

## Credit Institutions Act

Passed 9 February 1999

(RT<sup>1</sup> I 1999, 23, 349; consolidated text RT I 2002, 17, 96),

entered into force 1 July 1999,

amended by the following Acts:

19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387;

05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336;

20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131;

29.01.2002 entered into force 04.03.2002 - RT I 2002, 21, 117.

### Chapter 1

#### General Provisions

##### § 1. Purpose of Act

This Act provides the legal bases for the foundation, activities and dissolution of credit institutions and the principles and legal bases for supervision of credit institutions.

##### § 2. Implementation of Act

(1) This Act applies to all credit institutions founded or operating in Estonia and to parent companies, subsidiaries, branches and representative offices thereof which are located in Estonia.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) This Act also applies to subsidiaries, branches and representative offices of Estonian credit institutions in foreign states, unless otherwise prescribed by the legislation of the host country, and to subsidiaries, branches and representative offices of foreign credit institutions in Estonia, unless otherwise provided by international agreements entered into by Estonia.

(3) The Bank of Estonia is not deemed to be a credit institution.

##### § 3. Definition of credit institution

(1) A credit institution is a company the principal and permanent activity of which is to receive cash deposits and other repayable funds from the public and to grant loans for its own account and provide other financing.

(2) Credit institutions may operate as public limited companies or associations and the provisions of law regarding public limited companies or savings and loan associations apply thereto unless otherwise provided by this Act.

#### § 4. Receipt of deposits from public

(1) Credit institutions have the exclusive right to receive money from the public for the purposes of depositing or to receive repayable funds in any other manner, and to invest such money or funds or use them for granting loans for their own account as their permanent activity.

(2) For the purposes of this Act, deposits or other repayable funds are deemed to be received from the public if the proposal to deposit money or receive repayable funds in any other manner is made to a previously unspecified set of persons.

(3) For the purposes of this Act, the public are deemed to be a previously unspecified set of persons.

(4) The provisions of subsection (1) of this section do not apply to the receipt of money from the public for depositing or to the receipt of repayable funds in any other manner by:

1) the Government of the Republic;

2) local governments;

3) international organisations or other international institutions governed by public law of which the Republic of Estonia or a member state of the European Union is a member;

4) legal persons whose activities upon receipt of money from the public and investment thereof is sufficiently regulated by legislation and over whose activities in such areas of activity state supervision has been established by legislation for the protection of depositors and investors.

#### § 5. Financial institution

For the purposes of this Act, a financial institution is a company other than a credit institution, the principal and permanent activity of which is to acquire holdings or conclude one or more of the transactions specified in clauses 6 (1) 2)-12) of this Act.

(11.05.2000 entered into force 01.09.2000 - RT I 2000, 40, 249; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 6. Transactions and acts permissible for credit institutions

(1) Credit institutions are permitted to conclude the following transactions and perform the following acts:

1) deposit transactions for the receipt of deposits and other repayable funds from the public;

2) lending;

- 3) leasing transactions;
- 4) money transmission services;
- 5) issue and administration of non-cash means of payment;
- 6) guarantees and commitments and other transactions involving off-balance-sheet items;
- 7) transactions for their own account or for the account of clients in
  - foreign exchange,
  - financial futures and options,
  - exchange and interest rate instruments,
  - transferable securities,
  - other money market instruments;
- 8) provision of services related to the issue and sale of securities;
- 9) provision of advice to clients on issues concerning investments and economic activities, and provision of services related to the merger, division or acquisition of companies;
- 10) money broking;
- 11) portfolio management;
- 12) safekeeping and administration of securities;
- 13) credit reference services;
- 14) safe custody services;
- 15) other transactions which are essentially similar to transactions specified in clauses 1)–14).

(2) A credit institution may conclude transactions and perform acts other than those specified in subsection (1) of this section if these are directly ancillary or supplementary to its principal activity. In order to conclude such transactions or perform such acts, a credit institution may found or acquire an ancillary undertaking.

(2<sup>1</sup>) The provisions of subsections (1) and (2) of this section do not affect the validity of other transactions concluded or acts performed by a credit institution.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) For the purposes of this Act, an ancillary undertaking of a credit institution (hereinafter ancillary undertaking) is a company the principal and permanent activity of which is the administration of immovable property, the provision of information technology services, or

other activities which are ancillary or supplementary to the principal activities of one or several credit institutions.

#### § 7. Parent company and subsidiary

(1) For the purposes of this Act, a parent company is:

1) a company which holds a majority of the share capital or votes determined by shares in another company (a subsidiary);

2) a company which is a partner or shareholder in another company (a subsidiary) and which has the right to appoint or remove a majority of the members of the management board or supervisory board of the subsidiary;

3) a company which pursuant to the articles of association of or a contract entered into with another company (a subsidiary) can exercise a dominant influence over the management of such company;

4) a company which is a partner or shareholder in another company (a subsidiary), the majority of the members of the management or supervisory board of which have been appointed solely as a result of the exercise of the voting rights of the parent company and on the condition that such members have held office during the preceding and current financial years and that no other company has the rights of a parent company listed in clauses 1)–3) of this subsection with regard to the subsidiary;

5) a company which is a partner or shareholder in another company (a subsidiary) and, pursuant to a contract entered into with other shareholders in the parent company, controls a majority of the votes determined by shares in the company.

(2) The Financial Supervision Authority also has the right to deem a company to be a parent company if the company actually exercises a dominant influence over another company (a subsidiary) in any other manner.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) Subsidiaries of subsidiaries of parent companies specified in subsection (1) of this section are deemed to be subsidiaries of the same parent company.

(4) For the purposes of this Act, close links are a connection between two or more persons:

1) as a parent company and subsidiary pursuant to subsections (1)–(3) of this section;

2) if a person holds at least 20 per cent of the share capital or votes determined by shares in a company;

3) if such persons are controlled by one and the same person.

#### § 8. Financial holding company and mixed-activity holding company

(1) A financial holding company is a financial institution the subsidiaries of which include at least one credit institution and the remaining subsidiaries of which are either exclusively or mainly credit institutions, financial institutions or ancillary undertakings.

(2) A mixed-activity holding company is a parent company, other than a financial holding company or a credit institution, the subsidiaries of which include at least one credit institution.

#### § 9. Consolidation group of credit institution

(1) The consolidation group of a credit institution comprises the parent company, subsidiaries thereof which are credit institutions, financial institutions or ancillary undertakings, and credit institutions or financial institutions in which the credit institution included in the consolidation group holds at least 20 per cent of the share capital or votes.

(2) The parent company of the consolidation group of a credit institution may be a credit institution, a financial holding company or a mixed-activity holding company.

(3) In order to form the consolidation group of a credit institution the parent company of which is not a credit institution, at least one subsidiary must be a credit institution.

(4) With the consent of the Financial Supervision Authority, an undertaking shall not be included in the consolidation group of a credit institution if the balance sheet total of the undertaking is less than 10 million euro on the basis of the exchange rate of the Bank of Estonia or less than 1 per cent of the balance sheet total of the parent company. If several undertakings which meet these requirements together exercise sufficient control over the financial situation of the consolidation group, they shall be included in the consolidation group of the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) With the consent of the Financial Supervision Authority, the consolidation group of a credit institution shall not include an undertaking:

1) whose inclusion in the consolidation group would, in the opinion of the Financial Supervision Authority, distort the actual financial and economic situation of the consolidation group of the credit institution;

2) which is located in a country which is not a Member State of the European Union (hereinafter third country) and from which the possibility of obtaining the necessary reports is restricted due to the legislation of the third country.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 10. Procedure for calculation of voting rights

(1) For the purposes of calculating voting rights in a company, a person is deemed to hold the following votes:

1) votes determined by shares held by the person;

- 2) votes determined by shares held by a company controlled by the person;
- 3) votes determined by shares held by a third party with whom the person has entered into a written agreement which obliges the parties to use concerted voting to adopt a common policy towards the management of the company;
- 4) votes determined by shares which are held by a third party but which, pursuant to a written agreement entered into by the person or a company controlled by him or her and the third party, have been temporarily transferred to the person.

(2) For the purposes of this Act, a controlled company is a company in which a person:

- 1) holds at least one-half of the votes, or
- 2) has the right to appoint or remove a majority of the members of the supervisory or management board of the company and is at the same time a shareholder in the company, or
- 3) is a shareholder in the company and controls a majority of the votes of the shareholders pursuant to an agreement entered into with other shareholders, or
- 4) according to the opinion of the Financial Supervision Authority, actually exercises dominant influence in any other manner.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 11. Branches and representative offices of credit institutions

(1) For the purposes of this Act, a branch of a credit institution is a structural unit which has no legal personality, the address of which is different from the address of the credit institution in the commercial register and which concludes one or more of the transactions or performs one or more of the acts for which the credit institution has been authorised.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) (Repealed - 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) For the purposes of this Act, a representative office of a credit institution is a structural unit which is located separately from the seat of the credit institution and the purpose of the activities of which is to represent the credit institution and protect the interests thereof in a particular territory.

(4) Representative offices of credit institutions are prohibited from engaging in commercial activities.

#### § 12. Business names of credit institutions and use of word “*pank*” [bank] therein

(1) A credit institution founded as a public limited company is required to use the word “*pank*” [bank] in the business name thereof and a credit institution founded as an association is required to use the word “*ühistupank*” [association bank] in the business name thereof.

(2) Only credit institutions may use the words “*pank*” or “*ühistupank*” or derivatives or foreign language equivalents thereof in their business names.

(3) A branch of a credit institution may add the place name of the administrative unit in which the branch is located or other place names to the business name of the credit institution.

(4) A foreign credit institution may operate in Estonia under the business name of the credit institution as registered in the home country thereof if the name is clearly distinguishable from other business names entered in the commercial register in Estonia. If there is any danger that a business name is not clearly distinguishable from the business names of other credit institutions operating in Estonia, the Financial Supervision Authority has the right to demand that such business name be accompanied by an attribute.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) The business name of a credit institution shall not be such as to be confused for another credit institution or a state central bank.

(6) Subsections (1) and (2) of this section do not apply to cases in which it is evident that the institution in question is not a credit institution.

## Chapter 2

### Authorisation of Credit Institution

#### § 13. Application for authorisation

(1) A person who wishes to found a credit institution or commence activities as a credit institution is required to submit a written application for authorisation of the credit institution to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) An application for authorisation shall be submitted to the Financial Supervision Authority. The following shall be appended to an application:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) the notarised memorandum of association of the credit institution;
- 2) the articles of association of the credit institution;
- 3) the business plan of the credit institution and a detailed description of the intended activities;
- 4) a description of the organisational structure of the credit institution;

5) a draft of the accounting policies and procedures, and data relating to the information systems to be used;

6) documents to certify that candidates for the positions of managers of the credit institution, the head of the internal audit unit or the chairman of the audit committee of the credit institution are trustworthy and meet the requirements of this Act;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

7) the list of shareholders or members with data relating to the number of shares and votes acquired or the contributions paid by them;

8) if a shareholder or member who is a natural person holds more than 2 per cent of the share capital or votes in the credit institution, documents certifying the financial status of the person during the last three years;

9) if a shareholder or member who is a legal person holds more than 5 per cent of the share capital or votes in the credit institution, the articles of association of the legal person and the last three annual reports thereof together with the auditor's reports, and the list of shareholders together with data relating to the percentage of capital held by them in the company in question;

10) data relating to the auditor;

11) a document by which the credit institution assumes the obligation to pay the single contribution prescribed in the Guarantee Fund Act (RT I 2002, 23, 131; 57, 357);

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

12) a document certifying the existence of the share capital of the company to be founded or, in the case of an operating company, documents certifying the existence of net own funds together with the auditor's report;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

13) the draft statutes of the internal audit unit;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

14) the internal rules and rules of procedure regulating the activities of the managers and employees of the credit institution pursuant to the requirements of § 63 of this Act;

15) written confirmation from the members of the management board certifying the correctness of the data in the documents submitted pursuant to this section.

(3) In order to obtain authorisation for an association bank, the following shall be submitted in addition to the documents and data specified in subsection (2) of this section:

1) (Repealed - 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)



2) documents relating to the members of the audit committee, certifying that they are trustworthy and meet the requirements of this Act.

(3<sup>1</sup>) Upon application for the authorisation of a credit institution, the applicant shall pay a state fee.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) A person who wishes to acquire a qualifying holding upon the foundation of a credit institution shall submit the documents specified in § 30 of this Act in addition to the documents specified in subsection (2) of this section.

(4<sup>1</sup>) If a person who wishes to found a credit institution in Estonia is the parent company of a credit institution registered in a Member State of the European Union or a subsidiary of a parent company of such credit institution, directly or indirectly has a qualifying holding in the share capital or votes of a credit institution registered in a Member State of the European Union or exercises dominant influence or control over the management of such credit institution in another manner, the Financial Supervision Authority is required to consult with the banking supervision authority of the Member State prior to granting the authorisation.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(5) A credit institution shall have rooms which meet the requirements for the provision of services to clients and for security, and the necessary technical equipment, information technology and other technological equipment and systems, security systems, and control mechanisms and systems to conclude the intended transactions and perform the intended acts. Minimum requirements for the information technology and other technological equipment and systems and security systems of credit institutions shall be established by the Bank of Estonia.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(6) The Financial Supervision Authority may demand additional documents or information and carry out on-the-spot verification in order to specify or verify the certificates, documents or equipment specified in subsections (2)–(5) of this section.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(7) The procedure for application for authorisation and the list of documents to be submitted shall be established by the Bank of Estonia pursuant to law.

#### § 14. Grant of authorisation

(1) The Financial Supervision Authority shall grant authorisation to a credit institution if:

1) the share capital of the credit institution being founded has been fully paid in in money or the net own funds of the company applying for authorisation meet the requirements of this Act;

2) the credit institution being founded or the company about to commence activities as a credit institution has assumed the obligation to pay the single contribution prescribed in the Guarantee Fund Act;

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

3) candidates for the positions of managers of the credit institution, the head of the internal audit unit or the chairman of the audit committee of the credit institution meet the requirements established for them by legislation;

4) the shareholders who have qualifying holdings in the credit institution meet the requirements for shareholders with qualifying holdings established by legislation;

5) the management, organisational structure and necessary equipment of the credit institution conform to the activities set out in the business plan of the credit institution and to requirements established by legislation;

6) the seat of the credit institution is in Estonia;

7) close links between the credit institution and other persons do not prevent sufficient supervision;

8) legislation in force in a third country where a person with whom the credit institution has close links is located does not provide for any obstacles to the provision of sufficient supervision over the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The Financial Supervision Authority shall make a decision on the grant of or refusal to grant authorisation within three months after all the documents and data required on the basis of § 13 of this Act are submitted and all the requirements are met. The decision shall be communicated to the applicant in writing within ten days after the date on which the decision is made.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 15. Refusal to grant authorisation

(1) The Financial Supervision Authority shall refuse to issue an operating licence if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) the requirements provided for in § 14 of this Act are not met, or

2) the applicant has failed to submit on time or has refused to submit the data, documents or information required by § 13 of this Act or by the Financial Supervision Authority to the Financial Supervision Authority, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

3) the applicant has submitted misleading or inaccurate data or falsified documents.

(2) The reasoned decision on refusal to grant authorisation shall be sent promptly to the applicant.

(3) A decision on refusal to grant authorisation may be contested in court within ten days as of the date of receipt of the decision.

