

Act No. 21/1992 Coll.
of 20 December 1991,
on Banks

As amended by:

Act No. 264/1992 Coll.,
Act No. 292/1993 Coll.,
Act No. 156/1994 Coll.,
Act No. 83/1995 Coll.,
Act No. 84/1995 Coll.,
Act No. 61/1996 Coll.,
Act No. 306/1997 Coll.,
Act No. 16/1998 Coll.,
Act No. 127/1998 Coll.,
Act No. 165/1998 Coll.,
Act No. 120/2001 Coll.,
Act No. 239/2001 Coll.,
Act No. 319/2001 Coll.,
Act No. 126/2002 Coll.,
Act No. 453/2003 Coll.,
Act No. 257/2004 Coll.,
Act No. 439/2004 Coll.,
Act No. 377/2005 Coll.,
Act No. 56/2006 Coll.,
Act No. 57/2006 Coll.,
Act No. 62/2006 Coll.,
Act No. 70/2006 Coll.,
Act No. 159/2006 Coll.,
Act No. 189/2006 Coll.,
Act No. 120/2007 Coll.,
Act No. 296/2007 Coll.,
Act No. 126/2008 Coll.,
Act No. 216/2008 Coll.,
Act No. 230/2008 Coll.,
Act No. 254/2008 Coll.,
Act No. 433/2008 Coll.,
Act No. 215/2009 Coll.,
Act No. 230/2009 Coll.,
Act No. 285/2009 Coll.,
Act No. 287/2009 Coll.,
Act No. 156/2010 Coll. (part),
Act No. 160/2010 Coll.,
Act No. 227/2009 Coll.,
Act No. 156/2010 Coll. (part),
Act No. 281/2009 Coll.,
Act No. 409/2010 Coll.,
Act No. 41/2011 Coll. (part),
Act No. 73/2011 Coll.,
Act No. 139/2011 Coll.,

Act No. 188/2011 Coll.,
Act No. 263/2011 Coll.,
Act No. 41/2011 Coll. (part),
Act No. 420/2011 Coll.
and Act No. 470/2011 Coll.

Note: This text is a working document for information only, and is not an official translation of the Czech legislation

The Federal Assembly of the Czech and Slovak Federal Republic has passed this Act:

PART ONE
Basic provisions

Article 1

(1) This Act incorporates the applicable regulations of the European Union¹⁾ and governs certain relations associated with the establishment, business activities and dissolution of banks having their registered offices within the territory of the Czech Republic, including their activities outside the territory of the Czech Republic, as well as certain relations associated with the activities of foreign banks within the territory of the Czech Republic. For the purposes of this Act, “banks” shall mean joint-stock companies having their registered offices in the Czech Republic^{1a)} which:

- a) accept deposits from the public, and
- b) provide loans

and which have been granted a banking licence (hereinafter referred to as the “licence”) (Article 4) to carry on the activities referred to in subparagraphs a) and b). Where this Act provides otherwise, the provisions of the Commercial Code on joint-stock companies shall not apply to banks.

(2) For the purposes of this Act:

- a) “deposit” shall mean any funds entrusted to the bank that constitute an obligation of the bank to the depositor to repayment thereof;
- b) “loan” shall mean funds in any form provided temporarily.

(3) In addition to the activities referred to in Article 1(1)(a) and (b), a bank may carry on the following other activities, provided that it is authorised to do so in its licence:

- a) investing in securities for own account,
- b) financial leasing,
- c) money transmission services,
- d) issuing and administering means of payment, e.g. credit cards and travellers cheques,
- e) providing guarantees,
- f) opening letters of credit,
- g) collecting payments,
- h) providing investment services pursuant to a special legal rule,^{1b)} where the licence specifies the principal investment services and activities and ancillary investment activities

the bank is authorised to carry on and the investment instruments in relation to which they may be carried on pursuant to a special legal rule,^{1b)}

- i) money broking,
- j) acting as a depository,
- k) bureau-de-change activities,
- l) providing banking information,
- m) trading for own account or for account of clients in foreign exchange and gold,
- n) renting safe deposit boxes,
- o) activities directly associated with the activities listed in subparagraphs a) to n) and in paragraph 1.

(4) A bank may not carry on business activities other than those permitted in its licence; this shall not apply to activities carried on for another entity, provided that they are associated with safeguarding its operation and the operation of other banks, financial institutions and ancillary services undertakings controlled by the bank. A bank may exercise the powers of a contact point of the public administration if granted authorisation pursuant to a special legal rule.

(5) The carrying-on of some of the activities listed in paragraph 3 may be subject to authorisation pursuant to a special legal rule. Where the carrying-on of any activity is subject to authorisation pursuant to a special legal rule, such activity may be permitted in the licence only after authorisation has been granted pursuant to the special legal rule.

(6) The banking activities listed in paragraphs 1(a) and 1(b) and in paragraph 3 may also be carried on by foreign banks through their branches, provided that they have obtained the required licence in accordance with Article 5.

(7) The licence shall name the permitted activities and may define the extent of the permitted activities, although not in the sense of limiting the number of individual business transactions, and may also stipulate the conditions that the bank or foreign bank branch must meet prior to commencing any permitted activity or adhere to when carrying on any permitted activity.

(8) The legal status of the Czech National Bank is governed by a special legislative act.²⁾

Article 2

(1) No person may accept deposits from the public without a licence, unless provided otherwise by a special legislative act.

(2) The continuing issuance of bonds and other comparable securities shall also be deemed acceptance of deposits where:

- a) it constitutes the sole, or one of the main, activities of the issuer,
- b) the issuer's line of business is providing loans, or
- c) the issuer's line of business is one or more of the activities listed in Article 1(3).

Article 3

(1) The term “bank” or “savings bank”, translations thereof or terms derived therefrom may only be used in the commercial name of a legal entity that has been granted a licence, unless it is clear from the context in which the term “bank” or “savings bank” is used that such person is not engaged in the activities listed in Article 1(1).

(2) Paragraph 1 shall not apply to legal entities whose commercial name or designation is well established or recognised by law or pursuant to an international treaty which has been passed by Parliament, ratified and promulgated and which is binding on the Czech Republic, or pursuant to any similar international treaty that entered into force before 1 January 1993 (hereinafter referred to as an “international treaty”).

(3) The Czech National Bank may require:

- a) a bank to change its proposed commercial name in cases where there exists a danger of its being confused with the commercial name of some other, already existing, legal entity or organisational unit thereof,
- b) a foreign bank branch to change its commercial name by adding a distinguishing attribute in cases where there exists a danger of its being confused with the commercial name of some other, existing, legal entity or organisational unit thereof.

PART TWO

The licence

Article 4

(1) Licence applications shall be submitted to the Czech National Bank. A draft of the Articles of Association shall be submitted with the licence application. The minimum capital of a bank shall be CZK 500,000,000 and must comprise pecuniary contributions in at least this amount. The Czech National Bank shall set forth in a decree the essential elements of the licence application.

(2) Decisions concerning the granting of a licence shall be made by the Czech National Bank.

(3) Prior to making a decision concerning a licence, the Czech National Bank shall seek the opinion of the competent supervisory authority supervising banks, investment firms or insurance companies in a member state of the European Union or another state constituting the European Economic Area (hereinafter referred to as a “Member State”, in the event that the entity to which the licence is to be granted is controlled by:

- a) a foreign bank having its registered office in the Member State,
- b) an entity having a permit from the competent supervisory authority in the Member State to provide investment services,
- c) an insurance company having a permit from the competent supervisory authority in the Member State,
- d) an entity having control over an entity listed in subparagraphs (a), (b) or (c).

(4) The Czech National Bank shall require that the opinions pursuant to paragraph (3) in particular contain information relevant for the assessment of whether the conditions listed in paragraph (5)(d) and (e) have been met.

(5) For the licence to be granted, the following conditions must be met:

- a) the capital and other funds of the bank must be of transparent and unexceptionable origin, sufficient amount and appropriate structure;
- b) the capital must be paid up in full;
- c) the person to which the licence is to be granted must be trustworthy and competent;
- d) persons having a qualifying holding (Article 17a(3)) in the bank must be trustworthy and competent to exercise shareholder rights in the bank's business activities;
- e) the persons who are nominated for executive managerial positions in the bank with which are associated the powers and responsibilities laid down in the Articles of Association (hereinafter referred to as "bank officers") must have sufficient trustworthiness, competence and experience;
- f) the bank must have in place the technical and organisational prerequisites for pursuing its proposed activities and a functional and effective management and control system;
- g) the bank must have a programme of operations proceeding from its proposed strategy of activities and based on realistic economic calculations;
- h) any group of entities having close links with the bank must be transparent;
- i) the close links within the group referred to in subparagraph g) must not impede the exercise of banking supervision;
- j) in the state within whose territory the group referred to in subparagraph g) has close links, there must be no legal or factual impediment to the exercise of banking supervision;
- k) the registered office of the future bank must be within the territory of the Czech Republic.

(6) For the purposes of this Act, "close links" shall mean:

- a) a relationship between two or more entities where one has a direct or indirect holding in another, the sum of which totals 20% or more of the capital,
- b) a relationship between two or more entities where one has a direct or indirect holding in another, the sum of which totals 20% or more of the voting rights,
- c) a relationship between two or more entities where one has control over the other or others,
- or
- d) a relationship between two or more entities that are controlled by the same entity.

(7) The Czech National Bank shall be entitled to request an extract from the Criminal Register concerning natural persons who are founders of the bank or who are nominated as bank officers. A person convicted lawfully in the past of a wilful criminal offence may not act as a bank officer.

Article 4a

A licence can be also granted at the request of a credit union if such credit union simultaneously applies for consent to a change in legal form from a credit union to a joint-stock company. A joint proceeding shall be conducted in respect of the two applications in accordance with the act governing administrative proceedings. A motion to enter the change in the legal form of the credit union in the Companies Register may be submitted after the granting of the licence and of the consent to the change in legal form from a credit union to a joint-stock company enters into force. Legal effects of the granting of the licence occur as of

the record date of the change in legal form from a credit union to a joint-stock company in the Companies Register.

Article 5

(1) A foreign bank wishing to establish a branch within the territory of the Czech Republic shall submit a licence application to the Czech National Bank.

(2) Together with the licence application, the foreign bank shall submit the opinion of the banking supervisory authority of the country in which the foreign bank has its registered office on its wish to establish a branch in the Czech Republic, as well as that authority's declaration that the branch will be subject to banking supervision.

(3) Decisions concerning the granting of the licence referred to in paragraph 1 shall be made by the Czech National Bank.

(4) For the licence referred to in paragraph 1 to be granted, the following conditions must be met:

a) the funds provided by the foreign bank to its branch must be of sufficient amount and transparent origin, taking due consideration of the scope and risks of the branch's business activities;

b) the foreign bank must be trustworthy and have sufficient financial strength, taking due consideration of the scope of the branch's business activities;

c) the persons nominated for executive managerial positions in the branch must have sufficient competence, trustworthiness and experience;

d) the branch must have in place the technical and organisational prerequisites for pursuing its proposed activities and a functional and effective management and control system;

e) the branch must have a programme of operations proceeding from its proposed strategy of activities and based on realistic economic calculations;

f) any closely linked group to which the foreign bank belongs must be transparent;

g) the close links within the group referred to in subparagraph f) must not impede the exercise of banking supervision;

h) in the state within whose territory the group referred to in subparagraph f) has close links, there must be no legal or factual impediment to the exercise of banking supervision;

i) the foreign bank wishing to carry on activities through a branch within the territory of the Czech Republic must have its registered office and its head office in the same state.

(5) The Czech National Bank shall set forth in a decree the essential elements of the application referred to in paragraph 1 and the minimum amount of funds to be provided.

(6) The fact that the legal form of the foreign bank does not correspond to the legal form of a joint-stock company shall not constitute grounds for rejecting the licence application.

(7) The procedure given in paragraphs 1 to 5 shall not apply to the cases referred to in Article 5a.

Article 5a

(1) Banks having their registered offices in Member States may, through their branches, carry on activities pursuant to this Act within the territory of the Czech Republic without a licence, provided that they have been granted authorisation to carry on those activities in the country in which they have their registered office and provided that the foreign bank has complied with the procedure laid down in European Union law and provided for in Articles 5c to 5m. Such branches shall be subject to the taxable person registration duty provided in a special legal rule³⁾. Banks having their registered offices in member states of the European Union shall moreover be authorised under the same conditions to carry on such activities without establishing a branch, provided that the carrying-on of such activities does not have the character of permanent economic activity.

(2) Paragraph 1 shall not apply to banks which do not enjoy the advantages of the single licence in accordance with European Union law or to banks having their registered offices in a state which does not enjoy the advantages of the single licence in accordance with European Union law.

(3) In compliance with an international treaty, the Czech National Bank may in a decree expand the group of countries whose banks enjoy the same advantages when pursuing their business within the territory of the Czech Republic as banks having their registered offices in Member States.

(4) Branches of foreign banks which, pursuant to paragraph 1, may carry on activities within the territory of the Czech Republic in accordance with this Act without a licence therefor being granted to the relevant foreign bank shall not be subject to this Act, save for the provisions of Article 11(3) and (5), the information duty referred to in Article 38(2) to (6), the provisions relating to bank liquidity, implementation of monetary policy and corrective accounting of banks (Article 20c), and the provisions of Article 41m(1) and (2).

(5) Where the foreign bank branch referred to in paragraph 1 decides to participate in the payment system administered by the Czech National Bank (Article 20b), it shall be subject to the legal rules governing the operation of that system. Where the foreign bank branch decides to make use of the possibility provided for in Article 38a(1), it shall be subject to Article 38a.

(6) The provisions of this Act relating to insurance of deposit claims shall apply to such branches only if they make use of the possibility provided for in Article 41m. The measures referred to in Article 26 may be taken against the foreign bank branches referred to in paragraph 1 only on condition that the branch is not itself taking remedial action at the behest of the Czech National Bank, nor has the banking supervisory authority of the country in which the relevant foreign bank has its registered office taken remedial action at the request of the Czech National Bank, and on condition that the irregular situation persists. This shall not apply in the event of violations of Article 11(3) and (5) and the provisions on corrective accounting; in the event of violations of the legal rules governing the operation of the payment system administered by the Czech National Bank (Article 20b) where the bank is a participant in that system; in the event of violations of Article 38a and the information duty referred to in Article 38(2) to (6); or in emergencies and where such action is necessary in the interests of depositors. The measures referred to in Article 26 taken in emergencies and because such action is necessary in the interests of depositors must be reviewed by the Czech

National Bank at the earliest opportunity or within the time limit prescribed by the European Commission where the European Commission so decides in conformity with Article 5k(4); the Czech National Bank shall proceed likewise where the European Commission so decides in the case of the application of the procedure laid down in Article 26bb.

(7) In branches of foreign banks which, pursuant to paragraph 1, may carry on activities within the territory of the Czech Republic in accordance with this Act without a licence therefor being granted to the relevant foreign bank, or in entities comprising a consolidated group containing the foreign bank referred to in paragraph 1, the Czech National Bank may carry out on-site examinations if so requested by the supervisory authority of the country in which the foreign bank has its registered office. The supervisory authority of the country in which the foreign bank referred to in paragraph 1 has its registered office may, after having first informed the Czech National Bank, carry out an on-site examination within the territory of the Czech Republic at the foreign bank branch referred to in paragraph 1, or at a financial institution fulfilling the conditions listed in Article 5e(1).

Article 5b

The licence may not be granted if doing so would be in contravention of an international treaty.

The single licence principle

Article 5c

(1) Banks having their registered office within the territory of a Member State (hereinafter referred to as the “home state”) may, through their branches, carry on the activities listed in Article 5d within the territory of another Member State (hereinafter referred to as the “host state”) without a licence, provided that they have been granted authorisation to carry on those activities in their home state. Save for the activity provided for in Article 5d(a), the same authorisation shall apply to financial institutions fulfilling the conditions listed in Article 5e(1) (hereinafter referred to as “eligible financial institutions”).

(2) The banks referred to in paragraph 1 shall moreover be authorised to carry on the activities listed in Article 5d without establishing a branch, provided that the carrying-on of such activities does not have the character of permanent economic activity. The same shall apply to the eligible financial institutions referred to in paragraph 1, save for the activity provided for in Article 5d(a).

(3) A bank or financial institution which does not enjoy the advantages of the single licence in accordance with European Union law, or a bank or financial institution having its registered office in a state which does not enjoy the advantages of the single licence in accordance with European Union law, may not carry on activities through a branch within the territory of the host state without a licence.

Article 5d

Banks or eligible financial institutions may carry on the following activities within the territory of a host state, provided that they fulfil the conditions provided for in European Union law and laid down in this Act:

- a) acceptance of deposits from the public,
- b) lending,
- c) financial leasing,
- d) providing payment services and issuing electronic money,
- e) issuing and administering means of payment where this does not constitute providing payment services and issuing electronic money pursuant to subparagraph d),
- f) providing guarantees,
- g) trading for own account and for account of clients in:
 1. money market instruments,
 2. foreign exchange,
 3. futures, options and instruments, the value of which relates to exchange rates, the interest rate or interest income,
 4. investment securities,
- h) participation in securities issues and the provision of services related to such issues,
- i) advice on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings,
- j) money broking,
- k) portfolio management and advice,
- l) safekeeping and administration of securities,
- m) providing banking information,
- n) safe custody services,
- o) provision of investment services and activities pursuant a special legal rule^{1a)}.

Article 5e

(1) Financial institutions wishing to make use of the advantages provided for in Article 5c must also fulfil the following conditions:

- a) the bank or banks referred to in Article 5c(1) must hold 90% or more of the voting rights and capital of the financial institution and must be governed by the law of the same state as the financial institution;
- b) the activities that the financial institution intends to carry on within the territory of the host state it must carry on also within the territory of its home state;
- c) the financial institution must be included in the consolidated supervision of the bank or banks referred to in Article 5c(1) in accordance with European Union regulations;
- d) the bank or banks referred to in Article 5c(1) must, with the consent of the home supervisory authority, jointly and severally guarantee the commitments entered into by the financial institution;
- e) the bank or banks referred to in Article 5c(1) must satisfy the home supervisory authority regarding the prudent management of the financial institution.

(2) Compliance with the conditions referred to in paragraph 1 must be verified by the supervisory authority of the home state, which must supply a certificate of compliance.

(3) Should an eligible financial institution cease to fulfil any of the conditions referred to in paragraph 1, the home supervisory authority shall immediately notify the host supervisory authority and the financial institution shall forfeit the advantages of the single licence.

Article 5f

A bank or eligible financial institution wishing to establish a branch within the territory of a host state shall notify the supervisory authorities of the home state and shall provide it with the following information in writing:

- a) the member state within the territory of which it plans to establish a branch;
- b) a programme of operations setting out, inter alia, the types of business envisaged;
- c) the structural organisation of the branch;
- d) the address in the host state from which documents may be obtained;
- e) the names of those responsible for the management of the branch;
- f) in the case of an eligible financial institution, also documents for verifying the information referred to in Article 5e(1).

Article 5g

(1) Unless the supervisory authority of the home state has reason to doubt the adequacy of the administrative structure and the financial situation of the bank or financial institution, taking due consideration of the activities envisaged, it shall within three months of receipt of the information referred to in Article 5f communicate that information, together with information on the amount of capital of the bank or eligible financial institution, information on its capital adequacy, and particulars about deposit insurance and about the transfer of the certificate of compliance referred to in Article 5e(2), to the host supervisory authority and shall inform the bank or financial institution accordingly.

(2) Where the doubts referred to in paragraph 1 exist, the supervisory authority of the home state shall, within the time limit prescribed in paragraph 1, inform the bank or financial institution that it has not communicated the information to the host supervisory authority and shall give reasons for its course of action. In that event, or if the supervisory authority of the home state fails to inform the bank or financial institution within the time limit prescribed in paragraph 1, the bank or financial institution may apply to the courts for redress.

Article 5h

(1) The supervisory authority of the host state shall, within two months of receiving the information mentioned in Article 5g(1), prepare for the supervision of the bank or financial institution and if necessary notify it of those legal provisions of the host state that will apply to its activities within the territory of the host state on the basis of the authorisation granted by the supervisory authority of the home state.

(2) On receipt of the information referred to in paragraph 1, or in the event of the lapse of two months without receipt of such information, the bank or eligible financial institution may commence its activities within the territory of the host state.

(3) The bank or eligible financial institution shall notify the supervisory authorities of the home and host states of any changes in the particulars mentioned in Articles 5f and 5g(1) one month in advance.

Article 5i

If a bank or eligible financial institution wishes to carry on the activities listed in Article 5d within the territory of the host state without establishing a branch, it shall, prior to providing the service for the first time, notify the home supervisory authority of the activities which it wishes to carry on. The home supervisory authority shall, within one month, send that notification to the host supervisory authority.

Article 5j

(1) Supervision of the branches of banks or eligible financial institutions shall be performed by the supervisory authority of the home state. Supervision of the liquidity of the branches of banks or eligible financial institutions shall be performed by the supervisory authority of the host state. Branches shall be subject to the measures adopted by the host state as part of its monetary policy, or, in the case of the states that have introduced the euro as their currency, to the measures adopted by the European Central Bank. Such measures may not provide for discriminatory treatment.

