to the Fund's Administrative Board, respectively to the National Bank of Romania's Board.

Article 39. – The Fund's financial year shall start on the 1st of January and shall end on the 31st of December of every year. The first financial year shall start on the date the Fund is set up.

Article 40. – (1) The annual accounts shall be subject to approval by the National Bank of Romania's Board, upon proposal from the Fund's Administrative Board.

(2) The annual business report, together with the annual accounts, approved by the National Bank of Romania's Board, as well as the financial auditor's report shall be made public.

CHAPTER IX

Information to be notified to the Fund

Article 41. – (1) Upon request from the Fund's Administrative Board, the National Bank of Romania shall provide any available information that it considers necessary in order to fulfil its tasks to the Fund.

(2) Upon request from the Fund's Administrative Board, the credit institutions shall inform the Fund about any necessary information that it considers necessary in order to fulfil its tasks and that it is not available with the National Bank of Romania.

(3) The information received shall be used by the Fund only to fulfil its tasks.

(4) The Fund shall test on a regular basis its own systems' capacity to ensure the collection of the information necessary for determining the compensations to be paid, verifying and sending them to the mandated credit institutions in the time limits applicable according to this ordinance.

(5) The National Bank of Romania shall inform the Fund, when necessary, about the situations when it identifies, within a credit institution, certain aspects that could lead to making the deposits unavailable.

Article 42. – (1) In order to fulfil its tasks, the Fund shall verify, within credit institutions, both the reality of the date appearing in the statements concerning the calculation and payment of the contributions owed, and the observance of the legal provisions regarding the information of the depositors by the credit institutions. The Fund shall also be able to conclude contracts with financial auditors, legal entities, members of the Chamber of Financial Auditors of Romania, in order to verify the accountancy of a credit institution. The fact of choosing the auditors and the need of a verification that shall be carried out by them shall be submitted for approval to the National Bank of Romania's Board.

(2) During the assessment mentioned in paragraph (1), the Fund or the person it mandated can ask the members of the Administrative Boards and the employees of the credit institution, as well as the auditors of this institution, any information necessary for the calculation of the guaranteed deposits.

Article 43. – The members of the Fund's Administrative Board, the Fund's employees, as well as the other persons employed by the Fund have the obligation not to reveal the professional secrecy concerning the information gathered during their activity, except under the circumstances referred to by Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented.

CHAPTER X **Information for Depositors**

Article 44. – (1) The credit institutions participating to the Fund shall make available to the existing and potential depositors the information concerning deposits guarantees that should refer at least to the following:

- a) the types of covered deposits, respectively, the types of deposits for which payouts do not apply - non-guaranteed deposits;
- b) the level coverage.

(2) The credit institutions referred to in paragraph (1) shall make available to existing and potential depositors, upon their request, the information referring to:

- a) the calculation formula for the compensation;
- b) the documents, conditions and formalities that need to be carried out in order to receive the Fund's payouts.

(3) The information referred to in paragraphs (1) and (2) shall be available in every office of the credit institutions, and it shall be presented in a clear, fluent and easily understandable manner, without ambiguous paragraphs, according to the regulations issued by the Fund.

(4) Where a depositor's deposit does not fit into the covered deposits category, the credit institution shall inform the depositor as soon as possible about this situation.

(5) For the purpose of implementing the provisions of paragraph (4), when initiating a business relationship or an incidental transaction that might generate a deposit, the participating credit institutions have to obtain, from the legal representative of the legal entity or from other sources,

the relevant information in order to determine whether the respective legal entity fits into the category of micro-enterprises, small and medium-sized enterprises, according to the provisions of Law No 346/2004 regarding the stimulation of the establishment and development of small and medium-sized enterprises, as further amended and supplemented.

(6) Any changes regarding the situation of a legal entity that might lead to a change in the classification mentioned in paragraph (5) shall be notified as soon as possible to the credit institution by the respective legal entity.

Article 45. - The credit institutions taking part to the Fund shall not make available to existing and potential depositors the information referring to other types of covered deposits or to other limits of the coverage level than the ones in force according to this ordinance, respectively the ones set by the officially acknowledged deposit-guarantee scheme(s) that they participate in.

CHAPTER XI

Sanctions

Article 46. - (1) If a credit institution authorized by the National Bank of Romania does not comply with the obligations stipulated by the provisions of this ordinance and by the regulations issued for its implementation, the Fund shall inform the National Bank of Romania about this, in view of taking the necessary measures.

(2) In the situation referred to in paragraph (1), the National Bank of Romania can order the measures referred to in Article 226 (2) (d) and/or apply the sanctions referred to in Article 229 (1) of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented.

(3) The deposits lodged with a credit institution whose operating permit was withdrawn by the National Bank of Romania shall continue to be guaranteed by the Fund.

(4) The recovered fines become state budget income.

(5) Where a branch taking part to the Fund, according to Article 3 (2), does not comply with the obligations stipulated by the provisions of this ordinance and by the regulations issued for its implementation, the Fund shall inform the competent authority in the Member State of origin. If the implementation of the measures ordered by the competent authority does not lead to the credit institution's compliance with the requirements imposed, upon deliberate agreement by the competent authority, after a notice of at least 12 months, the Fund can withdraw the quality of participant to the respective branch. The deposits drawn by the branch before losing its participant quality shall continue to be guaranteed by the Fund until their due date.

(6) The respective branch shall inform depositors about the fact of losing their quality of participant to the Fund.