#### § 16. Termination of authorisation

Authorisation terminates:

1) in the event of the merger of the credit institution on the basis of subsection 65 (2) of this Act, upon the entry of the new credit institution in the commercial register;

2) in the event of the merger of the credit institution on the basis of subsection 65 (3) of this Act, upon the entry of the merger in the commercial register;

3) in the event of the voluntary dissolution of the credit institution, upon the receipt of authorisation for voluntary dissolution from the Financial Supervision Authority;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

4) in the event of revocation of authorisation, upon the revocation of the authorisation;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

5) in the event of the bankruptcy of the credit institution, upon the commencement of bankruptcy proceedings on the basis of a petition from the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 17. Revocation of authorisation

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

The Financial Supervision Authority may revoke authorisation if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

1) the credit institution fails to commence activities or if an act or omission by the founders of the credit institution shows that the credit institution will be unable to commence activities within twelve months as of the issue of authorisation, or if the activities of the credit institution are suspended for more than six months, or

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

2) the credit institution violates the prudential ratios established by or on the basis of this Act and, during the term specified in a precept issued by the Financial Supervision Authority, fails to restore the stringency required by such ratios, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

3) the Financial Supervision Authority establishes that misleading or inaccurate data or falsified documents were submitted upon application for authorisation, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

4) a manager of the credit institution or a shareholder who has a qualifying holding does not meet the requirements provided for in this Act and if the credit institution has failed to comply with the corresponding precept issued by the Financial Supervision Authority during the term specified in the precept, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

5) the credit institution does not meet the conditions under which authorisation was issued, or

6) the credit institution violates the procedure established by legislation for the prevention of money laundering, or

7) the credit institution submits misleading or inaccurate data or falsified documents or repeatedly and materially violates this Act or the Accounting Act (RT I 1994, 48, 790; 1995, 26/28, 355; 92, 1604; 1996, 40, 773; 42, 811; 49, 953; 52/54, 993; 1998, 59, 941; 91/93, 1500; 96, 1515; 1999, 55, 584; 101, 903; 2001, 11, 49; 87, 527; 2002, 23, 131; 53, 336; 57, 355), or

8) the credit institution belongs to a consolidation group the structure of which prevents the receipt of information necessary for supervision on a consolidated basis, or if a company which belongs to the same consolidation group as the credit institution operates on the basis of legislation of a foreign state, which prevents the exercise of sufficient supervision, or

9) close links between the credit institution and other persons prevent the exercise of sufficient supervision, or

10) the credit institution concludes transactions or performs acts which are beyond the scope of activities determined by this Act or the articles of association of the credit institution, or

11) the activities of the credit institution cause significant damage to the interests of depositors or other clients or hinder the circulation of currency or the functioning of the money or capital markets, or

12) the credit institution fails to pay a quarterly contribution prescribed in the Guarantee Fund Act on time and fails to comply with a corresponding precept of the Financial Supervision Authority during the term specified in the precept.

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

## § 18. Procedure for revocation of authorisation

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(1) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The authorisation of a credit institution is revoked by a reasoned decision of the management board of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) A reasoned decision on the revocation of authorisation shall be sent promptly to the credit institution whose authorisation is revoked and to other Estonian credit institutions and the Guarantee Fund.

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

(4) The public shall be informed of the revocation of the authorisation of a credit institution in at least one daily national newspaper and one local newspaper of the seat of the credit institution not later than on the third day after the corresponding decision is made.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(5) A decision on the revocation of authorisation may be contested in court by the management board of the credit institution within ten days as of the date of adoption of the decision.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

## § 19. Consequences of termination of authorisation

(1) After the termination of its authorisation, a credit institution shall not conclude the transactions and perform the acts specified in § 6 of this Act and shall terminate all payments to depositors, clients or creditors, unless otherwise provided for in this Act.

(2) Except in the cases specified in clauses 16 1) or 2) of this Act, termination of authorisation results in the dissolution of the credit institution pursuant to the procedure provided for in Chapter 11 of this Act.

## § 20. Foundation of subsidiary credit institutions, branches and representative offices of credit institutions in foreign states

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(1) If a credit institution wishes to found a subsidiary credit institution or branch in a foreign state or acquire a holding in a foreign credit institution such that the latter would become a subsidiary thereof, the credit institution shall submit an application for the corresponding authorisation to the Financial Supervision Authority setting out the following data:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

1) the name of the state;

2) the business name and address of the subsidiary credit institution or the address of the branch;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

3) the last three annual reports of the foreign credit institution in which the credit institution wishes to acquire a qualifying holding;

4) the business plan of the subsidiary credit institution or the branch together with a detailed description of the intended activities, a description of the organisational structure, and the relationship with the credit institution being founded;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

5) data relating to the managers of the subsidiary credit institution or the director of the branch. Such data shall be submitted pursuant to the requirements of subsection 48 (7) of this Act. The director of a branch must meet the requirements established by this Act for chairman of a management board;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

6) pursuant to the requirements established in § 30 of this Act, data relating to shareholders who have qualifying holdings in the subsidiary credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The Financial Supervision Authority may demand additional documents or information in order to specify or verify the data specified in subsection (1) of this section;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The Financial Supervision Authority shall inform the banking supervision authority of the foreign state of a submitted application within three months as of the submission of the application, and shall co-ordinate liability and the principles of supervision with the banking supervision authority of the host country.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) The Financial Supervision Authority may refuse to grant authorisation if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) the financial situation of the credit institution being founded or acquired or the financial situation of the acquiring credit institution is not sufficiently sound, or

2) the organisational structure of the subsidiary credit institution or branch being founded or acquired is not suitable for the intended activities, or

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

3) the managers of the subsidiary credit institution or the director of the branch being founded or acquired do not meet the requirements of §§ 48, 53, 56 and 57 of this Act, or

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

4) the legislation of the foreign state prevents the exercise of sufficient supervision, including supervision on a consolidated basis, or the receipt of information necessary therefor.

(5) A written reasoned decision on the grant of or refusal to grant authorisation shall be sent to the credit institution by the Financial Supervision Authority within three months as of the receipt of the application specified in subsection (1) of this section or the submission of additional data specified in subsection (2) of this section. If the grant of authorisation is refused, the provisions of subsection (3) of this section do not apply.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(6) A credit institution which has a subsidiary credit institution or a branch in a foreign state is required to notify the Financial Supervision Authority and the banking supervision authority of the host country of all intended alterations in the data specified in clauses (1) 2), 4) or 5) of this section at least one month before such alterations are made.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(6<sup>1</sup>) The Financial Supervision Authority may revoke authorisation granted to a credit institution to open a branch in a foreign state if:

1) the credit institution or its branch in the foreign state does not meet the requirements provided by legislation with which compliance was necessary to obtain the authorisation;

2) the branch of the credit institution located in the foreign state fails to submit its reports as required.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(6<sup>2</sup>) The Financial Supervision Authority shall immediately notify the banking supervision authority of the host country of the branch of the revocation of authorisation specified in subsection (6<sup>1</sup>) of this section.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(7) The Financial Supervision Authority shall be notified of the opening of a representative office of a credit institution in a foreign state at least ten days before such opening. The

procedure and conditions for submission of the corresponding information shall be established by the Bank of Estonia.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(8) The Financial Supervision Authority shall maintain a list of the subsidiary credit institutions, branches and representative offices of Estonian credit institutions in foreign states.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

§ 20<sup>1</sup>. Specifications for opening of branch of credit institution in Member State of European Union

(1) Unless prescribed otherwise in this section, the provisions of § 20 of this Act regulating the foundation of a branch in a foreign state shall apply with regard to the foundation of a branch in a Member State of the European Union.

(2) The Financial Supervision Authority shall immediately notify the banking supervision authority of the host country of a branch of the grant of authorisation and forward information concerning the amount of own funds and the capital adequacy indicator of the credit institution.

(3) A credit institution may open a branch and commence its operations after receipt of the relevant information from the banking supervision authority of the host country of the branch or, if the information is not sent, after two months have passed since receipt of the information specified in subsection 20 (3) of this Act by the banking supervision authority of the Member State.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

§ 20<sup>2</sup>. Provision of cross-border banking services in Member States of European Union

(1) A credit institution shall inform the Financial Supervision Authority of any intention to provide cross-border banking services in a Member State of the European Union.

(2) The Financial Supervision Authority shall notify the banking supervision authority of the corresponding Member State within one month after the receipt of the information specified in subsection (1) of this section.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

§ 21. Foundation of subsidiary credit institutions or branches of foreign credit institutions in Estonia

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)



(1) A foreign credit institution which wishes to found a subsidiary credit institution in Estonia shall apply for authorisation from the Financial Supervision Authority pursuant to § 13 of this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) A foreign credit institution which wishes to acquire a holding in an Estonian credit institution such that the latter would become a subsidiary thereof shall submit an application and the data and documents required by clauses 13 (2) 3–6) and 10) and § 30 of this Act to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) A foreign credit institution which wishes to found a branch in Estonia is required to apply in writing for authorisation from the Financial Supervision Authority. An application for authorisation shall be submitted to the Financial Supervision Authority and the following shall be annexed thereto:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) the business plan of the branch being founded and a detailed description of the intended activities, a description of the organisational structure, and the relationship with the credit institution founding the branch;

2) the address of the branch;

3) data relating to the director of the branch, in accordance with subsection 48 (7) of this Act;

4) the data and documents required by subsection 30 (2) of this Act relating to shareholders who have qualifying holdings in the credit institution founding the branch;

5) the documents prescribed in clauses 386 (2) 1), 3), 4) and 5) of the Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 24, 133; 34, 185; 56, 332; 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388).

(4) (Repealed - 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(5) The consent of the banking supervision authority of the home country of the credit institution to the foundation or acquisition of a subsidiary credit institution or foundation of a branch in Estonia, confirmation that the credit institution holds valid authorisation or a valid licence, data relating to the amount of own funds and the capital adequacy of the credit institution, and data relating to the deposit guarantee system of the home country shall be submitted to the Financial Supervision Authority in addition to the data required by subsections (2) and (3) of this section.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(5<sup>1</sup>) If a credit institution registered in a Member State of the European Union or the parent company of such credit institution wishes to found a subsidiary credit institution in Estonia or to acquire a holding in an Estonian credit institution such that the latter would become a subsidiary thereof or a controlled company in another manner, the Financial Supervision Authority is required to consult with the banking supervision authority of the home country of the credit institution or its parent company.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(6) Documents and data specified in this section shall be submitted to the Financial Supervision Authority together with a notarised translation into Estonian.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(7) In addition to the provisions of subsection 15 (1) of this Act, the Financial Supervision Authority may refuse to grant authorisation if:

1) according to the opinion of the Financial Supervision Authority, the financial situation of the foreign credit institution is not sufficiently sound, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

2) the organisational structure of the subsidiary credit institution or branch of the foreign credit institution in Estonia is not suitable for the intended activities, or

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

3) the legislation of the home country of the foreign credit institution does not require or the banking supervision authority of the home country does not exercise sufficient supervision, including supervision on a consolidated basis.

(8) A reasoned decision on the grant of or refusal to grant authorisation shall be made by the Financial Supervision Authority within two months as of the receipt of an application and all the data and documents specified in subsection (2) or (3) of this section.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(9) The reasoned decision on refusal to grant authorisation shall be sent promptly to the applicant.

§ 21<sup>1</sup>. Branches of credit institutions registered in Member States of European Union in Estonia

(1) The provisions of subsections 21 (3) and (7)-(9) of this Act do not apply to the foundation of a branch of a credit institution registered in a Member State of the European Union in Estonia.

(2) A credit institution registered in a Member State of the European Union shall notify the Financial Supervision Authority of any intention to found a branch in Estonia via the banking

supervision authority of the home country of the credit institution. The information specified in clauses 21 (3) 1)-3) and subsection 21 (5) of this Act shall be appended to the notice.

(3) If necessary, the Financial Supervision Authority shall inform the branch of a credit institution registered in the European Union of the conditions which are necessary for the exercise of supervision and with which the branch must comply prior to commencing activities in Estonia. A branch may also commence activities if the Financial Supervision Authority has not sent a corresponding notice within two months as of the submission of the information specified in subsection (2) of this section.

(4) Confirmation from the Financial Supervision Authority concerning receipt of the information specified in subsection (2) of this section shall be submitted upon entry of a branch in the commercial register.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

## § 22. Representative offices of foreign credit institutions

(1) A foreign credit institution which wishes to open a representative office in Estonia shall submit the corresponding information and the following data and documents to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) confirmation from the banking supervision authority of the home country that the credit institution holds valid authorisation;

2) the activities programme of the representative office;

3) an authorisation document certifying the authorisation of the representative;

4) a document concerning the registration of the credit institution in the home country (an extract from the commercial register or a transcript of the registration certificate);

5) the articles of association of the credit institution;

6) the seat, address and telecommunications numbers of the representative office.

(2) The documents specified in subsection (1) of this section shall be submitted to the Financial Supervision Authority together with a notarised translation into Estonian.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The Financial Supervision Authority shall maintain a list of the representative offices of foreign credit institutions in Estonia and the Bank of Estonia shall establish a list of information to be entered therein.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## Chapter 3

## Banks as Credit Institutions

### Division I

#### Foundation of Banks and Requirements for Articles of Association

##### § 23. Restrictions on foundation of banks

A bank shall not be founded by public share subscription.

##### § 24. Payment for shares of banks

(1) Upon the foundation of a bank, shares shall be paid for in money. This restriction does not apply to the case specified in subsection 65 (2) of this Act.

(2) Monetary contributions shall be paid to the bank being founded into an account opened in the Bank of Estonia or an account opened in an Estonian credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

##### § 25. Transactions concluded before entry in commercial register

Before the entry of a bank in the commercial register, the founders of the bank may, in the name of the bank being founded, only conclude transactions which are directed at the creation of the organisational structure of the bank being founded and the acquisition or acquisition for use of necessary technical equipment or security systems or assets necessary to conclude transactions for which the bank has been authorised.

##### § 26. Requirements for articles of association of banks

The articles of association of a bank shall, in addition to data provided for in the Commercial Code, set out the procedure for formation of the structural units specified in this Act and for provision of the competence thereof, and the reporting principles of the structural units.

##### § 27. Amendment of articles of association

(1) Before the entry of amendments to the articles of association in the commercial register, a credit institution is required to submit all such amendments to the Financial Supervision Authority in order to obtain the consent thereof.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) In order to obtain consent for amendments to the articles of association, a credit institution is required to submit an application and the following documents to the Financial Supervision Authority within ten days as of the adoption of the resolution by the general meeting of shareholders:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) the resolution of the general meeting on amendment of the articles of association;

2) the minutes of the general meeting;

3) the new text of the articles of association.

(3) The Financial Supervision Authority shall refuse to grant consent to amendments to articles of association if such amendments do not comply with current legislation.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) The Financial Supervision Authority shall make a reasoned decision on the grant of or refusal to grant consent not later than within two weeks as of the submission of the application.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) The consent of the Financial Supervision Authority to amendments to the articles of association of a credit institution shall be annexed to the application submitted to the commercial register.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## Division 2

### Shares of Banks

#### § 28. Shares of banks and registrar of share register

(1) A bank may have only registered shares.

(2) Pursuant to the procedure provided by law and with the consent of the Financial Supervision Authority, a bank may issue non-voting shares which grant the pre-emptive right to receive dividends and to participate in the distribution of the remaining assets of the bank upon dissolution (preferred shares).

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The sum of the nominal values of preferred shares shall not be greater than one-tenth of the share capital.

(4) A bank may issue registered convertible bonds, the sum of the nominal values of which shall not be greater than one-tenth of the share capital.

(5) The shares of a bank shall be freely transferable. The pre-emptive right of a shareholder provided for in subsection 229 (2) of the Commercial Code does not apply to the transfer of shares of a bank.