(2) In discharging the responsibilities imposed on it in paragraph 1 and in the area of monitoring the risks arising from open positions on the financial market within the territory of that state, the host state may require that bank branches or eligible financial institutions provide the same information as it requires from banks or financial institutions having their registered offices within the territory of that state. The host state may require that banks or eligible financial institutions having branches within its territory report periodically on their business activities within its territory in the form of statistical data.

Article 5k

(1) Where the competent authority of a host state ascertains that a bank or eligible financial institution providing services within its territory is not complying with the legal rules in the areas falling within the powers of the host state, it shall require the bank or eligible financial institution concerned to put an end to that irregular situation.

(2) If the bank or eligible financial institution concerned fails to take the necessary steps, the competent authority of the host state shall inform the supervisory authority of the home state accordingly. The supervisory authority of the home state shall, at the earliest opportunity, take the necessary measures to ensure that an end is put to that irregular situation and shall communicate those measures to the competent authority of the host state.

(3) If, despite the measures referred to in paragraph 2, the bank or eligible financial institution persists in violating the legal rules referred to in paragraph 1, the competent authority of the

host state may, after informing the supervisory authority of the home state, take the necessary measures to put an end to the irregular situation and, in so far as is necessary, to put an end to the activities of the bank or eligible financial institution within the territory of the host state.

(4) In emergencies, the competent authority of the host state may take measures to protect the bank's clients. The competent authority of the home state shall inform the European Commission and the supervisory authorities of the states concerned of such measures. The European Commission may, after consulting the supervisory authorities of the states concerned, instruct the authority of the host state to abolish or amend the measures taken.

(5) The authorities of the host state may take the necessary measures to prevent or to punish conduct within the territory of that state which is contrary to the legal rules of that state in the public interest area. This shall include measures to put an end to the activities of the bank or eligible financial institution within the territory of that state. In this event, the provisions of the previous paragraphs shall not apply.

Article 5l

(1) In the event of withdrawal of the licence of a bank or eligible financial institution, the home supervisory authority shall inform the host supervisory authority at the earliest opportunity. The host supervisory authority shall take the necessary measures to put an end to the activities of the bank or eligible financial institution within its territory and to safeguard the interests of depositors.

(2) The supervisory authorities shall inform the European Commission of the number and type of cases where they have refused to communicate to a host state authority information on the establishment of a branch or where they have used their powers to put an end to any irregular situation pursuant to Article 5k(1) to (3).

Article 5m

Banks and eligible financial institutions may freely advertise their services in Member States, subject to any legal rules governing advertising adopted in the host state.

Article 5n

(1) A branch of a bank or of a foreign bank having its registered office in a Member State may be identified in accordance with European Union law as significant by the supervisory authority of the Member State within whose territory the branch operates (hereinafter referred to as a "significant branch").

(2) The Czech National Bank shall notify the supervisory authority of the home state of the foreign bank of its intention to identify the branch of the foreign bank which operates in the Czech Republic as significant. If such foreign bank branch is a member of a European parent bank group (Article 26d(1)(1)), a member of a European financial holding entity group (Article 26d(1)(n)) or a member of a European parent investment firm group under the act

governing business on the capital market, the Czech National Bank shall notify the authority supervising such group on a consolidated basis of its intention to identify such branch as significant. At the same time, the Czech National Bank shall inform such authority of the reasons why it intends to identify the branch as significant with reference to the criteria listed in paragraph 3.

(3) When intending to identify a branch as significant, the Czech National Bank shall take into account in particular:

(a) the market share of the branch in deposits in the Czech Republic and whether this share exceeds 2%,

(b) the probable impact of the suspension or winding up of the foreign bank whose branch might be identified as significant on liquidity in the market or on the operation of payment and settlement systems in the Czech Republic,

(c) the size of the branch and its importance for the financial system of the Czech Republic in terms of the number of its clients.

(4) The Czech National Bank shall endeavour to ensure that its decision about the identification of a foreign bank branch as significant is reached by agreement with the supervisory authority referred to in paragraph 2 within two months of notifying this authority of its intention pursuant to paragraph 2.

(5) Where no agreement is reached in accordance with paragraph 4, either the Czech National Bank shall decide about the identification of a foreign bank branch as significant within four months of informing the supervisory authority referred to in paragraph 2 of this intention, or it shall notify this authority within the same time limit that it is withdrawing from this intention. It shall take into account the opinion of this authority.

(6) Where the Czech National Bank decides to identify a foreign bank branch as significant, it shall notify the supervisory authority referred to in paragraph 2 thereof without undue delay. The Czech National Bank shall also notify this authority of the reasons for identifying the branch as significant.

Article 5o

(1) The Czech National Bank shall be competent to agree on the identification of a branch of a foreign bank as significant where that bank carries on business in another Member State through this branch and the supervisory authority of the host state has notified the Czech National Bank of its intention to identify this branch as significant and has stated the reasons for such intention in accordance with European Union law. The provisions of Article 5(4) shall apply *mutatis mutandis*.

(2) Where a bank carries on business in another Member State through a significant branch, the Czech National Bank shall provide the supervisory authorities of this Member State with the information referred to in Article 38h(3)(c) and (d) and shall perform the tasks referred to in Article 26i(c) in cooperation with the supervisory authorities of that Member State.

(3) If the Czech National Bank discovers adverse developments in a bank that carries on business through a significant branch in another Member State, it shall notify the relevant central banks of the European System of Central Banks without undue delay under the

conditions laid down in Article 25a(4)(j) and public authorities pursuant to Article 25a(4)(l) in the Member States affected by such developments.

(4) Where a bank carries on business in another Member State through a significant branch, the Czech National Bank shall establish a college of supervisors (hereinafter referred to as the “college”) to perform the tasks referred to in paragraphs 2 and 3 and in Article 38h. The establishment and activities of the college shall be based on written agreements referred to in Article 26c(8), which shall be drawn up by the Czech National Bank after discussion with supervisory authorities pursuant to paragraph 2. The members of the college shall be the Czech National Bank and the supervisory authorities of the host states in which the bank carries on business through a significant branch. The provisions of Article 26l(4) and (5) shall apply *mutatis mutandis*.

(5) The duties referred to in paragraph 2 to 4 shall be performed by the Czech National Bank after it has agreed on the identification of a branch as significant pursuant to paragraph 1 or after it has been notified by a competent supervisory authority of a host state of the identification of a branch as significant.

Article 6

The licence shall be granted for an indefinite period and shall not be transferable to any other entity.

Article 7

The Czech National Bank shall maintain a complete list of the banks and branches of foreign banks active within the territory of the Czech Republic. The list shall be made available for inspection in the headquarters and branches of the Czech National Bank. The Czech National Bank shall disclose it in a manner which allows remote access.

Article 7a

(1) The licence shall cease to be valid on the day:

- a) on which a decision to withdraw the licence becomes effective,
- b) on which the bank is wound up, where it is wound up and liquidated,
- c) from which, in accordance with a decision adopted by the General Meeting, an existing bank will cease to carry on any activity for which a licence is required,
- d) on which the bank is expunged from the Companies Register, where it is wound up without being liquidated,
- e) on which a decision on the prohibition of a bank’s activities in the Czech Republic becomes effective pursuant to another legal rule.

(2) The licence granted to a foreign bank for its branch shall also cease to be valid on the day on which:

- a) the foreign bank discontinues the activities of its branch within the territory of the Czech Republic,

b) the foreign bank loses its authorisation to carry on the business of a bank in the state in which it has its registered office.

(3) As from the date of termination of the licence, a bank and a foreign bank branch may not accept deposits or provide loans or carry on any other activities, except for those necessary for the settlement of its claims and liabilities; such a bank or a foreign bank branch shall be regarded as a bank and a foreign bank branch pursuant to this Act until it settles its claims and liabilities.

PART THREE

Bank organisation

Article 8

(1) A bank's statutory body shall consist of at least three members and shall be composed of bank officers.

(2) A member of the statutory body of the bank and an employee of the bank may not simultaneously be a statutory body or a member of a statutory body or a member of a supervisory board of any other legal entity which is an entrepreneur. This shall not apply to the membership of:

a) the statutory body or supervisory board, or to the performance of the duties of the statutory body, of another bank, foreign bank or financial institution that is part of the same consolidated group as the bank (Article 26d),

b) the supervisory board of another legal entity controlled by the bank,

c) the statutory body or supervisory board, or to the performance of the duties of the statutory body, of an operator of a regulated market in investment instruments,

d) the statutory body or supervisory board, or to the performance of the duties of the statutory body, of an ancillary services undertaking, or

e) the statutory body or supervisory board, or to the performance of the duties of the statutory body, of a housing cooperative or a similar foreign entity.

(3) The powers of the statutory body and the supervisory board shall be specified in the Articles of Association.

(4) The powers entrusted to the board of directors of a joint-stock company by the Commercial Code may not be transferred to the supervisory board of the bank.

Article 8a

Members of the statutory body of a bank who have infringed their duties as members of the statutory body of the bank ensuing from the legal rules or from the Articles of Association shall be liable jointly and severally for any damage caused to the creditors of the bank

resulting from the bank not being able to meet its due commitments as a result of the infringement of duties by those members of the statutory body.

Article 8b

Management and control system

(1) A bank shall have a management and control system that includes:

a) prerequisites for the sound governance and management of the bank, which shall always include:

1. management policies and procedures,
2. organisational arrangements, with an adequate, transparent and comprehensive specification of responsibilities and decision-making powers, within which conflicting duties shall simultaneously be defined, and procedures for preventing potential conflicts of interest,
3. sound administrative and accounting procedures,
4. a system of remuneration of persons whose activities relating to their employment, profession or position have a significant effect on the risks undertaken by the bank and the scope of such risks, including principles for the determination of, and conditions for the payment of, fixed and flexible components of remuneration, procedures for taking decisions about remuneration and a method for assessing performance, so that the system of remuneration can contribute to proper and effective risk management and be consistent with it.

b) a risk management system, which shall always include:

1. the bank's rules of approach to the risks it is or might be exposed to, including risks arising from the external environment and liquidity risk,
2. effective processes to identify, evaluate, measure, monitor and report risks,
3. effective processes to adopt measures leading to the mitigation of any risks, and

c) an internal control system, which shall always include:

1. internal audit and
2. ongoing control of compliance with the bank's legal obligations and obligations arising from the bank's internal rules.

(2) The management and control system shall be comprehensive and proportionate to the nature, scale and complexity of the bank's activities.

(3) A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall have an obligation to establish and maintain a management and control system on a solo basis. A bank shall also have these obligations on a consolidated basis if it is:

- a) a domestic parent bank [Article 26d(1)(k)],
- b) a parent bank but not a domestic parent bank or a responsible bank in a financial holding entity group [Article 26d(1)(b), (k) and (o)] where a foreign bank or financial institution having its registered office in a non-Member State is a member of its consolidated group,
- c) a responsible bank in a financial holding entity group [Article 26d(1)(o)], or
- d) a responsible bank in a foreign parent bank group [Article 26d(1)(p)].

(4) A bank which has an obligation to establish and maintain a management and control system on a consolidated basis shall also ensure that the management policies and procedures, organisational arrangements, processes and mechanisms referred to in paragraph 1 used by the members of the consolidated group are mutually consistent and well-integrated and

produce all the information needed for the purposes of the decision-making processes within the consolidated group and for the purposes of supervision.

(5) The Czech National Bank shall stipulate in a decree more detailed requirements for the management and control system of banks on a solo and consolidated basis within the limits given in paragraph 1.

(6) A foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall be subject to the requirements for the management and control system *mutatis mutandis*.

Article 9

(1) The bank shall also specify in its Articles of Association:

- a) the structure and organisation of the bank;
- b) the powers and responsibilities of bank officers;
- c) the powers and responsibilities of other employees of the bank's head office and branches and of any other organisational units of the bank authorised to execute banking transactions;
- d) the organisational arrangements of its management and control system.

(2) Certified copies of the Articles of Association and amendments thereto shall be lodged with the Czech National Bank.

Article 10

Banks and branches of foreign banks shall be incorporated in the Companies Register and shall lodge their certificate of incorporation with the Czech National Bank

PART FOUR

Operational requirements

Article 11

(1) Banks and branches of foreign banks shall supply on their premises written information in the Czech language on the terms and conditions applying to the acceptance of deposits, the provision of loans and other banking transactions and services and on their participation in any payment systems. On request, they shall supply information on the rules of the relevant payment system. This shall be without prejudice to Article 273(1) of the Commercial Code.

(2) In the information on services consisting in accepting funds from clients, or when providing such services, the relationship of the service to the insurance of deposit claims, including the limits for payment to one eligible person, shall be stated explicitly and plainly. Banks and foreign bank branches shall supply written information in the official language or languages of the state in which they carry on their activities about the manner of payment of

compensation from the Deposit Insurance Fund (Article 41a) or any other insurance scheme to which they belong, and about the manner of making a claim with the Deposit Insurance Fund or any other insurance scheme to which they belong.

(3) A bank or a foreign bank branch shall at the request of a legal or natural person in the context of its business provide at the earliest opportunity a written explanation of the credit assessment (rating) of that person for the purposes of assessment of a loan provided to it or its application for a loan. A bank and a foreign bank branch shall provide a written explanation of a credit assessment if the person to whom the credit assessment relates so requests. A bank and a foreign bank branch shall be entitled in respect of the applicant to compensation of reasonable costs associated with the provision of an explanation of a credit assessment.

(4) A bank and a foreign bank branch shall keep records of all agreements entered into with clients in such a way that it is able, at the request of the Czech National Bank, to submit the relevant documents at the earliest opportunity in a verified translation into the Czech language.

(5) Banks and branches of foreign banks shall introduce effective mechanisms for dealing with client complaints and supply clear written information about these mechanisms on their premises in the official language or languages of the states in which they carry on their activities.

Article 11a

Disclosure of information

(1) A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall disclose basic information on itself, its shareholder structure, the structure of the consolidated group to which it belongs, and on its activities and financial situation.

(2) A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall also disclose information on compliance with the prudential rules on a solo basis. This shall not apply if it is:

- a) a parent bank [Article 26d(1)(b)],
- b) a responsible bank in a European financial holding entity group [Article 26d(1)(o)],
- c) a responsible bank in a foreign parent bank group [Article 26d(1)(p)], or
- d) a subsidiary in a European parent bank group [Article 26d(1)(l)], in a European financial holding entity group [Article 26d(1)(n)] or in a foreign parent bank group [Article 26d(1)(i)] and it is taken into consideration when disclosing information on a consolidated basis.

(3) A bank shall also disclose information on compliance with the prudential rules on a consolidated basis if it is:

- a) a European parent bank [Article 26d(1)(l)], or
- b) a responsible bank in a European financial holding entity group [Article 26d(1)(o)].

(4) A bank which has a significant position on the financial market of the Czech Republic but is not subject to the obligations laid down in paragraphs 2 and 3 shall disclose information on compliance with the prudential rules to a reduced extent. A bank's position on the financial

market of the Czech Republic shall be deemed significant if at least one of the following criteria is met:

- a) the average balance-sheet total of the bank amounts to at least EUR 500,000,000, where the average balance-sheet total is determined as the arithmetic average of the bank's balance-sheet totals given in the three most recent ordinary financial statements verified by a legal or natural person carrying on auditor activity under the act governing the activity of auditors^{3a)} (hereinafter referred to as the "auditor"),
- b) the bank is an issuer of securities admitted to trading on a European regulated market¹⁵⁾,
- c) the bank is a depository of a collective investment fund or a pension fund, or
- d) the bank's position on the financial market of the Czech Republic in a particular area of business is dominant in relation to other entities of the financial market of the Czech Republic.^{3b)}

(5) A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law and is not subject to the obligations laid down in paragraphs 2–4 shall disclose information on who discloses information on a consolidated basis on behalf of the European parent bank group or on behalf of the European financial holding entity group to which it belongs, and in what way.

(6) A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law need not disclose information on compliance with the prudential rules which:

- a) is not material; information shall be material if its omission or misstatement could change or influence the assessment or decision of persons relying on that information when making their decisions; this possibility shall not apply to information on approaches for the calculation of capital requirements (Article 12a),
- b) is sensitive; information shall be sensitive if its disclosure could undermine a bank's competitive position, especially in the case of information on products or systems which, if shared with other competitors, could render a bank's investment in such products or systems less valuable,
- c) is confidential; information shall be confidential if there are obligations to customers or other counterparties binding a bank to confidentiality.

(7) If a bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law exercises the option of not disclosing sensitive or confidential information, it shall disclose the disclosure requirement concerned and the reason for non-disclosure. A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall, however, state at least general information about the facts they were to have disclosed, except where this general information is also sensitive or confidential.

(8) The auditor shall verify information about the capital and capital requirements and the ratios of a bank.

(9) The Czech National Bank shall stipulate in a decree:

- a) the content of the information meant for disclosure on a solo and consolidated basis, including the reduced extent of information on compliance with the prudential rules, as well as the form, manner, structure, frequency and dates of disclosure of information,
- b) the content of the information verified by the auditor, and

c) the content of the information referred to in subparagraphs a) and b) meant for disclosure by a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law.

(10) A bank shall establish internal procedures and policies for complying with the disclosure requirements laid down in this Act or on the basis thereof and for assessing the appropriateness of the information disclosed, including their verification and frequency of disclosure. A bank or a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall also introduce internal procedures and policies for assessing whether the information disclosed by that bank or foreign bank branch provides a complete and fair view of all risks undertaken and the scope of such risks. In the event that the information does not provide such a view, a bank or a foreign bank branch shall disclose any other information needed to achieve this objective, except for information referred to in paragraph 6.

Article 12

(1) A bank or a foreign bank branch shall carry on its activities with prudence and, in particular, pursue its business in a manner which is not detrimental to the interests of its depositors in respect of the recoverability of their deposits and which does not endanger the bank's safety and soundness.

(2) A bank may not conclude any agreements under conspicuously disadvantageous conditions for a bank or a foreign bank branch, especially such that bind it to economically unjustified performance or performance that fails conspicuously to correspond to the countervalue provided. Agreements concluded in contravention of this provision shall be invalid.

Article 12a

Capital

(1) A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall, on a solo basis, maintain capital which is always more than or equal to the sum of the individual capital requirements for the coverage of risks (hereinafter referred to as "capital adequacy"). A bank shall also comply with the risk transfer rules. A bank's capital may not fall below the threshold stipulated in Article 4(1).

(2) A bank shall continuously maintain capital adequacy on a consolidated basis if it is:

- a) a domestic parent bank [Article 26d(1)(k)],
- b) a parent bank but not a domestic parent bank or a responsible bank in a financial holding entity group [Article 26d(1)(b), (k) and (o)] where a foreign bank or financial institution having its registered office in a non-Member State is a member of its consolidated group,
- c) a responsible bank in a financial holding entity group [Article 26d(1)(o)], or
- d) a responsible bank in a foreign parent bank group [Article 26d(1)(p)].

(3) A bank shall use either a basic or a special approach for the calculation of individual capital requirements.

(4) If a bank intends to use a special approach for the calculation of a capital requirement, or if it intends to change the special approach it uses or the conditions of use of that approach, it shall apply to the Czech National Bank for prior consent. The Czech National Bank shall decide on the bank's application within six months. In the decision on the granting of consent, the Czech National Bank may stipulate binding conditions under which the bank is entitled to use the special approach.

(5) A bank which is a member of a European parent bank group [Article 26d(1)(l)] or a European financial holding entity group [Article 26d(1)(n)] or is controlled by a European parent investment firm under a special legal rule^{1b)} shall also be entitled to use one of the special approaches for the calculation of a capital requirement or to change the special approach it already uses if it is a signatory to a joint application of a European parent bank and its subsidiaries, a joint application of the subsidiaries of a European financial holding entity or a joint application of a European parent investment firm and its subsidiaries for prior consent to the use of such special approach or to a change in the special approach it uses.

(6) The Czech National Bank shall be competent to decide on a joint application referred to in paragraph 5 provided that it performs banking supervision on a consolidated basis of the European parent bank group or the European financial holding entity group. Otherwise, the supervisory authority of the Member State which performs supervision on a consolidated basis of the consolidated group in question shall decide on the joint application. A bank shall use a special approach or change the special approach it uses pursuant to the decision of the Member State's supervisory authority on the joint application for prior consent to the use of a special approach or to a change therein in accordance with the conditions stipulated in that decision.

(7) The Czech National Bank shall decide on a joint application referred to in paragraph 5 within six months. The Czech National Bank shall, without delay, forward the complete application to the supervisory authorities of the members of the consolidated group which submitted the application and shall coordinate cooperation with those supervisory authorities in the assessment of the application. The Czech National Bank shall do everything within its power to ensure that the decision is issued by agreement with all the supervisory authorities concerned and that the reaching of an agreement is duly set out in the justification of the decision. If the supervisory authorities concerned fail to reach an agreement allowing a decision to be made within the time limit mentioned in the first sentence, the Czech National Bank shall take into account the views and comments made by the other supervisory authorities within that time limit when deciding on the joint application. In the decision on the granting of consent, the Czech National Bank may stipulate binding conditions under which the bank or other joint applicants are entitled to use the special approach. The Czech National Bank shall also send the decision on the granting of consent to all the supervisory authorities concerned.

