

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

As amended by:

Act No. 264/1992 Coll.,
Act No. 292/1993 Coll.,
Act No. 156/1994 Coll.,
Act No. 83/1995 Coll.,
Act No. 84/1995 Coll.,
Act No. 61/1996 Coll.,
Act No. 306/1997 Coll.,
Act No. 16/1998 Coll.,
Act No. 127/1998 Coll.,
Act No. 165/1998 Coll.,
Act No. 120/2001 Coll.,
Act No. 239/2001 Coll.,
Act No. 319/2001 Coll.,
Act No. 126/2002 Coll.,
Act No. 453/2003 Coll.,
Act No. 257/2004 Coll.,
Act No. 439/2004 Coll.,
Act No. 377/2005 Coll.,
Act No. 413/2005 Coll.

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

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

PART ONE
Basic provisions

Article 1

(1) This Act governs certain relations associated with the establishment, business activities and dissolution of banks having their registered office within the territory of the Czech Republic, including their activities outside the territory of the Czech Republic, as well as certain relations associated with the activities of foreign banks within the territory of the Czech Republic. For the purposes of this Act, “banks” shall mean legal entities having their registered offices in the Czech Republic, founded as joint-stock companies¹⁾, which:

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

and which have been granted a banking licence (hereinafter referred to as the “licence”) (Article 4) to carry on the activities referred to in subparagraphs a) and b). Where this Act

¹⁾ The Commercial Code

provides otherwise, the provisions of the Commercial Code on joint-stock companies shall not apply to banks.

(2) For the purposes of this Act:

- a) “deposit” shall mean any funds entrusted to the bank that constitute an obligation of the bank to the depositor to repayment thereof;
- b) “credit” 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 legislative act,^{1a)} where the licence specifies the principal 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 legislative act,^{1a)}
- i) money broking,
- j) acting as a depository,
- k) bureau-de-change activities (purchase of foreign currency),
- l) providing banking information,
- m) trading for own account or for account of clients in foreign exchange and gold,
- n) renting safe deposit boxes,
- o) activities directly associated with the activities listed in subparagraphs a) to n) and in paragraph 1.

(4) A bank may not carry on business activities other than those permitted in its licence. This shall not apply to activities carried on for another entity, provided that they are associated with safeguarding its operation and the operation of other banks, financial institutions and ancillary banking services undertakings over which the bank exercises control.

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

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

(7) The licence shall name the permitted activities and may define the extent of the permitted activities, although not in the sense of limiting the number of individual business transactions,

^{1a)} Article 8 of Act No. 591/1992 Coll., on Securities, as amended

^{1a)} Act No. 256/2004 Coll., on Capital Market Undertakings

and may also stipulate the conditions that the bank or foreign bank branch must meet prior to commencing any permitted activity or adhere to when carrying on any permitted activity.

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

Article 2

(1) Save as otherwise provided in a special legislative act, no person may without a licence:

- a) accept deposits from the public,
- b) issue electronic instruments,

(2) “Electronic money instrument” shall mean a payment instrument that stores monetary value in electronic form and is accepted as a means of payment by persons other than the issuer.

(3) The continuing issue 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 credits, or
- c) the issuer’s line of business is one or more of the activities listed in Article 1(3).

(4) The continuing issuing of bonds and other comparable securities shall not be deemed acceptance of deposits from the public if they are offered solely to institutional investors.

Article 3

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

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

(3) The Czech National Bank may require:

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

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

PART TWO

The licence

Article 4

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

(2) Decisions concerning the granting of a licence shall be made by the Czech National Bank, which shall seek the opinion of the Ministry of Finance prior to making any such decision. If the entity to which the licence is to be granted is an entity controlled by a securities dealer or an insurance company having its registered office in the Czech Republic or by another entity that has control over a securities dealer or an insurance company having its registered office in the Czech Republic, the Czech National Bank shall seek the opinion of the relevant supervisory authority.

(3) Prior to making a decision concerning a licence, the Czech National Bank shall seek the opinion of the relevant supervisory authority in a member state of the European Union, 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 of the European Union,
- b) an entity having a permit from the relevant supervisory authority in the member state of the European Union to provide investment services,
- c) an insurance company having a permit from the relevant supervisory authority in the member state of the European Union,
- d) an entity having control over an entity listed in subparagraphs (a), (b) or (c).

(4) The Czech National Bank shall require that the opinions pursuant to paragraphs (2) and (3) in particular contain information relevant for the assessment of whether the conditions listed in paragraph (5)(c) and (d) 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) persons having a qualifying holding (Article 17a(4)) in the bank must be competent to exercise shareholder rights in the bank's business activities;
- d) the persons who, on the basis of a contract of employment or other contract, are nominated for executive managerial positions in the bank with which are associated the powers and responsibilities laid down in the Articles of Association (hereinafter referred to as "bank officers") must have sufficient competence, trustworthiness and experience;
- e) the bank must have in place the technical and organisational prerequisites for pursuing its proposed activities and a functional and effective management and control system, including a risk management system;

- f) the bank must have a programme of operations proceeding from its proposed strategy of activities and based on realistic economic calculations;
- g) any group of entities having close links with the bank must be transparent;
- h) the close links within the group referred to in subparagraph g) must not impede the exercise of banking supervision;
- i) in the state within whose territory the group referred to in subparagraph g) has close links, there must be no legal or factual impediment to the exercise of banking supervision;
- j) the registered office of the future bank must be within the territory of the Czech Republic.

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

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

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

Article 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, which shall seek the opinion of the Ministry of Finance prior to making any such decision.

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

- a) the funds provided by the foreign bank to its branch must be of sufficient amount and transparent origin, taking due consideration of the scope and risks of the branch’s business activities;
- b) the foreign bank must be trustworthy and have sufficient financial strength, taking due consideration of the scope of the branch’s business activities;

- c) the persons nominated for executive managerial positions in the branch must have sufficient competence, trustworthiness and experience;
- d) the branch must have in place the technical and organisational prerequisites for pursuing its proposed activities and a functional and effective management and control system, including a risk management system;
- e) the branch must have a programme of operations proceeding from its proposed strategy of activities and based on realistic economic calculations;
- f) any closely linked group to which the foreign bank belongs must be transparent;
- g) the close links within the group referred to in subparagraph f) must not impede the exercise of banking supervision;
- h) in the state within whose territory the group referred to in subparagraph f) has close links, there must be no legal or factual impediment to the exercise of banking supervision;
- i) the foreign bank wishing to carry on activities through a branch within the territory of the Czech Republic must have its registered office and its head office in the same state.

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

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

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

Article 5a

(1) Banks having their registered offices in member states of the European Union and entities authorised to issue electronic money instruments having their registered offices in member states of the European Union 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 entity has complied with the procedure laid down in European Community law and provided for in Articles 5c to 5m. Such branches shall be subject to the taxable person registration duty provided in a special legislative act.³⁾ Banks having their registered offices in member states of the European Union and entities authorised to issue electronic money instruments having their registered offices in member states of the European Union shall moreover be authorised under the same conditions to carry on such activities without establishing a branch, provided that the carrying-on of such activities does not have the character of permanent economic activity.

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

(3) In compliance with an international treaty, the Czech National Bank may in a decree expand the group of countries whose banks or entities authorised to issue electronic money

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

instruments enjoy the same advantages when pursuing their business within the territory of the Czech Republic as banks and entities authorised to issue electronic money instruments having their registered offices in member states of the European Union.