(6) The shares of a bank shall be registered in the Estonian Central Register of Securities. The registrar of the share register of a bank is the registrar of the Estonian Central Register of Securities. If any shareholder acquires a qualifying holding in the bank, the number and date

of the authorisation issued by the Financial Supervision Authority for the acquisition of a qualifying holding shall be entered in the share register.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 29. Qualifying holding

(1) For the purposes of this Act, a holding in a company which directly or indirectly represents 10 per cent or more of the share capital or votes in the company or which grants dominant influence over the management of the company in another manner is deemed to be a qualifying holding.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) Qualifying holdings in a bank may be held by persons who, according to the opinion of the Financial Supervision Authority, are able to ensure the sound and prudent management of the bank and whose business connections and structure of owners are transparent and do not prevent the exercise of supervision.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 30. Application for authorisation for acquisition of qualifying holding

(1) A person who intends to acquire a qualifying holding in a bank or to increase a qualifying holding so that the proportion of the share capital or votes in the bank held by the person exceeds 20, 33 or 50 per cent or so that the bank would become the subsidiary of the person as a result of the transaction is required to apply in writing for authorisation for acquisition of the qualifying holding from the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) In order to obtain authorisation for acquisition of a qualifying holding, an application shall be submitted to the Financial Supervision Authority setting out the size of the intended holding. The following shall be appended to an application:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) data relating to the identity of the acquirer of the holding, including documents which certify the trustworthiness and impeccable business reputation of the members of the management board and supervisory board of the acquiring company;

2) the last three annual reports of the acquiring company. If more than nine months have passed since the end of the previous financial year, an interim report for the first six months of the financial year shall be submitted;

3) if the acquirer of the holding is a company belonging to a group, a description of the structure of the group, data relating to the sizes of the holdings of the companies belonging to the group, and the last three annual reports of the group;

4) if the acquirer is a natural person, documents certifying the financial status of the person during the last three years;

5) information and certificates concerning the sources of the funds necessary to acquire the qualifying holding.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2<sup>1</sup>) Upon application for authorisation for acquisition of a qualifying holding, the applicant shall pay a state fee.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) The procedure for submission of the data and documents specified in subsection (2) of this section and the exact list of data shall be established by the Bank of Estonia.

(4) The Financial Supervision Authority may demand additional documents or information in order to specify or verify the documents specified in subsection (2) of this section.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) A foreign credit institution, insurance company or financial institution which wishes to acquire a qualifying holding shall, in addition to documents specified in subsection (2) of this section, submit a certificate issued by the supervisory authority of the home country, which proves that the credit institution, insurance company or financial institution holds valid authorisation or a valid licence and that the activities thereof comply with prudential ratios, to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(6) (Repealed –13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(7) Upon becoming aware of a transaction by which a qualifying holding is acquired, a bank shall promptly inform the Financial Supervision Authority of the transaction.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

### § 31. Requirements for and consequences of granting authorisation for acquisition of qualifying holdings

(1) The Financial Supervision Authority may refuse to grant authorisation for the acquisition or increase of a qualifying holding if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) the acquisition or increase of the qualifying holding may significantly restrict free competition in the banking market, or

2) the acquisition of the qualifying holding does not comply with the principles of sound and prudent management of credit institutions, or

3) the person acquiring or increasing the holding does not have an impeccable business reputation or does not meet the requirements provided for in subsection 29 (2) of this section, or

4) the Financial Supervision Authority is of the opinion that the financial situation of the applicant is not sufficiently sound or that the financial statements of the applicant do not allow for a correct assessment of the financial situation of the applicant, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

5) the applicant has failed to submit on time or has refused to submit the data, documents or information prescribed by this Act or required by the Financial Supervision Authority to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The Financial Supervision Authority shall notify the applicant of a decision on the grant of or refusal to grant authorisation not later than within two months after receipt of all the documents specified in this Act, or after receipt of additional documents and information required in order to specify or verify such documents.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The Financial Supervision Authority shall notify the registrar of the share register of a credit institution of the number and date of issue of authorisation for the acquisition of a qualifying holding or of a decision on refusal to grant authorisation.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) If a transaction by which a qualifying holding is acquired or increased is concluded without the authorisation of the Financial Supervision Authority, the person who concluded the transaction shall not acquire the voting rights determined by the acquired shares and the shares shall not be included in the quorum of the general meeting. If the data specified in subsection 28 (6) of this Act has not been entered in the share register, authorisation shall be presumed not to have been granted unless proved otherwise by documents.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) If voting rights representing a qualifying holding acquired or increased by a transaction concluded without the authorisation of the Financial Supervision Authority are included in the quorum of the general meeting and influence the adoption of a resolution of the general meeting, a court may, on the basis of a petition of the Financial Supervision Authority, declare the resolution of the general meeting invalid if the petition is submitted within three months as of the adoption of the resolution of the general meeting.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)



### § 32. Withdrawal of authorisation for acquisition of qualifying holding

(1) The Financial Supervision Authority may withdraw authorisation for the acquisition of a qualifying holding if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) the applicant has submitted misleading or inaccurate data or falsified documents;
- 2) the activities of the shareholder who has a qualifying holding or the representative thereof cause a significant risk to the sound and prudent management of the credit institution.

(2) The provisions of subsections 31 (4) and (5) of this Act apply to the withdrawal of authorisation for the acquisition of a qualifying holding.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) The Financial Supervision Authority shall promptly notify the registrar of the share register of the credit institution of the withdrawal of authorisation for the acquisition of a qualifying holding.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

### § 33. Transfer of qualifying holdings

A person who intends to transfer shares in the amount by which the person loses a qualifying holding in a bank or to reduce the holding of the person such that it falls below one of the thresholds specified in subsection 30 (1) of this Act is required, before transferring the shares, to inform the Financial Supervision Authority of the size of the holding to be transferred, regardless of whether the bank ceases thereby to be a subsidiary or affiliated undertaking of another company.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

### § 34. Acquisition or taking as security of own shares

(1) A bank may acquire its own shares and take its own shares as security in the conduct of ordinary business provided that the shares of the bank are traded on a regulated market.

(2) The provisions of clause 283 (2) 1) and subsection 284 (1) of the Commercial Code do not apply to a bank taking its own shares as security.

(3) The grant of a loan for the purchase of own shares is prohibited.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

### § 35. Share capital of bank

(1) The paid-in share capital of a bank upon the foundation thereof shall be equivalent to at least 5 million euro on the basis of the exchange rate of the Bank of Estonia.

(2) Only amounts actually paid in may be indicated as the share capital of a bank.

#### § 36. Methods of increase of share capital

(1) Upon a resolution of the general meeting, the share capital of a bank may be increased by supplementary monetary contributions or, without supplementary contributions, out of the retained profits or share premium accounts of the bank (bonus issue) or by the conversion of convertible bonds to shares or by the settlement of a financial claim arising out of a subordinated debt agreement and the issue price of the shares.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) Upon a resolution of the general meeting, shares may be paid for by a non-monetary contribution upon an increase of the share capital of the bank in the course of a merger of banks.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) Prior written consent from the Financial Supervision Authority is required to increase the share capital of a bank by the conversion of convertible bonds to shares or by the settlement of a claim arising out of a subordinated debt agreement and the issue price of the shares.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3<sup>1</sup>) The Financial Supervision Authority may refuse to grant consent if increasing the share capital of a bank by the method specified in subsection (3) of this section would damage the interests of depositors, other clients and creditors of the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) The provisions of § 349 of the Commercial Code also apply to a bank; however, the supervisory board shall not increase the share capital by more than 10 per cent of the share capital which existed at the time the supervisory board acquired the right to increase the share capital.

(5) A bank is required to notify the Financial Supervision Authority of the conditions of an intended increase in share capital at least seven days before the adoption of the corresponding resolution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 37. Reduction of share capital

(1) Share capital may be reduced in order to cover a loss (simplified reduction of share capital), unless otherwise provided by this Act. After the adoption of a resolution to reduce share capital, the net own funds of the bank shall not be less than those provided for in subsection 75 (4) of this Act.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) Prior written consent from the Financial Supervision Authority is required to reduce share capital for other purposes.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) The Financial Supervision Authority may refuse to grant the consent provided for in subsection (2) of this section if the reduction of share capital would damage the solvency of the bank or the interests of depositors, clients or other creditors of the bank.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) Section 358, the term provided for in the first sentence of subsection 359 (1), and subsection 359 (2) of the Commercial Code do not apply to banks. The management board shall publish a notice concerning the new amount of share capital in a national daily newspaper within fifteen days as of adoption of the resolution on the reduction of the share capital.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

## Chapter 4

### Association Banks as Credit Institutions

#### § 38. Application of Acts

The provisions of law regarding savings and loan associations apply to the foundation, activities and dissolution of association banks, unless otherwise provided by this Act.

#### § 39. Foundation of association banks

(1) An association bank must be founded by at least fifty persons.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The provisions of § 25 of this Act apply to the foundation of association banks.

(3) The provisions of § 5 of the Savings and Loan Associations Act do not apply to the foundation of association banks.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

§ 40. (Repealed –13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 41. Foundation of association bank by merger of savings and loan associations

(1) An association bank may be founded by a merger of savings and loan associations pursuant to the procedure prescribed in the Savings and Loan Associations Act.

(2) The founders of an association bank are the merging savings and loan associations.

(3) Upon the foundation of an association bank by a merger of savings and loan associations, all merging savings and loan associations shall be audited by at least one common auditor who meets the requirements specified in subsection 94 (1) of this Act.

(4) The auditor shall prepare a report concerning the audit of the merger agreement and merger report and provide his or her opinion as to whether the share capital and stringency of prudential ratios of the association bank being founded meet the requirements of this Act and legislation issued on the basis thereof.

#### § 42. Requirements for articles of association of association banks

(1) In addition to that provided for in the Savings and Loan Associations Act, the articles of association of an association bank shall set out:

1) a description of the organisational structure of the association bank and the procedure for the formation of structural units;

2) the competence of the directing bodies;

3) the body which establishes the procedure for granting loans to the members of the association bank;

4) the reporting principles;

5) the work procedure of the audit committee.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) (Repealed –13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) (Repealed –13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) The provisions of § 27 of this Act apply to association banks.

#### § 43. Proprietary liability of members of association banks

(1) (Repealed –13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The provisions of §§ 34-37 of the Commercial Associations Act do not apply to members of association banks.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 44. Share capital of association banks

(1) The paid-in share capital of an association bank upon the foundation thereof shall be equivalent to at least 5 million euro on the basis of the exchange rate of the Bank of Estonia.

(2) Only amounts actually paid in may be indicated as the share capital of an association bank.

#### § 45. Legal reserve of association bank

(1) In order to guarantee the obligations of an association bank, a legal reserve shall be formed in the amount of at least one-tenth of the share capital unless the articles of association prescribe a higher level.

(2) During each financial year, at least one-twentieth of net profit shall be entered in the legal reserve. If the legal reserve reaches the amount prescribed in the articles of association, the increase of legal reserve from net profit shall be terminated.

#### § 46. Distribution of profit of association bank

(1) The profit of an association bank shall be calculated pursuant to accounting rules and distributed according to the resolution of the general meeting.

(2) Upon a resolution of the general meeting, the shares of profit prescribed for payment to members in the profit distribution proposal submitted by the management board shall not be increased.

(3) Payments shall not be made to members if the annual accounts of the association bank approved at the end of the previous financial year show that the amount of own funds of the association bank does not comply with the provisions of this Act.

#### § 47. Covering of loss of association bank

The provisions of § 26 of the Savings and Loan Associations Act do not apply to association banks.

### Chapter 5

#### Management and Organisational Structure of Credit Institutions. Requirements for Members of Directing Bodies and Employees of Credit Institutions

#### § 48. Managers of credit institutions

(1) The members of the supervisory board and management board of a credit institution are deemed to be the managers of the credit institution.

(2) Only persons who have the education, experience and professional qualifications necessary to manage a credit institution and who have an impeccable business reputation may be elected or appointed managers of credit institutions.

(3) A person whose earlier activities have caused the bankruptcy or compulsory liquidation or revocation of the activity licence of a company, or from whom the right to engage in economic activity has been taken away pursuant to law, or whose earlier activities as a manager of a company have shown that he or she is not capable of organising the management of a company such that the interests of the shareholders, members, creditors and clients of the company are sufficiently protected, or whose earlier activities have shown that he or she is not suitable to manage a company for other good reasons shall not be elected or appointed manager of a credit institution or a member of the supervisory board or

management board of the parent company of a credit institution or a company belonging to the same consolidation group as the parent company.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) The managers and employees of a credit institution are required to act with the prudence and competence expected of them and according to the requirements for their positions and the interests of the credit institution and the clients thereof.

(5) The managers and employees of a credit institution are required to give priority to the economic interests of the credit institution and the clients thereof over their own personal economic interests.

(6) A credit institution is required to notify the Financial Supervision Authority of the intention to elect or appoint the managers of the credit institution or of the resignation or initiation of removal of the managers before the expiry of their term of office, and to submit the documents specified in subsection (7) of this section to the Financial Supervision Authority at least ten days before deciding such issues. This term shall not be applied if the prior submission of documents is not possible for good reasons.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(7) In order to elect or appoint a manager of a credit institution, the written consent of the person to be elected or appointed is necessary. A person shall submit his or her written consent together with an overview of his or her education, work experience, engagement in enterprise and punishments entered in the punishment register, and confirmation concerning the absence of facts provided for in this Act which preclude the right to be a manager of a credit institution. The procedure for the submission of data and documents to confirm that a person is trustworthy and suitable and that he or she meets the requirements shall be established by the Bank of Estonia.

#### § 49. Prohibition on competition, and declaration of economic interest

(1) A member of the supervisory board of a credit institution shall not be a member of the supervisory board, management board or audit committee or an auditor of another credit institution unless the credit institutions are companies belonging to the same consolidation group or cannot be deemed to be in competition as they operate in different markets.

(2) The following persons shall not be members of the management board of a credit institution:

1) a member of the management board or supervisory board of another company unless the company belongs to the same consolidation group as the credit institution;

2) a procurator, auditor, member of the audit committee, or controller of another company.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) Members of the management board of a credit institution shall not be party to employment contracts entered into with other persons. Members of the management board of

a credit institution are prohibited from entering into agreements with other persons if, pursuant to such agreements, the duties of the members include investment, the preparation or intermediation of loan and investment projects, or other similar activities.

(4) The managers of a credit institution are required to declare their economic interests and conflicts of interest under the conditions and pursuant to the procedure established by the Bank of Estonia.

#### § 50. Removal of manager of credit institution

(1) The Financial Supervision Authority has the right to issue a precept to demand the removal of a manager of a credit institution if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) according to the opinion of the Financial Supervision Authority, the person does not meet the requirements established for the managers of credit institutions, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

2) the person has submitted misleading or inaccurate information or falsified documents in connection with his or her election or appointment;

3) the activities of the person in managing the credit institution have shown that he or she is not capable of organising the management of the credit institution such that the interests of the depositors, other clients and creditors of the credit institution are sufficiently protected.

(2) If a credit institution fails to comply with a precept specified in subsection (1) of this section in full or within the specified term, the Financial Supervision Authority has the right to demand the removal of a manager of the credit institution by a court.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) A court may, at the request of the Financial Supervision Authority or the management board, the supervisory board or a shareholder of the credit institution, appoint a new member to replace a member removed from the supervisory board. The authority of a court-appointed member of the supervisory board shall continue until the election of a new member of the supervisory board by the general meeting.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 51. General meeting

(1) The management board shall call a special general meeting if:

1) the net own funds of the credit institution are less than prescribed in subsection 75 (4) of this Act and if the credit institution has failed to increase its net own funds to the required level during the term specified in a precept of the Financial Supervision Authority;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

2) this is demanded by shareholders whose shares represent at least one-tenth of the share capital, or by one-tenth of the members;

3) this is demanded by the supervisory board or the auditor;

4) this is demanded by another person to whom the corresponding right has been granted by law.

(2) In the case specified in clause (1) 1) of this section, the general meeting shall decide on:

1) the increase of share capital or implementation of other measures to bring the net own funds of the credit institution into accordance with the requirements of this Act, or

2) the merger of the credit institution, or

3) the dissolution of the credit institution.

(3) The provisions of clause 292 (1) 1), subsection 292 (3) and § 301 of the Commercial Code do not apply to banks, and the provisions of § 40 of the Savings and Loan Associations Act do not apply to association banks.

(4) The management board, or shareholders whose shares represent at least one-tenth of the share capital, or one-tenth of the members, or the Financial Supervision Authority may demand the inclusion of a certain issue on the agenda. A demand shall be submitted before the notice calling the general meeting is sent to shareholders or members or is published.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) The management board shall send a notice of the general meeting to the Financial Supervision Authority pursuant to the same procedure as to the shareholders or members of the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## § 52. Supervisory board of credit institution

(1) The supervisory board of a credit institution is a directing body of the credit institution which plans the activities of the credit institution, gives instructions to the management board for organisation of the management of the credit institution, and supervises the activities of the credit institution and the activities of the management board in managing the credit institution.