(8) The Czech National Bank shall stipulate in a decree:

a) the rules for calculating capital adequacy, which shall include the procedures that a bank shall apply when calculating capital adequacy, the rules for setting capital, determining individual capital requirements and defining the approaches for calculating them, including

conditions for applying the basic and special approaches for the calculation of capital requirements, and risk transfer rules,
b) a specification of the special approaches, the use or change of which requires consent pursuant to paragraph 4 or 5,
c) the essential elements of an application for prior consent to the use of a special approach or to a change in a special approach already in use as submitted to the Czech National Bank.

Article 12b

(1) For the calculation of capital requirements using a debtor's credit assessment (rating) issued by another entity, a bank shall use such rating only where it has been issued by a rating agency registered or certified pursuant to a directly applicable European Union legal rule on credit rating agencies (hereinafter the "regulation on credit rating agencies"), provided that the agency is entered in the list of credit assessment agencies kept by the Czech National Bank or the rating is a comparable credit assessment issued by another entity where the regulation on credit rating agencies allows the use of such a comparable credit assessment.

(2) The list of credit assessment agencies shall contain the commercial name, registered office and legal form of the listed entity, its identification number if assigned, the scope of application of external ratings used by the entity, an assignment of these credit assessments to the credit quality steps, and the date from which the credit assessments of the entity may be used. In the case of the expunction of an entity from the list of credit assessment agencies (paragraph 5), the Czech National Bank shall state in this list the date from which the credit assessments of the entity may not be used.

(3) A credit assessment entity may apply to the Czech National Bank for entry in the list of credit assessment agencies provided that it can demonstrate that at least one bank, credit union or non-bank investment firm plans to use its credit assessments for the calculation of capital requirements. The Czech National Bank shall issue a decision to enter this entity in the list after it has verified that its assessment methods comply with the requirements of objectivity, independence, ongoing review and transparency, and that the resulting credit assessments meet the requirements of credibility and transparency. If a credit assessment entity is a registered or certified rating agency pursuant to the regulation on credit rating agencies, its methods of assessment shall be deemed compliant with the requirements of impartiality, independence and transparency and shall be deemed updated on an ongoing basis.

(4) The Czech National Bank shall be entitled to request from an entity entered in the list of credit assessment agencies information necessary for evaluating whether the entity continues to comply with the requirements laid down in this Act or on the basis thereof.

(5) The Czech National Bank shall issue a decision to expunge an entity from the list of credit assessment agencies if the entity ceases to meet the listing requirements laid down in this Act or if it requests expunction.

(6) The Czech National Bank shall issue a decision to enter or amend an entry or to reject an application for entry in the list of credit assessment agencies pursuant to paragraph 3 or to expunge an entity from the list pursuant to paragraph 5 within four months of the commencement of administrative proceedings.

(7) The Czech National Bank may enter in the list of credit assessment agencies an entity which is already entered in a similar list of credit assessment agencies kept by a competent supervisory authority of another Member State and which has applied for entry in the list of credit assessment agencies kept pursuant to this Act. In such case, the Czech National Bank shall not be obliged to verify the information referred to in paragraph 3. When entering such an entity, the Czech National Bank may use the assignment of the credit assessments used by the entity to the credit quality steps as performed by the competent supervisory authority of the other Member State. The time limit for issuing the decision laid down in paragraph 6 shall apply *mutatis mutandis*.

(8) The Czech National Bank shall stipulate in a decree:

- a) the form and content of an entry in the list of credit assessment agencies,
- b) the requirements for independence, impartiality, ongoing updating and transparency of the assessment methods and the requirements for credibility and transparency of credit assessments of an entity that is to be entered in the list of credit assessment agencies.

Article 12c

(1) A bank shall adopt and apply sound, effective and complete strategies and processes to determine and assess and maintain on an ongoing basis the amounts, structure and distribution of internal capital to adequately cover the risks to which it is or might be exposed. This shall be without prejudice to the obligations laid down in Article 12a.

(2) A bank shall regularly review the strategies and processes referred to in paragraph 1 to ensure that they are functional, effective and proportionate to the nature, scale and complexity of its activities.

(3) The obligations laid down in paragraphs 1 and 2 shall apply on a solo basis only to a bank which:

- a) is not controlled by a domestic parent bank [Article 26d(1)(k)] or a domestic financial holding entity [Article 26d(1)(m)],
- b) is not a responsible bank in a foreign parent bank group [Article 26d(1)(p)] or another bank in such a group,
- c) does not control another bank, financial institution or ancillary services undertaking, or
- d) is exempt from the consolidated group.

(4) The obligations laid down in paragraphs 1 and 2 shall apply on a consolidated basis only to a bank which is:

- a) a domestic parent bank [Article 26d(1)(k)],
- b) a parent bank but not a domestic parent bank or a responsible bank in a financial holding entity group [Article 26d(1)(b), (k) and (o)] where a foreign bank or financial institution having its registered office in a non-Member State is a member of its consolidated group,
- c) a responsible bank in a financial holding entity group [Article 26d(1)(o)], or
- d) a responsible bank in a foreign parent bank group [Article 26d(1)(p)].

Article 13

A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall comply with rules that limit the amount of assets and off-balance-sheet items vis-à-vis an entity or group of entities in relation to capital (hereinafter referred to as the “exposure rules”) on a solo basis. A bank shall also comply with the exposure rules on a consolidated basis if it is:

- a) a domestic parent bank,
- b) a parent bank but not a domestic parent bank or a responsible bank in a financial holding entity group [Article 26d(1)(b), (k) and (o)] where a foreign bank or financial institution having its registered office in a non-Member State is a member of its consolidated group,
- c) a responsible bank in a financial holding entity group [Article 26d(1)(o)], or
- d) a responsible bank in a foreign parent bank group [Article 26d(1)(p)].

Article 14

(1) A bank and a foreign bank branch which does not enjoy the advantages of the single licence in accordance with European Union law shall maintain their solvency at all times. A bank shall adhere to the rules set forth in respect of liquidity and safe operation (Article 15). These rules may regulate:

- a) the minimum level of liquid funds, or groups of such funds, relative to the bank’s assets or liabilities or to a group of assets or liabilities;
- b) restrictions and conditions applying to certain types of loans or investments, deposits, guarantees and commitments;
- c) the acquisition, financing and assessment of assets;
- d) restrictions and conditions applying to foreign exchange positions.

Article 15

The Czech National Bank shall lay down the rules referred to in Article 13 and Article 14(c) in a decree. The Czech National Bank shall lay down the rules referred to in Article 12 and Article 14(a), (b) and (d) for banks and foreign bank branches in a provision of the Czech National Bank to be promulgated in the Bulletin of the Czech National Bank.²⁾

Article 16

(1) A bank shall have the prior consent of the Czech National Bank:

- a) in order to conclude an agreement based on which the business or part thereof is disposed of in any way,
- b) for a decision by the General Meeting to wind up the bank,
- c) in order to merge or divide the bank or to transfer its assets to a bank acting as a partner,
- d) in order to reduce the capital of the bank, unless the capital is being reduced to cover a loss,
- e) for a resolution of the General Meeting pursuant to Article 7a(1)(c).

Legal acts and resolutions of the General Meeting adopted without the required prior consent shall be invalid. Only the applying bank shall be a party to the proceedings to grant prior

consent. The counterparty in the case of the disposal of the business or part thereof under subparagraph a), other joint-stock companies participating in the merger or division or the partner to which the assets are being transferred under subparagraph b) shall also be parties to such proceedings.

(2) A bank shall notify the Czech National Bank:

a) of any intended change in its Articles of Association relating to facts that must be stated in the Articles of Association in accordance with the requirements of the Commercial Code or this Act;

b) of proposed personnel changes in the statutory body of the bank and in the positions of the bank's officers, including the submission of documents necessary for evaluating their competence, trustworthiness and experience; this obligation shall also apply to a foreign bank branch in respect of persons nominated for executive managerial positions in the branch;

c) of its wish to establish a legal entity abroad or to have a holding therein.

(3) The provisions of paragraphs 1(b) and 1(c) shall be without prejudice to the provisions of a special legal rule.⁴⁾

(4) A bank may transfer its business only to another bank or foreign bank branch; this shall also apply to the lease of a bank's business.

(5) A bank may also transfer its business to a joint-stock company whose sole shareholder is the Czech Republic, provided that the joint-stock company complies with the minimum capital requirement laid down in Article 4(1) (hereinafter referred to as a "special-purpose bank"). A special-purpose bank fulfils the conditions for granting a licence pursuant to Article 4(5) if the Czech National Bank grants its prior consent to the conclusion of an agreement to transfer the business to the special-purpose bank; in that case, the Czech National Bank shall grant it a licence covering the activities given in the licence of the bank transferring the business. A special-purpose bank shall not carry on the activities given in the licence before the day on which the agreement on the transfer of the business takes effect, which may be no sooner than on the day on which the licence is granted to the special-purpose bank.

(6) A bank that has transferred its business shall be dissolved and enter into liquidation on the day on which the agreement on the transfer of the business takes effect.

Article 16a

(1) A bank shall inform the Czech National Bank in writing of its wish to open a branch or representation abroad, of its wish to provide services abroad without establishing a branch, and of any discriminatory treatment by the state within the territory of which the branch or representation abroad operates or is to operate, or within the territory of which services are being provided or are to be provided without a branch being established.

(2) Where a bank wishes to open a branch or provide services without establishing a branch in a Member State, it shall proceed in accordance with Articles 5c to 5m. The same shall apply where it wishes to provide the services referred to in Article 5d through a financial institution fulfilling the conditions listed in Article 5e(1) which will provide the services through a branch or without establishing a branch. After receiving notification of the plan to open a

branch or financial institution abroad, the Czech National Bank shall decide in administrative proceedings whether the conditions for such cases laid down in European Union law and provided for in Articles 5c to 5m have been fulfilled.

(3) Where the Czech National Bank decides in administrative proceedings that the conditions for such cases laid down in European Union law and provided for in Articles 5c to 5m have not been fulfilled, the decision shall be reviewable by the courts.

Article 17

(1) A bank may acquire a holding in another legal entity, establish another legal entity or participate in the establishment thereof, provided that

- a) it does not become a partner with unlimited liability,
- b) the entity does not have a qualifying holding in the bank, unless the entity's equity securities are held for trading and for a short period of time and the bank complies with the rules for the acquisition, financing and assessment of assets, laid down by the Czech National Bank in accordance with Article 14(c),
- c) there are no legal or other obstacles relating to the provision of information to the bank by this entity or relating to the provision of information by the bank for the purposes of supervision of the bank's activities, the transparency of the consolidated group of which the bank is a member is maintained, and close links within the consolidated group do not prevent the performance of supervision of the bank's activities, or
- d) the investment is in line with the bank's overall strategy and the bank manages risks associated with this investment above all from the point of view of potential liabilities arising therefrom.

(2) A bank's qualifying holding in an entity that is neither a bank pursuant to this Act, nor a foreign bank, nor a financial institution nor an ancillary services undertaking may not exceed

- a) in a single legal entity 15% of the bank's capital,
- b) in respect of all legal entities a total of 60% of the bank's capital.

(3) The obligation laid down in paragraph 2 shall apply on a solo basis only to a bank which:

- a) is not controlled by a domestic parent bank [Article 26d(1)(k)] or a domestic financial holding entity [Article 26d(1)(m)],
- b) is not a responsible bank in a foreign parent bank group [Article 26d(1)(p)] or another bank in such a group,
- c) does not control another bank, financial institution or ancillary services undertaking, or
- d) is exempt from the consolidated group.

(4) The obligation laid down in paragraph 2 shall apply on a solo basis only to a bank which is:

- a) a domestic parent bank,
- b) a parent bank but not a domestic parent bank or a responsible bank in a financial holding entity group [Article 26d(1)(b), (k) and (o)] where a foreign bank or financial institution having its registered office in a non-Member State is a member of its consolidated group,
- c) a responsible bank in a financial holding entity group [Article 26d(1)(o)], or
- d) a responsible bank in a foreign parent bank group [Article 26d(1)(p)].

(5) The limits set forth in paragraph 2 shall not apply to a bank's qualifying holding in an entity arising from a claim of the bank on that entity and where the bank holds the qualifying holding during a rescue operation or the financial reconstruction of that entity for no longer than three years from the date of acquiring it.

(6) The limits set forth in paragraph 2 shall not apply to any qualifying holding of the bank arising from its participation in the issue of securities and the provision of related services where the bank holds the qualifying holding for no longer than 12 months from the date of acquiring it, or arising from a holding which the bank holds in its own name for the account of another person.

(7) A bank shall notify the Czech National Bank of its acquisition of a qualifying holding pursuant to paragraph 2 at the earliest opportunity. At the request of the Czech National Bank it shall prove that it meets the conditions set forth in paragraphs 1 and 2.

(8) "Holding" shall also mean an indirect holding (Article 17a(1)) or the sum of indirect holdings.

Article 17a

(1) "Indirect holding" shall mean a holding held through an entity or entities which are controlled.

(2) For the purposes of this Act, "financial institution" shall mean an entity which is neither a bank or a foreign bank and whose principal or major activity is to acquire or hold holdings in legal entities or to carry on one or more of the activities listed in Article 1(1) and (3) of this Act, or an investment company, investment fund, pension fund, insurance company or reinsurance company which carries on activities pursuant to special legislative acts, all including any foreign entities carrying on similar activities.

(3) "Qualifying holding" shall mean a direct or indirect holding in an entity's capital or voting rights, or a sum thereof, which represents 10% or more, or which makes it possible to exercise a significant influence over its management.

(4) For the purposes of calculation of qualifying holdings in banks, shares in capital or voting rights shall be included

a) which are at the disposal of another entity acting in concert with an entity referred to in Article 20(3),

b) which are temporarily at the disposal of an entity referred to in Article 20(3) against consideration,

c) which have been provided to an entity referred to in Article 20(3) as security, where this entity declares publicly that it will exercise the voting rights,

d) for which an entity referred to in Article 20(3) has a lifelong right of use,

e) which are at the disposal, within the meaning of (a) to (d), of an entity controlled by an entity referred to in Article 20(3),

f) which are managed or administered by, or kept with, an entity referred to in Article 20(3), unless the owner has given the entity specific instructions regarding voting,

g) which may be exercised by another entity in its own name for the account of an entity referred to in Article 20(3), or

h) which are exercised by an entity referred to in Article 20(3) on the basis of a power of attorney, provided that it may exercise these rights at its discretion and the mandator has given it no specific instructions regarding voting.

(5) The calculation of shares in voting rights arising from participation in a bank shall not include voting rights from equity securities relating to securities that the bank or another entity authorised in another Member State to operate as a bank holds in direct connection with the underwriting or placing of securities,^{4b)} provided that it neither exercises the voting rights nor influences the management of the issuer of these securities in any other way and it alienates the securities within one year of acquiring them.

(6) In accordance with the act governing business activities on the capital market, a market maker shall not include in the share in voting rights arising from participation in a bank such voting rights that do not exceed 5% of all voting rights in the bank, provided that it neither exercises the voting rights nor influences the management of the bank in any other way.

(7) An entity controlling an entity authorised to administer client assets in accordance with the act governing business activities on the capital market or a foreign entity authorised in another Member State to provide a similar investment service, shall not include in the share in voting rights arising from participation in a bank such shares in voting rights that relate to the assets administered by the subsidiary, provided that

- a) the subsidiary exercises the voting rights solely on the basis of a written instruction of the client, or
- b) the parent undertaking does not influence the exercise of the voting rights in any way.

(8) An entity controlling an investment company or foreign investment company shall not include in the share in voting rights arising from participation in a bank such voting rights that are connected with assets in collective investment funds administered by the subsidiary, provided that the parent undertaking does not influence the exercise of the voting rights in any way.

(9) The conditions set forth in paragraphs 7 or 8 shall apply to a parent undertaking only if it sends to the Czech National Bank without undue delay

- a) information about the subsidiary listed in paragraph 7 or 8 to the extent stipulated in Article 20(16), specifying the authorities performing supervision thereof,
- b) a declaration of fulfilment of the conditions under paragraph 7 or 8, and
- c) any changes to the information under (a) or any changes to the declaration under (b).

(10) At the request of the Czech National Bank, a parent undertaking pursuant to paragraphs 7 or 8 shall prove without undue delay that

- a) the organisational arrangements of the parent undertaking and the subsidiary enable voting rights to be exercised in accordance with paragraph 7(b) or paragraph 8,
- b) where the parent undertaking is a client of its subsidiary, written documents confirm that their relationship is analogous to that with other clients.

(11) “Ancillary services undertaking” shall mean a legal entity providing services supporting the business activities of banks or foreign banks.

Article 18

(1) A bank may not enter into transactions with persons having a special relation thereto (Article 19) which would otherwise, owing to their nature, purpose or risk, not be entered into with other clients.

(2) A bank shall provide loans to, and secure the commitments of, the persons referred to in paragraph 1 only if its statutory body so decides after analysing the banking transaction in question and the applicant's financial standing.

(3) The provisions of the Commercial Code relating to conflict of interests and governing the granting of loans and credit and the securing of commitments by a joint-stock company to the members of its bodies and other persons shall not apply to banks.^{4c)}

Article 19

(1) For the purposes of this Act, the following persons shall be deemed to have a special relation to a bank:

- a) members of the statutory body and the bank officers of the bank;
- b) members of the supervisory board of the bank;
- c) entities controlling the bank, persons having qualifying holdings in those entities, and members of the management of those entities;
- d) persons close⁵⁾ to the members of the statutory body, the supervisory board, the bank officers and the persons controlling the bank;
- e) legal entities in which any of the persons listed in subparagraphs a), b) and c) have a qualifying holding;
- f) persons having qualifying holdings in the bank, and any entities controlled by them;
- g) members of the Bank Board of the Czech National Bank,
- h) entities which the bank controls.

Article 19a

(1) A bank may carry on trading in securities and trading in the rights attaching to securities or deriving from securities pursuant to a special legislative act^{5a)} for its own account or from its own property only under the conditions most advantageous for the bank, and in particular at the best price that can be achieved with due diligence.

(2) A bank shall demonstrate due diligence by:

- a) comparing the prices offered for individual sales, purchases and other trades, or by providing evidence of the unsuitability or impossibility of assessing more than one offer,
- b) documenting the manner of execution of the trade, checking the objectivity of recorded data and taking steps to avoid the risk of own financial losses,
- c) conducting an analysis of the economic benefits of the trades using publicly available information, d) developing investment and business strategies that provide the basis for executing individual transactions.

(3) The exercising of due diligence by a bank shall consist in carrying on trading within the framework of automated trading systems or in another manner, in which case, however, the bank must be able to substantiate the benefits of such a procedure to the bank and its clients.

(4) Paragraphs 1 to 3 shall also apply to foreign bank branches.

Article 19b

(1) The bank shall prevent the use of information received in the context of its lending transactions when carrying on transactions in investment instruments, and vice versa, unless this information is publicly available.

(2) In order to discharge the duties set out in paragraph 1, the bank shall implement measures in its organisational, management and control systems to ensure the separation of lending transactions and transactions in investment instruments.

(3) “Lending transactions” shall mean activities connected with the providing of loans and guarantees.

(4) Paragraphs 1 to 3 shall also apply to foreign bank branches.

Article 20

(1) A bank may issue shares to which voting rights are attached as book-entry (dematerialised) shares only.

(2) In addition to shares to which voting rights are attached, banks may issue preference shares. However, no voting rights shall be attached to such shares, even where the Commercial Code provides otherwise.

(3) An entity or entities acting in concert must have the consent of the Czech National Bank

- a) to acquire a qualifying holding in a bank,
- b) to increase a qualifying holding in a bank so that it reaches or exceeds 20%, 30% or 50%, or
- c) to become entities controlling a bank,

even where these entities do not exercise the voting rights associated with the participation in the bank acquired in this way; failure to exercise voting rights shall not alter the share in the voting rights of these or any other entities.

(4) Within two working days of receiving an application for consent pursuant to paragraph 3, the Czech National Bank shall confirm receipt thereof to the applicant and inform the applicant of the date when the time limit for the assessment of the application referred to in paragraph 6 will expire. The application shall contain information about the entity or entities intending to acquire or increase their qualifying holding in the bank or take control of the bank, information about the bank in which the share is to be acquired or control taken over, the overall share the applicant will reach after acquiring or increasing the qualifying holding

or taking control of the bank, and information about the entity transferring the share to the applicant. The applicant shall enclose with the application documents necessary to assess the application from the point of view of the conditions stipulated in paragraph 9. The application for consent may only be submitted on the prescribed form, to which the applicant shall attach documents confirming fulfilment of the conditions stipulated in paragraph 9. The Czech National Bank shall stipulate the specimen forms and the content of the annexes thereto in a decree.

(5) In cases referred to in paragraph 3, the Czech National Bank shall seek the opinion of the supervisory authority of another member state of the European Union where the entity having a qualifying holding in the entity applying for consent is an entity authorised by the supervisory authority of that Member State to operate as a bank, insurance company, reinsurance company, investment company or investment services provider, or is the parent undertaking of such an entity.

