

**21/1992 Coll.**

**ACT**

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., 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. 126/2002 Coll. (part), 257/2004 Coll.

Act No. 439/2004 Coll.

Act No. 377/2005 Coll.

Act No. 413/2005 Coll.

Act No. 56/2006 Coll., 62/2006 Coll.

Act No. 57/2006 Coll., 70/2006 Coll.

Act No. 443/2006 Coll. (Selected provisions of amendments)

Act No. 159/2006 Coll.

Act No. 37/2007 Coll.

Act No. 120/2007 Coll.

Act No. 296/2007 Coll.

Act No. 216/2008 Coll.

Act No. 126/2008 Coll., 230/2008 Coll.

Act No. 254/2008 Coll.

Act No. 433/2008 Coll.

Act No. 189/2006 Coll.

Act No. 215/2009 Coll.

Act No. 230/2009 Coll.

Act No. 287/2009 Coll.

Act No. 285/2009 Coll.

Act No. 156/2010 Coll.

Act No. 160/2010 Coll.

Act No. 227/2009 Coll.

Act No. 156/2010 Coll. (part)  
Act No. 281/2009 Coll., 409/2010 Coll.  
Act No. 41/2011 Coll.  
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., 470/2011 Coll.  
Act No. 37/2012 Coll.  
Act No. 254/2012 Coll.  
Act No. 428/2011 Coll., 396/2012 Coll.  
Act No. 227/2013 Coll.  
Act No. 241/2013 Coll.  
Act No. 303/2013 Coll.  
Act No. 135/2014 Coll.  
Act No. 135/2014 Coll. (part)

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

## **PART ONE**

### **Basic provisions**

#### Article 1

This Act incorporates the applicable regulations of the European Union<sup>1)</sup> and is at the same time related to the directly applicable legislative act of the European Union<sup>27)</sup> 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. "Banks" shall mean joint-stock companies having their registered offices in the Czech Republic 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).

(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,<sup>1b)</sup> 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,<sup>1b)</sup>
- 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 values other than investment instruments and gold,
- n) renting safe deposit boxes,
- o) administering investment funds and foreign investment funds,
- p) activities directly associated with the activities listed in subparagraphs a) to o) 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, credit unions, investment firms, insurance companies, reinsurance companies, 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) Where the carrying-on of any of the activities listed in paragraph 3 is

subject to authorisation by the Czech National Bank pursuant to legal rules governing regulation of the provision of some financial services and the applicant proves compliance with all the conditions for granting such authorisation, the Czech National Bank shall permit the activity in the licence.

(6) The banking activities listed in paragraphs 1(a) and 1(b) and in paragraph 3 may also be carried on by a foreign bank through its branch (hereinafter referred to as a “foreign bank branch”); a foreign bank

a) having its registered office in a Member State of the European Union or in a state which is a contracting state of the Agreement on the European Economic Area (hereinafter referred to as a “Member State”) which enjoys the advantages of the single licence (Article 5a) shall perform these activities through a branch of this foreign bank (hereinafter referred to as a “branch of a bank from a Member State”);

b) having its registered office in a state other than a Member State shall perform these activities through a branch of this foreign bank (hereinafter referred to as a “branch of a bank from a non-Member State”), provided that it has obtained the required licence in accordance with Article 5 and only within the scope of the licence granted.

(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 the branch of a bank from a non-Member State 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.<sup>2)</sup>

## 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 a branch thereof,

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

#### Article 3a

The Czech National Bank shall act as a competent authority and at the same time shall be a designated authority under the directly applicable legislative act of the European Union governing prudential requirements.<sup>27)</sup>

## **PART TWO**

### **THE LICENCE**

#### Article 4

(1) Licence applications shall be submitted to the Czech National Bank. The minimum capital of a bank shall be CZK 500,000,000 and must comprise pecuniary contributions of at least this amount.

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 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,

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(4)) in the bank or, if there are no such persons, the twenty largest shareholders of the bank according to shares of the voting rights to exercise shareholder rights in the bank's business activities, must be trustworthy and competent,

e) members of the statutory body, members of the administrative board and members of the supervisory board must be competent, trustworthy and experienced, and other requirements applying to the bank's bodies and their members under Article 8 must be met,

f) the bank must have in place the technical and organisational prerequisites for pursuing its proposed activities and a functional and effective governance 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 f) must not impede the exercise of banking supervision;

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

k) the registered office of the bank must be within the territory of the Czech Republic.

l) the bank must have at least three employees or natural persons carrying out their activities at the order of another person (hereinafter referred to as the "officer") who hold an executive managerial position and are members of its statutory body or administrative board.

(6) For the purposes of this Act, “close links” shall mean close links as defined in Article 4(1)(38) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(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 members of the of the statutory body, members of the administrative board and members of the supervisory board of the bank. A person convicted lawfully in the past of a property offence or a criminal offence whose facts relate to banking activities or of a wilful criminal offence committed in connection with business activities may not act as a member of the statutory body, a member of the administrative board or a member of the supervisory board of the bank.

(8) A licence application may be submitted only on the prescribed form, to which the applicant shall attach documents confirming compliance with the conditions stipulated in paragraph 5. The specimen of the form and the content of its annexes shall be set out in a decree by the Czech National Bank.

#### 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 scale and risks of the branch's

activities; the minimum amount of funds provided shall be CZK 500,000,000;

b) the foreign bank must be trustworthy and have sufficient financial strength, taking due consideration of the scale of the branch's 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 governance 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.

j) the foreign bank must be subject to supervision comparable to banking supervision performed in Member States,

k) the legal order of the home country of the foreign bank must stipulate no obstacles preventing effective exchange of information between the Czech Republic and the supervisory authority of the foreign bank.

(5) A licence application referred to in paragraph 1 may be submitted only on the prescribed form, to which the applicant shall attach documents confirming compliance with the conditions stipulated in paragraph 4. The specimen of the form and the content of its annexes shall be set out in a decree by the Czech National Bank.

(6) The Czech National Bank shall be entitled to request an extract from the Criminal Register concerning natural persons who are nominated for executive managerial positions in the branch pursuant to paragraph 1. A person who has been lawfully convicted of a property offence or a criminal offence whose facts relate to banking activities or of a wilful criminal offence committed in connection with business activities, may not act as a person in the management of the branch pursuant to paragraph 1.

(7) 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 referred to in paragraph 1.

#### 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. Banks having their registered offices in Member States 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 from a Member State shall not be subject to this Act, save for the provisions of Articles 3(3)(b), 5n, 10, 11(1), (2) and (5), 21, 24(2) (third sentence), 26bb, 29a, 37, the information duty referred to in Article 38(2) to (8), the provisions relating to the implementation of monetary policy and corrective accounting of banks (Article 20c) and Article 41m.

(5) Where the branch of a bank from a Member State 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 branch of a bank from a Member State 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 a branch of a bank from a Member State only if it makes use of the possibility provided for in Article 41m.

(7) The measures referred to in Article 26 may be taken against the branch of a bank from a Member State only

a) in the event of violations of Article 11(1), (2) and (5),

b) in the event of violations of Article 20c on corrective accounting of banks,

c) in the event of violations of the law governing payments as regards the operation of the payment system administered by the Czech National Bank where the bank is a

participant in that system (Article 20b),

d) in the event of violations of Article 38a and the information duty referred to in Article 38(2) to (6),

e) where such action is necessary to protect financial stability and the common interests of clients or investors of the foreign bank and the matter must be resolved immediately (Article 5k(3)), or

f) where such action is necessary to protect financial stability and the common interests of clients or investors of the foreign bank because its liquidity is jeopardised, after informing the supervisory authority of the country in which the foreign bank has its registered office and the European Banking Authority (Article 5ka(1)).

(8) In branches of banks from a Member State 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 branch of a bank from a Member State or at a financial institution fulfilling the conditions listed in Article 5e(1).

(9) The Czech National Bank may carry out on-site examinations and request information about the activities the branch of a bank from a Member State carries on in the Czech Republic where it considers it important from the point of view of financial stability in the Czech Republic. The Czech National Bank shall notify the supervisory authority of the relevant Member State about the purpose of the on-site examination before its commencement and provide this authority with all information relevant to the assessment of the bank's riskiness or to financial stability in the Czech Republic after its completion.

#### 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 "authorised 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 authorised financial institutions referred to in paragraph 1, save for the activity provided for in Article 5d(a).

(3) A bank referred to in paragraph 1 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 referred to in Article 5c(1) or authorised 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,  
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 businesses,
- 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.

#### 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 authorised 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.

(4) An entity controlled by an authorised financial institution having its registered office in another Member State may operate in the Czech Republic through a branch to the same extent as the authorised financial institution.

#### Article 5f

A bank referred to in Article 5c(1) or an authorised financial institution wishing to establish a branch within the territory of a host state shall notify the supervisory authority 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 authorised 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 referred to in Article 5c(1) or the authorised 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 and composition of the capital of the bank or authorised financial institution, information on its capital ratios under Article 92 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, and particulars about deposit insurance and the certificate of compliance referred to in Article 5e(2) to the supervisory authority of the host state and shall inform the bank or authorised 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 referred to in Article 5c(1) or the authorised financial institution that it has not communicated the information to the supervisory authority of the host state 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 referred to in Article 5c(1) or the authorised financial institution within the time limit prescribed in paragraph 1, the bank referred to in Article 5c(1) or the authorised 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 referred to in Article 5c(1) or the authorised 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 referred to in Article 5c(1) or authorised financial institution may commence its activities within the

territory of the host state.

(3) The bank referred to in Article 5c(1) or the authorised 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 referred to in Article 5c(1) or authorised 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

Supervision of the branches of banks from Member States or authorised financial institutions shall be performed by the supervisory authority of the home state. For statistical and informative purposes and for the purposes of supervision, the supervisory authority of the host state may require that branches of banks from Member States or authorised financial institutions report periodically on their business activities in the host state and demand any information necessary for decisions on designating a branch as being significant under Article 5n.

#### Article 5k

(1) If, on the basis of information received from the supervisory authority of the home state referred to in Article 38h, the supervisory authority of the host state ascertains that a bank referred to in Article 5c(1) or an authorised financial institution providing services within its territory is violating this Act or the directly applicable legislative act of the European Union governing prudential requirements, or if there is reasonable suspicion that it will violate this Act or the directly applicable regulation of the European Union governing prudential requirements, it shall notify the supervisory authority of the home state of this fact. The supervisory authority of the home state shall, without undue delay, take appropriate remedial measures under Article 26 aimed at eliminating the violation of these legal rules or averting the risk of such violation and shall immediately notify the supervisory authority of the host state of the measures taken.

(2) If the supervisory authority of the home state does not take measures pursuant to paragraph 1, the supervisory authority of the host state may notify the European supervisory authority (the European Banking Authority)<sup>19)</sup> (hereinafter referred to as the “European Banking Authority”) of this fact and ask it to settle the dispute pursuant to the directly applicable legislative act of the European Union governing financial market supervision in the banking area.<sup>28)</sup>

(3) In emergencies, the supervisory authority of the host state may take appropriate measures pursuant to Article 26 or Article 26bb to protect financial stability and the common interests of clients or investors of the foreign bank in the

host Member State. The supervisory authority of the home state shall inform the European Commission, the European Banking Authority and the supervisory authorities of the states concerned of such measures. If the supervisory authority of the home or other Member State concerned disagrees with the measures taken by the supervisory authority of the host state, it may ask the European Banking Authority to settle the dispute pursuant to the directly applicable legislative act of the European Union governing financial market supervision in the banking area.<sup>28)</sup>

(4) The measures referred to in paragraph 3 must be commensurate with the protection of financial stability and the common interests of clients or investors of the foreign bank in the host Member State and must not lead to the clients or investors of the foreign bank in the host Member State being given preference over the clients or investors of the foreign bank in other Member States. The supervisory authority of the host state may take the measures referred to in paragraph 3 only until measures are taken to resolve the bankruptcy of the foreign bank in accordance with the insolvency legislation of the home Member State. The taking of such measures shall cause the measures referred to in paragraph 3 to cease to be effective.

(5) The supervisory authority of the host state shall cancel the measures referred to in paragraph 3 if it considers that these measures are no longer necessary in view of measures taken by the supervisory authority of the home state pursuant to paragraph 1.

(6) 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 referred to in Article 5c(1) or the authorised financial institution within the territory of that state. In this event, the provisions of the previous paragraphs shall not apply.

#### Article 5ka

(1) If the liquidity of a foreign bank whose branch carries on business in the host state is jeopardised and the supervisory authority of the home state has not taken the necessary measures, the supervisory authority of the host state may, after informing the supervisory authority of the home state and the European Banking Authority, take measures to protect the common interests of clients or investors of the foreign bank or financial stability in the host Member State.

(2) If it disagrees with the measures taken by the supervisory authority of the host state in which the foreign bank carries on activities in the Czech Republic through its branch, the supervisory authority of the home state may turn to the European Banking Authority and ask it to settle the dispute pursuant to the directly applicable legislative act of the European Union governing financial market supervision in the banking area.<sup>28)</sup>

#### Article 5l

(1) In the event of withdrawal of the licence of a bank referred to in Article 5c(1) or the authorised 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 referred to in Article 5c(1) or the authorised 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 referred to in Article 5c(1) and authorised 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 bank from a Member State may be designated in accordance with European Union law as being significant by the supervisory authority of the Member State within whose territory it 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 designate the branch of the bank from a Member State which operates in the Czech Republic as being significant. If such branch is a member of a European parent bank group (Article 26d(1)(m)), a member of a European financial holding company group (Article 26d(1)(o)) or a member of a European parent investment firm group under the act governing capital market undertakings, the Czech National Bank shall notify the authority supervising such group on a consolidated basis of its intention to designate such branch as being significant; for the purposes of this Act, “supervisory authority performing supervision on a consolidated basis” shall mean a consolidating supervisor as defined in Article 4(1)(41) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council. At the same time, the Czech National Bank shall inform such authority of the reasons why it intends to designate the branch of the bank from a Member State as being significant with reference to the criteria listed in paragraph 3.

(3) When intending to designate a branch of a bank from a Member State as being significant, the Czech National Bank shall take particular regard of:

- a) the market share of the branch in terms of deposits in the Czech Republic and whether this share exceeds 2%,
- b) the likely impact of a suspension or closure of the operations of the foreign bank whose branch might be designated as being significant on market liquidity 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 designation of a branch of a bank from a Member State as being 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. If no such agreement is reached, the Czech National Bank shall decide about the designation of the branch of a bank from a Member State as being significant within four months of notifying 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.

(5) Where the Czech National Bank decides to designate a foreign bank branch as being 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 designating the branch as being significant.

(6) The Czech National Bank may turn to the European Banking Authority and ask it to settle the dispute pursuant to the directly applicable legislative act of the European Union governing financial market supervision in the banking area<sup>28)</sup> if

a) the supervisory authority of the home state fails to consult the Czech National Bank on the plan for restoring the liquidity of a bank having its registered office in the territory of a Member State which operates in the Czech Republic through a significant branch, or

b) the Czech National Bank disagrees with the liquidity recovery plan submitted.

#### Article 5o

(1) The Czech National Bank shall be competent to agree on the designation of a branch of a foreign bank as being 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 designate this branch as being 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 38ha(2)(c) and (d) and the results of the review and evaluation process conducted pursuant to Article 25c, shall provide them with reports assessing the group's risks pursuant to Article 26k(2) and shall perform the tasks referred to in Article 26i(1)(c) in cooperation with the supervisory authorities of that Member State. The Czech National Bank shall notify the supervisory authorities of this Member State of the decision on the imposition of remedial measures on the bank where the decision is significant for the branch.

(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(7), 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 designation of a branch as being significant pursuant to paragraph 1 or after it has been notified by a competent supervisory authority of a host state of the designation of a branch as being significant. Article 6

(6) Where a bank carries on business in another Member State through a significant branch, the Czech National Bank shall consult the supervisory authority of that Member State on the liquidity recovery plan if there is liquidity risk which could have a significant effect on the currency of the host state.

#### 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 date:

- 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 date 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 board of directors shall have at least three members. A bank's administrative board shall have at least five members and the statutory director shall be a member of it.

(2) The statutory director of a bank may not simultaneously be the chairman of its administrative board; the Czech National Bank may, on the basis of a justified proposal made by the bank, permit simultaneous performance of both offices and shall assess the effect of simultaneous performance of the offices on the proper and prudent performance of the bank's activities having regard to their nature, scale and complexity and taking into account individual circumstances, in particular

a) sufficient time capacity to perform the stipulated duties and

b) potential conflicts of interest.

(3) A bank shall ensure that

a) the members of its statutory body, the members of its administrative board and the members of its supervisory board are trustworthy persons and possess sufficient competence and experience,

b) sufficient financial and human resources are devoted to the continuous professional training of members of the statutory body, members of the administrative board and members of the supervisory board and

c) a diversity-supporting policy is pursued in the selection of members of the statutory body, members of the administrative board and members of the supervisory board.

(4) Over their entire term of office, members of the statutory body, members of the administrative board and members of the supervisory board of the bank

a) shall perform their duties properly, honestly and independently and commit sufficient time to perform their duties,

b) may simultaneously hold offices in the bodies of other legal entities only if this does not affect the sufficiency of time to perform their duties in the body of the bank having regard to their nature, scale and complexity and taking into account individual circumstances,

c) at a bank that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities may not simultaneously hold offices in the bodies of other legal entities larger in scale than

1. one office of an executive member with two offices of a non-executive member, or
2. four offices of a non-executive member.

(5) The Czech National Bank may, on the basis of a justified proposal made by the bank, permit a member of the statutory body, a member of the administrative board or a member of the supervisory board at a bank that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities to hold one additional office in the body of another legal entity if it does not affect the proper performance of duties in the body of the bank.

(6) For the purposes of the provisions of paragraph 4(c), the office of a member in a legal entity that does not serve predominantly profitable purposes shall not be taken into account and shall be deemed the performance of one office, the office of an executive and non-executive member held within

a) the same parent bank group,

b) the same institutional protection scheme pursuant to Article 113(7) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

c) a commercial corporation in which the bank holds a qualifying holding.

(7) For the purposes of this Act, “executive member” shall mean a member of a body who holds an executive managerial position in the bank.

(8) The competences of the statutory body and the administrative board or the supervisory board shall be specified in the Articles of Association.

(9) A member of the statutory body, a member of the administrative board and a member of the supervisory board may only be a natural person.

(10) Paragraphs 4 to 7 shall apply mutatis mutandis to the assessment of the senior management and staff of a branch of a bank from a non-Member State.

## Article 8a

(1) Members of the statutory body of a bank or members of the administrative board of a bank who have infringed their duties arising from the performance of office under this Act or special 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 the above duties.

(2) Paragraph 1 shall apply mutatis mutandis to members of a statutory body of a foreign bank which has a branch referred to in Article 5 established in the Czech Republic, and to senior management of this branch.

## Article 8b

### **Governance systems**

(1) A bank shall have a governance system that includes:

a) prerequisites for the sound governance and management of the company, 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 administration and accounting procedures in accordance with special legal rules,
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 scale of such risks, including principles for the determination of, and conditions for the payment of, fixed and variable components of remuneration, procedures for taking decisions about remuneration and a method for assessing performance so that the system of remuneration can promote and be consistent with sound and effective risk management.

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.

d) safeguarding of the trustworthiness, competence and experience of members of the statutory body, members of the administrative board and members of the

supervisory board and

e) safeguarding of the competence and experience of the statutory body, the administrative board and the supervisory board as a whole, guaranteeing an understanding of the bank's activities, including a sufficient understanding of the main risks.

(2) The governance system shall be effective, comprehensive and proportionate to the nature, scale and complexity of the risks associated with the business model and activities of the bank.