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

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

(6) The provisions of this Act relating to insurance of deposit claims shall apply to such branches only if they make use of the possibility provided for in Article 41m. The measures referred to in Article 26 may be taken against the foreign bank branches referred to in paragraph 1 only on condition that the branch is not itself taking remedial action at the behest of the Czech National Bank, nor has the banking supervisory authority of the country in which the relevant foreign bank has its registered office taken remedial action at the request of the Czech National Bank, and on condition that the irregular situation persists. This shall not apply in the event of violations of Article 11(5) and the provisions on corrective accounting; in the event of violations of the legal rules governing the operation of the payment system administered by the Czech National Bank (Article 20b) where the bank is a participant in that system; in the event of violations of Article 38a and the information duty referred to in Article 38(2) to (6); or in emergencies and where such action is necessary in the interests of depositors. The measures referred to in Article 26 taken in emergencies and because such action is necessary in the interests of depositors must be reviewed by the Czech National Bank at the earliest opportunity or within the time limit prescribed by the European Commission where the European Commission so decides in conformity with Article 5k(4).

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

Article 5b

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

The single licence principle

Article 5c

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

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

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

Article 5d

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

- a) acceptance of deposits from the public,
- b) lending,
- c) financial leasing,
- d) money transmission services,
- e) issuing and administering means of payment,
- f) providing guarantees,
- g) trading for own account and for account of clients in:
 1. money market instruments,
 2. foreign exchange,
 3. financial futures and options, including exchange and interest-rate instruments,
 4. transferable securities,
- h) participation in securities issues and the provision of services related to such issues,

- i) advice on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings,
- j) money broking,
- k) portfolio management and advice,
- l) safekeeping and administration of securities,
- m) providing banking information,
- n) safe custody services.

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 Community regulations;
- d) the bank or banks referred to in Article 5c(1) must, with the consent of the home supervisory authority, jointly and severally guarantee the commitments entered into by the financial institution;
- e) the bank or banks referred to in Article 5c(1) must satisfy the home supervisory authority regarding the prudent management of the financial institution.

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

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

Article 5f

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

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

Article 5g

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

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

Article 5h

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

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

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

Article 5i

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

Article 5j

(1) Supervision of the branches of banks or eligible financial institutions shall be performed by the supervisory authority of the home state. Supervision of the liquidity of the branches of

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

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

Article 5k

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

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

(3) If, despite the measures referred to in paragraph 2, the bank or eligible financial institution persists in violating the legal rules referred to in paragraph 1, the competent authority of the host state may, after informing the supervisory authority of the home state, take the necessary measures to put an end to the irregular situation and, in so far as is necessary, to put an end to the activities of the bank or eligible financial institution within the territory of the host state.

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

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

Article 5l

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

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

Article 5m

Banks and eligible financial institutions may freely advertise their services in member states of the European Union, subject to any legal rules governing advertising adopted in 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.

Article 7a

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

- a) on which a decision to withdraw the licence becomes effective,
- b) on which the bank is wound up, where it is wound up and liquidated,
- c) from which, in accordance with a decision adopted by the General Meeting, an existing bank will cease to carry on any activity for which a licence is required,
- d) on which the bank is expunged from the Companies Register, where it is wound up without being liquidated.

(2) The licence granted to a foreign bank for its branch shall also cease to be valid on the day on which the foreign bank discontinues the activities of its branch within the territory of the Czech Republic and, moreover, on the day on which the foreign bank loses its authorisation to carry on the business of a bank in the state in which it has its registered office.

PART THREE
Bank organisation

Article 8

- (1) A bank shall have a statutory body¹⁾ and a supervisory board.
- (2) The bank's statutory body shall consist of at least three members and shall be composed of bank officers.
- (3) A member of the statutory body of the bank may not simultaneously be a statutory body or a member of a statutory body or a member of a supervisory board of any other legal entity which is an entrepreneur. A bank employee who is not a member of the statutory body of the bank may not be a statutory body or a member of a statutory body of such a legal entity. This shall not apply to the membership of:
- a) a member of the statutory body of the bank in the statutory body or supervisory board of a financial institution or a bank, or of a foreign bank controlled by a bank, as well as a financial institution or a bank or a foreign bank which exercises control over the bank, as well as a legal entity authorised to organise the demand and supply of securities and an ancillary banking services undertaking (Article 17a(5)),
 - b) an employee in a statutory body of an ancillary banking services undertaking or to the performance of the duties of the statutory body in such an undertaking.
- (4) The powers of the statutory body and the supervisory board shall be specified in the Articles of Association.
- (5) The powers entrusted to the board of directors of a joint-stock company by the Commercial Code may not be transferred to the supervisory board of the bank.
- (6) The bank shall establish an internal audit department which shall analyse and evaluate in particular
- a) the functionality and effectiveness of the management and control system of the bank,
 - b) its system of risk management and its adherence to the principles of prudential bank business.
- (7) The head of the internal audit department may not be a member of the statutory body of the bank or a member of the supervisory board of the bank.
- (8) The head of the internal audit department shall, with the knowledge of the statutory body of the bank, notify the supervisory board of the department's findings and, if something is uncovered that could adversely affect the bank's performance, shall instigate an extraordinary meeting of the supervisory board.

Article 8a

Members of the statutory body of a bank who have infringed their duties as members of the statutory body of the bank ensuing from the legal rules or from the Articles of Association

shall be liable jointly and severally for any damage caused to the creditors of the bank resulting from the bank not being able to meet its due commitments as a result of the infringement of duties by those members of the statutory body.

Article 9

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

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

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

Article 10

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

PART FOUR

Operational requirements

Article 11

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

(2) In the information on services consisting in accepting funds from clients, or when providing such services, the relationship of the service to the insurance of deposit claims, including the limits for payment to one eligible person, shall be stated explicitly and plainly. Banks and foreign bank branches shall supply written information in the official language or languages of the state in which they carry on their activities about the manner of payment of compensation from the Deposit Insurance Fund (Article 41a) or any other insurance scheme to which they belong, and about the manner of making a claim with the Deposit Insurance Fund or any other insurance scheme to which they belong.

(3) A bank shall publish quarterly information on its shareholder structure, on the structure of any consolidated group (Article 26d(1)(a)) to which it belongs and on its activities and financial indicators to the extent and in the manner provided for in a Czech National Bank

provision (regulation) promulgated in the Bulletin of the Czech National Bank. A foreign bank branch shall also supply information on its activities and financial indicators to the extent and in manner provided for in a Czech National Bank provision promulgated in the Bulletin of the Czech National Bank.

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

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

Article 12

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

(2) A bank may not conclude any agreements under conspicuously disadvantageous conditions for itself, 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.

(3) Banks shall meet the capital adequacy requirement on both a solo and consolidated basis.

(4) A bank's capital may not fall below the threshold stipulated in Article 4(1).

Article 13

Banks shall adhere to the rules set forth in respect of credit exposure on a solo and consolidated basis.

Article 14

(1) Banks shall maintain their solvency both in the Czech currency and in foreign currencies on a solo and consolidated basis at all times. To this end, they shall adhere to the rules set forth in respect of liquidity and safe operation (Article 15). These rules may lay down:

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; this obligation may also be met by maintaining a prescribed part of the funds at the Czech National Bank;

b) restrictions and conditions applying to certain types of credits or investments, deposits, guarantees and commitments;

- c) restrictions and conditions aimed at matching the maturities of the bank's assets and liabilities;
- d) restrictions and conditions applying to open foreign exchange positions.