(6) If the application is incomplete or suffers from other shortcomings, the Czech National Bank shall, no later than on the 50th day of the time limit stipulated in paragraph 7, call upon the applicant in writing to eliminate the shortcomings in the application or to supply additional information needed to assess the application. The Czech National Bank shall confirm receipt of such information to the applicant in writing within the time limit stipulated in paragraph 4. The running of the time limit stipulated in paragraph 7 shall be interrupted upon the sending of this call for a maximum of 20 working days. The running of the time limit stipulated in paragraph 7 shall be interrupted for a maximum of 30 working days if the applicant

- a) has a permanent address, registered office or place of business in a state that is not a member state of the European Union,
- b) is not subject to supervision by an authority of a member state of the European Union performing supervision of banks, insurance companies, reinsurance companies, investment services providers, investment companies or standard funds in accordance with the legal act governing collective investment.

(7) The Czech National Bank shall issue a decision on the application no later than 60 working days following the sending of the written confirmation of receipt of the application for consent pursuant to paragraph 3. If the Czech National Bank does not issue a decision within this time limit, consent shall be deemed to have been granted. This shall not apply to an application for consent submitted pursuant to paragraph 11.

(8) When assessing the application, the Czech National Bank shall consider only the conditions stipulated in paragraph 9 and shall not take into account the economic needs of the market.

(9) The Czech National Bank shall grant its consent to an application where the following conditions are met with regard to the potential impact on the bank's operations:

- a) the persons applying for consent must be trustworthy,
- b) the persons proposed as bank officers must meet the conditions of trustworthiness, competence and experience with no apparent doubt,
- c) the applicant's funds must be sufficient, transparent and unobjectionable with regard to the activities executed and planned in the bank,
- d) the bank must be able to continue meeting the prudential rules on both a solo and consolidated basis,

e) the structure of the consolidated group in which the bank is to be included must not prevent efficient banking supervision and efficient exchange of information between the Czech National Bank and the authority of another Member State performing financial market supervision, or must not impede the execution of the powers of individual supervisory authorities concerning the consolidated group and entities that are a part thereof, and
f) reasonable concern must not arise that an act laying down measures against money laundering and terrorist financing could be, or has been, violated in connection with the intended acquisition of, or increase in, the qualifying holding in the bank.

(10) An entity acquiring or increasing a qualifying holding in a bank or taking control of a bank without the prior consent of the Czech National Bank shall notify the Czech National Bank thereof and apply for its consent pursuant to paragraph 3 without undue delay.

(11) The consent referred to in paragraph 10 may also be granted subsequently in cases deserving of special consideration.

(12) Acquiring or increasing a qualifying holding in a bank or taking control of a bank without the prior consent of the Czech National Bank shall not render invalid the legal act resulting in such changes in holdings in the bank, although the voting rights linked with the holding thus acquired shall not be executed until the consent is granted.

(13) In its decision on the application, the Czech National Bank may

- a) restrict the time limit for the acquisition of the holding pursuant to paragraph 3,
- b) state conclusions resulting from the opinions it received when proceeding in accordance with paragraph 5 prior to issuing the decision.

(14) An entity or entities acting in concert shall notify the Czech National Bank without undue delay that

- a) they are reducing their qualifying holding in a bank so that it will fall below 50%, 30% or 20%, or are completely disposing of it, or
- b) they are reducing their qualifying holding in a bank so that they will cease to control it.

(15) The notification pursuant to paragraph 14 shall include information about the entity or entities reducing or disposing of their qualifying holding in the bank or the entity or entities ceasing to control it, information about the bank in which the share is to be reduced or disposed of completely or which is ceasing to be controlled, the overall share in this bank after its reduction, and information about the entity or entities acquiring or increasing their holding in the bank.

(16) For the purposes of the application pursuant to paragraph 4 and the notification under paragraph 14, information about the relevant entities shall mean

- a) for legal entities the commercial name or name, registered office and identification number, if assigned, and
- b) for natural persons the name and surname, date of birth, birth certificate number, if assigned, and permanent address; for entrepreneurs registered in the Companies Register the commercial name, or place of business, and identification number, if assigned.

(17) The bank shall notify the Czech National Bank in writing of any changes subject to the procedure referred to in paragraph 3 or 14 at the earliest opportunity after becoming aware of the material facts.

Article 20a

(1) Where a holding has been acquired in a bank without the Czech National Bank's prior consent referred to in Article 20(3) or after the time limit prescribed in Article 20(13) and the consent referred to in Article 20(11) was not granted, and furthermore where the entity fails to fulfil its notification duty pursuant to Article 20(10) or the Czech National Bank becomes aware that the influence exercised by the person or persons having a qualifying holding in the bank operates to the detriment of the sound and prudent management of the bank, or if such influence can reasonably be expected to be exercised, the Czech National Bank shall in administrative proceedings suspend the exercise of the following rights of the shareholder who alone or by acting in concert with other persons has a qualifying holding in the bank:

a) to attend and vote in a General Meeting,

b) to request the convening of an Extraordinary General Meeting.

It shall only be possible to suspend the exercise of all the above rights. The filing of a remedial action against the decision to suspend shareholder rights shall have no suspensory effect.

(2) Where a bank is controlled pursuant to in Article 20(3)(c) without the prior consent of the Czech National Bank or after the time limit prescribed in Article 20(10) and the consent referred to in Article 20(11) was not granted, and furthermore where the Czech National Bank becomes aware that the influence exercised by the parent undertaking operates to the detriment of the sound and prudent management of the bank, or if such influence can reasonably be expected, the Czech National Bank shall in administrative proceedings suspend the control agreement and the control agreement shall terminate on the earliest possible date allowed by the Commercial Code. The provisions of Article 26(5) and (7) shall apply *mutatis mutandis*. The Czech National Bank shall promulgate its decision to suspend the control agreement in the Commercial Bulletin.

(3) A bank shall submit to the Czech National Bank an extract of all shareholders and trustees from the bank's share issue as of the day preceding the date of the General Meeting by seven days. This extract must be delivered by the bank to the Czech National Bank no later than six days before the General Meeting. The Czech National Bank shall approve the list of shareholders stated in the extract from the bank's share issue or, at the earliest opportunity, indicate in a written opinion on the extract from the bank's share issue those shareholders whose shareholder rights have been suspended or whose shareholder rights it has newly found reason to suspend, and it shall return the extract, together with its opinion, to the bank no later than on the day preceding the date of the General Meeting.

(4) The bank shall not permit any person indicated by the Czech National Bank in its opinion on the extract from the bank's share issue pursuant to paragraph 3, or any person not stated in the extract from the bank's share issue or persons standing proxy for those persons, to attend the General Meeting. If the Czech National Bank indicates persons whose shareholder rights it has newly found reason to suspend, administrative proceedings shall thereby be opened pursuant to paragraph 1, unless administrative proceedings have already been opened, and the indicating of those persons shall have the effect of a preliminary measure.¹¹⁾

(5) The General Meeting of the bank may not be held without the Czech National Bank's written opinion on the extract from the bank's share issue.

(6) The Czech National Bank may propose that a court of law declare, under conditions laid down in a special legal rule, a resolution adopted by the General Meeting of the bank invalid if it is in contravention of the legal rules or the Articles of Association.

(7) The fact that the exercise of a shareholder's rights has been suspended under paragraph 1 shall not change the share in voting rights of the shareholder or other entities.

(8) The central depository^{1a)} shall, at any time, upon request, provide the Czech National Bank with an extract from the bank's share issue, listing all shareholders of the bank, even in cases where the central depository maintains these shares on client accounts.

Article 20b

(1) The Czech National Bank shall maintain an interbank payment system account in Czech koruna for each bank which participates in the payment system operated by the Czech National Bank. The interbank payment system account may not be subject to the execution of a decision or preliminary measure.

(2) Paragraph 1 shall also apply to foreign bank branches.

Article 20c

(1) Where a bank or credit union within the territory of the Czech Republic has failed to settle an amount in the Czech currency or where it has failed to use the bank details as instructed by its client and has thereby caused incorrect execution of a payment transaction, the bank maintaining the account of the unauthorised beneficiary shall, at the request of the bank or credit union which caused the incorrect execution of the payment transaction, debit from this account the incorrectly settled amount and provide it to the bank or credit union which caused the incorrect execution of the payment transaction in order to correct the incorrectly executed payment transaction in accordance with the act governing the payment system; the bank shall also be entitled to restore the account of the unauthorised beneficiary to the position as if the incorrect execution of the payment transaction had not taken place (hereinafter referred to as "corrective settlement").

(2) A request pursuant to paragraph 1 may be submitted within three months from the occurrence of the error resulting in the incorrect execution of the payment transaction.

(3) Corrective settlement involving the debiting of the accounts of tax authorities shall not be permitted; the bank which caused the incorrect execution of the payment transaction shall apply to the relevant tax authority for a refund of the amount in question.

(4) The provisions of paragraphs 1 to 3 shall also apply to foreign bank branches.

PART FIVE

Accounting and business documentation

Article 21

(1) Banks and foreign bank branches shall keep books and accounts in accordance with a special legislative act.⁶⁾

(2) Banks and branches of foreign banks shall keep separate records in their accounts of transactions made for a client's account and those made for the account of the bank or foreign bank. Records of transactions shall be kept by banks and branches of foreign banks for a period of at least ten years.

Article 22

(1) A bank shall arrange for an auditor to perform:

a) an audit of its financial statements;

b) an audit of its management and control system; the bank shall provide the auditor with an overview of the internal inspections conducted which relate to this audit;

c) preparation of reports on the audit of its financial statements and management and control system; the bank shall submit those reports to the Czech National Bank on the stipulated dates.

d) an audit of the disclosed data stipulated in Article 11a, within the scope set forth in a decree of the Czech National Bank pursuant to Article 11a(9)(b).

(2) The Czech National Bank shall stipulate in a decree the content of the reports on the audit of the bank's management and control system referred to in paragraph 1(b) and (c), the manner, structure and frequency of the preparation thereof and the date for submission thereof.

(3) The Czech National Bank may waive the requirement for an audit of the system referred to in paragraph 1(b) or limit it to only some of the parts thereof. The Administrative Procedure Code shall not apply to proceedings on the waiver or limitation of the audit requirement. The Czech National Bank shall inform the bank of the intention to waive or limit the requirement for an audit of the system referred to in paragraph 1(b) by 30 April of the relevant calendar year. The bank may provide reasoned comments on the intention of the Czech National Bank within 20 working days of receipt thereof. The Czech National Bank shall discuss comments received within the specified time limit and shall inform the bank by 30 June of the relevant calendar year as to whether it will waive the audit of the system referred to in paragraph 1(b) or limit the performance of this audit in some way.

(4) The bank shall notify the Czech National Bank of the auditor it has selected. The Czech National Bank shall be entitled to reject the auditor within 30 days of receiving this notification. The bank shall provide notification of a new auditor within 30 days of the Czech National Bank's rejection.

(5) The audit of the information referred to in paragraph 1 may not be performed in the bank by an auditor having a special relation to the bank as defined in Article 19(1). The same shall apply to natural persons performing auditing activities on behalf of the auditor.

(6) If any shortcomings are detected, the reports referred to in paragraph 1(c) shall describe the influence of those shortcomings on the performance and liquidity of the bank and on the creation and allocation of profits/losses.

(7) The duties ensuing from paragraphs 1 to 5 shall apply mutatis mutandis to branches of foreign banks.

Article 23

(1) Within four months of the end of the accounting period, a bank shall publish an annual report in the manner set forth in a special legal rule⁶⁾ and a consolidated annual report pursuant to a special legal rule⁶⁾; these shall both include an audited financial statement, if the bank is obliged to draw one up. The bank shall also submit the annual report and the consolidated annual report to the Czech National Bank within the same time limit. If the General Meeting of the bank does not approve the financial statement or consolidated financial statement, the bank shall at the earliest opportunity publish and provide to the Czech National Bank its reasons for not approving the financial statement or consolidated financial statement and its method for dealing with the General Meeting's comments on them.

(2) If a bank posts a loss in the current year, the General Meeting shall decide on the covering of the loss from the bank's own funds when approving the financial statements of the bank for that year.

Article 24

(1) Banks and foreign bank branches shall produce and submit to the Czech National Bank information and documents the content, form, closing dates and manner of submission of which shall be stipulated by the Czech National Bank in a decree. Banks and foreign bank branches shall submit to the Czech National Bank at its request other documents and other materials necessary for the exercise of supervision on a solo and consolidated basis and to provide all the information necessary therefor as required by the Czech National Bank.

(2) The Czech National Bank shall stipulate information and documents referred to in paragraph 1 different for banks and foreign bank branches from the information and documents for other entities on the financial market in a provision to be promulgated in the Bulletin of the Czech National Bank.²⁾

(3) Where a bank has a holding of 20 per cent or more in one or more commercial companies or other legal entities, the information and documents referred to in paragraph 1 shall also include information concerning those commercial companies or other legal entities.

PART SIX

Banking supervision and the confidentiality obligation

Article 25

(1) The activities of banks, including branches thereof carrying on activities within the territory of another country, shall be subject to banking supervision by the Czech National Bank, including on-site examinations. The activities of branches of foreign banks shall be subject to supervision by the home country of the foreign bank and to the extent stipulated by law for the banking supervision exercised by the Czech National Bank. The activities of consolidated groups (Article 26d(1)(a)) containing a bank shall be subject to banking supervision on a consolidated basis by the Czech National Bank, including on-site examinations, save as where the law provides otherwise.

(2) The Czech National Bank may ask the supervisory authority of the relevant country for an on-site examination of the entities it supervises outside the territory of the Czech Republic. The Czech National Bank may meet the request of the home country supervisory authority of a bank or financial institution for the carrying-out of an on-site examination of an entity it supervises. Such entities shall allow the carrying-out of an on-site examination and give the necessary assistance to the competent authority. The Czech National Bank shall allow the home country supervisory authority of a foreign bank or financial institution to carry out on-site examinations on the basis of reciprocity. The supervisory authority that requested the on-site examination shall be entitled to participate in the examination, unless the examination is carried out by such supervisory authority itself.

(3) When exercising supervision, the Czech National Bank shall review and evaluate whether the arrangements, strategies, processes and mechanisms implemented by the bank and the capital of the bank ensure the safe and sound operation of the bank and coverage of the risks to which it is or might be exposed. The Czech National Bank shall establish the frequency and intensity of this review and evaluation in proportion to the size, significance and position of the bank on the financial market and the nature, scale and complexity of its activities, but shall perform such review and evaluation at least once a year.

(4) The Czech National Bank shall participate in the activities of the Committee of European Banking Supervisors^{7b)} (hereinafter referred to as the “Committee”).

(5) In discharging its responsibilities pursuant to this Act and the act governing the activities of credit unions, the Czech National Bank shall take into account convergence of the instruments and procedures of banking supervision used in Member States; it shall follow the guidelines, recommendations, standards and other measures taken by the Committee unless it states its reasons for not doing so.

Article 25a

(1) All persons exercising banking supervision or conservatorship shall maintain confidentiality regarding all information acquired in the context of the performance of their occupation, employment or duties. They may divulge to third parties information in aggregate form only such that the specific bank or person in question cannot be identified. The obligation of confidentiality shall persist even after their occupation, employment or duties have ceased.

(2) The persons referred to in paragraph 1 may use information acquired when performing their duties solely for executing the tasks of banking supervision and conservatorship or in judicial proceedings concerning the decisions or the exercise of banking supervision or in like proceedings before an international authority.

(3) Subject to compliance with the statutory conditions, disclosure of information acquired in the context of exercising banking supervision or supplementary supervision of entities in a financial conglomerate^(6d) to an authority responsible for supervising banks, financial institutions or financial markets in another state and disclosure of information to the Ministry of Finance for the purposes of state control of compliance with the conditions for providing state support pursuant to a special legal rule^(6e) shall not be deemed a breach of the confidentiality obligation. Disclosure of information acquired while exercising banking supervision to employees of the Czech National Bank who are involved in exercising supervision of the financial market for the performance of their duties shall not be deemed a breach of the confidentiality obligation referred to in paragraph 1.

(4) Subject to compliance with the statutory conditions, disclosure of information acquired in the context of exercising banking supervision to public authorities and other entities in the Czech Republic shall not be deemed a breach of the confidentiality obligation, provided that the information is disclosed for the performance of their duties:

- a) as authorities involved in the liquidation or insolvency of a bank or financial institution,
- b) of supervision of the authority referred to in subparagraph a),
- c) as auditor of the statutory financial statements of a bank or financial institution,
- d) of supervision of the auditor of the statutory financial statements of a bank or financial institution,
- e) of supervision of compliance with company law,
- f) in combating money laundering and terrorist financing, or imposing international sanctions for the purposes of maintaining international peace and security, protecting fundamental human rights and combating terrorism,
- g) of supervision of payment or settlement systems,
- h) as operator of a payment or settlement system,
- i) as a law enforcement authority,
- j) as a central bank of the European System of Central Banks if the information is significant for the performance of its tasks stipulated by legal regulations, including the implementation of monetary policy and the related provision of liquidity, supervision of payment and settlement systems and securities settlement systems and protection of the stability of the financial system.
- k) as systems of insurance of deposit claims and insurance of investors.
- l) as a public authority responsible for the preparation of legal regulations relating to the supervision of banks and financial institutions, as well as persons authorised by such authorities to perform control work.

The same shall apply with respect to public authorities and other entities in Member States and, with the exception of the authorities and entities referred to in letters g), h), j) and l) in other states.

(5) Information acquired in the context of exercising banking supervision may also be disclosed to European Union bodies where necessary to meet the obligations of international treaties.

(6) Information acquired in the context of performing banking supervision may also be disclosed to international organisations operating in the area of combating criminal activities and also to law enforcement authorities of foreign countries to allow them to fulfil their functions.

(7) The information referred to in paragraphs 3, 4 and 6 may be disclosed only on condition that the institution concerned has in place an information protection regime at least within the scope of European Union law.

(8) Information acquired from the authorities of foreign states may be used solely for the purposes for which it was provided and may not be disclosed to any other person without the consent of the provider.

(9) Information acquired during on-site supervision within the territory of another state may not be disclosed to any other person without the consent of the banking supervisory authority of that state.

Article 25b

Should the Czech National Bank, when supervising a bank, detect an emergency, including adverse developments in financial markets, as a result of which the liquidity of the market and the stability of the financial system might be jeopardised in the Czech Republic (hereinafter referred to as an “emergency”), it shall report this fact without undue delay to

- a) the central banks of the European System of Central Banks in Member States affected by this situation under the conditions laid down in Article 25a(4)(j), and
- b) the public authorities referred to in Article 25a(4)(l) in Member States affected by this situation where this information is relevant to them.

PART SEVEN

Remedial measures and penalties

Article 26

(1) Should the Czech National Bank detect any shortcomings in the activities of a bank or a foreign bank branch, it shall be entitled, according to the nature of the shortcoming, to:

- a) demand that the relevant bank or foreign bank branch remedy the situation within a specified period, or rectify the shortcoming in its activities, by
 1. restricting some of its permitted activities, ceasing non-permitted activities or not executing certain transactions, money transfers or other operations,
 2. restricting its distribution network, including reducing the number of business units,
 3. replacing persons in the management of the bank or foreign bank branch,
 4. replacing members of the bank’s supervisory board,
 5. bringing its arrangements, strategies, processes and mechanisms into compliance with this Act,

6. adopting stricter liquidity rules, stricter rules for creating provisions for the bank's assets and reserves or for determining capital requirements,
 7. creating adequate provisions and reserves,
 8. maintaining capital above the threshold stipulated in Article 12a(1),
 9. reducing its capital to a specified extent,
 10. using its profit after tax preferentially to supplement its reserve funds or to increase its capital, or
 11. reducing its share in another entity or transferring its share in the entity to another entity or otherwise limiting the risks ensuing from the bank's share in the entity,
 12. reducing a flexible pay element of persons referred to in Article 8b(1)(a)(4) if it is not in compliance with maintaining capital pursuant to Articles 12a and 12c; in such case a bank or a foreign bank branch shall set the amount of the flexible pay element as a percentage of net profit or of some other indicator determined by the Czech National Bank.
 13. adjusting the capital structure by replacing an instrument that can be included in additional original capital in accordance with a decree of the Czech National Bank published pursuant to Article 12a(8)^{7c)} with a similar instrument or with a proportionate increase in capital, or
 14. not paying interest, shares in profit or any similar consideration arising from an instrument that can be included in additional original capital in accordance with a decree of the Czech National Bank published pursuant to Article 12a(8)^{7c)},
- b) change the licence by excluding or restricting some of the activities listed therein,
 - c) order an extraordinary audit at the expense of the bank or foreign bank branch concerned.
 - d) impose conservatorship,
 - e) impose a fine of up to CZK 50,000,000,
 - f) reduce the capital of the bank in order to cover the loss by an amount corresponding to the loss after clearance thereof with reserve funds and other funds, provided that the loss exceeds 20% of the bank's equity,
 - g) prohibit or restrict the execution of transactions with legal entities which have close links with the bank or which belong to the same consolidated group as the bank or which have a special relation to the bank (Article 19),
 - h) require an increase in capital above the level laid down in Article 12a, in connection with the results of a review and assessment conducted pursuant to Article 25(3), particularly if it identifies shortcomings in the arrangement, strategies, procedures or other mechanisms of the control system regulated in Article 8b or shortcomings in the strategies or procedures regulated in Article 12c(1), or in the application thereof, and the imposition of measures pursuant to (a) to (g) seems to be insufficient for rectifying the situation in reasonable time; the same shall apply under the conditions stipulated in Article 26k(1) and (2) to a foreign bank that is a member of a European parent bank group (Article 26d(1)(l)), a member of a European financial holding entity group (Article 26d(1)(n)) or a member of a European parent investment firm group under the act governing capital market undertakings which is supervised by the Czech National Bank on a consolidated basis, in which case an increase in capital above the threshold stipulated by legal regulations abroad may be required,
 - i) require an increase in the liquid funds of the bank or foreign bank branch at least to the level required by the Czech National Bank.