(3) A bank shall verify and regularly assess the efficiency, effectiveness and adequacy of its governance system as a whole and of its parts and take appropriate remedial measures without undue delay.

(4) A bank shall have an obligation to establish and maintain a governance system on an individual basis unless it has been granted a derogation by the Czech National Bank under Article 7 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council. A bank shall also have these obligations on a consolidated basis if it is:

a) a domestic parent bank (Article 26d(1)(l)),

b) a parent bank but not a domestic parent bank, a responsible bank in a financial holding company group or a responsible bank controlled by a mixed financial holding company (Article 26d(1)(b), (l), (r) and (t)) where a foreign bank, a foreign non-bank investment firm or a 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 company group (Article 26d(1)(r)),

d) a responsible bank in a foreign parent bank group (Article 26d(1)(s)), or

e) a responsible bank controlled by a mixed financial holding company (Article 26d(1)(t)),

(5) A bank which has an obligation to establish and maintain a governance system on a consolidated basis shall also ensure that its subsidiary which is not subject to the Czech National Bank's supervision has in place the management policies and procedures, organisational arrangements and other processes and mechanisms referred to in paragraph 1. The Czech National Bank may grant an exemption from this obligation if the bank proves that the introduction of such policies, procedures, arrangements and mechanisms is not compliant with the law of the country of domicile of the subsidiary.

(6) A bank which has an obligation to establish and maintain a governance 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.

(7) The Czech National Bank shall set out in a decree more detailed requirements for the governance systems of banks on an individual and consolidated basis within the limits given in paragraph 1, including the competences, powers, composition and functioning of a bank's bodies and committees and the requirements applying to their members, unless this is governed by the directly applicable legislative act of the European Union governing prudential requirements or a European Commission regulation or decision.

(8) A branch of a bank from a non-Member State shall be subject to the requirements for the governance system *mutatis mutandis*.

#### Article 8c

(1) A bank that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities shall establish

- a) a Risk Committee,
- b) an Appointment Committee,
- c) a Remuneration Committee.

(2) The Risk Committee, the Appointment Committee and the Remuneration Committee shall consist of non-executive members of the bank's bodies.

(3) The Czech National Bank shall set out in a decree criteria for assessing the significance of a bank pursuant to paragraph 1.

#### Article 8d

##### The Czech National Bank

a) shall use information regarding remuneration policy in accordance with Article 450 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council to compare remuneration trends and procedures,

b) shall monitor whether a bank, taking into account to the nature, scale and complexity of its activities, does not rely solely on external credit assessments when assessing the creditworthiness of an entity or a financial instrument, which, for the purposes of this Act, shall mean a financial instrument as defined in Article 4(1)(50) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

c) shall monitor the scale of the risk-weighted exposures or capital requirements of a bank, with the exception of capital requirements for operational risk, for exposures or transactions in a comparative portfolio arising from the bank's internal approaches; for the purposes of this Act, "operational risk" shall mean operational risk as defined in Article 4(1)(52) of Regulation (EU) No. 575/2013 of the European Parliament and

of the Council,

d) shall, at least once a year, assess the quality of a bank's internal approaches,

e) shall take remedial measures if an internal approach leads to undervaluation of a bank's capital requirements which is not a result of existing differences in positions or exposures; the remedial measures shall preserve the objectives of the internal approach,

f) shall monitor developments connected with liquidity risk profiles,

g) shall take measures if developments referred to in subparagraph f) may lead to instability of a bank or systemic instability,

h) shall use information regarding diversity-supporting policy in accordance with Article 435 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council to compare the policy supporting diversity in the selection of members of the statutory body, members of the administrative board and members of the supervisory board.

#### Article 9

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

a) the structure and organisation of the bank;

b) the powers and responsibilities of members of the statutory body, members of the administrative board and members of the supervisory board;

c) the powers and responsibilities of other staff members 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 governance system.

(2) A bank may also specify in its Articles of Association the powers of the general meeting

a) to set in an agreement on the performance of a function the level of the ratio between the fixed and variable components of remuneration in excess of 100%; the overall level of the variable component must not exceed 200% of the fixed component of the total remuneration of any individual, or

a) to instruct the supervisory board or the administrative board, if it approves an agreement on the performance of a function, to set the level of the ratio between the fixed and variable components of remuneration in excess of 100%; the overall level of the variable component must not exceed 200% of the fixed component of the total remuneration of any individual.

(3) Certified copies of the Articles of Association and amendments thereto

shall be lodged with the Czech National Bank.

#### Article 10

(1) A bank is obliged to lodge a copy of its certificate of incorporation, and all amendments made thereto, with the Czech National Bank without undue delay.

(2) A foreign bank carrying on banking activities through a branch in the Czech Republic shall be obliged to lodge a copy of its certificate of incorporation, and all amendments made thereto, with the Czech National Bank without undue delay.

#### Article 10a

(1) A bank shall establish procedures for its staff to make internal reports on failure or imminent failure to comply with this Act, its implementing regulations or the directly applicable legislative act of the European Union governing prudential requirements via a special, independent and separate communication channel.

(2) The Czech National Bank shall introduce an effective mechanism for the reports on failure or imminent failure to comply with this Act, its implementing regulations or the directly applicable legislative act of the European Union governing prudential requirements and shall provide information about it in a manner allowing remote access; this mechanism shall include at least

a) procedures for making reports on failure or imminent failure to comply with this Act and for the assessment thereof by the Czech National Bank,

b) protection of the person who reports the failure or imminent failure; where the person is an employee of the bank, the Czech National Bank and the bank shall ensure protection at least against discrimination or other types of unjust treatment,

c) protection of the personal data of the person who reports the failure or imminent failure or who is allegedly responsible for the failure or imminent failure, unless disclosure is required by national law in respect of further investigation or subsequent court proceedings.

(3) The Czech National Bank shall set out in a decree requirements for the bank's procedures pursuant to paragraph 1, including the same level of protection as required pursuant to paragraph 2(b) and (c).

(4) The procedures for internal reporting pursuant to paragraph 1 may be set on the basis of agreement with social partners, via or using the communication channels of those partners, while ensuring the same level of protection as required pursuant to paragraph 2(b) and (c).

## **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.

(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 branch of a bank from a non-Member State 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.

(4) A bank and a branch of a bank from a non-Member State 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 by branches of banks from a non-Member State**

(1) A branch of a bank from a non-Member State shall disclose information on itself and its activities and information on compliance with the prudential rules.

(2) A branch of a bank from a non-Member State shall disclose in a manner allowing remote access information on who and in what way it discloses information on the foreign bank.

(3) A branch of a bank from a non-Member State 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,

b) is sensitive; information shall be sensitive if its disclosure could undermine the foreign bank's competitive position, especially in the case of information on products or systems which, if shared with other competitors, could render its 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 the foreign bank to confidentiality.

(4) If a branch of a bank from a non-Member State exercises the option of not disclosing sensitive or confidential information, it shall disclose the disclosure requirement concerned and the reason for non-disclosure. A branch of a bank from a non-Member State shall state at least general information about the facts it was to have disclosed, except where this general information is also sensitive or confidential.

(5) The auditor shall verify information about the capital and capital requirements and the ratios of a bank and a branch of a bank from a non-Member State.

(6) The Czech National Bank shall set out in a decree:

a) the content of the information meant for disclosure, as well as the form, manner, structure, frequency and dates of disclosure of information,

b) the content of the information verified by the auditor.

(7) A branch of a bank from a non-Member State 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 branch of a bank from a non-Member State shall also introduce, maintain and enforce 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 branch of a bank from a non-Member State shall disclose any other information needed to achieve this objective, except for information referred to in paragraph 3.

## Article 11b

### **Disclosure of information by parent undertakings and banks**

(1) A bank 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 that has duties set on a consolidated basis pursuant to this Act or the directly applicable legislative act of the European Union governing prudential requirements shall disclose information on

- a) property rights relationships between members of the consolidated group, including information on close links,
- b) the governance system pursuant to Article 8b(1)(a) to (e),
- c) the governance system of the consolidated group pursuant to Article 8b(4).

(3) A bank shall discharge its duty pursuant to paragraph 2 also by disclosing references to where such information is available.

(4) The Czech National Bank may set a shorter than one-year frequency for disclosure of information by banks pursuant to Part Eight of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(5) A bank shall disclose in its annual report among the key indicators its return on assets expressed as the ratio of net profit to total assets.

(6) A bank shall disclose information on its compliance with the requirements for the internal control system in a manner allowing remote access.

(7) The Czech National Bank

a) shall set out in a decree the scope of the information meant for disclosure pursuant to paragraphs 1 to 3, as well as the form, manner, structure and dates of disclosure of information and the frequency of disclosure of information pursuant to paragraph 1.

b) may set out in a decree the frequency pursuant to paragraph 4 and the dates and manner of disclosure of information,

c) shall set out in a decree the scope of the information meant for disclosure pursuant to paragraph 6, as well as the form, manner, structure, frequency and dates of disclosure of information.

#### Article 11c

(1) A bank shall each year disclose for the preceding accounting period the following information broken down into the individual Member States and non-Member States in which it has a subsidiary or a branch

- a) a list of activities it performs and their geographical location,
- b) the turnover,
- c) the number of members of staff converted into full-time equivalents,
- d) pre-tax profit or loss,
- e) corporate income tax or similar tax paid abroad or loss,

f) public support received.

(2) The information referred to in paragraph 1 shall be disclosed in an appendix to the annual accounts or, where consolidated annual accounts are compiled, in an appendix to the consolidated annual accounts.

(3) The auditor shall verify the information referred to in paragraph 1 as part of its auditing activities.

## Article 12

(1) A bank or a branch of a bank from a non-Member State 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 safety and soundness of the bank.

(2) A bank and a branch of a bank from a non-Member State may not conclude any agreements under conditions which are conspicuously disadvantageous for the bank or the branch of a bank from a non-Member State, 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 of a branch of a bank from a non-Member State**

(1) A branch of a bank from a non-Member State shall continuously maintain a capital ratio of at least 8%. "Capital ratio" shall mean the percentage ratio of the capital to the total risk exposure amount. The capital of a branch of a bank from a non-Member State may not fall below the threshold of funds provided to it by the foreign bank pursuant to Article 5(4)(a).

(2) A branch of a bank from a non-Member State shall use a basic approach, an internal approach or an internal model for the calculation of individual capital requirements.

(3) If a branch of a bank from a non-Member State intends to use an internal approach for the calculation of a capital requirement, or if it intends to change the internal 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 this application within six months. In the decision on the granting of consent, the Czech National Bank may stipulate binding conditions under which the branch of a bank from a non-Member State is entitled to use the internal approach.

(4) The Czech National Bank shall set out in a decree:

a) the rules for calculating the capital ratio, which shall include the procedures that a branch of a bank from a non-Member State shall apply, the rules for determining

capital, determining the total risk exposure amount, determining individual capital requirements and defining the approaches for calculating them, including conditions for applying internal approaches and internal models for the calculation of capital requirements, and risk transfer rules,

b) a specification of the internal approaches, the use or change of which requires consent pursuant to paragraph 3,

c) the essential elements of an application for prior consent to the use of an internal approach or to a change in an internal approach already in use as submitted to the Czech National Bank.

#### Article 12b

For the calculation of capital requirements using a debtor's credit assessment (rating) issued by another entity, a branch of a bank from a non-Member State shall use such rating only where it has been issued or acknowledged by a rating agency or another entity entered in the list maintained by the European Banking Authority or an export credit agency that publishes its ratings and complies with an agreed methodology of the Organization for Economic Cooperation and Development which has been chosen and consistently used by the branch of the bank.

#### 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.

(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 an individual basis only to a bank which:

a) is not a subsidiary of a domestic parent bank (Article 26d(1)(l)), a domestic financial holding company (Article 26d(1)(n)) or a domestic mixed financial holding company (Article 26d(1)(p)),

b) is not a responsible bank in a foreign parent bank group (Article 26d(1)(s)) or a responsible bank in a European financial holding company group or any other bank in such a group,

c) is not a responsible bank which is a subsidiary of a European mixed financial holding company or any other subsidiary of a mixed financial holding company,

d) is not a parent bank of another bank, a credit union, a foreign bank, an investment firm that is not a bank, a foreign investment firm that is not a foreign bank, a financial institution or an ancillary services undertaking,

e) is not included in the consolidation pursuant to Article 19 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

(4) The obligations laid down in paragraphs 1 and 2 shall apply on a consolidated basis to the extent and in manner provided for in Part One, Title II, Chapter 2, Sections 2 and 3 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council only to a bank which is:

- a) a domestic parent bank (Article 26d(1)(l)),
- b) a parent bank but not a domestic parent bank or a responsible bank in a financial holding company group or a responsible bank which is a subsidiary of a mixed financial holding company (Article 26d(1)(b), (l), (r) and (t)), where a foreign bank, a foreign investment firm that is not a 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 company group (Article 26d(1)(r)),
- d) a responsible bank in a foreign parent bank group (Article 26d(1)(s)), or
- e) a responsible bank which is a subsidiary of a mixed financial holding company (Article 26d(1)(t)),

#### Article 12d

#### **The combined buffer**

(1) A bank shall continuously maintain Common Equity Tier 1 capital under Article 50 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council at the level corresponding to the combined buffer, doing so in addition to the capital requirements under Article 92 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, capital requirements imposed on it by means of remedial measures and other measures under this Act or other legal rules and taking into account internal capital.

(2) The combined buffer shall consist of

- a) a capital conservation buffer,
- b) a countercyclical capital buffer,
- c) a systemic risk buffer.

(3) A bank shall maintain the buffers referred to in paragraph 2(a) to (c) on an individual and consolidated basis in accordance with Part One, Title II of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(4) If a bank does not maintain the combined capital buffer in the required amount, it may not distribute the proportionate part of its after-tax profit and shall

submit to the Czech National Bank an application for the approval of a capital restoration plan within five days of the date on which the combined capital buffer decreased below the required amount. The Czech National Bank may grant an extension of no more than ten working days depending on an assessment of the bank's situation taking into account the scale and complexity of its activities.

(5) The Czech National Bank shall approve the capital restoration plan referred to in paragraph 4 if the bank can be expected to meet the combined buffer requirement within the set time limit on the basis of this plan. If the Czech National Bank does not approve the capital restoration plan, it shall impose remedial measures pursuant to Article 26(2)(a)(12) or Article 26(2)(e).

(6) The Czech National Bank shall set out in a decree:

- a) the rules for the combined capital buffer referred to in paragraph 1 and the capital buffers referred to in paragraph 2,
- b) the rules for the calculation of the proportionate part of after-tax profit referred to in paragraph 4,
- c) the essential elements of the capital restoration plan referred to in paragraph 4.

#### Article 12e

### **The capital conservation buffer rate**

The capital conservation buffer rate shall be 2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

### **The countercyclical capital buffer**

#### Article 12f

(1) The Czech National Bank shall calculate a countercyclical capital buffer guide on a quarterly basis as a reference to guide it in setting the countercyclical capital buffer rate. This indicator shall be based on the deviation of the ratio of credit to GDP from its long-term trend.

(2) When calculating the countercyclical capital buffer guide, the Czech National Bank shall take into account in particular

- a) the credit cycle and growth in the level of loans provided in the Czech Republic,
- b) changes in the ratio of credit to GDP
- c) specificities of the Czech national economy
- d) guidance issued by the European Systemic Risk Board.

(3) The Czech National Bank shall set the countercyclical capital buffer rate for the Czech Republic on a quarterly basis, and in so doing shall take into account

- a) the countercyclical capital buffer guide calculated in accordance with paragraphs 1 and 2,
- b) guidance issued by the European Systemic Risk Board,
- c) variables that may indicate growth in systemic risk.

(4) The countercyclical capital buffer rate referred to in paragraph 3 shall be set at 0%–2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council in multiples of 0.25 percentage point. Where justified on the basis of the considerations set out in paragraph 3, the Czech National Bank may set a rate in excess of 2.5%.

(5) The Czech National Bank shall set out in a provision of a general nature:

- a) the countercyclical capital buffer rate for the Czech Republic referred to in paragraph 3,
- b) the date from which banks must apply the rate referred to in subparagraph a) for the purposes of calculating the combined buffer.

(6) Where the rate referred to in paragraph 5(a) is set for the first time or where it is increased, the date referred to in paragraph 5(b) may be set one year from the date of issue of the provision of a general nature at the earliest; in exceptional cases this time limit may be shorter. This shall not apply if the rate referred to in paragraph 5(a) is decreased.

(7) The Czech National Bank shall give in a provision of a general nature:

- a) the information referred to in paragraph 5,
- b) the ratio of credit to GDP in the Czech Republic and the deviation of this ratio from its long-term trend,
- c) the countercyclical capital buffer guide referred to in paragraphs 1 and 2,
- d) a justification for the level of the rate referred to in paragraph 5(a), together with all the factors the Czech National Bank took into account when setting that rate,
- e) where the time limit referred to in paragraph 6 is shorter than one year, the reasons for reducing the time limit,
- f) where the countercyclical capital buffer rate is decreased, the indicative period during which the Czech National Bank does not expect the rate referred to in paragraph 5(a) to be increased, together with a justification for the length of this period.

(8) The Czech National Bank shall coordinate the timing of the issuance of the provision of a general nature with the competent authorities or designated authorities of other countries.

#### Article 12g

(1) A bank shall apply the countercyclical capital buffer rate for another Member State at the level set by the competent authority or the designated authority of that Member State<sup>29)</sup> where that rate has been set at a level of up to 2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(2) Where the competent authority or the designated authority of another Member State has set a countercyclical capital buffer rate in excess of 2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, the Czech National Bank shall either recognise the rate or set a rate of 2.5%. In such case the bank shall apply the rate set by the Czech National Bank.

(3) The Czech National Bank shall set out in a provision of a general nature:

- a) the countercyclical capital buffer rate for another Member State referred to in paragraph 2,
- b) the name of the state to which the rate referred to in subparagraph a) applies.
- c) the date from which banks must apply the rate referred to in subparagraph a) for the purposes of calculating the combined buffer.

(4) Where the rate referred to in paragraph 3(a) is set for the first time or where it is increased, the date referred to in paragraph 3(c) may be set one year from the date of issue of the provision of a general nature at the earliest; in exceptional cases this time limit may be shorter. This shall not apply if the rate referred to in paragraph 3(a) is decreased.

(5) Where the time limit referred to in paragraph 4 is shorter than one year, the Czech National Bank shall give the reasons for reducing the time limit in a provision of a general nature.

#### Article 12h

(1) A bank shall apply the countercyclical capital buffer rate for a non-Member State at the level set by the competent authority of that state<sup>29)</sup> where that rate has been set a level of up to 2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(2) Where the competent authority of a non-Member State has set a countercyclical capital buffer rate lower than 2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European

Parliament and of the Council, the Czech National Bank may increase the rate to 2.5% if it considers it necessary from the point of view of the risks associated with the amount of loans provided in that state. In such case the bank shall apply the rate set by the Czech National Bank.

(3) Where the competent authority of a non-Member State has set a countercyclical capital buffer rate in excess of 2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, the Czech National Bank shall either recognise the rate or set a rate of 2.5%. In such case the bank shall apply the rate set by the Czech National Bank.

(4) Where the competent authority of a non-Member State has not set a countercyclical capital buffer rate, the Czech National Bank may set a rate of up to 2.5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council. In such case the bank shall apply the rate set by the Czech National Bank.

(5) When setting the countercyclical capital buffer rate referred to in paragraphs 2 to 4, the Czech National Bank shall take into account the recommendations issued by the European Systemic Risk Board.

(6) The Czech National Bank shall set out in a provision of a general nature:

- a) the countercyclical capital buffer rate for a non-Member State referred to in paragraphs 2 to 4,
- b) the name of the state to which the rate referred to in subparagraph a) applies.
- c) the date from which banks must apply the rate referred to in in subparagraph a) for the purposes of calculating the combined buffer.