Article 15

The rules referred to in Articles 12 to 14 and the extent to which foreign bank branches are subject to those rules, as well as the definition of the term capital on a solo and consolidated basis, shall be set forth by the Czech National Bank in a provision to be promulgated in the Bulletin of the Czech National Bank.

Article 16

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

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

Before deciding whether to grant prior consent in accordance with subparagraphs b) and c), the Czech National Bank shall seek the opinion of the Ministry of Finance. Legal acts and resolutions of the General Meeting adopted without the required prior consent shall be invalid.

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

- a) of any intended change in its Articles of Association relating to facts that must be stated in the Articles of Association in accordance with the requirements of the Commercial Code or this Act;
- b) of proposed personnel changes in the statutory body of the bank and in the positions of the bank's officers, including the submission of documents necessary for evaluating their competence, trustworthiness and experience; this obligation shall also apply to a foreign bank branch in respect of persons nominated for executive managerial positions in the branch;
- c) of its wish to establish a legal entity abroad or to have a holding therein.

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

⁴⁾ Act No. 63/1991 Coll., on the Protection of Economic Competition, as amended.

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 of the European Union, it shall proceed in accordance with Articles 5c to 5m. The same shall apply where it wishes to provide the services referred to in Article 5d through a financial institution fulfilling the conditions listed in Article 5e(1) which will provide the services through a branch or without establishing a branch. After receiving notification of the plan to open a branch or financial institution abroad, the Czech National Bank shall decide in administrative proceedings whether the conditions for such cases laid down in European Community law and provided for in Articles 5c to 5m have been fulfilled. If the bank or financial institution is a securities dealer, the Czech National Bank shall seek the opinion of the Securities Commission prior to making such a decision.

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

Article 17

(1) A bank may not exercise control of another legal entity that is neither a bank pursuant to this Act, nor a financial institution nor an ancillary banking services undertaking.

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

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

(3) The prohibition set forth in paragraph 1 and the limits set forth in paragraph 2 shall not apply to a bank's holding in an entity arising from a claim of the bank on that entity and where the bank holds the holding during a rescue operation or the financial reconstruction of that entity for no longer than three years from the date of acquiring it.

(4) The limits set forth in paragraph 2 shall not apply to any qualifying holding of the bank arising from its participation in the issue of securities and the provision of related services where the bank holds the qualifying holding for no longer than six months from the date of acquiring it.

(5) A bank shall notify the Czech National Bank of its acquisition of a qualifying holding at the earliest opportunity.

Article 17a

- (1) Control over a legal entity is exercised by the entity that is the parent undertaking (controlling person) in relation to that legal entity within the meaning of the Commercial Code.
- (2) “Indirect holding” shall mean a holding held indirectly through an entity or entities over which control is exercised.
- (3) For the purposes of this Act, “financial institution” shall mean an entity other than a bank pursuant to this Act, the principal or major activity of which is to acquire or hold holdings in legal entities or carry on one or more of the activities listed in Article 1(1) and (3) of this Act, or an investment company, investment fund, pension fund, insurance company or reinsurance company which carries on activities pursuant to special legislative acts,^{4a)} all including any foreign entities carrying on similar activities.
- 4) “Qualifying holding” shall mean a direct or indirect holding, or aggregate thereof, which represents 10% or more of the capital or the voting rights of a legal entity, or which makes it possible to exercise a significant influence over the management of an undertaking of another entity.
- (5) “Ancillary banking services undertaking” shall mean a legal entity providing services supporting a bank’s business activity.

Article 18

- (1) A bank may not enter into transactions with persons having a special relation thereto (Article 19) which would otherwise, owing to their nature, purpose or risk, not be entered into with other clients.
- (2) A bank shall provide credits to, and secure the commitments of, the persons referred to in paragraph 1 only if its statutory body so decides after analysing the banking transaction in question and the applicant’s financial standing.
- (3) The provisions of the Commercial Code relating to conflict of interests and governing the granting of credits and loans and the securing of commitments by a joint-stock company^{4b)} shall not apply to banks.

Article 19

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

^{4a)} Act No. 248/1992 Coll., on Investment Companies and Investment Funds, as amended; Act No. 42/1994 Coll., on Additional Pension Insurance with State Contribution and on Changes to Certain Acts Connected with its Introduction, as amended by Act No. 61/1996 Coll.; and Czech National Council Act No. 185/1991 Coll., on the Insurance Business, as amended.

^{4b)} Articles 161e, 161f and 196a of the Commercial Code.

- a) members of the statutory body and the bank officers of the bank;
- b) members of the supervisory board of the bank;
- c) entities exercising control over the bank, persons having qualifying holdings in those entities, and members of the management of those entities;
- d) persons close⁵⁾ to the members of the statutory body, the supervisory board, the bank officers and the persons exercising control over 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 under their control;
- g) members of the Bank Board of the Czech National Bank,
- h) entities over which the bank exercises control.

Article 19a

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

(2) A bank shall demonstrate due diligence by:

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

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

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

Article 19b

(1) The bank shall prevent

- a) the use of information received in the context of its lending transactions when carrying on investment transactions, and vice versa,
- b) the use of information received in the context of its investment transactions for a client's account when carrying on investment transactions for its own account, and vice versa, unless this information is publicly available.

⁵⁾ Article 116 of the Civil Code No. 40/1964 Coll., as amended.

^{5a)} Articles 14 and 15 of Czech National Council Act No. 591/1992 Coll., on Securities, as amended; Article 1(d) of Act No. 219/1995 Coll., the Foreign Exchange Act.

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

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

(4) “Investment transactions” shall mean activities concerning:

- a) investment in securities,
- b) trading in securities,
- c) trading in rights attaching to securities or deriving from securities,
- d) participation in securities issues and the provision of related services,
- e) portfolio management and advice.

(5) The bank may carry on investment transactions for a client’s account only under the conditions most advantageous for the client, and in particular at the best price that can be achieved for the client with due diligence.

(6) The bank shall keep separate records of investment transactions undertaken for the client’s account.

(7) Paragraphs 1 to 6 shall also apply to foreign bank branches.

Article 20

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

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

(3) Prior to acquiring a qualifying holding in a bank or prior to increasing a qualifying holding so that it would reach or exceed 20%, 33% or 50% of the capital or of the voting rights, a legal or natural person or persons acting in concert^{5b)} must have the consent of the Czech National Bank. A person concluding a control agreement with a bank as a parent undertaking (controlling person) or a person executing any other legal act aimed at taking control of the bank shall also always have the consent of the Czech National Bank. A member of the statutory body of the parent undertaking shall meet the conditions set forth in this Act for bank officers. The Czech National Bank shall stipulate the essential elements of the application in a decree. The Czech National Bank shall not give its consent if this would be in contravention of any international treaty which has been ratified by Parliament, which is binding on the Czech Republic and which has been promulgated.