(2) The members of the supervisory board shall ensure verification that the activities of the credit institution and the management board and employees thereof are in accordance with legislation and the provisions of internal rules and other rules established by the directing bodies of the credit institution.

(3) The members of the supervisory board must comprehend the risks involved in the activities of the credit institution and shall ensure that the management board of the credit institution identify risks and monitor and control the extent thereof.



(4) The supervisory board is competent and required to:

- 1) approve the strategy and general principles of the activities of the credit institution;
- 2) approve the general principles of risk management of the credit institution;
- 3) approve the principles of the organisational structure of the credit institution;
- 4) approve the general principles of monitoring of the activities of the credit institution;
- 5) approve the statutes of the internal audit unit;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

6) elect and remove the chairman and members of the management board of the credit institution;

7) appoint and remove from office the head of the internal audit unit of the credit institution and, on the proposal of the head of the internal audit unit, appoint and remove from office employees of the internal audit unit;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

8) approve the budget and the investment plan of the credit institution;

9) decide on the foundation or closure of branches in foreign states;

10) approve the general principles of the activities and the competence of the credit committee;

11) decide on the conclusion of transactions which are beyond the scope of the everyday economic activities of the credit institution;

12) decide on the conclusion of transactions with members of the management board, and appoint the representative of the credit institution in such transactions;

13) file claims against members of the management board, and appoint the representative of the credit institution in such claims;

14) decide on other matters placed in the competence of the supervisory board by the articles of association.

(5) The provisions of subsection 317 (1) of the Commercial Code do not apply to credit institutions.

#### § 53. Members of supervisory board

(1) The supervisory board shall have five members unless the articles of association prescribe a greater number of members.

(2) In addition to persons provided for in subsection 48 (3) of this Act, members of the management board of the credit institution or other persons authorised to operate in the name of the credit institution, or employees exercising internal control, members of the audit committee, auditors of the credit institution and bankrupts shall not be members of the supervisory board. The articles of association may prescribe other persons who shall not be members of the supervisory board.

#### § 54. Meeting of supervisory board

(1) Meetings of the council shall be held when necessary but not less frequently than once every three months.

(2) A meeting of the supervisory board shall be called if this is demanded by a member of the supervisory board, a member of the management board, an auditor, the head of the internal audit unit, the chairman of the audit committee, shareholders whose shares represent at least one-tenth of the share capital, one-tenth of the members, or other persons prescribed by law. An application for calling a meeting of the supervisory board shall set out the matters to be resolved.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) An auditor, the head of the internal audit unit or the chairman of the audit committee are required to participate in a meeting of the supervisory board if this is demanded by at least one member of the supervisory board.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 55. Management board of credit institution

(1) The management board of a credit institution is a directing body of the credit institution which directs the day-to-day activities thereof pursuant to the strategies and general principles of activities approved by the supervisory board, and monitors the day-to-day activities of the employees of the credit institution.

(2) Among other obligations, the management board is required to:

1) develop a business plan for implementation of the strategy approved by the supervisory board;

2) develop, pursuant to the general principles approved by the supervisory board, the principles of risk management of the credit institution and approve the conditions and limits for the grant of debenture loans.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

3) identify and assess regularly all risks involved in the activities of the credit institution and ensure the monitoring and control of the extent of such risks;

4) develop the organisational structure of the credit institution on the basis of the principles provided for in the articles of association and approve the structure of the credit institution;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

5) develop and implement systems for monitoring the activities of the credit institution, ensure adherence to such systems, assess the sufficiency thereof regularly and improve them if necessary pursuant to the principles established by the supervisory board;

6) ensure that all employees of the credit institution are aware of the provisions of legislation relating to their duties of employment and of the principles provided for in the documents approved by the directing bodies of the credit institution;

7) organise the effective functioning of the internal control system of the credit institution and ensure monitoring of the compliance of the activities of the credit institution and the managers and employees thereof with legislation and the documents approved by the directing bodies of the credit institution and with the principles of sound banking management;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

8) ensure the existence and functioning of systems to guarantee that information necessary for employees of the credit institution to perform their duties is communicated thereto in a timely manner;

9) ensure the safety and regular monitoring of information technology systems used by the credit institution and systems used for the safekeeping of assets of clients;

10) inform the supervisory board to the extent and pursuant to the procedure established thereby of all discovered violations of legislation or of internal rules or other rules established by the directing bodies of the credit institution.

(3) The management board shall present an overview of the activities and economic situation of the credit institution to the supervisory board at least once every three months.

(4) The management board shall immediately inform the members of the supervisory board of any deterioration in the economic situation of the credit institution, danger of such deterioration or deviation from prudential ratios.

#### § 56. Members of management board

(1) The management board shall consist of three members unless the articles of association prescribe a greater number of members.

(2) Persons with an impeccable business reputation, higher education, the necessary expertise and experience to manage a credit institution, professional qualifications and at least three years' professional experience may be members of a management board.

(3) In addition to persons provided for in subsection 48 (3) of this Act, members of the supervisory board, employees exercising internal control, members of the audit committee, controllers, auditors and bankrupts shall not be members of the management board of a credit institution. The articles of association may prescribe other persons who shall not be members of the management board.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 57. Increased requirements for chairman of management board of credit institution

In addition to the requirements provided for in this Act for members of the management board of a credit institution, the chairman of the management board of a credit institution shall have at least five years' practical experience in the financial field in a management capacity.

#### § 58. Credit committee

(1) The credit committee shall be formed pursuant to the procedure prescribed in the articles of association of the credit institution and have at least five members, including the chairman of the management board of the credit institution who shall not be the chairman of the credit committee nor chair the sessions of the credit committee in the absence of the chairman. At least one-half of the members of the credit committee of an association bank shall be members or representatives of members of the association bank.

(2) Loans which exceed the limits established by the supervisory board of a bank shall be granted or renewed on the basis of a specific prior decision of the credit committee. In association banks, loans shall be granted and renewed pursuant to the procedure prescribed in the articles of association.

(3) Before deciding on the grant or renewal of loans, the committee shall review all documents and other information submitted to apply for a loan and, on the basis thereof, adopt a position as to the solvency and financial soundness of the loan applicant and the existence and sufficiency of collateral offered by the applicant. The positions of the members of the credit institution shall be recorded in the minutes of the session.

(4) Sessions of the credit committee shall be closed. A session of the credit committee has a quorum if more than one-half of the members of the committee participate. The grant of loans shall be decided by an open vote by name with a majority of votes in favour. Members of the credit committee do not have the right to abstain from voting or to remain undecided. The chairman of the committee shall have the deciding vote upon an equal division of votes.

(5) Minutes shall be taken of sessions of the credit committee. The minutes shall be signed by all members of the committee who participate in the session. A dissenting opinion of a member of the committee shall be recorded in the minutes and confirmed by his or her signature.

(6) The credit committee is not required to substantiate a refusal to grant a loan.

#### § 59. Internal control system

(1) A credit institution or a company in the consolidation group of a credit institution shall have in place an adequate internal control system.

(2) The internal control system of a credit institution shall cover all levels of management and operations of the credit institution in order to ensure the effective operation of the credit institution, the reliability of financial reporting and compliance with law, other legislation,

documents approved by the directing bodies of the credit institution and the principles of sound banking management, and the adoption of resolutions based on reliable and relevant information.

(3) An independent internal audit unit shall be formed as part of the internal control system of a credit institution and the internal audit unit shall monitor the activities of the whole credit institution.

(4) The internal audit unit shall assess the ordinary business of the credit institution and the suitability and sufficiency of the internal rules and rules of procedure for the activities of the credit institution, regularly monitor compliance with the requirements, rules of procedure, limitations and other rules established by the supervisory board or the management board, and monitor compliance with precepts issued by the Financial Supervision Authority.

(5) The internal audit unit shall analyse the deficiencies discovered in the activities of the credit institution and the employees thereof, cases of failure to perform duties and excess of authority, make proposals for the elimination of deficiencies and for measures to prevent errors, prepare reviews of the activities of the unit on a regular basis and submit the reviews to the supervisory board and management board of the credit institution pursuant to the procedure prescribed in the articles of association of the credit institution.

(6) In an association bank, the duties provided for in subsections (4) and (5) of this section shall be performed by the audit committee, which also has the rights provided for in § 61 of this Act.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

§ 60. Requirements for employees of internal audit unit and members of audit committee

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(1) A person with an impeccable business reputation, higher education and the necessary expertise and experience to manage the work of the internal audit unit may be the head of the internal audit unit or chairman of the credit committee of a credit institution, and the provisions of subsection 48 (6) of this Act apply to the person.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) Employees of the internal audit unit and members of the audit committee of a credit institution must be natural persons with active legal capacity, impeccable business reputations and the education, experience and professional qualifications necessary for the work of the internal audit unit.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) The employees of the internal audit unit shall be appointed to and removed from office on the basis of a resolution of the supervisory board of the credit institution. The members of the audit committee shall be elected and removed by the general meeting.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) The number of employees of the internal audit unit and the number of members of the audit committee shall be sufficient for the performance of the duties assigned thereto.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(5) The employees of the internal audit unit and members of the audit committee are required to maintain the confidentiality of information which becomes known to them in the course of their activities. This requirement does not apply to information which is submitted to the Financial Supervision Authority or the management board or supervisory board of the credit institution pursuant to the procedure provided by law, the articles of association of the credit institution or the statutes of the internal audit unit.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 61. Rights of internal audit unit

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(1) The internal audit unit shall operate pursuant to the procedure provided for in the statutes approved by the supervisory board of the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The employees of the internal audit unit have the right to examine all documents of the credit institution, monitor the work of the credit institution at each stage without restrictions, and participate in the meetings of the management board or the committees formed on the basis of the articles of association of the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) The internal audit unit has the right to demand written explanations from the employees of the credit institution concerning deficiencies and errors discovered in their work, and the elimination of such deficiencies.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) The internal audit unit shall co-operate with the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 62. Monitoring committee of supervisory board

(1) The supervisory board may form a committee for monitoring the activities of the management board of the credit institution (monitoring committee of the supervisory board) whose competence, rights and principles of activities shall be determined by the supervisory board of the credit institution.

(2) Members of the supervisory board and other persons appointed by the supervisory board may be members of the monitoring committee of the supervisory board. Members of the management board and employees of the credit institution shall not be members of the committee.

(3) The provisions of this section do not apply to association banks.

#### § 63. Internal rules and rules of procedure of credit institutions

(1) A credit institution shall establish internal rules and rules of procedure to regulate the activities of the managers and employees of the credit institution. The internal rules and rules of procedure shall ensure compliance with legislation regulating the activities of the credit institution and with the resolutions of the directing bodies of the credit institution.

(2) Among other matters, the internal rules and rules of procedure of a credit institution shall set out:

1) the procedure for prevention of conflicts between the interests of the credit institution and the personal economic interests of the managers and employees of the credit institution;

2) the procedure for exchange of information and documents within the credit institution;

3) the procedure for conclusion of transactions and performance of other acts at the expense of the credit institution and in the name and at the expense of the clients;

4) relationships of subordination and the procedure for reporting and the delegation of rights, and shall provide the separation of functions upon assumption of obligations in the name of the credit institution, making of payments, recording of transactions for accounting and reporting purposes and assessment of risks involved in transactions;

5) the procedure for the functioning of the internal control system.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) A person acting in the name of a credit institution shall not represent the credit institution in transactions or legal disputes with a third party with regard to whom the person acting in the name of the credit institution or a person with an economic interest equivalent to that of such person has personal economic interests.

## Chapter 6

### Merger of Credit Institutions

#### § 64. Specifications for merger, division and transformation of credit institutions

(1) The transformation of credit institutions is prohibited.

(2) The division of credit institutions is prohibited.

(3) The merger of credit institutions shall be effected pursuant to the procedure provided for in the Commercial Code, taking into consideration the specifications provided for in this Chapter.

(4) The provisions of § 399, the term prescribed in subsection 400 (1), and the requirements provided for in subsections 400 (2) and (3) of the Commercial Code do not apply to the merger of credit institutions.

(5) An action may be filed with a court for contestation of a merger resolution only until corresponding authorisation for merger or activities is granted pursuant to the procedure prescribed in this Act.

#### § 65. Methods of merger of credit institutions

(1) Only authorised credit institutions are permitted to merge.

(2) Credit institutions may merge by founding a new credit institution. A credit institution being founded as a result of merger shall apply for authorisation pursuant to the procedure provided for in Chapter 2 of this Act.

(3) With the permission of the Financial Supervision Authority, a credit institution (credit institution being acquired) may merge with another credit institution (acquiring credit institution) such that the credit institution being acquired continues its activities on the basis of the authorisation of the acquiring credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) The stringency of prudential ratios of a credit institution being founded or an acquiring credit institution shall comply with the requirements of this Act.

#### § 66. Merger agreement and merger report

(1) A merger agreement between credit institutions shall not be entered into with a suspensive or resolute condition unless the condition is to obtain authorisation for merger from the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) Within three days after entry into a merger agreement, the management boards of the merging credit institutions shall notify the Financial Supervision Authority thereof and submit a merger plan concerning the acts related to the merger.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) A merger report and a final balance sheet which meets the requirements for annual reports and is prepared as of a date not earlier than three months before preparation of the merger report shall be prepared upon the merger of credit institutions.

#### § 67. Appointment of auditor and auditor's report



(1) Upon the merger of credit institutions, the Financial Supervision Authority shall, on the proposal of the merging credit institutions, appoint at least one common auditor for all the merging credit institutions.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The auditor shall prepare a report concerning the audit of the merger agreement and merger report, indicate the assessment methods used to determine the exchange ratio of shares or contributions, and give an opinion as to whether the stringency of prudential ratios of the acquiring credit institution and the credit institution being founded complies with the requirements of this Act.

#### § 68. Application for authorisation for merger

(1) In order to apply for authorisation for merger, an acquiring credit institution shall submit an application and the following documents to the Financial Supervision Authority:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) the merger agreement or a notarised transcript thereof;
- 2) the merger report;
- 3) the merger resolutions;
- 4) the auditor's report;
- 5) the business plan for the first three years;
- 6) a draft of the accounting policies and procedures and data relating to the information systems to be used;
- 7) a description of the organisational structure of the credit institution;
- 8) documents to certify that the managers of the credit institution, the head of the internal audit unit and the chairman of the audit committee are trustworthy and meet the requirements of this Act;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

9) written confirmation from the members of the management board certifying the correctness of the data in the documents submitted pursuant to this section.

(2) The Financial Supervision Authority may demand additional documents and information in order to specify or verify documents specified in subsection (1) of this section.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) If shareholders of a credit institution being acquired acquire a qualifying holding in the acquiring credit institution to the extent prescribed in § 30 of this Act, the documents prescribed in § 30 shall also be submitted.

(4) The Financial Supervision Authority may exercise on-the-spot supervision over acts related to a merger.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 69. Authorisation for merger

(1) The Financial Supervision Authority may refuse to grant authorisation for the merger of credit institutions if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) according to the opinion of the Financial Supervision Authority, the merging credit institutions do not have sufficient management and financial resources;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

2) the merger would significantly reduce effective competition in the banking market;

3) the applicant has failed to submit on time or has refused to submit the documents or information specified in subsections 68 (1) and (2) of this Act to the Financial Supervision Authority;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

4) the merger may damage the interests of the depositors, clients or other creditors of the merging credit institutions.

(2) The Financial Supervision Authority shall make a decision on the grant of or refusal to grant authorisation for the merger of credit institutions not later than within thirty days but not earlier than within seven days as of the submission of the documents or information specified in subsections 68 (1) and (2) of this Act. The applicant shall be notified of the decision in writing within three days as of the date on which the decision is made.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 70. Notification of merger

(1) Merging credit institutions shall promptly give notice of obtaining authorisation for merger in at least one daily national newspaper and one local newspaper of the seat of the credit institution.

(2) A credit institution may submit an application for entry of a merger in the commercial register promptly after publication of the notice specified in subsection (1) of this section.