(7) Where the rate referred to in paragraph 6(a) is set for the first time or where it is increased, the date referred to in paragraph 6(c) may be set one year from the date of issue of the provision of a general nature at the earliest; in exceptional cases this time limit may be shorter. This shall not apply if the rate referred to in paragraph 6(a) is decreased.

(8) The Czech National Bank shall justify the level of the rate referred to in paragraph 6(a) in a provision of a general nature and shall give the reasons for reducing the time limit if the time limit referred to in paragraph 7 is shorter than one year.

## **The systemic risk buffer**

### Article 12i

(1) The Czech National Bank may require banks, a set of banks defined by type and an individual bank to continuously maintain a systemic risk buffer on an individual and consolidated basis in accordance with Part One, Title II of Regulation

(EU) No. 575/2013 of the European Parliament and of the Council, doing so in addition to the capital requirements under Article 92 of this Regulation, capital requirements imposed on the bank by means of remedial measures and other measures pursuant to this Act or other legal rules and taking into account internal capital.

(2) The Czech National Bank shall set a systemic risk buffer rate for exposures located in the Czech Republic of at least 1% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council in multiples of 0.5 percentage point. It may also set this rate for exposures located in another Member State or non-Member State. When setting the rate, the Czech National Bank shall take into account that the level of the rate should not have an adverse effect on the financial market as a whole or any part thereof in other Member States of the European Union or the European Union as a whole and should not be an obstacle to the functioning of the single market. The Czech National Bank shall review the reasons for setting the systemic risk buffer rate at least once every two years.

(3) The Czech National Bank shall set out in a decision or a provision of a general nature:

- a) the systemic risk buffer rate referred to in paragraphs 1 and 2,
- b) the information necessary for identifying the bank that must maintain the systemic risk buffer,
- c) the date from which the bank concerned must apply the rate referred to in subparagraph a),
- b) the names of the states to which the rate referred to in subparagraph a) applies.

#### Article 12j

(1) The Czech National Bank shall notify the European Commission, the European Banking Authority, the European Systemic Risk Board and the competent authorities or designated authorities of the Member States concerned of its intention to set a systemic risk buffer rate.

(2) The notification referred to in paragraph 1 shall contain:

- a) the systemic risk buffer rate,
- b) a description of systemic or macroprudential risk,
- c) a justification for the level of the rate referred to in subparagraph a) with regard to the level of systemic or macroprudential risk and the threat to the stability of the financial system in the Czech Republic.
- d) a justification for the level of the rate referred to in subparagraph a) from the point of view of its effectiveness and proportionality to mitigate systemic or macroprudential

risk,

e) a justification for the effectiveness and proportionality of the level of the rate referred to in subparagraph a) with regard to the other existing measures applicable under this Act and Regulation (EU) No. 575/2013 of the European Parliament and of the Council, excluding Articles 458 and 459 of that Regulation,

f) an assessment of the likely positive and negative impacts of setting the systemic risk buffer on the single market of the European Union, based on information which is available to the Czech National Bank.

(3) Where the Czech National Bank intends to set a systemic risk buffer rate of up to 5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, it shall provide notification of that intention pursuant to paragraph 1 no later than one month prior to issuing a decision or a provision of a general nature pursuant to Article 12i(3). Where the Czech National Bank intends to set a systemic risk buffer rate of above 5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, it shall provide notification of that intention pursuant to paragraph 1 and issue a decision or a provision of a general nature pursuant to Article 12i(3) only on the basis of a regulation or decision of the European Commission.

(4) Where the Czech National Bank intends to set a systemic risk buffer rate of up to 5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council for exposures located in other Member States, the systemic risk buffer rate shall be the same for all Member States.

(5) The Czech National Bank may ask the European System Risk Board to issue a recommendation that the competent authorities or designated authorities of other Member States recognise the systemic risk buffer rate set by the Czech National Bank for the Czech Republic.

(6) Where the Czech National Bank intends to set a systemic risk buffer rate of greater than 3% and less than or equal to 5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, it shall seek the opinion of the European Commission before issuing a decision or a provision of a general nature pursuant to Article 12i(3). Where the Czech National Bank does not comply with the opinion of the European Commission, it shall inform it of the reasons for not so doing.

(7) Where the Czech National Bank intends to set a systemic risk buffer rate greater than 3% and less than or equal to 5% of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council for a bank whose parent undertaking has its registered office in another Member State and the Czech National Bank and the competent authorities or designated authorities of the Member State concerned disagree, or if the opinions of the European Commission and the European Systemic Risk Board are negative, the Czech National Bank may refer the matter to the European Banking

Authority in accordance with the directly applicable legislative act of the European Union governing financial market supervision in the banking area.<sup>28)</sup> The Czech National Bank shall not issue a decision or a provision of a general nature under Article 12i(3) until the European Banking Authority decides on the matter.

#### Article 12k

(1) Where a competent authority or a designated authority of another Member State has set a systemic risk buffer rate for that Member State, the Czech National Bank may recognise the rate for the purposes of calculating the systemic risk buffer and set this rate in a decision or a provision of a general nature pursuant to Article 12i(3). Before setting the rate the Czech National Bank shall take into consideration the information provided in the notification of the competent authority of the Member State concerned.

(2) The Czech National Bank shall notify the European Commission, the European Banking Authority, the European Systemic Risk Board and the competent authority or the designated authority of the Member States of its recognition of the rate referred to in paragraph 1.

#### Article 12l

(1) Articles 172 and 173(1) of the Administrative Procedure Code shall not apply to the issuing of a provision of a general nature pursuant to Articles 12f to 2i. The Czech National Bank shall announce the provision of a general nature in a manner facilitating remote access. The provision of a general nature shall take effect on the date of its publication. If the publication of the justification for the provision of a general nature issued pursuant to Article 12i(3) would jeopardise the stability of the financial system of the states concerned, the Czech National Bank shall not publish the justification.

(2) A bank or a branch of a foreign bank may file justified written objections to a provision of a general nature within ten working days of the publication thereof. The Czech National Bank shall handle objections by notification. The Czech National Bank shall use the objections as a basis for changing or cancelling the provision of a general nature.

(3) The Czech National Bank shall publish the final decision pursuant to Article 12i(3) in a manner allowing remote access. If the publication of the justification for the decision would jeopardise the stability of the financial system of the states concerned, the Czech National Bank shall not publish the justification.

#### Article 13

(1) A branch of a bank from a non-Member State 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. These rules shall include in particular the definition of large exposures, the manner of determining their amount, the definition of collateral eligible for the calculation of exposures, the definition of exposures that can be excluded for the purposes of monitoring limits, and limits on large exposures.

(2) The Czech National Bank shall set out the rules referred to in paragraph 1 in a decree.

#### Article 14

(1) A branch of a bank from a non-Member State shall maintain its solvency at all times. A branch of a bank from a non-Member State shall adhere to the rules set forth in respect of liquidity and safe operation; these rules may govern in particular

- 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 currency positions.

(2) A bank shall adhere to the rules referred to in paragraph 1(b) to (d).

(3) The Czech National Bank shall set out in a decree the rules referred to in paragraph 1 for banks and branches of banks from non-Member States.

#### Article 15

(1) The Czech National Bank shall set out the rules of procedure referred to in Article 12 in a decree.

(2) The Czech National Bank shall set out in a decree, which it is authorised to issue pursuant to Article 11a(6), Article 12a(4), Article 13(2) and Article 14(3), the rules and requirements for the activities of banks from non-Member States in a manner comparable with the regulation of such rules and requirements in the directly applicable legislative act of the European Union governing prudential requirements.

#### Article 16

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

- a) to conclude an agreement based on which its business or part thereof is disposed of in any way,
- b) for a decision by the General Meeting to wind up the bank,
- c) to merge or divide the bank or to transfer its assets to a bank acting as a partner,
- d) 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 action 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 c) 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 this Act;

b) of proposed personnel changes in the statutory body, the administrative board and the supervisory board, including the submission of documents necessary for evaluating their competence, trustworthiness and experience;

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.<sup>4)</sup>

(4) A bank may transfer its business only to

a) another bank,

b) a bank having its registered office in the territory of a Member State which operates in the Czech Republic through its branch,

c) a foreign bank carrying on banking activities in the Czech Republic through its branch based on a licence referred to in Article 5, provided that the foreign bank proves that the deposit-claim insurance scheme that will apply to deposits transferred as part of the sale of the business ensures eligible persons at least the same level of protection as they enjoyed under this act;

subparagraphs a) to c) shall also apply mutatis mutandis 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 date on which the agreement on the transfer of the business takes effect, which may be no sooner than on the date 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 date 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 an authorised 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 an authorised financial institution abroad, the Czech National Bank shall decide in administrative proceedings whether the conditions for such cases laid down in European Community 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.

(4) When supervising a bank that carries on business in another Member State through a branch, the Czech National Bank shall take into account the information obtained by the supervisory authority of that Member State during an on-site examination when compiling the supervisory examination programme referred to in Article 25e.

#### Article 16b

(1) A foreign bank having a registered office in a territory other than a Member State which carries on banking activities in the Czech Republic through its branch shall be obliged to inform the Czech National Bank without undue delay about

a) proposed personnel changes in the branch's officers and, along with this information, to submit documents necessary for evaluating their competence, trustworthiness and experience,

b) all changes in information and facts stated in the licence application submitted in connection with the establishment of this branch in the Czech Republic, ,

c) declines in the funds provided to this branch pursuant to Article 5(4)(a),

d) facts and decisions which have an impact on the activities of this branch or relate

to it directly, in particular the intention to dissolve the branch or to sell the part of the business to which the branch belongs,

e) amendments to its statutes,

f) its adverse financial situation which might affect the activities of the branch,

g) an extraordinary situation on the financial market of its home country, including such adverse developments on this market which might result in the liquidity of this market or the stability of the financial system being jeopardised.

(2) A foreign bank having its registered office in a territory other than a Member State, which carries on banking activities in the Czech Republic through its branch, shall be obliged to inform a supervisory authority of the foreign bank's home country about the issuance of a decision on the insolvency and the adjudication of bankruptcy on this branch.

#### 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(1)(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 shall notify the Czech National Bank of its acquisition of a qualifying holding at the earliest opportunity. At the request of the Czech National Bank it shall prove that it meets the conditions pursuant to paragraph 1.

(3) "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 a financial institution as defined in Article 4(1)(26) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(3) For the purposes of this Act, “institution” shall mean a credit institution as defined in Article 4(1)(1) and an investment firm as defined in Article 4(1)(2) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(4) For the purposes of this Act, “qualifying holding” shall mean a qualifying holding as defined in Article 4(1)(36) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(5) 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.

(6) 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,<sup>4b)</sup> 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.

(7) 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.

(8) 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.

(9) A parent undertaking of a manager of an investment fund or foreign investment fund shall not include in the share in voting rights arising from participation in a bank such voting rights that are connected with assets in investment funds and foreign investment funds administered by the subsidiary, provided that the parent undertaking does not influence the exercise of the voting rights in any way.

(10) 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 referred to in paragraph 8 or 9, specifying the authorities performing supervision thereof,

b) a declaration of fulfilment of the conditions set out in paragraph 8 or 9, and

c) any changes to the information under (a) or any changes to the declaration under (b).

(11) 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 8(b) or paragraph 9,

b) where the parent undertaking is a client of its subsidiary, written documents confirm that their relationship is analogous to that with other clients.

(12) For the purposes of this Act, "ancillary services undertaking" shall mean an ancillary services undertaking as defined in Article 4(1)(18) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

## 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. A branch of a bank from a non-Member State may not enter into transactions with persons having a special relation to it or to this foreign bank (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 the board of directors or the administrative board of the bank so decides after analysing the banking transaction in question and the applicant's financial standing. A branch of a bank from a non-Member State shall provide loans to, and secure the commitments of, the persons referred to in paragraph 1 only if the statutory body of this foreign bank or another authority or entity designated by this statutory body so decides after analysing the banking transaction in question and the applicant's financial standing.

## 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 of the bank;
- b) members of the administrative board and the supervisory board and members of the audit committee,<sup>25)</sup> the risk committee, the remuneration committee and the appointment committee;
- c) parent undertakings of the bank, persons having qualifying holdings in those undertakings, and members of the management of those undertakings;
- d) persons close to members of the statutory body of the bank, to members of the administrative board and members of the supervisory board of the bank, to members of the audit committee, the risk committee, the remuneration committee and the appointment committee, and to parent undertakings of 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.

(2) Paragraph 1 shall apply *mutatis mutandis* to a foreign bank having its registered office in a territory other than the territory of a Member State which carries on banking activities in the Czech Republic through its branch, and to this branch. For the purposes of this Act, the senior officers of the branch shall also be deemed to

have a special relation to this branch.

#### 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<sup>5a</sup> 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 branches of banks from a non-Member State.

#### 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, governance 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 branches of banks from a non-Member State.

#### 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 act governing the legal relationships of commercial companies and cooperatives provides otherwise.

(3) A person or persons 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 set out 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 or managers of foreign investment funds.

(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 12.

(8) When assessing the application, the Czech National Bank shall consider only compliance with 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 members of the statutory body, members of the administrative board, members of the supervisory board and senior managers of the bank who hold executive positions in the bank and are accountable to the bank's managers for its everyday management 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 an individual 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) If, when assessing the application for prior consent, the Czech National Bank finds that the conditions set out in paragraph 9 are not met and the consent cannot be granted, it shall notify the applicant of this finding within two working days of the date on which this finding was established. The Czech National Bank may publish the justification for its negative decision on the application for consent at the request of the applicant or without such request.

(11) 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.

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

(13) 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 action 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.

(14) 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.

(15) 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.

(16) The notification pursuant to paragraph 15 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.

(17) The bank shall notify the Czech National Bank in writing of any changes subject to the procedure referred to in paragraph 3 or 15 at the earliest opportunity after becoming aware of the material facts.

(18) A bank whose shares have been admitted to trading on a regulated market shall notify the Czech National Bank at least once a year of the names of its shareholders possessing qualifying holdings and the size of such holdings.

#### 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(12) was not granted, and furthermore where the entity fails to fulfil its notification duty pursuant to Article 20(11) 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 a 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 Article 20(3)(c) without the prior consent of the Czech National Bank or after the time limit prescribed in Article 20(11) and the consent referred to in Article 20(12) 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 agreement allowing the bank to be controlled as a subsidiary by a parent undertaking and shall impose on a bank the obligation to terminate the relationship based on this agreement on the earliest possible date allowed by this agreement, the Civil Code or another legal rule. The provisions of Article 26aa(2) 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, with whom administrative proceedings are conducted on suspending shareholder rights 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 date 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 in its opinion on the extract from the bank's share issue a person 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 that person shall have the effect of a preliminary measure.<sup>11)</sup>

(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<sup>1a)</sup> 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) Paragraphs 1 to 3 shall also apply to foreign bank branches.

#### Article 20d

(1) The Czech National Bank may issue a provision of a general nature based on, and within the limits of, the directly applicable legislative act of the European Union governing prudential requirements where this directly applicable legislative act allows a competent authority to grant an exemption or modify the application of the rules set for banks or a set of banks defined by type.

(2) The draft provision of a general nature shall be published only on the Czech National Bank’s official noticeboard. Where a public debate of the draft provision of a general nature is held, the Czech National Bank shall announce the time and venue of the debate on the Czech National Bank’s official noticeboard.

(3) The provision of a general nature shall take effect on the date of its publication on the Czech National Bank’s official noticeboard.

(4) Justified written objections to the provision of a general nature may be filed only by banks or foreign bank branches, which must do so within 10 working days of the publication thereof. The Czech National Bank shall handle objections by notification. The Czech National Bank shall use the objections as a basis for changing or cancelling the provision of a general nature.

### **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.<sup>6)</sup>

(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 governance 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 governance 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 Articles 11a and 11b, within the scope set out in a decree of the Czech National Bank pursuant to Article 11a(6)(b).

(2) The Czech National Bank shall set out in a decree the content of the report on the audit of the bank's governance 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 under paragraphs 1 to 6 shall apply *mutatis mutandis* to branches of banks from a non-Member State.

## 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 rule<sup>6)</sup> and a consolidated annual report pursuant to a special legal rule<sup>6)</sup>; 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, 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 the relevant period.

## Article 24

(1) A bank shall produce and submit to the Czech National Bank information and documents the form and manner of submission of which shall be set out by the Czech National Bank in a decree in compliance with the directly applicable legislative act of the European Union governing prudential requirements and a European Commission regulation or decision. A bank shall produce and submit to the Czech National Bank other information and documents necessary for the exercise of supervision. The content, form, closing dates and manner of submission of such information shall be set out by the Czech National Bank in a decree. A bank shall submit to the Czech National Bank at its request other documents and other materials necessary for the exercise of supervision and to provide all the information necessary therefor as required by the Czech National Bank.

(2) A branch of a bank from a non-Member State 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 set out by the Czech National Bank in a decree. A branch of a bank from a non-Member State shall submit to the Czech National Bank at its request other documents and other materials necessary for the exercise of supervision and to provide all the information necessary therefor as required by the Czech National Bank. A branch of a bank from a Member State shall produce and submit to the Czech National Bank information and documents pursuant to Article 5j, the content, form, closing dates and manner of submission of which shall be set out by the Czech National Bank in a decree.

(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**

Heading deleted

### **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 supervisory authority of the home country of the foreign bank and to the extent stipulated by law for the banking supervision exercised by the Czech National Bank, including on-site inspections. 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 foreign bank or authorised financial institution for the carrying-out of an on-site examination of an entity it supervises. The Czech National Bank shall allow the home country supervisory authority of a foreign bank or authorised 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. To this end, the Czech National Bank may conclude written arrangements on coordination and cooperation with the supervisory authority of the home country of the foreign bank or authorised financial institution.

(3) In discharging its responsibilities pursuant to this Act and the directly applicable legislative act of the European Union governing prudential requirements the Czech National Bank shall participate in the activities of colleges of supervisory within the European System of Financial Supervision.<sup>7b)</sup>

(4) In discharging its responsibilities pursuant to this Act and the directly applicable legislative act of the European Union governing prudential requirements the Czech National Bank shall participate in the activities of the European Banking Authority.

(5) In discharging its responsibilities pursuant to this Act and the directly applicable legislative act of the European Union governing prudential requirements, 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 European Banking Authority unless it states its reasons for not doing so.

(6) The Czech National Bank may require regular provision of information necessary to discharge its responsibilities and for statistical purposes from

a) banks

- b) financial holding companies,
- c) mixed financial holding companies,
- d) mixed activity holding companies,
- e) entities belonging to the entities referred to in subparagraphs a) to d),
- f) entities that have been authorised to perform activities by the entities referred to in subparagraphs a) to d).

(7) The Czech National Bank may carry out inspections in the entities referred to in paragraph 6 where necessary to discharge its responsibilities; for this purpose it may

- a) require the submission of documents,
- b) examine books and records and make extracts and copies from such books and records,
- c) obtain written or oral explanations from the entities referred to in paragraph 6 and their representatives and staff,
- d) obtain oral explanations from entities other than those referred to in paragraph 6 on condition that they give consent.

(8) The Czech National Bank may carry out on-site examinations in the entities referred to in paragraph 6(b) to (f) and in all entities subject to supervision on a consolidated basis provided that it has informed the supervisory authority concerned in advance.

#### 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, the following shall not be deemed a breach of the confidentiality obligation:

- a) disclosure of information acquired in the context of exercising banking supervision

or supplementary supervision of entities in financial conglomerates<sup>6d</sup> to an authority responsible for supervising banks, financial institutions or financial markets in another state,

b) disclosure of information to the Ministry of Finance for the purposes of inspecting compliance with the conditions for providing contributions to natural persons pursuant to the act regulating building savings schemes,

c) disclosure of information acquired while exercising banking supervision to member of staff of the Czech National Bank who are involved in exercising supervision of the financial market for the performance of their duties,

d) publication of the results of stress tests conducted pursuant to Article 25d(2) or the directly applicable legislative act of the European Union governing financial market supervision in the banking area.