(2) The measures referred to in paragraphs 1(b) to (f) shall be taken if the demand referred to in paragraph 1(a) is not complied with; depending on the nature of the shortcoming, and especially in emergencies, these measures may be applied even without the prior demand referred to in paragraph 1(a). The measures referred to in paragraphs 1(d) and (f) to (h) may not be taken against branches of foreign banks.

(3) “Shortcoming in the activities” shall mean:

- a) failure to comply with the conditions stipulated in the licence or to fulfil the conditions under which the licence was granted pursuant to Article 4(5) or Article 5(4);
- b) failure to comply with, or circumvention of, this Act, special legislative acts, legal rules and the provisions issued by the Czech National Bank;
- c) failure to comply with, or circumvention of, the obligations or conditions set forth in a decision of the Czech National Bank or in a measure of a general nature under Article 26bb;
- d) the execution of, or a decision to execute, a transaction or transactions, a money transfer or money transfers or any other operation or operations by the bank or foreign bank branch in a manner which is detrimental to the interests of its depositors or which endangers the safety and soundness of the bank or foreign bank branch;
- e) management of the bank or foreign bank branch by persons who are not sufficiently competent or who are not trustworthy;
- f) a situation where the total volume of reserves and provisions set aside by the bank is not sufficient to cover the risks arising from the volume of classified assets recorded by the bank;
- g) contravention of a legal rule of the state within the territory of which the bank has a branch when carrying on business activities within the territory of that state;
- h) a fall in capital below the minimum level stipulated in Article 4(1);
- i) breach of the obligations stipulated in a special legal rule^{6a)} for remote concluding of financial services agreements;
- j) use of a credit assessment to calculate capital requirements in contradiction with this Act.

(4) The only party to the proceedings shall be the bank concerned.

(5) Proceedings may also be opened by the serving of a decision.

(6) The Czech National Bank shall serve delivery into own hands by handing the decision over to a member of the bank’s board of directors or a member of the bank’s supervisory board or to the person authorised to manage the bank or foreign bank branch. If any of these persons refuses to take delivery of the decision, it shall be considered served as of the moment of refusal.

(7) An appeal may be filed against the decision. The appeal shall have no suspensory effect, unless it concerns a decision to impose a fine. Decisions concerning appeals shall be made by the Bank Board of the Czech National Bank.

(8) The time limit for execution of the decision served shall be at least 24 hours.

(9) The Czech National Bank may also impose the fine referred to in paragraph 1(e) on a person who fails to comply with the provisions of Article 3, Article 20(3) or Article 20(10).

(10) The imposition of the fine referred to in paragraph 1(e) shall be without prejudice to liability under other legal rules.

(11) The fine referred to in paragraph 1(e) shall constitute a state budget revenue. Such a fine may be imposed up to one year from the detection of the shortcoming, but no later than ten years from the date on which the shortcoming arose.

Article 26a

(1) If the Czech National Bank becomes aware that a bank's capital on a solo basis is lower than two thirds of the sum of the individual capital requirements within the meaning of Article 12a(1), it shall in administrative proceedings impose one or more of the following remedial measures on the bank:

- a) to increase its capital such that the capital of the bank on a solo basis is at least equal to the sum of the individual capital requirements within the meaning of Article 12a(1),
- b) to acquire assets which, according to the decree issued under Article 12a(8), have a risk weighting of less than 100% only,
- c) not to acquire any share of the capital and voting rights of any legal entity, except for agreements concluded before the imposition of this measure, and not to establish or acquire any other legal entity or organisational unit thereof,
- d) not to provide any loan to a person having a special relation to the bank,
- e) not to offer interest rates on deposits exceeding the usual current interest rates on deposits of like amounts and with like maturity as ascertained by the Czech National Bank.

(2) Simultaneously with the measures referred to in paragraph 1, the Czech National Bank may apply the remedial measures and sanctions referred to in Article 26(1).

Article 26b

If the statutory body or supervisory board becomes aware that the bank is, or will become, insolvent or that the bank has incurred, or will probably incur, losses which have caused, or may cause, the bank's capital on a solo basis to fall below two thirds of the sum of the individual capital requirements, it shall notify the Czech National Bank of this fact at the earliest opportunity.

Article 26ba

(1) If a bank's capital decreases below the threshold stipulated in Article 12a and the bank increases its capital to meet the capital requirements laid down in this Act and a legal rule issued on the basis thereof:

- a) this shall represent an important interest of the company to restrict or exclude the preferential right to subscribe for new shares; this shall be without prejudice to Article 29(2), second sentence;
- b) the issue price shall be the same for all subscribers;
- c) new shares may be subscribed for even if the shareholders have yet to pay the issue price of the formerly subscribed shares; however, the new shares shall not be subscribed for by a shareholder who has yet to pay the issue price of the formerly subscribed shares;
- d) the right to preferential subscription shall not be separately transferable;
- e) the bank shall publish an invitation to the General Meeting at least seven days before the General Meeting;
- f) the Board of Directors shall file a proposal to enter the resolution of the General Meeting to increase the capital in the Companies Register within seven days of its adoption;
- g) the time limit for subscribing for new shares using the preferential right shall be fourteen days from the day on which the resolution of the General Meeting to increase the capital is entered in the Companies Register;

- h) the time limit for subscribing for new shares without using the preferential right shall be fourteen days from the lapse of the time limit under subparagraph g) or, if preferential right of shareholders to subscribe for new shares was excluded, from the day on which the resolution of the General Meeting to increase the capital is entered in the Companies Register;
- i) the subscriber shall pay the issue price of the new shares within the time limit for subscription, otherwise his subscription shall be invalid;
- j) the issue price of the new shares shall be paid in cash or by a non-cash deposit in the form of a cash receivable from the bank.

(2) The invitation to a General Meeting convened to decide on increasing the bank's capital under paragraph 1 shall state the reasons why this procedure was selected and how it differs from the capital increasing procedure laid down in the Commercial Code; however, failure to fulfil this obligation shall not render the subsequent resolution of the General Meeting invalid.

Article 26bb

(1) The Czech National Bank shall issue a measure of a general nature pursuant to paragraph 2

- a) if the stability of the banking or financial system is jeopardised and where appropriate to eliminate the jeopardy, or
- b) if the stability of the banking or financial sector has already been disrupted, where this is appropriate to alleviate the consequences of such disruption.

(2) With respect to banks, foreign bank branches, a group of banks defined by type or a group of foreign bank branches defined by type, the measure of a general nature issued by the Czech National Bank shall:

- a) stipulate a temporary exemption from the obligations laid down in Articles 4, 5, 11 to 24 or 26f, or from rules laid down on the basis of this Act,
- b) temporarily prohibit or restrict some licensed activities or the execution of some transactions, money transfers or other operations, or
- c) set time limits and a frequency for the disclosure duties of a bank or foreign bank branch at variance with this Act or a legal rule issued on the basis thereof.

(3) The measure of a general nature shall be issued without a proceeding to propose a measure of a general nature. The measure of a general nature shall take effect on the day of its publication on the Czech National Bank's official board; publication on the official board of any other authority shall not be required. The measure of a general nature shall cease to be effective six months after it takes effect, unless it ceases to be effective earlier.

(4) Banks and foreign bank branches shall be the only entities whose rights, obligations or justified interests may be affected by the measure of a general nature issued by the Czech National Bank. These entities shall be entitled to file justified written objections to the issued measure within five working days of the publication thereof. The filed objections shall not have suspensory effect. The Czech National Bank shall decide on the filed objections, and no remedial measure may be filed against this decision.

PART EIGHT

Banking supervision on a consolidated basis

Article 26c

- (1) Banking supervision on a consolidated basis shall mean the monitoring and regulation of the risks of consolidated groups containing a bank in order to limit the risks to which the bank is exposed in respect of its membership of the consolidated group.
- (2) Banking supervision on a consolidated basis shall not mean supervision of the individual entities belonging to a consolidated group, nor shall it substitute for banking supervision on a solo basis pursuant to this Act or for supervision of financial institutions pursuant to special legislative acts.
- (3) Without prejudice to Article 25a, when exercising supervision on a consolidated basis the Czech National Bank shall cooperate with the authorities responsible for supervising banks and financial institutions in other countries and shall be entitled to exchange information with them.
- (4) The Czech National Bank may, for the purposes of exercising supervision on a consolidated basis, carry out an on-site examination in the entities belonging to a consolidated group or ask the competent foreign supervisory authority to carry out such an examination. The Czech National Bank shall notify the foreign authority responsible for supervising the inspected entity of the commencement, purpose and results of the on-site examination. This shall apply without prejudice to Article 25a.
- (5) Entities belonging to a consolidated group shall allow the carrying-out of the on-site examination referred to in paragraph 4 and to give the necessary assistance to the Czech National Bank.
- (6) Where the Czech National Bank requires information necessary for exercising banking supervision on a consolidated basis and it knows that such information has already been given to another supervisory authority by a member of the consolidated group, it shall preferentially request that authority for such information.
- (7) Banking supervision of a member of European parent bank group (Article 26d(1)(l)) or of a member of a European financial holding entity group (Article 26d (1)(n)) performed by the Czech National Bank shall be based on written coordination and cooperation agreements with the authority supervising this group on a consolidated basis. These agreements may entrust such supervisory authority with tasks relating to this coordination and cooperation.
- (8) Where the Czech National Bank supervises a European parent bank group or a European financial holding entity group on a consolidated basis, it must have in place written coordination and cooperation agreements with the authorities supervising members of this group. These agreements may entrust the Czech National Bank with tasks relating to this coordination and cooperation.
- (9) Instead of the Czech National Bank, a supervisory authority of a Member State supervising a European parent bank group or a European financial holding entity group on a consolidated basis shall be competent in accordance with European Union law¹⁷⁾ to perform banking supervision of a member of this group having its registered office in the Czech

Republic within the scope and under conditions stipulated by an international treaty. This international treaty shall always stipulate the conditions under which the Czech Republic is entitled to recourse payment by a supervisory authority of another Member State, or by a Member State within the territory of which this authority is seated, if it has paid compensation for damage or non-proprietary loss caused by this authority in the performance of supervision due to an unlawful decision or maladministration. The Czech National Bank shall notify the European Commission of this treaty. The laws of the Czech Republic shall apply to the performance of banking supervision by a supervisory authority of another Member State. Liability for damage caused by a supervisory authority of another Member State due to its decision or maladministration in the performance of banking supervision shall be assessed in compliance with the act governing liability for damage caused in the exercise of public authority¹⁸⁾.

(10) Instead of a supervisory authority of another Member State performing supervision of a European parent bank group on a consolidated basis, the Czech National Bank, performing supervision of a European parent bank group or a European financial holding entity group on a consolidated basis, shall be competent in accordance with European Union law¹⁷⁾ to perform supervision of a member of this group having its registered office in another Member State within the scope and under conditions stipulated by an international treaty. The Czech National Bank shall notify the European Commission of this treaty.

Article 26d

(1) For the purposes of this Act:

- a) “consolidated group” shall mean a parent bank (controlling bank) group, a foreign parent bank group, a financial holding entity group or a mixed-activity holding entity group, such consolidated group consisting of at least two entities,
- b) “parent bank” (controlling bank) shall mean a bank, the subsidiary (controlled entity) or affiliate of which is a bank, a financial institution or an ancillary services undertaking,
- c) “financial holding entity” shall mean a parent undertaking which
 1. is a financial institution other than an investment firm, a foreign entity having its registered office in a Member State which is authorised to provide investment services in that Member State, an insurance or reinsurance company,
 2. is not a mixed-activity holding entity pursuant to a special legal rule^{6d)}, and
 3. controls exclusively or principally banks or financial institutions, where at least one of its subsidiaries is a bank,
- d) “mixed-activity holding entity” shall mean a parent undertaking (controlling person) other than a bank, a foreign bank, a financial holding entity or a mixed-activity financial holding entity pursuant to a special legal rule^{6d)}, where at least one of its subsidiaries is a bank,
- e) “parent bank group” shall mean a group which consists of a bank and its subsidiaries and affiliates,
- f) “financial holding entity group” shall mean a group which consists of a financial holding entity and its subsidiaries and affiliates,
- g) “mixed-activity holding entity group” shall mean a group which consists of a mixed-activity holding entity and its subsidiaries and affiliates,
- h) “affiliate” shall mean an entity in which another entity exercises a significant influence, which shall mean such significant influence over the management or operation of the business activities of such entity which is other than control and other than only temporary in nature and the purpose of which is to participate in the business activities of such entity; a direct or

indirect holding treated separately or totalling 20% or more of the capital or of the voting rights shall be always considered a significant influence unless it is a case of control,

i) “foreign parent bank” shall mean a foreign bank which has a bank as a subsidiary,

j) “foreign parent bank group” shall mean a group which consists of a foreign parent bank and its subsidiaries and affiliates,

k) “domestic parent bank” shall mean a parent bank which is simultaneously not a subsidiary of another bank or financial holding entity having its registered office in the Czech Republic,

l) “European parent bank” shall mean a parent bank or foreign parent bank which is authorised to carry on business in a Member State and which is not a subsidiary of another bank or foreign bank which is authorised to carry on business in any Member State, or of a financial holding entity having its registered office in any Member State,

m) “domestic financial holding entity” shall mean a financial holding entity having its registered office in the Czech Republic which is simultaneously not a subsidiary of a bank or financial holding entity having its registered office in the Czech Republic,

n) “European financial holding entity” shall mean a financial holding entity having its registered office in a Member State which is not a subsidiary of a bank or foreign bank which is authorised to carry on business in any Member State, or of a financial holding entity having its registered office in any Member State,

o) “responsible bank in a financial holding entity group” shall mean a bank which is a subsidiary of a financial holding entity having its registered office:

1. in the Czech Republic,

2. in another Member State, where this financial holding entity simultaneously is not the parent undertaking of a foreign bank which is authorised to carry on business in this Member State, or of a foreign bank with a larger balance-sheet total which is authorised to carry on business in another Member State, or

3. in a non-Member State, unless the Czech National Bank has waived the exercise of banking supervision on a consolidated basis of this financial holding entity group pursuant to Article 26e(5),

4. where there is more than one bank in the consolidated group referred to in points 1 to 3, “responsible bank in a financial holding entity group” shall mean the bank with the largest balance-sheet total,

p) “responsible bank in a foreign parent bank group” shall mean a bank which is a subsidiary of a foreign parent bank which is authorised to carry on business in a non-Member State, unless the Czech National Bank has waived the exercise of banking supervision on a consolidated basis of this foreign parent bank group pursuant to Article 26e(5); where there is more than one bank in such consolidated group, “responsible bank in a foreign parent bank group” shall mean the bank with the largest balance-sheet total.

(2) Where the relationships within a consolidated group are such that it is not possible to determine unambiguously the parent undertaking or type thereof, the Czech National Bank shall be entitled to designate, by agreement with the competent foreign authority responsible for supervising banks or financial institutions, the parent undertaking of the consolidated group or type thereof.

(3) The Czech National Bank stipulate in a decree the criteria for exempting entities from a consolidated group for the purposes of compliance with the prudential rules on a consolidated basis.

(4) Investment firms not referred to in Article 8a (1) to (3) of the Capital Market Undertakings Act shall be exempt from supervision of the consolidated group.

Article 26e

(1) The Czech National Bank shall exercise banking supervision on a consolidated basis of a parent bank group and of a foreign parent bank group, the members of which include a responsible bank in a foreign parent bank group. A group of a parent bank which is a subsidiary of a domestic parent bank or a domestic financial holding entity shall be subject to banking supervision on a consolidated basis only if a foreign bank or financial institution having its registered office in a non-Member State is a member of this group.

(2) The Czech National Bank shall exercise banking supervision on a consolidated basis of a financial holding entity group, the members of which include a responsible bank in a financial holding entity group. A group of a financial holding entity which is a subsidiary of a domestic parent bank or a domestic financial holding entity shall be subject to banking supervision on a consolidated basis only if a foreign bank or financial institution having its registered office in a non-Member State is a member of this group.

(3) The Czech National Bank:

a) shall exercise supervision of a financial holding entity group which does not meet the conditions given in the first sentence of paragraph 2, or

b) shall waive the exercise of supervision of a financial holding entity group which meets the conditions given in the first sentence of paragraph 2 if it so agrees with the competent supervisory authority of a Member State and if it feels that the designation of the responsible bank in the financial holding entity group according to the criteria stipulated in this Act [Article 26d(1)(o)] is inappropriate, having regard in particular to the significance of the banks or foreign banks which are members of this consolidated group for the financial market in the Member States concerned. In such case, however, the Czech National Bank or the competent supervisory authority shall seek the opinion of the responsible bank in the group of the financial holding entity or the European financial holding entity group which is a member of consolidated group concerned. Where the Czech National Bank applies the procedure given in letter a), it shall designate the bank that will fulfil the obligations of responsible bank in the financial holding entity group.

(4) The Czech National Bank shall exercise banking supervision on a consolidated basis of a mixed-activity holding entity group.

(5) The Czech National Bank may waive the exercise of banking supervision on a consolidated basis of a consolidated group where the parent undertaking has its registered office in a non-Member State, provided that this consolidated group is subject to like banking supervision on a consolidated basis. Prior to making such a decision, the Czech National Bank seek the opinion of the authority supervising a foreign bank having its registered office in another Member State and belonging to the same consolidated group, and of the European Banking Committee. Should there be no like banking supervision on a consolidated basis of such consolidated group, the Czech National Bank may require the members of the consolidated group to establish a financial holding entity in the territory of the Czech Republic or another Member State. The Czech National Bank shall inform the authority supervising the bank having its registered office in another Member State and belonging to the same consolidated group, and the European Commission, of the procedure referred to in the third sentence.

Article 26f

(1) A parent bank, a responsible bank in a financial holding entity group, a responsible bank in a foreign parent bank group and a bank in a mixed-activity holding entity group which are members of a consolidated group subject to banking supervision by the Czech National Bank shall comply on a consolidated basis with:

- a) the requirements for the management and control system (Article 8b),
- b) the rules for disclosure of information (Article 11a),
- c) the rules for determination of capital and the rules for determination of capital requirements and capital adequacy (Article 12a),
- d) the strategies and processes for assessing and changing internal capital (Article 12c),
- e) the exposure rules (Article 13),
- f) the restrictions on qualifying holdings (Article 17),
- g) the requirements for operations within a consolidated group (Article 26g(4)).

(2) Entities belonging to a consolidated group shall supply the Czech National Bank, regularly or on request, either directly or via a bank referred to in paragraph 1, with all the information necessary for exercising supervision on a consolidated basis. The Czech National Bank shall stipulate in a decree the manner of submission of regular information and the scope, structure, frequency and dates of disclosure.

Article 26g

(1) Entities belonging to a consolidated group shall create adequate control mechanisms ensuring the correctness of information supplied for the purposes of banking supervision on a consolidated basis.

(2) A domestic parent bank, a responsible bank in a financial holding entity group and a responsible bank in a foreign parent bank group shall notify the Czech National Bank in advance of the auditors that will audit the entities belonging to the consolidated group subject to banking supervision by the Czech National Bank.

(3) A domestic parent bank, a responsible bank in a financial holding entity group, a responsible bank in a foreign parent bank group and a bank in a mixed-activity holding entity group shall arrange an audit of information that they submit for the purposes of banking supervision on a consolidated basis, in the manner and within the scope set forth in a decree of the Czech National Bank.

(4) A bank shall duly monitor its operations with members of the same consolidated group, manage the associated risks, and subject them to appropriate internal control mechanisms.

(5) A financial holding entity shall ensure that its statutory body, a member thereof or any other natural person that manages the business of the financial holding entity or of a legal entity that is its statutory body or a member thereof (hereinafter referred to as a “person in an executive managerial position”), either alone or together with other persons, is a trustworthy

person having enough experience to discharge the office and to meet requirements applying to the financial holding entity under this Act.

(6) A financial holding entity shall inform the Czech National Bank in advance of planned personnel changes in executive managerial positions and, at the same time, submit supporting documents proving the trustworthiness and experience of the nominated persons. An entity that has become a new financial holding entity shall be obliged to meet this requirement concerning the persons in executive managerial positions within two months from when it became a financial holding entity; otherwise the persons in executive managerial positions shall be deemed not to have complied with the set preconditions. The natural person concerned shall submit the necessary supporting documents and give assistance to the financial holding entity. The Czech National Bank shall specify the supporting documents proving the trustworthiness and experience of persons in executive managerial positions of a financial holding entity in a decree.