### Chapter 7

## Guarantee of Financial Soundness of Credit Institutions and Protection of Interests of Clients

### § 71. Prudential ratios

(1) In order to guarantee the financial soundness of a credit institution, the credit institution is required at all times to adhere to prudential ratios which set out:

1) the minimum amount of net own funds;

2) the capital adequacy ratio;

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

3) (Repealed - 13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

4) limitations on concentration of exposures;

5) limitations on investments;

6) limitations on net open currency positions.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

(2) If a credit institution belongs to a consolidation group, capital adequacy, limitations on concentration of exposures and limitations on investments shall be complied with and observed both separately with regard to each credit institution and on a consolidated basis.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

(3) The prudential ratios, the instructions for assessment thereof and the procedure for reporting shall be established by the Bank of Estonia pursuant to this Act.

(4) The management board of a credit institution is required to notify the Financial Supervision Authority promptly of any deviations from prudential ratios.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(6) A credit institution is required to form reserves in order to cover possible losses arising from general risks involved in the principal activities of the credit institution. The size of the reserves and the procedure for the formation, maintenance and use of the reserves shall be established by the Bank of Estonia.

### § 72. Own funds of credit institutions

The own funds of a credit institution are:

1) Tier 1 own funds;

2) Tier 2 own funds;

3) Tier 3 own funds.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 72<sup>1</sup>. Subordinated debt

(1) Subordinated debt is a claim against a credit institution which, in the event of the dissolution of the credit institution or the declaration of the credit institution as bankrupt, is satisfied after the justified claims of all other creditors have been satisfied. In the event of the bankruptcy of a credit institution, a claim arising out of a subordinated debt shall be satisfied pursuant to the provisions of § 131 of this Act.

(2) Subordinated debt may be included in the own funds of a credit institution if it meets the following contractual conditions:

1) the credit institution does not issue a guarantee for the performance of such obligation;

2) the provisions do not include a condition pursuant to which the credit institution would, under certain circumstances, be required to repay the loan before the agreed due date, except in the case of the dissolution of the credit institution;

3) the provisions do not include a condition which could make the loan more expensive than originally agreed;

4) the contract prescribes the right of the credit institution to postpone the payment of interest if, after payment of the corresponding amounts, the own funds of the credit institution are insufficient to comply with the prudential ratios specified in § 71 of this Act.

(3) Repayment of subordinated debt included in the own funds of a credit institution before the agreed due date is only permitted on the initiative of the borrower and on the basis of the prior written consent of the Financial Supervision Authority.

(4) The Financial Supervision Authority shall grant the consent specified in subsection (3) of this section if, after repayment of the subordinated loan, the own funds of the credit institution will be sufficient to comply with the prudential ratios specified in § 71 of this Act and other requirements established on the basis of this Act.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 73. Tier 1 own funds

(1) Tier 1 own funds consist of:

1) paid-in share capital, except for amounts paid for cumulative preferred shares;

2) share premium accounts;

3) reserves formed on the basis of law and the articles of association on account of the profits, and reserve capital;

4) retained profits or losses from previous years;

5) profits for the current financial year, approved by an auditor;

6) other financial instruments which are similar to those specified in clauses 1)-3) of this subsection, are of a capital nature and are accepted as Tier 1 own funds by the Financial Supervision Authority.

(2) In order to calculate the size of Tier 1 own funds, the following shall be deducted from the total of the entries specified in subsection (1) of this section:

1) own shares;

2) intangible assets;

3) losses of the current financial year.

(3) The Tier 1 own funds specified in subsection (1) of this section shall be available to the credit institution for immediate and unrestricted use to cover losses or risks.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 74. Tier 2 own funds

(1) Only amounts which have been placed at the full disposal of a credit institution in the form of monetary contributions shall be taken into account as Tier 2 own funds. Tier 2 own funds consist of:

1) subordinated debt in the meaning of subsections 72<sup>1</sup> (1) and (2) of this Act;

2) cumulative preferred shares;

3) other obligations, and instruments of a capital nature, which are similar to those specified in clauses 1) and 2) of this subsection and are accepted as Tier 2 own funds by the Financial Supervision Authority.

(2) Tier 2 own funds are divided into:

1) upper Tier 2 own funds;

2) lower Tier 2 own funds.

(3) Instruments included in upper Tier 2 own funds shall meet the following conditions:

1) the term for repayment is not provided in the contract (contract concluded for an unspecified term);

2) the contract provides that the repayment of debt is subject to at least five years' notice;

3) the contract provides that the amounts of subordinated debt may, on the basis of a resolution of the general meeting of shareholders of the credit institution, be used without restrictions for covering ordinary banking risks prior to determining loss.

(4) Obligations and instruments which are of a capital nature, which are included in upper Tier 2 own funds and regarding which notice of repayment has been given shall be deemed to be fixed-term obligations and instruments and are considered as lower Tier 2 own funds.

(5) Lower Tier 2 own funds include instruments specified in subsection (1) of this section if, pursuant to the contract, the term for repayment thereof is at least five years and one day.

(6) During the five years before the date of expiry or termination of the contract, the amount included in lower Tier 2 own funds shall be reduced each year by 20 per cent of the original amount of debt. The reduction shall be calculated on a quarterly basis.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 75. Gross and net own funds

(1) Tier 1 and Tier 2 own funds together form gross own funds.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

(2) In order to calculate net own funds, the following shall be deducted from gross own funds pursuant to the procedure established by the Bank of Estonia:

1) holdings in other credit or financial institutions;

2) subordinated claims and other financial instruments included in the own funds of credit or financial institutions specified in clause 1) of this subsection.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

(3) (Repealed - 13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

(4) Credit institutions shall have net own funds in an amount equivalent to at least 5 million euro on the basis of the exchange rate of the Bank of Estonia, unless the Bank of Estonia establishes a higher requirement for the minimum amount of net own funds.

#### § 76. Trading portfolio and banking portfolio

(1) The trading portfolio of a credit institution consists of the following instruments:

1) securities, goods and derivative instruments which have been acquired with a view to re-sale and earning profits on differences between the actual and expected purchase and selling prices or on other fluctuations in prices and interest rates during short periods;

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

2) commitments made and instruments acquired in order to cover risks related to instruments specified in clause (1) of this subsection;

3) instruments which are of a similar nature to those specified in clauses 1) or 2) of this subsection.

(2) The banking portfolio consists of securities, goods and derivative instruments, and commitments made and instruments acquired in order to cover risks related to such instruments which are not included in the trading portfolio.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 77. Tier 3 own funds

(1) Tier 3 own funds consist of subordinated debt in the meaning of subsections 72<sup>1</sup> (1) and (2) of this Act which has been placed at the full disposal of a credit institution in the form of monetary contributions, on the condition that the following conditions are met:

1) the term of repayment of the subordinated debt prescribed in the contract is at least two years;

2) the right of the credit institution not to repay the loan or pay interest upon the maturity thereof is prescribed in the contract, if the own funds of the credit institution are insufficient to comply with the prudential ratios specified in § 71 of this Act.

(2) A credit institution is required to notify the Financial Supervision Authority of the repayment of subordinated loans and interest related thereto included in Tier 3 own funds if the capital adequacy indicator of the credit institution is less than 120 per cent of the capital adequacy ratio provided for in or established pursuant to subsection 79 (2) of this Act.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 78. Limitations on own funds

(1) The total amount of subordinated debts and cumulative preferred shares included in Tier 2 own funds shall not exceed 50 per cent of Tier 1 own funds.

(2) The total amount of Tier 2 own funds used for covering the risks of the banking portfolio shall not exceed Tier 1 own funds used for the same purpose.

(3) The total amount of Tier 2 and Tier 3 own funds together shall not exceed Tier 1 own funds of the credit institution.

(4) The total amount of Tier 2 and Tier 3 own funds used for covering risks related to the trading portfolio shall not exceed 250 per cent of the Tier 1 own funds used for covering risks related to the trading portfolio.

(5) Tier 2 and Tier 3 own funds in excess of limitations prescribed in subsections (1)-(4) of this section shall not be taken into account for the purposes of calculating the prudential ratios specified in § 71 of this Act.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 79. Capital adequacy

(1) The capital adequacy indicator is a proportion which expresses the covering of risks related to the activities of a credit institution by the own funds of the credit institution. The procedure for calculating the capital adequacy indicator shall be established by the Bank of Estonia.

(2) The capital adequacy indicator of a credit institution shall be at least 8 per cent unless the Bank of Estonia establishes a higher ratio.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 80. Liquidity

(1) A credit institution shall invest its assets such that the satisfaction of justified claims of creditors, i.e. the liquidity, is guaranteed at all times. For that purpose, a credit institution shall maintain the necessary ratio of liquid assets and current liabilities.

(2) The managers of a credit institution are required to structure the assets of the credit institution such that financing is not based on funds which are too short-term or insufficient. The managers are also required to monitor the terms of claims and commitments on a regular basis. The activities of the credit institution shall not be endangered by the expiry of terms for the conclusion of commitments. A credit institution shall monitor its liquidity on the basis of cash-flows.

(3) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) Credit institutions are required to deposit some of their liquid assets in the Bank of Estonia unless otherwise prescribed by the Bank of Estonia.

(5) The uniform rate of liquid assets to be deposited in the Bank of Estonia and the procedure for the use of such assets shall be established by the Bank of Estonia.

#### § 81. Limitations on investment

(1) For the purposes of this Act, investment is the acquisition of movables subject to entry in a register, except securities, and immovables or financial fixed assets for the purpose of long-term use thereof. For the purposes of this Act, financial fixed assets are holdings in other companies by way of shares acquired for use on a continuing basis and for gaining profit during an extended period.

(2) A credit institution shall not participate as a partner in a general partnership or as a general partner in a limited partnership.

(3) A qualifying holding held in any other company by a credit institution shall not exceed 15 per cent of the net own funds of the credit institution.



(4) The total amount of investments of a credit institution in financial fixed assets as qualifying holdings shall not exceed 60 per cent of the net own funds of the credit institution.

(5) The total amount of investments of a credit institution shall not exceed the net own funds of the credit institution.

(6) The limitations specified in subsections (3)–(5) of this section do not apply to:

1) financial fixed assets acquired by a credit institution in connection with the acquisition of holdings in credit or financial institutions or ancillary undertakings of the same credit institution;

2) investments made by a credit institution due to prevent loss or underwrite an issue of securities if the credit institution does not keep the investments for longer than one year;

3) immovables which are necessary for a credit institution to carry out its principal and permanent activities.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 82. General requirements for risk management and monitoring

(1) A credit institution and the companies belonging to the same consolidation group as the credit institution shall not, in their activities, take risks which could endanger the solvency of the credit institution or the consolidation group.

(2) A credit institution and the companies belonging to the same consolidation group as the credit institution shall have systems and strategies for risk monitoring, risk management and risk assessment which are appropriate and sufficient for their activities, and appropriate internal rules which shall be subject to review and updating on a regular basis and apply both in the credit institution and the companies belonging to the same consolidation group as the credit institution.

(3) The credit risk strategy of a credit institution and the rules based thereon shall determine the objectives of credit policy, the main principles and criteria for the choice of risks, the criteria for risk assessment, the principles for the credit ratings of borrowers, the principles for taking and assessing collateral, the competence to grant credit and the organisation of corresponding decision-making, and the organisation of the system for monitoring credit risks.

(4) The management board of a credit institution is required to notify the Financial Supervision Authority promptly of all facts which may materially affect the financial situation of the credit institution or the companies belonging to the same consolidation group as the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 83. Requirements for loans

(1) For the purposes of this Act, a loan is deemed to be the assets or off-balance sheet items of a credit institution arising from contracts under which the lender grants or undertakes to grant money or other assets to the recipient of the loan or another entitled person pursuant to the contract and the recipient of the loan undertakes to return the money or other assets to the lender under the prescribed conditions.

(2) The principles for the grant and monitoring of loans shall be established by the Bank of Estonia.

(3) Upon granting loans, a credit institution is required to observe the main internal crediting principles of the credit institution and the principles of sound banking management.

(4) The procedure for granting loans to the employees of a credit institution shall be approved by the supervisory board of the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 84. Loans to persons connected to credit institutions

(1) Persons connected to a credit institution are:

1) the managers of the credit institution, the head of the internal audit unit or the chairman of the audit committee, and the controller;

2) persons with economic interests equivalent to those of the persons specified in clause 1) of this subsection;

3) shareholders who are natural persons and have qualifying holdings in the credit institution;

4) members of management boards or of substituting bodies of shareholders who are legal persons and have qualifying holdings in the credit institution.

(2) Persons with equivalent economic interests are the spouse or cohabitee, children, parents, sisters and brothers of a manager of a credit institution, of the head of an internal audit unit or of the chairman of an audit committee.

(3) The following are also deemed to be persons with equivalent economic interests:

1) companies controlled, within the meaning of subsection 10 (2) of this Act, by a manager of a credit institution, by the head of the internal audit unit or chairman of an audit committee or by a person specified in subsection (2) of this section, and by parent companies and subsidiaries of such companies;

2) companies where a manager of a credit institution, head of an internal audit unit or chairman of an audit committee or a person specified in subsection (2) of this section is a member of the directing body.

(4) Loans may be granted to persons connected to a credit institution only on the basis of a specific unanimous resolution of the management board. The above-mentioned condition does not apply if the amount of the loan is less than 25 per cent of the annual remuneration

which the chairman of the management board of the credit institution received from the credit institution, unless a smaller minimum rate has been established by a resolution of the supervisory board.

(5) A manager of a credit institution or a member of the credit committee thereof, an employee who decides on the grant of loans, and other persons who have equivalent economic interests to such persons shall not participate in the process of deciding on the grant of a loan to him or her.

(6) The conditions of loans granted to persons connected to a credit institution and granted to shareholders of a credit institution shall not be less stringent than those of loans granted to other persons who have similar solvency and collateral.

(7) The provisions of clauses 281 (1) 1), 2) and 4) of the Commercial Code do not apply to credit institutions.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 85. Limitations on concentration of exposures

(1) Concentration of exposures is the ratio of the total of claims, derivative instruments and off-balance sheet items of a credit institution and holdings acquired in the share capital of other companies to the net own funds of the credit institution. The concentration of exposures shall be calculated separately for each client or group of connected persons. The concentration of exposures is deemed to be large if it exceeds 10 per cent.

(2) The management board is required to inform the supervisory board of the credit institution of each person or group of persons in respect of whom a large exposure arises.

(3) The following are deemed to be a group of connected persons:

1) two or more persons who constitute a single risk to a credit institution or the consolidation group thereof because one of the persons, either directly or indirectly, has control over the activities of the other or others, or

2) two or more persons between whom there is no relationship specified in clause (1) of this subsection but who constitute a single risk to a credit institution or the consolidation group thereof because they are so interconnected that, if one of the persons were to experience financial problems, the other or others would also be likely to encounter repayment difficulties.

(4) Exposures of a credit institution to a client or a group of connected persons shall not exceed 25 per cent.

(5) If a client or a group of connected persons is the parent undertaking, a subsidiary or an affiliated undertaking of a credit institution or a subsidiary of the parent undertaking of the credit institution, the concentration of exposures with respect thereto shall not exceed 20 per cent.

(6) Exposures to persons specified in subsection 84 (1) of this Act or to shareholders of the credit institution and shareholders of companies belonging to the same group as the credit institution if such shareholders hold more than 1 per cent of the share capital of the companies shall not exceed 5 per cent. This limitation does not apply to undertakings specified in subsections (5) and (8) of this section.

(7) A credit institution shall not incur large exposures which in total exceed 800 per cent.

(8) The limitations provided for in subsections (4) and (5) of this section do not apply to parent companies and subsidiaries subject to supervision on a consolidated basis.

(9) The deductions permitted in the calculation of the limitations on concentration of exposures specified in subsections (4)-(7) of this section and the bases for exemption from limitations shall be established by the Bank of Estonia.

(10) Credit institutions are required to inform the Financial Supervision Authority promptly if the limitations specified in subsections (4)-(7) of this section are exceeded.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 85<sup>1</sup>. Limitations on net open currency positions

(1) The overall net foreign-exchange position of a credit institution shall not exceed 30 per cent of the net own funds of the credit institution.