(4) Prior to any proposed reduction of a qualifying holding so that it would fall below 50%, 33%, 20% or 10% of the capital or of the voting rights, or prior to any reduction of a qualifying holding in a bank so that the bank would cease to be a subsidiary (controlled

^{5b)} Article 66b of the Commercial Code.

person), a legal or natural person or persons acting in concert^{5b)} shall notify the Czech National Bank of this fact at the earliest opportunity. The same duty shall apply to a such a person who proposes to transfer a volume of shares or other rights that in itself represents a qualifying holding in the bank, or who proposes to forfeit, or has forfeited against his will, the position of parent undertaking (controlling person) in respect of the bank. The Czech National Bank shall stipulate the essential elements of the application in a decree.

(5) Where the thresholds prescribed in paragraph 3 are exceeded as a result of transfer of title, the person with the holding in question shall notify the Czech National Bank of this fact at the earliest opportunity.

(6) The applicant for the consent referred to in paragraph 3 shall be assessed analogously to the founder of a bank in licensing proceedings. The Czech National Bank shall seek the opinion of the competent supervisory authority as in Article 4(2) to (4) if the applicant is to become the parent undertaking of the bank.

(7) The consent referred to in paragraph 3 may be granted subsequently in cases deserving of special consideration.

(8) The execution of a legal act in contravention of paragraph 3 shall not render that legal act invalid.

(9) A legal act based on the consent referred to in paragraph 3 may be executed no later than one year after the granting of consent.

(10) If the Czech National Bank does not issue a decision on the application referred to in paragraph 3 at least in the first instance within the time limit prescribed in Article 40(5), the consent shall be deemed to have been granted.

(11) If the time limit for submitting the complete application is not observed, the Czech National Bank shall be entitled to stop the administrative proceedings regarding the granting of consent.

(12) The bank shall notify the Czech National Bank in writing of any changes subject to the procedure referred to in paragraph 3 or 4 at the earliest opportunity after becoming aware of the material facts.

Article 20a

(1) Where a share 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(9) and the consent referred to in Article 20(7) was not granted, and furthermore where the Czech National Bank becomes aware that the influence exercised by the person or persons having a qualifying holding in the bank operates to the detriment of the sound and prudent management of the bank, or if such influence can reasonably be expected to be exercised, the Czech National Bank shall in administrative proceedings suspend the exercise of the following rights of the shareholder who alone or by acting in concert with other persons has a qualifying holding in the bank:

a) to attend and vote in a General Meeting,

- b) to request the convening of an Extraordinary General Meeting,
- c) to file petitions in the courts to have resolutions adopted by the General Meeting declared invalid.

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 as a result of a control agreement and this agreement was concluded without the consent referred to in Article 20(3) or after the time limit prescribed in Article 20(9) and the consent referred to in Article 20(7) was not granted, and furthermore where the Czech National Bank becomes aware that the influence exercised by the parent undertaking operates to the detriment of the sound and prudent management of the bank, or if such influence can reasonably be expected, the Czech National Bank shall in administrative proceedings suspend the control agreement and the control agreement shall terminate on the earliest possible date allowed by the Commercial Code. The provisions of Article 26(6) and (8) shall apply *mutatis mutandis*. The Czech National Bank shall promulgate its decision to suspend the control agreement in the Commercial Bulletin.

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

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

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

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

(7) Shares whose owners' shareholder rights have been suspended shall not be considered voting shares for the period during which they are held by that owner. The duty to apply for the prior consent of the Czech National Bank in accordance with Article 20(3) of this Act shall not apply to increases in other shareholders' shares of the voting rights arising in such way.

¹¹⁾ Act No. 71/1967 Coll., on Administrative Proceedings (Administrative Procedure Code), as amended.

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

Article 20b

(1) Within the territory of the Czech Republic, banks shall transfer funds among themselves in the Czech currency in accordance with individual items created at their own instruction and at the instruction of their clients through payment systems operated in compliance with a special legislative act or through the payment systems operated by the Czech National Bank.

(2) 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.

(3) Paragraphs 1 and 2 shall also apply to foreign bank branches.

Article 20c

(1) Where a bank 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 an error in settlement, it shall correct the mistake using corrective settlement. The bank shall, at the earliest opportunity, transfer funds in the correct amount, plus interest accrued pursuant to the agreement for the period during which the client could not dispose of his funds, to the account of the authorised beneficiary. Interest totalling less than CZK 10 shall not be transferred unless the authorised beneficiary expressly requests its return. Corrective settlement by means of debiting the amount from the account of the unauthorised beneficiary may be effected up to three months from the occurrence of the error in settlement. If the account of the unauthorised beneficiary of an incorrectly settled payment is maintained by another bank, then the bank which caused the error shall be entitled to submit to this bank a request to have this amount debited from his account.

(2) A bank which maintains the account of an unauthorised beneficiary of an incorrectly settled payment shall be entitled, subject to the principles provided for in paragraph 1, to debit his account with the amount to be corrected and to recalculate the interest accrued on the funds so that the account records the position as if the incorrectly settled payment had not been received; if the error in settlement was caused by another bank, it shall debit the relevant amount from his account at the request of that bank and provide it to that bank.

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

(4) The Czech National Bank shall stipulate in a decree the technical procedures to be used by banks for corrective settlement.

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

PART FIVE

Accounting and business documentation

Article 21

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

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

Article 22

(1) A bank shall arrange for a legal entity or natural person carrying on auditing activities pursuant to a special legislative act^{6c)} (hereinafter referred to as the "auditing company") to perform:

- a) an audit of its financial statements;
- b) an audit of its management and control system, including its risk management system;
- c) preparation of reports on the audit of its financial statements and of the systems referred to in subparagraph b) and submission of those reports to the Czech National Bank on the stipulated dates.

(2) The Czech National Bank may waive the audit of the systems referred to in paragraph 1(b) or limit the requirement to only some parts thereof.

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

(4) The audit of the information referred to in paragraph 1 may not be performed in the bank by an auditing company 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 auditing company.

(5) 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.

⁶⁾ Act No. 563/1991 Coll., on Accounting.

^{6c)} Article 15 of Act No. 254/2000 Coll., on Auditors and on the Amendment of Act No. 165/1998 Coll.

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

Article 23

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

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

Article 24

(1) Banks and foreign bank branches shall produce and submit to the Czech National Bank information and documents the content, form, layout, closing dates and manner of submission of which shall be stipulated by the Czech National Bank.²⁾

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

PART SIX

Banking supervision and the confidentiality obligation

Article 25

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

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

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

Article 25a

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

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

(3) Subject to compliance with the statutory conditions, disclosure of information acquired in the context of exercising banking supervision or supplementary supervision of entities in a financial conglomerate^{6d)} to an authority responsible for supervising financial institutions or financial markets in the Czech Republic or to an authority responsible for supervising banks, financial institutions or financial markets in another state shall not be deemed a breach of the confidentiality obligation.

(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,
- g) of supervision of payment systems,
- h) as operator of a payment system,

^{6d)} Act No. 377/2005 Coll., 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).

- i) as a law enforcement authority,
- j) as a central bank responsible for monetary policy,
- k) as systems of insurance of deposit claims and insurance of investors.