(7) The Czech National Bank may require a financial holding entity to change a person in an executive managerial position of the financial holding entity if such person is not sufficiently experienced or trustworthy.

Article 26h

(1) The Czech National Bank may in administrative proceedings impose a fine of up to CZK 50,000,000 on an entity which is not a bank and which belongs to a consolidated group if it does not supply the information required for the purposes of banking supervision on a consolidated basis or if it supplies incomplete, false or distorted information or it does not comply with the time limit for submission thereof.

(2) Should the Czech National Bank detect any shortcomings in the activities of an entity belonging to a consolidated group which might adversely affect the performance of a bank that belongs to the consolidated group, it shall be entitled, in respect of a parent bank, a responsible bank in a financial holding entity group, a financial holding entity, a responsible bank in a foreign parent bank group, a bank in a mixed-activity holding entity group or a mixed-activity holding entity, according to the nature of the shortcoming, to:

- a) demand that it remedy the situation within a specified period,
- b) order an extraordinary audit in the entity which belongs to the consolidated group, at the expense of the parent undertaking,
- c) impose a fine of up to CZK 50,000,000,
- d) prohibit or restrict the execution of transactions with entities that belong to the same consolidated group.

(3) A shortcoming in the activities of an entity which belongs to a consolidated group and which is not a bank shall mean:

- a) failure to comply with, or circumvention of, this Act, special legislative acts, the legal rules issued by the Czech National Bank and the legal rules referred to in Article 5k
- b) execution of transactions within or outwith the consolidated group in a manner which is detrimental to the interests of the depositors of a bank which belongs to the consolidated group or which endangers the safety and soundness thereof.

Article 26i

Where the Czech National Bank exercises banking supervision on a consolidated basis of a European parent bank group or a European financial holding entity group, it shall carry out the following tasks in addition to those laid down in this Act or a special legal rule²⁾:

- a) coordination of the gathering and dissemination of relevant or essential information, in relation to the supervisory authorities of other Member States,
- b) planning and coordination of supervisory activities in cooperation with the competent supervisory authorities; this activity shall include coordination and planning of supervision of banks governed by Articles 8b(1)(b), 11a and 12c, supervision performed in accordance with Article 25(3) and the imposition of measures pursuant to Article 26(1), including coordination of supervision within the meaning of similar provisions of the legal regulations of another Member State,
- c) in cooperation with competent supervisory authorities and, if necessary, with central banks of other Member States, planning and coordination of the work of these authorities in preparation for adverse developments in a bank and for emergencies and the work of these authorities during adverse developments in a bank and during emergencies; furthermore, planning and coordination of the preparation of joint assessments, the introduction of emergency plans, the provision of information to the public and the imposition of extraordinary remedial measures pursuant to Article 38i(1)(b) and similar provisions of legal regulations abroad.
- d) communication to the supervisory authorities of other Member States exercising supervision of an entity which is a member of such a consolidated group of information essential for the exercise of supervision of this entity, having regard in particular to the significance of this entity for the financial market in the state concerned (Article 38h),
- e) decision-making on joint applications for prior consent to the use of one of the special approaches or on applications to change an approach already in use pursuant to Article 12a(5)–(7).

Article 26j

(1) Where the Czech National Bank performs banking supervision of a European parent bank group or a European financial holding entity group and an emergency arises in the Member State in which a member of such group has its registered office or in which it carries on business through a significant branch, a significant branch under the act governing credit union activities or a significant organisational unit under the act governing capital market undertakings, the Czech National Bank shall, without undue delay, provide

- a) the central banks of the European System of Central Banks in Member States affected by this situation with information under the conditions laid down in Article 25a(4)(j), and
- b) the public authorities referred to in Article 25a(4)(l) in Member States affected by this situation with all information that is relevant to them.

(2) Should the Czech National Bank detect an emergency which might have an impact in a Member State, it shall, without undue delay, inform the authority performing banking supervision on a consolidated basis of a European parent bank group or a European financial holding entity group, a member of which has its registered office in the Member State concerned or carries on business in this Member State through a significant branch, a

significant branch under the act governing credit union activities or a significant organisational unit under the act governing capital market undertakings.

Article 26k

(1) Where the Czech National Bank performs banking supervision on a consolidated basis of a European parent bank group or a European financial holding entity group, it shall be entitled, by agreement with the other authorities supervising members of such groups, to impose on a member of this group

- a) remedial measures pursuant to Article 26(1)(h) in the case of a bank or a foreign bank,
- b) remedial measures consisting in an increase in capital above the minimum level as laid down in the act governing credit union activities in the case of a credit union, or
- c) remedial measures consisting in an increase in capital above the minimum level as laid down in the act governing capital market undertakings in the case of an investment firm that is not a bank or as laid down in the act governing capital market undertakings in the case of a foreign investment firm.

(2) The Czech National Bank shall inform the other authorities supervising the members of the group concerned in advance about its intention to impose remedial measures pursuant to paragraph 1 and shall simultaneously provide them with a report assessing the risks of the group. The Czech National Bank shall endeavour to reach agreement pursuant to paragraph 1.

(3) Should agreement pursuant to paragraph 1 not be reached within four months of the day on which the Czech National Bank submitted the report pursuant to paragraph 2 to the other authorities supervising the members of the group concerned, the Czech National Bank shall be entitled to impose remedial measures referred to in paragraph 1 on the members of the group concerned which it supervises without agreement with the other authorities supervising the members of the group concerned. In doing so, the Czech National Bank shall take into account the assessments of the risks of the members of this group expressed in the opinions of the other authorities supervising the members of this group and send a copy of the written decision to these authorities for information.

(4) The Czech National Bank shall be entitled to impose remedial measures pursuant to Article 26(1)(h) by itself on a bank that is a member of a European parent bank group, a member of a European financial holding entity group or a member of a European parent investment firm group under the act governing capital market undertakings if agreement between the authority performing supervision of the group concerned on a consolidated basis and the other authorities supervising members of this group is not reached within four months of the day on which the authority performing supervision of the group concerned on a consolidated basis submitted the report assessing the risks of this group to the Czech National bank. In doing so, the Czech National Bank shall take into account the opinion of the authority performing supervision of the group concerned on a consolidated basis.

(5) Before issuing a decision pursuant to paragraph 3, the Czech National Bank may seek the opinion of the Committee. The Czech National Bank shall request this opinion whenever any of the other authorities supervising members of the group concerned so requests. If the Committee's opinion has been requested before the issuing of a decision pursuant to paragraph 3 or 4, the Czech National Bank shall follow it unless it states its reasons for departing from the opinion in a justification of the decision.

(6) The Czech National Bank shall review decisions pursuant to paragraphs 1, 3 or 4 at least once a year following the procedure referred to in paragraphs 1 to 5. The Czech National Bank may review these decisions at the justified written request of an authority supervising a member of the group concerned. In such case, a decision pursuant to paragraphs 1, 3 or 4 may also be reviewed only within the scope of this request.

(7) A bank shall maintain capital on a solo or consolidated basis above the threshold stipulated in Article 12a if such an obligation is imposed on it by a decision issued, in agreement with the Czech National Bank, by the authority of another Member State performing supervision on a consolidated basis.

Article 26l

(1) Where the Czech National Bank performs banking supervision on a consolidated basis of a European parent bank group or a European financial holding entity group, it shall establish a college to perform the tasks referred to in Articles 26i and 26j. The establishment and activities of the college shall be based on written agreements referred to in Article 26c(8), which shall be drawn up by the Czech National Bank after discussion with the supervisory authorities concerned. Where appropriate, the Czech National Bank, while adhering to the confidentiality obligation and other requirements laid down in European Union law, shall coordinate cooperation with supervisory authorities of non-Member States. The establishment and activities of the colleges shall be without prejudice to the powers and competences of supervisory authorities laid down in European Union law.

(2) The college shall create preconditions for cooperation between the Czech National Bank and other supervisory authorities concerned in respect of

- a) the exchange of information,
- b) the application of agreements and international treaties pursuant to Article 26c(7) to (10) where appropriate,
- c) the preparation of inspection plans based on the assessment of the risks of the group concerned pursuant to Article 25(3),
- d) increasing the effectiveness of supervision by reducing duplicate requirements in the performance of supervision, including requests for information pursuant to Article 26c(6) and the second sentence of Article 38h(4) and pursuant to analogous provisions of foreign legal rules,
- e) the uniform application of prudential rules within the group concerned without prejudice to the powers of supervisory authorities laid down in European Union law,
- f) the planning and coordination of activities referred to in Article 26i(c) and in analogous provisions of foreign legal rules, taking into account the activities of other authorities where established for these purposes.

(3) The college members shall be:

- a) the Czech National Bank,
- b) the authorities supervising the members of the group concerned,
- c) the supervisory authorities of host countries in which a member of the group concerned carries on business through a significant branch, a significant branch under the act governing credit union activities or a significant organisational unit under the act governing capital market undertakings,

- d) central banks where appropriate,
- e) supervisory authorities of non-Member States where appropriate and provided that, in the opinion of all the supervisory authorities concerned, they protect information at least within the scope required by European Union law.

(4) The Czech National Bank shall chair the college's meetings and determine which members will participate in the meetings or other activities of the college. In doing so, it shall take into account the significance of these activities for the fulfilment of its duties referred to in Article 5o(2) and (3), as well as their significance for the college members. On the basis of the available information it shall take into account particularly the possible impact on the stability of financial systems in the Member States concerned, especially in emergencies.

(5) The Czech National Bank shall endeavour to achieve close cooperation between the college members. The Czech National Bank shall inform the college members sufficiently in advance about college meetings, meeting agendas and planned activities and inform them without undue delay about the conclusions adopted at the meetings and about other agreed activity.

(6) The Czech National Bank shall inform the Committee about the college's activities, even if an emergency occurs, and shall provide it with all information relevant to convergence of the instruments and procedures of banking supervision. This shall apply without prejudice to the provisions of Article 25a.

PART NINE Conservatorship

Article 27

(1) A decision to impose conservatorship shall contain:

- a) the reasons for imposing conservatorship,
- b) the first name, surname and birth certificate number of the conservator and the first name, surname and birth certificate number of the deputy conservator,
- c) any restrictions or prohibitions applying to acceptance of deposits, lending or other activities.

(2) The costs associated with conservatorship shall be covered from the bank's assets and shall constitute an expense of the bank for achieving, maintaining and securing income for the purposes of legal entity income tax as defined in a special legislative act.^(6c)

(3) The deputy conservator shall deputise to the full extent for the conservator in his absence. The provisions of this Act relating to the conservator shall apply mutatis mutandis to the deputy conservator.

(4) Where the law requires a decision of the General Meeting to be verified by a notarial certificate, the decision of the conservator in such matter shall be in the form of a notarial certificate.

Article 28

(1) The conservator shall be an employee of the Czech National Bank. The Czech National Bank may dismiss the conservator or deputy conservator and appoint a new one.

(2) The conservator shall be entitled to take on additional persons to execute the conservatorship, except for persons having a special relation to the bank as defined in Article 19 of this Act. The persons taken on to execute conservatorship may not be persons who are in a debtor's position towards the bank or who are employed by another bank. The persons thus taken on shall be entitled to become privy to matters that are subject to banking secrecy in the relevant bank. At the same time, they shall maintain confidentiality regarding such matters.

(3) A person who was a bank officer on the day of imposition of conservatorship or at any time during the two years preceding that day shall give assistance to the conservator at his request. The Czech National Bank may impose a fine of up to CZK 1,000,000 on such a person if this duty is breached, and may do so repeatedly.

Article 29

(1) Save for the filing of legal remedies against the imposition of conservatorship, the duties of all bodies of the bank shall be suspended at the moment the written decision to impose conservatorship is served. The decision shall apply to all as of the moment it is served. The conservator shall act in the capacity of the statutory body. The conservator shall submit to the persons authorised to file a legal remedy against the imposition of conservatorship at their written request within the necessary scope copies of the available documentation of the bank and enable them to make transcripts or extracts from it.

(2) The General Meeting of the bank shall not take place and the conservator shall decide on matters falling within the powers of the General Meeting. Where the conservator decides to increase the bank's capital, he may exclude the shareholders' preferential right to subscribe for new shares only if the bank failed to comply within the prescribed time limit with a remedial measure requiring an increase in the bank's capital.

(3) If the bank's situation so requires, the bank under conservatorship may, with the prior consent of the Czech National Bank, suspend partially or fully the depositors' right of disposal of their deposits in the bank.

(4) A bank under conservatorship may suspend partially or fully, for a maximum of six months, payments to persons with a special relation to the bank resulting from legal titles arising before the imposition of conservatorship. The bank under conservatorship may extend this time limit only in the case of payments resulting from legal titles contested by the conservator within this time limit for being invalid, ineffective or unenforceable with a court or any other relevant authority. In such case the time limit may be extended, even repeatedly, up to the day when the decision of the court or other relevant authority in the matter takes effect.

(5) If the conservator becomes aware that the bank is insolvent, he shall notify the Czech National Bank without delay and submit supporting documents proving such fact.

Article 29a

In order to conclude an agreement on the takeover of the debts⁶ⁱ⁾ of a bank under conservatorship by another bank or foreign bank branch:

- a) the consent of creditors shall not be required,
- b) the prior consent of the Czech National Bank shall be required; the Czech National Bank shall grant its consent only if the entity taking over the debts ensures proper and smooth continuation of client relationships connected with the debts being taken over.

Article 29b

(1) If a bank under conservatorship sells the bank's business, the purchase price shall be determined as a result of a valuation of the business and related rights and obligations as of the day on which the agreement on the sale of the business takes effect (hereinafter referred to as the "valuation").

(2) The valuation shall be made impartially, in full, without undue delay after the commissioning of the valuation, with professional care and in accordance with generally recognised principles of valuation of businesses and other assets.

(3) The valuation shall not take into account state guarantees or any other blanket security for the liabilities of the bank under conservatorship provided by third parties to preserve its soundness and stability. Neither shall the valuation take into account insurance of deposit receivables under this Act and the guarantee system relating to the assets of clients of an investment firm under an act governing capital market undertakings. Any loans provided by the Czech Republic or the Czech National Bank shall be deemed due for the purposes of the valuation.

(4) The usual interest for the period from the day on which the agreement on the sale of the business took effect to the day on which the purchase price is due shall be added to the purchase price. If the result of the valuation is not a positive figure, a purchase price of CZK 1 shall be paid to the seller.

(5) The bank under conservatorship, the buyer and any other entities that hold items and documents or possess information needed to prepare the valuation properly shall provide them for that purpose to the entity preparing the valuation of the bank's business (hereinafter referred to as the "valuer"). The Czech National Bank may impose a fine of up to CZK 1,000,000 on an obliged person that is not a bank or foreign bank branch if this duty is breached, and may do so repeatedly.

Article 29c

(1) The valuer shall be appointed by the Czech National Bank. The person to be appointed valuer, the bank under conservatorship and the buyer of the business shall be parties to the proceedings on the appointment of the valuer.

(2) A person who has experience and knowledge in the area of valuation of financial institutions' businesses, has sufficient prerequisites for preparing a proper and independent valuation of the business of the bank under conservatorship and agrees to his appointment shall be appointed valuer.

(3) The valuer may not be a person who has a special relation to the bank, has been the bank's auditor in the last five years or does not represent a guarantee of impartial valuation.

(4) The person to be appointed valuer shall notify the Czech National Bank without undue delay of facts that could, in his opinion, cast doubt on his impartiality. The valuer shall also have this obligation if he discovers such facts during the performance of his duties.

(5) The Czech National Bank shall specify the valuer's remuneration or the method of determination thereof, as well as the due date thereof. The valuer's remuneration shall represent a cost associated with conservatorship pursuant to Article 27(2) and shall also include the valuer's necessary expenses. If the bank's assets are insufficient to cover the remuneration or part thereof, the Czech National Bank shall pay the remuneration or the said part thereof to the valuer; a claim of the Czech National Bank vis-à-vis the bank under conservatorship shall thereby arise.

(6) The Czech National Bank may dismiss the valuer if the valuer breaches the duties stipulated in this Act in a serious manner, and appoint a new valuer. For the same reason the Czech National Bank may reduce the valuer's remuneration. For serious reasons the Czech National Bank may also dismiss the valuer at his own request. Any appeal filed shall not have suspensory effect.

(7) The dismissed valuer shall provide the newly appointed valuer with all assistance needed to perform his duties. The Czech National Bank may impose a fine of CZK 1,000,000 on him if this duty is breached, and may do so repeatedly.

(8) The provisions of Articles 29b and 29c shall apply *mutatis mutandis* to the sale of a part of the business.

Article 30

(1) The Czech National Bank may impose conservatorship in the situation where shortcomings in a bank's activities endanger the stability of the banking or financial system.

(2) Should conservatorship be imposed on a bank that has a branch in a host state, the Czech National Bank shall inform the host supervisory authority of the intention to impose conservatorship and of any restricted disposal of deposits and any restricted payments to persons with a special relation to the bank pursuant to Articles 29(3) and 29(4); such information shall be disclosed before the decision is taken or immediately thereafter if the matter brooks no delay. The information shall contain notification of the possible consequences of the imposition of conservatorship and/or the restricted disposal of deposits.

(3) The conservator shall exercise his powers laid down in this Act in the territories of other Member States, with the exception of the use of coercive means or any other use of force and the power to issue binding decisions on disputes and other proceedings falling within the jurisdiction of the courts and administrative bodies of the relevant state.

(4) The conservator shall show an authenticated, non-superlegalised copy of the decision to impose conservatorship, translated into the official language of the relevant state, where requested. The conservator shall, where possible, exercise his powers laid down in this Act in the territories of third states.

(5) In exercising his powers in the territories of Member States, the conservator shall comply with the law of the relevant state, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Where necessary for the purposes of performing conservatorship in compliance with the legal rules of the relevant state, the conservator shall request that the information about the imposition of conservatorship be registered in the land register, the commercial register or any other public register. The registration costs shall be borne by the bank.

Article 31

(1) Conservatorship shall be recorded in the Companies Register.^{7a)} Proposed entries relating to conservatorship shall be submitted by the Czech National Bank.

(2) A court of law shall, at the proposal of the Czech National Bank, record in the Companies Register the imposition of conservatorship, the termination of conservatorship, the dismissal of a conservator and the appointment of a new conservator.

(3) The court shall rule on the conservator's proposals concerning the entry in the Companies Register within three days of delivery thereof.

Article 32

(1) During conservatorship, the Czech National Bank may render financial assistance to the bank in question to overcome any temporary shortage of liquidity.

(2) Claims for repayment of the financial assistance rendered by the Czech National Bank pursuant to paragraph 1 shall have priority over all other liabilities of the bank.

Article 33

(1) Conservatorship shall be terminated:

- a) by the serving of a decision of the Czech National Bank to terminate conservatorship;
- b) upon the appointment of a liquidator;
- c) by declaration of bankruptcy; or
- d) upon the lapse of 24 months from the imposition of conservatorship.

(2) Conservatorship shall not be terminated upon the termination of a bank's licence.

Article 33a

The provisions of this Act governing the imposition of conservatorship shall not affect the exercise of rights and the fulfilment of obligations stemming from financial collateral agreements pursuant to an act governing financial collateral agreements¹⁵⁾ or pursuant to a comparable foreign legal regulation if financial collateral was agreed and originated before the imposition of conservatorship. This shall also apply where financial collateral was agreed on the day of, but after, the imposition of conservatorship, unless the financial collateral taker knew about this fact or should have and could have known about it. Neither shall the provisions of this Act governing imposition of conservatorship affect close-out netting pursuant to an act governing business activities on the capital market¹⁶⁾ if close-out netting was concluded before the imposition of conservatorship.

PART TEN

Revocation of the licence

Article 34

(1) If serious shortcomings persist in the activities of a bank or foreign bank branch, or if a bank fails, the Czech National Bank shall revoke its licence; such a measure need not be preceded by the imposition of conservatorship.

(2) The licence may also be revoked if:

- a) the bank does not start its activities within twelve months of being granted its licence or if it has ceased to accept deposits from, or provide loans to, the public for six months or more,
- b) the licence was obtained through false information stated in the application.

(3) The Czech National Bank shall revoke the licence if it becomes aware that the bank's capital on a solo basis is lower than one third of the sum of its individual capital requirements. The Czech National Bank shall not be obliged to revoke the licence in this case if the bank is a bank under conservatorship or a special-purpose bank.

Article 35

(1) The decision to revoke a licence shall be published in the Commercial Bulletin; in addition, in the case of a foreign bank branch, notification shall be given to the competent banking supervisory authority in the relevant state.

(2) As from the date on which the decision to revoke the licence becomes legally valid, the legal entity concerned may not accept deposits or provide loans or carry on any other activities, except for those necessary for the settlement of its claims and liabilities; such an entity is regarded as a bank as defined by this Act until it settles its claims and liabilities.

(3) The Czech National Bank shall serve its decision to revoke the licence on the statutory body of the bank. At the same time, the Czech National Bank shall notify the banking supervisory authorities of the states in which the bank has branches of this decision.