(7) Where an officially acknowledged deposit-guarantee scheme to which a branch of a credit institution Romanian legal entity participates, according to Article 3 (3) or (4), shall inform the National Bank of Romania about the failure to meet the obligations of the respective branch, as a participant to the respective deposit-guarantee scheme, the National Bank of Romania shall apply the measures and/or sanctions referred to in paragraph (2) to the credit institution, thus cooperating with the respective deposit-guarantee scheme.

Article 47. - The credit institution sanctioned according to Article 46 is not exempt from the obligations related to the financial year when it was sanctioned.

Article 48. - The Fund and the National Bank of Romania, where appropriate, are authorized to issue the necessary regulations to apply and impose compliance with the legal provisions referring to the Fund's activity. The regulations, rules, instructions, memorandums and statements issued by the Fund shall be published in the Monitorul Oficial al României, Part I. The rules and regulations shall be approved by the National Bank of Romania.

CHAPTER XII Contraventions

Article 49. – (1) Failure to comply with the provisions of Article 4 (1), referring to the obligation to inform about the reimbursement incapacity, and/or the provisions of Article 20 (1), referring to the obligation to inform the Fund, shall represent contraventions and shall be sanctioned with a fine of 10,000 to 100,000 lei.

(2) The action of the individual responsible for ensuring the fulfilment of the obligations referred to in Article 4 (1) and/or in Article 20 (1) and who failed to fulfil them or fulfilled them in a faulty manner shall represent a contravention and shall be sanctioned with one to six months of imprisonment or fine.

CHAPTER XIII Final and Transitional Provisions

Article 50. – (1) Without prejudice to the provisions of paragraph (2) of this article, of Article 2 (3) (c) (i), of Article 4 and those of Article 5 shall enter into force on 30 August 2009.

(2) Before 31 December 2010, the time limit referred to in Article 5 (1), referring to ascertaining the unavailability of the deposits by the National Bank of Romania, shall not exceed 21 days.

(3) Before 31 December 2010, the time limit referred to in Article 8 (2) is of 20 days.

Article 51. – (1) Before 31 December 2010, the time limit in Article 18 (1), referring to the period set by the Fund for starting the payouts, the duration of the payouts and the means to conduct the payouts and for publishing this information, cannot exceed 30 days from the date the deposits became unavailable.

(2) Before 31 December 2010, the time limit referred to in Article 18 (3) for starting the payouts cannot exceed three months from the date the deposits became unavailable.

(3) The provisions of paragraph (4) and of Article 18 shall enter into force on 31 December 2010.

Article 52. – (1) Before 31 December 2010, the time limit in Article 20 (1), referring to the fact of informing the Fund about the elements in Article 8 (1), is of 20 days.

(2) Before 31 December 2010, the time limit referred to in Article 20 (2) is of 30 days.

Article 53. – The Fund is exempt from any fees for the operations conducted by the National Bank of Romania in its accounts.

Article 54. – The first meeting of the Fund's Administrative Board shall be held within 30 days from the entry into force of the law amending and supplementing this ordinance.

Article 55. – The Fund shall draw up its articles of association and regulations for implementing the provisions of the law amending and supplementing this ordinance within 60 days from its entry into force.

Article 56. – (1) Any intent to modify the provisions concerning the level coverage or the provisions of the annex including the list of non-guaranteed deposits shall be notified to the National Bank of Romania, who shall inform the European Commission and the European Banking Committee about these intents.

(2) The National Bank of Romania shall inform the European Commission and the European Banking Committee about Romania's difficulties in terms of cooperation with other Member States on issues related to deposit-guarantee schemes.

ANNEX

THE LIST OF NON-GUARANTEED DEPOSITS

1. Deposits, other than the ones that comply with the provisions of Article 7 (3), belonging to a credit institution lodged for it and on its own behalf
2. Instruments that comply with the definition of own resources, according to the regulations issued by the National Bank of Romania concerning the credit institutions' own resources
3. Deposits belonging to financial institutions, as defined in Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented, except for non-banking financial companies from the mutual benefit institutions category
4. Deposits belonging to insurers and reinsurers and insurance intermediaries, as they are defined by the legislation concerning the insurance and insurance supervision activity
5. Deposits belonging to central, local and regional public authorities
6. Deposits belonging to collective investment funds, as they are defined by the legislation on the capital market
7. Deposits belonging to pension funds
8. Deposits with the credit institution belonging, where appropriate, to its administrators, directors, members of the Supervisory Board, auditors, main shareholders
9. Deposits belonging to depositors with similar statute to those referred to in paragraph 8 within other companies in the credit institution's group
10. Deposits belonging to members of the families of the individuals referred to in points (8) and (9), respectively, spouses and relatives and first degree akin, as well as to third parties that act on behalf of the depositors mentioned in points (8) and (9)
11. Deposits with the credit institution belonging to companies of the same group as the credit institution
12. Non-nominated deposits
13. Securities covered by the debt issued by the credit institution, as well as obligations arising from own acceptances and promissory notes
14. Deposits belonging to companies, legal entities that are not micro-enterprises, small and medium-sized enterprises, according to the provisions of Law No 346/2004 regarding the

stimulation of the establishment and development of small and medium-sized enterprises, as further amended and supplemented.

We hereinafter reproduce the statement concerning the implementation of the community rules of Government Emergency Ordinance No 80/2009, approved with amendments and supplements by Law No 44/2010:

“This Emergency Ordinance implements the provisions of Article 1 (3) (i) of the Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, published in the Official Journal of the European Union L 135 of 31 May 1994, and of the Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay, published in the Official Journal of the European Union L 68 of 13 March 2009.”