(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 bankruptcy 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 the Czech National Bank as the central bank of the Czech Republic and the authority performing financial market supervision,

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 and also with respect to the European Central Bank, the European Banking Authority and the European Systemic Risk Board.<sup>22)</sup>

(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 competent authority or person protect information at least within the scope required by 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.

#### Article 25c

### **The review and evaluation process**

(1) When exercising supervision, the Czech National Bank shall review and evaluate whether the arrangements, strategies, processes and mechanisms implemented by a bank to comply with the requirements laid down in this Act, the directly applicable legislative act of the European Union governing prudential

requirements and a European Commission regulation or decision and the capital and liquidity of the bank ensure the safe and sound operation of the bank and the proper management and coverage of risks. The Czech National Bank shall always assess risks to which the bank is or might be exposed, risks which the bank may pose to the financial market taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council or recommendations of the European Systemic Risk Board, and risks revealed by stress tests.

(2) The Czech National Bank shall establish the frequency and intensity of such 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 and in the scope of the requirements laid down in Part One, Title II of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and a European Commission regulation or decision.

(3) The Czech National Bank shall review and evaluate credit, market and operational risks; the review and evaluation must focus at least on

a) the results of the stress tests carried out in accordance with Article 177 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council by a bank applying the internal ratings based approach,

b) exposures to and management of concentration risk by a bank in accordance with Part Four of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and a European Commission regulation or decision,

c) the suitability, effectiveness and robustness of the policies and procedures for the management of the residual risk associated with the use of recognised credit risk mitigation techniques, where “credit risk” shall mean credit risk as defined in Article 4(1)(57) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, and the correctness of their application,

d) the extent to which the capital held by a bank in respect of assets which it has securitised corresponds to the economic substance of the transaction, including the degree of risk transfer achieved,

e) the exposure of a bank to liquidity risk and the measurement and management of liquidity risk, including the development of alternative scenario analyses, the management of risk mitigants and the effectiveness of emergency plans,

f) the impacts of risk distribution and how such impacts are factored into the risk measurement system,

g) the results of stress tests carried out by a bank using an internal model to calculate the market risk capital requirement under Part Three, Title IV, Chapter 5 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

h) geographical location of a bank’s exposures,

- i) the business model of the bank,
- j) the assessment of systemic risk.

(4) The Czech National Bank shall also review and evaluate

a) the overall liquidity risk management by a bank; at the same time it shall promote the development of proper internal methodologies and take into account the bank's position on the financial markets and duly consider in its decisions made in connection with the review and evaluation the potential impact on financial stability in all other Member States concerned,

b) the exposure of a bank to the interest rate risk of the investment book, which, for the purposes of this Act, shall mean a portfolio containing instruments that are not contained in the trading book; if the economic value of the bank declines by more than 20% of its capital as a result of a sudden and unexpected change in interest rates of more than 2 percentage points or by the amount defined in the guidelines of the European Banking Authority, the Czech National Bank shall impose appropriate remedial measures,

c) the exposure of a bank to the risk of excessive leverage, which, for the purposes of this Act, shall mean leverage as defined in Article 4(1)(93) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and which shall be identified on the basis of indicators of excessive leverage, including the leverage ratio determined pursuant to Article 429 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, a European Commission regulation or decision; in determining the adequacy of the leverage ratio and of the arrangements, strategies, processes and mechanisms implemented by the bank to manage the risk of excessive leverage, which, for the purposes of this Act, shall mean the risk of excessive leverage as defined in Article 4(1)(94) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, the Czech National Bank shall take into account the business model of the bank,

d) the governance system of the bank, its corporate culture and the ability of members of the statutory body, members of the administrative board and members of the supervisory board to perform their duties; in conducting the review and evaluation, the Czech National Bank may require the bank to provide the agendas for meetings of the statutory body, the administrative board and the supervisory board and their committees, including related supporting documents and the results of the internal and external evaluation of the work of the statutory body, the administrative board and the supervisory board.

(5) The Czech National Bank shall also review and evaluate

a) whether a bank has provided implicit support to a securitisation, which, for the purposes of this Act, shall mean securitisation as defined in Article 4(1)(61) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council; if the Czech National Bank finds that a bank has provided hidden implicit to a securitisation on more than one occasion, it shall take appropriate measures reflective of the risk

that the bank will provide support to its securitisation in the future,

b) whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council or a European Commission regulation or decision, enable the bank to sell or hedge out its positions within a short period without incurring material losses under normal market conditions; for the purposes of this Act, “trading book” shall mean the trading book as defined in Article 4(1)(86) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

#### Article 25d

(1) If, during the performance of the review and evaluation under Article 25c, the Czech National Bank finds that multiple banks are or may be exposed to similar risks or pose a similar risk to the financial market, it shall be entitled to perform the review and evaluation in the same or similar manner in sets of banks defined by type. Sets of banks defined by type with a similar risk profile can be determined mainly on the basis of systemic risk evaluation pursuant to Article 25c(3)(j).

(2) The Czech National Bank shall carry out stress tests on banks at least once a year to facilitate the review and evaluation process under Article 25c. The Czech National Bank may publish the results of the stress tests.

(3) The Czech National Bank shall review regularly, and at least once every three years, compliance with the conditions under which a bank was permitted to use internal approaches. It shall focus in particular on the quality of the methods and procedures used and on whether they are up to date, on changes in the bank’s business and on the use of internal approaches for new products.

#### Article 25e

(1) The Czech National Bank shall proceed in accordance with a supervisory examination programme, which shall be compiled at least once a year taking into account the results of the review and evaluation process under Article 25c.

(2) The Czech National Bank shall compile the supervisory examination programme referred to in subparagraph 1 in such a way that it does not prevent the supervisory authority of another Member State from carrying out an on-site examination in a bank that carries on business in another Member State.

(3) The supervisory examination programme of the Czech National Bank shall contain

a) a list of banks intended to be subject to enhanced supervision in connection with the measures referred to in paragraph 4,

b) a plan for on-site examinations at the premises of a bank, including its branches and subsidiaries having their registered office in other Member States,

c) information on the planned manner of carrying out tasks and allocating the

resources needed to do so,

d) a list of banks for which the results of the stress tests referred to in Article 25c and 25d(2), or the outcome of the review and evaluation process under Article 25c, indicate significant risks to financial soundness or breaches of the requirements laid down in this Act, its implementing regulation, a decision issued under this Act, a provision of a general nature issued under this Act, the directly applicable legislative act of the European Union governing prudential requirements or a European Commission regulation or decision,

e) a list of banks that pose systemic risk to the financial market,

f) a list of other banks for which the Czech National Bank deems it to be necessary.

(4) In connection with the outcome of the review and evaluation under Article 25c, the Czech National Bank shall take the following measures if necessary:

a) an increase in the number of on-site examinations,

b) a permanent presence of a representative of the Czech National Bank at the bank,

c) additional or more frequent reporting by the bank,

d) additional or more frequent review of operational, strategic or business plans of the bank,

e) inspections focused on monitoring selected risks to which the bank might be exposed.

#### Article 25f

(1) A bank shall draw up and regularly update a recovery plan for the event of a serious deterioration of its financial situation. If the Czech National Bank, taking into account the size of the bank, its business model or its interconnectedness to other institutions or to the financial market as a whole, determines that a deterioration in the financial condition of the bank will not have a negative effect on the financial market, on other institutions or on funding conditions, the bank shall, with the consent of the Czech National Bank, draw up a recovery plan to the proportionate extent.

(2) The Czech National Bank shall draw up and regularly update a resolution plan for a bank setting out options for the resolution of the bank. If the Czech National Bank, taking into account the size of the bank, its business model or its interconnectedness to other institutions or to the financial market as a whole, determines that any failure of the bank will not have a negative effect on the financial market, on other institutions or on funding conditions, it shall draw up a recovery plan to the proportionate extent.

(3) A bank shall provide the Czech National Bank with all information necessary for the preparation of a resolution plan pursuant to paragraph 2 to an extent proportionate to its size, its business model or its interconnectedness to other

institutions or to the financial market as a whole.

(4) The Czech National Bank shall collaborate with the European Banking Authority<sup>30)</sup> in the preparation of bank resolution plans. It shall inform the European Banking Authority on the preparation of bank recovery plans and bank resolution plans; in particular, it shall inform it sufficiently in advance of the dates and venues of meetings and of the main issues to be discussed. The Czech National Bank shall allow a representative of the European Banking Authority to participate in meetings.

## **PART SEVEN**

### **REMEDIAL MEASURES AND PENALTIES**

#### Article 26

##### **Remedial measures**

(1) Where the Czech National Bank identifies any shortcomings in the activities of an entity subject to its supervision resulting from breaches of or non-compliance with its duties or the requirements laid down in this Act, its implementing regulation, a decision issued pursuant to this Act, a provision of a general nature issued under this Act, the act regulating building savings schemes, the directly applicable legislative act of the European Union governing prudential requirements or a European Commission regulation or decision, the Czech National Bank may impose remedial measures commensurate with the nature and gravity of the violation in order to eliminate the shortcomings identified. Remedial measures may also be imposed where shortcomings are identified on the basis of the results of the review and evaluation process pursuant to Article 25c.

(2) To remedy shortcomings identified, the Czech National Bank may

a) require an entity subject to its supervision

1. to hold capital in excess of the minimum capital requirements laid down in Article 92 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and the capital buffers requirements laid down in this Act,
2. to improve its arrangements, strategies, processes and other mechanisms so as to restore or reinforce their compliance with this Act, its implementing regulation, a decision or provision of a general nature issued pursuant to this Act or the directly applicable legislative act of the European Union governing prudential requirements and a European Commission regulation or decision,
3. to present a plan to restore compliance with the requirements laid down in this Act and the directly applicable legislative act of the European Union governing prudential requirements and to implement it within a set deadline,
4. to apply specific principles and procedures for provisioning for assets and reserves or for determining capital requirements,
5. to restrict, terminate or not execute certain transactions, operations or activities that pose an excessive risk to the bank,
6. to restrict its distribution network, including a potential reduction in the number of premises,
7. to reduce the risks associated with its activities, products or systems,

8. to reduce the variable component of remuneration of persons referred to in Article 8b(1)(d) where it is inconsistent with the maintenance of capital; in such case a bank or a foreign bank branch from a non-Member State shall set the amount of the variable component of remuneration as a percentage of net profit,
9. to use its profit after tax preferentially to supplement its reserve funds or to increase its capital,
10. to reduce profit distribution or not distribute profit to shareholders or holders of additional Tier 1 instruments in accordance with Article 51 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council where this prohibition does not constitute an event of default by the entity,
11. to rectify the shortcoming in its activities within a specified period and desist from repeating that shortcoming;
12. to increase its capital to a particular level within a specified period, unless it maintains a combined capital buffer pursuant to Article 12d(1) and the Czech National Bank approves a capital restoration plan,

b) impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions,

c) impose special liquidity requirements, including restrictions on maturity mismatches between assets and liabilities, taking into account the specific business model of the bank, the arrangements, procedures and mechanisms of the bank, particularly those under Article 8b(1)(b), and the systemic liquidity risk to the integrity of the Czech financial market,

d) require additional disclosures,

e) impose stricter limits on after-tax profit distribution than those laid down in Article 12d(4), unless the Czech National Bank approves a capital restoration plan,

f) impose other appropriate remedial measures.

(3) The Czech National Bank may impose the measures referred to in paragraph 2(a)(1) particularly if

a) it identifies shortcomings in the arrangements, strategies, procedures or other mechanisms of the governance system regulated by this Act or its implementing regulation, non-compliance with the requirements under Article 393 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council or shortcomings in strategies and procedures under Article 12c or in their application; this shall apply under the conditions laid down in Article 26k(1) and (2) *mutatis mutandis* to a foreign bank that is a member of a European parent bank group (Article 26d(1)(m)), a member of a European financial holding company group (Article 26d(1)(o)) 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,

b) the capital requirements laid down in this Act or the directly applicable legislative act of the European Union governing prudential requirements do not apply to risks or

elements of risks,

c) the imposition of measures under paragraph 2(a)(2), (5) and (6) and paragraph 2(c)(8) to (10) or measures under paragraph 4(a) to (f) seems to be insufficient for rectifying the situation in reasonable time,

d) non-compliance with the requirements for the application of an appropriate approach is likely to lead to inadequate capital requirements,

e) the risks are likely to be underestimated despite compliance with the requirements of this Act and the directly applicable legislative act of the European Union governing prudential requirements,

f) a bank reports to the Czech National Bank in accordance with Article 377(5) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council that stress tests results revealed a need for capital significantly exceeding the capital requirement for the correlation trading portfolio.

(4) If an entity subject to supervision by the Czech National Bank has been granted consent to use an internal approach or internal model for the calculation of capital requirements in accordance with Part Three of Regulation (EU) No. 575/2013 of the European Parliament and of the Council but does not meet the requirements for applying that approach anymore, the Czech National Bank may

a) require it to demonstrate that the non-compliance with the requirements of the internal approach or internal model is immaterial,

b) require it to present a plan for restoring compliance with the requirements of the internal approach or internal model and set a deadline for its implementation,

c) require it to adjust the plan for restoring compliance with the requirements of the internal approach or internal model and set a deadline for implementing those adjustments if full compliance is unlikely to be achieved under the original plan or if the deadlines in the original plan are inappropriate,

d) limit the consent to areas which comply with the requirements or those where compliance can be achieved within the relevant deadline,

e) revoke the consent to the use of an internal approach or internal model which requires consent if the bank is unlikely to be able to restore compliance within the relevant deadline or has not demonstrated that the non-compliance is immaterial,

f) revoke the consent to the use of an internal market risk model or impose appropriate measures to ensure that the model is improved immediately if it indicates a large number of overshootings referred to in Article 366 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

g) impose other appropriate measures.

(5) Paragraph 3 shall apply under the conditions stipulated in Article 26k(1)

and (2) mutatis mutandis to a foreign bank that is a member of a European parent bank group ((Article 26d(1)(m)), a member of a European financial holding company group ((Article 26d(1)(o)) 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.

(6) If any shortcomings are identified in the activities of an entity subject to its supervision, the Czech National Bank may

a) require the entity

1. to change a member of the statutory body, a member of the administrative board or a member of the supervisory board, a senior officer of a foreign bank branch or any other responsible natural person,
2. to create adequate provisions and reserves,
3. to reduce or increase its capital to a specified extent,
4. to reduce its capital in order to cover the loss by an amount corresponding to the loss after clearance thereof with reserve funds and other funds, if the loss exceeds 20% of capital,
5. to reduce its share in another entity or transfer its share in the entity to another entity or otherwise limit the risks arising from its share in the entity,

b) change the licence by excluding or restricting some of the activities listed therein,

c) introduce conservatorship,

d) order an extraordinary audit at the expense of a bank or a branch of a bank from a non-Member State,

e) 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 or the branch of a bank from a non-Member State pursuant to Article 19,

f) require an increase in the liquidity of the bank or the branch of a bank from a non-Member State at least to the level stipulated by the Czech National Bank,

g) withdraw consent to the use of an internal approach or internal model for the calculation of a capital requirement in accordance with Part Three of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(7) The Czech National Bank may require a natural person or a legal entity not subject to its supervision which does not fulfil the duties stipulate in this Act, its implementing regulation, a decision issued under this Act, the directly applicable legislative act of the European Union governing prudential requirements and a European Commission regulation or decision to cease the unlawful conduct and to desist from repeating it; the Czech National Bank may also

a) suspend the voting rights of the shareholder or shareholders responsible for the unlawful conduct,

b) temporarily ban a member of the statutory body, a member of the administrative board or a member of the supervisory board of the bank or another responsible natural person from exercising a function in the bank or exercising a function in another bank or a foreign bank,

c) disclose information on which person is responsible for the unlawful conduct and what is the nature of the conduct,

(8) The procedure referred to in paragraph 2(a)(1),(2) and (4) and paragraph 6(a)(4) and paragraph 6(c) and (e) may not be applied to a branch of a bank from a Member State and the procedure referred to in paragraph 2(a)(4) and paragraph 6(c) and (e) may not be applied to a branch of a bank from a non-Member State.

(9) The Czech National Bank may also impose remedial measures pursuant to paragraphs 2 to 4, paragraph 6(g) and paragraph 7 if it reasonably suspects that a shortcoming in activities may occur within the following 12 months.

#### Article 26a

If the Czech National Bank becomes aware that a bank's total capital ratio on an individual basis is lower than two thirds of the total capital ratio pursuant to Article 92(1)(c) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, it shall impose one or more of the following remedial measures on the bank:

a) to increase its capital so that the capital ratio of the bank on an individual basis is at least equal to the total capital ratio pursuant to Article 92(1)(c) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

b) to acquire assets which, pursuant to the directly applicable legislative act of the European Union governing prudential requirements, 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.

#### Article 26aa

(1) The only party to a proceeding to impose remedial measures shall be the entity on which the remedial measures are to be imposed.

(2) Proceedings may also be opened by the issuing of a decision.

(3) A person on whom the Czech National Bank has imposed a remedial measure shall notify the Czech National Bank of the remedying of the situation without undue delay.

(4) An appeal may be filed against a decision to impose remedial measures. Such appeals shall have no suspensory effect. Appeals shall be ruled on by the Bank Board of the Czech National Bank.

#### Article 26ab

(1) The Czech National Bank shall publish the final decision on the imposition of remedial measures without undue delay in a manner allowing remote access.

(2) The Czech National Bank shall publish the decision without giving the identification details of the person on which the remedial measure was imposed if such publication

a) is found to be evidently disproportionate vis-à-vis the natural person involved on the basis of a prior assessment,

b) would jeopardise the stability of the financial market,

c) would jeopardise ongoing criminal proceedings,

d) would cause disproportionate damage to the person involved.

(3) A decision under paragraphs 1 or 2 must be published for at least five years. The personal data of the natural person involved shall be published only for the period necessary in accordance with the personal data protection act.

#### Article 26b

(1) Should a member of the statutory body, a member of the administrative board or a member of the supervisory board become 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 total capital ratio on an individual basis to fall below the minimum level of the total capital ratio pursuant to Article 92(1)(c) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, it shall notify the Czech National Bank of this fact at the earliest opportunity.

(2) Paragraph 1 shall apply mutatis mutandis to a foreign bank carrying on banking activities in the Czech Republic through its branch based on a licence in accordance with Article 5 and to its branch; the senior officers of both the foreign bank and the branch shall have the duty to inform the Czech National Bank.

#### Article 26ba

(1) Should the bank's total capital ratio fall below the minimum level pursuant

to Article 92(1)(c) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and the bank increases its capital to meet the total capital ratio requirement,

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 the second sentence of Article 29(2),

b) the issue price must 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 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 adopted,

g) 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 f) 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 adopted,

h) the subscriber shall pay the issue price of the new shares within the time limit for subscription, otherwise his subscription shall be invalid,

i) the issue price of the new shares shall be paid in cash or by settlement.

(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 act governing the legal relationships of commercial companies and cooperatives; however, failure to fulfil this obligation shall not render the subsequent resolution of the General Meeting invalid.

#### Article 26bb

#### **Provision of a general nature if the stability of the banking or financial system is jeopardised or disturbed**

(1) The Czech National Bank shall issue a provision 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 provision 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,

c) set temporarily the rules laid down in Article 12, Article 13 and Article 14(a), (b) and (d) at variance with this Act or a legal rule issued on the basis thereof, or

d) 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 Czech National Bank shall issue a provision of a general nature if the conditions laid down in Article 458 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council are met.