(4) The Czech National Bank shall serve the decision to revoke a licence granted to a foreign bank branch on the person authorised to manage the branch.

PART ELEVEN

Bank liquidation

Article 36

(1) If a bank is wound up and liquidated, the Czech National Bank shall have exclusive authority to submit a proposal for the nomination of the liquidator. In addition, the Czech National Bank shall have exclusive authority to submit a proposal for the dismissal of the liquidator and for the nomination of a new liquidator or a proposal for the winding up of the joint-stock company if the bank's licence has been revoked. The court shall rule on the Czech National Bank's proposal the within 24 hours of the proposal being submitted.

(2) The liquidator may be a natural person or a legal entity. The liquidator may not be a person who has, or has had, a special relation to the bank, who is, or has been in the last five years, the bank's auditor, or who has contributed to the bank's audit in any way. The Czech National Bank shall set the amount and payment date of the liquidator's remuneration taking due consideration of the extent of the activities involved.

(3) Natural persons who have become privy to information subject to banking secrecy during the course of a bank's liquidation shall maintain confidentiality in accordance with Article 39 of this Act *mutatis mutandis*.

(4) The liquidator shall submit to the Czech National Bank at the earliest opportunity the financial statements and documents prepared during the course of liquidation in compliance with the Commercial Code and, at the written request of the Czech National Bank, other documents necessary for assessing the liquidator's activities and the course of the liquidation.

(5) The liquidator shall enforce performance in respect of invalid legal acts (Article 12(2)).

PART TWELVE

Common provisions

Article 37

(1) Banks shall provide services to their clients on a contractual basis. A bank may refuse to provide services should the client remain anonymous.

(2) For the purposes of banking transactions, banks and foreign bank branches shall collect and process the data on entities, including birth certificate number, where allocated (excluding sensitive data on natural persons) necessary to allow the banking transaction to be executed without the bank incurring undue legal and material risks. The data shall be adequate to the legal and material risks of the banking transaction with the subject of the data and relevant to the assessment of such risks. The data collected and processed in this manner are subject to the provisions on banking secrecy (Article 38).

Article 38

(1) All the banking transactions and financial services of banks, including account balances and deposits, shall be subject to banking secrecy.

(2) A bank shall submit a report on all matters that are subject to banking secrecy to the persons authorised to perform banking supervision. Exchange of information between the Czech National Bank and the banking supervisory authorities and like institutions of other countries shall not be deemed a breach of banking secrecy if the subject of exchange is information on entities which operate or wish to start operating within the territory of the relevant state. Disclosure of information on a client and on a client's transactions shall also not be deemed a breach of banking secrecy in the case of the reporting of a criminal act or the discharge of a notification duty under the Act on Certain Measures against Money Laundering and Terrorist Financing or under the Act on the Imposition of International Sanctions.

(3) Reports on matters concerning a client which are subject to banking secrecy may be submitted by a bank without the client's consent only upon the written request of:

- a) a court of law for the purposes of civil proceedings;⁸⁾
- b) a law enforcement authority under conditions laid down by a special legislative act;⁹⁾
- c) the tax authorities under the conditions laid down by the Tax Administration Code;
- d) the financial arbiter when making decisions pursuant to special legal rule^{9c)} in disputes between a petitioner and an institution;
- e) the Ministry of Finance under conditions laid down by the Act on Certain Measures against Money Laundering and Terrorist Financing or the Act the Imposition of International Sanctions;
- f) the social security authorities, in matters of proceedings concerning social security payments and contributions to the state employment policy owed by the client, including outstanding additional premiums, late payment fees and fines, the health insurance authorities in matters of proceedings concerning overpayments of sickness benefits, compensation as a result of recourse and outstanding fines, the social security authorities or municipal authorities of municipalities with extended competence or authorised municipal authorities, in matters of proceedings concerning overpayments of social security benefits and outstanding fines, or state welfare bodies in matters of proceedings concerning overpayments of welfare benefits which the client is obliged to return; the same shall apply to the exaction of such insurance payments, contributions and overpayments;
- g) health insurance companies in matters of proceedings concerning public health insurance payments owed by the client; the same shall apply to the exaction of such insurance payments;
- h) a judicial executor authorised to perform execution pursuant to a special legislative act;^{9b)}

i) the Labour Office of the Czech Republic in matters of proceedings concerning the return of funds provided to the client from the state budget; the same shall apply to the exaction of such funds.

j) cancelled;

k) cancelled;

l) the National Security Authority, the intelligence service or the Ministry of the Interior when carrying out security proceedings pursuant to a special legislative act^{10c)}. The written request must contain information enabling the bank to identify the relevant matter.

(4) At the written request of the social security authorities in matters of proceedings concerning the return of a benefit credited to a client's account after the day for which the final payment of a benefit to a deceased beneficiary was due, including exaction thereof, the bank shall communicate identification data on its client who is the account holder and on persons entitled to dispose of funds on that account and information on matters relating to that account, even without the consent of the client. The bank shall also communicate such information at the written request of the Labour Office of the Czech Republic after the death of a client.

(5) The bank shall be entitled to reimbursement of its material costs for providing the reports referred to in paragraphs 3(a) and (h).

(6) For the purposes of executing a decision or a tax execution the bank shall communicate to the competent person the bank connection of its client, i.e. the account number and the identification code of the bank or foreign bank branch and the identification data of its client who is the account holder, even without the consent of the client. The same duty of the bank shall apply in respect of persons who prove that they have suffered damage as a result of their own incorrect instruction to the bank or foreign bank branch and that without this information they cannot exercise their right to the surrender of this ungrounded enrichment within the meaning of the Civil Code. The bank shall be entitled to reimbursement of its material costs for providing the information.

(7) If a client is in default with meeting his financial obligations toward a bank for a period exceeding 60 days or fails to comply with his duties to the bank agreed in a contract or laid down by law, the duty of the bank to maintain banking secrecy shall be restricted in that the bank may inform other banks or third persons or the public of the breach of the contract by the client, although it may only state the name of the client and the duty with which the client failed to comply.

(8) The client may prevent this right from being exercised by concluding, within thirty days of the failure to comply with the relevant duties, an agreement with the bank to remedy the situation. The bank shall not be obliged to conclude such an agreement. If such an agreement is not concluded within this period or if the client subsequently fails to adhere to the agreement concluded, the bank may exercise its right under paragraph 7 without further notice. The client may use the possibility referred to in this paragraph only once in a calendar year.

(9) Paragraphs 1 to 8 and paragraph 11 shall also apply to foreign bank branches.

(10) In the context of its business activities within the territory of another state, a bank shall submit a report on matters relating to a client that are subject to banking secrecy even without

the consent of the client in so far as is necessary to fulfil the obligations laid down by the law of the state within the territory of which the bank carries on those activities. This is without prejudice to the provisions of the special legislative act^{10b)}.

(11) Providing information to another payment service provider or within the payment system shall not constitute a breach of banking secrecy where it is necessary to prevent, investigate and detect fraud in the payment system.

Article 38a

(1) In fulfilling their obligation to act with prudence when carrying on their activities, banks and foreign bank branches may provide each other with bank account details, identification data on account holders and information on matters attesting to the financial soundness and trustworthiness of their clients, including via legal entities which are not banks. Holdings in such legal entities may only be held by banks, which shall see to it that such legal entities keep the information secret and protect it against misuse. Banks and foreign bank branches shall treat information on the clients of another bank or foreign bank branch as if it were information on their own clients.

(2) The Czech National Bank shall create a database (hereinafter referred to as the “register”) from the information within the scope referred to in paragraph 1 obtained from banks, foreign bank branches^{10a)} and other persons where a special legislative act so provides. Banks, foreign bank branches, the Czech National Bank for the purposes of financial market supervision and other persons where a special legislative act so provides shall have access to the information in the register. The transfer of information into and from the register under the conditions laid down by law shall not be deemed a breach of banking secrecy and the confidentiality obligation. However, banks and foreign bank branches shall treat information on clients acquired from the register as if it were information on their own clients.

(3) The Czech National Bank shall be entitled to grant access to the information in the register under paragraph 2 on the basis of reciprocity to central banks and other institutions of EU Member States that create databases comparable to the register, provided that the conditions of access to this information and the manner of its protection in the Member State in question are at a level at least comparable to that required by this Act. The comparability requirement shall also be met where a broader group of entities has access to the information in the foreign database. The data from databases acquired by the Czech National Bank on the basis of reciprocity shall become part of the register.

(4) The Czech National Bank shall stipulate in a decree cases where it shall be possible to request information pursuant to paragraphs 2 and 3 and detailed conditions for the provision of such information.

(5) The client shall have the right to have an extract of the information kept on him in the register made for the settlement of material costs.

(6) A bank’s notification to a state prosecutor, to the police or to any other competent authority of its suspicion that a criminal act or offence has been committed may not be deemed a violation of Article 38.

Article 38b

A bank may disclose information that is otherwise subject to banking secrecy if such disclosure is necessary for the purposes of supervision on a consolidated basis or supplementary supervision^{6d)} and for the purposes of compliance with the prudential rules. This shall be without prejudice to the provisions of the act governing the protection of personal data^{10b)}.

Article 38c

The Czech National Bank shall discharge its consultation and information duties vis-à-vis the banking supervisory authorities of other states, the bodies of international organisations and other persons within the scope of international treaties. A breakdown of the basic consultation and information matters is given in Articles 38d to 38i.

Article 38d

(1) The Czech National Bank shall inform the European Commission

- a) of the number and type of cases where it has refused to allow a bank or financial institution fulfilling the conditions listed in Article 5e(1) having its registered office within the territory of the Czech Republic to establish a branch in another Member State or where it has taken measures pursuant to Article 26 against a branch pursuant to Article 5a(1),
- b) of licences granted and revoked,
- c) of the fact that a bank has become a subsidiary of an entity which is governed by the laws of a state that is not a member of the European Union, and of the structure of the consolidated group to which that bank belongs,
- d) of any discriminatory measures applied against banks establishing branches in states that are not members of the European Union,
- e) of financial holding entities,
- f) of any agreements pursuant to Article 26e(3),
- g) of any measures pursuant to Article 26 taken against branches pursuant to Article 5a(1) in emergencies and where such action is necessary in the interests of depositors,
- h) does not exist,
- i) of the application of the procedure laid down in Article 26bb to a branch referred to in Article 5a(1).

(2) The Czech National Bank shall inform the European Commission at its request of any request:

- a) for a licence made by a subsidiary of an entity governed by the laws of a state that is not a member of the European Union,
- b) to acquire a holding in a bank made by an entity which is governed by the laws of a state that is not a member of the European Union or by a subsidiary of an entity which is governed by the laws of a state that is not a member of the European Union such that the applicant would become the parent undertaking of the bank.

(3) The Czech National Bank shall forward to the Committee information collected for the purpose of comparing the remuneration schemes and procedures introduced by other banks about

- a) the number of persons whose income is at least an amount equivalent to EUR 1,000,000, broken down by the areas of activity of the bank,
- b) the main components of wages, bonuses and performance-based pay over the longer term and special pension benefits for the persons referred to in a).

Article 38e

The Czech National Bank shall inform the competent supervisory authority of a Member State:

- a) of all consolidated groups containing a bank as well as a bank having its registered office within the territory of the Member State or a financial institution fulfilling the conditions listed in Article 5e(1) having its registered office within the territory of the Member State,
- b) of any notification from a bank or financial institution fulfilling the conditions listed in Article 5e(1) that it wishes to establish a branch within the territory of the Member State or to provide services there, and of any changes thereto,
- c) of the fact that a financial institution has ceased to fulfil the conditions listed in Article 5e(1),
- d) of measures pursuant to Article 26 taken against branches pursuant to Article 5a(1) in emergencies and where such action is necessary in the interests of depositors,
- e) of the application of the procedure laid down in Article 26bb to a branch referred to in Article 5a(1),
- f) of the granting of consent pursuant to Article 29(3) where the bank concerned has a branch within the territory of that state; in emergencies it shall provide such information to the competent supervisory authority before consent is granted or immediately thereafter.

Article 38f

(1) Prior to making any decision to change or revoke the licence of a bank which has a branch within the territory of a Member State, the Czech National Bank shall consult the banking supervisory authority of that state. In emergencies, the Czech National Bank shall inform the supervisory authority of its intention to change or revoke the licence. The Czech National Bank shall, at the earliest opportunity, inform the banking supervisory authorities of the states in which the bank has branches of the change or revocation of the licence. The same shall apply where it intends to revoke the licence of a branch of a foreign bank having its registered office outside the territories of the Member States if such bank has a branch within the territories of the Member States; in such case, the Czech National Bank shall endeavour to coordinate its activities with competent authorities in the Member States.

(2) The Czech National Bank shall without delay inform the competent supervisory authority of the member state of the European Union in which a bank or foreign bank has a branch of the issuance of an insolvency decision and the adjudication of bankruptcy on the assets of the bank or foreign bank having its registered office outside the territories of the Member States.

Article 38g

The Czech National Bank may, after having first informed the banking supervisory authority of the state concerned, carry out an on-site examination within the territory of a Member State, or may request it to carry out such an examination.

Article 38h

(1) In the framework of exercising banking supervision, the Czech National Bank shall collaborate with the banking supervisory authorities of other states, and in particular those within the territory of which a bank has a branch or within the territory of which a foreign bank having a branch carrying on activities within the territory of the Czech Republic has its registered office.

(2) On request, the Czech National Bank shall supply the supervisory authorities referred to in paragraph 1 with information:

- a) on holdings in the bank or foreign bank,
- b) on the management of the bank or foreign bank,
- c) on the capital of financial institutions controlled by the bank or foreign bank,
- d) on capital adequacy on a solo and consolidated basis,
- e) on financial holding entities,
- f) of relevance to the supervision of such banks or foreign banks, in particular with regard to liquidity, solvency, deposit insurance, capital adequacy, consolidated supervision, accounting, internal controls and monitoring of the risks arising from open positions on financial markets within the territory of the Czech Republic or within the territory of the state in which the bank has undertaken such risks.

(3) The Czech National Bank shall, on request or on its own initiative, also communicate to the supervisory authorities of other Member States information that materially influences the assessment of the financial situation of a foreign bank or financial institution in the Member State concerned, in particular information concerning:

- a) identification of the structure of a consolidated group, all significant banks in this consolidated group, and the authorities responsible for supervising the banks in this consolidated group,
- b) procedures for the collection of information from the banks in a consolidated group, and the verification of that information,
- c) developments in a bank or another entity in a consolidated group which could seriously jeopardise the financial situation of a bank in the consolidated group,
- d) major sanctions and remedial measures of exceptional significance imposed on a bank in accordance with this Act, in particular a requirement for a capital increase under Article 26(1)(h), and the non-granting of consent to the use of a special approach for the calculation of a capital requirement under Article 12a(4) or (7) or the non-granting of consent to change a special approach already in use.

(4) The Czech National Bank shall ask the supervisory authority of another Member State exercising supervision of an entity which is a member of a consolidated group for the information referred to in paragraph 3. In addition, it shall ask the authority exercising

supervision on a consolidated basis of a European parent bank for information regarding the approaches and methods applied in respect of compliance with the prudential rules.

Article 38i

(1) Prior to:

- a) making a decision under Article 16(1) and Article 20(3),
- b) imposing sanctions and remedial measures of exceptional significance, in particular a requirement for a capital increase under Article 26(1)(h),
- c) refusing an application for consent to the use of a special approach for the calculation of a capital requirement under Article 12a(4) or (7)

the Czech National Bank shall consult with the supervisory authority exercising supervision on a consolidated basis of the consolidated group to which the bank concerned belongs, and with the other supervisory authorities also concerned.

(2) The Czech National Bank need not consult pursuant to paragraph 1 in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, it shall inform the other supervisory authorities without delay.

Article 38j

(1) The Czech National Bank shall disclose in a manner which allows remote access:

- a) up-to-date texts of the acts and the decrees and provisions of the Czech National Bank governing the prudential rules for banks on a solo and consolidated basis, and related official information of the Czech National Bank; this shall be without prejudice to the provisions of special legal rules on the manner of promulgation of legal rules,
- b) information on the manner of exercise of the options and discretions available to the Member States and their supervisory authorities under European Union legislation in the legal rules referred to in letter a),
- c) information on the approach and methods used by the Czech National Bank in exercising banking supervision pursuant to Article 25(3),
- d) aggregate statistical data on compliance with the prudential rules by banks in the Czech Republic,
- e) the list of credit assessment agencies,
- f) agreements to change the competent authority responsible for supervising a financial holding entity group on a consolidated basis pursuant to Article 26e(3) and information about changes in the competent authority supervising a member of a European parent bank group or a member of a European financial holding entity group pursuant to Article 26c(9) and (10),
- g) information about the approach and methods applied by the Czech National Bank in the supervision of compliance with the risk transfer rules pursuant to Article 12a.
- h) an annual report on the results of supervision of compliance with the risk transfer rules pursuant to Article 12a, including measures imposed.

(2) The Czech National Bank shall disclose the information referred to in paragraph 1 in a manner which allows remote access in such a way as to enable comparison with information of the same nature disclosed by banking supervisory authorities in other Member States, and shall update this information on a regular basis.

Article 39

(1) The employees of a bank and the members of its supervisory board are obliged to maintain confidentiality in business matters that concern the interests of the bank and its clients. The statutory body shall exempt the aforesaid from this obligation for the reasons listed in Article 38(2), (3), (4) and (6) and Article 38b. Provision of information in cases and for purposes referred to in Articles 41d(2) and 41n shall not be considered contravention of the obligation to maintain confidentiality in business matters.

(2) The obligation to maintain confidentiality shall persist even after the employment or like relationship has ceased.

Article 40

(1) Applications for a licence, for making changes thereto or for granting consent pursuant to this Act shall be submitted by the applicant in writing to the Czech National Bank.

(2) Decisions regarding the changing of a licence shall be made by the Czech National Bank.

(3) The Czech National Bank shall issue its decision to grant a licence or to change a licence or to reject an application for a licence or change in licence within six months of the date of opening of the administrative proceedings and shall deliver its decision within that time limit. If the application was incomplete and the Czech National Bank has asked for additions to be made thereto, the Czech National Bank shall issue its decision within twelve months of the date of opening of the administrative proceedings and shall deliver its decision within that time limit.

(4) If, following the Czech National Bank's request for additions to be made to the application, the applicant again submits an incomplete application or fails to adhere to the time limit set by the Czech National Bank for the additions to be made, the Czech National Bank shall be entitled to stop the administrative proceedings.

(5) The decision on the application for consent pursuant to this Act shall be made within three months of the date of opening of the administrative proceedings, save as otherwise provided in this Act.

(6) Proper reasons must be given for rejection of the application for a licence or for making changes thereto or for refusal to grant consent pursuant to this Act.

(7) In licensing proceedings and in proceedings to grant consent pursuant to Article 20(3) of this Act, the Czech National Bank may request the necessary information on the parties to the proceedings from the competent authorities.

(8) The Czech National Bank shall inform the Ministry of Finance of its final decisions pursuant to Article 4(2), Article 5(3), Article 16(1)(b) and (c), Article 27(1), Article 29(3), Article 34(1) and Article 40(2).

Article 41

(1) Appeals filed against decisions of the Czech National Bank shall be ruled on by the Bank Board of the Czech National Bank. Such appeals shall have no suspensory effect. The provision of the Administrative Procedure Code regarding the possible ways of terminating appeals proceedings¹⁰⁾ shall not apply.

(2) Save as otherwise provided in this Act, the regulations on administrative proceedings¹¹⁾ shall apply to proceedings concerning applications and licence revocations pursuant to this Act.

PART THIRTEEN

Insurance of deposit claims

Article 41a

(1) The Deposit Insurance Fund (hereinafter referred to as the “Fund”) is hereby established. The Fund shall be incorporated in the Companies Register as a legal entity.

(2) The Fund shall not be a state fund within the meaning of a special legislative act.¹²⁾ No special legal rules governing the insurance business shall apply to the insurance of deposit claims.

(3) Without prejudice to Articles 5a(4) and 411, all banks and branches of foreign banks (hereinafter referred to as “banks” in this Part) shall participate in the deposit-claims insurance scheme and contribute to the Fund to the extent laid down in this Act.

(4) The source of the Fund shall be contributions from banks and other income, in particular yields on investment of funds, funds raised by the Fund in accordance with Article 411, repayable financial assistance, and proceeds from closed insolvency and liquidation proceedings.

(5) Drawings may only be made from the Fund to pay compensation for deposit claims to eligible persons under the conditions laid down by this Act, and for the repayment of debts. The costs of the Fund’s activities shall be covered from the yields on the investment of funds.

(6) The financial statements of the Fund must be verified by an auditor.

(7) The Fund shall cooperate with the Czech National Bank and the Ministry of Finance when carrying on its activities. The Czech National Bank shall notify the Fund in advance of a possible procedure pursuant to Article 41d(1).