The same shall apply with respect to public authorities and other entities in member states of the European Union

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

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

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

PART SEVEN

Remedial measures and penalties

Article 26

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

- a) demand that the relevant bank or foreign bank branch remedy the situation within a specified period, and in particular that it restrict some of its permitted activities or cease non-permitted activities, replace persons in the management of the bank or foreign bank branch, or create an adequate amount of provisions and reserves, or that the bank reduce its capital to a specified extent, replace members of the supervisory board or use its profit after tax preferentially to supplement its reserve funds or to increase its capital,
- b) change the licence by excluding or restricting some of the activities listed therein,
- c) order an extraordinary audit at the expense of the bank or foreign bank branch concerned.
- d) impose conservatorship,
- e) impose a fine of up to CZK 50,000,000,

f) reduce the capital of the bank by an amount corresponding to the loss after clearance thereof with reserve funds and other funds, provided that the loss exceeds 20% of the bank's equity,

g) prohibit or restrict the execution of transactions with legal entities which have close links with the bank or which belong to the same consolidated group as the bank or which have a special relation to the bank (Article 19).

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

(3) "Shortcoming in the activities" shall mean:

a) failure to comply with the conditions stipulated in the licence or to fulfil the conditions under which the licence was granted pursuant to Article 4(5) or Article 5(4);

b) failure to comply with, or circumvention of, this Act, special legislative acts, legal rules and the provisions issued by the Czech National Bank;

c) execution of transactions by the bank or foreign bank branch in a manner which is detrimental to the interests of its depositors or which endangers the safety and soundness of the bank or foreign bank branch;

d) management of the bank or foreign bank branch by persons who are not sufficiently competent or who are not trustworthy;

e) a situation where the total volume of reserves and provisions set aside by the bank is not sufficient to cover the risks arising from the volume of classified assets recorded by the bank;

f) contravention of a legal rule of the state within the territory of which the bank has a branch when carrying on business activities within the territory of that state;

g) a fall in capital below the minimum level (Article 12(4)).

(4) Save as otherwise provided in this Act, proceedings to change a licence, impose conservatorship, terminate conservatorship, order an extraordinary audit, impose a fine, reduce capital and to prohibit or restrict the execution of transactions shall be governed by the regulations on administrative proceedings.

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

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

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

(8) An appeal may be filed against the decision. The appeal shall have no suspensory effect. Decisions concerning appeals shall be made by the Bank Board of the Czech National Bank.

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

(10) The Czech National Bank may also impose the fine referred to in paragraph 1(e) on persons who fail to comply with the provisions of Article 3.

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

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

Article 26a

(1) If the Czech National Bank becomes aware that bank's capital adequacy on a solo basis is lower than two thirds of the ratio laid down by the Czech National Bank,^{6a)} it shall in administrative proceedings impose one or more of the following remedial measures on the bank:

- a) to increase its capital so as to attain the prescribed capital adequacy thereof on a solo basis,^{6a)}
- b) to acquire assets with a risk weighting of less than 100% only,^{6a)}
- 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 credit to a person having a special relation to the bank,
- e) not to offer interest rates on deposits exceeding the usual current interest rates on deposits of like amounts and with like maturity as ascertained by the Czech National Bank.

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

Article 26b

If the statutory body or supervisory board becomes aware that the bank is, or will become, insolvent or that the bank has incurred, or will probably incur, losses which have caused, or may cause, the bank's capital adequacy on a solo basis to fall below two thirds of the ratio laid down by the Czech National Bank,^{6a)} it shall notify the Czech National Bank of this fact at the earliest opportunity.

PART EIGHT

Banking supervision on a consolidated basis

^{6a)} Czech National Bank Provision No. 3 of 5 October 1995, on the Capital Adequacy of Banks, promulgated in Vol. 72/1995 Coll., as amended by Czech National Bank Provision No. 4 of 4 July 1995, promulgated in Vol. 61/1996 Coll.

Article 26c

(1) Banking supervision on a consolidated basis shall mean the monitoring and regulation of the risks of consolidated groups containing a bank in order to limit the risks to which the bank is exposed in respect of its membership of the consolidated group.

(2) Banking supervision on a consolidated basis shall not mean supervision of the individual entities belonging to a consolidated group, nor shall it substitute for banking supervision on a solo basis pursuant to this Act or for supervision of financial institutions pursuant to special legislative acts.

(3) Without prejudice to Article 25a, when exercising supervision on a consolidated basis the Czech National Bank shall co-operate with the authorities responsible for supervising financial institutions in the Czech Republic and with the authorities responsible for supervising banks and financial institutions in other countries and shall be entitled to exchange information with them.

(4) The Czech National Bank may, for the purposes of exercising supervision on a consolidated basis, carry out an on-site examination in the entities belonging to a consolidated group or ask the competent supervisory authority to carry out such an examination. The Czech National Bank shall notify the authority responsible for supervising the inspected entity of the commencement, purpose and results of the on-site examination. This shall apply without prejudice to Article 25a.

(5) Entities belonging to a consolidated group shall allow the carrying-out of the on-site examination referred to in paragraph 4 and to give the necessary assistance to the Czech National Bank.

Article 26d

(1) For the purposes of this Act:

a) “consolidated group” shall mean a parent bank (controlling bank) group or a financial holding entity group or a mixed-activity holding entity group, such consolidated group consisting of at least two entities,

b) “parent bank” (controlling bank) shall mean a bank, the subsidiaries (controlled entities) or affiliates of which are banks, financial institutions or ancillary banking services undertakings,

c) “financial holding entity” shall mean a parent undertaking which

1. is a financial institution other than an insurance or reinsurance company,
2. is not a mixed-activity holding entity pursuant to a special legal act^{6d)}, and
3. controls exclusively or principally banks or financial institutions, where at least one of its subsidiaries is a bank,

d) “mixed-activity holding entity” shall mean a parent undertaking (controlling person) other than a bank, financial holding entity or a mixed-activity financial holding entity pursuant to a special legal act,^{6d)} where at least one of its subsidiaries is a bank,

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

- f) “financial holding entity group” shall mean a group which consists of a financial holding entity and its subsidiaries and affiliates,
- g) “mixed-activity holding entity group” shall mean a group which consists of a mixed-activity holding entity and its subsidiaries and affiliates,
- h) “affiliate” shall mean an entity in which another entity exercises a significant influence, which shall mean such significant influence over the management or operation of the business activities of such entity which is other than control and other than only temporary in nature and the purpose of which is to participate in the business activities of such entity; a direct or indirect holding treated separately or totalling 20% or more of the capital or of the voting rights shall be always considered a significant influence unless it is a case of control.

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

(3) The Czech National Bank may stipulate in a decree the criteria for exempting entities from supervision of the consolidated group.

Article 26e

(1) The Czech National Bank may waive the exercise of banking supervision on a consolidated basis of a consolidated group which is subject to banking supervision or like oversight on a consolidated basis exercised by a supervisory authority in the Czech Republic or in another state. The Czech National Bank may reach agreement on the terms of supervision on a consolidated basis with that authority. However, the Czech National Bank shall exercise banking supervision on a consolidated basis of each and every parent bank group having its registered office in the Czech Republic.

(2) Save as agreed otherwise with the competent home country supervisor of the bank or financial institution, the Czech National Bank shall not exercise supervision of a financial holding entity having its registered office in another member state of the European Union if:

- a) the financial holding entity contains a bank having its registered office in that state, or
- b) the group contains a bank having its registered office in another member state of the European Union as well as a bank having its registered office in the Czech Republic and the latter has a smaller balance-sheet total than the former; if both banks have the same balance-sheet total, supervision on a consolidated basis shall not be exercised by the Czech National Bank if the bank having its registered office in the Czech Republic received its licence later.