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

(5) Banks and foreign bank branches shall be the only entities whose rights, obligations or justified interests may be affected by the provision 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 objections shall have no suspensory effect. The Czech National Bank shall decide on objections filed, 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 an individual basis pursuant to this Act or for supervision of investment firms, credit unions and financial institutions pursuant to special legislative acts.

(3) When performing supervision on a consolidated basis the Czech National Bank shall co-operate with the authorities responsible for supervising banks, investment firms and financial institutions in other countries and shall be entitled to exchange information with them. This shall apply without prejudice to Article 25a.

(4) The Czech National Bank may, for the purposes of performing 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) Where the Czech National Bank requires information necessary for performing 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.

(6) Banking supervision of a member of European parent bank group (Article 26d(1)(m)) or of a member of a European financial holding company group (Article 26d(1)(o)) 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.

(7) Where the Czech National Bank supervises a European parent bank group or a European financial holding company 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.

(8) Instead of the Czech National Bank, a supervisory authority of a Member State supervising a European parent bank group or a European financial holding company group on a consolidated basis shall be competent in accordance with European Union law<sup>17)</sup> 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 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 authority<sup>18)</sup>.

(9) 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 company group on a consolidated basis, shall be competent in accordance with European Union law<sup>17)</sup> 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.

(10) Paragraphs 6 to 9 shall apply mutatis mutandis to the supervision on a consolidated basis of a responsible bank which is a subsidiary of a European mixed financial holding company.

#### 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 company group or a mixed activity holding company 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 credit union, a foreign bank, a financial institution, an investment firm, a foreign investment firm or an ancillary services undertaking,

c) “financial holding company” shall mean an entity as defined in Article 4(1)(20) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

d) “mixed activity holding company” shall mean an entity as defined in Article 4(1)(22) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

e) “mixed financial holding company” shall mean an entity as defined in Article 4(1)(21) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

f) “parent bank group” shall mean a group which consists of a bank and its subsidiaries and affiliates which are institutions, financial institutions or an ancillary services undertaking,

g) “financial holding company group” shall mean a group which consists of a financial holding company and its subsidiaries and affiliates which are institutions, financial institutions or an ancillary services undertaking,

h) “mixed activity holding company group” shall mean a group which consists of a mixed activity holding company and its subsidiaries and affiliates which are

institutions, financial institutions or an ancillary services undertaking,

i) “affiliate” shall mean an entity as defined in Article 4(1)(35) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

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

k) “foreign parent bank group” shall mean a group which consists of a foreign parent bank and its subsidiaries and affiliates which are institutions, financial institutions or an ancillary services undertaking,

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

m) “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 company or a mixed financial holding company having its registered office in any Member State,

n) “domestic financial holding company” shall mean an entity as defined in Article 4(1)(30) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

o) “European financial holding company” shall mean an entity as defined in Article 4(1)(31) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

p) “domestic mixed financial holding company” shall mean an entity as defined in Article 4(1)(32) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

q) “European mixed financial holding company” shall mean an entity as defined in Article 4(1)(33) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

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

1. in the Czech Republic,

2. in another Member State, where this financial holding company 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 performance of banking supervision on a consolidated basis of this financial holding company group pursuant to Article 26e(6);

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

s) “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 performance of banking supervision on a consolidated basis of this foreign parent bank group pursuant to Article 26e(6); 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.

t) “responsible bank which is a subsidiary of a mixed financial holding company” shall mean a bank which is a subsidiary of a mixed financial holding company having its registered office:

1. in the Czech Republic,

2. in another Member State, where this mixed financial holding company 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 performance of banking supervision on a consolidated basis pursuant to Article 26e(6);

where there is more than one bank in the consolidated group referred to in points 1 to 3, “responsible bank which is a subsidiary of a mixed financial holding company” shall mean the bank with the largest balance-sheet total,

u) “consolidated basis” shall mean consolidated basis as defined in Article 4(1)(48) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

(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 relevant foreign authority responsible for supervising banks or financial institutions, the parent undertaking of the consolidated group or type thereof.

(3) 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 perform 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 company shall be subject to banking supervision on a consolidated basis only if a foreign bank, investment firm or financial institution having its registered office in a non-Member State is a member of this group.

(2) The Czech National Bank shall perform banking supervision on a consolidated basis of a financial holding company group, the members of which include a responsible bank in a financial holding company group, and of a

responsible bank which is a subsidiary of a mixed financial holding company. A group of a financial holding company which is a subsidiary of a domestic parent bank or a domestic financial holding company shall be subject to banking supervision on a consolidated basis only if a foreign bank, investment firm or financial institution having its registered office in a non-Member State is a member of this group.

(3) The Czech National Bank shall

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

b) shall waive the supervision of a financial holding company 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 company group according to the criteria stipulated in this Act (Article 26d(1)(r)) 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 company or the European financial holding company 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 company group.

(4) Paragraph 3 shall apply *mutatis mutandis* to the supervision on a consolidated basis of a responsible bank which is a subsidiary of a mixed activity holding company.

(5) The Czech National Bank shall perform banking supervision on a consolidated basis of a mixed activity holding company group.

(6) The Czech National Bank may waive the performance 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 under the directly applicable legislative act of the European Union governing prudential requirements. Prior to making such a decision, the Czech National Bank shall 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 Authority. 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 company or a mixed financial holding company 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 and the European Banking Authority, of the procedure referred to in the third sentence.

(1) A parent bank, a responsible bank in a financial holding company group, a responsible bank which is a subsidiary of a mixed financial holding company, a responsible bank in a foreign parent bank group and a bank in a mixed activity holding company 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 governance system (Article 8b),
- b) the strategies and processes for assessing and changing internal capital (Article 12c),
- c) the requirements laid down in Article 26g(4).

(2) Entities belonging to a consolidated group shall supply the Czech National Bank, on request, either directly or via a bank referred to in paragraph 1, with all the information necessary for supervision on a consolidated basis.

#### 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 company group, a responsible bank which is a subsidiary of a mixed financial holding company 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 company group, a responsible bank which is a subsidiary of a mixed financial holding company, a responsible bank in a foreign parent bank group and a bank in a mixed activity holding company 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 out 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 company and a mixed financial holding company shall ensure that their statutory body, a member thereof, a member of the administrative board or a member of the supervisory board is a trustworthy person having enough competence and experience to discharge the office and to meet the requirements applying to the financial holding company and the mixed financial holding company under this Act. The Czech National Bank shall set out detailed requirements in a decree.

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

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

#### Article 26h

(1) 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 company group, a responsible bank which is a subsidiary of a mixed financial holding company, a financial holding company, a responsible bank in a foreign parent bank group, a bank in a mixed activity holding company group or a mixed activity holding company, 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.

(2) 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

(1) Where the Czech National Bank supervises a European parent bank group, a European financial holding company group or a responsible bank which is a subsidiary of a European mixed financial holding company on a consolidated basis, it shall carry out the following tasks in addition to those laid down in this Act, a special legal rule<sup>2)</sup> or the directly applicable legislative act of the European Union governing prudential requirements:

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 Article 8b(1)(b), by Part Eight of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and by Article 12c, supervision performed in accordance with Article 25(c) 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 the central banks of the European System of Central Banks, which shall mean the central banks of the European System of Central Banks as defined in Article 4(1)(45) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, 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) on request, communication to the supervisory authorities of other Member States supervising an entity which is a member of such a consolidated group of information essential for the performance of supervision of this entity, having regard in particular to the significance of this entity for the financial market in the state concerned (Article 38ha),

e) decision-making on joint applications for prior consent to the use of one of the internal approaches or on applications to change an approach already in use.

(2) Where the competent supervisory authority of another Member State does not cooperate with the Czech National Bank to a sufficient extent in carrying out the tasks referred to in paragraph 1, the Czech National Bank may inform the European Banking Authority about it.<sup>23)</sup>

(3) The Czech National Bank may also inform the European Banking Authority

about cases where the supervisory authority of another Member State does not carry out tasks imposed on it on the basis of a legal rule of the European Union regulating the business of credit institutions<sup>23)</sup> when performing supervision on a consolidated basis of a European parent bank group, a European financial holding company group or a responsible bank which is a subsidiary of a European mixed financial holding company, a member of which is supervised by the Czech National Bank.

#### Article 26j

(1) Where the Czech National Bank performs banking supervision of a European parent bank group, a European financial holding company group or a bank which is a subsidiary of a European mixed financial holding company 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 branch 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 European Banking Authority and the European Systemic Risk Board and 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 European Banking Authority and the authority performing banking supervision on a consolidated basis of a European parent bank group or a European financial holding company 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 branch 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, a European financial holding company group or a bank which is a subsidiary of a European mixed financial holding company, 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 Articles 26(2)(a)(1) and 26(2)(c) in the case of a bank or a foreign bank,

b) remedial measures consisting in an increase in capital above the minimum level and in the form of special liquidity requirements 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 and in the form of special liquidity requirements 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 capital coverage of risks and the liquidity risk of the group. The Czech National Bank shall endeavour to reach agreement pursuant to paragraph 1 within four months of the day on which it submitted a report assessing the capital coverage of risks to the other authorities supervising the members of the group concerned and within one month of the day on which it submitted a report assessing liquidity risk.

(3) Should agreement pursuant to paragraph 1 not be reached within this period,

a) 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, or

b) the Czech National Bank may ask the European Banking Authority in the last seven days before the expiry of the time limits defined in paragraph 2 to settle the dispute pursuant to the directly applicable legislative act of the European Union governing financial market supervision in the banking area;<sup>24)</sup> where either the Czech National Bank or the authorities supervising the members of the group concerned referred to in paragraph 1 ask the European Banking Authority to settle the dispute, the Czech National Bank shall suspend the proceedings on the imposition of remedial measures until the European Banking Authority issues its decision.

(4) If agreement between the authority performing supervision on a consolidated basis of a European parent bank group, a European financial holding company group, a bank which is a subsidiary of a European mixed financial holding company or a European parent investment firm group under the act governing capital market undertakings and the Czech National Bank on the imposition of remedial measures by the Czech National Bank on a bank which is a member of one or more of the above groups is not reached within four months of the day on which the authority performing supervision on a consolidated basis of the group concerned submitted the report assessing the capital coverage of risks of this group to the Czech National Bank or within one month of the day on which the authority performing supervision on a consolidated basis of the group concerned submitted the report assessing the liquidity risk of this group to the Czech National Bank,

a) the Czech National Bank shall be entitled to impose remedial measures pursuant

to Articles 26(2)(a)(1) and 26(2)(c) by itself on the said bank; 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, or

b) the Czech National Bank may ask the European Banking Authority in the last seven days before the expiry of the aforementioned time limits to settle the dispute pursuant to a directly applicable legislative act of the European Union governing financial market supervision in the banking area;<sup>24)</sup> where either the Czech National Bank or the authorities supervising the members of the group concerned referred to in paragraph 1 ask the European Banking Authority to settle the dispute, the Czech National Bank shall suspend the proceedings on the imposition of remedial measures until the European Banking Authority issues its decision.

(5) Before issuing a decision pursuant to paragraph 3, the Czech National Bank may seek the opinion of the European Banking Authority. The Czech National Bank shall request this opinion whenever any of the other authorities supervising members of the group concerned so requests. If the European Banking Authority'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 for the decision.

(6) The Czech National Bank shall review decisions pursuant to paragraphs 1, 3, 3(a) or 4(a) at least once a year following the procedure referred to in paragraphs 1, 2, 3(a), 4(a) and 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(a) or 4(a) may also be reviewed only within the scope of this request.

(7) A bank shall maintain capital on an individual or consolidated basis above the threshold 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 26I

(1) Where the Czech National Bank performs banking supervision on a consolidated basis of a European parent bank group, a European financial holding company group or a bank which is a subsidiary of a European mixed financial holding company, 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(7), 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(6) to (9) where appropriate,
- c) the preparation of inspection plans based on the assessment of the risks of the group concerned pursuant to Article 25c,
- d) increasing the effectiveness of supervision by reducing duplicate requirements in the performance of supervision, including requests for information pursuant to Article 26c(5) and the second sentence of Article 38ha(3) 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(1)(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 branch under the act governing capital market undertakings,
- d) central banks of the European System of 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 European Banking Authority 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 Article 25a.

#### Article 26m

(1) Where performing supervision on a consolidated basis of a mixed financial holding company, the Czech National Bank may stipulate, after consultation with the relevant supervisory authorities, that it will only apply the relevant provisions of the legislative act governing supplementary supervision of financial conglomerates in this supervision, provided that the mixed financial holding company is subject to comparable conditions of this Act and the legislative act governing supplementary supervision of financial conglomerates, notably as regards risk-based supervision.

(2) Where the Czech National Bank supervises, on a consolidated basis, a responsible bank which is a subsidiary of a European mixed financial holding company, it may stipulate, after consultation with the relevant supervisory authorities, that it will only apply the relevant provisions of the legislative act governing supplementary supervision of financial conglomerates in this supervision, provided that the European mixed financial holding company is subject to comparable conditions of this Act and the legislative act governing supplementary supervision of financial conglomerates, notably as regards risk-based supervision.

(3) The Czech National Bank shall be competent to consult on the application only of foreign legal regulations governing the supplementary supervision of financial conglomerates if it is an authority supervising a bank which is a subsidiary of a European mixed financial holding company and if invited to consult by an authority performing supplementary supervision of the financial conglomerate.

(4) Where performing supervision on a consolidated basis, the Czech National Bank may stipulate that it will only apply the provisions relating to the most important sector in accordance with the legislative act governing supplementary supervision of financial conglomerates in this supervision of a mixed financial holding company, provided that the mixed financial holding company is subject to equivalent conditions of this Act and the legislative act governing the activities of insurance companies, notably as regards risk-based supervision.

(5) Where the Czech National Bank supervises, on a consolidated basis, a responsible bank which is a subsidiary of a European mixed financial holding company, it may stipulate, by agreement with the relevant supervisory authorities, that it will only apply the provisions relating to the most important sector in accordance with the legislative act governing supplementary supervision of financial conglomerates in this supervision, provided that the European mixed financial holding company is subject to equivalent conditions of this Act and the legislative act governing the activities of insurance companies, notably as regards risk-based

supervision.

(6) The Czech National Bank shall be competent to agree on the application only of foreign legal regulations relating to the most important sector in accordance with the regulations governing supplementary supervision of financial conglomerates if it is an authority supervising a bank which is a subsidiary of a European mixed financial holding company and if invited to agree by an authority performing supplementary supervision of the financial conglomerate.

## **PART NINE**

### **CONSERVATORSHIP**

Heading deleted

#### 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 public document, a public document must also be made about the decision of the conservator in such matter.

#### 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 member of the statutory body, a member of the administrative board or a member of the supervisory board of a bank or another responsible natural person informed of the facts necessary for performing conservatorship, on the date of imposition of conservatorship or at any time during the two years preceding that date, shall give assistance to the conservator at his request.

#### 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 debts of a bank under conservatorship by another bank or foreign bank branch:

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 date 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 date on which the agreement on the sale of the business took effect to the date 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").

#### 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 banks' 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 material reasons the Czech National Bank may also dismiss the valuer at his own request. Appeals filed shall have no suspensory effect.

(7) A dismissed valuer shall provide the newly appointed valuer with all assistance needed to perform his duties.

(8) The provisions of Articles 29b and 29c shall apply mutatis mutandis to the sale of a part of a 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. 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 or make the entry in the Companies Register without issuing a decision thereon within the same time limit. The restrictions laid down in the legislative act governing public registers of legal and natural persons for making entries in the Companies Register without issuing a decision to allow the entry shall not apply.

#### 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 expiry 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 agreements<sup>15)</sup> 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 date 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 market<sup>16)</sup> if close-out netting was concluded before the imposition of conservatorship.

### **PART TEN**

#### **REVOCATION OF THE LICENCE OR CONSENT**

Heading deleted

#### Article 34

(1) If serious shortcomings persist in the activities of a bank or a branch of a bank from a non-Member State, or if a bank or a branch of a bank from a non-Member State 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 or the branch of a bank from a non-Member State 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) a shortcoming has been identified in the bank's activities which might also satisfy elements of an administrative offence pursuant to Article 36e(2)(a), (d), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o) or Article 36e(3)(c) and a foreign bank having its registered office in a non-Member State carrying on activities in the Czech Republic through its branch has committed an administrative offence pursuant to Article 36h(1)(d) or Article 36h(2)(b), (d) and (e),

c) the applicant gives false information in the application or conceals fundamental information necessary for examining the application,

d) serious shortcomings persist in the activities of the foreign bank having its registered office in a territory other than the territory of a Member State which carries on banking activities in the Czech Republic through its branch, or it has gone

bankrupt,

e) a final decision has been issued against a bank for a serious violation of the act laying down measures against money laundering and terrorist financing, or

f) the bank fails to comply with the requirements laid down in Part One, Four or Six of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, in Article 26(2)(a)(1) or in Article 26(2)(c).

(3) The Czech National Bank shall revoke the licence if it becomes aware that the bank's total capital ratio on an individual basis is lower than one third of the total capital ratio laid down in Article 92(1)(c) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council. 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. The Czech National Bank shall revoke the licence if it becomes aware that the total capital ratio of branch of a bank from a non-Member State is lower than one third of the capital ratio laid down in Article 12a(1).

(4) The Czech National Bank may revoke a consent granted hereunder if the consent was granted on the basis of false information or the applicant concealed fundamental information in the application for consent necessary for examining the application.

#### Article 35

(1) The decision to revoke a licence shall be published in the Commercial Bulletin; in the case of a branch of a bank from a non-Member State, the Czech National Bank shall notify the supervisory authority in the home country of the foreign bank.

(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 branch of a bank from a non-Member State 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 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 Civil Code and the act governing the legal relationships of commercial companies and cooperatives 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**

### **ADMINISTRATIVE OFFENCES**

#### **Offences**

##### Article 36a

(1) A natural person will commit an offence if:

- a) he receives a deposit in conflict with Article 2(1),
- b) he commences an activity that requires a licence hereunder without that licence,
- c) he acquires or increases a qualifying holding in a bank or takes control of a bank without the prior consent of the Czech National Bank pursuant to Article 20(3),
- d) he fails to fulfil the notification duty pursuant to Article 20(11),
- e) as a person acting in concert

1. he acquires or increases a qualifying holding in a bank or takes control of a bank without the prior consent of the Czech National Bank pursuant to Article 20(3), or
2. he fails to fulfil the notification duty pursuant to Article 20(15), or

f) he gives false information in an application for consent under this Act or under the directly applicable legislative act of the European Union governing prudential requirements or conceals fundamental information necessary for examining the application.

(2) A natural person as a person subject to supervision by the Czech National Bank will commit an offence if he fails to comply with the duties laid down in the Inspection Rules.

(3) A member of the statutory body, a member of the administrative board or a member of the supervisory board of a bank as a senior officer of a bank from a non-Member State will commit an offence if he simultaneously holds offices in a greater than permitted scope in contravention of Article 8(4)(c).

(4) A member of the statutory body, a member of the administrative board or a member of the supervisory board of a bank will commit an offence if he fails to inform the Czech National Bank pursuant to Article 26b(1) at the earliest opportunity.

(5) A natural person as a senior officer of a foreign bank having its registered office in a non-Member State which carries on banking activities in the Czech Republic through its branch, or as a senior officer of that branch, will commit an offence if he fails to inform the Czech National Bank pursuant to Article 26b(2) at the earliest opportunity.

(6) A natural person as a person who was a member of the statutory body of a bank, a member of the administrative board of a bank, a member of a supervisory board of a bank or another responsible natural person on the date of imposition of conservatorship or at any time during the two years preceding that date will commit an offence if he fails to give assistance to the conservator pursuant to Article 28(3).