Article 41b

- (1) The Fund shall be managed by a Board of Directors consisting of five members.
- (2) The Chairman, the Vice-Chairman and other directors of the Fund shall be appointed and dismissed by the Minister of Finance.
- (3) The directors shall be appointed by the Minister of Finance for a five-year period, possibly repeatedly. One director shall be appointed each year. There shall be no remuneration for discharge of the office of director.
- (4) A director shall perform his function with due professional care. In the event of a breach of this obligation, a director shall be liable for any damage he causes:
 - a) in full in the case of intentional conduct,
 - b) up to a total of CZK 600,000 per term of office in the case of negligence.
- (5) If a director terminates his membership of the Board prior to the lapse of his period of office, a new director shall be appointed in his or her place. The new director's period of office shall end on the same date the period of office of his or her predecessor would have ended.
- (6) At least one director shall be appointed from among the employees of the Czech National Bank and at the proposal of the Czech National Bank. At least two directors shall be appointed from among the members of boards of directors of banks. Directors shall be entitled to reimbursement of the expenses incurred in connection with the discharge of their office.
- (7) Details concerning the activities and powers of the Fund shall be laid down in the Statute of the Fund to be issued by the Board of Directors after having first received the consent of the Ministry of Finance. The consent of the Ministry of Finance shall be also required for an amendment of the Statute of the Fund.
- (8) Directors of the Fund, employees of the fund and other persons authorised to perform activities relating to the payment of compensation from the Fund shall maintain confidentiality regarding all information acquired in the context of the performance of their occupation, employment or duties. Provision of information in cases and for purposes referred to in Articles 38(2) to (4) and (6), 41g(1), 41n and 41o(2) shall not be considered contravention of the obligation to maintain confidentiality in business matters. The provisions of Articles 38(5) and 39(2) shall apply *mutatis mutandis*.

Article 41c

- (1) Insured shall be all claims arising from deposits, including interest accrued, held in the Czech currency or in a foreign currency, registered as credit balances on accounts or deposit books or evidenced by a certificate of deposit, deposit slip or other comparable document, except for the claims referred to in paragraph 2 and subject to compliance with the identification requirements provided for in paragraph 3.

(2) Uninsured shall be the deposit claims of banks, foreign banks, financial institutions, health insurance companies and state funds. This shall not apply in the cases referred to in Article 41f. Also uninsured shall be the deposit claims that a bank is entitled to include partly in its capital (subordinated debt).

(3) A bank shall ensure identification of depositors when maintaining their accounts or when accepting their deposits in any other form and shall keep identification data on its depositors and information about the amount of and reason for the insured deposit claim in its files.

“identification data” shall mean:

a) in the case of natural persons: the first name, surname, address, birth certificate number, and if not allocated, date of birth or identification number,

b) in the case of legal entities: the commercial name or designation of the legal entity, its registered office and, for domestic legal entities, its identification number.

(4) The identification data referred to in paragraph 3 shall be stated in the account contract, in the deposit book and on the certificate of deposit, deposit slip or other comparable document evidencing the acceptance of the deposit.

(5) The deposit-claims insurance scheme shall not apply to bills of exchange and other securities.

(6) The contribution of a bank to the Fund shall be 0.04% of the average volume of insured deposit claims for the relevant calendar quarter. The bank shall calculate the average volume of insured deposit claims using the stock of insured deposit claims as of the last day of each calendar month of the relevant calendar quarter, including interest accrued to each depositor as of the same day. The calculation shall be made in the Czech currency. In the case of claims arising from deposits held in a foreign currency, the foreign exchange market rate announced by the Czech National Bank as of the date on which the calculation is made shall be used for conversion into the Czech currency.

(7) The contribution of a building savings bank to the Fund shall be 0.02% of the average volume of insured deposit claims for the relevant calendar quarter. The building savings bank shall calculate the average volume of insured deposit claims using the stock of insured deposit claims as of the last day of each calendar month of the relevant calendar quarter, including interest accrued to each depositor as of the same day, excluding advance payments of state support.

(8) If the volume of funds of the Fund falls below 1.5% of the total volume of deposit claims insured with the Fund, the Fund shall issue a notification thereof, which shall be published in a manner allowing remote access. In this case the contribution of banks shall be 0.01% of the average volume of insured deposit claims calculated in accordance with paragraph 6 and the contribution of building savings banks shall be 0.005% of the average volume of insured deposit claims calculated in accordance with paragraph 7 as from the calendar quarter following the notification publication date.

(9) If the volume of funds of the Fund falls below 1.5% of the total volume of deposit claims insured with the Fund and in cases other than those referred to in Article 41k, the Fund shall issue a notification thereof, which shall be published in a manner allowing remote access. In this case the amount of the contribution of

- a) banks shall be subject to the rate referred to in paragraph 6;
- b) building savings banks shall be subject to the rate referred to in paragraph 7, as from the calendar quarter following the notification publication date.

(10) A bank shall pay its contribution to the Fund for the relevant calendar quarter by the end of the calendar month following the end of the calendar quarter at the latest. The contribution shall be paid in Czech koruna. The Fund shall inform the Czech National Bank of any non-payment of a contribution without any delay. If the bank is in default in payment, it shall be obliged to pay the Fund interest on late payment stipulated by civil regulations.

(11) The bank shall maintain a register of information pursuant to paragraph 3 and in cases stipulated in this Act (Articles 41d(2) and 41n) provide the Fund with this information. The Ministry of Finance shall stipulate the form, structure and manner of maintaining and providing information in a decree.

Article 41d

(1) Compensation for an insured deposit claim shall be paid from the Fund to an eligible person after the Fund receives notification in writing from the Czech National Bank, or, in the case of a foreign bank branch pursuant to Article 5a having supplementary insurance pursuant to Article 41m, from the home country banking supervisory authority, that the bank is unable to meet its commitments to eligible persons under the legal and contractual conditions. Such notification shall be issued at the latest five working days after the date on which the material fact was established, and the bank or former bank must be informed thereof in writing. The date on which the Fund receives this notification, shall be considered the record date. The Czech National Bank shall publish information about when the record date occurred in a manner allowing remote access.

(2) The bank or former bank, liquidator, trustee or insolvency trustee shall, within eight working days of the record date, provide the Fund with information kept pursuant to Article 41c(3).

(3) No later than 12 working days from the record date, the Fund shall determine the date, place and manner of payment of compensation, make this information publicly known in an appropriate manner and notify the Ministry of Finance and the Czech National Bank. The Fund must be able to pay compensation to eligible persons within 20 working days of the record date. In wholly exceptional circumstances and after receiving the consent of the Czech National Bank and the Ministry of Finance, the Fund may grant an extension of no more than ten working days.

(4) The Fund shall inform the Czech National Bank of any failure to fulfil the obligation referred to in paragraph 2 at the earliest opportunity.

(5) The liquidator, trustee or insolvency trustee shall commit an offence by failing to fulfil the obligation stipulated in paragraph 2. The Czech National Bank may impose a fine of up to CZK 500,000 for this offence. The Czech National Bank shall impose a fine of up to CZK 500,000 on a bank or former bank that breaches the obligation stipulated in paragraph 2.

Article 41e

(1) To calculate the compensation, all the eligible person's insured deposit claims at the bank, including shares in accounts kept for two or more joint account holders, shall be summed according to the position as of the record date. The share of a joint account holder shall be equal to a fraction with the total amount in the account as the numerator and the number of joint account holders as the denominator, unless the eligible persons when opening or disposing of the account provide evidence of a different share. The bank shall note the different share in its records. Any different share specified after the record date shall not be taken into consideration. The calculation shall be made in the Czech currency, conversion into the Czech currency shall be carried out for claims arising from deposits held in a foreign currency using the foreign exchange market rate announced by the Czech National Bank as of the record date. Interest calculated as of the record date shall form part of the insured deposit claim. The compensation shall be paid in the Czech currency. The right of an eligible person to payment of compensation from the Fund shall be a right associated with the deposit claim.

(2) The compensation paid to an eligible person shall be the sum calculated in accordance with paragraph 1 up to a maximum of EUR 100,000 per eligible person per bank, unless stipulated otherwise in a directly applicable regulation of the European Union. The equivalent of the limit in Czech koruna shall be calculated using the foreign exchange market rate announced by the Czech National Bank as of the record date.

(3) The government may increase the amount referred to in paragraph 2 in a regulation based on relevant European Union regulations^{12a)}.

Article 41f

(1) The funds of two or more persons deposited on a single account shall constitute a deposit claim with special treatment.

(2) On opening the account referred to in paragraph 1 or on the first occasion of disposing of such an existing account, the account holder shall notify the bank in writing of the fact that the funds of two or more persons are deposited on the account, provide evidence of the share of each of them, identify those persons to the extent laid down in Article 41c(3) and demonstrate the truthfulness of this information. The bank shall treat deposits in such an account as any other insured deposit claim and shall keep information on them in its records.

(3) For the purposes of calculating compensation from the Fund for a claim arising from a deposit on the account referred to in paragraph 1, the bank shall submit to the Fund a breakdown of the deposit claims by person and the amounts falling to each of them, and shall demonstrate the truthfulness of the information. It shall submit the information to the Fund.

(4) Compensation for a deposit claim with special treatment shall be paid to the eligible persons in an amount equal to that which would have been paid had each of the aforementioned eligible persons had the funds registered on their own accounts.

(5) Where the real owner of the funds differs from the account holder, the compensation shall be paid to the real owner. The account holder shall notify the bank of this fact on opening the

account or on the first occasion of disposing of the account and shall identify the real owner of the funds to the extent laid down in Article 41c(3). The bank shall record this information in the account contract or in another document the issuance of which is associated with the acceptance of the deposit, and in its records.

(6) Any notification pursuant to paragraphs 2 and 5 made by the account holder after the record date shall not be taken into consideration.

(7) A payment institution, small-scale payment service provider, electronic money institution or small-scale electronic money issuer on whose account are recorded funds which have been entrusted to it by payment service users in order to execute a payment transaction¹³⁾ or against receipt of which electronic money has been issued shall notify the bank thereof in writing without undue delay; in such case it shall not be subject to the obligation stipulated in the first sentence of paragraph 2 and the second sentence of paragraph 5. For the purpose of calculating compensation from the Fund, payment service users or electronic money holders shall be considered the actual owners of these funds. The compensation shall be provided to the payment institution, small-scale payment service provider, electronic money institution or small-scale electronic money issuer. The identification of the real owner pursuant to paragraph 5 shall be based on the records of the payment institution, small-scale payment service provider, electronic money institution or small-scale electronic money issuer as of the record date. These entities shall maintain a register of information pursuant to Article 41c(3) and submit it to the bank on demand without any delay in cases stipulated in Articles 41d or 41n.

(8) Paragraph 7 shall apply *mutatis mutandis* to an investment firm on whose account are recorded funds constituting client assets under the act governing capital market undertakings¹⁴⁾.

(9) A bank is entitled to use information that it receives from an entity referred to in paragraphs 7 or 8 only to fulfil its duties to the Fund in accordance with this part of the Act and in cases referred to in Article 38(2) to (4) and (6).

(10) At the request of a payment service user or electronic money holder, a payment institution, small-scale payment service provider, electronic money institution and small-scale electronic money issuer shall communicate information about at which bank, credit union or foreign bank a separate account is maintained on which funds which have been entrusted to it in order to execute a payment transaction or against receipt of which electronic money has been issued are deposited in accordance with the legislation regulating the payment system.

Article 41g

(1) The Fund shall cooperate to the necessary extent to ensure the payment of compensation and exchange information with entities through which it ensures the payment of compensation.

(2) The following persons shall not be eligible for the payment of compensation from the Fund:

a) persons having a special relation to the bank concerned, except for the persons referred to in Article 19(e),

b) persons otherwise eligible if it has been proven by a final and conclusive judgment that the deposit originates from criminal activity.

(3) The Fund shall suspend the payment of compensation for those deposit claims regarding which it becomes clear during the course of criminal proceedings that they are deposit claims within the meaning of paragraph 2(b).

(4) The duty to render a contribution to the Fund from the deposit claims of the persons referred to in paragraph 2 shall remain unaffected.

(5) For the purposes of calculating the amount to be paid to an eligible person, no account shall be taken of accruals of insured deposit claims which occur:

a) on the basis of in-bank transfers made between individual accounts maintained with the same bank after the record date,

b) as a result of the assignment of a deposit claim made after the record date.

Article 41h

(1) As of the date of commencement of payments, the claim of an eligible person on a bank shall be decreased by an amount equalling his right to payment of compensation from the Fund.

(2) As of the date referred to in paragraph 1, the Fund shall become a creditor of the bank in the amount of the rights of eligible persons to payment of compensation from the Fund.

(3) The right of an eligible person to payment of compensation from the Fund shall be forfeited upon the lapse of three years from the date determined as the date of commencement of payments.

Article 41i

Wherever the resources of the Fund are not sufficient for payment of the compensation laid down by law, the Fund shall raise the necessary funds on the market. The Fund shall see to it that the conditions under which the funds are provided to the Fund are as advantageous to it as possible. If the Fund is not able to raise funds on the financial market before the date of commencement of the payment of compensation pursuant to Article 41d, it may be provided at its request with a subsidy or repayable financial assistance of the necessary amount from the state budget.

Article 41j

The Fund may only invest its funds in a safe manner in compliance with its Statute.

Article 41k

Where the Fund has been granted a loan or any other form of repayable financial assistance (Article 41i), the contribution of banks to the Fund shall, as from the calendar quarter following the granting of the loan or other forms of repayable financial assistance, be increased to double the percentage rate laid down in Article 41c(6) and (7). In the calendar quarter following the repayment of the loan or other forms of repayable financial assistance, the contribution shall be reduced to the percentage rate laid down in Article 41c(6) and (7).

Article 41l

(1) Foreign bank branches shall not be obliged to participate in the deposit-claims insurance scheme provided that they notify the Czech National Bank of their intention and at the same time demonstrate that the deposit-claims insurance scheme in which they do participate ensures eligible persons a level of protection at least the same as that required by European Union law.

(2) This shall be without prejudice to the obligation of the foreign bank branch to pay a contribution to the Fund for the relevant part of the calendar quarter in which it made the notification referred to in paragraph 1.

Article 41m

(1) Foreign bank branches may take out supplementary deposit-claims insurance under contract with the Fund. The supplementary insurance must be such that the amount up to which deposit claims are insured overall, including supplementary insurance, does not exceed the equivalent of EUR 100,000. The contribution to the Fund shall equal the contribution referred to in Article 41c multiplied by a fraction whose numerator shall be the difference between the amount up to which deposit claims are insured overall, including supplementary insurance and the limit for maximum compensation under the deposit-claims insurance scheme in which the branch participates, and whose denominator shall be the amount up to which deposit claims are insured overall, including supplementary insurance.

(2) The supplementary insurance referred to in paragraph 1 shall be terminated by agreement or by serving notice of withdrawal from the contract with a three-month notice period which shall start running on the first day of the calendar quarter following the date on which notice was served. The Fund may withdraw from the contract only if the foreign bank branch fails to fulfil its obligations toward the Fund, although in the case of a foreign bank branch pursuant to Article 5a it may do so only if Article 5a(6) was complied with. The foreign bank branch may withdraw from the contract without giving its reasons. The foreign bank branch shall inform clients of these facts on its premises.

(3) Banks may not make use in advertising of differences in deposit-claims insurance between Member States.

Article 41n

The Fund shall verify the functioning of the compensation payment system at least once a year. In doing so, it shall cooperate with the Czech National Bank, the Ministry of Finance

and banks, which are obliged to provide the Fund at the Fund's request and within the time limit stipulated by the Fund with information maintained pursuant to Article 41c(3). The Fund shall be obliged to submit the report on the results to the Czech National Bank and the Ministry of Finance without any delay.

Article 41o

(1) The Fund shall cooperate with foreign deposit-claim insurance scheme operators when carrying on its activities.

(2) Where so stipulated by an agreement between the Fund and a foreign deposit-claim insurance scheme operator, in the event of failure of

a) a foreign bank carrying on business in the Czech Republic through a branch, the Fund may be involved in the payment of compensation from the foreign deposit-claim insurance scheme in which the foreign bank participates,

b) a bank having its registered office in the Czech Republic carrying on business abroad through a branch, the foreign deposit-claim insurance scheme may be involved in the payment of compensation from the Fund.

PART FOURTEEN

Transitional and final provisions

Article 42

Legal entities operating as banks or savings banks as defined in Act No. 158/1989 Coll., on Banks and Savings Banks, shall be deemed banks pursuant to this Act from the date on which this Act takes effect.

Article 43

Loans provided by banks in accordance with the existing regulations shall be deemed loans pursuant to this Act.

Article 44

cancelled

Article 44a

cancelled

Article 45

If a bank is obliged to grant loans under specified conditions in accordance with a legal rule issued prior to the entry into effect of this Act and if it thereby incurs a loss, the bank shall be entitled to reimbursement of this loss from the state budget to which it has a transfer or tax duty.

Article 46

Act No. 158/1989 Coll., on Banks and Savings Banks, is hereby repealed.

Article 47

This Act shall take effect on 1 February 1992.

X X X

1) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, as amended by Directives 2005/1/EC and 2009/14/EC of the European Parliament and of the Council. Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.

Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), as amended by Directive 2007/18/EC of the Commission, Directives 2007/44/EC, 2007/64/EC and 2008/24/EC, 2009/83/EC, 2009/110/EC, 2009/111/EC and 2010/16/EU of the European Parliament and of the Council.

Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), as amended by Directives 2008/23/EC, 2009/27/EC and 2009/111/EC of the European Parliament and of the Council.

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

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.

Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies.

1b) Act No. 256/2004 Coll., on Capital Market Undertakings.

2) Czech National Council Act No. 6/1993 Coll., on the Czech National Bank, as amended by Act No. 60/1993 Coll.

3) Article 33 of Act No. 337/1992 Coll., on the Administration of Taxes and Fees, as amended.

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- 3a) Act No. 254/200 Coll., on Auditors and on the Amendment of Act No. 165/1998 Coll., as amended by Act No. 209/2002 Coll., Act No. 169/2004 Coll., Act No. 284/2004 Coll., Act No. 56/2006 Coll., Act No. 57/2006 Coll., and Act No. 70/2006 Coll.
- 3b) Article 10(1) of Act No. 143/2001 Coll., on the Protection of Economic Competition.
- 3c) Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.
- 4) Act No. 63/1991 Coll., on the Protection of Economic Competition, as amended.
- 4b) Article 4(2)(g) and (h) and Article 4(3)(f) of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended by Act No. 230/2008 Coll.
- 4c) Article 196a of the Commercial Code
- 4d) Act No. 591/1992 Coll., on Securities, as amended.
- 5) Article 116 of the Civil Code No. 40/1964 Coll., as amended.
- 5a) Articles 14 and 15 of Czech National Council Act No. 591/1992 Coll., on Securities, as amended Article 1(d) of Act No. 219/1995 Coll., the Foreign Exchange Act.
- 6) Act No. 563/1991 Coll., on Accounting.
- 6a) The Civil Code.
- 6e) Act No. 96/1993 Coll., on Building Savings Schemes and State Support for Building Savings Schemes, as amended.
- 6c) Act No. 586/1992 Coll., on Income Taxes, as amended.
- 6i) Article 531(1) of the Civil Code.
- 7a) Article 27a et seq. of the Commercial Code.
- 7b) Commission decision of 23 January 2009 on establishing the Committee of European Banking Supervisors (2009/78/EC).
- 7c) Decree No. 123/2007 Coll., on prudential rules for banks, credit unions and investment firms, as amended.
- 8) Civil Procedure Code No. 99/1963 Coll., as amended.
- 9) Act No. 141/1961 Coll., on Criminal Proceedings (Criminal Procedure Code), as amended.
- 9a) e.g. Act No. 530/1990 Coll., as amended.
- 9b) Act No. 120/2001 Coll., on Judicial Executors and Executory Activities (Executory Procedure Code) and on the Amendment of Other Acts.
- 10c) Act No. 412/2005 Coll., on Protection of Classified Information and on Security Clearance.
- 10b) Act No. 101/2000 Coll., on Personal Data Protection and to the Amendment of Other Acts, as amended
- 10a) Article 41(2) of Act No. 6/1993 Coll., on the Czech National Bank, as amended.
- 10) Article 152(5) of Act No. 500/2004 Coll., Administrative Procedure Code.
- 12) Czech National Council Act No. 576/1990 Coll., on the Rules for Financial Management of the Budgetary Funds of the Czech Republic and of Municipalities in the Czech Republic (the National Budget Rules), as amended.
- 12a) Article 7(7) of Directive 94/19/EC of the European Parliament and of the Council, as amended by Directive 2009/14/EC of the European Parliament and of the Council.
- 13) Article 19 of Act No. 284/2009 Coll., the Payment System Act.
- 14) Article 2(1)(h) of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended by Act No. 120/2007 Coll. and Act No. 230/2008 Coll.
- 15) Article 55(2) of Act No. 256/2004 Sb., on Capital Market Undertakings, as amended by Act No. 230/2008 Coll. and Act No. 188/2011 Coll..
- 16) Article 193 of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended by Act No.409/2010 Coll.
- 17) Article 131 of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.
- 18) Act No. 82/1998 Coll., on Liability for Damage Caused During the Exercise of State Authority by a Decision or Maladministration, as amended, and on the amendment of Act No.358/1992 Coll. of the Czech National Council, on Notaries and their Activities (the Notarial Code), as amended.