(3) If the parent bank or financial holding entity has its registered office in a non-EU member state, the Czech National Bank shall seek the opinion of the authority supervising a bank having its registered office in another member state of the European Union and belonging to the same consolidated group, and of the Banking Advisory Committee,^{6e)} before deciding whether to waive the exercise of banking supervision on a consolidated basis of the consolidated group. Should there be no banking supervision or like oversight on a consolidated basis of such consolidated group, the Czech National Bank may request the establishment of a financial holding entity in the territory of the Czech Republic or any other member state of the European Union. The Czech National Bank shall inform the authority

supervising the bank having its registered office in another member state of the European Union and belonging to the same consolidated group, and the Commission of the European Communities, of the procedure referred to in the previous sentence.

Article 26f

(1) Parent undertakings the consolidated groups of which are subject to banking supervision on a consolidated basis shall comply with the prudential rules for parent undertakings on a consolidated basis. The Czech National Bank shall lay down these rules, and the extent to which they apply to particular types of parent undertakings, in a decree.

(2) The entities belonging to a consolidated group shall supply the Czech National Bank, either directly or via their parent undertaking or via a bank which is a member of that consolidated group and has been designated by the Czech National Bank, with all the information necessary for exercising supervision on a consolidated basis. The Czech National Bank shall stipulate in a decree the manner of submission of the information and the scope and frequency thereof.

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) The parent undertaking shall notify the Czech National Bank in advance of the auditors and auditing companies that will audit the entities belonging to its consolidated group.

(3) The parent undertaking and the financial holding entity shall ensure an audit of information that they submit for the purposes of the banking supervision on a consolidated basis and within the scope set forth in a decree of the Czech National Bank.

(4) A financial holding entity shall ensure that its statutory body, a member thereof or any other natural person that manages the business of the financial holding entity or of a legal entity that is its statutory body or a member thereof (hereinafter referred to as a “person in an executive managerial position“), either alone or together with other persons, is a trustworthy person having enough experience to discharge the office and to meet requirements applying to the financial holding entity under this Act.

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

financial holding entity. The Czech National Bank shall specify the supporting documents proving the trustworthiness and experience of persons in executive managerial positions of a financial holding entity in a decree.

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

Article 26h

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

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

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

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

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

(4) Save as otherwise provided in this Act, proceedings to impose the measures listed in paragraphs 2(b) to (d) shall be governed by the regulations on administrative proceedings. Articles 26(6) to (9), (11) and (12) shall apply mutatis mutandis; the only party to the proceedings shall be the parent undertaking concerned.

PART NINE Conservatorship

Article 27

(1) A decision to impose conservatorship shall contain:

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

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

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

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

Article 28

(1) The conservator shall be appointed and dismissed by the Bank Board of the Czech National Bank, which shall also determine the remuneration for executing the conservatorship. The conservator shall be an employee of the Czech National Bank.

(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.

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, who shall convene a General Meeting and be entitled to attend it, shall act in the capacity of the statutory body.

^{6b)} Act No. 586/1992 Coll., on Income Taxes, as amended.

(2) The conservator shall decide on matters falling within the powers of the General Meeting. Decisions on matters falling within the powers of the General Meeting shall be made by the conservator with the prior consent of the Czech National Bank.

(3) If the bank's situation so requires, the conservator may, with the prior consent of the Czech National Bank, which shall seek the opinion of the Ministry of Finance, suspend partially or fully the depositors' right of disposal of their deposits in the bank. This decision shall be without prejudice to the rights and obligations ensuing from financial collateral arrangements^(6e) pursuant to a special legal act^(6f) or foreign legislation which has been provided by or to the bank. The option of carrying out final settlement in line with a special legal act governing capital market undertakings shall not be affected either^(6g).

(4) 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 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 system and the shareholders have not taken the necessary steps to eliminate those shortcomings. The Czech National Bank shall seek opinion of the Ministry of Finance on the imposition of conservatorship.

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

Article 31

- (1) Conservatorship shall be recorded in the Companies Register.^{7a)} Proposed entries relating to conservatorship shall be submitted by the Czech National Bank.
- (2) A court of law shall, at the proposal of the Czech National Bank, record in the Companies Register the imposition of conservatorship, the termination of conservatorship, the dismissal of a conservator and the appointment of a new conservator.
- (3) The court shall rule on the conservator's proposals concerning the entry in the Companies Register within three days of delivery thereof.

Article 32

- (1) During conservatorship, the Czech National Bank may render financial assistance to the bank in question to overcome any temporary shortage of liquidity.
- (2) Claims for repayment of the financial assistance rendered by the Czech National Bank pursuant to paragraph 1 shall have priority over all other liabilities of the bank.

Article 33

- (1) Conservatorship shall be terminated:
- a) by the serving of a decision of the Czech National Bank to terminate conservatorship;
 - b) upon the appointment of a liquidator;
 - c) by declaration of bankruptcy; or
 - d) upon the lapse of 24 months from the imposition of conservatorship.
- (2) Conservatorship shall not be terminated upon the revocation of a bank's licence.

PART TEN

Revocation of the licence

Article 34

^{7a)} Article 27a et seq. of the Commercial Code.

^{6e)} Article 56a of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, as amended by Directive 2002/87/EC.

^{6f)} Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.

^{6g)} The Commercial Code.

^{6h)} Act No. 256/2004 Coll., on Capital Market Undertakings, as amended.

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

(2) The licence may also be revoked if:

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

(3) The Czech National Bank shall revoke the licence if it becomes aware that the bank's capital adequacy on a solo basis is lower than one-third of the ratio laid down by the Czech National Bank.^{6a)}

Article 35

(1) The decision to revoke a licence pursuant to Article 34 shall specify the date as of which the licence is revoked; the decision shall be published in the Commercial Bulletin; in addition, in the case of a foreign bank branch, notification shall be given to the competent banking supervisory authority in the relevant state.

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

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

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

PART ELEVEN

Bank liquidation

Article 36

(1) If a bank is wound up and liquidated, the Czech National Bank shall have exclusive authority to submit a proposal for the nomination of the liquidator. In addition, the Czech National Bank shall have exclusive authority to submit a proposal for the dismissal of the liquidator and for the nomination of a new liquidator or a proposal for the winding up of the

^{6a)} Provision of the Czech National Bank No. 3 of 5 October 1995 on the Capital Adequacy of Banks, promulgated in Vol. 72/1995 Coll., as amended by Provision of the Czech National Bank No. 4 of 4 July 1996, promulgated in Vol. 61/1996 Coll.

joint-stock company if the bank's licence has been revoked. The court shall rule on the Czech National Bank's proposal the within 24 hours of the proposal being submitted.

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

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

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

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

PART TWELVE

Common provisions

Article 37

(1) Banks shall provide services to their clients on a contractual basis. A bank shall demand proof of a client's identity for each transaction exceeding CZK 100,000 and when renting safe deposit boxes. A bank may refuse to provide client services on an anonymous basis.