(7) A fine may be imposed for an offence as follows:

a) up to CZK 5,000,000 in the event of an offence referred to in paragraph 2,

b) up to CZK 10,000,000 in the event of an offence referred to in paragraph 1(f) or paragraph 3,

a) up to CZK 20,000,000 in the event of an offence referred to in paragraphs 4 to 6,

d) up to double the amount of the unauthorised benefit in the event of an offence referred to in paragraph 1(a) to (e); where the amount of the unauthorised benefit cannot be determined, a fine of up to CZK 130,000,000 may be imposed.

#### Article 36b

(1) A dismissed valuer will commit an offence if he fails to provide the valuer

with assistance pursuant to Article 29c(7).

(2) A natural person as a person who has become privy to information subject to banking secrecy during the course of a bank's liquidation will commit an offence if he contravenes the obligation to maintain confidentiality pursuant to Article 36(3).

(3) A member of staff, a member of the statutory body, a member of the administrative board or a member of the supervisory board of a bank will commit an offence if he contravenes the obligation to maintain confidentiality pursuant to Article 39.

(4) A member of the administrative board of the Deposit Insurance Fund, a member of staff of the Deposit Insurance Fund and other persons authorised to perform activities will commit an offence if they contravene the obligation to maintain confidentiality pursuant to Article 41b(8).

(5) A liquidator, trustee, deputy trustee or insolvency trustee will commit an offence if he fails to provide the Deposit Insurance Fund with information pursuant to Article 41d(2).

(6) A natural person as an applicant for a licence will commit an offence if he gives false information in the application or conceals fundamental information necessary for examining the application.

(7) A fine may be imposed for an offence as follows:

- a) up to CZK 2,000,000 in the event of an offence referred to in paragraph 5,
- b) up to CZK 20,000,000 in the event of an offence referred to in paragraphs (1) to (4) and paragraph (6),

### **Administrative offences of legal entities and natural persons carrying on business activities**

#### Article 36c

(1) A legal entity or a natural person carrying on business activities will commit an administrative offence if:

- a) he receives a deposit in conflict with Article 2,
- b) he uses, in an unauthorised manner, the term "bank" or "savings bank", translations thereof or terms derived therefrom in a commercial name,
- c) he commences an activity that requires a licence hereunder without that licence,
- c) he acquires or increases a qualifying holding in a bank or takes control of a bank without the prior consent of the Czech National Bank pursuant to Article 20(3),
- e) he fails to fulfil the notification duty pursuant to Article 20(11),

f) as a person acting in concert

1. he acquires or increases a qualifying holding in a bank or takes control of a bank without the prior consent of the Czech National Bank pursuant to Article 20(3), or
2. he fails to fulfil the notification duty pursuant to Article 20(15),

g) he gives false information in an application for consent under this Act or under the directly applicable legislative act of the European Union governing prudential requirements or conceals fundamental information necessary for examining the application, or

h) he fails to provide a valuer with assistance pursuant to Article 29b(5).

(2) A legal entity or a natural person carrying on business activities as a person subject to supervision by the Czech National Bank will commit an offence if he fails to comply with the duties laid down in the Inspection Rules.

(3) A legal entity or a natural person carrying on business activities as a person included in a consolidated group will commit an offence if:

a) he fails to provide the Czech National Bank with information necessary for performing supervision on a consolidated basis or provides false or distorted information, conceals fundamental information or fails to comply with the time limit for submission thereof,

b) he fails to create adequate control mechanisms ensuring the correctness of information supplied for the purposes of banking supervision on a consolidated basis.

(4) A legal entity or a natural person carrying on business activities as a person to be appointed a valuer and a valuer will commit an administrative offence if they fail to notify the Czech National Bank of facts pursuant to Article 29c(4).

(5) A valuer will commit an administrative offence if he prepares a valuation in contravention of the requirements laid down in Article 29b.

(6) A dismissed valuer will commit an administrative offence if he fails to provide the valuer with assistance pursuant to Article 29c(7).

(7) A legal entity or a natural person as an applicant for a licence will commit an administrative offence if he gives false information in the application or conceals fundamental information necessary for examining the application.

(8) A legal entity as an entity whose licence has terminated will commit an administrative offence if he accepts a deposit, provides a loan or carries on other activities after the date of termination of the licence.

(9) The following fines shall be imposed for an administrative offence:

a) up to CZK 5,000,000 in the event of an administrative offence referred to in paragraph 2,

b) up to CZK 10,000,000 in the event of an administrative offence referred to in paragraph 1(g) and paragraph 4,

c) up to CZK 20,000,000 in the event of an administrative offence referred to in paragraph 1(b) and (h), paragraph 3, paragraph 5, paragraph 6 or paragraph 7,

d) up to double the amount of the unauthorised benefit in the event of an administrative offence referred to in paragraph 1(a) and (c) to (f) committed by a natural person carrying on business activities; where the amount of the unauthorised benefit cannot be determined, a fine of up to CZK 130,000,000 shall be imposed,

e) up to double the amount of the unauthorised benefit in the event of an administrative offence referred to in paragraph 1(a) and (c) to (f) or paragraph 8 committed by a legal entity; where the amount of the unauthorised benefit cannot be determined, a fine of up to 10% of the annual net turnover of the legal entity in the preceding accounting period shall be imposed, which turnover shall include the elements listed in Article 316 of Regulation No. 575/2013 of the European Parliament and of the Council,

f) up to double the amount of the unauthorised benefit in the event of an administrative offence referred to in paragraph 1(a) and (c) to (f) or paragraph 8a committed by a subsidiary; where the amount of the unauthorised benefit cannot be determined, a fine of up to 10% of the annual net turnover resulting from the consolidated accounts of the parent undertaking in the preceding accounting period shall be imposed.

#### Article 36d

(1) A financial holding company, a mixed financial holding company or a mixed activity holding company will commit an administrative offence if:

a) it fails to ensure that its statutory body, a member of its statutory body, a member of its administrative board or a member of its supervisory board complies with the requirements pursuant to Article 26g(5), or

(b) it in contravention of Article 26g(6) fails to inform the Czech National Bank in advance of planned personnel changes in executive managerial position or fails to submit the required documents.

(2) A payment institution, a small-scale payment service provider, an electronic money institution or a 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 transaction<sup>13)</sup> or against receipt of which electronic money has been issued will commit an administrative offence if it fails to provide a payment service user or an electronic money holder with information pursuant to Article 41f(10) at their request.

(3) An investment firm on whose account are recorded funds constituting client assets under the act governing capital market undertakings or a payment institution,

a small-scale payment service provider, an electronic money institution or a 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 transaction<sup>13)</sup> or against receipt of which electronic money has been issued will commit an administrative offence if:

a) it fails to fulfil the notification duty to a bank or a foreign bank branch pursuant to Article 41f(7), or

b) it fails to keep records of data pursuant to Article 41c(3).

(4) An authorised financial institution having its registered office in the Czech Republic will commit an administrative offence if:

a) it establishes a branch within the territory of a host state in contravention of Article 5f,

b) it fails to inform the Czech National Bank of changes in the details referred to in Articles 5f and 5g(1), or

c) it carries on activities listed in Article 5d within the territory of the host state without establishing a branch and without notifying the Czech National Bank of the activities it wishes to carry on prior to commencing any of them pursuant to Article 5i.

(5) The following fines shall be imposed for an administrative offence:

a) up to CZK 10,000,000 in the event of an administrative offence referred to in paragraph 1(a) or (b), paragraph 2 or paragraph 3,

a) up to CZK 20,000,000 in the event of an administrative offence referred to in paragraph 4,

### **Administrative offences of a bank**

#### Article 36e

(1) A bank will commit an administrative offence if:

a) it carries on an activity in contravention of the licence,

b) it establishes a branch within the territory of a host state in contravention of Article 5f,

c) it commences activities within the territory of a host state in contravention of the procedure laid down in Article 5h(2),

d) it fails to inform the Czech National Bank of changes in the details referred to in Articles 5f and 5g(1),

e) it carries on activities listed in Article 5d within the territory of the host state without

establishing a branch and without notifying the Czech National Bank of the activities it wishes to carry on prior to commencing any of them pursuant to Article 5i,

f) it fails to comply with the duties laid down in Article 8(3),

g) it fails to lodge certified copies of the Articles of Association or amendments thereto with the Czech National Bank pursuant to Article 9(3),

h) it fails to comply with the reporting duties laid down in Article 11(1) or (2),

i) it fails to keep records of all agreements entered into with clients pursuant to Article 11(4),

j) it fails to introduce an effective mechanism for dealing with client complaints and to supply information about that mechanism,

k) it fails to disclose the information under Part Eight of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

l) it fails to introduce internal procedures and policies in accordance with the directly applicable legislative act of the European Union governing prudential requirements,

m) in contravention of Article 12(1) it executes a transaction in a manner which is detrimental to the interests of its depositors in respect of the recoverability of their deposits or which endangers the safety and soundness of the bank, or

n) in contravention of Article 12(2) it concludes an agreement under conditions which are conspicuously disadvantageous for it.

(2) A bank will commit an administrative offence if:

a) its governance system fails to comply with all the requirements laid down in this Acts, its implementing regulation, a decision issued pursuant to Article 8b, the directly applicable legislative act of the European Union governing prudential requirements and a European Commission regulation or decision,

b) it fails to provide a legal or natural person in the context of its business at the earliest opportunity with a written explanation of its rating decisions pursuant to Article 431(4) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

c) it fails to adhere to the rules for setting capital and determining individual capital requirements and to the conditions for applying the basic and internal approaches for the calculation of capital requirements pursuant to Parts Two and Three of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and the provision of a general nature of the Czech National Bank referred to in Article 20d,

d) it fails to provide the Czech National Bank with information or gives false or incomplete information pursuant to Article 99(1) of Regulation (EU) No. 575/2013 of

the European Parliament and of the Council and a European Commission regulation or decision,

e) it uses or changes its internal approach for the calculation of a capital requirement without the prior consent of the Czech National Bank or another supervisory authority from a Member State or uses that approach in contravention of the binding conditions laid down in that consent pursuant to Article 143 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and a European Commission regulation or decision,

f) it fails to provide the Czech National Bank with information or gives false or incomplete information about capital requirements laid down in Article 101 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and a European Commission regulation or decision,

g) it incurs an exposure to the credit risk of a securitised position,

h) it incurs an exposure exceeding the limits defined in Article 395 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and the provision of a general nature of the Czech National Bank referred to in Article 20d,

i) in contravention of the directly applicable legislative act of the European Union governing prudential requirements, it fails to provide the Czech National Bank with information or gives false or incomplete information about

1. large exposures,
2. the leverage ratio,
3. liquidity,

j) it fails repeatedly or for a protracted period of time to hold liquid assets as defined in Article 412 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

k) it fails to provide access to information within the scope and in the manner defined in Article 431(1) to (3) or Article 451(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and a European Commission regulation or decision or provides access to the information using incomplete or false data,

l) it distributes part of its after-tax profit in contravention of this Act,

m) it fails to fulfil the notification duty pursuant to Article 20(18),

n) it provides holders of investment instruments included in the bank's capital with consideration in contravention of Articles 28, 51 or 63 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, or

o) it allows a person who is not compliant with the requirements of this Act applying a member of the statutory body, the administrative board or the supervisory board of a bank to become or remain a member of such body or board.

(3) A bank will commit an administrative offence if:

a) it fails to adopt, apply or regularly review strategies and processes pursuant to Article 12c,

b) it fails to comply with the reporting duties pursuant to Article 16(2), Article 16a or Article 24 or Part Eight of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

c) it fails to notify the Czech National Bank of the acquisition of a qualifying holding or fails to prove that it meets the conditions set forth in Article 89 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, or

d) it fails to prove compliance with the conditions set forth in Article 17(1).

(4) A bank will commit an administrative offence if:

a) in contravention of Article 20a(3) to (5) it fails to submit an extract of all shareholders or permits a person indicated by the Czech National Bank to attend the General Meeting or holds the General Meeting without the Czech National Bank's written opinion,

b) it fails to perform corrective settlement pursuant to Article 20c(1),

c) it breaches the duty to keep separate records in its accounts of transactions made for a client's account and those made for the account of the bank,

d) it breaches the duty to keep records of transactions for a period of 10 years,

e) it fails to arrange for an auditor to perform:

1. an audit of the financial statements of the bank pursuant to Article 22(1)(a),
2. an audit of the governance system of the bank pursuant to Article 22(1)(b),
3. preparation of reports on the audit of its financial statements and governance system pursuant to Article 22(1)(c),
4. an audit of the disclosed data stipulated in Articles 431 to 455 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

f) it fails to notify the Czech National Bank of the auditor it has selected pursuant to Article 22(4),

g) it fails to ensure that the audit of the information referred to in Article 22(1) is performed by an auditor who is not a person referred to in Article 19(1),

h) it fails to publish its annual report or consolidated annual report pursuant to Article 23(1),

i) it fails to submit its annual report or consolidated annual report to the Czech National Bank within the mandatory time limit,

j) it fails to take remedial measures pursuant Articles 26 or 26a within the requested time limit, or

k) it fails to maintain its capital ratio at least at the level stipulated in the decision issued on the basis of Article 26k(7).

(5) A bank will commit an administrative offence if:

a) it gives false information in an application for consent under this Act or under the directly applicable legislative act of the European Union governing prudential requirements or conceals fundamental information necessary for examining the application.

b) it breaches the duty to process data on clients pursuant to Article 37(2),

c) it fails to submit reports on matters concerning a client which are subject to banking secrecy upon the written request of entities referred to in Article 38(3), (4) and (6),

d) in the context of its business activities within the territory of another state, it fails to submit a report on matters relating to a client that are subject to banking secrecy 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,

e) it fails to provide the client with an extract of the information kept on him in the register pursuant to Article 38a(2),

f) it fails to participate in the deposit-claims insurance scheme or to contribute to the Deposit Insurance Fund to the extent laid down in this Act,

g) it fails to ensure identification of depositors pursuant to Article 41c(3) or (4),

h) it fails to provide the Deposit Insurance Fund with information pursuant to Articles 41c(11), 41d(2), 41f(3) or 41n,

i) it uses information that it receives from entities referred to in Article 41f(7) and (8) in contravention of Article 41f(9), or

m) it makes use in advertising of differences in deposit-claims insurance between Member States.

(6) The following fines shall be imposed for an administrative offence:

a) up to CZK 10,000,000 in the event of an administrative offence referred to in paragraph 1(b) to (e), (h) or (i),

b) up to CZK 20,000,000 in the event of an administrative offence referred to in paragraph 1(f), (g) or (j) to (n),

c) CZK 50,000,000 in the event of an administrative offence referred to in paragraph 1(a), paragraph 3(a), (b) or (d), paragraph 4 or paragraph 5.

d) up to double the amount of the unauthorised benefit in the event of an administrative offence referred to in paragraph 2 or paragraph 3(c) committed by a legal entity; where the amount of the unauthorised benefit cannot be determined, a fine of up to 10% of the annual net turnover of the bank in the preceding accounting period shall be imposed, which turnover shall include the items listed in Article 316 of Regulation No. 575/2013 of the European Parliament and of the Council,

f) up to double the amount of the unauthorised benefit in the event of an administrative offence referred to in paragraph 2 or paragraph 3(c) committed by a subsidiary bank; where the amount of the unauthorised benefit cannot be determined, a fine of up to 10% of the annual net turnover resulting from the consolidated accounts of the parent undertaking in the preceding accounting period shall be imposed,

#### Article 36f

(1) A bank which has an obligation to establish and maintain a governance system on a consolidated basis pursuant to Article 8b(4) will commit an administrative offence if it fails to ensure that the organisational arrangements and other mechanisms referred to in paragraph 8b(1) and 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.

(2) A bank which has a significant position on the financial market of the Czech Republic will commit an administrative offence if it fails to disclose the information under Part Eight of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

(3) A domestic parent bank or a responsible bank in a financial holding company group or a responsible bank in a foreign parent bank group will commit an administrative offence if:

a) it fails to notify the Czech National Bank of the auditors that will audit the entities belonging to the consolidated group subject to banking supervision by the Czech National Bank pursuant to Article 26g(2) or

b) it fails to arrange an audit of information pursuant to Article 26g(3).

(4) A bank will commit an administrative offence if it breaches the duty pursuant to Article 26g(4) to monitor its operations with members of the same consolidated group or manage the associated risks or subject them to appropriate internal control mechanisms.

(5) A parent bank, a responsible bank in a financial holding company group, a responsible bank in a foreign parent bank group, a bank in a mixed activity holding company group and a responsible bank which is a subsidiary of a mixed financial holding company which are members of a consolidated group subject to banking supervision by the Czech National Bank will commit an administrative offence if they fail to comply on a consolidated basis with the duties pursuant to Article 26f(1) or

Articles 11 and 13 of Regulation (EU) No. 275/2013 of the European Parliament and of the Council.

(6) A fine of up to CZK 50,000,000 shall be imposed for an administrative offence referred to in paragraphs 1 to 5.

#### Article 36g

### **Administrative offences of a foreign bank having its registered office in a Member State**

(1) A foreign bank having its registered office in a Member State which carries on banking activities in the Czech Republic through its branch will commit an administrative offence if:

- a) it carries on banking activities in the Czech Republic in contravention of Articles 5c to 5m,
- b) it fails to lodge a copy of its certificate of incorporation or amendments made thereto with the Czech National Bank,
- c) it fails to comply with the reporting duties pursuant to Article 11(1) or (2),
- d) in contravention of Article 11(5) it fails to introduce an effective mechanism for dealing with client complaints and to supply information about that mechanism,
- e) it breaches the duty to keep separate records in its accounts of transactions made for a client's account and those made for the account of the foreign bank,
- f) it breaches the duty to keep records of transactions for a period of 10 years,
- g) it fails to comply with the reporting duties pursuant to Article 24,
- h) it fails to take remedial measures pursuant to Article 26(1) within the requested period of time,
- i) it fails to process data on clients pursuant to Article 37(2),
- j) it breaches the duty to maintain banking secrecy pursuant to Article 37(2),
- k) it fails to submit a report on all matters that are subject to banking secrecy to persons authorised to perform banking supervision,
- l) it fails to submit reports on matters concerning a client which are subject to banking secrecy upon the written request of entities referred to in Article 38(3), (4) and (6), or
- m) it makes use in advertising of differences in deposit-claims insurance between Member States.

(2) A foreign bank having its registered office in a Member State which carries

on banking activities in the Czech Republic through its branch and takes advantage of the supplementary insurance referred to in Article 41m will commit an administrative offence if:

- a) it fails to participate in the deposit-claims insurance scheme or to contribute to the Deposit Insurance Fund to the extent laid down in this Act, or
- b) it fails to provide the Deposit Insurance Fund with information pursuant to Articles 41c(11), 41d(2), 41f(3) or 41n.

(3) The following fines shall be imposed for an administrative offence:

- a) CZK 1,000,000 in the event of an administrative offence referred to in paragraph 1(b),
- b) CZK 20,000,000 in the event of an administrative offence referred to in paragraph 1(c) to (g),
- b) CZK 50,000,000 in the event of an administrative offence referred to in paragraph 1(a) or (h) to (m) or paragraph 2,

#### Article 36h

#### **Administrative offences of a foreign bank having its registered office in a non-Member State**

(1) A foreign bank having its registered office in a non-Member State which carries on banking activities in the Czech Republic through its branch will commit an administrative offence if:

- a) it carries on banking activities in the Czech Republic without a licence granted in accordance with Article 5,
- b) it carries on banking activities in contravention of the licence,
- c) it accepts a deposit, provides a loan or carries on other activities after the date of termination of the licence,
- d) it fails to have in place of a governance system pursuant to Articles 8b(1) and (2),
- e) it fails to lodge a copy of its certificate of incorporation or amendments made thereto with the Czech National Bank,
- f) it fails to disclose information pursuant to Article 11,
- g) it fails to provide a legal entity or natural person in the context of its business at the earliest opportunity with a written explanation of its credit assessment pursuant to Article 11(3),
- h) it fails to keep records of all agreements entered into with clients pursuant to

Article 11(4),

i) in contravention of Article 11(5) it fails to introduce an effective mechanism for dealing with client complaints and to supply information about that mechanism,

j) it fails to introduce internal procedures and policies in accordance with Article 11a(7),

k) in contravention of Article 12(1) it executes transactions in a manner which is detrimental to the interests of its depositors in respect of the recoverability of their deposits or which endangers the safety and soundness of the foreign bank, or

l) in contravention of Article 12(2) it concludes an agreement under conditions which are conspicuously disadvantageous for it.