(2) The methods for calculating net open currency positions and the overall net foreign-exchange position and the limitations on net open currency positions shall be established by the Bank of Estonia.

(3) A credit institution which belongs to a consolidation group shall comply with and observe limitations on net open currency positions on a consolidated basis unless otherwise established by the Bank of Estonia.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 86. Valuation of assets

(1) Credit institutions are required to value their assets on a regular basis and use all measures in compliance with the principles of sound banking management and law to collect claims.

(2) Credit institutions are required to value all claims on the basis of the likelihood of payment thereof. Claims the full or partial payment of which is unlikely shall be written off to the extent which is valued as unlikely to be paid.

(3) The procedure for valuation of claims shall be established by the Bank of Estonia.

(13.12.2001 entered into force 01.07.2002 - RT I 2001, 102, 672)

#### § 87. Transactions between credit institutions

- (1) A credit institution shall open an account in the Bank of Estonia.
- (2) Payments of credit institutions shall be settled through a payment system pursuant to the procedure established by the Bank of Estonia.
- (3) A payment system is deemed to be a body of rules and procedures for the settlement of payments, established on the basis of an agreement entered into by three or more parties.
- (4) Upon making settlements through a payment system, credit institutions may offset liabilities pursuant to the procedure established by the Bank of Estonia.
- (5) A payment order given to the administrator of a payment system by a credit institution pursuant to the rules of the payment system is irrevocable. Declaration of a moratorium or commencement of bankruptcy proceedings shall not suspend the execution of payment orders given pursuant to the rules of the payment system. Payment orders given before the declaration of a moratorium or commencement of bankruptcy proceedings shall be executed out of the collateral instruments of the payment system, the procedure for formation and use of which shall be established by the Bank of Estonia.

#### § 88. Information subject to banking secrecy

- (1) For the purposes of this Act, all data which are known to a credit institution concerning the financial status, personal data, transactions, acts, economic activities, business or professional secrets, or ownership or business relations of the clients of the credit institution or other credit institutions are deemed to be information subject to banking secrecy.
- (2) The following data are not deemed to be information subject to banking secrecy:
  - 1) data which are public or available from other sources to persons with a legitimate interest;
  - 2) consolidated data on the basis of which data relating to a single client or the identities of persons included in the set of persons referred to in the consolidated data cannot be ascertained;
  - 3) a list of the founders and shareholders or members of a credit institution and data relating to the sizes of their holdings in the share capital of the credit institution, regardless of whether or not they are clients of the credit institution.
  - 4) information relating to the correctness of the performance of a client's obligations to a credit institution.
- (3) Details of a client which are subject to banking secrecy may be disclosed by a credit institution to third persons only with the written consent of the client, unless the obligation or right to disclose information subject to banking secrecy arises from the provisions of subsection (5), (8) or (9) of this section.
- (4) The managers and employees of a credit institution and other persons who have access to information subject to banking secrecy are required to maintain the confidentiality of such information indefinitely, unless otherwise provided for in this Act.

(5) A credit institution is required to disclose information subject to banking secrecy to the Bank of Estonia and the Financial Supervision Authority for the performance of duties assigned thereto by law. In response to a written inquiry, a credit institution shall disclose information subject to banking secrecy to:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) a court or, in the cases prescribed by law, a person specified in a court ruling;
- 2) a pre-trial investigation authority and the Prosecutor's Office if a criminal proceeding is commenced, and on the basis of a request for legal assistance received from a foreign state pursuant to the procedure provided for in an international agreement;
- 3) a bailiff pursuant to subsection 64<sup>15</sup> (1) of the Code of Enforcement Procedure (RT I 1993, 49, 693; RT I 2001, 29, 156; 43, 238; 53, 336; 56, 350);
- 4) a tax authority pursuant to the provisions of the Taxation Act;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

- 5) the State Audit Office for the performance of its duties;

(29.01.2002 entered into force 04.03.2002 - RT I 2002, 21, 117)

6) a person entitled to succeed or a person authorised by the latter, to a notary, to a person making the inventory of an estate at the appointment of a notary and to the administrator of an estate appointed by a court, and to the consular representations of foreign states in connection with estates and data relating thereto, upon submission of relevant written documents;

- 7) a person appointed by the Guarantee Fund pursuant to the Guarantee Fund Act;

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

8) a foreign banking supervision authority or other financial supervision authority through the Financial Supervision Authority if the obligation to maintain the confidentiality of information subject to banking secrecy extends to such authority;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 9) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

10) a depository of declarations of economic interests for the verification of the correctness of the data submitted in a declaration of economic interests of a person specified in § 4 of the Anti-corruption Act (RT I 1999, 16, 276; 87, 791; 2000, 25, 145; 2001, 58, 357; 2002, 53, 336; 63, 387) in the case of suspicion of corruption.

- (6) An inquiry shall set out:

1) the name of the person submitting the inquiry, his or her official title or a reference to any other legal basis for his or her competence, and his or her address and telecommunications numbers;

2) the name or business name of the client with regard to whom the inquiry is submitted and the personal identification code or date of birth or registry code of the client;

3) the purpose of use of the requested data and an exhaustive list or description of the data;

4) the legal grounds for the inquiry;

5) the signature of the person submitting the inquiry.

(7) Persons to whom information subject to banking secrecy is disclosed may use such information only for the purpose specified in the inquiry, and the obligation to maintain the confidentiality of such information indefinitely and the liability therefor extend to such persons unless otherwise provided by law.

(8) Credit institutions have the right and obligation to disclose information subject to banking secrecy to the Financial Intelligence Unit in the cases and to the extent prescribed in the Money Laundering Prevention Act (RT I 1998, 110, 1811; 2000, 84, 533; 2001, 93, 565; 2002, 53, 336; 63, 387).

(9) A credit institution has the right to disclose information subject to banking secrecy to a preliminary investigator, the public prosecutor and the courts in order to protect its violated or contested rights or freedoms pursuant to the procedure determined by law.

(11.05.2000 entered into force 01.07.2000 - RT I 2000, 40, 250)

## § 89. Protection of clients

(1) For the purposes of this Act, a client of a credit institution is any person who uses or has used a service offered by the credit institution, or a person who has turned to the credit institution with a view to using a service and who has been identified by the credit institution.

(2) The relationships of a credit institution with the clients thereof shall be regulated by unattested agreements, unless otherwise provided by law.

(3) All clients have the right to access all data subject to mandatory disclosure pursuant to this Act, and credit institutions are required to disclose such data to clients at the request thereof.

(4) At the request of a client, a credit institution is required to provide the client with information concerning the sizes of the holdings that shareholders with qualifying holdings have in the share capital of the credit institution, and information concerning the managers of the credit institution.

(5) The list of transactions concluded or services provided by a credit institution, the general conditions for relationships between the credit institution and clients thereof (hereinafter general conditions), interest rates, service charges, and all amendments thereto shall be

displayed in a visible place in the client service area of the credit institution. Clients have the right to request corresponding explanations and instructions from the credit institution.

(6) For the purposes of this Act, the general conditions are a document which contains standard conditions applicable to all clients of a credit institution and which provides the general principles for relationships between the credit institution and clients, the procedure for communication between the credit institution and clients and general conditions for transactions between clients and the credit institution.

(7) The general conditions shall be approved, amended or annulled by the management board of the credit institution. Amendments to the general conditions shall be displayed in a visible place in the client service area of the credit institution for at least fifteen days before the amendments enter into force. Application of the general conditions to relationships between the credit institution and a client shall be provided by a written agreement between the credit institution and the client.

(8) The assets of a client in a credit institution may be seized or confiscated or a claim for payment may be made thereon only pursuant to the procedure prescribed by law.

(9) Credit institutions are free to decide who to service.

## Chapter 8

### Accounting and Reporting

#### § 90. Organisation of accounting

(1) Credit institutions shall organise the accounting thereof pursuant to the Accounting Act, the Establishment of Personal Liability for Accounting and Correctness of Accounting Information Act (RT I 1993, 43, 620; 1996, 6, 101), other Estonian legislation, and the articles of association of the credit institution. Accounting guidelines for credit institutions shall be established by the Bank of Estonia.

(2) The accounting of a credit institution shall provide truthful information relating to the economic activities and the financial situation of the credit institution.

(3) Accounting policies and procedures shall be established by the management of a credit institution pursuant to the Accounting Act and legislation of the Bank of Estonia.

(4) Claims and commitments which are not subject to recording in the balance sheet shall be indicated by credit institutions in off-balance-sheet accounts.

(5) A credit institution is required to prepare reports and submit them to the Financial Supervision Authority pursuant to the procedure established by the Bank of Estonia. The parent company of a consolidation group is required to organise consolidated accounting and submit consolidated reports to the Financial Supervision Authority if at least one of the subsidiaries belonging to the consolidation group is a credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)



## § 91. Reports

(1) The Bank of Estonia shall establish the following for credit institutions and branches of foreign credit institutions:

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

- 1) the list of reports, and the regularity of submission and methods of preparation thereof;
- 2) the procedure and terms for submission of reports;
- 3) the requirements for consolidated accounting.

(2) The annual report of a credit institution shall be approved pursuant to the procedure established by law and the articles of association of the credit institution. The annual report, a copy of the resolution of the general meeting concerning the approval of or refusal to approve the annual report, and a list of shareholders or members who hold at least 2 per cent of the share capital or votes shall be submitted to the Financial Supervision Authority not later than within two weeks after the general meeting of shareholders or members.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) In order to perform duties arising from the Bank of Estonia Act (RT I 1993, 28, 498; 1994, 30, 463; 1998, 64/65, 1006; 1999, 16, 271; 2001, 58, 353; 59, 358; 2002, 57, 356), the Bank of Estonia has the right to demand that credit institutions submit additional reports on a regular or individual basis. The reporting forms shall be established by the Bank of Estonia.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## § 92. Disclosure of reports

(1) A credit institution is required to prepare and disclose its annual report and interim three, six, nine and twelve month reports for the current financial year. The minimum requirements for data subject to disclosure, the reporting forms, the methods of preparation and the requirements for disclosure of reports shall be established by the Bank of Estonia.

(2) A credit institution is required to disclose interim three, six, nine and twelve month reports for the current financial year not later than within two months after the end of the corresponding accounting period and to disclose the approved annual report not later than within six months after the end of the financial year.

(3) If a material error becomes evident in a report which has been disclosed, the public shall be promptly informed of the error and a corrected report shall be disclosed.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

## § 93. Audit

(1) Annual accounts of credit institutions shall be audited by an auditor, in accordance with international auditing standards.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) In the course of auditing a credit institution, an auditor shall audit a report and submit it to the credit institution and the Financial Supervision Authority, assessing at least the following areas:

- 1) the compliance of the valuation of assets with the actual value of the assets;
- 2) compliance with the rules established for own funds;
- 3) the sufficiency and efficiency of the internal control system or the activities and acts of the audit committee;
- 4) the security of the information systems of the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) Companies belonging to the same consolidation group as a credit institution shall be audited by at least one common auditor.

#### § 94. Appointment of auditor

(1) A trustworthy person with adequate expertise and experience to audit credit institutions may be appointed auditor of a credit institution.

(2) The auditor of a credit institution may be appointed to conduct a single audit or for a specific term which shall not exceed five years. An auditor shall not be re-appointed for a period longer than five years.

(3) An auditor shall be appointed by a court of the seat of the credit institution on the basis of a petition by the Financial Supervision Authority if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) the general meeting has not appointed an auditor;
- 2) the auditor appointed by the general meeting refuses to conduct an audit;
- 3) according to the opinion of the Financial Supervision Authority, the auditor is no longer trustworthy.
- (4) The authority of a court-appointed auditor shall continue until appointment of a new auditor by the general meeting.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 95. Notification obligation of auditor

(1) An auditor is required to notify the Financial Supervision Authority promptly in writing of circumstances which have become known to the auditor in the course of his or her professional activities and which result or may result in:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

- 1) material violation of legislation regulating the activities of credit institutions;
- 2) interruption of the activities of the credit institution;
- 3) interruption of the activities of a subsidiary of the credit institution;
- 4) an adverse or qualified report by the auditor concerning the annual accounts or consolidated accounts of the credit institution;
- 5) a situation, or the risk of a situation arising, in which the credit institution is unable to perform its obligations;
- 6) an act by a manager or employee causing significant proprietary damage to the credit institution or to a client thereof;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

7) the creation of close links due to circumstances specified in clause 7 (4) 3) of this Act.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The confidentiality requirements provided for in an agreement entered into by a credit institution and an auditor do not apply to data submitted to the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## Chapter 9

### Supervision

#### § 96. Supervisory authority and purpose of supervision

(1) Supervision over the activities of credit institutions shall be exercised by the Financial Supervision Authority pursuant to the procedure provided for in the Financial Supervision Authority Act, this Act and legislation issued on the basis thereof.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(1<sup>1</sup>) Supervision over the activities in Estonia of branches of credit institutions registered in Member States of the European Union shall be exercised by the banking supervision authority of the home country of the credit institution, including on-the-spot verifications if the Financial Supervision Authority is notified thereof in advance.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The Financial Supervision Authority shall review applications for authorisation for activities and applications for authorisation for merger made by credit institutions, and other applications and accompanying documents prescribed in this Act, and verify and assess the compliance thereof with the requirements provided for in this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) The Financial Supervision Authority shall monitor the activities and situation of credit institutions on a regular basis and verify the compliance of credit institutions and consolidation groups thereof with the prudential ratios. If necessary, the Financial Supervision Authority may engage independent experts for such activities.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 97. Scope of supervision

(1) The supervision activities of the Financial Supervision Authority cover:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) all Estonian credit institutions;

2) the subsidiaries, branches and representative offices of Estonian credit institutions in foreign states if they are not supervised by foreign supervisory bodies or if correspondingly agreed with a foreign supervisory body;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

3) the subsidiaries, branches and representative offices of foreign credit institutions in Estonia unless otherwise agreed with the supervisory body of the corresponding foreign state;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

4) companies belonging to the same consolidation group as a credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The Financial Supervision Authority shall exercise supervision on a consolidated basis if:

1) an Estonian credit institution is a parent company;

2) the parent company of an Estonian credit institution is a financial holding company;

3) the parent company of credit institutions registered in two or more Member States of the European Union is a financial holding company registered in Estonia.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(3) If none of the subsidiary credit institutions are located in the Member State of the European Union where the financial holding company which is the parent company is located, supervision on a consolidated basis shall be exercised by the supervisory authorities of the Member State which authorised the subsidiary credit institution with the greatest balance sheet total unless otherwise agreed with the banking supervision authority of that Member State.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(4) The supervision activities of the Financial Supervision Authority cover monitoring the liquidity and reporting of a branch of a credit institution of a Member State of the European Union in co-operation with the banking supervision authority of the home country of the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

§ 98. (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 99. Rights of Financial Supervision Authority upon receipt of information

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(1) For the purpose of performing supervision activities, the Financial Supervision Authority has the right to:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) demand additional information, documents and explanations in order to specify data submitted by credit institutions or companies belonging to the consolidation groups thereof;
- 2) demand information, documents and explanations from shareholders who have qualifying holdings in credit institutions;
- 3) carry out on-the-spot verifications of companies belonging to the consolidation group of a credit institution in order to verify information submitted to the Financial Supervision Authority, and to demand submission of documents necessary for the exercise of supervision;

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

4) receive data relating to the activities, shareholders or members of credit institutions from general national registers, state registers and authorised employees responsible for state databases, and to demand submission of documents which are at the disposal of such persons;

5) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

6) receive information from and co-operate with internal audit units and audit committees of credit institutions;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

7) obtain information and explanations concerning credit institutions or companies belonging to consolidation groups of credit institutions from third parties, and to demand the submission of corresponding documents at the disposal of such persons.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) For the purposes of supervisory activities, the Financial Supervision Authority has the right to require the submission of supplementary information and reports from credit institutions and companies which belong to consolidation groups of credit institutions.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The following have the right to refuse to provide information under clause (1) 7) of this section:

1) advocates or employees of the Bar Association in respect of circumstances which become known to them in connection with the provision of legal assistance;

2) notaries, ministers of religion and doctors in respect of circumstances which became known to them in connection with their professional activities;

3) agencies conducting state statistical surveys in respect of information which becomes known to them in connection with a survey.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 100. Organisation of supervision

(1) Supervision shall be organised on the basis of reporting and other information subject to submission by credit institutions and consolidation groups thereof and the Financial Supervision Authority has the right to conduct on-the-spot verifications of credit institutions, companies belonging to consolidation groups of credit institutions and branches of foreign credit institutions.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The Financial Supervision Authority shall carry out on-the-spot-verifications in credit institutions and companies which are parent companies of consolidation groups at least once every two years.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 101. On-the-spot verification

(1) During on-the-spot verification, the employees of the Financial Supervision Authority and other persons authorised by the Financial Supervision Authority have the right to:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

- 1) enter all rooms, in compliance with all security requirements in force in the credit institution;
- 2) use a separate room necessary for their work;
- 3) investigate all documents and media, make extracts, transcripts and copies thereof and monitor work processes without restrictions;
- 4) demand explanations from managers and employees of the credit institution.