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

Article 38

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

(2) A bank shall submit a report on all matters that are subject to banking secrecy to the persons authorised to perform banking supervision. Exchange of information between the Czech National Bank and the banking supervisory authorities and like institutions of other

countries shall not be deemed a breach of banking secrecy if the subject of exchange is information on entities which operate or wish to start operating within the territory of the relevant state. Disclosure of information on a client and on a client's transactions shall also not be deemed a breach of banking secrecy in the case of the reporting of a criminal act or the discharge of a notification duty pursuant to a special legislative act.¹⁰⁾

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

- a) a court of law for the purposes of civil proceedings;⁸⁾
- b) a law enforcement authority under conditions laid down by a special legislative act;⁹⁾
- c) the tax authorities under the conditions laid down by the special legislative act on the administration of taxes and fees;
- d) the Ministry of Finance and the Securities Commission when exercising statutory supervision;^{9a)}
- e) the Ministry of Finance under conditions laid down by a special legislative act;¹⁰⁾
- f) the social security authorities, in matters of proceedings concerning social security payments and contributions to the state employment policy owed by the client, and 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, or state welfare bodies in matters of proceedings concerning overpayments of welfare benefits which the client is obliged to return; the same shall apply to the exaction of such insurance payments, contributions and overpayments;
- g) health insurance companies in matters of proceedings concerning public health insurance payments owed by the client; the same shall apply to the exaction of such insurance payments;
- h) a judicial executor authorised to perform execution pursuant to a special legislative act;^{9b)}
- i) a labour office 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) the National Security Authority, the Intelligence Service or the Ministry of Interior when carrying out a security proceeding pursuant to a special legislative act^{10c)}.

The written request must contain information enabling the bank to identify the relevant matter.

(4) At the written request of the social security authorities or district authorities in matters of proceedings concerning the return of a benefit remitted to an account after the death of the recipient of the benefit, 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 a labour office after the death of a client.

¹⁰⁾ Act No. 61/1996 Coll., on Certain Measures Against Money Laundering and on the Amendment of Related Acts.

^{10c)} Act No. 412/2005 Coll., on the Protection of Classified Information and on Security Capacity.

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.

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

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

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

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

(10) In the context of its business activities within the territory of another state, a bank shall submit a report on matters relating to a client that are subject to banking secrecy even without the consent of the client in so far as is necessary to fulfil the obligations laid down by the law of the state within the territory of which the bank carries on those activities. This is without prejudice to the provisions of the special legislative act^{10b)}.

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.

^{10b)} Act No. 101/2000 Coll., on Personal Data Protection and to the Amendment of Other Acts, as amended

(2) The Czech National Bank shall create a database from the information within the scope referred to in paragraph 1 obtained from banks, foreign bank branches^{10a)} and other persons where a special legislative act so provides. Where a special legislative act so provides, banks, foreign bank branches and other persons shall have access to the information in this database under conditions laid down in a Czech National Bank decree. The transfer of information into this database shall not be deemed a breach of banking secrecy. However, banks and foreign bank branches shall treat information on the clients of another bank or foreign bank branch acquired from the database as if it were information on their own clients.

(3) The client shall be entitled to know the information kept on him in the relevant database if it concerns his person or a legal entity which he represents. He shall have the right to have an extract made for the settlement of material costs.

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

Article 38b

A bank may disclose information that is otherwise subject to banking secrecy if such disclosure is necessary for the purposes of oversight or supervision on a consolidated basis or supplementary supervision^{6d)}.

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 38h.

Article 38d

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

- a) of the number and type of cases where it has refused to allow a bank or financial institution fulfilling the conditions listed in Article 5e(1) having its registered office within the territory of the Czech Republic to establish a branch in another member state of the European Union or where it has taken measures pursuant to Article 26 against a branch pursuant to Article 5a(1),
- b) of licences granted and revoked,
- c) of the granting of a licence to any bank controlled by an entity which is governed by the laws of a state that is not a member of the European Union, and of the structure of the consolidated group to which that bank belongs,

^{10a)} Article 41(2) of Act No. 6/1993 Coll., on the Czech National Bank, as amended.

- d) of the fact that a bank has become a subsidiary of an entity which is governed by the laws of a state that is not a member of the European Union, and of the structure of the consolidated group to which that bank belongs,
- e) of any discriminatory measures applied against banks establishing branches in states that are not members of the European Union,
- f) of financial holding entities,
- g) of any agreements pursuant to Article 26e,
- h) of any measures pursuant to Article 26 taken against branches pursuant to Article 5a(1) in emergencies and where such action is necessary in the interests of depositors.

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

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

Article 38e

(1) The Czech National Bank shall inform the competent supervisory authority of a member state of the European Union:

- a) of all consolidated groups containing a bank as well as a bank having its registered office within the territory of the member state of the European Union or a financial institution fulfilling the conditions listed in Article 5e(1) having its registered office within the territory of the member state of the European Union,
- b) of any notification from a bank or financial institution fulfilling the conditions listed in Article 5e(1) that it wishes to establish a branch within the territory of the member state of the European Union or to provide services there, and of any changes thereto,
- c) of the fact that a financial institution has ceased to fulfil the conditions listed in Article 5e(1),
- d) of measures pursuant to Article 26 taken against branches pursuant to Article 5a(1) in emergencies and where such action is necessary in the interests of depositors,
- e) of the 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 consult the banking supervisory authority of a member state of the European Union on the granting of:

- a) a licence to a bank which is controlled by a bank having its registered office within the territory of that state or is controlled by the same entity as a bank having its registered office within the territory of that state,
- b) consent to the acquisition of a qualifying holding in a bank such that the bank would become a member of a consolidated group also containing a bank having its registered office within the territory of that 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 of the European Union, the Czech National Bank shall consult the banking supervisory authority of that state. In emergencies, the Czech National Bank shall inform the supervisory authority of its intention to change or revoke the licence. The Czech National Bank shall, at the earliest opportunity, inform the banking supervisory authorities of the states in which the bank has branches of the change or revocation of the licence. The same shall apply where it intends to withdraw the licence of a branch of a foreign bank which also has a branch within the territory of a member state of the European Union.

(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 adjudication of bankruptcy on the assets of the bank or foreign bank having its registered office outside the territories of the member states of the European Union.

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 of the European Union, or may request it to carry out such an examination.

Article 38h

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

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

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

Article 39

(1) The employees of a bank and the members of its supervisory board are obliged to maintain confidentiality in business matters that concern the interests of the bank and its clients. The

statutory body shall exempt the aforesaid from this obligation for the reasons listed in Article 38(2), (3), (4) and (6) and Article 38b.

(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, which shall seek the opinion of the Ministry of Finance.

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

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

(5) The decision on the application for granting consent pursuant to this Act shall be made within three months of the date of opening of the administrative proceedings.

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

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

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. Appeals filed against decisions of the Czech National Bank made after the opinion of the Ministry of Finance has been sought shall be ruled on by the Bank Board of the Czech National Bank, which shall seek the opinion of the Minister of Finance. Such appeals shall have no suspensory effect.

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

PART THIRTEEN Insurance of deposit claims

Article 41a

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

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

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

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

(5) Drawings may only be made from the Fund to pay compensation for deposit claims to eligible persons (hereinafter referred to as the “depositor”) 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.

Article 41b

(1) The Fund shall be managed by a Board of Directors consisting of five members.

(2) The Chairman, the Vice-Chairman and other directors of the Fund shall be appointed and dismissed by the Minister of Finance.

(3) The directors shall be appointed by the Minister of Finance for a five-year period, possibly repeatedly. One director shall be appointed each year. There shall be no remuneration for discharge of the office of director.

¹¹⁾ Act No. 71/1967 Coll., on Administrative Proceedings (Administrative Procedure Code), as amended.

¹²⁾ Czech National Council Act No. 576/1990 Coll., on the Rules for Financial Management of the Budgetary Funds of the Czech Republic and of Municipalities in the Czech Republic (Budgetary Rules of the Republic), as amended.