(2) A foreign bank from a non-Member State which carries on banking activities in the Czech Republic through its branch will commit an administrative offence if:

a) it fails to maintain, on an ongoing basis, capital requirements pursuant to Article 12a(1),

b) in contravention of Article 24(2) it fails to provide the Czech National Bank with information or gives incomplete or false information,

c) it uses or changes the internal approach for the calculation of a capital requirement without the prior consent of the Czech National Bank pursuant to Article 12a(3),

d) it breaches some of the rules in compliance with the implementing legal regulation issued to implement Articles 13(1) and 14(1), or

e) it fails to comply with the conditions laid down in Article 13.

(3) A foreign bank from a non-Member State which carries on banking activities in the Czech Republic through its branch will commit an administrative offence if:

a) it fails to comply with the reporting duties pursuant to Article 16b(1),

b) it enters into transactions with persons referred to in Article 19(1) which would otherwise, owing to their nature, purpose or risk, not be entered into with other clients,

c) it breaches the duty to keep separate records in its accounts of transactions made for a client's account and those made for the account of the foreign bank,

d) it fails to keep records of transactions for a period of 10 years pursuant to Article 21(2),

e) it fails to arrange for an auditor to perform:

1. an audit of the financial statements of the foreign bank;
  2. an audit of the governance system of the foreign bank branch,
  3. preparation of reports on the audit of its financial statements and governance system,
- f) it fails to notify the Czech National Bank of the auditor it has selected pursuant to Article 22(4),
- g) it fails to ensure that the audit of the information referred to in Article 22(1) is performed by an auditor who is not a person referred to in Article 19(1),
- h) it fails to take remedial measures pursuant to Article 26(1) within the requested period of time,
- i) it fails to process data on clients pursuant to Article 37(2),
- j) it breaches the duty to maintain banking secrecy pursuant to Article 37(2),
- k) it fails to submit a report on all matters that are subject to banking secrecy to persons authorised to perform banking supervision,
- l) it fails to submit reports on matters concerning a client which are subject to banking secrecy upon the written request of entities referred to in Article 38(3), (4) and (6),
- m) it fails to participate in the deposit-claims insurance scheme or to contribute to the Deposit Insurance Fund to the extent laid down in this Act, or
- n) it fails to provide the Deposit Insurance Fund with information pursuant to Articles 41c(11), 41d(2), 41f(3) or 41n.

(4) The following fines shall be imposed for an administrative offence:

- a) up to CZK 10,000,000 in the event of an administrative offence referred to in paragraph 1(e) to (i),
- b) up to CZK 20,000,000 in the event of an administrative offence referred to in paragraph 3(l),
- c) up to CZK 50,000,000 in the event of an administrative offence referred to in paragraph 1(a) to (d) or (j) to (l), paragraph 2 or paragraph 3(a) to (k), (m) or (n).

## **Joint provisions**

### **Article 36i**

(1) Where the Czech National Bank establishes that a legal duty has been breached which may be subject to a sanction under this Act (hereinafter referred to as “unlawful conduct”), it shall commence proceedings on the imposition of a sanction if it concludes, based on an assessment of the unlawful conduct, that such unlawful conduct is socially harmful. When assessing the social harmfulness of

unlawful conduct, the Czech National Bank take into account mainly the nature, gravity, duration and consequences of the unlawful conduct and of any action taken by the person suspected of the unlawful conduct to eliminate the consequences of the unlawful conduct. Where proceedings on the imposition of a sanction are not opened, they shall be put on file and the case shall be discontinued. A decision to discontinue the case shall not be issued.

(2) The decision on the administrative offence shall waive the imposition of a sanction if the very hearing of the administrative offence is sufficient to correct the offender.

(3) A legal entity shall not be liable for an administrative offence if it proves that it made every effort that could possibly have been required to prevent the unlawful conduct.

(4) The gravity of the administrative offence, in particular the manner in which it was committed and its consequences and circumstances, shall be taken into account when determining the amount of the fine to be imposed on a legal entity; the following shall also be taken into account where appropriate:

- a) the duration of the unlawful conduct,
- b) the financial situation of the legal entity,
- c) the magnitude of the unauthorised benefit of the legal entity if it can be determined,
- d) the loss incurred by third parties from the unlawful conduct,
- e) the cooperation of the legal entity in the proceedings on the administrative offence,
- f) previous administrative offences of the legal entity,

(5) The criteria for determining the amount of a fine listed in paragraph 4 shall also apply to the determination of the amount of a fine imposed on a natural person for committing an offence.

(6) Liability for an administrative offence hereunder shall expire if the Czech National Bank does not open proceedings thereon within one year of the day it became aware of it, although no later than five years after the day the offence was committed.

(7) An offence committed by a natural person cannot be heard if the Czech National Bank does not open proceedings thereon within one year of the day it became aware of it, although no later than five years after the day the offence was committed.

(8) Liability for an administrative offence that occurred during or directly in connection with the business activities of a natural person shall be subject to the provisions of this Act on liability and punishment of a legal entity.

## Article 36j

(1) Administrative offences under this Act shall be heard by the Czech National Bank.

(2) Income from fines imposed shall constitute a state budget revenue.

(3) The Czech National Bank shall publish the final decision on a fine imposed without undue delay in a manner allowing remote access.

(4) The Czech National Bank shall publish the decision without giving the identification details of the person being fined if such publication

a) is found to be evidently disproportionate vis-à-vis the natural person involved on the basis of a prior assessment,

b) would jeopardise the stability of the financial market,

c) would jeopardise ongoing criminal proceedings,

d) would cause disproportionate damage to the person involved.

(5) A decision under paragraphs 3 or 4 must be published for at least five years. The personal data of the natural person involved shall be published only for the period necessary in accordance with the personal data protection act.

## **PART THIRTEEN**

### **Joint provisions**

## Article 37

(1) Banks and foreign bank branches shall provide services to their clients on a contractual basis. A bank or a foreign bank branch 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 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 authorities 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;<sup>8)</sup>
- b) a law enforcement authority under conditions laid down by a special legislative act;<sup>9)</sup>
- c) the tax authorities under the conditions laid down by the Tax Administration Code;
- d) the financial arbitrator when making arbitration decisions pursuant to a special legal rule,<sup>9c)</sup>
- 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;<sup>9b)</sup>

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) an intelligence service for the purpose of performing a specific task relating to the suppression of financing of terrorism<sup>26)</sup> within its competence under the act governing the activities of the intelligence services of the Czech Republic with a judge's consent; the request for the report shall be subject to the provisions of this other legal rule,

k) repealed,

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<sup>10c)</sup>,

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 date on 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 3(h).

(6) For the purposes of executing a decision 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 2 to 8 shall apply *mutatis mutandis* to branches of banks from a Member State and paragraphs 1 to 8 and 11 shall apply *mutatis mutandis* to branches of banks from a non-Member State .

(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.<sup>10b)</sup>

(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<sup>10a)</sup> and other persons where a special legislative act so provides. Banks, foreign bank branches, the European Central Bank, 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 authorities 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 set out 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 notification by a bank or a foreign bank branch 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<sup>6d)</sup> and for the purposes of compliance with the prudential rules. This shall be without prejudice to the provisions of the personal data protection act.<sup>10b)</sup>

#### 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 about all significant facts it finds in the performance of banking supervision that are relevant to the proper performance of this supervision within the European Union, and in particular about

a) 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 of a bank from a Member State pursuant,

b) licences revoked,

c) financial holding companies and mixed financial holding companies as defined in Article 11 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

d) treaties pursuant to Article 26c(8) and (9) and agreements pursuant to Article 26e(3),

e) measures taken pursuant to Article 26 against a branch of a bank from a Member State in emergencies and where such action is necessary in the interests of depositors,

f) measures taken pursuant to Article 26bb against a branch of a bank from a Member State,

g) licences to perform banking activities through a branch granted to a foreign bank having its registered office in a non-Member State,

h) the composition of the combined capital buffer and the date from which banks are subject to the duty to maintain the combined capital buffer in that composition,

i) recognition of a shortening of the transition period for the countercyclical capital buffer introduced by another Member State.

(2) The Czech National Bank shall inform the European Banking Authority about all significant facts it finds in the performance of banking supervision that are relevant to the proper performance of this supervision within the European Union, and in particular about

a) 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) licences granted and revoked,

c) treaties pursuant to Article 26c(8) and (9) and agreements pursuant to Article 26e(3),

d) data collected for the purpose of comparing the remuneration schemes and procedures introduced by other banks on

1. the number of persons whose income is at least an amount equivalent to EUR 1,000,000, broken down by their assignments and the areas of activity of the bank,

2. the main components of wages, bonuses and performance-based pay over the longer term and special pension benefits for the persons referred to in item 1,

e) financial holding companies and mixed financial holding companies as defined in Article 11 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

f) licences to perform banking activities through a branch granted to a foreign bank having its registered office in a non-Member State,

- g) conditions that must be met for a licence to be granted pursuant to this Act,
- h) property relations between members of a consolidated group, organisational structure and governance and other significant facts relating to a consolidated group where the Czech National Bank performs supervision on a consolidated basis,
- i) names of authorities or persons to which information may be disclosed pursuant to Article 25a,
- j) the functioning of the review and evaluation process pursuant to Article 25c,
- k) the methodology used as a basis for decisions pursuant to Article 25c(3) to (5), Article 25d(2) and (3) and Article 26 in the review and evaluation process pursuant to Article 25c,
- l) cases where it applies Article 25d(1),
- m) procedures adopted pursuant to Article 26m(1), (2), (4) and (5),
- n) the results of a review and evaluation pursuant to Article 25c where the results suggest the potential for systemic risk posed by a bank pursuant to Article 23 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council; the Czech National Bank shall provide this information without undue delay,
- o) data collected in order to compare remuneration trends and procedures,
- p) measures taken pursuant to Article 8d(g),
- q) permission to hold an additional non-executive office pursuant to Article 8(5),
- r) data collected pursuant to Article 8d(h),
- s) data received from a bank about shareholders' decisions regarding remuneration,
- t) remedial measures imposed pursuant to Article 26(2)(11) and Article 26(7) and fines imposed for an administrative offence pursuant to Articles 36a(1)(a) to (e), Article 36c(1)(a) to (f), Article 36e(2)(a), (d), (f) to (k), (m), (n) and (o) and Article 36e(3)(c), including information about appeals against decisions imposing such sanctions,
- u) the composition of the combined capital buffer and the date from which banks are subject to the duty to maintain the combined capital buffer in that composition,
- v) recognition of a shortening the transition period for the countercyclical capital buffer introduced by another Member State.

(3) The Czech National Bank shall inform the European Banking Authority about licences to perform banking activities through a branch granted to a foreign bank or a financial institution having its registered office in a non-Member State.

(4) On request, the Czech National Bank shall inform the European Banking Authority about all facts necessary to carry out its tasks set out in the applicable regulations of the European Union.

(5) The Czech National Bank shall inform the European System Risk Board about

a) the composition of the combined capital buffer and the date from which banks are subject to the duty to maintain the combined capital buffer in that composition,

b) recognition of a shortening of the transition period for the countercyclical capital buffer introduced by another Member State,

c) the countercyclical capital buffer rate pursuant to Article 12f(3) and the information referred to in Article 12f(7).

(6) The Czech National Bank shall inform the European Insurance and Occupational Pensions Authority<sup>31)</sup> about procedures adopted pursuant to Article 26m(1), (2), (4) and (5).

#### Article 38da

(1) The Czech National Bank shall cooperate with the European Banking Authority in all cases where the European Banking Authority contributes to the resolution of disputes between competent authorities at its own initiative.

(2) The Czech National Bank shall use data from the European Banking Authority's database of administrative penalties to assess the trustworthiness of members of a bank's bodies.

#### Article 38e

(1) The Czech National Bank shall inform the competent supervisory authority of a Member State about

a) 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) 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) that a financial institution has ceased to fulfil the conditions listed in Article 5e(1),

d) measures taken pursuant to Article 26 against a branch of a bank from a Member State in emergencies and where such action is necessary in the interests of depositors,

e) measures taken pursuant to Article 26bb against a branch of a bank from a Member State,

e) 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.

(2) The Czech National Bank shall inform the competent supervisory authority of a non-Member State about measures taken pursuant to Article 26bb against a bank from a non-Member State.

(3) The Czech National Bank shall inform the relevant college of supervisors about

a) the composition of the combined capital buffer and the date from which banks are subject to the duty to maintain the combined capital buffer in that composition,

b) recognition of a shortening of the transition period for the countercyclical capital buffer introduced by another Member State.

#### 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.

(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 branch of a bank from a non-Member State.

(3) Prior to making any decision to change or revoke the licence of a branch of a bank from a non-Member State, the Czech National Bank shall aim at coordinating its procedure with banking supervisory authorities of Member States in which the foreign bank has its branches. In emergencies, the Czech National Bank shall inform these supervisory authority of its intention to change or revoke the licence.

#### 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

## **Exchange of information in the supervision of branches of banks from Member States**

(1) As part of supervision, the Czech National Bank shall collaborate with the supervisory authorities of other Member 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) The Czech National Bank shall supply the supervisory authorities referred to in paragraph 1 with all information about holdings in the bank and the management of that bank or a foreign bank which carries on activities through its branch which may facilitate the protection of financial stability, their supervision or a review of the conditions for the purposes of issuing a licence or authorisation. The Czech National Bank shall also supply all information which may facilitate supervision of a bank or a foreign bank which carries on activities through its branch, in particular information about liquidity, solvency, deposit insurance, the capital ratio, large exposure limits and other factors which may affect the degree of systemic risk posed by the bank, and about administrative and accounting procedures and internal control mechanisms.

(3) As part of the collaboration referred to in paragraph 1 the Czech National Bank may ask the supervisory authorities of other Member States for information referred to in paragraph 2.

(4) The Czech National Bank shall, without delay, provide the supervisory authority of another Member State in which a bank carries on activities through a branch with all information relating to supervision of compliance with the liquidity requirements under Part Six of Regulation (EU) No. 575/2013 of the European Parliament and of the Council or a regulation or decision of the European Commission and to supervision on a consolidated basis under Part Eight of this Act where such information is important to protect the common interests of clients or investors of the bank or financial stability in that Member State. The Czech National Bank shall, without delay, inform the competent supervisory authority if the bank's liquidity is jeopardised or if there is reasonable suspicion that the bank's liquidity will be jeopardised. In such case, the Czech National Bank shall inform the competent supervisory authority of the liquidity recovery plan, the manner of implementation thereof and the measures it has adopted in this respect. At the request of the supervisory authority of another Member State in which the bank carries on activities through its branch, the Czech National Bank shall inform it about how it has taken into account the information it received from the supervisory authority.

(5) The Czech National Bank may inform the European Banking Authority if a supervisory authority of another Member State refuses a request of the Czech National Bank to cooperate, in particular to provide information, or fails to provide the requested information within a reasonable time.

## **Exchange of information in supervision on a consolidated basis**

(1) When performing banking supervision on a consolidated basis, the Czech National Bank shall cooperate with the supervisory authorities of other Member States.

(2) On request, the Czech National Bank shall provide the supervisory authorities of other Member States with information necessary for the performance of their supervision; the Czech National Bank shall, at its own initiative, provide the supervisory authorities of other Member States with fundamental 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 about:

a) property relations between members of the consolidated group and the governance structure, including the organisational structure of the consolidated group. All regulated and unregulated entities, unregulated subsidiaries, significant branches and parent undertakings and authorities supervising regulated entities in this consolidated group shall be included,

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(2)(a), and the non-granting of consent to the use of an internal approach or internal model for the calculation of a capital requirement or the non-granting of consent to change an internal approach or internal model already in use,

e) financial holding companies and mixed financial holding companies as defined in Article 11 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

(3) The Czech National Bank shall ask the supervisory authority of another Member State supervising an entity which is a member of a consolidated group for information necessary for the performance of supervision on a consolidated basis. In addition, it shall ask the authority supervising on a consolidated basis a European parent bank for information regarding the approaches and methods applied in respect of compliance with the prudential rules.

(4) The Czech National Bank may inform the European Banking Authority if a supervisory authority of another Member State refuses a request of the Czech National Bank for cooperation, in particular to provide information, or fails to provide the requested information within a reasonable time, or if the banking supervisory authority of another Member State fails to provide fundamental information at its own initiative.<sup>32)</sup>

## Article 38i

### (1) Before

- 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(2)(a)(1),
- c) refusing an application for consent to the use of an internal approach or an internal model for the calculation of a capital requirement under Article 301(2) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, the Czech National Bank shall consult with the supervisory authority supervising on a consolidated basis 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) valid texts of the acts and the decrees governing the prudential rules for banks on an individual and consolidated basis, provisions of a general nature pursuant to Article 26bb 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 and the publication of provisions of a general nature pursuant to Article 26bb,
- 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 performing banking supervision pursuant to Article 25c,
- d) aggregate statistical data on compliance with the prudential rules by banks in the Czech Republic, including the number and nature of remedial measures or fines received under this Act,
- e) agreements to change the competent authority responsible for supervising a financial holding company 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 company group pursuant to Article 26c(8) and (9),
- f) information on the approach and methods used by the Czech National Bank in

performing supervision of compliance with the risk transfer rules pursuant to Articles 405 to 409 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council,

g) an annual report on the results of supervision of compliance with the risk transfer rules pursuant to Articles 405 to 409 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, 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 38k

Where the Czech National Bank makes a decision pursuant to Article 7(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, it shall publish in a manner facilitating remote access

a) the criteria which it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities,

b) the number of parent undertakings which make use of the possibility provided for in Article 7(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and the number of parent undertakings which include subsidiaries in a non-Member State,

c) overall for the Czech Republic

1. the total amount of capital of parent undertakings on a consolidated basis which make use of the possibility provided for in Article 7(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council which is held in subsidiaries in a non-Member State,

2. the percentage of the total capital of parent undertakings on a consolidated basis which make use of the possibility provided for in Article 7(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council which is held in subsidiaries in a non-Member State,

3. the percentage of the total capital referred to in Article 92 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of parent undertakings on a consolidated basis which make use of the possibility provided for in Article 7(3) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council which is held in subsidiaries in a non-Member State,

#### Article 38l

Where the Czech National Bank makes a decision pursuant to Article 9(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, it shall publish in a manner facilitating remote access

a) the criteria which it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities,

b) the number of parent undertakings which make use of the possibility provided for in Article 9(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council and the number of parent undertakings which include subsidiaries in a non-Member State,

c) overall for the Czech Republic

1. the total amount of capital of parent undertakings which make use of the possibility provided for in Article 9(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council which is held in subsidiaries in a non-Member State,

2. the percentage of the total capital of subsidiaries which make use of the possibility provided for in Article 9(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council which is held in subsidiaries in a non-Member State,

3. the percentage of the total capital referred to in Article 92 of Regulation (E) No. 575/2013 of the European Parliament and of the Council of parent undertakings which make use of the possibility provided for in Article 9(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council which is held in subsidiaries in a non-Member State.