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) The management of a credit institution is required to appoint a competent representative who shall provide the person carrying out on-the-spot verification with documents and other information necessary for the performance of his or her duties, including the auditor's report concerning the reports of the credit institution together with findings to be submitted to the management, and provide necessary explanations with regard to such documents and information.

(3) A person carrying out on-the-spot verification is required to prepare a report or statement concerning the results of verification and submit the report or statement to a member of the management board of the credit institution or to a person authorised by the member, who shall sign for the receipt thereof.

#### § 102. Ordering of special audits or assessments

(1) The Financial Supervision Authority has the right to demand that a special audit or assessment be conducted in a credit institution if, according to the opinion of the Financial Supervision Authority, the reports of the credit institution are misleading or inaccurate, transactions have been concluded which may result or have resulted in significant damage to the credit institution, or other issues relevant to the supervision of the credit institution need additional clarification.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) In order for a special audit or assessment to be conducted, the Financial Supervision Authority has the right to appoint an auditor who has the right to use all data and documents necessary to conduct the audit or assessment. Credit institutions are required to submit such data and documents without restrictions and to provide all possible help to auditors pursuant to the procedure provided for in subsection 101 (2) of this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) Costs related to the conduct of a special audit or assessment shall be covered from the budget of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 103. Precepts

(1) The Financial Supervision Authority has the right to:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) issue precepts if violations of the requirements of Acts, legislation established on the basis thereof or the articles of association of the credit institution are discovered as a result of supervision;

2) issue a precept to apply the provisions of § 104 of this Act, except for clause 12), in order to prevent offences if the risks taken by a credit institution increase significantly or if other circumstances exist which endanger the activities of the credit institution or damage the interests of depositors, other clients or creditors.

(2) A precept shall set out:

1) the name and position of the person preparing the precept;

2) the date of preparation of the precept;

3) the name and address of the recipient of the precept;

4) the bases for issue of the precept together with references to the provisions of relevant Acts;

5) the term for compliance with the precept;

6) the sanctions to be imposed upon failure to comply with the precept.

(3) A precept shall be issued promptly to the representative of the credit institution against a signature.

(4) The recipient of a precept shall commence compliance with the precept promptly after receipt thereof.

(5) The recipient of a precept has the right to contest the precept pursuant to the procedure prescribed in § 110 of this Act.

#### § 104. Rights upon issue of precepts

The Financial Supervision Authority has the right, by issuing a precept, to:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) restrict the volume of certain types of transactions concluded by a credit institution;

2) prohibit a credit institution from concluding certain types of transactions;

3) prohibit, wholly or partially, payment of dividends from profit;

4) prohibit the foundation of new branches;



5) demand valuation of the assets of a credit institution pursuant to the provisions of § 86 of this Act;

5<sup>1</sup>) require compliance with a higher capital adequacy indicator than established by this Act or the Bank of Estonia or improvement of the ratio of liquid assets and current liabilities;

(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

6) demand restrictions on the operating expenses of a credit institution;

7) demand amendment of internal rules or rules of procedure;

8) demand that the supervisory board of a credit institution remove a member of the management board;

9) make a proposal to the general meeting for removal of a member of the supervisory board;

10) demand suspension of an employee of a credit institution from work;

11) demand submission of a rehabilitation plan for a credit institution;

12) demand payment of a contribution prescribed by the Guarantee Fund Act;

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

13) make other demands for compliance with this Act.

#### § 105. Calling of and participation in meetings of directing bodies of credit institutions

(1) The Financial Supervision Authority has the right to issue a precept in order to:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) call a meeting of the supervisory board or management board of a credit institution or to call the general meeting of a credit institution;

2) include an issue on the agenda of a meeting of the supervisory board or management board or the general meeting if this is necessary according to the opinion of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The Financial Supervision Authority has the right to send representatives to a meeting who have the right to present positions and make proposals and demand the recording thereof in the minutes of the meeting.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 106. Invalidation of resolutions of directing bodies of credit institutions

On the basis of a petition from the Financial Supervision Authority, a court of the seat of a credit institution may declare invalid a resolution of the general meeting, supervisory board or management board of a credit institution which is in conflict with an Act, legislation issued on the basis thereof or the articles of association of the credit institution, if the petition is submitted within three months after adoption of the resolution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 107. Rehabilitation plan of credit institution

(1) If a credit institution fails to comply with prudential ratios, the credit institution is required to submit a rehabilitation plan to the Financial Supervision Authority during the term determined by a precept.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) The Financial Supervision Authority has the right to demand that a credit institution order an assessment of the rehabilitation plan by one or several auditors appointed by the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) A rehabilitation plan shall set out a detailed description of measures to be applied in order to achieve compliance with prudential ratios during the term determined by the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) If, according to the opinion of the Financial Supervision Authority, the rehabilitation plan of a credit institution is not feasible or does not ensure the protection of the interests of clients and creditors or if the credit institution is unable to perform the acts or apply the measures specified in the rehabilitation plan on time, the Financial Supervision Authority has the right to establish a moratorium on the credit institution or revoke the authorisation of the credit institution or to apply other measures arising from this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 108. Notification obligation

(1) For the purposes of this Act, all reports, information, explanations and other documents which are specified in this Act or legislation arising therefrom and which credit institutions or other persons are required to submit to the Financial Supervision Authority or other persons specified in this Act, or to disclose, are deemed to be mandatory information, reports and documents.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) A credit institution is required to notify the Financial Supervision Authority promptly in writing of:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) a change in the seat or address of the credit institution, the opening of any branches and representative offices, changes in the addresses thereof or the closure thereof, and of the foundation, acquisition or dissolution of a subsidiary or an affiliated or ancillary undertaking;

2) circumstances which affect or may materially affect the financial situation of the credit institution;

3) entry into subordinated debt agreements;

4) other circumstances and acts if so prescribed in this Act.

(3) The Financial Supervision Authority shall maintain a list on credit institutions, the branches, representative offices, subsidiaries and affiliated undertakings thereof and the results of audits thereof and the Bank of Estonia of Estonia shall establish a list of information to be entered in the list.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 109. (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

§ 110. Submission of complaints and resolution of disputes

(1) If upon the inspection of a credit institution, the officials of the Financial Supervision Authority or other persons conducting supervisory activities as authorised by the Financial Supervision Authority exceed the rights vested in them by the Financial Supervision Authority Act or by this Act, the credit institution has the right to annex an opinion to this effect to the inspection report or certificate by making a notice expressing a corresponding opinion next to the signature of the representative of the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) An appeal against a precept of the Financial Supervision Authority may be filed with an administrative court within ten days as of the receipt of the precept.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## Chapter 10

### Moratorium

§ 111. Definition of moratorium

A moratorium is a total or partial suspension of the activities of a credit institution with solvency problems in order to ascertain the reasons for and nature of the solvency problems and the possibilities of restoring solvency, and to protect the proprietary interests of creditors.

§ 112. Establishment of moratorium

(1) The Financial Supervision Authority may establish a moratorium on a credit institution if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) the credit institution fails, as a result of the financial situation thereof, to perform at least one of its obligations to the depositors on time, or

2) the ratio of liquid assets to current liabilities of the credit institution is such that, according to the opinion of the Financial Supervision Authority, the credit institution is unable to perform its obligations on time, or

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

3) during the previous calendar month, the credit institution failed to comply with the requirement provided for in subsection 80 (4) of this Act and, according to the opinion of the Financial Supervision Authority, will be unable to comply with the requirement during the current calendar month.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) (Repealed - 09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) Upon establishment of a moratorium, the Financial Supervision Authority shall determine the term, extent and conditions of the moratorium, appoint a moratorium administrator and determine the competence thereof.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) The duration of a moratorium shall not exceed six months.

(5) Moratorium administrators shall meet the requirements provided for in subsection 56 (2) of this Act. Moratorium administrators shall not be employees of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(6) The Financial Supervision Authority shall promptly send a notice concerning a moratorium to the commercial register of the seat of the credit institution for a corresponding entry to be made and shall add the name, personal identification code and residence of the moratorium administrator to the notice.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(7) A notice concerning the establishment of a moratorium shall be published by the Financial Supervision Authority in at least one daily national newspaper and one local newspaper of the seat of the credit institution not later than within two working days after adoption of the corresponding resolution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

### § 113. Management of credit institution during moratorium

(1) Unless otherwise established pursuant to subsection 112 (3) of this Act, a moratorium administrator has the right during the moratorium to:

- 1) represent, manage and monitor the credit institution;
- 2) suspend compliance with resolutions of the directing bodies of the credit institution;
- 3) administer and dispose of the assets of the credit institution.

(2) The authority of members of the directing bodies of a credit institution shall be suspended on the basis of a resolution concerning establishment of a moratorium, unless otherwise established pursuant to subsection 112 (3) of this Act.

(3) Within two days after appointment, the moratorium administrator is required to:

1) display a notice at the seat and every branch and representative office of the credit institution concerning the appointment of the moratorium administrator, indicating the names of the persons whose authority to conclude transactions in the name of the credit institution has been revoked or whose earlier right to give orders in the name of the credit institution to make payments or transfers has been revoked;

2) publish a notice with the content provided for in clause 1) of this subsection in at least one daily national newspaper and one local newspaper of the seat of the credit institution and the branches thereof and to repeat the notice once a week for four weeks;

3) notify the correspondent banks and the Estonian Central Register of Securities of persons who are no longer authorised to dispose, in the name of the credit institution, of the assets of the credit institution or assets administered on the basis of authorisation, and of persons to whom corresponding authorisation has been granted;

4) suspend all distributions of profit, including payment of bonuses, additional remuneration, other incentives, loans and other amounts, to the managers, employees, and shareholders or members of the credit institution.

(4) A moratorium administrator shall submit data to the depositors and the Guarantee Fund pursuant to the procedure prescribed in the Guarantee Fund Act.

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

(5) A moratorium administrator shall receive remuneration corresponding to his or her tasks from the funds of the credit institution. The remuneration of a moratorium administrator shall

be determined by the Financial Supervision Authority. Assistants to a moratorium administrator, including experts, auditors and employees of the credit institution, may be remunerated corresponding to the tasks and qualifications thereof.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(6) A moratorium administrator shall ascertain whether the credit institution is able to eliminate solvency problems and continue its activities.

(7) Not later than within thirty days after appointment, the moratorium administrator shall submit a written report concerning the financial situation of the credit institution to the Financial Supervision Authority. The format of the report shall be established by the Bank of Estonia.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(8) A moratorium administrator is required to submit activity reports at the request of the Financial Supervision Authority but not less frequently than once a month.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(9) Appeals against the activities of a moratorium administrator may be filed pursuant to the procedure provided for in § 110 of this Act; however, the filing of and proceedings regarding an appeal do not suspend the activities of the moratorium administrator.

#### § 114. Performance of obligations during moratorium

(1) A moratorium administrator is required to act in the most economically purposeful manner pursuant to the interests of all depositors, other clients and creditors of the credit institution.

(2) During a moratorium, the moratorium administrator may sell assets of the credit institution in the most profitable manner and invest the amounts received in credit institutions or low-risk money market instruments with a view to eliminating the solvency problems of the credit institution. A moratorium administrator may conclude transactions and perform acts in the interests of creditors in order to prevent further losses.

(3) During a moratorium, a credit institution shall not perform financial and other proprietary obligations assumed before establishment of the moratorium. This provision does not apply in the case provided for in subsection (4) of this section or if otherwise established pursuant to subsection 112 (3) of this Act.

(4) During a moratorium, only obligations arising from payment orders accepted for settlement by the credit institution before the establishment of the moratorium shall be performed and set-offs shall be carried out through a payment system.

(5) Compulsory executions or seizure of the assets of a credit institution shall not be carried out in the credit institution during a moratorium.

(6) During a moratorium, a court shall refuse, by a ruling, to accept a petition against the credit institution and shall return the petition. A court shall suspend the proceedings in which the credit institution is a defendant until the end of the moratorium.

(7) Unless otherwise established pursuant to subsection 112 (3) of this Act, the performance under a moratorium of such obligations of the clients of a credit institution which are contingent on the credit institution shall be suspended for the time of the moratorium.

(8) Unless otherwise provided for in this Act, the obligation of a credit institution to pay a debt pursuant to a principal or accessory financial obligation shall be suspended from the date of establishment of a moratorium until termination thereof. Payment of debts shall be resumed immediately after termination of the moratorium if the credit institution has restored its solvency. Fines and interest on arrears shall not be imposed, calculated or paid during a moratorium. Calculation of interest shall continue but the payment thereof shall be commenced pursuant to contracts, on the date following the date of termination of the moratorium.

(9) A credit institution shall commence performance of obligations assumed before the establishment of a moratorium on the date following the date of termination of the moratorium if the credit institution has restored its solvency.

#### § 115. Termination of moratorium

(1) The Financial Supervision Authority shall decide on the termination of a moratorium on the basis of data submitted in the reports of the moratorium administrator and during the term specified in the resolution on establishment of the moratorium, but not later than within six months after establishment of the moratorium.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) A moratorium administrator may apply for termination of the moratorium before the end of the specified term.

(3) The Financial Supervision Authority shall decide on the termination of a moratorium and grant consent for resumption of the activities of a credit institution if:

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

1) according to the report of the moratorium administrator, the solvency problems of the credit institution have been eliminated and the proprietary interests of the clients and creditors are protected, and

2) according to the opinion of the Financial Supervision Authority, the circumstances specified in § 17 of this Act do not exist.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) On the basis of a resolution passed pursuant to subsection (3) of this section, a credit institution shall reacquire the right to administer the assets thereof and the authority of the members of the directing bodies shall be resumed.

(5) If, at the end of the term of a moratorium but not later than within six months after establishment of the moratorium, a credit institution fails to comply with the requirements provided for in this Act, the Financial Supervision Authority shall decide on the revocation of authorisation of the credit institution on the bases prescribed in § 17 of this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

## Chapter 11

### Dissolution of Credit Institutions

#### Division 1

#### Voluntary Dissolution and Compulsory Dissolution

##### § 116. Methods of dissolution of credit institution

(1) A credit institution shall be dissolved:

1) by a resolution of the general meeting of the shareholders or members of the credit institution, on the basis of Acts and the articles of association of the credit institution (voluntary dissolution);

2) on the initiative of the Financial Supervision Authority, on the basis of a court judgment (compulsory dissolution);

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

3) in the case of insolvency, pursuant to this Act and the Bankruptcy Act.

(2) A credit institution may be voluntarily or compulsorily dissolved on the condition that the assets thereof are sufficient to satisfy the justified claims of all creditors in full.

(3) If, during liquidation proceedings, it becomes evident that the assets of the credit institution are not sufficient to satisfy the justified claims of all creditors in full, the liquidators shall suspend their activities and commence bankruptcy proceedings, and shall notify the Financial Supervision Authority thereof in advance in writing.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

##### § 117. Voluntary dissolution

(1) In order to decide on the dissolution of a credit institution at the general meeting of shareholders or members, an overview of the economic activities of the credit institution during the current year and of the financial situation of the credit institution shall be submitted to the general meeting by the management board. The overview shall set out the term and funds for satisfaction in full by the credit institution of the justified claims of all creditors.