(4) If a director terminates his membership of the Board prior to the lapse of his period of office, a new director shall be appointed in his or her place. The new director's period of office shall end on the same date the period of office of his or her predecessor would have ended.

(5) At least one director shall be appointed from among the employees of the Czech National Bank and at the proposal of the Czech National Bank. At least two directors shall be appointed from among the members of boards of directors of banks. Directors shall be entitled to reimbursement of the expenses incurred in connection with the discharge of their office.

(6) Details concerning the activities and powers of the Fund shall be laid down in the Statute of the Fund to be issued by the Board of Directors after having first received the consent of the Ministry of Finance.

Article 41c

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

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

(3) A bank shall ensure identification of depositors when maintaining their accounts or when accepting their deposits in any other form and shall keep identification data on its depositors 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 annual contribution of a bank to the Fund shall be 0.1% of the average volume of insured deposit claims for the previous year, including interest accrued. 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 previous year, 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 annual contribution of a building savings bank to the Deposit Insurance Fund shall be 0.05% of the average volume of insured deposit claims for the previous year, including interest accrued to each building savings participant in the previous year. The building savings bank shall calculate the average volume of insured deposits using the quarterly stocks of insured deposits in the previous year excluding advance payments of state support.

(8) A bank shall pay its contribution to the Fund for the previous calendar year on 31 January of the current year 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 at the earliest opportunity.

Article 41d

(1) Compensation for an insured deposit claim shall be paid from the Fund to an eligible person after the Fund receives notification in writing from the Czech National Bank, or, in the case of a foreign bank branch pursuant to Article 5a having supplementary insurance pursuant to Article 41m, from the home country banking supervisory authority, that the bank is unable to meet its commitments to eligible persons under the legal and contractual conditions. Such notification shall be issued at the latest 21 days after the date on which the material fact was established, and the bank or former bank must be informed thereof in writing.

(2) The Fund shall, in agreement with the Ministry of Finance and the Czech National Bank, determine the date of commencement of payments from the Fund and shall make it publicly known in an appropriate manner. The Fund must be able to pay compensation to the eligible persons within three months of the date on which the notification referred to in paragraph 1 is issued. In wholly exceptional circumstances, the Czech National Bank may, in agreement with the Ministry of Finance and at the request of the Fund, grant no more than two extensions, neither of which shall exceed three months.

(3) The bank or former bank shall, within the time limit stipulated by the Fund, provide the Fund with the documents necessary for commencing payments of compensation for deposit claims. The documents must contain information on the amount of the claim, the title of the claim and the amount of the deductible claims of the bank. The Board of Directors of the bank or former bank, or the liquidator or bankruptcy trustee, shall be responsible for fulfilling the obligation.

(4) As a consequence of failure to fulfil the obligation referred to in paragraph 3, the Czech National Bank may in administrative proceedings impose a fine of up to CZK 500,000 on the responsible persons, and may do so repeatedly.

(5) The Fund shall inform the Czech National Bank of any failure to fulfil the obligation referred to in paragraph 3 at the earliest opportunity.

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. 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 date on which the Fund was informed in writing of the fact referred to in Article 41d(1) shall not be taken into consideration. The same person's liabilities due to the bank shall be deducted from the resulting amount. The calculation shall be made in the Czech currency as of the date of commencement of payments. Conversion into the Czech currency shall be carried out using the foreign exchange market rate announced by the Czech National Bank as of the date on which the Fund was informed in writing of the fact referred to in Article 41d(1). Interest calculated as of the date of commencement of payments 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. 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 Fund was informed in writing of the fact referred to in Article 41d(1) shall be used for conversion into the Czech currency.

(2) The compensation paid to an eligible person shall equal 90% of the sum calculated in accordance with paragraph 1 up to a maximum of EUR 25,000 per eligible person per bank. 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 date on which the Fund was informed in writing of the fact referred to in Article 41d(1).

(4) Where for the purposes of payment of compensation from the Fund it would have been more advantageous to the eligible person to have used the foreign exchange market rate announced by the Czech National Bank as of the date of commencement of payments, the eligible person shall be entitled to payment of the difference.

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 depositor after the date on which the Fund was informed in writing of the fact referred to in Article 41d(1) shall not be taken into consideration.

Article 41g

(1) The place and manner of payment of compensation from the Fund shall be laid down by the Fund in agreement with the Ministry of Finance and the Czech National Bank.

(2) The Fund in co-operation with the Ministry of Finance shall ensure that the public is informed in an appropriate manner about the facts referred to in paragraph 1.

(3) The following persons shall not be eligible for the payment of compensation for a deposit claim from the Fund:

- a) persons having a special relation to the bank concerned, except for the persons referred to in Article 19(1)(e),
- b) owners of deposits arising in connection with money laundering for which they have been convicted lawfully by a court of law in criminal proceedings.

(4) 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 3(b).

(5) The duty to render a contribution to the Fund from the deposit claims of the persons referred to in paragraph 3 shall remain unaffected.

(6) 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 date on which the Fund was informed in writing of the fact referred to in Article 41d(1),
- b) as a result of the assignment of a deposit claim made after the date on which the Fund was notified in writing of the fact referred to in Article 41d(1).

Article 41h

- (1) As of the date of commencement of payments, the claim of an eligible person on a bank shall be decreased by an amount equalling his right to payment of compensation from the Fund.
- (2) As of the date referred to in paragraph 1, the Fund shall become a creditor of the bank in the amount of the rights of eligible persons to payment of compensation from the Fund.
- (3) The right of an eligible person to payment of compensation from the Fund shall be forfeited upon the lapse of five 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.

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 year following the granting of the loan or other form of repayable financial assistance, be increased to double the percentage rate laid down in Article 41c(6) and (7). In the year following the repayment of the loan or other form of repayable financial assistance, the contribution shall be reduced to the percentage rate laid down in Article 41c(6) and (7).

Article 41l

- (1) Foreign bank branches shall not be obliged to participate in the deposit-claims insurance scheme provided that they notify the Czech National Bank of their intention and at the same time demonstrate that the deposit-claims insurance scheme in which they do participate ensures eligible persons a level of protection at least the same as that offered by the deposit-claims insurance scheme provided for in this Act.
- (2) This shall be without prejudice to the obligation of the foreign bank branch to pay a contribution to the Fund for the relevant part of the calendar year in which it made the notification referred to in paragraph 1.

Article 41m

(1) Foreign bank branches pursuant to Article 5a may take out supplementary deposit-claims insurance under contract with the Fund. 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 EUR 25,000 and the limit for maximum compensation under the deposit-claims insurance scheme in which the branch participates, expressed in euro, and whose denominator shall be EUR 25,000.

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

(3) Banks may not make use in advertising of differences in deposit-claims insurance between member states of the European Union.

PART FOURTEEN

Transitional and final provisions

Article 37

An entity that became a financial holding entity prior to the date of effect of 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) shall be obliged to submit supporting documents to the Czech National Bank proving the trustworthiness and experience of a person in an executive managerial position within the meaning of Article 26g(4) of Act No. 21/1992 Coll. within two months of the entry into effect of the Act on Financial Conglomerates.

Article 42

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

Article 43

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

Article 44

cancelled

Article 44a

The state shall guarantee the commitments of Konsolidační banka Praha, state financial institution.

Article 45

If a bank is obliged to grant credits 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.

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