#### Article 39

(1) Members of staff of a bank, members of the statutory body of a bank, members of the administrative board of a bank and members of the supervisory board of a bank shall be 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; where the confidentiality duty of members of the statutory body is concerned, this competence shall lie with the administrative board or the supervisory board. 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) 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.

(5) 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.

(6) 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, unless they concern a decision on the imposition of a fine pursuant to Part Twelve. The provision of the Administrative Procedure Code regarding the possible ways of terminating appeals proceedings<sup>10)</sup> shall not apply.

(2) Save as otherwise provided in this Act, the regulations on administrative proceedings<sup>11)</sup> shall apply to proceedings concerning applications and licence revocations pursuant to this Act.

### **PART FOURTEEN**

#### **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.<sup>12)</sup> No special legal rules governing the insurance business shall apply to the insurance of deposit claims.

(3) Banks and branches of banks from a Member State which have taken advantage of the supplementary insurance referred to in Article 41m, and branches of banks from a non-Member State (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 41i, 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 an administrative board 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 member of the administrative board shall carry out his duties with due management 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 action,

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 administrative 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 or administrative boards 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 administrative board 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, the staff 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) Not insured shall be the deposit claims of banks, foreign banks, investment firms, credit unions, financial institutions, insurance companies, reinsurance companies, health insurance companies and state funds, including foreign entities engaged in similar activities. 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 set out 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 that the bank is unable or, in the case of a foreign bank branch from a Member State having supplementary insurance pursuant to Article 41m from the home country banking supervisory authority, that the foreign 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 will 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 duty 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 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 legislative act 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.<sup>12a)</sup>

#### 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, a small-scale payment service provider, an electronic money institution or a 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 transaction<sup>13)</sup> 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 undertakings<sup>14)</sup> and to a judicial executor on whose account are deposited funds for qualified and registered creditors under the Execution Code.

(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 judgement 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 is 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

**cancelled**

## Article 41m

(1) Branches of banks from a Member State 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 branch of a bank from a Member State fails to fulfil its obligations to the Fund; it may do so only if Article 5a(6) was complied with. The branch of a bank from a Member State may withdraw from the contract without giving its reasons. The branch of a bank from a Member State 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 of effect of this Act.

#### Article 43

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

#### Article 44

A bank shall disclose the information listed in Article 11c(1)(a) to (c) for the first time by 1 September 2014 for the preceding accounting period, subject to the conditions and in the manner defined in Article 11c.

#### Article 44a

An internationally identified global systemically important institution shall provide the European Commission with the information listed in Article 11c(1)(d) to (f) for the first time by 1 September 2014 for the preceding accounting period in the confidential data regime and subject to the conditions and in the manner defined in Article 11c.

#### Article 44b

(1) For the purposes of Article 12j(3) and (4), a rate of 3% shall be applied instead of a rate of 5% until 31 December 2014.

(2) For the purposes of Article 12u, the capital buffer for a global systemically important institution shall be

- a) 25% of the capital buffer stipulated in Article 12u in 2016,
- b) 50% of the capital buffer stipulated in Article 12u in 2017,
- b) 75% of the capital buffer stipulated in Article 12u in 2018.

#### Article 44c

(1) The Czech National Bank may stipulate in a provision of a general nature conditions, criteria, requirements or procedures pursuant to Articles 124(4)(a), 150(3), 153(9), 181(3)(a), 182(4)(a), 197(8), 221(9), 312(4)(b) and (c), 316(3), 318(3), 363(4)(a) and (c), 382(4)(a), 426, 440(2) and 443 of Regulation (EU) No. 575/2013 of

the European Parliament and of the Council.

(2) The draft provision of a general nature shall be published only on the Czech National Bank's official noticeboard. Where a public debate of the draft provision of a general nature is held, the Czech National Bank shall announce the time and venue of the debate on the Czech National Bank's official noticeboard.

(3) The provision of a general nature shall take effect on the date of its publication on the Czech National Bank's official noticeboard.

(4) Justified written objections to the provision of a general nature may be filed only by banks or foreign bank branches, which must do so within 10 working days of the publication thereof. The Czech National Bank shall handle objections by notification. The Czech National Bank shall use the objections as a basis for changing or cancelling the provision of a general nature.

#### 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.

**Havel**

**Dubček**

**Čalfa**

### **Selected provisions of amendments**

Section VI of Act No. 165/1998 Coll.

#### **Transitional provisions**

1. A bank whose shares with voting rights are not issued solely in book-entry form shall, within one year from the date of effect of this Act, bring the form of its shares into compliance with the requirement of Article 20 of Act No. 21/1992 Coll., on Banks, as amended.

2. A person which has a qualifying holding in the bank as of the date of effect of this Act shall notify the Czech National Bank of this fact within one month from the

date of effect of this Act.

3. State financial institutions arisen prior to the date of effect of this Act shall be governed by the previous legal rules until a special legislative act is adopted, however not longer than three years after the date of effect of this Act.

4. The composition of a bank's statutory body must be brought into compliance with the requirement pursuant to Article 8(2) of Act 21/1992 Coll., on Banks, as amended, within one year from the date of effect of this Act.

Section II of Act No. 319/2001 Coll.

### **Transitional provision**

The Deposit Guarantee Fund (hereinafter referred to as the "Fund") shall pay to natural persons and legal entities which were, as of the date of the opening of the administrative proceeding to revoke the authorisation to carry on business of a bank, depositors of Pragobanka, now in bankruptcy, Universal banka, a.s., Ústí nad Labem, now in bankruptcy, Moravia banka, a.s., Frýdek-Místek, now in bankruptcy, (hereinafter referred to as "banks"), additional compensation for all claims from their deposits in domestic and foreign currencies maintained with these banks as of the date of the opening of the administrative proceeding to revoke the authorisation to carry on business of a bank, of up to CZK 4 million to each depositor.

When paying additional compensation, Articles 41d to 41g, except Article 41e(2), of Act No. 21/1992 Coll., on Banks, as amended, shall be observed mutatis mutandis and the Fund shall reduce the additional compensation being paid by the compensation already paid. As of the date of commencement of payments of additional compensation, the claim of a depositor on the bank shall be reduced by an amount equalling the creditor's right to payment of additional compensation from the Fund. Additional compensation shall be paid to every person who was a depositor of the above-mentioned banks as of the date of opening of the administrative proceeding to revoke the authorisation to carry on business of a bank. Additional compensation shall also be paid to heirs of natural persons and legal successors of legal entities. As of the date of commencement of payments of additional compensation, the claim of a creditor on a bank shall be decreased by an amount equalling the creditor's right to payment of additional compensation from the Fund. As of the date of commencement of payments of additional compensation, the fund becomes a creditor of the banks in the amount of the rights of depositors to payment compensation from the Fund. Payments of additional compensation referred to in this provision must commence within four months from the date of effect of this Act.

Section II of Act No. 126/2002 Coll.

### **Joint and transitional provisions**

1. Where provisions of an international treaty which has been passed by the Parliament, ratified and promulgated and which is binding on the Czech Republic stipulate otherwise than provisions of Act No. 21/1992 Coll., on Bank, as amended by the existing regulations and this Act, the provisions of this treaty shall apply. The

provisions of the previous sentence shall also apply to similar international treaties which entered into force prior to 1 January 1993.

2. Provisions of Act No. 21/1992 Coll., on Banks, as amended by this Act, (hereinafter referred to as "this Act") relating to Member States of the European Union shall also related to other states of the European Economic Area, if it results so from an international treaty which has been passed by the Parliament, ratified and promulgated and which is binding on the Czech Republic or from a similar international treaty that entered into force before 1 January 1993.

3. The Czech National Bank shall issue banking licences in compliance with this Act to all banks carrying on business in the Czech Republic pursuant to existing legal regulations in an administrative proceeding opened at its own initiative; banking licenses shall also be issued to foreign banks whose branches carry on business in the Czech Republic pursuant to existing legal rules. The authorisation to carry on business of a bank shall expire on the date of effect of the decision to issue a banking licence if the authorisation has been granted pursuant to existing legal regulations.

4. Banks shall establish an internal audit department pursuant to Article 8(6) of this Act within a year from the date of effect of this Act.

5. Banks shall bring their Articles of Association and their ownership interests in general commercial companies and limited partnerships into compliance with this Act within one year from the date of effect of this Act.

6. When calculating the amount of additional compensation, interest on deposit claims shall be calculated for Pragobanka, a.s., Prague, now in bankruptcy, as of 1 December 1998; for Universla banka, a.s., Ústí nad Labem, now in bankruptcy, as of 17 May 1999; for Moravia banka, a.s., Frýdek-Místek, now in bankruptcy, as of 11 October 1999.

7. As of the date of commencement of payments of additional compensation, claims of depositors on a bank equalling the creditor's rights to payment of additional compensation from the Deposit-claim Insurance Fund shall be transferred to the Deposit-Claim Insurance Fund.

Section VII of Act No. 257/2004 Coll.

### **Transitional provisions**

An entity which becomes a financial holding company as a result of the effect of this Act without having been one pursuant to the previous legal regulation and entities belonging to a group of this financial holding company shall bring their activities into compliance with the provisions of this Act or a Czech National Bank Decree, regulating activities of financial holding companies and their group, by 31 December 2006.

Article 36 of Act No. 377/2005 Coll.

### **Transitional provision**

An entity which becomes a financial holding company before the date of effect of this Act shall submit to the Czech National Bank documents proving the trustworthiness and experience of a person in its management pursuant to Article 26g(4) of Act No. 21/1992 Coll., within two months from the date of effect of the Act on Financial Conglomerates.

Section III of Act No. 443/2006 Coll.

**cancelled**

Section II of Act No. 120/2007 Coll.

### **Transitional provisions**

Until 31 December 2007, a bank shall not be subject to Article 12c of Act No. 21/1992 Coll., on Banks, in the version effective from the date of effect of this Act, if the bank uses, throughout this period, the basic approach for the calculation of capital requirements corresponding to previous capital adequacy rules, terms of use of which the Czech National Bank set out in a decree pursuant to Article 12a(8) of Act No. 21/1992 Coll., on Banks, in the version effective from the date of effect of this Act. While applying the basic approach, the Czech National Bank shall not carry out a review and evaluation of this bank referred to in Article 25(3) of Act No. 21/1992 Coll., on Banks, in the version effective from the date of effect of this Act.

Section VII of Act No. 230/2009 Coll.

### **Transitional provisions**

1. Consent to acquire or increase a qualifying holding in a bank or to conclude a control agreement with a bank granted under Act No. 21/1992 Coll., on Banks, in the version effective prior to the date of effect of this Act, shall be considered a consent to acquire or increase a qualifying holding in a bank or to control it granted under Act No. 21/1992 Coll., on Banks, in the version effective from the date of effect of this Act.

2. Proceedings on the imposition of a remedial measure or a sanction opened before the date of effect of this Act shall be completed in accordance with the previous Act. The remedial measure or sanction shall be imposed pursuant to previous legal regulations.

3. The conduct which occurred before the date of effect of this Act shall be assessed in compliance with Act No. 21/1992 Coll., on Banks, in the version effective before the date of effect of this Act. Remedial measures or sanctions for violations of Act No. 21/1992 Coll., on Banks, in the version effective prior to the date of effect of this Act, shall be imposed in accordance with previous legal regulations.

4. Proceedings to grant consent to acquire or increase a qualifying holding in a

bank or to conclude a control agreement with a bank opened prior to the date of effect of this Act shall be completed pursuant to Act No. 21/1992 Coll., on Bank, in the version effective from the date of effect of this Act; time periods that started to run pursuant to Act No. 21/1992 Coll., on Banks, in the version effective prior to the date of effect of this Act, shall run again on the date of effect of this Act.

#### Section II of Act No. 156/2010 Coll.

##### **Transitional provisions**

1. Article 41c of Act No. 21/1992 Coll., on Banks, in the version effective prior to the date of effect of this Act, shall be used to calculate the contribution of banks, building societies and credit unions to the Deposit Insurance Fund for the part of the calendar year which ends on the last day of the calendar quarter in which this Act takes effect. The average volume of insured deposit claims calculated in this way shall be multiplied by a fraction with a number expressing the number of months from the start of the calendar year to the end of the calendar quarter in which this Act takes effect as the numerator and 12 as the denominator. Banks, building societies and credit union shall pay the prescribed contribution to the Deposit Insurance Fund within a month of the end of the calendar quarter in which this Act takes effect.

2. Banks, building societies, credit unions, payment institutions, small-scale payment service providers and investment firms shall keep records and provide information pursuant to Articles 41c(3) and (11) and 41f(7) and (8) of Act No. 21/1992 Coll., on Banks, in the version effective after the date of effect of this Act, from the date following the end of a 12-month period after the date of effect of this Act. The previous sentence shall apply mutatis mutandis to the duties laid on payment institutions, small-scale payment service providers and investment firms in provisions in the final sentence of Article 41f(7) of Act No. 21/1992 Coll., on Banks, in the version effective from the date of effect of this Act.

3. If the limitation time for exercising the right of an eligible person to payment of compensation from the Deposit Insurance Fund starts to run prior to the date of effect of this Act, Article 41h(3) of Act No. 21/1992 Coll., on Banks, in the version effective prior to the date of effect of this Act, shall be observed.

#### Section V of Act No. 160/2010 Coll.

##### **Transitional provisions**

1. If an entity entered in the list of credit assessment agencies pursuant to Act No. 21/1992 Coll., on Banks, in the version effective prior to the date of effect of this Act, fails to apply for authorisation to carry on business of a rating agency pursuant to Article No. 256/2004 Coll., on Capital Market Undertakings, in the version of the Act effective from the date of effect, and pursuant to the directly applicable legislative act of the European Parliament and of the Council on credit rating agencies (hereinafter referred to as the "Regulation") before 7 September 2010, the Czech National Bank shall delete it from the list of credit assessment agencies upon the lapse of time. A decision on the deletion shall not be issued.

2. If an entity entered in the list of credit assessment agencies pursuant to previous legal regulations applies for authorisation to carry on business of a credit rating agency pursuant to the Regulation and this application is dismissed, the Czech National Bank shall delete this entity from the list referred to in (1) with effect from the date when the decision not to grant authorisation becomes final. A decision on the deletion shall not be issued.

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 endure that the duty laid down in Article 12b(1) of Act no. 21/1992 Coll., on Banks, in the version effective from the date of effect of this Act is met by 7 December 2010. Until then, it may use a debtor's credit assessment for the calculation of capital requirements, made by an entity which met the requirements of Act No. 21/1992 Coll., on Banks, in the version effective prior to the date of effect of this Act, or on the basis of this Act and which was, as of the date of effect of this Act, entered in the list of credit assessment agencies maintained by the Czech National Bank prior to the date of effect of this Act.

Section II of Act No. 41/2011 Coll.

#### **Transitional provisions**

1. If the time limit stipulated in Article 26k(3) of Act No. 21/1992 Coll., on Banks, in the version effective as from the date of effect of this Act, starts running before 31 December 2012, it shall be 12 months.

2. A bank shall ensure that remuneration paid to persons listed in Article 1(10) is, as of the date of effect of this Act, in compliance with the provisions of this Act regulating the remuneration scheme.

Section II of Act No. 254/2012 Coll.

#### **Transitional provisions**

1. A bank or a foreign bank branch through which a foreign bank having its registered office in a Member State of the European Union or in a state which is a contracting state of the Agreement on the European Economic Area carries on banking activities, which was authorised to carry on activities listed in Article 1(3)(m) of Act No. 21/1992 Coll., in the version effective prior to the date of effect of this Act, shall terminate such activities in respect of investment instruments if it fails to have or acquire authorisation to carry on activities referred to in Article 1(3)(h) of Act No. 21/1992 Coll., in the version effective prior to the date of effect of this Act within three months after the date of effect of this Act.

2. Proceedings to grant authorisation referred to in Article 1(5) of Act No. 21/1992 Coll., in the version effective prior to the date of effect of this Act which were not concluded by a final and conclusive ruling prior to the date of effect of this Act shall be completed pursuant to previous legal regulations.

Section II of Act No. 135/2014 Coll.

## **Transitional provisions**

1. A bank shall ensure compliance with the requirements laid down in Articles 8(4)(c) and 8(6) of Act No. 21/1992 Coll., in the version effective as from the date of effect of this Act, before 1 July 2014.

2. A branch of a bank from a Member State shall proceed pursuant to Article 5a(4) of Act No. 21/1992 Coll., on Banks, in the version effective before the date of effect of this Act, in respect of the second sentence of Article 14(1) of Act No. 21/1993 Coll., on Banks, in the version effective as from the date of effect of this Act, until 31 December 2014.

3. Proceedings on the imposition of a remedial measure or proceedings on the imposition of a sanction opened before the date of effect of this Act and not concluded by a final and conclusive ruling by this date shall be completed in accordance with the previous legal regulations. Remedial measures or sanctions shall be imposed in accordance with the previous legal regulations.

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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 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.

Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Supervisory Authority (the European Banking Authority), the European Supervisory Authority (the European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (the European Securities and Markets Authority).

Directive No. 2013/36/EU of the European Parliament and of the Council (EU) of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

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.

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.

4a) Act No. 189/2004 Coll.

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) Act No. 591/1992 Coll., on Securities, as amended

4c) Article 196a of the Commercial Code.

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.

5b) Article 66b of the Commercial Code.

6) Act No. 563/1991 Coll., on Accounting.

6b) Act No. 586/1992 Coll., on Income Taxes, as amended.

6c) Article 15 of Act No. 254/2000 Coll., on Auditors and on the Amendment of Act No. 165/1998 Coll.

6d) Act No. 377/2005, on Supplementary Supervision of Banks, Credit Unions, Electronic Money Institutions, Insurance Corporations and Securities Dealers in Financial Conglomerates and on the Amendment of Certain Other Acts (Act on Financial Conglomerates), as amended.

7a) Article 27 et seq. of the Commercial Code.

7b) Commission decision of 23 January 2009 on establishing the Committee of European Banking Supervisors (2009/78/EC).

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.

9c) Act No. 229/2002 Coll., on the Financial Arbitrator , as amended by Act No. 558/2004 Coll.

9d) Act No. 159/2006 Coll., on Conflicts of Interest.

10) Article 152(5) of Act No. 500/2004 Coll., the Administrative Procedure Code.

10a) Article 41(2) of Act No. 6/1993 Coll., on the Czech National Bank, as amended.

10b) Act No. 101/2000 Coll., on the Protection of Personal Information and on the Amendment of Certain Acts, as amended.

10c) Act No. 412/2005 Coll., on Protection of Classified Information and on Security Clearance.

11) Act No. 71/1967 Coll., on Administrative Proceedings (the Administrative Procedure Code), as amended.

12) Act of the Czech National Council 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.

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..

Article 115 of Directive 2013/36/EC of the European Parliament and of the Council.

Article 28 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

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.

19) Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

21) Article 129(2) of Directive 2006/48/EC of the European Parliament and of the Council, as amended by Directive 2010/78/EU.

22) Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

23) Article 112(2) of Directive 2013/36/EU of the European Parliament and of the Council.

24) Article 113 of Directive 2013/36/EC of the European Parliament and of the Council.

25) Articles 42 and 132 of Directive 200648/48/EC of the European Parliament and of the Council, as amended by Directives 2009/111/EC and 2010/78/EU.

25) Article 44 of Act No. 93/2009 Coll., on Auditors and on the Amendment of Some Acts (the Act on Auditors), as amended by Act No. 139/2011 Coll..

26) The International Convention on the Suppression of Financing of Terrorism promulgated under No. 18/2006 of the Collection of International Treaties.

27) Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

28) Article 19 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council.

29) Articles 4(1)(40) and 458(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.

30) Article 25 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council.

31) Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.

32) Articles 50 and 117 of Directive 2013/36/EU of the European Parliament and of the Council.