(2) In co-ordination with the supervisory board, the management board of a credit institution is required to submit, at least fifteen days before the date of the general meeting, an application for authorisation for voluntary dissolution of the credit institution together with the data specified in subsection (1) of this section to the Financial Supervision Authority. The Bank of Estonia may establish a term for satisfaction of all claims of depositors.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The Financial Supervision Authority shall grant authorisation to a credit institution for voluntary dissolution only on the condition that the credit institution is able to satisfy the justified claims of all creditors in full not later than within three months after the date of publication of the liquidation notice.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 118. Compulsory dissolution

(1) A credit institution shall be dissolved by a court judgment on the basis of a petition of the Financial Supervision Authority if the authorisation of the credit institution has been revoked by the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) Evidence concerning circumstances provided for in § 17 of this Act shall be submitted to the court together with a petition.

(3) A court shall decide on the compulsory liquidation of a credit institution promptly but not later than within three working days after submission of the corresponding petition.

(4) The provisions of subsection 366 (3) of the Commercial Code do not apply to the case specified in subsection (1) of this section.

(5) A judgment on compulsory liquidation shall be executed promptly, and the filing of and proceedings regarding an appeal do not suspend the activities of liquidators.

#### § 119. Requirements for liquidators

(1) At least three persons who have experience in the banking field or higher education in law shall be elected or appointed liquidators and at least one of them shall meet the requirements specified in subsection 56 (2) of this Act.

(2) Liquidators shall remain impartial upon performance of their duties. At the request of the Financial Supervision Authority, a liquidator shall submit information concerning his or her personal and economic interests and any conflicts of such interests. The content of the information shall be determined and the procedure for submission thereof shall be established by the Bank of Estonia on the basis of this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The Financial Supervision Authority has the right to intervene in the activities of liquidators and demand, through a court, the appointment of new liquidators if data exists to show that the activities of the liquidators are not in compliance with law or that the claims of creditors are not satisfied objectively.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) Liquidators shall receive remuneration corresponding to their tasks from the funds of the credit institution being liquidated but not more than the average remuneration of the members of the management boards of an operating credit institution. Remuneration paid to assistants to liquidators, including experts and auditors, shall not exceed the average remuneration paid by an operating credit institution to persons working or operating in corresponding positions.

#### § 120. Duties and tasks of liquidators

Liquidators are required to:

- 1) carry out a full inventory of all assets of the credit institution as of the date of entry into force of the dissolution resolution;
- 2) publish a notice of the liquidation proceedings of the credit institution in at least two national newspapers on two occasions with an interval of two weeks;
- 3) notify in writing all known creditors of the credit institution of the liquidation proceedings and to specify the credit institution through which claims shall be paid;
- 4) demand that all known creditors submit the balance confirmations of their financial claims within two months after the date of publication of the first liquidation notice in a newspaper;
- 5) notify correspondent banks promptly of the dissolution resolution and to close correspondent accounts;
- 6) submit activity reports and a final balance sheet pursuant to the procedure established by the Bank of Estonia.

#### § 121. Submission and satisfaction of claims of creditors

(1) After publication of the dissolution resolution, the due dates for the claims of all depositors shall be deemed to have arrived and the obligations of the credit institution shall be subject to performance in full.

(2) Liquidators have the right to demand additional data and documents from all known creditors in order for the debt-claims of the creditors to be proven.

(3) The provisions of subsection 379 (3) and § 380 of the Commercial Code do not apply to credit institutions.

### Division 2

#### Bankruptcy of Credit Institutions

## § 122. Receipt of bankruptcy caution

A credit institution is required to notify the Bank of Estonia promptly, but not later than on the following working day, of the receipt of a bankruptcy caution specified in clause 9 (1) 4) of the Bankruptcy Act from a creditor.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## § 123. Submission of bankruptcy petition

(1) A bankruptcy petition against a credit institution may be submitted by:

- 1) the creditors;
- 2) the liquidators in the cases prescribed by law;
- 3) Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) An operating credit institution which is a debtor may submit a bankruptcy petition only with the written consent of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## § 124. Submission of bankruptcy petition by Financial Supervision Authority

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(1) The Financial Supervision Authority has the right to submit a bankruptcy petition against a credit institution regardless of whether the Financial Supervision Authority is a creditor of the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) In addition to the grounds prescribed in § 9 of the Bankruptcy Act, the Financial Supervision Authority also has the right to submit a bankruptcy petition if the credit institution fails to satisfy a justified claim of at least one client and the Financial Supervision Authority has sufficient data concerning the insolvency of the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## § 125. Commencement of bankruptcy proceedings and hearing of petitions

(1) A court shall promptly decide on the commencement of bankruptcy proceedings with regard to a credit institution but not later than within three working days after submission of the bankruptcy petition.

(2) The provisions of §§ 12 and 12<sup>1</sup> of the Bankruptcy Act do not apply if the bankruptcy petition against a credit institution is submitted by the Financial Supervision Authority. A

court shall hear a bankruptcy petition promptly but not later than on the following working day and decide on the declaration of bankruptcy on the basis of evidence annexed to the bankruptcy petition.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) On the basis of a petition by a creditor or liquidator, a court shall hold a preliminary hearing for the commencement of bankruptcy proceedings with regard to a credit institution. A representative of the Financial Supervision Authority shall be summoned to a preliminary hearing to give his or her opinion on the commencement of bankruptcy proceedings with regard to the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) A court shall hear a bankruptcy petition specified in subsection (3) of this section not later than within seven calendar days as of the commencement of the bankruptcy proceedings.

#### § 126. Appointment of interim trustee and trustees in bankruptcy

(1) A court shall appoint the interim trustee and trustees in bankruptcy of a credit institution on the proposal of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) At least three trustees in bankruptcy shall participate in the bankruptcy proceedings of a credit institution and at least one of them must meet the requirements provided for in subsection 56 (2) of this Act. The provisions of § 30 of the Bankruptcy Act do not apply to bankruptcy proceedings of credit institutions.

(3) A court shall release a trustee in bankruptcy at his or her request. The trustee in bankruptcy shall notify the Financial Supervision Authority of his or her request thirty days in advance and shall submit an activity report.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(4) If a trustee in bankruptcy has failed to perform his or her duties or has not performed them adequately, a court shall release the trustee in bankruptcy on the basis of a petition by the Financial Supervision Authority or a resolution of the bankruptcy committee.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) If a trustee in bankruptcy is released, a new trustee in bankruptcy shall be appointed pursuant to the procedure prescribed in subsection (1) of this section.

(6) Information specified in subsection 119 (2) of this Act shall be submitted to the court and the Financial Supervision Authority by an interim trustee or a trustee in bankruptcy within seven days after his or her appointment.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(7) The provisions of the second sentence of subsection 99 (4) of the Bankruptcy Act do not apply to determination of the remuneration of a trustee in bankruptcy of a credit institution. The provisions of subsection 119 (4) of this Act apply to payment of remuneration to assistants to a trustee in bankruptcy, including experts and auditors.

#### § 127. Duties of interim trustee

(1) An interim trustee shall, pursuant to the principle of conservatism, ascertain the true and fair value of the assets of the credit institution which is a debtor and submit the relevant documents to the court together with his or her report.

(2) If a credit institution is the parent company of a consolidation group, the interim trustee is required to ascertain the net assets of the consolidation group in the manner specified in subsection (1) of this section.

(3) The interim trustee shall organise execution of payment orders accepted by the credit institution before the commencement of bankruptcy proceedings, pursuant to the procedure provided for in § 87 of this Act.

(4) Upon performance of his or her duties, an interim trustee has the right to co-operate with and receive information and documents from the Financial Supervision Authority and the auditors of the credit institution.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 128. Duties of trustees in bankruptcy

(1) A trustee in bankruptcy shall notify the depositors, other clients and the creditors of the bankruptcy order and perform the duties prescribed in the Guarantee Fund Act.

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

(2) A trustee in bankruptcy is required to notify correspondent banks promptly of the bankruptcy order and to close correspondent accounts.

(3) A trustee in bankruptcy shall organise execution of payment orders accepted by a credit institution before the commencement of bankruptcy proceedings, pursuant to the procedure provided for in § 87 of this Act.

(4) A trustee in bankruptcy is required to deposit funds pursuant to the procedure specified by the bankruptcy committee.

(5) A trustee in bankruptcy of a credit institution is required to submit activity reports at the request of the Financial Supervision Authority but not less frequently than once every three months. The format of the reports shall be established by the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

#### § 129. Bankruptcy committee

(1) The bankruptcy committee of a credit institution shall consist of at least five members, at least one of whom shall be appointed by the Guarantee Fund and one by the Financial Supervision Authority.

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

(2) A court shall appoint the bankruptcy committee of a credit institution on the proposal of a trustee in bankruptcy and the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(3) The provisions of § 27 of the Bankruptcy Act do not apply to bankruptcy proceedings of credit institutions.

### § 130. Claims in bankruptcy proceedings of credit institutions

(1) The following shall be released from the obligation to submit a proof of claim:

1) the Guarantee Fund, to the extent of compensation paid on the basis of the Guarantee Fund Act;

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

2) depositors whose deposits are guaranteed pursuant to the procedure and to the extent prescribed in the Guarantee Fund Act, in claims to the extent not compensated by the Guarantee Fund, if the amount of the deposit exceeds the limit provided for in subsection 25 (2) or §§ 110 and 111 of the Guarantee Fund Act and if they have submitted the positions prescribed in subsection 38 (3) of the Guarantee Fund Act.

(20.02.2002 entered into force 01.07.2002 - RT I 2002, 23, 131)

(2) The provisions of subsection 68 (1)–(3) of the Bankruptcy Act may be applied in the bankruptcy proceedings of a credit institution after a meeting for the defence of the claims of the credit institution is held.

### § 131. Specifications regarding priority of claims

(1) In the bankruptcy proceedings of a credit institution, claims shall be satisfied according to the rankings provided for in the Bankruptcy Act, with the specifications provided for in this section.

(2) Accepted claims of a credit institution which arise from own funds provided for in §§ 74 and 77 of this Act shall be satisfied after satisfaction of claims which are not filed on time but are accepted.

### § 132. Specifications regarding formation of bankruptcy estate

(1) Collateral instruments of payments shall not be included in the bankruptcy estate of a credit institution in the amount which is necessary for execution of payment orders accepted by the credit institution before the commencement of bankruptcy proceedings.

(2) Assets removed from the ownership of a debtor in accordance with the provisions of subsection 114 (2) or (4) of this Act during a moratorium of a credit institution or in accordance with the provisions of § 87 of this Act during bankruptcy proceedings are not subject to recovery.

#### § 133. Sale of bankruptcy estate

(1) A trustee in bankruptcy has the right to sell the set of assets of the credit institution with the consent of the bankruptcy committee on the condition that the buyer secures all the claims of creditors.

(2) If the assets of a credit institution cannot be sold in any other manner, the general meeting of creditors may, by a resolution, issue a precept to a trustee in bankruptcy for the sale of the assets of the credit institution to creditors by way of payment with the claims thereof, in proportion to the claims defended by them. At least three-quarters of the creditors present must vote in favour of the specified resolution and the claims of the creditors present must make up at least two-thirds of the amount of all claims.

#### § 134. Rehabilitation and compromise of credit institution

(1) The rehabilitation plan of a credit institution may be submitted by a trustee in bankruptcy to the general meeting of creditors for approval only with the consent of the Financial Supervision Authority.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(2) A compromise may be made in the course of the bankruptcy proceedings of a credit institution only with the consent of the Financial Supervision Authority. In order to resume activities, a credit institution shall obtain new authorisation pursuant to the provisions of §§ 13 and 14 of this Act.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

## Chapter 12

### Liability

#### § 134<sup>1</sup>. Violation of prudential ratios

A credit institution which violates the prudential ratios provided for in this Act or on the basis thereof shall be punished by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 134<sup>2</sup>. Failure to submit mandatory information or documents

(1) Failure or refusal to submit or late submission of mandatory information, report, explanation or other mandatory data or documents to the Financial Supervision Authority, submission of an inaccurate or deficient report or information, or violation of the obligation to disclose reports, is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 134<sup>3</sup>. Violation of procedure for settlements

(1) Violation of the procedure for settlements is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 134<sup>4</sup>. Violation of obligation to maintain confidentiality of information subject to banking secrecy

(1) A head or employee of a credit institution, or any other person acting in the interests of a credit institution, who unlawfully discloses information subject to banking secrecy shall be punished by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 134<sup>5</sup>. Proceedings

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 44, 284; 56, 350) and of the Code of Misdemeanour Procedure (RT I 2002, 50, 1341) apply to the misdemeanours provided for in §§ 134<sup>1</sup>–134<sup>4</sup> of this Act.

(2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 134<sup>1</sup>–134<sup>4</sup> of this Act shall be conducted by the Financial Supervision Authority.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 135. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 136. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 137. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 138. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 139. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 140. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

Chapter 13



## Implementation of Act

### § 141. Application of Act to operating credit institutions

(1) Credit institutions operating on the date of entry into force of this Act shall bring their activities and documents into conformity with the requirements of this Act within one month after the entry into force of this Act, unless otherwise provided for in this section.

(2) The articles of association of credit institutions shall be brought into conformity with the requirements of this Act within nine months after the entry into force of this Act. If the articles of association of a credit institution founded before the entry into force of this Act are in conflict with this Act, the provisions of this Act apply.

(3) Credit institutions founded before the entry into force of this Act are required to bring the membership of their directing bodies into conformity with the requirements of this Act and submit the documents prescribed in subsection 48 (7) of this Act to the Bank of Estonia within one year after the entry into force of this Act.

(4) A person who has a qualifying holding in a bank but does not hold corresponding authorisation is required to apply for authorisation to acquire a qualifying holding from the Financial Supervision Authority within six months after the entry into force of this Act. From 1 September 1999, votes representing qualifying holdings without corresponding authorisation shall not be included in the quorum of the general meeting.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 48, 268)

(5) If a merger agreement between credit institutions was entered into before 1 July 1999, the Act in force at the time of entry into the merger agreement applies to acts performed in connection with the merger.

(6) If liquidation proceedings, bankruptcy proceedings or a moratorium regarding a credit institution commenced before 1 July 1999, the Act in force at the time of adoption of the liquidation resolution, commencement of the bankruptcy proceedings or establishment of the moratorium applies to acts performed in connection with the liquidation proceedings, bankruptcy proceedings or moratorium, unless otherwise prescribed in this section.

(7) The provisions of clause 120 6) of this Act apply to liquidation proceedings commenced before 1 July 1999 and the provisions of subsections 128 (4) and (5) and subsection 130 (2) of this Act apply to bankruptcy proceedings commenced before 1 July 1999.

(8) All circumstances and obligations which are not in compliance with this Act and which a credit institution is unable to eliminate or perform during the terms specified in this section shall be set out in a list which, together with a plan for the elimination of such circumstances and for the performance of such obligations, shall be submitted to the Bank of Estonia within six months after the entry into force of this Act. The Bank of Estonia shall specify a term for elimination of such circumstances and deficiencies.

(9) The Bank of Estonia has the right to establish legislation and give explanations and instructions for the implementation of this Act.

§ 142. Entry into force of Act

This Act enters into force on 1 July 1999, except for:

1) subsections 87 (3)–(5), 114 (4), 128 (3) and 132 (1), which enter into force on 1 January 2000;

2) 4. Chapter 4, which enters into force upon the entry into force of the Savings and Loan Associations Act;

3) subsections 21 (4) and 30 (6), which enter into force upon accession of the Republic of Estonia to the European Union unless otherwise provided by an international agreement of the Republic of Estonia.

§ 143. Application and repeal of earlier legislation

(1) The Credit Institutions Act (RT I 1995, 4, 36; 12, correction notice; 1998, 59, 941; 110, 1811; 111, 1828; 1999, 10, 155; 16, 276) is repealed.

(2) Other legislation regulating the activities of credit institutions upon the entry into force of this Act applies to credit institutions in so far as such legislation is not in conflict with this Act.

<sup>1</sup> RT = *Riigi Teataja* = *State Gazette*